

GENERAL TERMS AND CONDITIONS OF SALE JANUARY 2018

1. DEFINITION

In these Terms:

- "Fogmaker" means Fogmaker South Africa Proprietary Limited, 2015/315240/2017;
- "Business Day" means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- "Agreement / Terms" means these General Terms and Conditions of Sale and any subsequent agreement entered into;
- "Purchase Price" means the price stipulated in Fogmaker's Quotation and Invoice, as determined in accordance with the provisions of clause 5.1;
- "the Customer" means the person, entity, firm, close corporation or company to whom the Products are sold; or to whom the Services are rendered;
- "Order" means the written instruction placed by a Customer to supply the Products or render the Services;
- "Products" means the item/s which are sold and supplied to the Customer;
- "Parties" means the Customer and Fogmaker;
- "Quotation" means the formal offer by Fogmaker to the Customer to provide the Product/Services as set out in the Quotation, subject to the price, specifications and other terms stated in the Quotation;
- "Services" means the inspection, repair and maintenance services which are provided to the Customer;
- "Taxes" means any general sales tax, value added tax, duties including any similar tax which may be imposed on the Products/Services from time to time;
- "VAT" means the South African Value Added Tax imposed in terms of the Value Added Tax Act, 89 of 1991 (as amended), including any similar tax which may be imposed in place thereof from time to time;

2. SCOPE

- 2.1 Any Order for the Products/Services implies the Customer's full and unconditional acceptance of these Terms.
- 2.2 These Terms shall apply to all Quotations and offers made by and purchase orders accepted by Fogmaker. Fogmaker's obligations in terms of these Terms will be to manufacture and/or produce and/or supply the Product/Services in accordance with such designs, instructions, itemised details, plans, drawings, programs and specifications ("the specifications"). In particular, Fogmaker will not be responsible for the adequacy of, or the costs occasioned by inadequacy of any such specifications, and/or foundations or supporting such other work as may have been provided, prepared or certified by or on behalf of the Customer.
- 2.3 Any changes in the Terms contained herein must specifically be agreed to in writing signed by a director of Fogmaker before becoming binding on either party.

3. OTHER PRINTED OR STANDARD CONDITIONS

- 3.1 The Parties agree that only these Terms shall apply to all agreements between the Customer and Fogmaker, for the supply of the Products/Services and any document emanating from the Customer which contains printed or standard conditions will have been and shall be sent by the Customer and received by Fogmaker on the understanding that they appear on the Customer's document merely because they are printed thereon, shall have no legal effect whatsoever and the Customer waives all and any rights which the Customer might have to rely on such conditions.
- 3.2 Any terms and conditions of Customer's order which are in any way inconsistent with or in addition to these Terms (except additional provisions specifying quantities and shipping instructions) shall not be binding on Fogmaker and shall not be applicable notwithstanding Fogmaker's acceptance of Customer's purchase order. The Customer's issuance of a purchase order or instruction accepting the Quotation, shall constitute acceptance by Customer of said Quotation with the terms and conditions set out therein.
- 3.3 Unless otherwise specifically stipulated in writing in the Quotation, any terms and conditions forming part of the Customer enquiry or the Customer order, which deviates from these Terms shall be of no force and effect.
- 3.4 In the event that the Customer and Fogmaker engage in negotiations over amendments or additions to these Terms, then these Terms, shall continue to govern the supply of the Product/Services until such negotiations are finalised and these Terms shall only be amended (if at all) by agreement in writing and signed by both parties, in accordance with clause 2.3 above.

4. ADDRESS FOR LEGAL NOTICES

- 4.1 Fogmaker elects the address below as the delivery address where all notices, including legal notices and other communications must be delivered for the purposes of this Agreement:
49 Malcolm Moodie Crescent, Boksburg, Gauteng, South Africa, 1459
Email: info@fogmaker.co.za
- 4.2 The Customer elects the addresses as reflected on the Quotation and Invoice as the delivery address where all notices, including accounts and statements, legal notices and other communications must be delivered for the purposes of this Agreement.
- 4.3 Either of the Parties may change their addresses to another physical address and/or email address, by way of a notice to the other Party to this Agreement, provided that such a notice is received by the addressee, at least 7 (Seven) calendar days prior to such a change taking effect.

