

AGREEMENT OF SALE

STANDARD TERMS AND CONDITIONS OF AGREEMENT OF SALE OF REFORAC BV Chamber of Commerce number 63191814 ("THE SELLER") AND "THE CUSTOMER".

1. **APPLICABILITY OF THE STANDARD CONDITIONS**

All and any business undertaken by the Seller including without limitation the supply of goods, is and shall be subject to the terms and conditions hereunder.

These terms and conditions shall take precedence over any terms, conditions or stipulations that the Customer may attempt to impose on the Seller.
2. **QUOTATIONS AND ORDERS**

Notwithstanding the giving of any quotation by the Seller and the acceptance of the quotation by a Customer, no contract shall arise as a result thereof unless an order is placed by the Customer and it is accepted in writing by the Seller, or the goods ordered are supplied.
3. **PRICES**

The prices of goods and services sold or supplied shall be the usual price charged by the Seller for such goods and services, from time to time, unless otherwise agreed by the parties in writing.
4. **PAYMENT**
 - 4.1 All payments due by the Customer to the Seller shall be made at the Seller's principal place of business or into such bank or bank accounts as the Seller may specify. The Seller may require payment by debit order. The Customer shall on demand sign all documents which are necessary to effect the debit order.
 - 4.2 All sums shall be paid without deduction, demand or set off within thirty days of the date of the Seller's invoice to the Customer, unless specifically agreed to in writing by the Seller.
 - 4.3 Any amount not paid on the due date shall, at the sole discretion of the Seller, bear interest at the maximum permissible rate in law from the due date until the date the amount is paid.
- 4.4 The Seller does not accept risk for payment by cheque or cheques sent by post. Payment will only be deemed to have been made by the Customer, when the cheque has been deposited into the Seller's bank account and the cheque has cleared.
- 4.5 If any amount owing by the Customer to the Seller is not paid on the due date then all amounts owing by the Customer to the Seller and not yet due shall immediately become due, owing and payable.
5. **DELIVERY AND RISK**
 - 5.1 Unless otherwise agreed in writing, the Customer shall take delivery of all goods at the Seller's premises. If the Seller agrees to deliver the goods anywhere else, then the Customer will be liable for all the costs of delivery.
 - 5.2 Risk in and to the goods will pass to the Customer when the goods leave the premises of the Seller notwithstanding that the goods may be delivered by the Seller or a carrier appointed by the Seller.
 - 5.3 Off-loading of goods shall be the responsibility of the Customer and the Seller does not accept any liability for damages resulting from the off-loading of the goods even if the Seller's employees are requested to assist in off-loading the goods.
 - 5.4 The Seller shall be entitled to withhold delivery of any goods ordered by the Customer if there are any amounts outstanding on the Customer's account in respect of any previous goods that have been sold and delivered.
6. **TIME NOT OF THE ESSENCE**
 - 6.1 The time stipulated for the delivery of any

goods or the rendering of any service or the doing of any other act by the Seller, is approximate only and shall not be a material term and in any event is subject to the prompt receipt by the Seller of all information, specifications, and such other data which it may require from the Customer for the proper carrying out of the order.

6.2 Subject to 6.1, the Seller will make reasonable efforts to deliver goods and render services within the times stated in the contract.

6.3 A signed delivery note shall constitute *prima facie* proof that the goods have been delivered to and received by the Customer in good condition, whether signed by the Customer, an employee an agent or a representative of the Customer.

7. OWNERSHIP

Notwithstanding delivery, ownership in the goods vests in and remains with the Seller until such time as payment of the full purchase price and any interest thereon, if applicable, has been made.

8. NOTIFICATION OF DEFECTS

8.1 Within 7 (seven) days after delivery of the goods, the Customer shall be required to advise the Seller of any defects:

8.1.1 if the goods are defective, the Seller's liability shall be limited to replacing such goods against return to it of the defective goods.

