

**GENERAL TERMS AND CONDITIONS OF SALE AND SERVICES RENDERED**

**(Note: underlined words have been defined at the end of this document)**

**1 INTERPRETATION**

In this Agreement –

- 1.1 words referring to natural persons shall include a reference to legal entities and corporate and vice versa; a reference to the singular shall include a reference to the plural and vice versa; a reference to a party shall include a reference to that party's successors and assigns;
- 1.2 annexures to this Agreement shall be deemed to have been incorporated into this Agreement and shall form an integral part of this Agreement;
- 1.3 these General Terms and Conditions of Sale and Services Rendered are only in respect of cash sale purchases and any supply of goods, parts or services on credit, long term rental or short term rental shall be governed by separate terms and conditions.
- 1.4 where the day on or by which anything is to be done is a non-business day, it shall be done on or by the next business day. When any number of days is prescribed in this Agreement, they shall be calculated by excluding the first day and including the last day, unless the last day falls on a non-business day, in which case the last day shall be the next succeeding business day;
- 1.5 the clause headings in this Agreement are for reference purposes only and shall not affect the interpretation of this Agreement;
- 1.6 these terms and conditions shall apply to sale of goods and parts ("**Goods**") or maintenance and repairs of equipment ("**Services**") by the Company to the Customer at any time on or after the date of the signature of the cash sale application document to which these terms and conditions are attached, provided that the price for any such future purchases shall be at Company's current standard prices or such other prices as may be agreed in writing by and between the parties.
- 1.7 this Agreement shall be binding and enforceable by the estates, heirs, executors, administrators, trustees, assigns or liquidators of the parties as fully and effectually as if they had signed this Agreement themselves and reference to any party shall be deemed to include that party's estates, heirs, executors, administrators, trustees, assigns or liquidators, as the case may be;
- 1.8 the termination or expiry of this Agreement shall not affect those provisions of this Agreement which expressly provide that they will operate after expiry or termination, of this Agreement or those which of necessity must continue to have effect after expiry or termination of this Agreement (despite that any clause not expressly provide for this) will continue despite expiry or termination of this Agreement; and
- 1.9 the "Company" means BHBW South Africa (Pty) Ltd, Registration no. 2016/275663/07, a company registered and incorporated in accordance with the laws of the Republic of South Africa.
- 1.10 "as far as permissible in law" in these terms and conditions is restricted to mean that the clause will not be applicable in the event that it conflicts with the Consumer Protection Act of 2008 (the "**CPA**"), in all other circumstances, the clause will be applicable.

**2 AGREEMENT**

- 2.1 The Customer hereby agrees to be bound by these terms and conditions in respect of the cash sale purchase of Goods and Services.

**3 PRICE**

- 3.1 The price of any Goods or Services shall be at the prevailing price at the time of
  - 3.1.1 the despatch of the Goods; and/or
  - 3.1.2 any work carried out;
 unless otherwise agreed in writing.
- 3.2 All prices are strictly net and not subject to any discounts, unless expressly agreed to in writing by the Company.
- 3.3 If any discount is agreed to in writing, it shall only be allowed if payment is received by the Company by the due date, and shall only be calculated on the net purchase price of the Goods and Services.

**4 PAYMENT**

- 4.1 The Customer shall make all payment due to the Company under this Agreement in South African Rand on the payment date stipulated in the quotation and/or invoice.
- 4.2 Should the Customer fail to make payment timeously or withhold payment or any portion thereof for any reason whatsoever, the Company shall be entitled to withdraw or reverse any agreed discount on the price.
- 4.3 In all cases where the Customer uses a postal, banking, electronic or similar method or service to make payment, the supplier of such method or service shall be deemed to be the agent of the Customer.
- 4.4 The Customer shall not be entitled to claim set off or deduction in respect of any payment due by the Customer to the Company for Goods delivered or Services rendered and the Customer will not be entitled to stay or prevent any legal action instituted by the Company while waiting for the adjudication of any counter claim of the Customer.
- 4.5 Should any amount not be paid by the Customer on the due date the whole amount in respect of all purchases by the Customer shall immediately become due, owing and payable irrespective of the dates on which the Goods or Services were purchased. The Customer agrees that interest on overdue accounts will be charged at the maximum rate of interest permissible in law calculated on a daily basis. A certificate signed by a manager of the Company (whose appointment and authority it shall not be necessary to prove) shall constitute prima facie evidence of any amount outstanding from time to time and shall constitute a liquid document.
- 4.6 The Company shall have the right to suspend all Services until all amounts or accounts due and payable by the Customer are paid in full and, as far as is permissible in law, the Company is authorised to retain possession of the Goods or any other items on which work is performed or Part(s) supplied as security for payment.

