



SALES MANAGEMENT SYSTEM

TERMS & CONDITIONS OF SALES

Serial Number

001 UM 5-2
SALES 005

Latest
Review

Originator

SM

Date Origin

09/02/2022

10/05/2024

Approved

GM

Private and confidential

TERMS AND CONDITIONS OF SALES

Umzimkhulu Industrial Holdings (Pty) Ltd t/a Rossmin
Reg No: 2006/019502/07

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PROTECTION OF PERSONAL INFORMATION ACT (2021)

The Customer as the authorised representative hereby acknowledge and consent to Rosssmin sharing and exchanging all information it may collect, hold, organise, store, use, and administer for the purposes of enforcing the Agreement or purported Agreement, including standard terms and conditions signed by the Customer. Personal Information may be used for the administration and enforcement of the Agreement or purported Agreement and the Customer further accepts that this may involve the Information being sent to a country outside the Republic of South Africa in which Rosssmin may or may not provide services.

The purpose of the Information includes but is not limited to verification of the Customers details. The Customer acknowledges that it has the right to request a list of the names and addresses of any potential recipients of the Information and to review and correct the Information. The Customer acknowledges that the collection, processing, and transfer of the Information is important to enforce the contractual relationship with Rosssmin.

All Personal Information will be held securely and whenever Rosssmin commissions other organisations to provide support services, Rosssmin will bind its service providers and shareholdersto its privacy policies as far as they may be required to have access to their suppliers' and service providers' personal information and to perform such services.

TERMS AND CONDITIONS OF SALE AND CREDIT

1. Application

- a. These terms and conditions shall govern all future transactions as between with **Umzimkhulu Industrial Holdings t/a Rosssmin, Registration Number 2006/019502/07** including their respective associated and subsidiary companies, trading divisions, successors-in-title, and assigns (hereinafter referred to as "ROSSMIN") and the CUSTOMER.
- b. The terms and conditions set out hereunder shall bind the parties at all times irrespective of any other purported agreement that may take place between the parties and are to be read together with any authorised quote or specification sheets.

2. Disclosure

The CUSTOMER warrants that the information contained in the Credit Application is true and ROSSMIN may rely on the correctness of such information when assessing the credit facility.

3. Credit Facility

- a. The amount, extent and nature of the credit granted shall be at the discretion of ROSSMIN. If the CUSTOMER exceeds any limits this will not affect ROSSMIN's rights.
- b. ROSSMIN may suspend, alter or withdraw credit facilities at ROSSMIN's discretion. In the event of a default ROSSMIN may, at ROSSMIN's discretion, cancel or suspend the delivery of goods or the performance of services.

4. Credit Information Search

- a. ROSSMIN may perform a credit information search on the CUSTOMER at a credit information bureau of ROSSMIN's choice, monitor the CUSTOMER's payment behaviour and use new information obtained from the credit information bureau in respect of any future credit applications by the CUSTOMER.
- b. The CUSTOMER warrants that any information relating to the CUSTOMER not being credit worthy shall be sufficient grounds to deny or cancel this credit application.

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c. The CUSTOMER further warrants that any information regarding the CUSTOMER's credit worthiness, defaults in payment and details of how the CUSTOMER has conducted the account with ROSSMIN may be disclosed to any other creditor of the CUSTOMER and to any credit information bureau.

5. **Application of National Credit Act 34 of 2005 and the Consumer Protection Act 68 of 2008**

If any of these credit application terms and conditions is repugnant to or in conflict with the law, then and in such event the conflicting term embodied herein shall be deemed to be amended and/or altered to conform therewith, and such amendment and/or alteration shall not in any way affect the remaining provisions of these terms and conditions.

6. **Payment**

- a. All payments are strictly 30 days from the date of ROSSMIN's statement.
- b. If any payment is not paid on due date, or if the CUSTOMER is in breach of these conditions, all amounts unpaid shall immediately become due.
- c. The CUSTOMER shall not be entitled to claim set-off or deduction in respect of any payment due by the CUSTOMER to ROSSMIN in respect of goods and/or services supplied.
- d. The prices quoted are based on current costs and should these costs increase, ROSSMIN shall have the right to amend its prices forthwith and the CUSTOMER acknowledges and agrees that the actual price to be paid will be the price as determined by ROSSMIN at the time of delivery. In any dispute the amount of any increase shall be referred to ROSSMIN'S auditors, acting as experts and whose certificate shall be final and binding on both parties.