8.1.2 if there is short delivery, Seller's liability shall be limited to delivery of the proper quantity as soon as it is reasonably possible.

The Customer waives all other claims it may have against the Seller for the short delivery.

8.2 Failing notification in terms of clause 8.1 the goods shall be deemed to be complete in all respects and without any defects, and Seller shall not under any circumstances be liable for any defects, shortages in delivery or failure if the goods complying with the Customer's specifications.

9. WARRANTIES

9.1 The Seller gives no warranties and makes no representation as to the suitability of the goods for any specific purpose.

9.2 The Customer acknowledges that the Seller is in no way bound by any oral statement, representation, guarantee, promise, undertaking, inducement or otherwise which may have been made at any time by any salesperson, employee, representative or any person acting or purporting to act for or on behalf of the Seller, whether negligently or otherwise.

9.3 The Customer warrants that all information provided is true and correct and undertakes to notify the Seller in writing of any changes in ownership, name or address. Ssuch change will in no way derogate from the liability of the Customer to the Seller.

10. LIMITATION OF LIABILITY

10.1 Neither the Seller nor any of its employees or agents shall be liable for any loss or damage, nothing excepted, whether direct, indirect, consequential or otherwise, including, without limitation, any loss of profit, suffered by the Customer or the Customer's officers, employees or agents (if applicable), arising out any cause of action in connection with the goods supplied by the Seller to the Customer, whether such loss or damage is the result of any breach of contract, delict, negligence of any degree or any other cause without limitation.

10.2 If the Customer sells or disposes of the goods supplied by the Seller to a third party or otherwise permits a third party to use the goods, the Customer shall include in the Customers agreement with the third party, a provision in terms of which the Seller is afforded the same limitation of liability as contemplated in clause 10.1.

10.3 Notwithstanding any other provisions to the contrary, any claim which the Customer had against the Seller in connection with or arising out of any business shall lapse and become extinguished unless within:

10.3.1 30 days of such claim arising the Customer gives written notice thereof to the Seller, and at the

- same time discloses to the Seller in writing the material facts upon which the claim is to be based;
- 10.3.2 6 months of such claim arising, the Customer institutes legal proceedings against the Seller in respect of the claim by issuing summons out of a court with competent jurisdiction and serving such summons of the Seller.
- 10.4 The Customer hereby indemnifies the seller, its employees and agents and holds them harmless against all claims and costs, nothing excepted, where such claims have arisen out of or in connection with the goods supplied by the Seller to the Customer.
11. **NOTICES AND DOMICILIA**
- 11.1 Any notices to be given pursuant to any business undertaking shall be in writing and shall be delivered by hand or sent by registered post.
- 11.2 Each party shall be entitled at any time to change its *domicilium* to any other physical address provided that such change shall take effect only upon delivery or deemed delivery of the notice thereof to the other party.
12. **CANCELLATION CLAUSE**
- 12.1 In addition and without prejudice to any other rights it may have, the Seller is entitled to cancel any contract for the supply of goods if:
- 12.1.1 any judgement is granted against the Customer;
- 12.1.2 the Customer commits a breach of any of these terms and conditions or any contract between the Seller and the Customer arising pursuant hereto;
- 12.1.3 the Customer, being an individual, dies or is provisionally or finally sequestered or surrenders his estate;
- 12.1.4 the Customer is a partnership and the partnership is terminated;
- 12.1.5 the Customer, being a company or close corporation, is placed under provisional or a final order of liquidation or judicial management; or
- 12.1.6 the Customer compromises or attempts to compromise generally with any of its creditors.
- 12.2 Upon cancellation of the contract by the Seller, the Seller shall be entitled to the return of and/or to recover all goods delivered but not yet paid for as well as all damages incurred by it arising from or in connection with such cancellation, including but not limited to all costs, expenses and loss of profit. All amounts owing by the Customer will immediately become due, owing and payable.
- 12.3 The Customer is not entitled to cancel the contract for any reason whatsoever, unless specifically agreed to in writing by the Seller.
13. **CESSION IN SECURITATEM DEBITI**
- 13.1 As security for the due fulfilment by the Customer to the Seller of all of its obligations in terms of this agreement, the Customer cedes to the Seller in securitatem debiti all of its rights, title and interest in and to any claims, howsoever arising and nothing excepted, which the Customer may have against any person or juristic person for the payment of any monies which may be due to it, including the rights to any security held by the Customer in respect of such claims. The Seller accepts this Cession.
- 13.2 The Cession shall terminate only after payment in full to the Seller of all amounts owing by the Customer to it.
- 13.3 The Customer shall deliver to the Seller upon demand, all documents necessary to perfect this Cession.
- 13.4 The exercise by the Seller of any of the rights accorded to it by this clause shall be in addition to and without prejudice to any other rights it may have at law.
14. **SURETY**