## **5 ORDERS**

- 5.1 Orders by the Customer for the Company's Goods and / or Services shall be made in writing to such address as may be nominated by the Company from time to time.
- 5.2 Verbal orders shall similarly be capable of acceptance by the Company, but the Company will not be responsible for any errors or misunderstandings occasioned by the Customer's failure to submit orders in writing.
- 5.3 Orders shall constitute irrevocable offers to purchase the Goods/Services in question and shall be capable of acceptance by the Company by the delivery of the Goods or by the written acceptance or confirmation of the order.
- 5.4 In the event of a negotiated deal or quotation for the price and volume of Goods and/or Services, the period for acceptance of the negotiated deal or quotation will be the period as stated on the quotation.
- 5.5 Save where the price is set out in the underlying agreement, the price per the quotation will on acceptance of the Customer's order, apply in respect of Sales and Services. In the event of the quotation not specifying the aforementioned periods –
- 5.5.1 the quotation is open for acceptance for a period of thirty (30) days calculated from the date of the quotation; and
- 5.5.2 unless otherwise set out in the underlying agreement, the price will, on acceptance, only apply in respect of Goods and Services ordered for a period of (10) ten business days calculated from the date of acceptance or as stipulated in that agreement.

## **6 DELIVERY**

- 6.1 Unless otherwise agreed, the Customer agrees that it is liable for any transport costs of Goods from the premises of the Company to any delivery addresses of the Customer.
- 6.2 As far as permissible in law, in the event that the Company or the Company's carrier transports the Goods to the Customer, delivery and passing of the risk in the Goods shall be deemed to have taken place when the Goods are delivered at the Customer's premises. As far as permissible in law, the signature of any employee or representative of the Customer on a Company's delivery note or invoice shall be prima facie proof of proper delivery.
- 6.3 Should the Company, at the Customer's request, agree to engage a carrier to transport Goods to the Customer, such carrier shall be the Customer's agent and the Company shall engage the carrier on such terms and conditions as it deems fit and the Customer indemnifies the Company against all demands and claims which may be made against it by the carrier so engaged and all liability which the Company may incur. Delivery to such carrier by the Company shall be deemed to be delivery to the Customer. The signature of any employee or representative of the carrier shall be prima facie proof of proper delivery to the Customer.
- 6.4 As far as permissible in law, delivery of Goods to any delivery address given by the Customer shall constitute proper delivery of the Goods, despite the fact that such address may not have been the address or premises of the Customer.
- 6.5 All dates provided in the agreement and/or quotations are estimates. Time shall not be of the essence for delivery, and whilst every effort will be made to despatch Goods as advised, the Company does not guarantee despatch on any specific date and shall not be liable for any damages for failure to effect delivery/despatch. As far as permissible in law, the Company shall not be strictly bound by any date(s) agreed upon in the underlying agreement for completion of the Goods and/or Services to be performed and it is agreed that these dates are mere estimates, provided that the Company will make reasonable efforts to complete work by such stipulated date(s).
- 6.6 Should the parties agree that part deliveries may take place, and Goods are subsequently delivered in part, and if invoices relating to separate deliveries are furnished, such invoices shall be paid as if such Goods were the subject of a separate order and no payment shall be postponed until such time as all the Goods ordered have been delivered.
- 6.7 If the Customer fails to take delivery of the Goods ordered when delivery of the Goods is offered by the Company, or should the Customer in any way delay the delivery of Goods ordered, then as far as permissible in law, the risk in the Goods shall immediately pass to the Customer and the Customer shall be liable to pay the Company the reasonable costs of storing, insuring, and handling the Goods, from date that the Company offered delivery or the Customer failed to take delivery until the date of actual delivery.
- 6.8 As far as permissible in law, the Customer shall be barred from lodging any claim in respect of discrepancies between Goods charged and Goods delivered, unless the Customer has specified on the delivery note the nature of the discrepancy when taking delivery.
- 6.9 The Customer agrees to adhere to and follow the delivery and handover processes which the Company requires and agrees to have all intended operators (where applicable) of any Goods present at the delivery and handover.
- 6.10 The Customer agrees that it may not commence using the Goods until the formal handover process has been completed to the satisfaction of the Company. In the event that the Customer commences using the Goods prior to this, the Customer indemnifies and holds harmless the Company in respect of any and all claims brought against it under the CPA.

