



Heliotek Energy Terms and Conditions

Terms and Conditions

1. INTERPRETATION

Unless the context otherwise requires, words importing the singular shall include the plural and vice versa (the other way around), a natural person shall include a juristic person and vice versa (the other way around) and one gender shall include the other gender.

2. APPLICABLE LAW

This agreement and all modifications and amendments to this agreement shall be governed by and construed under and in accordance with the laws of the Republic of South Africa.

3. DOMICILIUM

The Applicant and I (the guarantor(s) whose signatures appear as guarantors under the personal guarantee) choose our domicilium citandi et executandi (place of notice) for all purposes arising out of these terms and conditions of sale, application for trade facilities and personal guarantee at the address stipulated on page 1 of this application.

4. CHANGE OF ADDRESS

The Applicant and I undertake to notify the Company immediately in writing of any change of address.

5. CHANGE OF OWNERSHIP IN APPLICANT

The Applicant undertakes to notify the Company, in writing, within 7 (seven) days of any change of ownership of the Applicant. The Applicant acknowledges that upon any change of ownership in the Applicant any outstanding amount whether due or not shall be deemed to be immediately payable by the Applicant to the Company.

6. OWNERSHIP OF GOODS

Until such time as the Applicant has paid the purchase price in full in respect of any purchase of goods from the Company, the ownership of all such goods shall irrevocably remain with the Company. Subject to any applicable law, the Company shall in its sole discretion without notice to the Applicant be entitled to take possession of any such goods (wherever they may be found) which have not been paid for, in which event the Applicant shall be entitled to a credit in respect of the goods so returned at the price at which the goods are sold or the value of the goods as determined by the Company. The Applicant and the guarantors indemnify the Company in respect of any claim against the Company arising from this clause. In the event that the Company exercises its rights in terms of this clause, the Applicant authorises the Company to seize and remove any such goods which have not been paid for from any location.

7. ORDERS

Subject to any applicable law, in the event of any order being given to the Company on an order form reflecting the Applicant's name as the entity from which the order arises, such order shall be deemed to have emanated from the Applicant, despite the fact that such order may have been given or signed by a person not authorised by the Applicant and such order will be deemed to constitute a valid order. All special orders cancelled for whatever reason by the customer will carry a 15% cancellation fee on total Quotation.

8. DELIVERY OF GOODS

8.1. The Company will make every reasonable endeavour to ensure timeous delivery of the goods on the terms and conditions agreed between the Applicant and the Company. The Company shall not be liable for late deliveries due to circumstances which are beyond the Company's control such as, but not limited to, the events set out in clause 26.

8.2. Signature by the Applicant or by any representative of the Applicant of the Company's delivery note, shall be regarded as acceptance by the Applicant that the goods reflected in such delivery note have been properly and completely delivered.

9. RISK IN AND TO THE GOODS

The risk in and to the goods shall pass from the Company to the Applicant on the date of delivery to the Applicant (or its nominee) despite the fact that ownership will not pass to the Applicant until full payment of the purchase price has been made to the Company.

10. GOODS SOLD AS IS

Subject to any applicable law, any goods sold to the Applicant shall be regarded as having been sold as is, without warranty against latent defects and no liability shall arise on the part of the Company for any representation or warranty made or alleged to have been made at any time in respect of the goods sold by the Company to the Applicant.

11. FAILURE TO OBJECT TO ANY ITEM APPEARING ON THE COMPANY'S STATEMENT

If the Applicant should fail to object to any item appearing on the Company's statement of account within 10 (ten) days of date of the dispatch of the statements, the account shall be deemed to be in order and correct in all respects.

12. PAYMENTS

12.1. Unless otherwise agreed in writing, payment terms are paid in advance. The Applicant as set out on the first page of this document may not withhold or defer payment to the Company for any reason whatsoever.

12.2. If the Applicant defaults in making payment of any amount that has become due, owing and payable to the Company, then the full balance outstanding (whether due or not) will immediately become due and payable to the Company without notice to the Applicant.

12.3. The Company does not appoint the Post Office or any other body as its agent for payments by post or otherwise. All payments shall either be made to the Company's physical place of business from where the goods were ordered or transferred directly to the Company's nominated bank account. In the event of any payments being mislaid or lost in the post or elsewhere the Applicant shall still be and remain liable to the Company for payment.

12.4. Payment may be made via Visa and MasterCard. For other direct payment methods please contact the company accounts department.

13. PROOF OF AMOUNT DUE, OWING AND UNPAID TO THE COMPANY

A certificate signed by the company secretary, any manager or any director of the Company reflecting the amount owing by the Applicant to the Company in relation to the Applicant's dealings with the Company and the fact that such

amount is due, owing and unpaid shall be prima facie (on the face of it) proof of such facts for the purpose of any action (whether by way of provisional sentence or otherwise), proof of debt on insolvency or for any purpose where the amount of

such claim is required to be established and it shall rest entirely with the Applicant to prove that such amount is not owing, due and/or unpaid.