As security for the due fulfilment by the Customer to the Seller of all of its obligations in terms of this agreement, a director, member, employee or representative of the Customer, to the approval of the Seller, shall sign as surety and co-principal debtor in favour of the Seller, on the terms and conditions specified by the Seller.

15. **GENERAL ACKNOWLEDGMENTS AND OBLIGATIONS OF THE CUSTOMER**

The Customer agrees and acknowledges that the Seller shall be entitled to:

- 15.1 undertake such credit reference checks on the Customer with such persons or parties (including without limitation the Customer's bankers and any credit bureau) as the Seller may reasonably require from time to time;
- 15.2 have access to such information as it may reasonably require in order to assess the ability of the Customer to pay any amounts due to it and the Customer shall allow and procure that Seller obtains such access.

16. **GENERAL**

- 16.1 No agent or employee of the Seller other than a director of the Seller shall have the authority to alter or vary these terms and conditions.
- 16.2 The Customer may not rely on a representation which it claims persuaded it to agree to these terms and conditions or to enter into this agreement.
- 16.3 No agreement varying, adding to, deleting from or cancelling any of these terms and conditions, and no waiver of any of these terms and conditions, shall be effective unless reduced to writing and signed by the Seller.
- 16.4 No indulgence granted by the Seller shall constitute a waiver of any of the Seller's rights.
- 16.5 If the Seller refers any claim or dispute against the Customer to its attorneys, and whether or not the Seller institutes or defends any legal or arbitration proceedings to enforce or protect its rights, the Seller shall be entitled to recover from the

Customer all legal costs (on an attorney and client basis), tracing charges and collection commission incurred by the Seller in that regard.

- 16.6 A certificate signed by a director or manager of the Seller reflecting particulars of the amounts owing by the Customer together with details of all deliveries made to the Customer and the invoices pertaining to such deliveries shall be *prima facie* proof of the Customer's indebtedness to the Seller.
- 16.7 The Customer may not cede any of its rights or delegate any of its obligations in terms of any contract unless the Seller gives prior written consent to the Customer to do so. If the Customer is a close corporation or company, any change in the effective control of that entity shall amount to a cession and/or delegation in terms of this clause 15.8.
- 16.8 Should the Seller or any of its associated companies be indebted to the Customer, then the Seller may set-off this indebtedness against the indebtedness of the Customer to the Seller, automatically, without notice to the Customer.
- 16.9 Credit facilities allowed by the Seller are in the Seller's discretion and the Seller is entitled, at any time, without notice to the Customer to, vary, curtail or terminate such facilities.
- 16.10 Unless it conflicts with the context of these conditions, words signifying one gender will include the other genders, words signifying the singular will include the plural and vice versa, and words signifying natural persons will include artificial persons and vice versa.
- 16.11 Headings of clauses are inserted for the purpose of convenience only and shall be ignored in the interpretation of these conditions.
- 15.12 If any part of these conditions is or becomes unenforceable, such part will be severable from the rest of these conditions which will continue to be binding.
- 16.13 This agreement shall be interpreted and implemented in accordance with the law of the Netherlands.

