

NEXUS INTERTRADE STANDARD TERMS AND CONDITIONS OF SALE

1. DEFINITIONS:

- 1.1. Buyer means the person who places an order with NEXUS in response to an Offer issued by NEXUS for the supply of Goods and/or Services.
- 1.2. Contract means an agreement constituted by the acceptance of an Offer by the Buyer in accordance with and subject to these Conditions.
- 1.3. Conditions means these conditions of sale.
- 1.4. Conveyance means a vessel or means of carriage into or onto which Goods are loaded for carriage from the Place of Discharge to the Place of Delivery or vice versa
- 1.5. Customer means any person who makes an enquiry for the purchase of Goods and/or Services from NEXUS.
- 1.6. CQD means Customary Quick Despatch which means that a vessel will be loaded as fast as possible, no demurrage payable, however despatch may be earned.
- 1.7. INCOTERMS means the International Chamber of Commerce Official Rules for the Interpretation of Trade Terms which entered into force on 1 January 2020.

- 1.8. Laycan means the period of time in which a vessel must arrive at the port of loading defined by an end and start date.
- 1.9. Laytime means the time permitted for loading or discharging a vessel calculated with reference to the quantity of Goods to be loaded or discharged into or from a Vessel and the requisite load or discharge rate provided for in the Contract.
- 1.10. NEXUS means NEXUS Intertrade (Pty) Ltd, a company incorporated in terms of the laws of South Africa with registration number 2014/046908/07
- 1.11. Offer means an offer issued by NEXUS to a Customer following an enquiry from the Customer for the supply of Goods and/or Services, the acceptance of which will constitute a Contract.
- 1.12. Place of Delivery means the place designated in the Contract where NEXUS is required to deliver the Goods and/or Services in terms of clause 8.
- 1.13. Place of Discharge means the place where the Goods are to be discharged by the carrier contracted by NEXUS or the Buyer in terms of the Contract and includes a port of discharge.
- 1.14. Price means the price payable in respect of the Goods and/or Services quoted.
- 1.15. Goods and/or Services means goods and/or services more fully described in the Offer provided by NEXUS.

1.16. Super Holidays means the 1st of January, 1st of May and 25th of December

1.17. Transport Document means any document issued by a carrier evidencing receipt of the Goods for carriage by it, including but not limited to waybills and bills of lading.

2. SALE OF GOODS AND/OR SERVICES

2.1. In response to an enquiry from a Customer in respect of the purchase of Goods and/or Services, NEXUS may provide the Customer with a quotation. Such a quotation shall constitute an Offer only in circumstances where it is expressly stated in the quotation that such quotation constitutes an Offer, otherwise such quotation shall merely constitute an invitation to do business.

2.2. A contract for the purchase and sale of Goods and/or Services between NEXUS and the Buyer will only come into existence upon the unconditional acceptance of all the terms and conditions contained in an Offer signed by the Buyer. Any term proposed by the Buyer, whether it relates to a material term of the agreement or not, will be of no force or effect unless NEXUS specifically agrees to such terms in writing, through the provision of an amended Offer.

3. APPLICATION AND INTERPRETATION

3.1. These Conditions shall apply to all Goods and/or Services supplied by NEXUS in response to a query from its Customers.

3.2. Headings of clauses are inserted for the purpose of convenience only and shall be ignored in the interpretation of the Conditions.

3.3. Unless inconsistent with the context, words signifying any one gender shall include the other, words signifying the singular shall include the plural and vice versa and words signifying natural persons shall include artificial persons and vice versa.

4. PRICE

- 4.1. The Price of the Goods and/or Services is that specified in the Offer and not in terms of earlier quotations or prices given prior to the issue of the Offer.
- 4.2. The Price of the Goods and/or Services excludes all taxes or other charges which may be levied by any government authority in respect of the export or import of the Goods and/or Services which, and to the extent that these charges may be levied against NEXUS, shall be charged as a separate line item.
- 4.3. The Price of the Goods and/or Services is based on NEXUS's standard offering, unless otherwise specified.

