

Ptytrade 228 (Pty) Ltd

Reg. No. 2015/397854/07

“Your Electrical Wholesaler”

99 Thirteenth Avenue
Ravenswood, Boksburg 1459
Switchboard: 011 918-7810
Email: ptysales@mweb.co.za

VAT No. 4910219775
P.O. Box 1754, Benoni 1501
Fax: 011 918-7915
www.ptygroup.co.za

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

- 1.1. “Agreement” – Refers to these terms and conditions together with all (but not limited to) any and all initialled and signed annexures, any application forms used to apply for credit, the main sale agreements and any relevant suretyships which shall be read together and in respect of each other as being the main agreement between the parties.
- 1.2. “Client/You/Yours” – Refers to the person/juristic entity that enters into the agreement with the company and binds themselves to the terms and conditions as shown in the signatory block.
- 1.3. “Company/us/ours” – Refers to the company: PTYTRADE 228 (Pty) Ltd, with registration number: (2015/397854/07)
- 1.4. “Hazardous Area” – refers to any area that the client wishes to apply the products or have them installed in which by their very nature are considered hazardous and of a dangerous nature.
- 1.5. “Master Electrician” – refers to any person with the relevant qualifications and certification appointing them in the position of being a “master electrician”. This qualification must state that they are qualified with the necessary industry qualification enabling them to fit the product. The client bears the responsibility of ensuring they have an independent master electrician to fit the product and then another master electrician that can verify that the product has been fitted correctly.
- 1.6. “Order” – refers to the physical order placed by the client to the company in respect of the product they wish to purchase.
- 1.7. “Parties” – Refers to both the client and the company and any further representatives thereof involved in this agreement.
- 1.8. “Representative” – Refers to any duly authorized natural person that has the authority to represent any juristic person that is involved in this agreement. Each representative undertakes that such authority is true and correct and in the event is found not to be so at a later stage then the company has the election of either cancelling the said agreement and holding the signatory personally liable for any damages that may have been incurred.
- 1.9. “Products” – refers to any products/products that is sold by the company to the client that forms part of the subject for this agreement.

2. SCOPE OF AGREEMENT

- 2.1. Notwithstanding anything contained in your order or in correspondence between us or elsewhere, these terms and conditions together with our quotation (if any) constitute the entire terms and conditions of the agreement between us in regard to the products and / or services and will prevail over all prior negotiations, proposals or correspondence or previous dealing between the parties.
- 2.2. An order, either verbally or in writing, for the products from you shall be deemed to be an offer by you to purchase the products. Acceptance of your offer will occur when you receive verbal or written acknowledgement, or upon delivery of the products, whichever occurs first.
- 2.3. By offering to purchase or purchasing the products you are agreeing to be bound exclusively by our quotation (if any) and these Terms and Conditions, which constitutes the entire agreement between the parties (“Agreement”). All other terms or conditions including those in your offer are excluded, unless agreed in writing at the time of acceptance and reduced to writing.
- 2.4. You acknowledge that in entering into this Agreement you did not rely on any representation other than those which are expressly incorporated into our quotation or this Agreement in writing and signed by both parties.

3. CHANGES OR VARIATION OF CUSTOMERS’ BUSINESS

- 3.1. Should there be any variation to any of the information supplied by you in your credit application with us; notice must be immediately given to PTYTRADE 228 (Pty) Ltd. Until a new credit application form is signed and approved in writing by us, the original applicant to the credit application and those person(s) who signed as guarantor(s) and indemnifier(s) agrees to remain liable to us as though all products were supplied to the original applicant.

4. PRICE

- 4.1. All prices quoted are firm, and unless otherwise stipulated, exclusive of delivery or VAT. All such taxes and costs will be added to the price at the designated rate.
- 4.2. Unless stated otherwise, all prices, quotes or other amounts are in South African Rands (R).

- 4.3. We reserve the right to make any changes necessary to the price to cover any cost variation, including (but not limited to):
- 4.4. Any act or omission on your part or the part of your agents; and / or,
- 4.5. To correct any typographical or clerical errors which may be present in the prices, deliveries or specifications in any quote or offer.
- 4.6. Any increases in our costs beyond our control will result in the price being increased by the same amount. In this paragraph the term “costs” includes statutory charges (other than VAT), the price paid by us for raw materials, components, products or services (including and dependent on rates of overseas exchange, customs duty, primage, insurance, freight & tariff), variations in commodity prices, labour rates (including & dependent on the statutory hours per week, workers' compensation, long service leave, sick and holiday pay & public holidays) and any other costs beyond our control.

5. VALIDITY

- 5.1. Unless otherwise stated, our quotations are valid for a period of 14 (fourteen) days from the date of quotation and thereafter are subject to confirmation before acceptance. We reserve the right to withdraw, either verbally or in writing, any quotation prior to acceptance of your offer.