## **7 SUB-CONTRACTORS**

All or any part of the work to be carried out by the Company may be carried out by it or on its behalf by any agent or subcontractor appointed by the Company, whether on the premises of the Company or not.

## **8 LIMITED WARRANTIES AND EXCLUSIONS**

- 8.1 **TO THE FULLEST EXTENT PERMISSIBLE BY LAW, NEITHER THE CUSTOMER NOR ANY THIRD PARTY SHALL HAVE ANY CLAIM WHATSOEVER FOR DAMAGES AGAINST BHBW (BEING DIRECT OR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES) FOR ANY REASON WHATSOEVER ARISING OUT OF THESE GENERAL TERMS AND CONDITIONS OF SALE AND SERVICES RENDERED, WHICH FOR THE SAKE OF CLARITY WILL INCLUDE ANY DAMAGES OF WHATSOEVER NATURE ARISING FROM OR RELATED TO THE CUSTOMER'S USE AND POSSESSION OF THE GOODS, BUT ALWAYS SUBJECT TO THE PROTECTION GIVEN TO THE CUSTOMER IN RESPECT OF THE GOODS, UNDER SECTION 61(2) OF THE CONSUMER PROTECTION ACT OF 2008.**
- 8.2 **AS FAR AS IS PERMISSIBLE IN LAW, IF THE COMPANY IS LIABLE FOR ANY REASON IN CONNECTION WITH THIS AGREEMENT WHETHER UNDER CONTRACT, NEGLIGENCE (DELICT) OR ANY OTHER LEGAL THEORY,**

**THEN BHBW'S MAXIMUM AGGREGATE LIABILITY IN ANY CIRCUMSTANCES (AND EVEN IF THE COMPANY WAS AWARE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE) SHALL BE LIMITED AS FOLLOWS:**