14. RETURN OF GOODS

In circumstances where the Applicant is entitled to return goods to the Company, the Applicant shall be obliged to furnish adequate proof of having purchased such goods from the Company. A handling fee of 35% will be charged.

15. SET-OFF

It is agreed that set-off shall operate automatically as a matter of law at the moment reciprocal debts between the Company and the Applicant come into existence and independently of the will of the parties and it shall not be necessary for either the Company or the Applicant to raise set-off. Upon the operation of an automatic set-off, the debts of the parties shall be mutually extinguished to the extent of the lesser debt.

16. CESSION OF COMPANY'S RIGHTS AND DELEGATION OF COMPANY'S OBLIGATIONS

The Company shall be entitled to cede all or any of its rights and delegate all or any of its obligations to any third party without prior notice to the Applicant at any time.

17. NON WAIVER / NOVATION OF COMPANY'S RIGHTS

Any condonation of any breach of any of the provisions of these terms and conditions of sale or other act or relaxation, indulgence or grace on the part of the Company shall not in any way operate as or be deemed to be a waiver by the Company of any rights or be construed as a novation of any rights.

18. WITHHOLDING OF TRADE FACILITIES & CANCELLATION OF AGREEMENT

Without notice to the Applicant, the Company shall be entitled to withhold any trade facilities at any time and cancel this agreement.

19. ENTIRE AGREEMENT

19.1. These terms of trade facilities, personal guarantees, cession and terms and conditions of sale contain the entire agreement between the parties and any other terms whether express or implied are excluded from these terms and conditions of sale and any variations, cancellations or additions shall not be of any

force or effect unless reduced to writing and signed by the parties or their duly authorised signatories. Accordingly, these terms and conditions of sale shall not be capable of being altered, amended or modified in any respect unless signed by the Company and by the Applicant (as well as any guarantor(s)).

19.2. The Applicant acknowledges that no terms at variance with the terms and conditions of sale and which have been sought to be introduced by the Applicant at any time shall be of any force or effect unless the Company has, in writing, expressly and unambiguously agreed that the terms so sought to be introduced by the Applicant shall apply. Without limiting the above, the Company shall not be regarded as having so expressly agreed by virtue merely of the Company having agreed to execute an order in which inconsistent terms have been introduced by the Applicant and despite the fact that the Company has not rejected such inconsistent terms.

19.3. Where any form of security has been furnished, at any time, to the Company on behalf of the Applicant (including but not limited to any Deed of Suretyship and / or Deed of Cession), the provisions of these terms and conditions of sale shall in no way whatsoever affect or diminish the Company's rights in and to such security.

20. WINDING UP OF APPLICANT

Should the Applicant at any time be wound up, whether provisionally or finally, (which liquidation or sequestration, whether provisional or not, shall be deemed to be a material breach by the Applicant of this contract) or commence steps to enter into business rescue proceedings, or in the event of the Applicant being an individual or partnership and having his/its estate sequestered, whether provisionally or finally, any goods delivered by the Company to the Applicant and in respect of which payment has not been made at the date of the winding up or sequestration (whether payment in respect thereof be due or not) shall immediately be returned to and recoverable by the Company, wherever such goods may be found.

21. CONVERSION OF APPLICANT

The Applicant and any guarantor acknowledge that in the event of the Applicant being a sole proprietorship, partnership, a company or a close corporation and converting from a sole proprietorship, partnership, or company to a close corporation or from a sole proprietorship, partnership or a close corporation to a company at any time, any guarantor or signatory of these terms and conditions of sale shall remain bound as a guarantor.

22. INDEMNITIES

22.1. Subject to any applicable law, the Applicant and the guarantor(s) acknowledge that they will indemnify and hold the Company harmless against

any liability in respect of the goods, including under the Occupational Health and Safety Act 85 of 1993 and the Mine Health and Safety Act 29 of 1996. Subject to any applicable law, specific reference to sections 10 and 21 of the respective legislation as it applies to product liability, is disclaimed by the Company.

22.2. The Applicant shall be obliged to and warrants that it will ensure that a qualified technician and/or electrician install all goods purchased from the Company which require installation by such qualified persons. Should the Applicant fail to comply with such obligation, the Applicant indemnifies the Company from any liability of whatever nature arising from the purchase of the goods.

22.3. The Applicant acknowledges that it does not rely, in any manner, on any representations and/or advise of the Company in its decision to purchase particular goods from the Company.

23. JURISDICTION

23.1 The parties consent to submit to the jurisdiction of any court of competent jurisdiction located in the Republic of South Africa, in any action proceeding arising out of or relating in any manner to this agreement. Despite any clause in these terms and conditions of sale to the contrary, despite any delivery to a place outside the Republic of South Africa, the Applicant and any guarantor for the Applicant consent to the jurisdiction of the appropriate Court of South Africa having jurisdiction over the Company's branch from which the goods were delivered to the Applicant. The provisions of this clause are inserted solely for the benefit of the Company who may exercise the provisions in its sole and absolute discretion.

