



TERMS AND CONDITIONS

The terms and conditions stipulated in this agreement shall apply to all transactions for the supply of goods, and services (if any), entered into between AGI frost fans (pty) ltd (hereinafter "AGI"/ "the seller") and the buyer of the goods, being the natural person, legal person, firm, partnership, company, close corporation or trust with whom this agreement is concluded (hereinafter "the buyer").

1. Definitions

- 1.1 "agreement" means the agreement concluded between the buyer and the seller, comprising these terms and conditions, as read with the accompanying quotation issued by the seller to the buyer ("the quotation");
- 1.1.1 "to retain warranty on components, the bi weekly start-up needs to be performed as per schedule on page 8 of the commissioning document (AGIcp)."
- 1.2 "buyer" means the natural person, legal person, partnership, company, close corporation or trust purchasing the goods from the seller, as is evident from the quotation;
- 1.3 "goods" means the frost prevention fans to be supplied by the seller subject to this conditions against payment of the purchase price as it appears in the quotation;
- 1.4 "pre-commissioning plan and checklist" means the seller's plan and checklist, to be provided by the seller, and completed where necessary by the buyer after installation of the goods, as referred to in clause 10.6 below;
- 1.5 "seller" means AGI frost (pty) ltd, a, private company with limited liability, duly registered and incorporated under the applicable laws of south africa with registration number 2015/051194/07;
- 1.6 "services" means the labour associated with the installation of the frost prevention fans by the seller on the designated premises of the seller, and the subsequent maintenance thereof, if any, as provided for in the quotation;
- 1.7 "site" means such place to which the buyer shall request the seller to provide the services.

2. Governing conditions

2.1 all orders for the goods and/or services, however made, are accepted only upon these terms and conditions which shall override any terms or conditions

incorporated or referred to by the buyer in writing, orally or otherwise, and no variation of these terms and conditions shall be incorporated into the agreement between the seller and the buyer unless expressly accepted in writing by a director of the seller.

2.2 no failure by the seller to object to any terms or conditions incorporated or referred to by the buyer in writing, orally or otherwise shall be deemed a waiver of these terms and conditions or an acceptance of the buyer's terms and conditions.

2.3 the buyer acknowledges that these terms and conditions, read together with the quotation, constitute and form the entire agreement between them in regard to the subject matter, to the exclusion of any antecedent statement or representation whether oral, written or implied or whether contained in any advertisement particulars or other matters issued or in any correspondence entered into by the seller. The buyer further acknowledges that it has not entered into this agreement in reliance upon any such statement or representation, other than the written specifications given by the seller.

3. Placing orders

3.1 placing an order presumes knowledge and acceptance of these terms and conditions. Upon placing the order, the buyer shall receive an acknowledgement of the order in writing and/or through the online order system designated by seller, if any; which does not constitute a binding agreement until the seller accepts the buyer's order by written confirmation and/or through such online system, as the case may be.

3.2 the seller reserves the right to reject cancellation by the buyer of an accepted order or any portion thereof.

3.3 the buyer accordingly recognises that cancellation of an accepted order needs to be approved in writing by the seller in order to be valid, and the buyer may be charged reasonable cancellation charges.

3.4 the buyer also accepts that goods already delivered to and accepted by the buyer cannot subsequently be returned or exchanged and will be invoiced in full.

3.5. If any changes are made to an original order, the price, discount on or delivery date of that order are subject to change.

3.6 the buyer recognises that:

3.6.1 the seller has a policy of continuous technical improvement and accordingly

reserves the right to make minor modifications to the technical specification and design of the goods;

3.6.2 catalogues and similar publications are only sent by way of information and any technical information provided is an approximate guide; and

3.6.3 the seller assumes no liability for any deviations from or mistakes in such information or for any errors of interpretation.

4. Works and specification as per the quotation

4.1 any adaptation of the standard specification of the goods shall be made upon the full and sole liability of the buyer.

4.2 where the standard specification of the goods is adapted, whether by the seller at the request of the buyer, or by the buyer itself, the buyer agrees to indemnify (and shall keep so indemnified) the seller in full against any claim resulting from any such variation (whether or not arising out of the negligence of the seller, its servants, agents or subcontractors).

4.3 in the event of any adaptation made by the seller upon request of the buyer, the buyer shall make such payment in respect thereof as the seller may reasonably demand.

