

**STANDARD TERMS AND CONDITIONS OF SALE**  
**OF SOUTH AFRICAN POLYPROPYLENE YARNS (PROPRIETARY) LIMITED**

(Hereinafter referred to as "SAPY")

**1. APPLICABILITY OF THE STANDARD CONDITIONS**

Unless otherwise agreed in writing and signed by SAPY, these Standard Conditions of Sale shall constitute the entire agreement between SAPY and the CUSTOMER and all goods are sold and/or services are rendered subject to this Agreement only. The CUSTOMER acknowledges and agrees that any additional or different terms or conditions contained in the CUSTOMER's order shall be null and void and of no force and effect.

**2. DEFINITIONS**

- 2.1 "CUSTOMER" means the person or persons at whose request or on whose behalf or in respect of whom SAPY undertakes any business, and for the purposes of any agreement being concluded after consideration of a Credit Application is made to SAPY, shall be the Applicant in terms thereof;
- 2.2 "Goods" means those products and/or services (where applicable) which SAPY sells to the CUSTOMER in terms of this agreement;
- 2.3 "Parties" means the CUSTOMER and SAPY collectively;
- 2.4 "SAPY" means South African Polypropylene Yarns (Proprietary) Limited, Registration № 94/10667/07;
- 2.5 "these conditions" means these Standard Terms and Conditions of Sale, including any annexures, schedules, or amendment thereto, from time to time;
- 2.6 "this Agreement" means these conditions, the credit application, Order Confirmations and any purchase orders and/or invoices in relation to the sale of any Goods to the CUSTOMER by SAPY.

**3. ORDER**

- 3.1 The agreement between SAPY and the CUSTOMER shall only come into existence when a duly authorised representative of SAPY has accepted the CUSTOMER's order either wholly or in part.
- 3.2 CUSTOMERS are required to place orders in writing, and in the event of an order being communicated to SAPY verbally, such order is to be confirmed in writing as soon as possible but not later than within 5 days, in order to constitute a valid order.
- 3.3 All orders accepted by SAPY shall be confirmed by an Order Confirmation, which shall be sent to the CUSTOMER by SAPY, which must be checked, signed and returned or "Confirmed" by a reply email.
- 3.4 All orders accepted by SAPY shall be binding on the CUSTOMER and may not be cancelled without obtaining SAPY's prior written consent.

**4. PRICES**

- 4.1 Subject to the provisions of these conditions, the selling prices at which the Goods shall be sold will be determined by agreement between SAPY and the CUSTOMER from time to time, prior to the confirmation of any order being delivered to the CUSTOMER.
- 4.2 The prices are based on the costs to SAPY, at the date on which the Order Confirmation is generated and SAPY confirms acceptance of the order which includes, *inter alia*:-
- 4.2.1 the cost of acquiring the raw materials'

- 4.2.2 the costs of labour;
- 4.2.3 the cost of freight;
- 4.2.4 the cost of purchasing any foreign currency to pay for the importation of the raw materials;
- 4.2.5 Import duties, government imposts, levies; and
- 4.2.6 other relevant charges.
- 4.3 If, after the date of the Order Confirmation, there is an unfavourable change to any of the cost items above, or any other reasonable cost that would impact on the price for the Goods agreed in clause 4.1 between the Parties, resulting in an increased cost to SAPY in supplying the Goods which form the subject of the Order Confirmation, then SAPY shall, on 30 (thirty) days' notice (or such other notice period as may be reasonably possible) in writing to the CUSTOMER, be entitled to adjust its price by the amount of such increase.
- 4.4 Within 5 working days of the date of the written notice of the price increase from SAPY or its agents, or such shortened period as may be stipulated by SAPY given the practical situation that prevails, the CUSTOMER shall, on notice to SAPY in writing, be entitled to cancel any undelivered order or portion of an order, if the Goods have not yet been prepared as at the date of receipt of the CUSTOMER's notice by SAPY as contemplated in clause 4.3. The CUSTOMER shall be deemed to have accepted the price increase if SAPY does not receive the CUSTOMER's notification of the cancellation of the whole or a portion of the order within 14 (fourteen) days of the date of SAPY's notice of the price increase, or such shortened period as may be applicable.
- 4.5 Unless otherwise stipulated, all prices are exclusive of VAT.
- 4.6 If the CUSTOMER varies its order or if there are delays or changes, which are not as a result of any act or omission of SAPY or within SAPY's control, SAPY shall be entitled to revise its prices by notice in writing.
- 4.7 In the event of a price reflected on an Order Confirmation or the order being incorrect due to a bona fide clerical error, then SAPY shall have the right to amend such price to rectify the error and this shall not amount to a price increase for the purposes of this clause 4.

