

HENSOLDT South Africa (Pty) Ltd trading as HENSOLDT SA Radar

Standard Conditions of Supply

1. GENERAL

All orders accepted and all proposals made by HENSOLDT SA Radar "hereafter referred to as the Seller" are made and accepted upon the following terms and conditions. Any order given to the Seller, or the acceptance of the Seller's proposal by the Buyer, shall be deemed to constitute an agreement to be bound by these terms and conditions. No other conditions will be applicable and if an order is placed by the Buyer, whether incorporating other conditions or not, these conditions contained in this document will be the only conditions applicable.

2. PERIOD FOR ACCEPTANCE OF PROPOSAL OR QUOTATION

Any proposal made by the Seller may be withdrawn at any time before acceptance, without incurring any liability. Unless otherwise stated in a proposal, if not accepted within 1 (one) month from the date thereof, the proposal shall be deemed to have been withdrawn automatically and will become null and void in all aspects, except for confidentiality of any information contained therein, which the Buyer will not be entitled to use directly or indirectly.

3. DRAWINGS AND SPECIFICATIONS

All the information contained in any specification, drawing and catalogue (or which accompanies or forms part of any proposal made by the Seller), is subject to alteration at any time without prior notice and the Seller will not be bound to comply exactly therewith. The Seller shall not be liable for any inaccuracies in any drawings, specifications or other information supplied by the Buyer, and the Seller shall not be liable for any defects, accidents, happenings or any other consequences arising out of such faulty information.

4. PRICE VARIATION

This proposal is based on the freight, insurance, import duty, value added tax and exchange rates ruling on the date of quotation, and in the event of any alteration thereto before delivery of the goods, any increase or decrease as the case may be, will be added to or subtracted from the contract price. Further, the proposal has been based on the cost of materials and standard wage rates ruling at the date of proposal, any statutory increases or decreases there from shall also be added to or subtracted from the contract price. A certificate by the Seller's auditors as to the amount of any adjustment shall be final and binding. This clause will not apply in the event of the proposal or quotation stating that the price will be fixed.

5. TERMS OF PAYMENT

Payment of any goods delivered by the Seller shall be made at the net invoice price without deduction of any discount within 30 (thirty) days after the date of the invoice and all overdue accounts shall bear interest at South African prime bank overdraft rates plus 3% (three percent). If at any time the terms of payment are exceeded, the Seller reserves the right to cancel any outstanding or uncompleted orders, and all expenses incurred thereby shall be for the Buyer's account.

The Seller reserves the right to request payment of an advance payment, which will be payable within 14 (fourteen) days from the date of the placement of an order.

Any proposals to Buyers which are not domiciled in South Africa, payment will be made by an irrevocable, confirmed Letter of Credit opened for the full order amount. The Letter of Credit must be opened within 14 (fourteen) days from date of Order placement through a First Rate International Bank, acceptable to the Seller. Payment will be made upon presentation of the Seller's invoice and certificate of conformance.

All bank costs related to payments, including that of the letter of Credit, will be borne by the Buyer.

6. RESERVATION OF OWNERSHIP

Notwithstanding delivery to the Buyer, all goods sold by the Seller shall remain the Seller's sole property until the Buyer has made payment in full.

7. RISK

The risk of loss or damage to the goods shall pass to the Buyer from the time of delivery and the Seller shall not be responsible for any loss or damage to the goods beyond the point of delivery.

8. DELIVERY

8.1. The period of time stated by the Seller for delivery of goods ordered is to be measured from the date the Seller receives a written order to proceed together with all information necessary to enable the Seller to put the work in hand and to deliver the goods. The Seller will not be responsible or accountable for any delay occasioned by any cause outside its control but shall be allowed a corresponding extension of time. In particular, but without limitation, the Seller will not be responsible or accountable for any delay occasioned by strike, lockout, war, fire, ice, accident (wherever any of the said causes shall occur), defective material, or any failure on the part of any supplier to make delivery. Should the Seller be prevented from delivering any goods especially manufactured by reason of any of the said causes, the Buyer shall take goods, as the Seller is able to deliver and shall pay for it at the agreed prices.

