a member of the Hudaco group
3 Wankel Street, Jet Park, Boksburg, 1406
Box 8189, Elandsfontien, 1406, SA
Tel: 011 397 4070 | www.abes.co.za
Co. Registration No. 1984/005432/07

TERMS AND CONDITIONS

INTRODUCTION - In these conditions:-
1. "ABES" – means Hudaco Trading (Pty) Ltd, reg. no. 1984/005432/07, also referred to as "we";
2. The "Consumer" – means the individual, firm, company or other legal persona with whom ABES contracts. The Consumer is referred to as the "Applicant" in the Credit Facilities Application Form which has to be read in conjunction to this document in the event of credit transactions;
3. The "goods" – means items ordered by the Consumer and supplied to the Consumer by or via ABES;
4. "Credit Application" – means the form completed by the Consumer;
5. "Cash transaction" – means payment of an amount owed by the Consumer to ABES which is immediately due and payable upon conclusion of a sale, also referred to as "COD";
6 "credit transaction" – means the agreement between ABES and Consumer in terms of the Credit Facility Application Form in terms of which agreement payment of an amount owed by the Consumer to ABES is deferred. These Terms and Conditions in conjunction with the Credit Application and/or any purchase orders and/or written orders placed by the Consumer, constitutes the whole agreement and no variation or amendment thereto shall be of any force or effect, unless reduced to writing and signed by both parties. These Terms and Conditions further supersede any other agreements concluded between the parties, and shall be applicable to each and every transaction between the parties, whether such transaction is in credit or cash.

PRICES & PURCHASE ORDERS
7. Prices quoted are based upon the ruling rates of wages, material and transportation. Prices may vary depending on the goods supplied.
8. Prices will increase and ABES reserves the right to adjust the prices. Such price increases will reflect on the invoice issued to the Consumer, who has 5 days from date reflecting on the invoice to raise any queries with the increased invoiced price. After the expiry of the 5 day period, the prices reflecting on the invoice of ABES, is the confirmed price and the Consumer is to make payment of that price and not any varied or reduced amount.
9. The payment terms set out herein shall apply for all cash transactions, except if the Consumer has applied for and successfully qualified for the goods to be provided on credit, in which instance the Credit Application should be read in conjunction herewith and deferred payment is allowed as set out herein.
10. The Consumer shall place an order with ABES ("purchase order"), which purchase order shall form part of the agreement between the parties, in respect of which these Terms and Conditions apply. ABES shall then invoice the Consumer for the purchase order and refer to the minimum orders as discussed herein for free delivery.
11. The purchase order shall be the source document to determine whether the quantities ordered and delivered or collected correspond, and any queries raised by the Consumer as to the goods ordered or delivered, shall be in writing and refer to the specific purchase order.

PAYMENT
12. All payments for cash transactions under this agreement are payable as follows: 50% of the invoice amount on ordering the goods by purchase order; and 50% of the invoice amount on the date of delivery.
13. All payments for credit transactions under this agreement must be paid by the Consumer within 30 days from the date reflecting on the invoice, unless alternative arrangements have been made with ABES, which is in writing and signed by ABES.
14. All payments, whether for cash or credit transactions are payable without any deduction or set-off, by way of EFT or into such bank account as stipulated on ABES's invoice or statement of account submitted to the Consumer.
15. ABES and the Consumer hereby agree that interest at the rate of 2.5% per month will become payable on all overdue accounts (payments which are not paid in terms hereof).
16. In the event of credit transactions, invoices will be addressed to the Consumer every 30 days reflecting the amount due and owing for the goods supplied to the Consumer by ABES on credit, and for cash transactions, an invoice will be issued per purchase order.
17. If the Consumer fails to pay any overdue amounts, or if the Consumer and ABES agree in writing to defer the payment, then ABES will be entitled to recover all charges incurred in the collection of overdue amounts and all finance charges, which shall be calculated in terms of the following:
  17.1 The total unpaid amount which is due and payable with interest at 2.5% per month;
  17.2 The period during which the Consumer continues to fail to pay the overdue amounts; or
  17.3 The period for which payment is deferred as above; and
  17.4 The overdue amounts will be calculated with compound interest on the date that payment of such amounts is made.