4.4 the buyer shall be responsible for ensuring that the goods are sufficient and suitable for the buyer's purposes (whether such goods have been adapted from their standard specification or not) and the seller shall have no liability to the buyer in the event that such goods are not sufficient and suitable for the buyer's purposes.

4.5 unless otherwise expressly agreed in writing, the seller shall not be responsible for any errors, omissions or defects in any goods, equipment, machines, parts, drawings, designs, specifications, test results, reports or other information supplied to the seller by the buyer or the buyer's employees, agents, sub-contractors or representatives and the buyer agrees to indemnify and keep indemnified the seller against all claims and liabilities incurred by the seller resulting from such errors, omissions or defects.

4.6 the seller accordingly reserves the right to correct any obvious errors or omissions in quotations, specifications or prices without liability.

5. Orders

5.1 all orders are subject to written



acceptance by the seller and the seller reserves the right to reasonably decline any order by the buyer.

5.2 only written orders / signed tender documents/ by a duly authorised person and having a well-defined scope of work will be accepted and no oral negotiations and/or alleged oral agreements will be binding, unless subsequently reduced to writing by way of a document having a well-defined scope of work.

5.3 after acceptance of an order, such order may not be cancelled, in whole, or in part, or varied in any manner whatsoever, unless subsequently confirmed by the seller in writing.

6. Purchase price and terms of payment

6.1 all amounts stated in these terms and conditions to be payable by the buyer are exclusive of value added tax or any similar tax properly chargeable in respect of goods supplied under these terms and conditions and any other tax or duty, and the buyer will pay all such value added tax and other applicable taxes together with those amounts.

6.2 unless otherwise specified, all quotations are valid for 21 (twenty-one) calendar days as from date of issuing, (after which time it shall automatically expire) and is subject to the seller's acceptance of the buyer's order.

6.3 the seller's quotation includes only such goods, accessories and work as are specified thereon and (without limitation to the foregoing) does not include the cost of lighting, power, heat and water required and/or used during the installation and testing of the goods at the site, or any insurance or overtime working by the seller.

6.4 unless otherwise agreed in writing, the buyer shall pay the invoice amount of the goods and services and any other costs, charges or expenses provided for by these terms and conditions, as read with the quotation, including value added tax at the then current rate.

6.5 the purchase price payable in respect of the goods, (and where applicable, the amount due in consideration for the services), as well as the payment terms of such amounts (including but not limited to the buyer having to acquire asset finance) shall be negotiated by and agreed to between the seller and the buyer and – if such price differs from the price stated in the quotation - such subsequent agreement shall forthwith be reduced to writing by way of e-mail or otherwise,

simultaneously serving as an amendment to this agreement, however only to the extent that the price will, by such agreement, be deemed to have been substituted by such agreement.

6.6 unless otherwise stipulated in the quotation, all payments shall be made in South African ZA Rand, without deduction or set-off, and shall be made in full, in the form of electronic fund transfer to the bank account designated by the seller.

6.7 should any amount due to the seller not be paid on the due date, the amount overdue shall bear interest at the prime bank commercial overdraft lending rate charged by the seller's bankers to its 1st rate corporate customers on an unsecured basis plus 2%.

6.8 the levying of interest as per clause 6.7 above does not prohibit the seller from availing itself of any other legal remedies, such as instituting legal proceedings (including but not limited to damages claim) in the alternative/in addition thereto.

7. Delivery and installation

7.1 the manner of the delivery of the goods will be confirmed once the order quantity has been confirmed.

7.2 unless otherwise agreed in writing, the goods shall be collected by the buyer from the seller's premises in Wellington, South Africa.

7.3 any time or date specified for collection, shall be approximation and guide only, and hence the seller shall not be liable for any delays in delivery caused by factors outside its reasonable control.

7.4 where applicable, the buyer shall be responsible for arranging for the transportation of the goods from the aforesaid premises in wellington to the destination required by the buyer, and shall do so at its own cost and sole risk. The seller undertakes to provide reasonable assistance to the buyer in this regard.

7.5 if the seller is - due to no fault of its own, and factors beyond its reasonable control - unable to supply the goods on the date or time stipulated by it to the buyer in the concomitant order, the buyer shall be obliged to take delivery as and when the seller can reasonably effect such delivery. The seller shall not be held responsible for any damages whatsoever, or loss of profit, or any direct, indirect or consequential damages which the buyer may suffer as a result of delayed delivery.

7.6 if the agreement, as per the quotation,

provides for the seller to deliver the goods, delivery shall be deemed to take place when the goods arrive at the agreed destination or are ready for dispatch by the seller to the order of the buyer.