7. **Interest**

If a payment is not made on the due date, the customer will be liable to pay interest on any overdue amount at 2% interest per month compounded.

8. **Delivery**

- a. Unless otherwise agreed, the delivery of goods to the CUSTOMER shall be at the CUSTOMER's premises.
- b. ROSSMIN shall make all reasonable efforts to promptly deliver the goods required, however, ROSSMIN shall not be strictly bound by any dates agreed upon.
- c. If the CUSTOMER fails to take delivery of goods on the due date, then ROSSMIN shall be entitled to reasonable costs, including storage and insurance, for the keep of the goods during the delay.
- d. Any delivery notes signed by the CUSTOMER or any agent or any employee of the CUSTOMER shall be deemed to be accurate and binding on the CUSTOMER and shall constitute prime facie proof of delivery.
- e. The mass of all products will be the weight as recorded on ROSSMIN's measuring system or weighbridge.
- f. Goods damaged during delivery and deemed not to be acceptable at ROSSMIN's sole discretion may be returned immediately on the same vehicle subject to the CUSTOMER endorsing the delivery note to that effect.
- g. Any delay in delivery shall not entitle the CUSTOMER to cancel the order or have any claim against ROSSMIN nor shall ROSSMIN be liable for any damages or losses, direct or consequential, which arise from the delay in delivery.
- h. A separate deposit will be charged by ROSSMIN should delivery take place on pallets or in bulk bags, such deposit will be refunded upon return of the pallets or bulk bags in suitable condition for re-use. The deposit will not be refunded should the pallets or bulk bags not be suitable for re-use upon their return, this determination shall be made at the sole discretion of ROSSMIN.

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9. Ownership

- a. Ownership of all goods delivered or supplied by ROSSMIN will remain vested in ROSSMIN until the purchase price has been paid in full.
- b. The risk shall pass to the CUSTOMER when the goods are delivered to the CUSTOMER's premises or the address appointed by the CUSTOMER and ROSSMIN shall not be liable for any damage or loss whatsoever, direct or indirect, consequential or otherwise, arising out of or in connection with the use by the CUSTOMER of the goods.
- c. Should delivery not be possible as a result of any actions or omissions by the CUSTOMER, its employees or representatives, risk shall pass to the CUSTOMER regardless of whether or not ROSSMIN cannot complete delivery to the CUSTOMER.

10. Statement of Accounts

- a. It is recorded that all transactions entered into between the CUSTOMER and ROSSMIN are recorded by ROSSMIN in computerised statements which are sent to the CUSTOMER each month, and which are intended to reflect all transactions entered into between ROSSMIN and the CUSTOMER up to the last day of that month.
- b. Each of the monthly statements shall be deemed to have been received by the CUSTOMER unless the CUSTOMER shall have by not later than the last day of the month following the month to which the statement relates, notified ROSSMIN in writing sent by email that such statement has not been received.
- c. Unless ROSSMIN shall have received notification as envisaged above, that the CUSTOMER has not received a particular monthly statement, the CUSTOMER shall be obliged to notify ROSSMIN in writing sent by registered post within 14 days of the end of the month to which any statement relates, of any items in the monthly statement which th/e CUSTOMER disputes, setting out the nature and amount of the item in dispute as well as the grounds upon which the item in question is disputed.
- d. The CUSTOMER shall have deemed to have acknowledged indebtedness to ROSSMIN in respect of each of the items and the amounts relating thereto which are reflected in each monthly statement and which the CUSTOMER has failed to dispute or query in the manner set out above, shall furthermore be deemed to have admitted that the amount relating to each such item is due owing and payable to ROSSMIN.
- e. Nothing in this clause shall prevent ROSSMIN from rectifying any errors in or omissions from previous monthly statements or including any statements or any transactions which may have occurred prior to the month in question, hereby rectifying any previous errors or omissions.

11. Return of Goods

Goods sold by ROSSMIN to the CUSTOMER are not returnable save at the option of ROSSMIN in the event of the goods not conforming to specification. Such returns or claims will be limited to, at ROSSMIN's discretion, replacement, or a reduced price, or a credit passed on future orders.