6. SPECIFICATIONS

- 6.1. We follow a policy of continual product development & reserve the right to alter the design or specification of any products without notice & without affecting the validity of this agreement.
- 6.2. Any performance figures given by us are based on our experience and are what we would expect to obtain on test. We will not be liable for any failure to attain performance figures stated in the agreement or otherwise unless these have been warranted by us in writing within a specified margin or tolerance.
- 6.3. All specifications, drawings, illustrations, data, dimensions and weights furnished by us or otherwise contained in our catalogues, price lists and advertising matter are approximate only and are intended to be by way of general description of the products and do not form part of this agreement unless specifically agreed to the contrary in writing, in which case they shall be subject to recognised tolerances.
- 6.4. We shall not be deemed to have agreed to comply with any specification or drawing referred to in any order unless such specification or drawing is agreed by us in writing at the time of acceptance of your offer.

7. DELIVERY & RISK

- 7.1. Delivery Date
 - 7.1.1. Time will not be of the essence under this agreement. Dates given for delivery are stated in good faith but are not to be treated as a term of this agreement.
 - 7.1.2. Warranted in writing by us to the contrary, delivery dates are approximate only and although every reasonable effort will be made by us to deliver products by the estimated delivery date, any failure by us to deliver by any particular date will not entitle you to cancel the agreement or void any of these Terms and Conditions or claim compensation.
 - 7.1.3. Where we agree in writing to guarantee a delivery date, we will not be liable for failure to fulfil or delays in fulfilling the order where fulfilment is prevented, delayed or hindered by strikes, lockouts, accidents, shortages, of material or labour, shipping delays, wars or any other cause (whether similar or dissimilar) beyond our control.
 - 7.1.4. All delivery dates are dependent upon the timely receipt by us of your written order and all necessary particulars required for production and delivery of the products.
 - 7.2. Part Deliveries
 - 7.2.1. We reserve the right to dispatch part of the order and you will be invoiced in respect of such delivery in accordance with the payment terms set out herein.
 - 7.3. Date and Place of Delivery
 - 7.3.1. Delivery of the products will be as per what is stated on our quotation or as otherwise agreed in writing and consented to by the parties.
 - 7.3.2. Unless stated otherwise, no allowance has been made in our price for transport, insurance & unloading costs. Should you require us to arrange these services, the cost of those services will be payable by you on demand. If you select a carrier for delivery to you, you do so on the express understanding that the carrier is acting as an agent for you with respect to freight and safe carriage.

Directors:

K.J. Tshehla

B.A. Chalmers

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7.4. Insurance

- 7.4.1. The risk of loss or damage to the products will pass to you on delivery to you (including your agents, carriers, employees or contractors) in accordance with paragraph 7.3 and notwithstanding paragraph 10 you must, at your own expense, effect full insurance upon the products against any loss or damage from such time that the products are at your risk.
- 7.4.2. The client must further maintain insurance of the products not less than the total of the client's outstanding obligations to the credit.
- 7.4.3. The client must ensure the following on respect of the insurance policy that they have on the property:
 - 7.4.3.1. The company is listed as the first loss payee under the policy up to the settlement value of this agreement as a first charge against the proceeds of that policy during the terms of this agreement;
 - 7.4.4. The customer will not be liable in the event of an insurer rejecting the client's claim for any reason.
- 7.5. Total Loss of the products
 - 7.5.1. If the products are damaged, lost or stolen the client must immediately advise the company in writing, and lodge an insurance claim with the insurer of the products.
 - 7.5.2. If the products cannot be repaired or replaced; or
 - 7.5.2.1. are disposed of by the client and is not recovered within 21 (twenty one) business days; or
 - 7.5.2.2. are forfeited to the State, then this agreement will terminate and the company will institute legal proceedings against the consumer.
 - 7.6. Voetstoots (as is) Clauses
 - 7.6.1. The company will not be responsible for any defects latent or patent if the company pointed out the defects to the client or if the defects were not known to the company at the time of sale.
 - 7.6.2. The Seller acknowledges that he or she has made the Purchaser aware of the quality of the products and the Purchaser agrees to accept the (products) as they stand with all faults that were pointed out.
 - 7.7. Shortage in Delivery or Damage or Loss in Transit
 - 7.7.1. If on delivery there are shortages in the quantity of products delivered or if there is any breakage or loss of products, you must advise us and the carrier within 24(TWENTY FOUR) hours of receipt of the consignment. In the event of non-delivery of a consignment you must promptly notify us and the carrier in writing.
 - 7.8. Force Majeure
 - 7.8.1. We shall not be liable for any failure to deliver, or delay in the delivery of the products due to any cause beyond our reasonable control, including but not limited to acts of God, acts of civil or military authority, fires, epidemics, floods, riots, wars, sabotage, labour disputes, governmental actions or inability to obtain materials, components, energy, manufacturing facilities, or transportation. In the event of any such delay, the date of delivery or performance hereunder shall be extended by a period equal to the time lost by reason of such delay. In the event our production is curtailed for any of the above reasons, we may allocate its production among our various customers.
 8. CREDITS
 - 8.1. We may, in our absolute discretion, provide credits for standard stock items provided the products are:
 - 8.1.1. returned within 14 days of delivery to our warehouse at your expense; and
 - 8.1.2. accompanied by a delivery note stating our invoice number & reason for return; and
 - 8.1.3. returned in their original packaging, undamaged and saleable.
 - 8.2. A restocking fee of 20% of original net invoice value plus VAT, if any, will apply to all products returned except where products have been wrongly supplied or are faulty.
 - 8.3. Products manufactured to your order or specification cannot be returned for credit under any circumstances
 9. ASSIGNMENT OF RIGHTS
 - 9.1. We shall be entitled at any time to assign our rights under this agreement to our successors, nominated transferees or assigns, (including but not limited to where applicable Personal Guarantees) and these Terms and Conditions shall not be in anyway affected or discharged pursuant to such assignment.
 - 9.2. We may assign, sub-contract or otherwise transfer any right, obligation or benefit under this agreement, or any part thereof, to any other party without your consent.

