

NUTAPE TERMS AND CONDITIONS

1. Introduction

- 1.1. This document together with its annexures sets out the terms and conditions on which Nutape cc (“**Nutape**”) will supply tapes, adhesives, plastics abrasives packaging chemicals and elements of safety (“**goods**”) to its customer (“**the Purchaser**”).
- 1.2. This document contains the entire agreement between the parties and no cancellation, amendment or variation thereof, or addition thereto, will be of any force or effect unless reduced to writing and signed by both parties.
- 1.3. Any failure by the Purchaser to comply with these terms and conditions may result in the supply of goods by Nutape to the Purchaser being terminated.
- 1.4. The Purchaser confirms that he/she/it has read this document carefully and understands the contents thereof.
- 1.5. It is recorded that Nutape has a commercial policy which regulates the discounts which the Purchaser will be entitled to, depending on its performance in different categories of assessment. The commercial policy is contained in annexure “**A**” hereto, which annexure forms an integral part of this agreement.

2. Price of goods

- 2.1. Due to operational circumstances, prices quoted by Nutape either telephonically or on Nutape’s quotation form, are subject to change and prices ruling at the time of dispatch of the goods will apply.

3. Resale of goods

- 3.1. The goods are supplied to the Purchaser by Nutape on the bases that it is intended for resale within the Republic of South Africa only.
- 3.2. In the event of the Purchaser selling any goods purchased from Nutape outside of the Republic of South Africa the Purchaser will be in breach of this agreement and the manufacturer’s warranty for end customers will be invalidated.

4. Account facilities

- 4.1. Nutape may open an account for the Purchaser once it has carried the necessary credit checks.
 - 4.1.1. The account facility may be withdrawn by Nutape at any time, in Nutape’s sole discretion, with or without prior notice to the Purchaser.

- 4.1.2. If the Purchaser fails to comply with any of its obligations as set out in these terms and conditions, Nutape may immediately close the Purchaser's account and all amounts owing will become due and payable immediately.
- 4.1.3. If the Purchaser fails to pay the full purchase price on any order when it becomes due and payable, the Purchaser will be in breach of this agreement.

5. **Payment terms**

- 5.1. Payment for goods on terms is to be made within 30 (thirty) days from the date of statement.
- 5.2. Payment for goods on pre-paid is due and payable when the order is placed and confirmed.
- 5.3. Nutape may, from time to time, in its sole discretion, determine the method and/or place of payment to be made used by the Purchaser.
- 5.4. In the event of the Purchaser's payment not being accompanied by an invoice number detailing how the payment should be allocated, Nutape has the right to allocate the payment as it deems fit.
- 5.5. The Purchaser will be responsible for any bank charges incurred by Nutape as a result of any failed payment by the Purchaser.

6. **Credit Limit**

- 6.1. So as to avoid the Purchaser incurring excessive debt, it is within Nutape's discretion to reduce the credit limit on the Purchaser's account facilities at any stage. Any amount of credit granted in excess of such limit does not, however, relieve the Purchaser from any liability in respect thereof.
- 6.2. The Purchase may apply to Nutape in writing to have the credit limit increased or decreased, but it remains within Nutape's sole discretion to allow any increase in the credit limit.
- 6.3. In the event if the Purchaser's credit limit being reached while payment for any goods is not yet due, new orders will only be dispatched upon writing and acceptable proof of prior payment for such new orders. In the event of the credit limit being reached and payment for any order had already fallen due, then no orders will be allowed until the full amount due has been settled in full.

7. **Suretyship and Liquidation**

- 7.1. Nutape will only provide an account facility to the Purchaser after a separate suretyship had been signed by the director(s) or member(s) of the Purchaser, or such third party as Nutape might accept as surety, as security for present and future obligations in relation to the Purchaser's account facility. The suretyship is attached to these terms and conditions as Annexure B and the duly signed and completed original thereof must be provided to Nutape before any credit facility will be granted.

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- 7.2. The Purchaser must forthwith notify Nutape of and provide Nutape with copies of any resolutions passed by the Purchaser in which business rescue proceedings, liquidation proceedings, comprise with its creditors, or any similar proceedings, are considered or authorized.

8. Placement orders

- 8.1. The placement of an order, telephonically or in writing, shall constitute an offer to purchase the goods in question. Nutape will accept such offer by written acceptance or confirmation of the order telephonically.
- 8.2. The Purchaser must ensure that orders are correctly placed, as Nutape will not be responsible for any incorrect orders placed by the Purchaser and the full amount of any order placed will be for the Purchaser's account.
- 8.3. The Purchaser will not be allowed to cancel any order for goods produced to its special specifications and will be responsible for payment of the full purchase price of such goods.

