

NIKHONA STANDARD TERMS AND CONDITIONS OF SALE

1. The following terms and conditions shall apply in respect of all goods to be supplied, services to be provided, or other work to be performed by Nikhona CC, Registration Number 2007/172594/23, with Registered Address at 3 Stellenvale, 3 Belmont Gardens Road, La Lucia, 4051 (the "Supplier") for the Purchaser (hereinafter referred to as the "Agreement").
2. Quotations
 - 2.1. Any quotations provided by the Supplier to the Purchaser shall be valid for acceptance for 30 (thirty) days from the date of issue.
 - 2.2. The Supplier shall be entitled to withdraw any quotation at any time prior to acceptance by the Purchaser.
 - 2.3. The acceptance of a quotation shall be communicated in writing by the Purchaser to the Supplier at the Supplier's registered address or at such other address as the Supplier may specify in writing.
 - 2.4. In the event that the Supplier has not conducted an on site inspection of the Purchaser's premises or subject site, and/or the Purchaser has provided its own measurements or fitting plan to the Supplier, the Purchaser shall be liable for any extra length of flooring or carpeting or other additional work required and not quoted.
 - 2.5. The Supplier shall exercise its best endeavours to ensure the accuracy of the prices, delivery date, availability of products, and other information which may be contained in its quotation to the Purchaser, but the Purchaser accepts that the information contained therein may be subject to change beyond the Supplier's reasonable control. The Supplier shall inform the Purchaser of any such change as soon as reasonably possible after becoming aware of it.
3. Payment
 - 3.1. The Supplier may require a deposit from the Purchaser in an amount which is reasonable in the Supplier's discretion before proceeding with any work or service.
 - 3.2. Payment by the Purchaser to the Supplier for goods delivered, services provided or work performed shall be due immediately upon receipt of invoice by the Purchaser.
 - 3.3. Ownership in goods sold shall remain vested in the Supplier until payment in full has been received by the Supplier.
 - 3.4. The Purchaser may apply to the Supplier for credit facilities but the granting of such facilities and the terms thereof shall be in the Supplier's sole discretion.
 - 3.5. The Supplier shall be entitled to appropriate any payment received from the Purchaser in connection with this Agreement to any amount due by the Purchaser, or which may become owing by the Purchaser to the Supplier from any cause whatsoever.
 - 3.6. Any discounts offered by the Supplier are *ex gratia* and may be withdrawn or cancelled at any stage. The Supplier shall be entitled to reverse any discount shown in any statement which is overdue for payment.
 - 3.7. The Supplier shall be entitled to levy interest on any and all amounts outstanding at a rate of 5% (five percent) per annum above the prime rate published from time to time at which The Standard Bank of South Africa Limited lends on overdraft, from the due date until the date on which payment in full is received.
 - 3.8. A certificate signed by any manager of the Supplier, whose status or appointment need not be proved, shall be sufficient proof, until the contrary is proved, of any amount owing by the Purchaser to the Supplier in terms of this Agreement for the purposes of obtaining judgment, provisional sentence, summary judgment or any other order or relief against the Purchaser.
4. Delivery
 - 4.1. Delivery to the Purchaser shall be deemed to have been made when the goods leave the Supplier's premises whereupon all risk therein shall pass to the Purchaser.
 - 4.2. Delivery shall be effected during the normal business hours of the Supplier, unless otherwise agreed upon between the Supplier and the Purchaser.
 - 4.3. The Supplier may without notice suspend delivery of any good or service if any amount due by the Purchaser to the Supplier is outstanding, or if the Supplier in its sole discretion considers that the Purchaser will be unable to effect payment on due date for the good or service to be delivered.