8.2. Unless otherwise stated, the place of delivery is the Seller's plant in Retreat, Cape Town, South Africa and all costs of delivery to the premises of the Buyer will be for the account of the Buyer.

9. WARRANTY OF PRODUCTS NOT MANUFACTURED

The Seller will use its best endeavour to pass on to the Buyer the benefit (with the corresponding liabilities) of any guarantee received by the Seller from the supplier of goods not manufactured by the Seller. Nothing herein contained shall, however, impose upon the Seller a greater liability than would be imposed by its own guarantee set out herein, nor shall the Seller have any obligation to enforce that guarantee by litigation or other proceedings.

10. WARRANTY OF PRODUCTS MANUFACTURED

Subject to the conditions hereinafter contained, the Seller warrants all products that have been manufactured by itself for a period of 12 (twelve) months from the date of delivery against any defect attributable to faulty material or workmanship. Should any defect develop within that period the Seller will repair or (at its option) replace the defective part at the Seller's factory without charge provided that:

- 10.1. The Buyer shall have reported a defect to the Seller immediately the defect manifested itself;
- 10.2. The product was not subjected to the abnormal use, or to use under abnormal conditions, or beyond its capacity as rated and recommended by the Seller;
- 10.3. The defect was not caused or contributed to by exposure to adverse weather conditions or by operation in abnormal atmospheric conditions;
- 10.4. No repairs or alterations to the products were carried out by the Buyer or a third party; and
- 10.5. The Buyer has fulfilled its obligations under the contract.

The onus of showing that the conditions set out above have been complied with shall rest with the Buyer. The Buyer shall at its own expense return the defective product or part to the Seller's factory and shall meet all other incidental expenses however incurred. The Seller shall have a reasonable period of time during which to effect the repairs (or at its option make the replacement), and the guarantee period stated above shall be extended by that time.

11. EXCLUSION OF LIABILITY

It is expressly agreed that the Seller shall not be liable for any damage, loss, injury, or expense of any sort or kind caused directly or indirectly to any person or property by any goods sold or delivered by the Seller or arising from the use thereof, and all such liability, whether general, special, consequential or otherwise arising out of or due to any of the acts, omissions, negligence or willful default of the Seller or its servants, whether at common law, by statute or otherwise, and whether arising from any condition, representation or warranty (express or implied) relating to the goods sold or delivered is expressly excluded.

12. INTELLECTUAL PROPERTY

Intellectual property that may arise from the contract is vested in the Seller.

12.1. For the purposes of this clause "intellectual property" means:

- 12.1.1 The patents, designs, know-how, copyright and trademarks which relate to the goods or services;
- 12.1.2 The "know-how" means all confidential information of whatever nature relating to the intellectual property and its exploitation as well as all other confidential information generally relating to the manufacture, use and sale of the goods including technical information, manufacturing technique and designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information generally.