10. RETENTION OF TITLE

- 10.1. Until each invoice is paid in full, we will remain the owner of products. Title to the products for each separable portion shall pass to you on the full payment price of each respective portion.
- 10.2. Risk shall pass to you on delivery, if delivered by us at the place of delivery, or if delivered by an agent appointed by you at the place of delivery to the said Agent.
 - 10.3. After delivery, but while ownership of products remains with us:
 - 10.3.1. You must ensure that the products are stored at your place(s) of business and they shall be marked accordingly by you in such a manner as they are readily identifiable as our property. Thus if applicable, you must inform your landlord of the premises that the company is the owner of the property; and
 - 10.3.2. You may not (unless we advise you otherwise, or you have breached these Terms and Conditions) sell, lease at market rates, loan, pledge or transfer the property to another person, in the ordinary course of your business.
 - 10.3.3. Nor may you allow the property to become subject to any attachment, lien, hypothec or any other legal claim. However, if you receive payment from a third party, you agree to hold such parts of the proceeds as relates to the products, separately and in identifiable form, on trust for us. Such part shall be deemed to be equal in rand terms to the amount owing by you to us at the time of the receipt of such proceeds; and
 - 10.3.4. You must maintain and service the products at your own costs in accordance with the manufacturer's specification.
 - 10.3.5. You must keep the products insured whilst the products are still owned by us as well as provide us with proof of the insurance. Should the insurance not be comprehensive (or to our satisfaction) then we reserve the right to request better insurance or alternatively to remove the product.
 - 10.3.6. The client must not modify the products without the company's prior written approval and understands that any modification may be seen as tampering with the product and thus make any warranties null and void.
 - 10.3.7. You must advise the company in writing of there are any changes to:
 - 10.3.7.1. the address where the products are kept, and
 - 10.3.7.2. the name/address of the person in permanent possession of the products changes.
 - 10.3.8. The company, sheriff of the court or his deputy may request the client to provide details as to the whereabouts of the products at any time, as well as details of any third-party possessor of the products, of the landlord or bondholder of any premises where the products are kept.
 - 10.3.9. Providing false or misleading information or acting in a manner that is likely to frustrate the company from exercising its rights, is an offence in terms of the National Credit Act, 34 of 2005.
 - 10.4. Notwithstanding the foregoing or anything to the contrary contained in this agreement the parties agree:
 - 10.4.1. we take a security interest in all products that we have previously supplied to you (if any) and all products that we will supply to you in the future, to secure (with equal priority) payment of all amounts that you owe us; and
 - 10.4.2. the security interest will continue until you have paid all amounts owing in accordance with paragraph 15.
 - 10.5. You:
 - 10.5.1. will promptly sign any further documents, provide any further information, or do any other things that we reasonably require to perfect and maintain the perfection of our security interest (including by registering a financing statement or financing change statement); and
 - 10.5.2. Indemnify (and if requested reimburse) us for all expenses that we incur in registering a financing statement or financing change statement or releasing products charged by the statement; and
 - 10.5.3. will give us 14 days' prior written notice of any change in your name, business practice or any other details, and use your best endeavours to ensure that any applicable financing change statement is registered disclosing your new details.
 - 10.6. In the event you are in default of the payment terms stated in paragraph 15 below or the credit limit approved by us then you without reservation irrevocably grant to us right of entry to any of The properties under your control where the products are reasonably expected to be stored. You must indemnify us and save us and our servants and agents harmless in relation to loss or damage as a result of the retaking of possession of the said products. Further, in the event we exercise our right of retaking possession of the said products, you grant to us Power of Sale to resell the said products and you

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further acknowledge that any shortfall owing after the said products are resold will be your responsibility.

11. PACKING, CRATING AND TRANSPORT

11.1. Unless otherwise stated in our quotation or agreed by us in writing at the time of acceptance of your offer, the price includes packing and crating in accordance with our standard practice. Any other packing or crating requested by you or deemed necessary by us will be payable by you.

12. INSPECTION AND TESTS

12.1. Any inspection of or tests performed on the products will be in accordance with our standard practice and will occur at a place of our choice. Any additional test requested by you may be subject to an additional charge. We will notify you when any tests requiring a witness on your behalf are ready to be carried out. If not carried out within 3 days of that notice, those tests may proceed in the absence of your witness but shall be deemed as to have taken place in that witness's presence.