9. Delivery of goods, risk and retention of ownership

- 9.1. Nutape will have the right to charge a reasonable delivery fee for the delivery of goods.
- 9.2. Upon delivery of the goods the risk therein will automatically pass to the Purchaser who will then be fully responsible for the goods and will be obliged to comprehensively insure the goods until payment therefor has been made. Nutape has the right to demand proof of the applicable insurance policy at any time.
- 9.3. Nutape will at all times retain full ownership in the goods unless and until the full purchase price has been paid.
- 9.4. Whilst every effort will be made to deliver on time, Nutape will not be responsible for any damages, costs or expenses arising out of a failure to effect delivery on time, for any reason beyond its control, including but not limited to, inability to secure transport, labour, power, materials, equipment or suppliers or by reason of an act of God, state of war, civil disturbance, riot, state of emergency, strike, lockout or other labour disputes, fire, flood, drought or legislation.
- 9.5. It is recorded that because the goods are manufactured outside of the Republic of South Africa and all stock is imported, Nutape is reliant on manufacturing schedules outside of its control. It is recorded, and the agreement is concluded on the basis that, in some circumstances, delivery can take up to 90 days from the date of the placement of the order by the Purchaser.
- 9.6. In the event of deliveries being made in instalments it will be considered a separate contract and non-delivery, or any delay, of any instalment, will not affect the balance of the contract or entitle the Purchaser to cancel the contract.

9.7. In the event of the Purchaser selling or transferring its business, or any part thereof, to a third party, in circumstances where any goods purchased from Nutape are not yet paid for, the Purchaser shall not be entitled to remove the goods from the Purchaser's premises or give possession of such goods to the third party, without the previously obtained written permission of Nutape.

10. **The Purchaser's duty on delivery of goods**

10.1. The Purchaser undertakes to properly inspect the goods, upon delivery, to ensure that the type, quantity and condition of the goods are correct and to its satisfaction. The Purchaser shall within 24 (twenty four) hours of delivery of the goods, in writing or by electronic mail, report any discrepancy or patent defect in respect of the goods Nutape's Customer Services Manager.

10.2. In the event of the Purchaser failing to comply with the previous clause it shall be deemed to have waived the right to return any goods due to any discrepancy or patent defect in respect of the type, quantity or condition of the goods so delivered.

10.3. The Purchaser declares that it is fully aware of the fact that anything done (or not done) by its agents will be regarded as being done (or not done) for and on the Purchaser's behalf, binding the Purchaser to such action or failure.

11. **Return of goods**

11.1. No collection or acceptance of returned goods shall in any manner constitute an acceptance of liability or obligation by Nutape in respect thereof, nor shall such collection or acceptance be construed as an acknowledgement by Nutape to grant any credit in respect thereof.

11.2. Subject to clauses 7.1 and 7.2 above, Nutape will not accept any returned goods due to an error in delivery, discrepancy or patent defect in the goods delivered. In that regard a Return for Credit note must first be issued by Nutape before any returns will be accepted.

11.3. Nutape will arrange for collection based upon valid returns as mentioned above. In the event of the Purchaser electing to return any goods on its own accord, the cost of the return of such goods will be for its own account and the Purchaser shall give Nutape at least 24 (twenty four) hours prior notification thereof.

11.4. The Purchaser will not be refunded in the case of the return of promotional items or discontinued products (which includes Free of Charge products), unless such goods were delivered in a defective condition. The Purchaser may, in Nutape's sole discretion, receive a credit note for the return of any promotional items or discontinued products.

11.5. Nutape will not accept the return of any goods which:

11.5.1. Did not originate from Nutape;

- 11.5.2. Have been partially or entirely disassembled, physically altered, permanently installed, affixed, fitted, attached, joined or added to, blended or combined with, or embedded within, other goods or items;
 - 11.5.3. Are not in its original condition, including but not limited to, damaged packaging, damaged components, missing and/or dirty components or goods which are not in a saleable condition;
 - 11.5.4. Are returned in boxes or packaging that have been re-marked, damaged or defaced in anyway; and
 - 11.5.5. Have failed or because of incorrect fitment or fitment procedures.
- 11.6. A 10% handling fee will be charged on all orders.
- 12. Latent defects in the goods**
- 12.1. The Purchaser may return goods that are found to be defective as a result of a latent defect.
 - 12.2. The Purchaser is obliged to notify Nutape immediately upon becoming aware of any goods presenting with a latent defect so that Nutape may assist the Purchaser in that regard.
 - 12.3. The Purchaser shall forthwith return such goods to the applicable sales representative for an assessment of such alleged defective goods.
 - 12.4. Should Nutape find that the goods are defective as such, and
 - 12.4.1. No alternation, modification or addition has been made to the goods, and
 - 12.4.2. The goods have been properly used in accordance with the manufacturer's instructions, and not damaged through a deliberate act, or the negligence of, the user of the goods;
 - 12.5. The Purchaser may then, if it is within 6 (six) months of the date of delivery, without any penalty being charged:
 - 12.5.1. Elect to receive a refund or credit for the amount paid to Nutape for the goods, alternatively to receive replacement goods of the same value.
 - 12.6. Returns by end customers to the Purchaser because of latent defects or factory faults shall be dealt with strictly in accordance with Nutape's policy on returns of damaged goods under warranty for credit.

