

MHPS (Pty) Ltd. ("Seller") - TERMS & CONDITIONS OF SALE

- 1. Terms and Conditions.** These Terms and Conditions of Sale ("Agreement") cancel and supersede any and all terms of sale pertaining to Parts, Equipment and Services (and any supplements thereto) previously issued by the Seller to the Buyer and are subject to change without advance notice. The prices, charges, discounts, terms of sale and other provisions referred to or contained herein shall apply to Parts and Equipment (collectively referred to as "Products") sold and shipped to the Buyer and Services provided by the Seller and shall remain in effect unless and until amended or superseded in writing by the Seller. Acceptance of an order for Products or Services by the Seller shall be deemed to constitute a binding agreement between the parties pursuant to the terms and conditions contained herein and the Buyer agrees that the order may not thereafter be cancelled, countermanded or otherwise changed without the prior written consent of the Seller. This Agreement supersedes any prior agreements, representations, or other communications between the parties relating to the subject matter set forth herein. No other terms and conditions shall apply including the terms of any purchase order submitted to the Seller by the Buyer, whether or not such terms are inconsistent or conflict with or are in addition to the terms and conditions set forth herein. The Seller's acceptance of the Buyer's purchase order is conditional upon the Buyer's acceptance of all the terms and conditions contained in this Agreement. Any communication construed as an offer by the Seller and acceptance thereof is expressly limited to the terms and conditions set forth herein. The Products are intended for industrial/commercial use by professional contractors, professional end-users and their trained employees and are not intended for use by consumers.
- 2. Terms of Payments.** Payment for the Products or Services purchased by the Buyer shall be made in accordance with any of the following terms, provided they have been previously arranged with and expressly approved by the Seller in writing: (1) cash in advance; (2) confirmed, irrevocable letter of credit established in such amount and form and at such time and at such bank as shall be approved by the Seller in respect of each order; (3) credit account purchases for which payment will be due and payable on nett thirty (30) day terms, plus service and other charges applicable to past due amounts in accordance with the Seller's written notices; or (4) other payment arrangements expressly approved by the Seller in writing prior to or at the time the order is placed. If any Buyer credit account purchase is not paid in accordance with the Seller's credit payment terms, in addition to any other remedies allowed by law, the Seller may refuse to make further shipments without advance payment by the Buyer. Nothing contained herein shall be construed as requiring the Seller to sell any Products or Services to the Buyer on credit terms at any time, or prohibiting the Seller from making any and all credit decisions which it, in its sole discretion, deems appropriate for the Seller. The Seller may charge interest on all amounts not paid when due and the Buyer agrees to pay such interest calculated on a daily basis, from the date that payment was due until the Seller receives payment in full, at the maximum rate permitted by applicable law. The Seller shall be entitled to an equitable adjustment in the price of the Products or Services in order to account for increases in the cost to the Seller of labor or materials, or in the event of unanticipated or unforeseen circumstances.
- 3. Taxes and Duties.** Unless otherwise specified, prices quoted do not include taxes or duties of any kind or nature. The Buyer agrees that it will be responsible for filing all tax returns and paying applicable tax, duty, export preparation charge and export documentation charge resulting from the purchase of any Products or Services. In addition, in the event that any other similar tax is determined to apply to the Buyer's purchase of any Products or Services from the Seller, the Buyer agrees to indemnify and hold the Seller harmless from and against any and all such other similar taxes, duties and fees. All prices quoted are South African Rand unless otherwise specified. The amount of any present or future taxes applicable to the sale, transfer, lease or use of any Products shall be paid by the Buyer; or in lieu thereof, the Buyer shall provide the Seller with a tax exemption certificate satisfactory to the applicable taxing authority proving that no such tax is due and payable upon such sale, transfer, lease or use.
- 4. Risk, Title, Transportation and Delivery.** Unless otherwise stated in writing, all prices and delivery are FCA, Seller's Premises (Incoterms 2010). Risk of loss or damage to the products shall pass to the Buyer upon delivery, as per Incoterms 2010. As security for payment of the full purchase price, legal and equitable title in the Products shall not pass to the Buyer until receipt by the Seller of payment in full for the Products. The Buyer is authorized to use the Products in the ordinary course of business or sell the Products to a third party. The entire proceeds of any sale or disposition of the Products shall be held by the Buyer in a fiduciary capacity for the Seller. Until receipt by the Seller of payment in full, the Buyer shall hold the Products in a fiduciary capacity as a deposit for the Seller and insure the Products for their full replacement value against all risks. The Buyer's right to possess and sell the Products shall automatically terminate if the Buyer becomes insolvent or the subject of any bankruptcy, insolvency, judicial management, business rescue or similar proceedings; makes an assignment for the benefit of or reaches a compromise with creditors; or is unable to pay its debts as they become due. Upon termination of the right to possession, the Seller and its representatives may at any time enter the premises of the Buyer or any third party to repossess the Products. If the Buyer pledges or otherwise encumbers any Products that have not been paid for in full, all monies owed by the Buyer to the Seller shall immediately become due and payable. If any portion of this clause shall be invalid or unenforceable, then such