13. WARRANTY

13.1. Any warranty provided under or in connection with this agreement relates only to products manufactured and services supplied by us. The parties agree that the warranty excludes:

- 13.1.1. replacement or repairs which are required as a result of improper installation, misuse, maladjustment, modification or lack of routine maintenance by others; and
- 13.1.2. items subject to deterioration or consumption in normal service (such as lamps, bulbs, fuses, batteries); and
- 13.1.3. products, materials, components, items or services supplied or manufactured by a 3rd parties, which will be repaired or replaced only to the extent of the original supplier's warranty; all other terms, conditions and warranties or guarantees implied by statute, common law otherwise in relation to the products or the Services are hereby excluded, except to the extent otherwise provided by law.

13.2. Warranty for Products

- 13.2.1. Unless otherwise stated in our quotation or agreed by us at the time of acceptance of your offer, subject to 13.4.2, the warranty period for the supply of products shall be one year from the date of manufacture of the products.
- 13.2.2. We warrant that the products will on their delivery to you conform with the description in this agreement or agreed by us in writing at the time of acceptance of your offer, and that there will be no defects in material or fault in manufacture, except that we will not be liable for:
 - 13.2.2.1. any such failure to conform, defects in material or fault in manufacture which are not notified to us in writing within the defects liability period; or
 - 13.2.2.2. any such failure to conform, defects in material or fault in manufacture in respect of products or components thereof not manufactured by us. We will extend to you where possible the benefit of any guarantees, warranties or conditions, if any, provided by the relevant manufacturer in respect of any such product or component (but subject to the same conditions and limitations) the cost of enforcing any such guarantee, warranty or condition to be borne by you;
 - 13.2.2.3. or any defective products or components thereof which have been repaired or modified without our prior written consent;
 - 13.2.2.4. or the cost of return carriage of the products to us.

13.3. Warranty Conditions

- 13.3.1. If the products provided by us to you are substantially in accordance with the requirements of the agreement between the parties, excluding minor omissions or minor defects which do not substantially affect normal use of the products, you must promptly advise the date of acceptance within 24 hours from delivery of the products to you in accordance with paragraph 7 or completion of the services, otherwise acceptance will be deemed to have been notified on the expiration of that period.
- 13.3.2. Any products which have been rejected by you will be repaired or replaced by us (at our discretion). If the products are rejected, the notice must state the reasons for the rejection, otherwise we will not be obliged to accept the notice of rejection.
- 13.3.3. If there is a breach by us of any warranty provided by us in regard to the products either under this agreement or otherwise, we will in our sole discretion, which will be your sole remedy in respect of such breach, either replace the products, supply equivalent products, repair the products, or return the invoiced price of the products to you; or

13.3.4. All claims with respect to a breach of warranty must be made by you to us in writing within the warranty period stated in paragraph 13.2.1 or 13.3.1, otherwise we will not be liable for the defect, breach or non-conformance.

13.3.5. Site repair is at our option. The cost of returning any defective products to us shall be borne by you.

13.3.6. Except as expressly provided in this paragraph 13, and subject to paragraph 14, we will not be liable to you for any loss, damage (whether direct or indirect, special or consequential) or injury resulting from any breach of warranty or any defective material, faulty workmanship or otherwise howsoever arising out of this agreement or the installation or use of the products or their resale or the provision of any services, whether or not caused by our negligence or default or by the negligence or default of our employees or agents or otherwise.

13.3.7. Second hand equipment is not subject to warranty unless specifically stated in the quotation or agreed in writing at the time of acceptance of your offer.

13.3.8. All other terms, conditions and warranties implied by statute, common law or otherwise in relation to the products (including without limiting the generality of the foregoing any implied warranty that the products are suitable or fit for any particular use or purpose or that the products will comply with a sample) or the services are hereby excluded, except for any warranties which may not be excluded according to the applicable laws or regulations of a country which has proper jurisdiction.

13.4. Information

13.4.1. We do not warranty the accuracy, sufficiency or completeness of any information provided by you. Liability for information provided by you remains the sole liability of you.

14. LIMITATION OF LIABILITY

14.1. Subject to paragraph 13, we shall be under no liability to you for any loss (including but not limited to loss of profits) or for damage to persons or property or for death or injury caused by any act or omission (including negligent acts or omissions) by us or our employees or contractors, wherever occurring, arising from the subject matter of this agreement.

14.2. We will not under any circumstances be liable for any contingent, indirect, consequential or special losses, damages or injuries arising directly or indirectly from this agreement or any performance or failure to perform this agreement, whether in contract, warranty, tort, negligence, strict liability or otherwise, including (but not limited to) our negligence, default or misconduct, loss of profits, loss of revenues, or loss of use, even if informed of the possibility of such damages.

14.3. You agree to indemnify us against all losses and expenses which we may suffer or incur due to your failure to observe your obligations under this agreement; and any claims made against us by any third party in respect of any loss, damage, death or injury arising from the subject matter of this agreement.