12. Whole Agreement

This contract is the entire agreement between the parties. No alteration or variation of these terms and conditions shall be of any force or effect unless reduced to writing and signed by a duly authorised representative of ROSSMIN and by the CUSTOMER.

13. Jurisdiction

The CUSTOMER consents in terms of Section 45 of the Magistrate's Court Act 1944, to the jurisdiction of the Magistrate's Court in respect of any proceedings pursuant to this agreement.

14. Domicilium Citandi et Executandi

The CUSTOMER chooses *domicilium citandi et executandi* (address at which the CUSTOMER chooses to receive all communications and at which legal proceedings are instituted) for all purposes hereunder at:

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Breach

- a. In the event of any breach by the CUSTOMER of any of these terms, ROSSMIN shall be entitled:
- i. to cancel any contract or any part thereof and to claim return of the goods sold thereunder; or
 - ii. to claim from the CUSTOMER immediate payment of all and any monies due by the CUSTOMER to ROSSMIN notwithstanding any earlier agreement for credit, whether same is due for payment or not if:-
 - 1. the CUSTOMER fails to pay any amount due on due date under any contract; or
 - 2. any cheque, promissory note or other bill of exchange given to ROSSMIN is dishonoured upon presentation for payment; or
 - 3. the estate of the CUSTOMER is provisionally or finally sequestrated or is placed into provisional or final liquidation, or an application is made by any creditor of the CUSTOMER to place the CUSTOMER in Business Rescue, or the Directors/Members of the CUSTOMER pass a resolution to institute Business Rescue proceedings of the CUSTOMER; or
 - 4. the CUSTOMER commits any act of insolvency in terms of Section 8 of the Insolvency Act; or
 - 5. the CUSTOMER enters any compromise agreement with its creditors; or
 - 6. the CUSTOMER fails to satisfy any judgment granted against it within seven (7) days of the date of judgment.
- b. Upon the cancellation of the contract for any reason whatsoever, ROSSMIN may repossess the goods if ownership has not been passed to the CUSTOMER in terms of clause 8.

15. Costs

The CUSTOMER shall be liable to pay all legal costs, including collection commission, counsel fees, tracing costs and any other costs arising from the recovery of any amount owing by the CUSTOMER or any legal proceedings against the CUSTOMER, including costs on an attorney and own client scale.

16. Notification of Change of Address

Should either party to this agreement wish to change their specified *domicilium* address they are required to deliver to the other party written notification of the new address by hand, registered mail, or electronic mail if the other party has provided an e-mail address.

17. Exemptions

ROSSMIN shall not be liable in any way whatsoever for loss of profit damage or harm suffered by the CUSTOMER because of any occurrence/negligence by ROSSMIN. The CUSTOMER indemnifies ROSSMIN against all claims that may be made against ROSSMIN, its Directors, Employees and Agents arising out of the manufacture, sale, supply, and delivery of the goods by ROSSMIN to the CUSTOMER.

18. Non-waiver

No extension of time or waiver or relaxation of any of these terms and conditions shall operate as an estoppel against ROSSMIN in respect of its rights hereunder, nor shall it operate to preclude ROSSMIN thereafter from exercising its rights strictly in accordance with such terms and conditions.

19. Certificate of Indebtedness

A certificate signed by any director or managing member of ROSSMIN indicating the amount due and owed by the CUSTOMER to ROSSMIN at any given time, as well as any other factor of which proof may be required, shall be prima facie (on the face of it) proof of the facts therein stated for the purpose of all legal proceedings against the CUSTOMER.

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20. **Warranty**

All ROSSMIN goods and products are in accordance with the specifications as published and contained in the relevant ROSSMIN specification sheet. All other warranties, whether express or implied are excluded.

21. **Arbitration**

- a. The CUSTOMER reserves the right to refer any matter to arbitration should any dispute arise regarding the interpretation of this Agreement or should the CUSTOMER breach any of the terms of this Agreement.
- b. The arbitration will take place at the ROSSMIN head offices under the auspices of Alternative Disputes Resolution Association of South Africa (“ADRASA”).
- c. The arbitrator will be agreed upon by the parties, failing which, shall be nominated and appointed by the executive director of ADRASA and the arbitration will take place in terms of the standard ADRASA agreement prevailing at the time.

End

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