## **5. VALUE ADDED TAX**

The CUSTOMER shall be responsible for and undertakes to pay to SAPY, at the same time as it is obliged to pay any sum in respect of Goods supplied or to be supplied and/or services rendered or to be rendered, any tax payable thereon by SAPY in terms of the Value Added Tax Act № 1991, as amended from time to time, or any replacement Act.

## **6. PAYMENT**

- 6.1 Unless otherwise specifically agreed to by SAPY in writing, all amounts shall be paid by the CUSTOMER to SAPY, without deduction, demand or set-off, within 30 (thirty) days of the date of SAPY's statement of account.
- 6.2 Any amount not paid on due date shall, at the discretion of SAPY, bear interest from the due date until it is paid, at a rate not exceeding 2 percentage points above the published prime overdraft rate from time to time of SAPY's principal bankers.
- 6.3 A letter purporting to be signed by a general, branch or other manager of SAPY's principal bankers, setting out the published prime overdraft rate from time to time shall be proof of the rate until the contrary is proved.
- 6.4 If any amount owing by the CUSTOMER to SAPY is not paid on the due date then all amounts owing by the CUSTOMER to SAPY from any cause whatsoever shall become immediately due and payable.
- 6.5 SAPY shall have the right to appropriate any payments received from the CUSTOMER to penalty interest and/or otherwise in its discretion, to the amounts owed to it by the CUSTOMER.

## **7. TIME NOT OF THE ESSENCE**

- 7.1 The time stated for delivery of the Goods or the rendering of any service by SAPY is approximate only and shall not be a material term to the Agreement or in relation to any particular confirmed order between SAPY and the CUSTOMER.
- 7.2 Subject to 7.1, SAPY will make reasonable efforts to deliver Goods within the times stated in the Order Confirmation and late delivery shall not render any order invalid nor render SAPY liable for any claim for damages, expenses, losses or any other amount which the CUSTOMER may incur as a result of a delay in delivery.
- 7.3 Delivery of the Goods is at all times dependent on stock or material availability, including but not limited to import and customs factors that may impact on delivery and shall be made, subject to 7.1 and 7.2, when the Goods are available.

## **8. DELIVERY AND RISK**

- 8.1 Unless otherwise agreed in writing, the CUSTOMER shall take delivery of the goods at SAPY's premises. If SAPY agrees to deliver the Goods to the CUSTOMER at any other place, then the CUSTOMER will be liable for all costs of delivery and these costs shall be paid to SAPY by the CUSTOMER on demand.
- 8.2 The CUSTOMER shall, at all times, be liable for any Goods In Transit insurance in relation to the Goods and for all costs associated with the logistics involved in delivering the Goods.
- 8.3 Risk in and to the Goods shall pass to the CUSTOMER upon collection, or delivery to the CUSTOMER, as the case may be.
- 8.4 Where delivery is effected by SAPY's transport contractor or the CUSTOMER's transporter (which shall include the CUSTOMER'S own vehicle/s):-
- 8.4.1 All risks in the goods shall remain with SAPY until and shall pass to the CUSTOMER upon the transporting vehicle coming to a stop at the point where the goods are to be unloaded;
- 8.4.2 The responsibility for unloading the Goods rests with the CUSTOMER;
- 8.4.3 SAPY reserves the right to pass on to the CUSTOMER any additional charges or any other costs whatsoever, including insurance premiums, which may be incurred by SAPY as a result of delayed or protracted unloading of the goods by or on behalf of the CUSTOMER;
- 8.4.4 SAPY reserves the right to charge the CUSTOMER for any other costs relating to the delivery of the Goods to the CUSTOMER, including insurance premiums.
- 8.5 Unless the CUSTOMER reports any incomplete or short delivery to SAPY, in writing, within 7 (SEVEN) days of the consignment of the Goods in question being delivered, the CUSTOMER shall be precluded from making any claim against SAPY in connection with such short or incomplete delivery.
- 8.6 Where the CUSTOMER requests that delivery be suspended or delayed to a date later than that originally requested, SAPY shall be entitled to charge the CUSTOMER a reasonable fee for the storage of such goods.
- 8.7 SAPY is entitled to withhold delivery of any Goods if the CUSTOMER has not made payment of amounts due in respect of previous orders.

## **9. OWNERSHIP**

- 9.1 Ownership of all goods delivered shall remain in SAPY until SAPY has received payment of the full purchase price notwithstanding that the Goods may have been purchased for resale.

9.2 The CUSTOMER acknowledges SAPY's rights to repossess the goods if the CUSTOMER defaults with any payment and in relation to any Goods ordered by the CUSTOMER at any time, in whole or in part, and the CUSTOMER shall bear the onus of proving that it has not defaulted with any payment and that payment has been made in full to SAPY.

