

AGREEMENT OF SALE

1. When goods are delivered by rail or by any other vehicle, the carrier shall be the agent of the purchaser, even if the seller agrees to pay the cost of transport and carriage, and to supervise the loading of goods.
2. Unless otherwise specified in writing by the seller, delivery is free on rail at the nearest station or siding to the seller's premises, or the premises of any outside supplier, or in the event that road transport is used, delivery is free on vehicle at the seller's premises, or the premises of any outside supplier.
3. Where the seller pays the costs of carriage or consignment, it shall not in any way prejudice the seller, and such amount will be repayable to the seller by the purchaser on demand.
4. Any indulgence shown to the purchaser shall not constitute a waiver or variations of the seller's rights.
5. Ownership of the goods sold shall only pass on payment of the full purchase price, together with any interest thereon which may have become due and payable.
6. While the price of the goods remains unpaid the seller shall be entitled to nominate any persons to inspect the goods and if necessary to repair or replace any part or whole thereof. The seller shall be entitled to retain as its own property any part of the goods which it has disconnected in order to replace such parts. The repair or replacement of any goods shall not constitute a waiver or variation of the seller's rights.
7. The installation of any of the goods shall not constitute an act of acceding same to any immovable property.
8. Should the purchaser (being a juristic person) be placed in liquidation or under judicable management, or should an application be made against it for such an order, or should it convene a meeting of shareholders/members for the purpose of passing a resolution to wind itself up, or should it compromise with its creditors (or being a natural person) be sequestered or should an application be made against him for an order of sequestration, or should he give notice of his intention to apply for the surrender of his estate as insolvent, or should any judgment be obtained against the purchaser and not be satisfied immediately, or should the purchaser make application for assistance under the agricultural credit act no. 28 or 1966 (or any act replacing this act), or should the purchaser commit a breach of any of the items or conditions set out in these conditions of sale then the seller without prejudice to any other rights which it may have, shall be entitled to cancel this contract and/or refuse to make any further deliveries of goods to the purchaser. The purchaser (or liquidator or judicial manager or the purchaser's trustee as the case may be) will have no claim of any nature whatsoever against the seller arising out of such cancellation or refusal to make further deliveries.
9. Strikes, labor disputes, war, riots, civil commotion, delays of manufacturers, delays in transport to the seller or from the seller, accidents, orders or regulations of any government or other authority, acts of God, major breakdown of machinery causing lengthy repair time and any other cause beyond the seller's control shall entitle the seller to withdraw from the contract especially in cases where delivery may be delayed considerably beyond the date requested in the order or in the contract. Where such cancellation occurs, the seller shall not be liable for damage or loss, direct or indirect, consequential or otherwise, sustained by the purchaser.
10. The seller shall not be liable for any loss of profit or any damages, direct or indirect, consequential or otherwise, arising from the late delivery/installation, defective delivery/installation or non-delivery/installation of any goods, whether due to negligence or any other cause.
11. Subject to the guarantee set out in clause 14 below, all goods are sold voetstoots.
12. Advices, recommendations or opinions by representatives of the seller are given and expressed in good faith and shall not constitute representations of any description and shall not give rise to any claim against the seller or such representatives.
13. Neither the seller nor any of its representatives shall be liable in respect of any claim whether arising from contract or delict for any injury, loss or damage, direct or indirect, consequential or otherwise, caused to any person or property by or arising out of the goods supplied to the purchaser by the seller.
14. The seller hereby guarantees to the purchaser that all the goods sold by it are properly designed and are free of any defects in material or craftsmanship for a period of 1 (one) year calculated from date of delivery of the goods by the seller to the purchaser. The seller's liability towards the purchaser will be limited to either the repair or the replacement of the goods or to the refund of the purchase price of the goods to the purchaser against the return of the goods, at the discretion of the seller. Apart from the aforesaid obligations of the seller, it shall not be liable for any loss of profit or any damages, direct or indirect, consequential or otherwise, suffered by the purchaser as a result of any defect (including a latent defect) in the goods sold. The above-mentioned guarantee will only be applicable in the event of the purchaser having used the goods in the normal and correct manner and in accordance with the directions. The purchaser hereby acknowledges that, save for the above-mentioned guarantee, the seller did not give any further warranties in respect of the performance of the goods or otherwise.
15. In the event of the seller replacing any goods in terms of the guarantee, the guarantee period of such replacement goods shall not extend beyond the original guarantee date.
16. The said guarantee (or any other which may be specifically given in writing) shall be null and void if the goods are not installed and/or used correctly, or if they shall not be maintained according to specification or if they are damaged as the result of accident or malpractice.
17. Descriptions, illustrations and examples contained in any catalogue, brochure, advertisement or pricelist are representations only as general information and do not constitute representations and do not form part of any tender, quotation, estimate or contract.
18. Without detracting from the legal effects of any of the conditions set out above, no claim of whatsoever nature arising from this agreement shall be capable of being brought against the seller unless written notice of such claim is given to the seller within 10 (ten) days after the facts giving rise to the claim, have come to the claimant's knowledge.
19. This agreement constitutes the whole agreement between the parties and no agreement at variance with the terms of this agreement shall be binding on the parties, unless it is reduced to writing and signed by all parties.
20. The purchaser consents to the jurisdiction of the Magistrate's Court in respect of any action or process arising from this agreement. Notwithstanding the foregoing, the seller shall be entitled to institute action in any other court having jurisdiction.
21. This agreement is ruled by and governed according to the law of the Republic of South Africa, with the provision that should there be any conflict between the legal position applicable in the different provinces of the Republic of South Africa, this agreement is ruled by and governed in accordance with the law applicable in the province of the Western Cape.