DELIVERY AND ACCEPTANCE
18. ABES agrees to deliver free of charge, subject to the Consumer placing an order for goods at a minimum value to be stipulated by ABES, which minimum value shall be per one order, and not the sum of more than one order, and which minimum value shall be reflected on the invoice. Should the Consumer not order the minimum value stipulated by ABES, then delivery charges shall be payable, as reflected on the invoice.
19. Such delivery charges shall make provision for any costs associated with delivery, including fuel charges and toll fees.
20. It is agreed that estimated delivery times reflecting on the invoice are guidelines which ABES shall endeavour to comply with and that late deliveries, however caused, shall not give rise to any claim for damages or consequential loss for any cause whatsoever arising and shall not entitle the Consumer to cancel the order/transaction.
21. All goods must be checked on arrival by the Consumer against the delivery notes and no claims in respect of shortages, non-delivery/collection of goods shall be entertained unless submitted by the Consumer to ABES in writing within 24 (twenty four) hours of receipt/collection of goods. The Consumer shall be deemed to have accepted the goods to its/their satisfaction should it not raise any query within 24 hours.
22. The signature of any employee or agent of the Consumer, which appears on ABES's official delivery note or waybill, or the delivery note of any authorised independent carrier, will constitute evidence of delivery of goods purchased or ordered by the Consumer.
23. ABES's invoices and statements shall be deemed to be *prima facie* proof of delivery and receipt of the goods reflected thereon to the Consumer. In the event of a dispute as to the quantity of goods sold and delivered and its value, the onus of proving that the goods were not delivered and/or the quantity and price thereof is in dispute, shall be upon the Consumer.
24. Where goods are to be delivered/collected as required and the Consumer does not accept delivery or collect without a valid cause, ABES may either cancel the agreement and claim from the Consumer any damages it may sustain, alternatively at its option it may enforce the agreement tendering the goods in question only against immediate payment, notwithstanding any previous terms agreed.

RETURNS & STOCK ROTATIONS

25. Stock rotations allow the Consumer to request ABES to accept the return of stock not used and/or sold by the Consumer. ABES reserves the right to accept such returns subject to the goods being in unused form, and the Consumer placing a new order equivalent to the value of the returned goods, plus 20%, from ABES. The Consumer also accepts responsibility to deliver the returned goods to ABES's premises, which costs will be for the Consumer's account.

26. ABES shall not be held liable for any consequential damages resulting from the use of wrongly delivered goods.

WARRANTIES

ABES warrants its goods for a period of 1 year, or 100 000 km in the event of clutches, whichever period occurs first and agrees to, in the event of a warranty claim, replace certain parts of the goods if found to be faulty, and subject to there being no negligence by the Consumer in the handling, use, or application of the goods. The Consumer will have no claim for consequential damages.

OWNERSHIP & POSSESSION

27. Notwithstanding that all risks in and to the goods sold by ABES to the Consumer shall immediately pass to the Consumer upon delivery or collection, ownership in the goods delivered or collected, shall remain vested in ABES until the full purchase consideration in respect thereof has been paid.

28. If the Consumer ceases to carry on business, is in financial difficulty, if the Estate of the Consumer is provisionally or finally liquidated or sequestrated or placed under judicial management, or if the Consumer defaults in making payment to ABES in accordance with the payment terms of these Terms and Conditions and the invoices, ABES shall be entitled forthwith to take possession of the goods in the Consumer's possession without prejudice to any further rights vested in it. Should the condition or nature of the repossessed goods be such that ABES is unable to sell the goods at the original invoice value, ABES shall reserve the right to claim any shortfall from the Consumer or its Estate.