5. PAYMENT

- 5.1. Payment shall be made by the Buyer;
- 5.1.1. In the currency stipulated in the Contract;
 - 5.1.2. Into the bank account nominated by NEXUS ;
 - 5.1.3. Free of any deduction, commission or set-off.
- 5.2. The Purchase Price and all other sums payable by the Buyer to NEXUS in respect of the supply of the Goods shall be paid on or before the date specified in the Contract. If no date is specified for payment, then payment must be received by NEXUS before the Goods and/or Service is delivered in accordance with these Conditions.
- 5.3. In the event that the Buyer is obliged to make payment of the Purchase Price prior to delivery of the Goods then NEXUS shall issue a pro-forma invoice to the Buyer for payment based on the quantity of Goods ordered. In the event that the Purchase Price calculated with reference to the relevant Transport Document issued subsequent to delivery is less than the amount paid pursuant to the pro-forma invoice NEXUS shall within 30 (thirty) days remit the difference between the two invoices to the Buyer's nominated bank account.

- 5.4. In the event that credit terms have been agreed between NEXUS and the Buyer in writing, then those credit terms shall apply.
- 5.5. The issuing of a quotation for the supply of Goods does not imply an obligation on the part of NEXUS to grant credit facilities. In this regard it should be noted that although credit terms may be granted, the Purchase Price of the Goods required may exceed the agreed credit limit. In such circumstances NEXUS shall issue a pro-forma invoice for the difference between the Purchase Price and the available credit limit which the Buyer shall be obliged to pay prior to delivery.
- 5.6. NEXUS may require the Buyer to furnish NEXUS with security for payment of the Purchase Price including but not limited to letters of credit and guarantees issued by a registered financial institution on terms and conditions acceptable to NEXUS. Such guarantees shall be provided to NEXUS in the time periods provided for in the Contract failing which NEXUS shall be entitled to cancel the Contract.
- 5.7. Interest compounded monthly shall accrue on all amounts not paid by the due date as follows;
- 5.7.1. In respect of payments to be made in South African Rands within 30 days of date of delivery, interest shall accrue at the rate equivalent to two percentage points above the published prime overdraft lending rate of the Standard Bank of South Africa (the "Bank"). A certificate obtained from the Bank evidencing such rate shall be *prima facie* proof of such interest rate. Where extended payment terms have been granted, typically calculated as a fixed number of days from OBL date, any late payments shall accrue penalty interest of two percentage points above the trade finance applicable to the transaction. Any costs associated with having to extend a FEC due to late payment shall be recoverable from the Buyer. These trade finance and FEC penalty charges shall be calculated on a per day basis, from the date when payment was due up to the date when payment was received.
- 5.7.2. In respect of payments to be made in United States Dollars, interest shall accrue at a rate equivalent to two percentage points above the One Month London Inter-bank offered rate.

5.8. NEXUS reserves the right to appropriate any payments made by the Buyer to any indebtedness of the Buyer to NEXUS as it deems fit.

5.9. The right to levy interest shall be without prejudice to NEXUS's right to enforce payment on the due date.

6. TIME NOT OF THE ESSENCE

6.1. The time stipulated in the Contract for the delivery of the Goods is approximate only and shall not be a material term. Unless specifically provided for elsewhere in these Conditions, the Buyer may not cancel the Contract as a result of the late delivery of the Goods.

6.2. The supply of Goods is subject to the prompt receipt by NEXUS of all information, specifications, and other data that NEXUS may require from the Buyer for the proper performance of the Contract.

6.3. Subject to clauses 6.1 and 6.2 above, NEXUS shall give its best endeavors to deliver the Goods by the dates specified in the Contract.

7. WARRANTIES

7.1. Goods supplied by NEXUS pursuant to any Contract entered into subject to these Conditions shall be in accordance with the relevant approved international quality Standards.

7.2. Save as provided for in clause 7.1 above all conditions, warranties and representations, whether express or implied by any Statute, law or otherwise in relation to the Goods are excluded to the fullest extent permitted by law. In particular, but without limiting the generality of the foregoing, NEXUS does not warrant that the Goods are fit for any intended purpose.

7.3. Sampling for each consignment of Goods shall be performed by a mutually agreed independent surveyor at the Buyer's expense who will take representative samples of the Goods loaded.