7.7 the seller may charge reasonable storage costs if the buyer requests the seller to withhold or postpone collection of the goods by the buyer beyond the delivery date as communicated to it by the seller.

7.8 delivery shall be deemed to have been affected upon tender of the goods for acceptance by the buyer within normal business hours, at the seller's premises in wellington.

7.9 if a carrier, as a representative of the seller, enters the premises of the buyer it shall be deemed to do so at the buyer's specific request, and in that event the seller and/or its agents shall accept no liability for damage or loss to the buyer or any third party, arising in any way from such entry or for that matter, exiting from the buyer's premises, or from the offloading thereof, or from any negligent act or omission of its agent.

7.10 upon collection, the buyer shall be responsible for receiving and checking the goods.

7.11 if any goods collected are damaged, or if the quantities received by the buyer do not correlate with the quantities indicated on the shipping (or other relevant) documents, the buyer shall inform the seller in writing within 1 calendar day after receipt of such goods.

7.12 insofar as installation of the goods is concerned, the buyer undertakes to:

- 7.12.1 ensure that the site will be safe at all times for the seller and its vehicles carrying out such installation when providing the services;

- 7.12.2 assume responsibility, at its own cost, for the provision of such labour and apparatus as is necessary for the offloading and positioning of the goods on site and shall give the seller every reasonable assistance in effecting the installation;

- 7.12.3 strictly follow the instructions as per the installation manual and ensure that the pre-commissioning plan and installation checklist contained therein as provided to it by the seller prior to installation is duly completed after such installation and is indeed completed by either the buyer him-/herself (if a natural person) or a duly authorised senior employee representing it (if a legal entity), and to this end, the buyer recognises that any deviation from such



instructions or failure to complete the pre-commissioning plan/ checklist by the buyer (or a third party duly acting on its behalf) shall negate all the warranties referred to in clause 10 below.

7.13 where a separate maintenance plan in respect of the goods forms part of the quotation, the buyer similarly undertakes to ensure that the site will be safe at all times for the seller and its vehicles carrying out such maintenance when providing the services. The buyer shall also similarly give the seller every reasonable assistance in providing all maintenance services.

8. Risk

8.1 risk in and to the goods shall pass to the buyer upon collection thereof by the buyer, its designated agent, a carrier for delivery to the buyer, or upon leaving the seller's premises for storage (if applicable), whichever occurs first, and any of which shall constitute delivery.

8.2 if delivery does not take place as a result of any act or omission of the buyer, or if the buyer fails to collect the goods as agreed, then delivery shall be deemed to have taken place at the time when the goods were received at AGI's premises in wellington, and risk shall similarly be deemed to have passed to the buyer, who hereby agrees to in such an event indemnify the seller in full against any expense, cost or loss incurred by the seller including, without limitation, storage and transport costs.

8.3 the seller's sole responsibility upon any damage of or loss to the goods is to repair or replace the goods which prove to be lost or defective (or at the seller's option the defective part(s)), as soon as is reasonably practicable, provided that they are returned to the seller by the buyer. Whether the remedy is repair or replacement shall be at the sole option of the seller and such repair or replacement shall be free of charge.

Subject to the provisions of clause 10 the seller shall have no further liability to the buyer.

8.4 if the buyer fails to comply with its reporting duty as contained in clause 7.11, the goods shall be deemed to be in accordance with the agreed upon specifications as per the quotation, and the buyer shall be bound to accept delivery and shall make payment without any deduction in accordance with these terms and conditions.

8.5 the seller will not be liable for any claims resulting from loss of or damage to the

goods occurring after delivery.

9. Ownership

Notwithstanding the delivery of any goods (or components thereof) to the buyer, ownership of the goods shall not pass until the seller has received payment of the full purchase price.

10. Warranties, liability and indemnity

10.1 unless otherwise stipulated in the quotation with regard to the particular goods concerned, the seller warrants to the buyer that AGI built components of the goods will be free from defects in material and workmanship for a period of 2 (two) years for mechanical and 1 (one) year on electrical components.

10.2 the time period of the warranty referred to in clause 10.1 will start on the day that the parties sign the commissioning documents.