- 4.4. The Purchaser shall obtain all necessary approval, consent, permit or license necessary to enable the Supplier to effect delivery and shall indemnify the Supplier against any loss, cost or damages that the Supplier may incur or suffer as a result of the Purchaser's failure to do so.
 - 4.5. The Purchaser shall ensure that the Purchaser's premises or the subject site is prepared for delivery and this shall include procuring that any flooring or carpeting can be laid on floor level, free of obstacles or obstructions, and that all flooring or carpeting will follow the normal slope of the floor area. Any work which the Supplier may need to perform to ready the Purchaser's premises or the subject site for delivery, e.g. removal of furniture and fittings, shall be for the account of and at the risk of the Supplier.
 - 4.6. The Purchaser shall advise the Supplier of any specific requirements it may have regarding the manner in which delivery should be effected or the manner in which the Supplier should undertake its work, including pointing out the correct flooring or carpeting to be laid in a particular room. Any work which the Supplier may need to perform as a result of incorrect or inadequate information, or unreasonable notice from the Supplier in this regard, shall be for the account of and at the risk of the Purchaser.
 - 4.7. Where delivery entails the performance of various pieces of work or services, e.g. the installation of flooring or carpeting in multiple rooms, the Supplier may in its sole discretion regard each piece of work or service, e.g. the installation of flooring or carpeting in one room, as a separate divisible contract between the Supplier and Purchaser.
5. Confidentiality
 - 5.1. Any specifications, samples, designs, formulations, trade secrets, financial data, intellectual property or other information identified as confidential or disclosed under this Agreement (the "Information") by one party (the "Disclosing Party") to the other party (the "Receiving Party") shall remain the exclusive property of the Disclosing Party and shall, together with any information incidental thereto, be kept confidential by the Receiving Party, its employees and agents and shall not, without the prior written consent of the Disclosing Party, be disclosed to any third party or used except for the purposes of the Agreement.
 - 5.2. Notwithstanding 5.1, the Information shall not be deemed confidential to the extent that the Receiving Party can demonstrate by written record that it was previously known by the Receiving Party, became generally available to the public through no fault of the Receiving Party, was disclosed to the Receiving Party by a third party without breach of any confidentiality obligation, or is specifically required to be disclosed by law or legal process.
 - 5.3. This clause 5 shall survive the termination of this Agreement.
 6. Force Majeure: The Supplier shall not be liable for any loss, cost or damage incurred or suffered by the Purchaser as a result of any delay in or non-performance of work, service, provision of goods or failure to comply with the provisions of the Agreement due directly or indirectly to acts of God, acts of the public enemy, riots, strikes, lockouts, epidemics, power failure, water shortage, adverse weather conditions, or other causes beyond the control of the Supplier.
 7. Breach and Termination
 - 7.1. The Supplier shall be entitled, without affecting any of its other rights which it may have, to cancel the Agreement and/or claim immediate payment of all amounts payable in terms of the Agreement, all of which shall then become due if the Purchaser:
 - 7.1.1. fails to comply timeously with any provision of this Agreement, all of which are material;
 - 7.1.2. fails to comply with a judgment obtained against it in any court within 10 (ten) days thereof, unless it has appealed against or applied for the setting aside of such judgment;
 - 7.1.3. commits any act of insolvency in terms of the Insolvency Act 24 of 1936 as amended or replaced;
 - 7.1.4. has any of its assets attached in execution;
 - 7.1.5. surrenders or attempts to surrender its estate;
 - 7.1.6. has made any incorrect or untrue statement or representation in connection with this Agreement, or its financial affairs or does, or allows to be done, anything which might prejudice the Supplier's rights under the Agreement; or
 - 7.1.7. in accordance with the Supplier's opinion and discretion has any deterioration in its financial position.