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- 12.2. The Buyer acknowledges the Seller's sole and exclusive ownership of and/or rights in and to the intellectual property and undertakes neither at any time nor in any manner to contest the validity of the Seller's exclusive ownership of and/or rights in and to the same whether now existing or hereinafter acquired.
- 12.3. The Buyer acknowledges that it has had no part in the creation or development of or prior knowledge of and has no rights or claims whatsoever in or to any elements of the Seller's rights to the intellectual property.
- 12.4. The Buyer shall not at any stage hereafter disclose, reveal, exhibit or reproduce or howsoever make available to any party whatsoever, nor permit or allow any of the foregoing by any acts or omission or commission, any element of the intellectual property which may become known to the Buyer in any manner whatsoever.
- 12.5. The Buyer acknowledges that all the foregoing are trade secrets in which the Seller has made a substantial investment and in respect of which the Seller has a legitimate right to protection. The Buyer undertakes that forever after this Contract, and for any cause whatsoever, it shall not for its own benefit or for the benefit of any other party, directly or indirectly, make use of or derive any profit or advantage from the Seller's intellectual property.
- 12.6. The Buyer shall, immediately on becoming aware thereof, inform the Seller both in writing and orally of any infringements or apparent infringements or challenge or threat of the Seller's intellectual property by any person together with all parties thereto which are known to the Buyer and undertakes to assist the Seller fully in taking such action as the Seller deems appropriate.
- 12.7. The Buyer shall have no claim of whatsoever nature against the Seller arising out of or flowing from any damages suffered by the Buyer as a result of any patent or trade mark relating to any of the goods sold being infringed, cancelled, breached or otherwise set aside or declared invalid. The foregoing shall apply mutatis mutandis forever after the termination of this Contract from any cause whatsoever.
- 13. RIGHT OF CANCELLATION**
- 13.1. The Seller shall have the right to cancel this contract or any order by written notice to the Buyer in the event that the Buyer is placed under provisional or final liquidation, judicial management or sequestration or commits any act of insolvency as defined in the Insolvency Act or ceases to carry on business.
- 14. BREACH**
- 14.1. If any party breaches any provision or terms of this Contract and fails to remedy such breach within 14 (fourteen) days of receipt of written notice requiring it to do so or within such further period as may be reasonable in the circumstances, then the aggrieved party shall be entitled without notice, in addition to any other remedy available to it at law or under this Contract, including obtaining an interdict, to cancel this Contract or to claim specific performance of any obligation whether or not the due date of performance has arrived, in either event without prejudice to the aggrieved party's right to claim damages.
- 14.2. On the occurrence of an event of breach attributable to the Buyer, the Seller will be entitled in addition to any rights, which it may have in law, to cancel this Contract on written notice to the Buyer, in which event all licenses granted to the Buyer in terms of this Contract will immediately be cancelled.
- 14.3. On the occurrence of an event of breach attributable to the Seller, the Buyer will be entitled, in addition to any other rights which it may have in law, to cancel this Contract on written notice to the Seller in which event all licenses granted to the Seller in terms of this contract will immediately be cancelled.
- 15. ARBITRATION**
- 15.1. All disputes between the Parties arising under or in connection with the Order shall if possible be settled by means of friendly consultation. In the event that no settlement can be reached through consultation the relevant dispute shall be submitted to arbitration. Neither party shall resort to arbitration for a minimum period of 3 (three) months from commencement of such consultation.
- 15.2. The arbitration take place in Pretoria, Gauteng, and shall be conducted in accordance with the provision of the Rules of the Arbitration Foundation of South Africa.
- 15.3. The decision given in the Arbitration institute shall be final and binding on both Parties.
- 15.4. The cost of the arbitration shall be apportioned by the Arbitration Institute.
- 15.5. During the course of arbitration the order shall continue to be performed except to the extent that such performance is the subject of the arbitration.
- 16. TERMINATION**
- In the event of termination of this Contract or an order, either by breach or by cancellation by the Buyer, the Seller will be entitled:
- 16.1. To receive a written notice of termination, such written notice shall be served on the Seller by the Buyer not less than 90 (ninety) days before the effective date and it shall specify the extent to which the order is terminated and the effective date thereof.
- 16.2. Upon receipt of such notice, the Seller shall:
- 16.2.1 Stop work/services under the order on the date and to the extent specified.
- 16.2.2 Place no further orders for materials, services or facilities affected by the notice.
- 16.2.3 Terminate all orders and subcontracts to the required extent of the notice.
- 16.2.4 Continue work/services not terminated.
- 16.2.5 Protect and preserve the Buyer's property relating to the order and delivery of these to the Buyer if so instructed.
- 16.3. The Buyer undertakes to make good costs and escalation, which the Seller has already incurred or committed up to the date of termination and in respect of which no recovery has been made by way of deliveries, which costs and escalation the Seller can prove.
- 17. LEGAL CONSTRUCTION**
- No alteration of any of the above conditions shall be binding on the Seller unless agreed there to by the Seller in writing. These conditions and every contract in which they are incorporated, shall be governed by and construed in accordance with the laws of the Republic of South Africa. The issuing and provisions of permits issued by the South African government will be strictly adhered to.
- 18. ENTIRE CONTRACT**
- 18.1. These Conditions and any documents referenced or invoked therein, constitute the entire Contract between the parties as to the subject hereof and cannot be changed except as agreed in writing between the Seller and the Buyer.
- 18.2. The Seller is not bound by any verbal agreement, statement or representation by any of its employees or representatives or any person purporting to act on behalf of the Seller.
- 19. CONFIDENTIALITY AND PUBLICITY**
- 19.1. Except with the consent of the Buyer in writing, and as is necessary for the proper performance of the Order, the Seller shall not disclose the Order or any provision thereof, or any Specification, Plan, Drawing or information issued by or on behalf of the Buyer in connection therewith to any third party, without the prior consent in writing of the Buyer.
- 19.2. Where necessary the Buyer and the Seller shall enter into a Confidentiality Agreement in order to protect the parties' proprietary information.
- 19.3. Notwithstanding the coming into force of the Confidentiality Agreement, both parties agree to keep Proprietary Information received from the other party confidential and to utilize the same controls as they employ to avoid disclosure publication and dissemination of their own Proprietary Information of a similar nature.
- 20. SEVERABILITY**
- In the event that any part or parts of the Order shall be held illegal or null and void by any court or administrative body of competent jurisdiction, such determination shall not affect the remaining parts of the Order which shall remain in force and effective as if the parts determined illegal or void had not been included herein.