The Buyer shall notify NEXUS in writing within 30 (thirty) days from the date the Goods are discharged at the Place of Discharge in the event that it alleges

that the Goods are not in conformance with the specifications provided for in clause 7.1 above. In the event that the Buyer does not notify NEXUS within the time period provided for any claim which the Buyer may have had in respect of the quality of the Goods shall be barred.

8. DELIVERY AND RISK

8.1. Until the payment obligations stipulated by NEXUS in terms of clause 5.6 or any credit terms agreed between the Parties are fulfilled to NEXUS's satisfaction, or unless payment of the Purchase Price (if this is to be affected prior to delivery) is made timeously, NEXUS shall be entitled to withhold delivery of the Goods or the performance of any other obligation of NEXUS at the risk and expense of the Buyer.

8.2. If at the Buyer's request, or due to default of the Buyer, NEXUS withholds or postpones delivery the Buyer shall pay NEXUS storage charges at the prevailing rate charged by NEXUS for such storage without prejudice to NEXUS's other rights. Unless specifically provided for herein, the Buyer shall ensure that it accepts delivery of the Goods at the time delivery is tendered by NEXUS. The Buyer shall however not be obliged to accept delivery prior to the intended delivery date or the commencement of the Laycan. Should the Buyer not accept delivery in accordance with this provision, then all Charges arising out of such delay, including but not limited to demurrage and storage costs, shall be for the Buyer's account.

Specific Terms in Relation to Transport of Goods

8.3. Depending on where NEXUS sources its Goods, the sale terms (defined in accordance with INCOTERMS) may vary.

8.3.1. CFR or CIF Terms

These terms apply in circumstances where the Goods are sold on CFR or CIF Terms as defined in accordance with INCOTERMS 2020.

8.3.1.1. Goods shall be shipped on vessels nominated by NEXUS. vessels shall be loaded by NEXUS and / or its nominated contractors.

- 8.3.1.2. The Goods shall be deemed to be delivered and risk in and to the Goods shall pass to the Buyer on the Goods passing the ship's rail.
- 8.3.1.3. The Buyer is responsible for arranging for all inspections and obtaining all permits necessary for the import into the country of destination, including any inspections required to be undertaken or any permits required to be obtained at the port of loading and shall ensure that such inspections and / or permits are carried out or obtained so as not to delay loading of the vessel.
- 8.3.1.4. The Buyer shall be required to nominate the discharge port and the Buyer warrants that the discharge port is safe for the vessel to enter and lie alongside always afloat (one safe port, one safe berth, always alongside always afloat).
- 8.3.1.5. For avoidance of doubt, it is recorded that it is the Buyer's obligation to arrange for a suitable berth for the vessel and to discharge the vessel. The Buyer shall be responsible for all costs in relation to the discharge, including but not limited to the costs of stevedores, wharfage, berth dues, tally costs and draft surveys.
- 8.3.1.6. NEXUS does not guarantee that the vessel will arrive at the discharge port at any particular time. NEXUS shall provide the Buyer with 15, 10, 7, 5, 3, 2 days and 24 hours notice of the vessel's ETA at the discharge port.
- 8.3.1.7. Vessels must be discharged within the Laytime. The Laytime shall be calculated with reference to the discharge rate agreed in the Contract. Laytime shall commence 12 hours after notice of readiness is tendered by the vessel. Notice of readiness may be tendered anytime day or night, Sundays and holidays included (excluding Super Holidays) upon the vessel's arrival at the port of discharge, whether in free pratique or not (WIFPON) and whether in customs clearance or not (WICCON). Any time lost due to the following events shall not be counted as Laytime:
- 8.3.1.7.1. Force Majeure as provided for in clause 13.7;
- 8.3.1.7.2. Inclement weather which would ordinarily prevent the discharge of the Goods.

8.3.1.8. Laytime shall cease on the completion of discharge of the vessel once the stevedores equipment and personnel have disembarked.

8.3.1.9. Demurrage / Despatch

8.3.1.9.1. In the event the vessel is delayed at the port of loading due to breach of the contract by the Buyer, in particular clause 8.4.4.3, then the Buyer shall be liable for any costs incurred by NEXUS including Demurrage.