13. The Consumer Protection Act, warranties and indemnity

- 13.1. It is recorded that Nutape is committed to compliance with the provisions of the Consumer Protection Act, 2008 (“CPA”) in the supply of all products to the Purchaser and that it recognizes the Purchaser’s rights to goods that are safe and of good quality.
- 13.2. The Purchaser acknowledges that in terms of the relevant provisions of the CPA, every consumer has the right to expect goods that are reasonably suitable for the purpose for which they are generally intended. It acknowledges in particular that, where a consumer has specifically informed the supplier of the particular purpose for which the consumer wishes to acquire any goods, the consumer is entitled to expect that the goods are reasonably suitable for the purpose that the consumer has indicated.
- 13.3. The Purchaser acknowledges that even through the Purchaser is a customer of Nutape, to the extent that the Purchaser supplies goods purchased from Nutape to end consumers, the Purchaser is also a supplier for the purposes of the CPA. Accordingly, the Purchaser acknowledges that it also has the same obligations in the re-sale of any products supplied to it by Nutape.
- 13.4. In order to protect end consumers, the Purchaser undertakes to ensure the following in relation to the re-sale of any goods supplied to it by Nutape;
 - 13.4.1. To properly familiarize itself with all of its obligations towards consumers under the provisions of the CPA;
 - 13.4.2. To ensure that all of its employees or agents dealing with end consumers properly familiarize themselves with the Purchaser’s obligations towards such consumers under the provisions of the CPA.
 - 13.4.3. To have a proper returns policy in place that it is compliant with the provisions of the CPA;
 - 13.4.4. To take all reasonable steps to ensure that any advice given by it or its agents regarding goods purchased from Nutape and sold to such consumers is accurate, not misleading and in line with the obligations placed on it in terms of the CPA.
- 13.5. The Purchaser indemnifies Nutape against any damages suffered, or costs or expenses incurred, by Nutape, or any claims instituted by any end consumers against Nutape, arising out of the Purchaser’s failure, or that of its agents, to comply with these requirements, or in respect of any inaccurate advise given to an end consumer, or a failure to warn and end consumer about a particular hazard or risk associated with the use of any goods supplied by Nutape to the Purchaser.

14. Repudiation and breach of agreement

14.1. Without limiting any applicable laws of the Republic of South Africa, it shall be considered to be a breach of these terms and conditions should the Purchaser:

- 14.1.1. Default in the payment of any amount due; or
- 14.1.2. Fail to observe or perform any other of the terms, conditions and/or obligations of this agreement; or
- 14.1.3. Commit any act of insolvency, or being a natural person, surrender his/her estate; or
- 14.1.4. Suffer any valid default judgment against it; or
- 14.1.5. Be sequestrated or wound-up, whether provisionally or finally; or
- 14.1.6. Abandon any of the goods supplied to it by Nutape; or
- 14.1.7. Enter into any compromise with its creditors, or attempt to do so; or
- 14.1.8. Make any inaccurate statement or representation in connection with this agreement, or in connection with its financial affairs; or
- 14.1.9. Do or cause to be done anything which may prejudice Nutape's rights under this agreement; or
- 14.1.10. Allow any goods supplied to it by Nutape to be seized under any legal process; or
- 14.1.11. Do or cause to be done anything which, in the reasonable opinion of Nutape, affects or prejudices the Purchaser's ability to meet its obligations in terms of this agreement.

14.2. In the event of a repudiation of this agreement, or breach of any term or condition thereof, by the Purchaser, Nutape may, additionally to any other rights it may possess:

- 14.2.1. Cancel any existing order and/or refuse to honour any further order and/or deliver any goods to the Purchaser;
- 14.2.2. Immediately claim all outstanding amounts (whether due and payable or not) for goods sold and delivered to the Purchaser.
- 14.2.3. Claim from the Purchaser any damages Nutape may have suffered, or any costs or expenses Nutape may have incurred, as a result of such repudiation or breach; and
- 14.2.4. Amend or cancel the status of the Purchaser in respect of any incentive scheme.