9.3 SAPY's rights to repossess the Goods in terms of clause 9.2, includes, *inter alia*, SAPY and/or its agents having the right to enter the CUSTOMER's premises for the purpose of inspecting and/or removing the Goods from the CUSTOMER's premises.

## 10. HYPOTHEC

10.1. The CUSTOMER shall give valid notice to its landlord of the terms of this Agreement in order to prevent the landlord's hypothec from being exercised over any Goods supplied by SAPY to the CUSTOMER.

10.2. To this end, the CUSTOMER shall provide SAPY with a copy of such written notification to its Landlord, upon request by SAPY.

## 11. NOTIFICATION OF DEFECTS

11.1 Within 7 (seven) days after the receipt of the Goods or provision of any services, as the case may be, the CUSTOMER shall be required to advise SAPY of any defects, failing which the Goods shall be deemed to be complete in all respects and without defects, and the CUSTOMER shall be precluded from making any claim against SAPY in connection with any alleged defective goods otherwise.

11.2 If SAPY agrees that any Goods are defective, SAPY's liability shall be limited to replacing such Goods as against return to it of the defective Goods.

11.3 Notwithstanding that the CUSTOMER may have a claim against SAPY for the goods being defective, the CUSTOMER is not entitled to withhold payment of any amount due to SAPY nor set off any amount against any payment due to SAPY.

## 12. RETURN OF GOODS

If SAPY agrees to accept the return of any Goods for credit, the CUSTOMER shall be liable to pay SAPY a handling charge of not less than 10% (ten percent) of the invoiced price of the Goods returned.

## 13. NO WARRANTIES

SAPY gives no warranties and makes no representations as to the suitability of the goods for any specific use.

## 14. LIMITATION OF LIABILITY AND INDEMNITY

14.1 Neither SAPY nor any of its employees, representatives, subcontractors or agents shall be liable for:

14.1.1 any loss or damage whatsoever, whether direct, indirect, consequential or otherwise, including any loss of profit, to any person or property, arising from any cause in connection with the Goods, services performed or advice given by SAPY, including *inter alia*, deleterious effects resulting from the application of any process or treatment to the Goods after delivery, howsoever arising, save in the event of the gross negligence of SAPY;

14.1.2 any loss or damage whatsoever, whether direct, indirect, consequential or otherwise, including loss of profit, to any person or property arising from any cause in connection with the handling, use, or manipulation of the Goods once the Goods have left the possession and/or control of SAPY.

14.2 The CUSTOMER hereby indemnifies SAPY and holds it harmless against all and any claims which may at any time be made against SAPY in respect of any such loss or damage, to the extent provided for in this clause 14.

14.3 If a CUSTOMER sells or disposes of any Goods supplied to it by SAPY to a third party or otherwise permits a third party to use such Goods, the CUSTOMER shall include in the CUSTOMER's agreement with the third party a provision in terms of which SAPY is afforded a similar limitation of liability to that contemplated in 14.1. The CUSTOMER shall, by virtue of its signature to this Agreement,

be deemed to have incorporated such an indemnity and limitation of liability in any such agreements with third parties.

14.4 Subject to clauses 8.6 and 11.1, any claim which a CUSTOMER has against SAPY in connection with or arising out of any business shall lapse and become extinguished unless within:-

14.4.1 90 (ninety) days of such claim arising, the CUSTOMER gives written notice thereof to SAPY and at the same time discloses to SAPY in writing the material facts on which the claim is based; and

14.4.2 12 (twelve) months of such claim arising, the CUSTOMER institutes legal proceedings against SAPY in respect of the claim by issuing summons out of a court of competent jurisdiction and having such summons served on SAPY.

## 15. **FORCE MAJEURE**

If SAPY is prevented or restricted directly or indirectly from carrying out all or any of its obligations under a contract with the CUSTOMER by reason of strike, lock-out, fire, explosion, floods, storms, riot, war, sabotage, accident, an act of God, embargo, legislation, shortage of or a breakdown in transportation facilities, negligence of the carriers, inability to obtain raw materials, civil commotion, unrest or disturbances, cessation of labour, government interference or control, or any other cause or contingency beyond the control of SAPY, SAPY shall be relieved of its obligations in terms of this Agreement during the period that such event and its consequences continue and shall not be liable for any delay or failure in the fulfilment of any obligations thereunder or loss or damages either general, special or consequential, which the CUSTOMER may suffer due to or resulting from such delay or failure in performance. If SAPY invokes *force majeure* it shall upon termination of such event giving rise thereto, forthwith give written notice thereof to the CUSTOMER. Should such *force majeure* continue for a period of more than 10 (ten) consecutive days then, SAPY shall be entitled forthwith to cancel the contract with the CUSTOMER in respect of any obligation still to be performed thereunder.