10.3 the limited warranty referred to in clause 10.1 above shall be void if the goods are not installed, operated, serviced and maintained in accordance with AGI's published instructions for the goods in effect from time to time, and as per the installation manual and/or installation checklist provided to the buyer, or if transmitted loads are not within the published limits for the goods. In addition, this limited warranty shall be void if the goods are in any way subjected to: (a) improper storage, (b) accident, damage, abuse or misuse, (c) abnormal operating conditions or applications, or (d) repair or modification by the buyer or any other third party without the prior written consent of AGI.

10.4 with respect to any defect in material or workmanship covered by the limited warranty, if the buyer notifies AGI of such defect in writing within the warranty period, AGI will, at its sole option, either (a) repair the goods or replace the goods, or re-perform the defective services or part thereof. This shall be the buyer's only remedy.

10.5 any claim not communicated to AGI in writing before expiry of the warranty period, will be deemed to have been waived by the buyer.

10.6 goods repaired within the warranty period will retain the same warranty period as per original warranty date, determined on day of commissioning.

10.7 the warranties referred to in this clause do not apply if:

- the goods have been modified by the

buyer;

- where installation did not occur by AGI and the goods have been incorrectly installed by the buyer;

- the buyer failed to strictly follow the instructions as per the installation manual and installation checklist provided to it by the seller, and to this end, the buyer recognises that any deviation from such instructions by the buyer (or a third party acting on its behalf) shall promptly negate such warranties;

- defects in the goods have been caused by the act, neglect, omission or default of the buyer or any third party acting on its behalf, fair wear and tear or abnormal working conditions;

- any remedial work in respect of the goods has been carried out by third parties instructed by the buyer without the prior written approval of the seller including, but not limited to, servicing, alteration and repair of the goods; or

- if the installation and operation instructions (if any) and any instructions issued by the seller, are not followed.

10.8 the seller shall not be liable to the buyer:

- for any damage to persons or property, however arising, unless due to gross negligence on the part of the seller or its employees/ representatives;

- for defects, in or in any way connected with the goods, caused by the act, neglect, omission or default of the buyer or any third party, fair wear and tear or abnormal working conditions;

- for any remedial work in respect of the goods, carried out by third parties instructed by the buyer without the prior written approval of the seller including, but not limited to, servicing, alteration and repair of the goods;

- for claims if the seller's installation and operation instructions (if any) and any instructions issued by the seller, are not followed. The seller reserves the right to charge for remedial works in these circumstances;

- possible defects in manufacturing the goods or the conception of the raw materials used;

- for any other defects in the goods not falling within the aforesaid paragraphs of this clause 10.9, unless notified to the seller by the earlier of 14 days of delivery of the goods or installation of the goods or occurrence of a malfunction by a latent defect; and



- for any special, indirect, consequential or economic loss (howsoever arising and whether based on delict or on this agreement) including, but not limited to, loss of profit, loss of production, loss of business, and in particular any frost damage.

10.9 the seller's sole and aggregate liability to the buyer in respect of any occurrence or series of occurrences attributable to the same cause, whether for negligence/based on delict or breach of contract, shall in no circumstances exceed the amount payable to seller pursuant to its professional indemnity policy/ public liability policy in place at the time, but shall in any event never exceed the price paid by the buyer to the seller in respect of the goods in question.

11. Return policy

Goods may not be returned without prior written authorisation of AGI.

Requests to return goods must be made within 30 (thirty) calendar days after collection.

Returns are authorised at AGI's sole discretion.

11.4 any returned goods must be in their original condition as at the date of delivery and capable of being returned to stock without further repair or refurbishment.

11.5 a 10% handling fee will be charged on cancelled orders on which any goods (or parts thereof) were already ordered.

11.6 the buyer shall be and remain liable for the full payment of the purchase price of an order in the event that the goods were manufactured according to the buyer's specifications and subsequently cancelled for any reason whatsoever.

11.7 all goods returned hereunder must be shipped to AGI prepaid, and the risk of loss of or damage to such goods during the period of transit/ shipping shall be carried by the buyer.

12. Breach

12.1 if the buyer breaches any term of this agreement and fails to remedy such breach within 7 (seven) calendar days from being given written request to do so, the seller may, at its sole discretion, claim return of the goods or its current market value in za rand, determinable from the relevant invoice.

AGI may also retain any monies already received from the buyer, as damages. If the buyer breaches the agreement and

the seller instructs an attorney to collect the amount owing to it by the buyer, or institutes legal action against the buyer, the buyer shall be liable to pay all such costs on an attorney-client scale.