- 8.2.1 **IN THE CASE OF DIRECT DAMAGES R100 000 (ONE HUNDRED THOUSAND RAND); AND**
- 8.2.2 **IN THE CASE INDIRECT, SPECIAL AND CONSEQUENTIAL DAMAGES R50 000.00 (FIFTY THOUSAND RAND).**
- 8.3 Insofar as any of the work to be performed by the Company in terms of this Agreement is carried out by any of its servants, agents, subcontractors, the provisions of clause 8.2 above are stipulated for their benefit as well as for that of the Company, and they shall each be exempted accordingly.
- 8.4 As far as permissible in law, in the event of the Customer purchasing Goods from the Company, it is expressly agreed that the Company provides no warranty that the Goods supplied will be fit for the purpose for which they may be intended by the Customer. The Company warrants that they are fit for the purposes as recommended and intended by the original Goods manufacturer, and set out in the operations manual for the Goods.
- 8.5 Despite what is stated in clause 8.4 above, the Company gives no warranty in respect of Goods which are sold as scrap since such Goods are sold for scrap purposes only. These Goods may only be used for a purpose other than scrap where they have successfully passed a load test (where applicable) and have been refurbished to the requirements and standards, of the original equipment manufacturer for the functioning of the equipment.
- 8.6 As far as permissible in law, no warranty or guarantee in respect of the work performed shall be provided by the Company, save where the Company provides an express warranty or guarantee in writing and it is intended by the Company that the warranty or guarantee form part of this Agreement.
- 8.7 Subject to any statutory (meaning those granted by a law) warranties that might be applicable, notwithstanding the warranties and indemnities given as aforementioned, the Company shall not, under any circumstances whatsoever, be liable to the Customer for any warranties, indemnities or representations howsoever arising or given which are in excess of the manufacturer's warranties and indemnities, it being hereby agreed that the manufacturer's warranties, indemnities or representations constitute the full extent of the Company's liability towards the Customer or any third party.
- 9 STRIPPING, DISMANTLING OR INSPECTING**
- 9.1 In the event of it being necessary to strip, dismantle or inspect any Goods in order to prepare an quotation for repairs, the following conditions shall apply -
- 9.1.1 the Company shall be entitled to strip, dismantle or inspect the Goods to such an extent as it may deem necessary in order to prepare the said quotation.
- 9.1.2 as far as permissible in law, the Customer shall be liable for all costs the Company in stripping, dismantling or inspecting the said Goods and any related fees which shall be charged at the Company's current rates; and
- 9.1.3 as far as permissible in law, in the event of the Customer not accepting the Company's estimate, and the Goods is on the Company's premises the Customer shall accept and remove the Goods in its dismantled condition or form, provided that the Customer shall, as far as is permissible in law, only be permitted to remove the Goods once payment has been made to the Company in respect of the reasonable expenses incurred in the stripping, dismantling, inspecting or preparation of the estimate.
- 9.2 As far as permissible in law, the Company accepts no liability whatsoever for any loss or damage arising as a result of the Customer's failure to accept the quotation or pay the reasonable costs of the work done or failure to remove the Goods timeously.
- 10 STORAGE**
- Notwithstanding anything to the contrary and in amplification of clause 9, it is specifically agreed that should the Customer not collect any Goods where work has been performed on such Goods at the appropriate time, or should the Company for any other reason have to store the Goods, the Company shall not be liable for any loss or damage of the Goods, irrespective of how such loss or damage occurs, and irrespective of whether it is in any way attributable to the negligence of the Company of any of its servants, agents or subcontractors. The Company shall be entitled to levy reasonable storage charges as well as any other charges incurred in the preservation of the Goods. As far as is permissible in law, this right of the Company shall not amount to an obligation on the Company to preserve or otherwise maintain the Goods in the same condition as which they were delivered.
- 11 DRIVING OF GOODS**
- 11.1 Where the work performed involves the servicing, ad hoc maintenance, and/or ad hoc repair of any Goods belonging to the Customer, the Customer hereby authorises the Company, or any of its employees, agents or subcontractors, to drive the Goods for the purposes of testing/diagnosing/removing the Goods to and from the premises of any subcontractor or Customer driving the Goods within the workshop of the Company or any subcontractor.
- 11.2 As far as is permissible in law, the Customer hereby acknowledges that any such driving shall be at the sole risk of the Customer unless any loss or damage was caused by the gross negligence of the Company, its employees, agents or subcontractors.
- 11.3 The Customer warrants that it shall only use the Goods for the purposes for which they were intended/designed and as far as permissible in law shall only allow the Goods to be operated by a suitably qualified, competent and properly trained and licensed person and hereby indemnifies the Company for any claim (including personal injury or death claims) as a result of a breach of this warranty by the Company.
- 12 LEGAL PROCEEDINGS AND RELATED MATTERS**
- 12.1 Regardless of the place of execution or performance in terms of this Agreement, and all modifications and amendments of this Agreement, shall be governed by and decided upon and interpreted in accordance with the laws of the Republic of South Africa.
- 12.2 Either party to the Agreement, shall be entitled to bring any action or proceedings to enforce its rights in terms of this Agreement, in the Magistrate's Court, notwithstanding the fact that any such action or proceedings may otherwise have been beyond the jurisdiction of such Court. This clause shall constitute the consent to bring such proceedings in the Magistrate Court as contemplated in section 45 of the Magistrate's Court Act (no. 32 of 1944) or any statutory

modifications or re-enactments thereof for the time being in force, provided that nothing will preclude any party from instituting action in the High Court if it so elects.