23.2 Whatever the amount owing by the Applicant (or any guarantor of the Applicant) to the Company, the parties consent, in terms of section 45 of the Magistrates Court Act 32 of 1944, to the jurisdiction of the magistrate's court having jurisdiction for the determination of any action or proceeding otherwise beyond the jurisdiction of the court which may be brought by the Company against the Applicant arising out of any transaction between the parties, it being recorded that the Company shall be entitled, but not obliged, to bring any action or proceeding in the said court.

24. ARBITRATION

The parties agree that the Company, in its sole and absolute discretion, may refer any dispute arising out of or relating in any manner to this agreement, including non-payment of any indebtedness by the Applicant (or any guarantor), to

arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa.

25. COSTS

All costs incurred in any action against the Applicant, including costs on an attorney and own client scale and attorney's collection commissions, will be paid by the Applicant should the Company be successful in such action or proceeding. The Applicant will reimburse the Company for all costs incurred in recovering any amount owing by the Applicant to the Company, including but not limited to its legal costs incurred in proceeding against the Applicant, howsoever those costs are incurred and whether they are incurred prior to the institution of action, after the entry of judgement or at any other time.

26. FORCE MAJEURE

No failure by either party to perform in accordance with any provision of this agreement shall constitute a breach of this agreement if the failure arose as a result of force majeure, including acts of God, war, strike, sanctions or changes in laws, regulations, ordinances or the like made by any competent authority or other circumstances outside the control of the parties.

27. SENSITIVE MATERIAL

Neither party shall be required to supply any material or information in violation of any law, regulation, ordinance or other official decree, if such supply or distribution can only be made with the approval of a governmental authority, without approval of that authority.

28. TRUSTS

In the event that the Applicant is a validly constituted trust, the Applicant warrants, irrevocably, that it is entitled to enter into these terms and conditions of sale and that such undertakings contained in these terms and conditions of sale are to the benefit of the trust, its beneficiaries and the trustees. The Applicant warrants that these terms and conditions of sale are to the Applicant's benefit and there are no encumbrances or hindrances to the conclusion of these terms and conditions of sale (incorporating the personal guarantee and trade facilities).

29. CONSENT CLAUSE

29.1 The Applicant (and any guarantor for the Applicant) understands that the personal information given under these terms and conditions of sale is to be used by the Company for the purposes of assessing the Applicant's credit worthiness.

The Applicant confirms that the information given by the Applicant is accurate and complete and further agrees to update the information supplied as and

when necessary in order to ensure the accuracy of the information, failing which the Company will not be liable for any inaccuracies.

29.2 The Company has the Applicant's consent and authority at all times to contact and request information from any persons, credit bureaux or businesses to obtain any information relevant to the Applicant's credit assessment including, but not limited to, information regarding the amounts purchased from suppliers per month, length of time Applicant has dealt with such supplier, type of goods or services purchased and manner and time of payment.

29.3 The Applicant agrees that information given in confidence to the Company by a third party concerning the Applicant will not be disclosed to the Applicant.

29.4 The Applicant consents to and authorises the Company at all times to furnish personal and credit information concerning the Applicant's dealings with the Company to any credit bureaux and to any third party seeking a trade reference regarding the Applicant.

30. SEVERABILITY

Each clause of these terms and conditions of sale is severable, the one from the other and if any one or more clauses are found to be invalid or unenforceable, that clause(s) shall not affect the balance of these terms and conditions of sale, which shall remain of full force and effect

31. Customer privacy policy

The provision of goods and services by Heliotek Energy Pty Ltd is subject to availability. In cases of unavailability, Heliotek Energy Pty Ltd will get the stock from suppliers locally. As per section 7, Cancellation of orders by the client will attract a 15% administration cancellation fee.

Goods are shipped and handled with care. Should breakage occur during transport, damaged stock will be checked and the possible claim will be looked at.

32. Customer privacy policy

Heliotek Energy Pty Ltd shall take all reasonable steps to protect the personal information of users. For the purpose of this clause, "personal information" shall be defined as detailed in the Promotion of Access to Information Act 2 of 2000 (PAIA). The PAIA may be downloaded from: <http://www.polity.org.za/attachment>

33. Card acquiring and security

Card transactions will be acquired for Heliotek Energy Pty Ltd via PayGate (Pty) Ltd who are the approved payment gateway for all South African Acquiring Banks. PayGate uses the strictest form of encryption, namely Secure Socket Layer 3 (SSL3) and no Card details are stored on the website. Users may go to www.paygate.co.za to view their security certificate and security policy.

34. Customer details

Customer details will be stored by Heliotek Energy Pty Ltd on its database.

35. Currency

The merchant outlet country at the time of presenting payment options to the cardholder is South Africa. Transaction currency is South African Rand (ZAR).

36. Responsibility

Heliotek Energy Pty Ltd takes responsibility for all aspects relating to the transaction including sale of goods and services towards customer service and support, dispute resolution and delivery of goods.

37. Country of domicile

This Terms and Conditions is governed by the laws of South Africa and Heliotek Energy Pty Ltd chooses as its domicilium citandi et executandi for all purposes under this agreement, whether in respect of court process, notice, or other documents or communication of whatsoever nature.