5. PRICE, TAXES AND QUOTATIONS

Unless otherwise specifically stated in writing in each particular instance: -

- 5.1 The Purchase Price to be paid to the Customer for the Product/Services shall be set out in the Quotation, and is based on the costs of materials, transport, labour,

exchange rates, import duties, ruling at the date of Quotation, and any variations in such costs or rates occurring between the date of Quotation and the date of completion of the Product/Services, shall be for the account of the Customer and shall be determined by Fogmaker;

- 5.2 The Customer shall pay to Fogmaker a deposit in the amount as determined by Fogmaker in its Quotation and Fogmaker shall be entitled to delay the provision of the Product/Services until such deposit has been paid. Fogmaker shall be entitled to allocate such deposit towards payment of the Purchase Price or part thereof and Fogmaker shall be entitled to retain the deposit paid to it by the Customer in the event of the Customer being in breach of the provisions of this Agreement, as a pre-estimate of the damages suffered by Fogmaker;
- 5.3 if the Product/Services or any part thereof are to be imported, the Purchase Price will be based on the exchange rate, freight, insurance premiums, lighterage, landing charges, port dues, custom duties, railage at the date of Quotation, or as specifically agreed to in writing by the parties. Should these rates have varied between the date of Quotation and the date upon which the charges are incurred, the Purchase Price shall be varied by the amount of the increase or decrease in such charges.

6. DELIVERY, RISK AND OWNERSHIP

- 6.1 Unless otherwise stipulated in the Quotation, delivery shall be ex-works (Fogmaker's premises in Boksburg, South Africa) and the Purchase Price is based on ex-works, as defined in the ICC-Inco Terms 2010, and exclusive of VAT, Taxes, or any other taxation payable in terms of any applicable statute or otherwise, packaging, loading, freight, unloading or insurance during transport.
- 6.2 The risk in and to the Product/Services will pass to the Customer on delivery and claims for non-delivery or for shortages or damage upon receipt of the Product/Services must be made in writing by the Customer, within 7 (seven) days of the relevant consignment note or receipt of the product/services as the case may be, failing which Fogmaker shall have no liability in respect of such claims.
- 6.3 Should the Customer fail or refuse to take delivery of the Product/Services in accordance with the delivery program, or if no delivery program is specified, when delivery is tendered by Fogmaker, the Customer shall be liable for all such costs as may be incurred by Fogmaker in consequence thereof.
- 6.4 The indicated delivery times provided by Fogmaker to the Customer are estimated guidelines only, and delays shall not entitle the Customer to cancel the sale, refuse or return the Products or claim damages.
- 6.5 Ownership of the Products remains with Fogmaker, notwithstanding delivery, until such time as the Customer has made full payment to Fogmaker in respect of the Products.
- 6.6 Fogmaker shall not be liable for delays in delivery or performance, due to (i) a cause beyond its reasonable control, or (ii) an act of God, act of the Customer, act of civil or military authority, Governmental priority, strike or other labour disturbance, flood, epidemic, war, riot, delay in transportation, or (iii) inability on account of a cause beyond the reasonable control of Fogmaker to obtain necessary materials, components, services or facilities or in the event of electricity supply interruptions. Fogmaker will notify the Customer promptly of any material delay excused by this clause and will specify the revised delivery date as soon as practicable. In the event of any such delay, there will be no termination and the date of delivery of performance shall be extended for the duration of the above force majeure event.

7. CERTIFICATE OF OUTSTANDING BALANCE

A certificate given by a manager, director or officer of Fogmaker, whose authority need not be proved, shall be considered *prima facie* evidence of the amount including interest due and shall entitle Fogmaker to enter judgement against the Customer and to obtain summary judgment or provisional sentence, as the case may be.