RISK

29. The full risk of loss or damage to goods, whether attributable to irresistible force, inevitable accident or any other cause, whether foreseeable or unforeseeable, will pass to the Consumer on delivery of the goods to the Consumer, OR collection of the goods by the Consumer.

30. ABES will not be liable to the Consumer for any loss or damage, consequential or otherwise, caused by any defect in the goods associated with the misuse thereof and/or negligence by the Consumer.

31. ABES will not be liable for delays caused by strike, lockouts, and breakdowns of machinery or any other reason beyond our control.

32. The goods supplied will be utilised for the purpose for which it has been made or manufactured. The Consumer assumes responsibility to ensure that the goods are used in accordance with the instruction manuals if any, and for its intended purpose.

BREACH

33. The Consumer will be in breach of this agreement if the Consumer:

33.1 fails to make any payment in terms of this agreement;

33.2 fails to comply with any other provision of this agreement;

33.3 fails to satisfy any judgment for the payment of money obtained against it within 7 (seven) days of such judgment or fails to lodge an appeal within the prescribed period; or

33.4 provides false information, or fails to reveal negative information in the Credit Application.

34. In the event of any breach of this agreement, ABES may, in addition to any other remedies that it may have in terms of this agreement or at law:

34.1 terminate this agreement; and/or

34.2 claim, at the Consumer's cost, return and possession of the goods, together with all documents in respect of the goods held at the Consumer's address or at such other address as ABES may have notified the Consumer of in writing; and/or

34.3 claim damages (which may include immediate payment of all arrear payments plus finance charges thereon); or

34.4 claim the balance of any overdue amount.

CERTIFICATE - A certificate signed by a manager or credit controller or director of ABES (no proof of this appointment or position is necessary) setting out any overdue amount by the Consumer to ABES in terms of this agreement will be sufficient evidence of the particulars included therein for purposes of judgment, including provisional sentence or summary judgment, and the burden of proof rests on the Consumer to prove otherwise.

JURISDICTION

35. The Consumer hereby consents to jurisdiction of the Magistrate Court of any district for any legal proceedings arising from this agreement.

36. The Consumer selects as its *domicilium citandi et executandi* the address appearing on the Credit Facility Application form in the event of a credit transaction, alternatively the address to which the goods are delivered, at which address all legal documents and processes may be served unless the Consumer notifies ABES in writing of any other address selected as *domicilium citandi et executandi*.

CONCESSIONS - Any extension of time, relaxation, indulgence or condonation extended by ABES to the Consumer will not be regarded as a waiver of any of ABES's rights in terms of this agreement. Acceptance by ABES of any payment made by the Consumer after termination of this agreement will not be a waiver of ABES's rights in terms of this agreement nor regarded as a novation thereof, and ABES's prior termination of this agreement will remain in full force notwithstanding such acceptance.

AMENDMENTS - This agreement (in conjunction with the Credit Application if applicable), comprises the full agreement between the parties on the subject matter and no amendment or cancellation of this agreement, including this provision, will be valid unless it has been reduced to writing and signed by both ABES and the Consumer.

DISCLOSURE OF INFORMATION - ABES may: (i) disclose all information relating to any of the Consumer's accounts with ABES to all divisions and entities of and associated with ABES; and (ii) disclose information about the Consumer's accounts and the conduct by the Consumer of its accounts to other banks and credit bureaus when asked for such information; (iii) as provided for on the Credit Application, do credit checks in respect of the Consumer, to establish the Consumer's credit record, and contact the Consumer's trade references, whether the Consumer engages in a credit or cash (COD) transaction with ABES or not. The Consumer acknowledges that the financing for credit transactions, has been approved on the basis of information supplied by the Consumer. To the extent that the information provided by the consumer is incorrect or false, ABES reserves the right to cancel the agreement and claim damages for misrepresentation.