8.3.1.9.2. In the event that the vessel is not discharged within the Laytime then the Buyer shall be liable to pay NEXUS demurrage at the rate agreed in the Contract.

8.3.1.9.3. Demurrage shall be paid by the Buyer within 30 (thirty) days of receiving an invoice for such demurrage from NEXUS.

8.3.1.9.4. In the event that the vessel is discharged within the Laytime then NEXUS shall be liable to pay the Buyer despatch at the rate agreed in the Contract.

8.3.1.9.5. NEXUS shall pay such despatch within 30 days after receipt of an invoice from the Buyer. In no circumstances shall the Buyer be entitled to set off despatch against the Purchase Price.

8.3.1.10. Stevedore Damage

The Buyer shall indemnify and hold NEXUS harmless in respect of any damage to the vessel, or to the Buyer's property or third party property as well as any claim arising due to injury to persons caused by the negligence of the stevedores in any degree.

1. DDP Terms

These terms apply in circumstances where the Goods are sold on DDP Terms as defined in accordance with INCOTERMS 2020.

1.1.1.1. Goods shall be transported on vehicles contracted by NEXUS. Vehicles shall be loaded by NEXUS and / or its nominated contractors.

1.1.1.2. The Goods shall be deemed to be delivered and risk in and to the Goods shall pass to the Buyer upon the Goods being delivered to the customer's premises.

2. RESERVATION OF OWNERSHIP

- 2.1. Notwithstanding the delivery of the Goods or the passing of risk to the Buyer ownership of the Goods shall remain vested in NEXUS until payment of the Purchase Price is made in full.
- 2.2. This reservation of ownership shall not preclude NEXUS from claiming full payment of the Purchase Price in accordance with the provisions of clause 5.
- 2.3. Title to the goods shall remain vested in the Seller and shall not pass to the Buyer until the purchase price of the goods has been paid in full and received by the Seller.

3. DISPUTES RE QUALITY

Disputes regarding quality of Goods shall be deal with in accordance with this clause 10.

- 3.1. If a dispute regarding the quality of the Goods arises the sample kept by the survey pursuant to the provisions of clause 7.3 above shall be sent for testing to a testing facility in the Republic of South Africa agreed to between the parties for testing in accordance with international standards as provided for in clause 7 of these Conditions. The results of such testing shall be final and binding on the parties in respect of the compliance with the quality specifications in the Contract.
- 3.2. In the event that the Goods meets these specifications then the costs of such testing shall be borne by the Buyer and vice versa.
- 3.3. In the event that the Goods fails to meet the specifications provided for in clause 7 NEXUS may, in accordance with clause 12, replace the Goods, or at NEXUS's option reimburse the Buyer for such Goods.

4. CLAIMS RE PACKAGING

Any claim for insufficiency of packaging must be lodged with NEXUS within 30 (thirty) days of discharge of the Goods at the Place of Delivery or such claim will be time barred and NEXUS shall have no liability to the Buyer for such claim.

5. LIMITATION OF LIABILITY

- 5.1. NEXUS's liability arising from or in connection with any Contract shall be limited to the replacement of the Goods within a reasonable period or, at the option of NEXUS, to reimburse the Buyer an amount not exceeding the Purchase Price in respect of the Goods. Where a claim relates to a portion of the Goods subject to a Contract NEXUS's liability shall be limited to replacement of that portion of the Goods or refunding the Buyer that portion of the Purchase Price.
- 5.2. NEXUS shall not be liable to the Buyer for any indirect or consequential loss which may be suffered by the Buyer whether as a result of NEXUS's breach of the Contract, breach of statutory duty, negligence in any degree or otherwise. In particular and without limiting the generality of the foregoing NEXUS shall have no liability for any loss or damage sustained by the Buyer or any third party arising out of the Goods being unsuitable for the purpose which the Buyer or any such third party intends using the Goods nor shall NEXUS be liable for any damages as a result of delay in the delivery of the Goods.
- 5.3. The Buyer indemnifies NEXUS and shall hold it harmless from any claim made by a third party in connection with the supply of Goods pursuant to a Contract entered into with the Buyer which exceeds NEXUS's liability provided for in these conditions.