- 7.2. The Purchaser shall be entitled to cancel the Agreement with the written consent of the Supplier, which consent the Supplier may grant or refuse in its sole discretion, and provided that the Purchaser shall immediately pay to the Supplier:
- 7.2.1. all amounts payable in terms of the Agreement; and
 - 7.2.2. the actual expenses and costs already incurred by the Supplier in respect of the goods or services sold in terms of the Agreement at the date of termination plus a termination fee in an amount equal to 25% (twenty five percent) of such expenses and costs.
8. Indemnity
- 8.1. The Supplier shall not be liable for any loss of profit or business, or indirect or consequential damages suffered by the Purchaser from any cause whatsoever under the Agreement.
 - 8.2. The Purchaser hereby indemnifies the Supplier against any loss, cost, or damages which the Purchaser may incur or suffer under the Agreement, including the loss of life or limb, provided that such loss, cost or damage is not a result of the gross negligence or willful misconduct of the Supplier, and provided further that the maximum liability of the Supplier shall be limited to an amount equal to the amounts actually received by the Supplier from the Purchaser under the Agreement.
9. Cession and Co-Purchasers
- 9.1. The Purchaser may not cede any of its rights or delegate any of its obligations in terms of this Agreement to anyone without the prior written consent of the Supplier.
 - 9.2. If more than one Purchaser is a party to this Agreement, each such Purchaser shall be jointly and severally liable to the Supplier in respect of all obligations of the Purchaser in terms of this Agreement.
10. Costs: The Purchaser shall pay to the Supplier any costs incurred by the Supplier in enforcing this Agreement, and, in particular, legal costs calculated on the scale as between attorney and own client.
11. Jurisdiction: This Agreement shall be governed by and construed according to the laws of the Republic of South Africa, and shall be subject to the jurisdiction of the Magistrate's Court having jurisdiction in respect of the Purchaser, provided that the Supplier may, at its discretion, institute proceedings in the High Court.
12. Waiver: No extension of time, waiver or relaxation of any of the provisions of this Agreement shall prejudice any of the Supplier's rights hereunder in any manner whatsoever, and shall not be regarded as a waiver of any of those rights.
13. Entire Agreement
- 13.1. This Agreement constitutes the entire contract between the parties regarding the subject matter hereof, and may not be amended, varied or cancelled except in writing and signed by the representations of the Supplier and Purchaser.
 - 13.2. Without derogating from the generality of 13.1,
 - 13.2.1. the Supplier has made no representation and the Purchaser shall not rely on any representation not contained herein,;
 - 13.2.2. the Supplier shall not be bound by any prior courses of dealing, trade usage or verbal agreements unless the Supplier agrees thereto in writing;
 - 13.2.3. the Supplier shall not be bound by the terms and conditions of any purchase order from the Purchaser unless the Supplier agrees thereto in writing, and in the event of any conflict between the provisions of this Agreement and the terms and conditions of the aforementioned purchase order, the provisions of this Agreement shall apply.
14. Domicilia
- 14.1. The Supplier and Purchase respectively choose as their *domicilia citandi et executandi* for all purposes of and in connection with the Agreement the addresses specified in the Agreement.
 - 14.2. Any party hereto shall be entitled to change its *domicilium* from time to time, provided that any new *domicilium* selected by it shall be an address other than a box number, and any such change shall only be effective upon receipt of notice in writing by the other party of such change.
 - 14.3. Any notice sent by one party to another party shall be deemed to be received:
 - 14.3.1. on the same day, if delivered in hand;
 - 14.3.2. on the same day, if sent by fax and if a valid fax report is kept;
 - 14.3.3. on the seventh day after posting, if sent by prepaid registered mail.

14.4. A written notice or communication actually received by a party shall be an adequate written notice or communication to that party, notwithstanding that it was not sent to or delivered to the chosen *domicilia citandi et executandi*.

I (Full Names) hereby acknowledge and accept the standard terms and conditions of sale. I further declare that I am authorized to sign this declaration for and on behalf of the Purchaser.

Name of Purchaser

Registration Number*

Registered Address*

SIGNED at (Place) on the (Day) of (Month and Year)

.....

.....

Designation

Signature of Purchaser/Signed on behalf of Purchaser

** Where the Purchaser is an individual or sole proprietor, the identity number and residential address must be provided.*