14.4. In respect of any other obligation, breach, or liability (including our employees, agents, suppliers or subcontractors under or in connection with a supply, or any failure to perform a supply, which is not covered under paragraphs 14.1-14.4, our maximum liability which may arise under any principle of law (including but not limited to breach of contract, tort, negligence, or under an indemnity) shall be limited and completely discharged by the payment of one rand.

14.5. Notwithstanding any other provision of the Terms and Conditions, including this paragraph 14, to the extent permitted by applicable law, the limitations and exclusions stated in these Terms and Conditions, including this paragraph 14, will apply regardless of whether liability arises from breach of contract, tort (including but not limited to our negligence, default or misconduct or the negligence, default or misconduct of our employees, representatives or agents), by operation of law, or otherwise.

14.6. All causes of action arising out of or in connection with the supply of the products shall expire unless brought within time limits stipulated in relation thereof.

15. PAYMENT

15.1. The client is liable to pay all amounts due in terms of this agreement.

15.2. The client may at any time prepay any amount under this agreement, without penalty. The client's repayments will be used to reduce his or her obligations in the following order:

15.2.1. firstly, against due or unpaid interest;

15.2.2. secondly, against due or unpaid fees or charge; and

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- 15.2.3. thirdly, against the amount of the principal debt.
- 15.3. If the client prepays an amount in terms of this agreement, the client agrees that such amounts will be used to proportionately reduce the clients' repayments over the remaining period of the original terms of this agreement, unless requested otherwise in writing.
- 15.4. Individual deliveries or deliveries of separate instalments may be invoiced separately and shall be paid for accordingly.
- 15.5. Unless a credit account is held by you with us, all products are supplied on a cash on delivery basis.
- 15.6. If a credit account is held by you, then you may not deduct any amount from your instalment payment.
- 15.7. If any instalment is paid late, then interest will be charged on all arrear amounts.
- 15.8. If a credit account is held by you then except where varied in writing, we may:
- 15.8.1. At the end of each month submit to you progress invoices for work completed or materials(including imported items) in transit which are purchased by us prior to completion of delivery to you of the products; and
- 15.8.2. Invoice the full value of the products on delivery; and
- 15.8.3. Charge you storage charges if a delay in delivery occurs for more than two weeks after completion of manufacture due to circumstances beyond our control.
- 15.9. All invoices must be paid in full (without any set-off or counterclaim) and payment must be received by us within 30 days of the date of the invoice. Payment is only by received us when the payment is made in cash, or when the proceeds of other methods of payment are cleared and credited to our bank account.
- 15.10. Should payment not be made in accordance with our payment terms, we may in addition to our other rights charge you weekly interest on the overdue amount of 15,5% from date when payment was due to the date of final payment. Payment will be first credited against interest accrued. If you fail to pay any amount to us when due whether in respect of this or any other agreement between us, we may in addition to any other rights we may have, either suspend further deliveries of products or terminate this agreement, in which event we will be entitled to payment from you for products already delivered and products in the course of manufacture. We may withdraw or suspend credit facilities at any time without notice to you.
- 15.11. Payments by cheque are not deemed to have been made until such time as the cheque has been duly honoured.
- 16. CANCELLATION**
- 16.1. You may terminate this agreement at any time by giving written notice to us and by surrendering the product to the company.
- 16.2. Once we are in possession of the products, we will within 10 (ten) business days thereafter appoint an appraiser to value the products, and will advise you in writing of the estimated value.
- 16.3. If you are not in default, then you may withdraw the written termination of the agreement within ten (10) business days after receiving the valuation, and resume possession of the property. If you are not in default with your obligations under the agreement, or elect not to withdraw the notice of termination or fail to respond to the valuation notice within ten (10) business days from receipt thereof, the property will be sold.
- 16.4. After selling the products, we shall:
- 16.4.1. credit or debit you with a payment or charge equivalent to the proceeds of the sale, less any expenses reasonably incurred by the us in connection with the sale of the products; and
- 16.4.2. give you a written notice stating the following:
- 16.4.3. the settlement value of the agreement immediately before the sale;
- 16.4.4. the gross amount realised on the sale;
- 16.4.5. the nett proceeds of the sale after deducting permitted default charges and reasonable costs; and
- 16.4.6. the amount credited or debited to your account.
- 16.5. You will be liable to us for any amount that is outstanding after the products have been sold, including our reasonable costs incurred in connection with the sale of the products and for interest calculated on these amounts, from the date of demand until the date of final payment.
- 16.6. You fail to pay any amount that is outstanding after the sale of the property we will take legal steps to enforce the outstanding obligations under the credit agreement.