- 12.3 The Customer shall pay all legal costs, including attorney and own client costs, tracing agent's fees and collection charges which the Company may incur in taking any steps due to any breach of its Agreement by the Customer.
- 12.4 The Customer agrees that any payments made on an account shall in the first instance be offset against accrued interest charges, thereafter against collection fees and legal fees, and finally against the deferred capital balance on the account.
- 12.5 The Customer's physical address as given in the Application form shall be recognised as the Customer's Domicilium Citandi et Executandi (meaning, its physical address chosen for the serving of all legal documents) for all purposes in terms of this Agreement, whether in respect of the serving of any court process, notices, the payment of any amount or communications of whatever nature.
- 12.6 Unless the Customer objects to the correctness of any entry on any statement, delivery note or invoice in writing within five (5) business days before the due date of payment of such statement, delivery note or invoice, it will be deemed that the Customer accepts that the entries are correct and he does not dispute such entries.
- 12.7 It will not be necessary for the Company to prove that the documents referred to in clause 12.6 were received by the Customer. In the event of the Customer not receiving any of the documents referred to in clause 12.6, the Customer must timeously request these from the Company, failing which, it will be accepted that the documents were received by the Customer.
- 12.8 The Customer undertakes to notify the Company within a period of seven (7) days of any change of address or any changes in the information as set out in this Agreement.
- 12.9 Should the Customer -
- 12.9.1 fail to comply with any term or condition of this Agreement and/or;
- 12.9.2 be sequestered, or liquidated, or commences business rescue proceedings; and/or
- 12.9.3 enter into a settlement or negotiation with creditors; and/or
- 12.9.4 allow the granting of a judgement against it; and/or
- 12.9.5 fail to comply with such judgement within 7 (seven) days; and/or
- 12.9.6 commit or allow any act that may endanger or prejudice the rights of the Company, the Company will immediately be entitled to claim payment of the any amounts, plus interest and costs, payable by the Customer in terms of this Agreement. The aforementioned shall not derogate from any other remedies which the Company may have at law.
- 12.10 As far as permissible in law, should the Customer breach this Agreement, then the Company shall, in addition to any other rights which it might have in law, have the right to obtain an attachment order in any court with jurisdiction, placing the Goods into the custody of the Company pending the conclusion of any action instituted or to be instituted against the Customer and the parties agree that the Company need not serve a notice of demand on the Customer before institution of proceedings to obtain an order for attachment of the Goods or an interdict against the Customer.

### **13 OWNERSHIP AND RISK**

- 13.1 As far as permissible in law, the ownership of any Goods sold by the Company to the Customer shall not pass to the Customer until payment of the full purchase price thereof has been made.
- 13.2 The risk in and to the Goods sold hereunder shall pass to the Customer as set out in clause 6 or as far as permissible in law, on delivery, notwithstanding the reservation of ownership therein as set out in clause 13.1.
- 13.3 The provisions of this clause shall prevail notwithstanding anything else to the contrary contained in this Agreement.

### **14 CLAIMS**

All claims submitted on behalf of the Customer to the manufacturer or any of its agents are to be paid for in accordance with the Company's standard procedure. As far as permissible in law, the Customer will only receive a credit in the event that the manufacturer or its agent refunds or credits the Company on any claim so lodged, by the Company on behalf of the Customer. It is specifically agreed that, as far as permissible in law, the Customer will only be refunded the value the manufacturer or its agent deems fit and which is subsequently refunded to the Company. As far as permissible in law, in the event that the manufacturer or its agent repudiates any claim, there will be no refund to the Customer.

### **15 GENERAL**

- 15.1 The Customer warrants that the directors/partners/members/sole proprietor/ trustees/sureties have never been insolvent or associated with any business failure.
- 15.2 This Agreement (as defined in 2.2) constitutes the whole agreement between the parties relating to the subject matter hereof.
- 15.3 No amendment or consensual cancellation of this document or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in writing and signed by the parties (or in the case of an extension of time, waiver or relaxation or suspension signed by the party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 15.4 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any party in respect of its rights under this Agreement, nor shall it operate so as to preclude such party from exercising its rights strictly in accordance with this Agreement at a later stage.
- 15.5 As far as permissible by law, no party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the agreement and/or whether it was negligent or not.