provisions shall be enforced to the maximum extent permitted by law, and such invalidity or unenforceability shall not affect the validity or enforceability of the other provisions of this paragraph.

5. **Claims and Losses.** Any claims for loss, damage or delay in transit must be entered and prosecuted by the Buyer directly with the carrier, who is hereby declared to be the agent of the Buyer. In the event that a delay in the shipment of Products is caused by the Buyer's failure to furnish necessary information with respect to the data and details for the Buyer's specifications, the Seller, may, in its sole discretion, extend the date of shipment for a reasonable time. **In the event that a delay in shipment is caused by the Buyer or at the Buyer's request, and there are Products that are not shipped within ten (10) days from the first date they are ready to be shipped, the Seller may, in its sole discretion, invoice the Products in full to the Buyer and the Buyer will be obliged to pay for the Products as if delivery had occurred.** Initial _____

All payments shall be made in accordance with the terms of the applicable invoice. In addition, storage charges due to a delay in furnishing delivery instructions, arranging and establishing a method of payment satisfactory to the Seller, or submitting valid import permits or licenses, or any other delay caused by the Buyer or at the Buyer's request, will be for the account of the Buyer. The Seller shall not be liable for any consequential, incidental, or indirect losses or damages due to the delay in scheduled delivery. Claims for shortages in shipments shall be deemed waived and released by the Buyer unless made in writing within five (5) days after the Buyer's receipt of shipment. The Seller's responsibility for shipment shall cease upon delivery of the Products to the place of shipment, and all claims occurring thereafter shall be made to or against the carrier by the Buyer.

6. **Cancellation.** Prior to delivery to the place of shipment, a Products order may be cancelled only with the Seller's prior written consent and upon terms indemnifying the Seller from all resulting losses and damages. The Seller shall have the right to cancel and refuse to complete a Products or Services order if any term and/or condition governing this Agreement is not complied with by the Buyer. In the event of cancellation by the Seller, or in the event that the Seller consents to a request by the Buyer to stop work or to cancel the whole or any part of any order, the Buyer shall make reimbursement to the Seller, as follows: (i) any and all work that can be completed within (30) days from date of notification to stop work on account of cancellation shall be completed, shipped and paid in full; and (ii) for work in progress and any materials and supplies procured or for which definite commitments have been made by the Seller in connection with the order, **the Buyer shall pay such sums as may be required to fully compensate the Seller for actual costs incurred, plus fifteen percent (15%).** The Buyer may not cancel any order after the Seller's delivery to the place of shipment. Orders for "Special" Equipment may not be cancelled after acceptance, except by the Seller. Items of "Special" Equipment are those that differ from standard Seller specifications, have a limited market, or incorporate specifications that have been determined for a specific application. Determination of whether an item of Equipment is "Special" shall be made by the Seller in its sole discretion. Initial _____

7. **Inspection and Acceptance.** The Buyer agrees that it shall inspect the Products or Services immediately after receipt of Products or completion of Services and promptly notify the Seller in writing of any non-conformity or defect within ten (10) days after the Products are put into service or the Services are completed, but not more than thirty (30) days after delivery or completion. The Buyer further agrees that failure to give such prompt notice or the commercial use of the Products shall constitute acceptance. Acceptance shall be final and the Buyer waives the right to revoke acceptance for any reason, whether or not known by the Buyer at the time of such acceptance. The giving of any such notice by the Buyer shall automatically cause the provisions of the Seller's warranty to apply and govern the rights, obligations and liabilities of the parties with respect to such nonconformity or defect, provided under no circumstances shall rejection give rise to any liability of the Seller for incidental or consequential damages or losses of any kind.