- 16.7. If there is a credit due to you after the sale of the products and after any reasonable costs incurred have been deducted this amount will be paid to you, provided that no other company has a credit agreement with you in respect of the same products.
- 16.8. You may only cancel the order with our written consent, which may be granted at our discretion, and upon payment of reasonable and appropriate cancellation charges to be reasonably determined by us, which will include, but are not limited to, actual costs already incurred by us in fulfilling the order.
- 16.9. Re-instatement
- 16.9.1. Before termination of the agreement you are entitled to reinstate the agreement in respect of which you are in default, by paying all overdue amounts, as well as permitted default charges and reasonable cost up to the time of reinstatement.
- 17. DRAWINGS AND PRINTED MATTER**
- 17.1. Where available, the price quoted includes one set only of standard instructions and drawings. Further copies can be provided at an additional charge. Additional instructions and drawings applicable to the products can be supplied at extra cost.
- 18. INSTALLATION AND COMMISSIONING**
- 18.1. All products shall be installed and commissioned by you at your expense unless agreed to in writing or otherwise stated herein.
- 18.2. You acknowledge that the product needs to be installed by a master electrician at your cost. You further acknowledge that a further master electrician must be used to certify the instalment.
- 18.3. We will not be liable or responsible for any damages or loss in respect of the product after it has been certified by either of the master electricians.
- 18.4. We will not be liable or responsible in any way should you fail to certify the products as per the requirements of paragraph 18.1 to 18.3.
- 19. INTELLECTUAL PROPERTY**
- 19.1. Ownership of Rights
- 19.1.1. In placing your order for products with us, you acknowledge and agree that all intellectual property rights in respect of the products or their manufacture (as applicable) vest in us on creation and are owned exclusively by us, except for copyright in designs, specifications or drawings provided by you. You agree you shall immediately notify us of any actual suspected or alleged infringement of our patents, trademarks, copyrights or other intellectual property that you are aware of, anywhere in the world.
- 19.2. Restrictions on Use etc.
- 19.2.1. You must not without our prior written consent decompile, disassemble, reverse engineer, manufacture, duplicate or modify any of the products or components thereof nor reproduce, copy or disclose nor permit others to reproduce, copy or disclose any of our designs, specifications or drawings.
- 19.3. Infringement
- 19.3.1. In the event of any claim for infringement of intellectual property (including but not limited to a registered design, trade mark, copyright, letters patent, or rights of confidentiality) relating to any products or components thereof (other than products or components based on a specification or design provided or specified by you), we will either replace or modify such products or component with non-infringing products or components or procure for you the right to use such products or components, provided we are given the full opportunity to conduct all negotiations in respect of such claims. In no event will we be liable for any losses arising from use or non-use of any such infringing products or components.
- 19.3.2. You warrant that any specification, design or instructions specified or provided by you or on your behalf to us will not cause us to infringe any rights of another party (including but not limited to intellectual property rights) and you agree to indemnify us and keep us indemnified for and against any loss or damage suffered by us arising from any breach of that warranty.
- 20. VARIATION**
- 20.1. Any variation to this agreement shall be invalid unless agreed in writing signed by one of our directors or an authorised employee.
- 20.2. Orders for the products placed with and accepted by us may not be cancelled by you except with our written consent.
- 21. BANKRUPTCY, LIQUIDATION AND DEFAULT**
- 21.1. If you default in due observance or performance of any or all of your obligations herein or, if you are a person and die or commit an act of bankruptcy, or if you are a company and you take or have taken against you

Directors:
K.J. Tshehla
B.A. Chalmers

Ptytrade 228 (Pty) Ltd

Reg. No. 2015/397854/07

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any action for the winding up or the placing of the company under official management, administration, liquidation or receivership other than for purposes of reconstruction, we may without prejudice to any other rights herein or at law give notice to you of our intention to:

- 21.1.1. Treat the agreement as repudiated and sue for breach; and / or
- 21.1.2. Suspend manufacture or delivery of the products; and / or
- 21.1.3. Claim the return of all products where title has not yet transferred to you; and/ or
- 21.1.4. Retain any security given or monies paid by you and apply this against the assessed loss and damages incurred by us in performing the contract; and / or
- 21.1.5. Make all outstanding amounts immediately due and payable.

22. CREDIT APPLICATION

- 22.1. Acceptance of your credit application is subject to our assessment of your application. You will not be provided with credit until you are advised in writing of approval of your application.
- 22.2. We reserve the right to request security for any credit extended at any time. You must comply with a notice received under this paragraph 22.2 within 14 days of receipt.
- 22.3. We reserve the right to cancel or terminate any credit facilities extended to you at our discretion without notice or reason.

23. SERVICE OF NOTICE

- 23.1. In addition to any other lawful means, any notice or other communication given under this agreement may be given by being personally served on a party, being left at the party's last known address, being sent to the party's last known address by registered post or by facsimile to the last known facsimile number of the party, provided the transmitting facsimile records the successful transmission of the facsimile.

24. ARBITRATION

- 24.1. If at any time any question, dispute or difference (“Dispute”) whatsoever should arise between the parties in connection with or arising out of this agreement, then either party to this agreement may give to the other notice in writing of the existence of such Dispute.
- 24.2. If the parties are unable to mutually resolve such dispute within 21 days, then the parties shall submit the Dispute to arbitration by a sole arbitrator appointed jointly by the parties. The arbitrator shall not be a person who has participated in any informal dispute resolution procedure in respect of the Dispute. The award of the arbitrator shall be final and binding on the parties, including any determination on the costs. The venue of the arbitration shall be in Johannesburg, South Africa.
- 24.3. Parties agree this paragraph 24, shall be a prerequisite to any legal proceedings arising under or in connection with this agreement, other than urgent injunctive relief or recovery of payment for the products, by us.