6. FORCE MAJEURE

- 6.1. Subject to the provisions of this clause, neither party shall be responsible to the other party for its failure to perform or any delay in performing any obligation under any Contract in the event and to the extent that such failure or delay is caused by force majeure.
- 6.2. For the purposes of these conditions force majeure shall mean any circumstance which is,

- 6.2.1. beyond the reasonable control and without the fault or negligence of the party giving notice of force majeure ("the affected party"),
 - 6.2.2. which, by the exercise of reasonable diligence, such Party was unable to provide against or avoid; and
 - 6.2.3. which, having arisen, such Party has used its best endeavors to minimize or overcome.
- 6.3. For the purposes of this agreement, Force Majeure shall include but not be limited to exceptional events or circumstances listed below, subject to satisfaction of the conditions listed above:
- 6.3.1. war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
 - 6.3.2. rebellion, terrorism, insurrection, military or usurped power or civil war,
 - 6.3.3. riot, commotion, disorder strike, lock-out or any other form of industrial action,
 - 6.3.4. ionizing radiation or contamination by radio-activity, except as may be attributable to Company or Contractor's use of such munitions, explosives, radiation or radio-activity, and
 - 6.3.5. natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.
- 6.4. The affected party must give notice thereof to the other party as soon as possible upon the occurrence of an event of force majeure.
- 6.5. If the event of force majeure is of such a nature that it will result in impossibility of performance of an obligation going to the root of the Contract, the party not so affected ("the other party") shall be entitled on receipt of notice of the force majeure event to terminate the Contract upon notice to the affected party, but shall not be entitled to recover any damages which it may suffer as a result of such premature termination.

- 6.6. If the event of force majeure is of such a nature that it will not result in impossibility of performance of the obligations in question, but will delay the performance thereof, the affected party must be entitled to such extension of time in which to perform that obligation as may be reasonable in the circumstances, taking into account the interests of both parties: provided that if such force majeure situation persists for a period in excess of 30 days the other party shall be entitled to terminate this agreement, but shall not be entitled to recover any damages which it may suffer as a result of such premature termination.
- 6.7. Notwithstanding the above provisions, the commencement and running of Laytime shall not be interrupted by any of the events defined as Force Majeure in clause 13.3 save for Act(s) of God including but not limited to earthquake, flood, fire or other natural physical disasters.

7. NOTICES

- 7.1. Any notice or other communication to be given to either of the Parties in terms of these conditions shall be valid and effective only if it is given in writing, provided that any notice given by telefax or e-mail shall be regarded for this purpose, as having been given in writing.
- 7.2. Any communication sent;
- 7.2.1. by pre-paid registered mail within the Republic of South Africa shall be deemed to be received by the other Party within 5 (five) days of posting,
- 7.2.2. by telefax shall be deemed to be received at the date and time indicated on the transmission slip
- 7.2.3. by email shall be deemed to be received when the complete data message enters an information system designated or used for that purpose by the addressee and is capable of being retrieved and processed by the addressee.

- 7.3. Notwithstanding anything to the contrary in this clause 14, a written notice or other communication actually received by either Party (and for which receipt has been obtained) shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.

8. BREACH AND TERMINATION

- 8.1. In the event that the Buyer commits a breach of the Contract, the Buyer shall be required to remedy such breach within 7 (seven) days from receipt of written notice from NEXUS (in case of a breach capable of being remedied at all). In the event that rectification of the breach is not possible within such period then the Buyer must take steps, to the satisfaction of NEXUS, within 7 (seven) days of receipt of such notice to remedy the breach. If the Buyer fails to remedy the breach within the aforesaid period or fails to take appropriate steps to remedy the breach then NEXUS will be entitled to cancel the Contract.
- 8.2. NEXUS may, without prejudice to its other rights forthwith terminate a Contract by giving notice to the Buyer in the event that:
- 8.2.1. If any present or future mortgage, charge, pledge or other security on or over the whole or any part of the property, assets or revenues of the Buyer becomes enforceable and any step (including the taking of possession or the appointment of a receiver or manager or administrative receiver) is taken to enforce that security.
 - 8.2.2. If the Buyer commits an act of insolvency.
 - 8.2.3. If the Buyer begins negotiations or takes any proceeding or other step with a view to re-adjustment, re-scheduling or deferral of all of its indebtedness or any voluntary arrangement by way of a composition in satisfaction of its debts, or a scheme of arrangement of the affairs of either party, or a compromise or arrangement between the Buyer and its creditors or members shall be proposed, approved or effected.