15. Legal proceedings, waiver and cession

- 15.1. The laws of the Republic of South Africa will apply to these terms and conditions.
- 15.2. The Purchaser's physical address reflected in this agreement or supplied by the Purchaser as the time of the conclusion of this agreement, will be regarded as its chosen address for all purposes of or arising from, this agreement, including the serving of any correspondence, notices or court process. The Purchaser shall forthwith notify Nutape in writing or by electronic mail of any change of its physical address, which change, for the purposes of this clause, shall take effect 5 (five) business days after receipts by Nutape of such notification.
- 15.3. In the event of Nutape having to institute legal action against the Purchaser arising from the breach by the Purchaser of any of the terms or conditions of this agreement, or a repudiation thereof, or to protect any of Nutape's rights arising from this agreement, the Purchaser shall be liable for any legal costs incurred by Nutape on an attorney and own client scale, including all collection commissions and tracing fees.
- 15.4. No relaxation, indulgence or failure by Nutape in enforcing of any of these terms or conditions shall be regarded as a waiver by Nutape of any rights in terms of this agreement, or a variation or novation of any part thereof.
- 15.5. Prior written approval must be obtained from Nutape before the Purchaser may cede any right or assign any obligation in terms of this agreement.
- 15.6. If one or more of these terms or conditions are declared unenforceable for any reason, it will not affect the enforceability of the remainder of the agreement.

16. Certificate of indebtedness

- 16.1. A certificate under the signature of any director or manager of Nutape (whose appointment as such need not be proved) stating the amount due and owing by the Purchaser to Nutape at any stage, shall be sufficient proof of such amount, for the purpose of any legal proceedings, including summary judgment proceedings and provisional sentence (for which purposes it will be regarded as a liquid amount or liquid document).

17. Disclosure of the Purchaser's information

- 17.1. The Purchaser consents to its personal or privileged information supplied in the application for an account facility being used by Nutape of its agents to assess the creditworthiness of the Purchaser. The Purchaser confirms that such information provided it correct and undertakes to update same forthwith when any material change of its creditworthiness occurs. The Purchaser will be responsible for any damage or harm which may result from any inaccuracies in the information supplied and indemnifies Nutape in that regard.

- 17.2. The Purchaser authorizes Nutape to obtain any information relevant to the Purchaser's credit assessment, including (but not limited to) information regarding the amounts purchased from its suppliers per month, length of time of dealings with such suppliers, type of goods or services purchased and manner and time of payment. Nutape is granted permission to request information from any third party, including any credit bureau or businesses.
- 17.3. For purposes of processing this application for credit facility and suretyship, the Applicant hereby gives consent to Nutape to:
- 17.3.1. obtain from any registered credit bureau and or trade reference all personal information, credit history and data relating to my credit profile to determine my creditworthiness;
 - 17.3.2. submit to any registered credit bureau all personal information relating to this application;
 - 17.3.3. request the Applicant's latest annual financial statements;
 - 17.3.4. store such personal information in any media, including an electronic database regardless of where in the world it is hosted, for as long as Nutape considers it necessary for the purposes of this credit application and for any other compatible purpose;
 - 17.3.5. reproduce, modify, adapt, distribute, display and use in any way and in any media, such information for the purposes of this credit application and for any other compatible purpose, provided that Nutape preserves the integrity of such information;
 - 17.3.6. provide the Applicant with direct electronic marketing offers related to this application which will include _____, financial products on offer for this credit application in the event of it being successful;
 - 17.3.7. share all personal information, as specified above, and gathered in respect of this application for purposes of processing this application. In this regard the applicant hereby gives consent to Nutape and/or Business Affiliates / Bank / Lender / Financial Institution to obtain and use the applicant's information from third-party qualification data providers to conduct an assessment to determine the applicant's eligibility for, and the appropriateness of, the credit application;
 - 17.3.8. share all personal information, as specified above, and gathered in respect of this application with any third party with whom the Applicant has, or intends to have, credit relations, on request by that third party.

- 17.4. For purposes of this credit application, I acknowledge and consent to Nutape, where applicable:
- 17.4.1. processing my special personal information, including my ethnic group, biometric information, and health information;
 - 17.4.2. transferring my data cross border to a third party for purpose of hosting the data;
 - 17.4.3. transmit to its credit bureau information about this credit application, including the Applicant's personal information and information about non-compliance;
 - 17.4.4. to process my personal information to do fraud checks, as well as checks and reporting to the South African Fraud Prevention Services; and
 - 17.4.5. retaining my personal information for as long as is reasonably necessary and legally required in terms of their business processes related to this service.