25. REGULATIONS

- 25.1. You must ensure that the installation and use of the products comply at all relevant times with every applicable law, including all regulatory requirements of any Government or other relevant authority, and that all necessary licences or permits required in connection with such installation or use have been obtained.
- 25.2. You acknowledge and agree you are subject to all applicable laws and regulations of South Africa and any other country which has proper jurisdiction with respect to the exportation or importation of our products or services. Unless otherwise agreed in writing, it is your sole responsibility to ensure all applicable laws and regulations have been complied with in relation to the supply of any products or Services by PTYTRADE 228 (Pty) Ltd.
- 25.2.1. Without limiting the generality of the foregoing, you shall obtain the prior written approval of the company and of the competent authorities of any country having proper jurisdiction, before any equipment supplied by us may be diverted, transferred, trans-shipped, reshipped, or re-exported to, or used in, any country for any purpose other than as described on the applicable export license.
- 25.2.2. Whenever we arrange for export or import, with respect to all relevant government and administrative authorities, you:
 - 25.2.2.1. acknowledge we must rely on you to provide correct information for export and import of the products or services; and
 - 25.2.2.2. agree to provide all necessary information and assistance required for export and import authorisations; and
 - 25.2.2.3. acknowledge you shall be fully responsible for the correctness of information provided by customer and any use of it to comply with applicable regulations.

25.3. Failure to comply with the export regulation provisions above shall void all warranties.

26. INDEMNITY

- 26.1. If we suffer any damage, loss, claim, action or expense as a result of your installation, use, application or resale of the products, or your failure to comply with paragraph 19 or any other obligation under this agreement, you must indemnify us and keep us indemnified in respect of such damage, loss, claim, action or expense.
- 26.2. You further agree to indemnify us for any legal costs and disbursements on an attorney and own client basis incurred by us in respect of this agreement, or other documentation required while credit is being offered in consequence of this agreement, and you further agree to indemnify us for any dishonoured cheque fees incurred and in the event that your account is in default of the Terms and Conditions, to indemnify us against its collection fees and legal costs.

27. WAIVER

- 27.1. Any failure by a party to this agreement to compel performance by the other party of any of the terms or conditions of this agreement will not constitute a waiver of those terms or conditions, and shall not operate as a waiver of another breach nor affect or impair the right to enforce those rights at a later time or to pursue remedies for any breach of those terms and conditions.
- 27.2. If a party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.
- 27.3. A single or partial exercise by a party of any of its rights does not prevent the further exercise of any right.
- 27.4. A waiver or variation of any right or provision under this agreement will only be valid if it is in writing.

28. BREACH

- 28.1. If you:
 - 28.1.1. do not comply with any of the terms and conditions of this agreement; or
 - 28.1.2. fail to pay any amounts due under this agreement; or
 - 28.1.3. made any misleading statements to us before signing this agreement; or
 - 28.1.4. allow any judgement that has been taken against you to remain unpaid for more than seven (7) business days; or
 - 28.1.5. are sequestered or liquidated, or perform an act of insolvency in terms of the Insolvency Act 24 of 1936; or
 - 28.1.6. enter into a compromise with any of your creditors; or
 - 28.1.7. in being a natural person, dies, or being a juristic person, undergoes a material restructure; or
 - 28.1.8. if any collateral that you have provided as security in terms of this agreement is lost then we may (without affecting any of our other rights) proceed with the enforcement or termination of the agreement.
- 28.2. Upon the occurrence of any of the abovementioned events, we shall be entitled, at our election and without prejudice to:
 - 28.2.1. claim immediate payment of the outstanding balance together with the interest and all amounts owing or claimable by it, irrespective of whether or not such amounts are due at that stage; or
 - 28.2.2. take repossession of the products in terms of an attachment order, retain all payments already made in terms hereof by you and to claim as liquidated damages, payment of the difference between the balance outstanding and the market value of the products, which amount shall be immediately due and payable.
- 28.3. If we elect to enforce the agreement, a notice will be sent to you, which will set out:
 - 28.3.1. the details of your default;
 - 28.3.2. the period within which you are required to rectify the default; and
 - 28.3.3. your rights to refer this agreement to a debt counsellor, alternative dispute resolution agent, or an Ombud with jurisdiction, with the intention of resolving any disputes or developing and agreeing on plan to bring the payments under this agreement up to date.

29. COSTS

- 29.1. You will also be liable for the default administration and collection costs arising from your failure to comply with any of the terms and conditions of this agreement and for legal costs and collection commission on all payments made by you if the matter is referred to an external debt collection company or attorney. Default administration costs will be charged for every necessary letter that is addressed to you at the rate of the defended tariff set out in the Magistrates' Courts Act 32 of 1944, plus the cost of postage or delivery, and

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collection costs will be limited to the amounts incurred by the company in the collection of amounts due under the agreement.

30. CERTIFICATE OF BALANCE

30.1. We may provide a certificate from any of our managers, or senior employees, whose position it will not be necessary to prove, showing the amount that you owe to the company. You agree that we may take any judgment or order that we are entitled to in law based on the amount contained in the certificate, unless you disagree with such amount and are able to satisfy the court that the amount in the certificate is incorrect.