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21. NON WAIVER

- 21.1. Any waiver by any party of a breach of any term or condition of this Contract shall not be construed as a waiver of any subsequent breach of the same or any other term or condition hereof.
- 21.2. No latitude, extension of time or other indulgence which may be given or allowed by either party to the other in respect of any payment provided for in this Contract or the performance of any other obligation shall under any circumstances be construed to be an implied consent by such party or operate as a waiver or novation of, or otherwise affect, any of that party's rights in terms of or arising from this Contract, or stop such party from importing, at any time without notice, strict and punctual compliance with each and every provision or term hereof.

22. DOMICILIA

- 22.1. The parties choose as their domicilia citandi et executandi the addresses mentioned in clause 22.2 below, but such domicilium of either party may be changed by written notice from such party to the other parties with effect from the date of receipt or deemed receipt by the latter of such notice.
- 22.2. SELLER: 64-74 White Road, Retreat, 7945, Cape Town, South Africa
BUYER: AS PER PROPOSAL
- 22.3. Any notice, demand or other communication properly addressed by either party to the other at the latter's domicilium in terms hereof for the time being and sent by prepaid registered post shall be deemed to be received by the latter on the seventh business day following the date of posting thereof. This provision shall not be construed as precluding the utilisation of other means and methods (including telefacsimile) for the transmission or delivery of notices, demands and other communications, but no presumption of delivery shall arise if any such other means or method is used.

23. APPLICABLE LAW

- 23.1. The parties agree that this agreement shall in all respects be governed by and construed in accordance with the laws of South Africa including all matters of construction, validity and performance but without reference to conflict of law principles.
- 23.2. All notices, communications, evidences, reports, opinions and other documents given under this agreement shall, unless submitted in the English language, be accompanied by one copy of a certified English translation thereof for each copy of the foregoing so submitted and the English version shall govern in the event of any conflict with the "non-English version."

24. APPROVALS AND SPECIFIC REGULATIONS

- 24.1. All proposals and the sales and delivery of any goods and services thereto require HENSOLDT SA Radar and South African Government approvals.
- 24.2. All proposals and the sales and delivery of any goods and services thereto and are governed by South African Non-Proliferation Committee and National Conventional Arms Committee's marketing, contracting, export and import legislation.

25. REPAIRED GOODS

- 25.1. Repaired goods shall carry a 3 months warranty after delivery on workmanship and spares needed for the repair, fair wear and tear excluded. The Seller shall not be responsible for consequential damages (loss of Buyer's profit or any direct or consequential loss or damage) or charges, which may arise there from. The Seller's liability shall be limited to compensating the Buyer either by way of credit or replacement to the invoiced value of the rejected material plus agreed upon transport charges incurred by the Buyer in the delivery of such goods to him.
- 25.2. All repaired goods shall be tested for conformance to the Seller's specifications prior to shipment. Any further inspection required shall be for the Buyer's account.
- 25.3. Repaired goods shall be returned in the received packaging. The Seller shall recommend the replacement of unsuitable packaging for the account of the Buyer. Should the Buyer decline the Seller's recommendation; the Seller shall not be responsible for goods damaged in transit due to improper packaging.