13. Intellectual property

13.1 the buyer acknowledges that AGI is the proprietor of intellectual property, including but not limited to its registered patent/s, trademarks, trade names, brands, logos, domain names, copyright, drawings, schedules, manuals and applications patents or trademarks pertaining to the goods; and undertakes:

13.1.1 not to infringe the intellectual property of AGI;

13.1.2 not to challenge AGI's ownership of such intellectual property, nor to cause anyone else so to challenge the same;

13.1.3 not to reverse engineer the same.

13.2 any unauthorised use of AGI intellectual property shall be considered to be prejudicial to the rights and interests of AGI and the buyer recognises that such conduct will lead to AGI instituting appropriate legal action against the buyer, the legal costs of which will be for the buyer's account and will be levied on the scale as between attorney and own client.

14. Applicable law and dispute resolution mechanism

14.1 this agreement and all transactions concluded thereunder shall be governed in all respects by and shall be construed according to the laws of the republic of south africa.

14.2 in the event of any dispute arising from this agreement, the parties shall in good faith exercise every reasonable attempt to settle the same amicably upon either party declaring such a dispute in writing.

14.3 in the event of the parties failing so to settle the dispute amicably within 14 calendar days of the dispute having been declared, such dispute shall be referred to their respective lawyers for mediation purposes, with the view of settling the dispute without the need to resort to litigation within 30 calendar days of such referral.

14.4 should the parties despite the aforesaid mediation, nevertheless have failed to settle the dispute, either party may initiate litigation proceedings in a court of competent jurisdiction, unless the parties, at the time, agree to settle such dispute by way of a specific tailor-made arbitration

agreement.

15. Environmental impact assessment

Such assessment is the liability of the client if such a request occurs.

16. Force majeure

16.1 AGI shall not be liable for damages or termination for default, if and to the extent that, the delay in performance or other failure to perform its obligations under the agreement is the result of an event of force majeure.

16.2 for purposes of this clause, "force majeure" means an event beyond the control of AGI and not involving its fault or negligence and not foreseeable.

16.3 such events may include, but are not restricted to, acts of the buyer either in its sovereign or contractual capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, strikes and freight embargoes.

16.4 if a force majeure situation arises, AGI shall promptly notify the buyer in writing of such condition and the cause thereof.

16.5 unless otherwise directed by the buyer in writing, AGI shall continue to perform its obligations under the agreement as far as is reasonably practical and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

17. General

17.1 these terms and conditions as read with the quotation shall constitute the entire agreement between the parties regarding the subject matter thereof and no variation, amendment, cancellation, or extension shall be valid unless reduced to writing and signed by both parties.

17.2 no indulgence which the seller may grant to the buyer shall in any way be deemed to affect, prejudice, or derogate from the rights of the seller, nor shall such indulgence constitute a waiver or novation of any of the rights of the seller who shall not thereby be precluded from exercising any rights against the buyer which may have arisen in the past or which may arise in the future.

17.3 the invalidity or unenforceability of any reason of any terms of these conditions shall not prejudice or affect the validity or enforceability of the remainder.

17.4 the buyer shall not be entitled, without the prior consent in writing of the seller, to cede its rights or assign its obligations



under the agreement.

17.5 any notice required or permitted to be given under these terms and conditions shall be in writing and shall be sent by recorded delivery addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice. In proving service, it shall be sufficient to prove that the notice was properly addressed and posted.

17.6 no waiver by the seller of any of the terms of these terms and conditions shall release the buyer from full performance of the remaining terms, and no waiver by the seller of any breach of the terms of these conditions shall be a waiver of any subsequent breach of the same or any other term of this conditions. No failure to exercise, nor delay or omission by the seller in exercising, any right, power or remedy conferred on it under these conditions or provided by law shall except with the express written consent of that party affect that right, power, or remedy; or operate as a waiver of it.

17.7 if any order is made by two or more buyers jointly, the obligations of those buyers under the agreement shall be joint and several.

17.8 the seller may use personal information of the buyer for the purposes of fulfilling any order, providing the goods and services, managing the relationship with the buyer; for their internal accounting and processes and for legal or regulatory purposes, and will do so in full compliance with the protection of personal information act, no 4 of 2013.

17.9 insofar as these terms and conditions were negotiated between the parties, the legal principle of *contra proferentem* (i.e., that an agreement needs to be interpreted in favour of the party who did not draft the agreement) shall not apply.

17.10 in the event of any conflict between the provisions of these terms and conditions and the provisions of the quotation, the provisions as per the quotation shall prevail.