### **16 DEFINITIONS AND EXPLANATIONS**

- 16.1 Clause 1.1: "**vice versa**" means "the other way around".
- 16.2 Clause 1.1: "**successors and assigns**" means those people who step into the shoes of a person (legal or natural) in the future or to who a person (legal or natural) transfers its rights to.
- 16.3 Clause 1.2: "**integral**" means essential.
- 16.4 Clause 1.3: "**precedence**" means preference.
- 16.5 Clause 1.6: This means that where an executor, heir, administrator, trustee or assign of a party to the Agreement attempts to enforce the Agreement, it is assumed that the executor, heir, administrator, trustee or assigns has as much legal authority to do so as if they have signed the Agreement and been a party to the Agreement originally.
- 16.6 Clause 3.2: "**expressly**" means "explicitly" or "clearly" or in writing.
- 16.7 Clause 4.3: This means that it is the Customer's responsibility if the postal, electronic or similar method or service to make payment does not work.
- 16.8 Clause 4.4: "**stay any action**" means obtain a legal order to prevent legal action.
- 16.9 Clause 4.5: "**prima facie**" means literally "at initial appearance" and in law means that evidence/a fact is presumed to be true unless evidence can be brought to disprove that evidence/fact.
- 16.10 Clause 4.5: "**liquid document**" means a document in respect of which no further steps are necessary before summary judgement or provisional sentence may be granted. This means that the amount stated in the document does not have to be further quantified or calculated before any further legal steps can be taken.
- 16.11 Clause 5.3: "**irrevocable offers**" means an offer to purchase which cannot be withdrawn.
- 16.12 Clause 6.2: "**permissible**" means "allowed" or "permitted".
- 16.13 Clause 6.3: "**indemnifies**" means to hold someone harmless by stepping into their shoes, in their place, in any legal or other proceedings.
- 16.14 Clause 6.5: "**Time shall not be of the essence for delivery**" means the parties agree that a delay in delivery will not cause a material harm to the Customer and that if a delay in delivery is reasonably required, this is accepted by the Customer.
- 16.15 Clause 8.1.1: "**indirect, special or consequential damages**" means those losses/damages which are not a direct result of an act but a consequence of the initial act. An example would be where the direct damages may be to someone breaking your computer but the indirect damage would be that you couldn't operate your online shopping business and thus couldn't earn your living.
- 16.16 Clause 10: "**amplification**" means enlarging a previous statement and in the circumstances means enlarging the content of the statements set out in the clause before.
- 16.17 Clause 10: "**levy**" means "charge" or "apply" and in the circumstances means charging reasonable costs to store the Goods.
- 16.18 Clause 11.1: "**ad hoc**" means in specific circumstances and from time to time.
- 16.19 Clause 12.3 "**attorney and own client cost**" means the rates a person would pay their own attorney and not the rates that are prescribed in the applicable court rules.
- 16.20 Clause 12.9.2: "**sequestered**" is a legal term for legally confiscating somebody's property temporarily until a debt which that person owes is paid, a dispute is settled or a court order is obeyed.
- 16.21 Clause 12.9.2: "**liquidated**" is the same as sequestration (see above) but is for a company or juristic person, not a natural person (as with sequestration).
- 16.22 Clause 12.9.6: "**prejudice**" means "disadvantage" or "harm".
- 16.23 Clause 13.2: This means that if someone else attempts to claim rights over Goods which still belong to the Company, the Customer must immediately inform the company.
- 16.24 Clause 15.1: "**warrants**" means "guarantee" and in the circumstances means you guarantee you have never been insolvent or associated with any business failure.
- 16.25 Clause 15.3: "**waiver**" means to give up or let go of and in the circumstances means the company giving up or relinquishing any of its rights under the Agreement.
- 16.26 Clause 15.4: "**estoppel**" means that if you make an untrue representation, the Company may assume that untrue representation is true when enforcing the terms and conditions between the Company and the Customer.