31. ADDRESSES

31.1. You agree that the physical address that you have provided on the Quotation/Cost of Credit is the address that you have elected as the address where the aforesaid all documents notices and processes must be sent to or served on you.
31.2. You must inform us, in writing, by hand or registered mail or e-mail of any change to the aforesaid address, or your email address, telephone or cellular phone numbers.
31.3. You accept that you will be deemed to have received a notice or letter five (5) business days after it has been posted to either of the addresses as provided by the consumer.

32. GENERAL

32.1. In the event that this agreement is translated into any language other than English, the English language version of this agreement shall prevail to the extent of any inconsistency or ambiguity.
32.2. Headings appear as a matter of convenience only and will not affect the interpretation or meaning of the agreement.
32.3. In the event of any of the terms and conditions of the agreement being declared legally invalid or unenforceable, the provision should be read down to the minimum extent necessary to render it enforceable and valid, and if incapable of being read down, it will be severed from the remainder of these conditions which shall not be affected by such severance. In such a case, we will substitute for the provisions concerned a provision considered substantially equivalent in economic terms.
32.4. Nothing in this agreement constitutes a joint venture, agency, partnership or other fiduciary relationship between the parties.
32.5. This agreement is governed by South African law.
32.6. In terms of Section 45 of the Magistrate's Court Act 32 of 1944 and at the company's option, any claim that may arise may be recovered in any magistrate's court having jurisdiction and the client hereby consents to the jurisdiction of the Magistrates' Court

33. NON-VARIATION

33.1. No relaxation of any of the terms and conditions of this agreement may be interpreted as a waiver of such terms and conditions.
33.2. This document constitutes the whole agreement and no changes or cancellations will be valid unless it is in writing and signed by both parties or is voice-logged by the company and subsequently reduced to writing.

34. ACKNOWLEDGEMENTS AND CONFIRMATIONS

34.1. By signing this agreement you acknowledge and confirm that:
34.1.1. We may provide a credit bureau with any of your personal information and dates in connection with the application for finance, the commencement and termination of this agreement and any related matters.
34.1.2. We may submit any information as to how you conduct this account to any credit bureau of its choice, which may use this information to create a credit

profile and/or a credit score on you. If you do not conduct this account in accordance with this agreement, this may adversely affect your future credit worthiness. You have the right to have your credit record disclosed and may challenge any incorrect information and have the information corrected.

- 34.1.3. You may provide a settlement value to any third party to whom you may wish to sell the product and to any governmental agency that may request same in the prescribed manner.
34.1.4. This agreement has been explained to you and you acknowledged that you understand and appreciate the costs, risks and obligations associated herewith.
34.1.5. As at the date of the application for finance, you have not taken up any additional credit.
34.1.6. You are not subject to an Administration Order referred to in section 74(1) of the Magistrate's Courts Act of 1944.
34.1.7. You are not subject to an order of a competent court holding you to be mentally unfit.
34.1.8. You have received a copy of the agreement.
34.2. The person who signs on your behalf warrants that he is duly authorized to do so. The signatory to the face of the agreement confirms that he has read and understood the terms and conditions contained herein, and accordingly binds himself to this agreement for and on behalf of the client and authorizes us to deduct any/all monies and/or damage charges due to us in terms of this agreement.
34.3. The person signing on behalf of the client further declares they have not been induced to sign this discharge by any representative whatsoever made to them by the company and that they have further read and understood the entire contents hereof notwithstanding in which language this indemnity and release is reduced to in writing and they further shall not be entitled to cancel this indemnity and release during this agreement for any reason whatsoever. They understand that failure to comply with the above mentioned will constitute a breach of agreement.
34.4. The company will not be held liable for any damages sustained or further liability which the client incurs as a result of using the product, from any cause arising whatsoever, whether negligently or otherwise, The company is not responsible for any defect of any nature whatsoever in the product at the time of purchase, alternatively, any defect that may arise use thereof.
34.5. The client including any employee and or any other entity from whatsoever source and nature or definition being near the product do hereby exonerate and declare blameless and hereby irrevocably indemnify and release the company together with all the members of the company, the Agents, representatives or any other entity connected directly or indirectly or in any other manner whatsoever connected, to the company, so mentioned herein and together all persons and/or entities connected to this company directly or indirectly, from any damages by whatsoever definition and or injury and or physical disability sustained by virtue of being near the product and or such damages sustained.
34.6. The client further releases and forever discharges for the company and all of its members and or Agents and or representatives from any claim, demands, damages and or actions and or suits at Law of whatsoever kind and nature, for or because of any matter or thing done and or not done, committed or suffered to be done and or not done and arising from the use of the product by whomsoever.

THIS CERTIFIES:

That I/ we have read, comprehend and accept the above Terms and Conditions for Ptytrade 228 (Pty) Ltd; and further without undue pressure or unfair tactic, append my/ our signature hereunto.

Signed at _____ on the _____ Day of _____ 20_____.

Directors:
K.J. Tshehla
B.A. Chalmers