8. PAYMENT

- 8.1 The Customer shall make payment for the Products/Services in currency and on the payment date as stipulated in the Quotation or Invoice. All payments are to be made by electronic bank transfer to the bank account designated by Fogmaker, free of any deduction, cost or exchange.
- 8.2 Should the Customer fail to make payment of any amount to Fogmaker by the due date, interest shall accrue on the outstanding amount at the rate of 2% (Two Percent) per month, alternatively at the maximum interest rate permissible in terms of the National Credit Act No. 34 of 2005.
- 8.3 Any other conditions of payment are subject to the prior written approval of Fogmaker. In no case shall the Customer be entitled to set off or deduct any amount from any payment due to Fogmaker for Products/Services, unless with the prior written consent of Fogmaker.
- 8.4 Fogmaker is entitled to appropriate any payment received from or on behalf of the Customer to any indebtedness of the Customer to Fogmaker from whatever cause arising.
- 8.5 Fogmaker shall be entitled to refuse to accept any Order from the Customer, if any payment by the Customer to Fogmaker for any Products/Services ordered is overdue, unless the Customer at Fogmaker's request makes upfront payment of the purchase price of the Products/Services ordered.
- 8.6 Fogmaker reserves the right to cancel or suspend further deliveries of Products/Services ordered and reserves the right to demand upfront cash payment before any delivery of Products/Services, if any payment by the Customer to Fogmaker for any Products/Services ordered is overdue or if Fogmaker has cause-to-believe Customer's credit or financial condition is unstable or has deteriorated.

9. BREACH

- 9.1. In the event that the Customer defaults in making any payment to Fogmaker that has become due and owing, then the full outstanding balance (whether due or not) may at the option of Fogmaker, immediately become due and payable.
- 9.2. The Customer acknowledges and agrees that in the event that the Customer fails to make payment within the period stipulated in the Quotation or Invoice, Fogmaker is hereby irrevocably authorised by the Customer to enter upon the Customer's premises or any other premises where the Products may be found and is hereby authorized to take possession of the relevant Products supplied by it and in such event, the Customer hereby irrevocably authorises Fogmaker's representative to enter its premises and take possession of such Products on behalf of Fogmaker. The Customer further hereby agrees that it will be responsible for all costs incurred for the recovery of the Products should the Customer fail to make any payment.
- 9.3. The Customer acknowledges and agrees to pay all Fogmaker's legal costs on the scale between attorney and own client, should it be necessary for Fogmaker to incur any legal costs in order to enforce any of its rights which it may have pertaining to the supply of the Products/Services to the Customer or to defend any action instituted against it by the Customer arising from the purchase of the Products by the Customer.

10. INSPECTION AND RETURNS

- 10.1. The Customer immediately must notify Fogmaker or Fogmaker's appointed distributor in writing of any visible defect and/or damage in the Products, error or alarm being activated on the Product's control panel.
- 10.2. Fogmaker shall at its sole discretion either replace at its expense the defective and/or damaged Products or repair the defective and/or damaged Products.

11. VALIDITY OF ORDERS

- 11.1. The Customer agrees that it shall be prohibited from denying the validity of any Order:
 - 11.1.1. Where an official Order has not been supplied but the Customer has elected to place the Order by telephone or has sent a representative to Fogmaker to place the Order;
 - 11.1.2. Where the Customer's representative is an employee or sub-contractor of the Customer, although such person did not have authority to place such an order;
 - 11.1.3. Where the Customer fails to notify Fogmaker in writing that the Customer's representative who previously had authority to place Orders, no longer has such authority;
 - 11.1.4. Where an authorised person presents an original or copy of the Customer's official documentation against which Products/Services are supplied.