- 8.2.4. If a distress, attachment, execution or other legal process is levied, enforced or sued out on or against all or a substantial part of the property or assets of the Buyer.
 - 8.2.5. If any step is taken by any person for the winding-up or liquidation of, or the appointment of an administrator in relation to the Buyer.
- 8.3. The Buyer acknowledges that:
- 8.3.1. If the terms of the sale are CFR pursuant to the provisions of clause 8.4.4 above NEXUS may have to arrange for discharge and storage of the Goods at the discharge port or divert the vessel to an alternative port of discharge and discharge and store the Goods there. The Buyer shall in such circumstances be liable for all costs and expenses for the discharge and storage of the Goods as well as any additional freight payable by NEXUS in having to divert the vessel to an alternative port of discharge.
- 8.4. The above provisions shall in no way limit any other right that NEXUS may have to claim damages.

9. GOVERNING LAW AND JURISDICTION

- 9.1. These Conditions and any Contract concluded pursuant thereto shall be governed and interpreted in accordance with the laws of the Republic of South Africa without regard to the rules of private international law.
- 9.2. Should any difference or question at any time arise between the Parties as to the construction, meaning or effect of the Contract or these conditions, or as to the rights, obligations or liabilities of the Parties hereunder, or should the Parties fail to agree upon any matter or thing which is provided for in the Contract or these conditions, such difference shall be determined by the procedures set out below.
- 9.3. The party claiming a dispute or difference shall advise the other in writing thereof. Within 14 (fourteen) days of receipt of such notice, the parties shall meet and negotiate in good faith in order to resolve such dispute or difference.

- 9.4. In the event that the parties are unable to resolve the dispute in accordance with the provisions of clause 16.3 above such dispute shall be referred to arbitration in Johannesburg and shall be subject to South African Law and the provisions of the Arbitration Act (Act 42 of 1965) or any statutory modification thereof. The arbitration shall be conducted in accordance with the rules for the conduct of arbitrations published by the Arbitration Foundation of Southern Africa current at the time when the arbitration proceedings are commenced.
- 9.5. The arbitration tribunal shall consist of a single arbitrator to be appointed by the parties. In the event that the parties are unable to agree on the appointment of an arbitrator one shall be appointed by the Secretariat of the Arbitration Foundation of Southern Africa.
- 9.6. The seat of the arbitration shall be in Johannesburg, Republic of South Africa.
- 9.7. The parties shall have a right of appeal to an appeal tribunal consisting of 3 (three) arbitrators. Each party shall appoint a single arbitrator and the arbitrators so appointed shall appoint the third arbitrator. The decision of the appeal tribunal shall be final and binding on the parties.
- 9.8. For the enforcement of any provisions of this clause the parties submit to the jurisdiction of the High Court of South Africa, Witwatersrand Local Division

10. GENERAL

- 10.1. The Contract, which is subject to these Conditions, contains the entire agreement between the parties and supersedes any previous agreement between the parties.
- 10.2. No party shall have any claim or right of action arising from any undertaking, representation or warranty not included in the Contract or these Conditions.
- 10.3. No failure by a party to enforce any provision of the Contract or these Conditions shall constitute a waiver of such provision or affect in any way a party's right to require performance of any such provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself.

- 10.4. No agreement to vary, add to or cancel the Contract or these Conditions shall be of any force or effect unless reduced to writing and signed by or on behalf of the parties to the Contract.
- 10.5. Notwithstanding any other provision of the Contract or these Conditions, NEXUS shall be entitled to cede any of its rights or delegate any of its obligations under the Contract or these conditions.
- 10.6. Each party warrants that it is acting as a principal and not as an agent for an undisclosed principal.
- 10.7. In the event that any provision contained herein or any part of such provision is unlawful or deemed to be void for whatever reason, it shall only be void to the extent of such unlawfulness and shall not derogate from the remainder of the provision.

-----ENDS-----