8. **Warranty.** The Seller warrants its new Equipment manufactured and sold worldwide, to be free, under normal use and service, of any defects in material or workmanship for a period of: (i) twelve (12) months from installation, or (ii) eighteen (18) months from delivery, whichever occurs first. The Seller warrants its OEM replacement Parts ordered from its Parts Department to be free of defects in manufacture or materials for a period of: (i) six (6) months from the date of delivery, or (ii) the period remaining on the Equipment warranty for the affected Equipment (if any), whichever is shortest. The Seller warrants the Services to be free of defects in workmanship for a period of six (6) months from date of completion of the Services. This warranty shall only be valid if the Buyer sends the Seller written notice of the defect within thirty (30) days of its discovery and establishes that: (i) the Product, or any equipment subject to any Service, has been maintained and operated within the limits of rated and normal usage; and (ii) the defect did not result in any manner from the intentional or negligent action or inaction by the Buyer, its agents or employees. If requested by the Seller, the Buyer must return the defective Product to the Seller's facility for inspection, and if the Buyer cannot establish that conditions (i) and (ii) above have been met, then this warranty shall not cover the alleged defect. Failure to give written notice of defect within such period shall be a waiver of this warranty and any assistance rendered thereafter shall not extend or revive it. Accessories, assemblies and components included in Products of the Seller, which are

not manufactured by the Seller, are subject to the warranty of their respective manufacturers. This warranty shall be void in the event that the Buyer has carried out modifications or reconditioning work on the Products without the prior written consent of the Seller. This warranty shall not cover any item on which serial numbers have been altered, defaced or removed. Maintenance and wear parts are not covered by this warranty and are the sole maintenance responsibility of the Buyer. This warranty is limited to the first retail purchaser and is not assignable or otherwise transferable without written agreement of the Seller.

THIS WARRANTY IS EXPRESSLY IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED (INCLUDING THE WARRANTIES AGAINST DEFECTS AND FITNESS FOR A PARTICULAR PURPOSE) AND ALL OTHER OBLIGATIONS OR LIABILITY ON SELLER'S PART. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE LIMITED WARRANTY CONTAINED HEREIN.

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For the avoidance of doubt, the sale of the Products or Services is *voetstoots*. The Seller neither assumes nor authorizes any other person to assume for the Seller any other liability in connection with the sale of the Seller's Products. This warranty shall not apply to any of the Products or any part thereof, or any equipment which was the subject of any Service, which has been subject to misuse, alteration, abuse, negligence, accident, acts of God or sabotage. No action by either party shall operate to extend or revive this limited warranty without the prior written consent of the Seller. **IN NO EVENT SHALL SELLER, OR ANY SUBSIDIARY OR DIVISION THEREOF BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OR LOSSES RESULTING FROM A BREACH OF WARRANTY INCLUDING, WITHOUT LIMITATION, LABOR COSTS, LOSS OF USE OF OTHER EQUIPMENT, THIRD PARTY REPAIRS, PERSONAL INJURY, EMOTIONAL OR MENTAL DISTRESS, IMPROPER PERFORMANCE OR WORK, PENALTIES OF ANY KIND, LOSS OF SERVICE OF PERSONNEL, OR FAILURE OF PRODUCTS TO COMPLY WITH ANY NATIONAL, PROVINCIAL OR LOCAL LAWS.**

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Remedies for Breach. IN THE EVENT OF ANY BREACH OF THE WARRANTY BY THE SELLER, THE PARTIES AGREE THAT SELLER'S LIABILITY SHALL BE LIMITED EXCLUSIVELY TO THE REMEDIES OF REPAIR OR REPLACEMENT (AT SELLER'S SOLE DISCRETION) OF ANY DEFECTIVE PRODUCT OR THE REPERFORMANCE OF ANY DEFECTIVE SERVICES COVERED BY THE WARRANTY.

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9. **Limitation of Liability.** NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, IN NO EVENT SHALL THE SELLER, OR ANY SUBSIDIARY OR DIVISION THEREOF BE LIABLE FOR INCIDENTAL, INDIRECT, CONSEQUENTIAL OR OTHER DAMAGES OR LOSSES OF ANY KIND WHATSOEVER, INCLUDING, WITHOUT LIMITATION, LABOR COSTS, LOST PROFITS, LOSS OF USE OF OTHER EQUIPMENT, THIRD PARTY REPAIRS, PERSONAL INJURY, EMOTIONAL OR MENTAL DISTRESS, IMPROPER PERFORMANCE OR WORK, PENALTIES OF ANY KIND, LOSS OF SERVICE OF PERSONNEL, OR FAILURE OF PRODUCTS OR SERVICES TO COMPLY WITH ANY NATIONAL, PROVINCIAL OR LOCAL LAWS. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, IN NO EVENT SHALL THE SELLER'S LIABILITY EXCEED ONE HUNDRED PERCENT (100%) OF THE TOTAL ORDER VALUE.