12. ORDER CANCELLATION

The Customer may cancel or reschedule a Product/Service without penalty if the cancellation is more than 20 Business Days from the Confirmed Delivery Date (as specified in the Quotation or the Customer's Order); cancellations within 10-20 Business Days of a Confirmed Delivery Date must be approved in writing by a Fogmaker sales manager and may be subject to a 20% cancellation charge and less than 10 Business Days from a Confirmed Delivery Date must be approved in writing by a Fogmaker sales manager and may be subject to a 50% cancellation charge.

13. WARRANTIES AND INDEMNITIES

- 13.1. In no event shall Fogmaker be liable towards the Customer for any other indirect, incidental or consequential losses or damages including but not limited to loss of income, loss of business opportunities or loss of profits howsoever arising.
- 13.2. The Customer hereby indemnifies and holds Fogmaker harmless from any claim, liability, cost, expense or penalty suffered or incurred as a result of the Customer not installing or using the Products in accordance with Fogmaker's instructions.
- 13.3. Fogmaker shall not be liable to the Customer for any claim, liability, cost, expense or penalty suffered or incurred as a result of the Customer failing to maintain or service the Products in accordance with Fogmaker's instructions or having repairs, maintenance or servicing carried out on the Products by any party other than by Fogmaker or a third party approved by Fogmaker in writing.
- 13.4. The Customer acknowledges that the Products are designed as a fire suppression system for vehicles and machines with enclosed engine compartments. Due to the complex nature of the fire initiation and propagation, suppression and extinguishing of all fires cannot be guaranteed and Fogmaker shall not be liable to the Customer for any claim, liability, loss, injury, damage, cost, expense or penalty suffered or incurred as a result of the Products not extinguishing a fire in a vehicle or machine to which the Products have been installed, nor shall Fogmaker be liable to repair or replace any machinery, parts and/or inventory damaged as a result of the Product failing to extinguish such fire.

14. LIABILITY

- 14.1. Fogmaker undertakes to use its best endeavours to supply the Products in accordance with such delivery dates, as are specifically agreed upon by the Parties upon placing of an Order, and in the event that the Products are not supplied in accordance with such delivery date, or within any extensions or revisions of such delivery date and Fogmaker shall have no liabilities for late delivery.
- 14.2. Notwithstanding anything to the contrary contained in this Agreement or elsewhere, the liability of Fogmaker, howsoever arising out of this Agreement or in delict or by operation of statute or otherwise, shall not extend beyond the obligations specifically assumed in terms of this clause and Fogmaker:
 - 14.2.1. shall not incur or accept any responsibility for equipment or materials furnished by or on behalf of the Customer to Fogmaker for purposes of manufacturing and/or producing the Products;
 - 14.2.2. in respect of "bought out" or proprietary items not of Fogmaker's own manufacture, Fogmaker gives no greater warranty and accepts no greater liability than is given or accepted by and enforceable against the supplier/manufacturer thereof;
 - 14.2.3. gives no warranties in respect of the Products used or for any defects arising

thereto, through the fair wear and tear or neglect thereof;

- 14.2.4. shall in no event be liable for the Customer's loss of profit, loss of use, loss of production, loss of contracts, loss of custom, loss of goodwill, or any special, indirect or consequential damages of whatsoever nature and howsoever arising.
- 14.3. Notwithstanding anything to the contrary contained in this Agreement or elsewhere, Fogmaker shall not be liable in terms of this Agreement or in delict or by operation of statute or otherwise in the event that:
 - 14.3.1. the Customer makes any modification to the Products without obtaining the prior written consent of Fogmaker;
 - 14.3.2. the Customer deactivates any of the systems, operations, components or functions installed on the Products without obtaining the prior written consent of Fogmaker;
 - 14.3.3. the Products are used by the Customer in such manner or form which is contrary to the design specifications for such Products.