## 16. **CANCELLATION**

Notwithstanding the acceptance of the cancellation of an order by SAPY, SAPY shall be entitled to recover all costs, expenses and/or damages incurred by it arising from or in connection with such cancellation, including but not being limited to all such costs, expenses and/or loss of profit arising out of or in connection with such cancellation.

## 17. **NOTICES AND DOMICILIA**

17.1 All notices to be given in terms of this Agreement shall be in writing and shall be:

17.1.1 delivered by hand; or

17.1.2 sent by prepaid registered post to SAPY at PO Box 109, Hammarsdale, 3700, KwaZulu-Natal, Republic of South Africa and to the CUSTOMER at any physical business addresses set out in its credit application, quotation giving rise to an Order Confirmation or Invoice in respect of the Goods, which physical addresses the parties select as their *domicilium citandi et executandi*; or

17.1.3 the email address provided by SAPY and by the CUSTOMER in the credit application

17.2 Each party shall be entitled at any time to change its *domicilium* to any other physical address within the Republic of South Africa, provided that such change shall take effect 7 (seven) days after delivery or deemed delivery of notice thereof to the other party. This shall also apply to any change in the identity of the recipient of the email address provided in the credit application.

17.3 Despite anything contained in this clause 17, any notice actually received by a Party shall constitute proper delivery of said notice in terms of this Agreement.

## 18. **GENERAL**

18.1 No agent or employee of SAPY, other than a director of SAPY, has SAPY's authority to alter or vary these conditions and no variation, alteration, novation, consensual termination or amendment shall be of any force and effect unless agreed to in writing by such authorised individual.

- 18.2 The CUSTOMER may not rely on any representations or warranties which are not contained in this Agreement, which it claims persuaded it to enter the contract.
- 18.3 No waiver of any of these conditions shall be effective unless reduced to writing and signed by a director of SAPY.
- 18.4 No indulgence granted by SAPY shall constitute a waiver of any of SAPY's rights.
- 18.5 If SAPY refers any claim or dispute against the CUSTOMER to its attorneys, whether or not SAPY institutes or defends any legal or arbitration proceedings to enforce or protect its rights, SAPY shall be entitled to recover from the CUSTOMER all legal costs (on an attorney and own client basis), tracing charges and collection commission incurred by SAPY in that regard.
- 18.6 In the event of SAPY deciding to institute legal proceedings for the enforcement of any of its rights against the CUSTOMER, SAPY shall be entitled to do so in any Court having competent jurisdiction.
- 18.7 A certificate signed by a director of SAPY reflecting the particulars of the amount owing by the CUSTOMER together with details of all deliveries made to the CUSTOMER and the invoices pertaining to such deliveries shall be *prima facie* proof thereof and of the CUSTOMER's indebtedness to SAPY.
- 18.8 The CUSTOMER may not cede, assign or transfer any of its rights or delegate any of its obligations in terms of this contract unless a director of SAPY gives prior written consent to the CUSTOMER to do so.
- 18.9 Credit facilities allowed by SAPY are in SAPY's discretion entirely and SAPY is entitled, at any time, upon reasonable written notice to the CUSTOMER to, vary, curtail or terminate such facilities.
- 18.10 Headings of clauses are inserted for convenience only and shall be ignored in the interpretation of these conditions.
- 18.11 If any part of these conditions is or becomes unenforceable, it will be severable from the rest of these conditions which will continue to be binding.
- 18.12 This agreement shall be interpreted and implemented in accordance with the law of the Republic of South Africa.
- 18.13. If any provision in a definition is a substantive provision conferring a right or imposing an obligation on any Party then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this Agreement;
- 18.14. No addition to, variation, novation or agreed cancellation of any provision of this Agreement shall be binding upon the Parties unless reduced to writing and signed by or on behalf of the Parties.
- 18.15. Where any term is defined within a particular clause other than as in clause 2 hereof, that term shall bear the meaning ascribed to it in that clause wherever it is used in this Agreement;
- 18.16. Where any number of days is to be calculated from a particular day, such number shall be calculated as excluding such particular day and commencing on the next day. If the last day of such number so calculated falls on a day which is not a business day, the last day shall be deemed to be the next succeeding day which is a business day;
- 18.17. A reference to "business day" means any day except a Saturday, Sunday or official public holiday in South Africa;
- 18.18. Any reference to days (other than a reference to business days), months or years shall be a reference to calendar days, months or years, as the case may be; and
- 18.19. The use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s.
- 18.20. The terms of this Agreement having been negotiated, the *contra proferentem* rule shall not be applied in the interpretation of this Agreement.