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10. **Limitation of Actions.** Any action for breach of this Agreement must be commenced within one (1) year after the cause of action has arisen.

11. **Specification Changes.** In the event that the Seller incurs additional expense because of changes in specifications or drawings previously approved by the Buyer, or in the event that the Seller is required to modify the ordered Products, perform any additional Services, perform any additional work or supply any additional Products, the additional expense shall be added to the purchase price. The Seller shall have the right, in its sole discretion, to accept or reject any changes in specifications requested by the Buyer. In no event shall any changes in specifications be made or accepted thirty (30) days prior to delivery date or thereafter.

12. **Insurance.** Until the purchase price of any Product is paid in full or the Service is completed, the Buyer shall provide and maintain insurance equal to the total value of any such Product delivered hereunder against customary casualties and risks; including, but not limited to fire and explosion, and shall also insure against liability for accidents and injuries to the public or to employees, by adding the Seller as additional insured with waiver of subrogation, and in an amount satisfactory to the Seller. If the Buyer fails to provide such insurance, the Buyer shall notify the Seller so that the Seller may provide same; and the cost thereof shall be added to the contract price. All loss resulting from the failure to effect such insurance shall be assumed by the Buyer.

- 13. Patents, Copyrights, Trademarks, Confidentiality.** No license or other rights under any patents, copyrights or trademarks owned or controlled by the Seller or under which the Seller is licensed are granted to the Buyer or implied by the sale of the Products or the provision of Services. The Buyer shall not identify as genuine products of the Seller, Products purchased hereunder which the Buyer has treated, modified or altered in any way, nor shall the Buyer use the Seller's trademarks to identify such products; provided, however, that the Buyer may identify such products as utilizing, containing or having been manufactured from genuine products of the Seller as treated, modified or altered by the Buyer or the Buyer's representative, upon written prior approval of the Seller. All plans, photographs, designs, drawings, blueprints, manuals, specifications and other documents relating to the business of the Seller ("Information") shall be and remain the exclusive property of the Seller and shall be treated by the Buyer as confidential information and not disclosed, given, loaned, exhibited, sold or transferred to any third party without the Seller's prior written approval; provided, however, that these restrictions shall not apply to Information that the Buyer can demonstrate: (a) at the time of disclosure, is generally known to the public other than as a result of a breach of this Agreement by the Buyer; or (b) is already in the Buyer's possession at the time of disclosure by from a third party having a right to impart such Information.
- 14. Default and Seller's Remedies.** In the event of default by the Buyer, all unpaid sums and installments owed to the Seller, shall, at the Seller's sole option, become immediately due and payable without notice of any kind to the Buyer. In addition to its right of acceleration, the Seller may pursue any and all remedies allowed by law, including but not limited to any and all remedies available to it under the laws of the Republic of South Africa. In addition to the foregoing, and not in limitation thereof, the Seller shall have the right to set off any credits or amounts owed to the Buyer against any amounts owed by the Buyer to the Seller.
- 15. Indemnification by Buyer.** The Buyer hereby agrees to indemnify, release, defend and hold harmless the Seller, its directors, officers, employees, agents, representatives, successors, and assigns against any and all suits, actions or proceedings at law (including the costs, expenses and reasonable attorney's fees incurred in connection with the defense of any such matter) and from any and all claims demands, losses, judgments, damages, costs, expenses or liabilities, to any person whatsoever (including the Buyer's and the Seller's employees or any third party), or damage to any property (including the Buyer's property) arising out of or in any way connected with the performance or the furnishing of Products or Services under this Agreement, regardless of whether any act, omission, negligence (including any act, omission or negligence, relating to the manufacture, design, repair, erection, service or installation of or warnings made or lack thereof with respect to any Products or Services furnished hereunder) of the Seller, its directors, officers, employees, agents, representatives, successors or assigns caused or contributed thereto. If the Buyer fails to fulfill any of its obligations under this paragraph or this Agreement, the Buyer agrees to pay to the Seller all costs, expenses and attorney's fees incurred by the Seller to establish or enforce the Seller's rights under this paragraph or this Agreement. The provisions of this paragraph are in addition to any other rights or obligations set forth in this Agreement.
- 16. Installation.** Unless otherwise expressly agreed in writing, the Buyer shall be solely responsible for the installation and erection of the Products purchased. Although the Seller may in some cases provide a serviceman, data and drawings to aid the Buyer with installation or start-up, the Seller assumes no responsibility for proper installation or support of any Product when installed and disclaims any express or implied warranties with respect to such installation and support. Notwithstanding whether data and drawings are provided or a serviceman aids in the installation, the Buyer shall indemnify and hold the Seller harmless and at the Seller's request, defend the Seller from all claims, demands or legal proceedings (including the costs, expenses and reasonable attorney's fees incurred in connection with the defense of any such matter) which may be made or brought against the Seller in connection with damage or personal injury arising out of said installation or start-up.
- 17. On-Site Services.** In the event that the Seller is providing Services at the Buyer's worksite (or at a location designated by the Buyer), the Buyer shall provide the Seller free and clear access and an adequate power supply in order to perform the Services. The Buyer shall maintain safe working conditions at the worksite, including, without limitation, implementing appropriate procedures regarding hazardous materials and energization and de-energization of power systems. The Buyer shall immediately remedy any unsafe working condition at the worksite. The Seller shall be entitled to suspend or terminate the Services in the event it determines that the worksite is unsafe. The Seller shall have no responsibility or liability for any pre-existing condition of the worksite including, without limitation, violations of safety rules, building codes, zoning ordinances or other laws or regulations ("Regulations"). In the event that any unsafe working condition or failure of the worksite to comply with a Regulation results in an increase in the Seller's cost of, or the time required for, performance of the Services, the Seller may make an equitable adjustment in price and schedule. The Buyer authorizes the Seller to perform the disassembly and inspection of any equipment necessary to provide the Services, including provision of all necessary Parts and labor, and agrees that the Seller is not responsible for any damage or loss due to causes beyond the Seller's control.