15. REPAIRS AND MAINTENANCE

- 15.1. Should the Products require repairs or maintenance, then the Customer shall notify Fogmaker thereof, and communicate the reasons there for, in writing.
- 15.2. The Customer shall arrange, at its cost, for a technician of Fogmaker to travel to Customer for such repairs or maintenance which will be done on-site where the Product has been installed. The cost of such repairs or maintenance shall be set out in a separate Quotation.
- 15.3. In the event of a fire or false discharge of the Product, the Customer must notify Fogmaker or Fogmaker's appointed distributor within 24 (Twenty-Four) hours of the discharge. Fogmaker or its authorised distributor will, at Customer's own cost, attend to recharging and/or resetting the Product within 5 (Five) Business Days of receipt of such notification, or within any such response time as agreed to by both Parties.
- 15.4. No Fault Found charges: All Products received by Fogmaker that undergo analysis and testing will be charged at full price as per Fogmaker's Quotation, whether or not a problem can be found. It is the Customer's responsibility to verify a problem exists with the part before sending it to Fogmaker for repair.
- 15.5. Fogmaker shall evaluate the Products and provide the Customer with a Quotation for the repairs or maintenance required within 5 (Five) Business Days of receipt thereof, and shall complete the repairs or maintenance within the period specified in the Quotation for the repairs or maintenance required, after having received payment of the amount quoted.
- 15.6. If Fogmaker repairs the Products or any component of the Products, and within Three (3) months after that repair, any failure, defect or unsafe feature has not been remedied, or a further failure, defect or unsafe feature is discovered, Fogmaker will replace the Products or refund the Purchase Price paid for the Products. This warranty on repairs is void if the Customer has subjected the Products, their parts or components to misuse or abuse and it further does not apply to ordinary wear and tear, or if any of the circumstances listed in clause 14.3 above are applicable.

16. CESSION, ASSIGNMENT & WAIVER

- 16.1. The Customer may not cede, delegate or assign any of its rights or obligations hereunder without the written consent of Fogmaker.
- 16.2. Fogmaker shall be entitled to cede, delegate or assign any of its rights or obligations in terms of these Terms, without the Customer's consent.

17. GENERAL

- 17.1. These Terms constitute the entire agreement between the Parties with regards to the order, sale, supply, delivery, installation and payment of Products and the rendering of the Services.
- 17.2. No variation, amendment or addition to these Terms and Conditions, including this clause, will be of any force and effect unless agreed to by the Parties in writing.
- 17.3. No relaxation or indulgence including the acceptance of late payments by Fogmaker shall be deemed to be a waiver by Fogmaker of any of its rights to enforce strict compliance by the Customer of any of its obligations in terms hereof, nor shall such relaxation or indulgence be a novation of any of the Terms of this Agreement, nor shall it form a defence of estoppel against Fogmaker.
- 17.4. Except as required by law, neither party shall use (except for purposes connected with the performance of its obligations hereunder), divulge or communicate to any third party any information of the other it reasonably knows to be confidential.
- 17.5. The Parties undertake at all times to do all such things, to perform all such acts and to take all such steps and to procure the doing of all such things, the performance of all such actions, undertaking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of these Terms.
- 17.6. In the event of a conflict between the provisions of these Terms and any Order, the provisions of these Terms shall prevail.
- 17.7. If any clause or term of these Terms should be invalid, unenforceable, defective or illegal for any reason whatsoever, then the remaining terms and provisions of these Terms shall be deemed to be severable therefrom and shall continue to be of force and effect unless such invalidity, unenforceability or defect or illegality goes to the root of these Terms.
- 17.8. All legal costs including costs between an attorney and his own client charges and disbursements incurred by any Party enforcing or defending any of the provisions of these Terms, and costs and disbursements incurred in tracing the Defaulting Party and in collecting or endeavouring to collect all or any amounts payable by the Defaulting Party hereunder or otherwise, and all collection commissions, including any VAT, Taxes on such costs, charges, disbursements, collections or fees, shall be for the account of the Defaulting Party and shall be payable on demand.
- 17.9. These Terms shall be governed by and construed in accordance with the laws of the Republic of South Africa. The Customer hereby irrevocably and unconditionally consent to the non-exclusive jurisdiction of the High Court of South Africa – Local Division Johannesburg in regard to all matters arising from these Terms.