- 18. Force Majeure.** The Seller shall not be liable to the Buyer or be deemed to be in breach of this Agreement by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Products or Services if the delay or failure was due to any cause beyond the reasonable control of the Seller including (without limitation) strike, lockout, riot, civil commotion, fire, accident, explosion, tempest, act of God, war, epidemic, stoppage of transport, terrorist activity, supply shortage or changes in government, governmental agency, laws, regulations or administrative practices.
- 19. Anti-Corruption; Export Controls.** The Buyer agrees that it shall, and that any party retained by the Buyer shall, comply with all applicable laws including, but not limited to, laws prohibiting public corruption and commercial bribery. The Buyer further agrees that it shall, and that any party retained or paid by the Buyer shall, comply with all applicable export controls, economic sanctions, embargoes and regulations regarding the export, re-export, distribution and sale of the Products, including without limitation U.S. Export Control laws, regulations, policies and executive orders as may be amended from time to time. The Buyer further agrees that it shall not, and any party retained or paid by the Buyer shall not, export or re-export the Products, directly, or with its knowledge, indirectly, into Sudan, Cuba or Iran or to any other country for which the United States government (or agency thereof) may require an export license or other approval or any country, person or entity to which such export or re-export may be prohibited by applicable United States law, regulation, policy or executive order. Failure to comply strictly with all applicable laws relating to embargoes, sanctions, export or re-export shall be grounds for immediate termination of this Agreement by the Seller. Notwithstanding anything to the contrary contained in any agreement between the Seller and the Buyer or in any other document (including purchase terms and conditions) or instrument relating to the Products, the Seller will not comply with requests related to the boycott of any country or other jurisdiction, except to the extent such boycott is required by or otherwise not inconsistent with United States law.
- 20. Construction and Severability.** This Agreement constitutes the entire agreement between the parties regarding the subject matter hereto and shall be construed and enforced in accordance with the laws of the Republic of South Africa. The Seller shall not be bound by any agent's, employees or any other representation, promise or inducement not set forth herein. The invalidity or unenforceability of any provisions of this Agreement shall not affect any other provision and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.
- 21. Jurisdiction.** The parties agree that the proper and exclusive forum and venue in all legal actions brought to enforce or construe any of the provisions of this Agreement shall be in the Republic of South Africa and the parties hereto do hereby consent to the jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg). In no way derogating from the foregoing, the Seller shall at their option be entitled to institute any such action in any other court of competent jurisdiction.
- 22. No Assignment.** No rights arising under this Agreement may be assigned by the Buyer unless expressly agreed to in writing by the Seller.
- 23. No Variation.** No variation of this agreement, including this paragraph, shall be in force and effect unless signed by a director of the Seller.