

# AUTOMOTIVE REFINISH SOLUTIONS (PTY)LTD, STANDARD TERMS AND CONDITION OF SALE 2021

These Standard Terms and Conditions of Sale ("T&Cs") contain assumptions of risk and/or liability by you and/or the entity you represent ("Customer") and may limit and exclude liabilities, obligations, and legal responsibilities, which AUTOMOTIVE REFINISH SOLUTIONS (Pty) Ltd will have towards the Customer.

No provision in these T&Cs is intended to contravene the applicable provisions of the Consumer Protection Act, 2008 or similar legislation in the applicable jurisdiction (the "CPA") and these T&Cs must be treated as being qualified, to the extent necessary, to ensure compliance with all applicable laws, including the CPA.

## 1) **SCOPE OF APPLICATION**

The supply of all products and services (collectively, the "Goods") by AUTOMOTIVE REFINISH SOLUTIONS to the Customer shall be governed by these T&Cs

## 2) **PRODUCT QUALITY, SPECIMENS & SAMPLES**

- a) The quality of the Goods shall be determined strictly and exclusively in accordance with AUTOMOTIVE REFINISH SOLUTIONS's product specifications (in effect at delivery of the Goods and available on request).
- b) The properties of specimens and samples (including any descriptions and compositions) constitute examples only and shall not constitute a representation by or create any binding obligations on AUTOMOTIVE REFINISH SOLUTIONS.
- c) AUTOMOTIVE REFINISH SOLUTIONS does not warrant the suitability of the Goods for any specific purpose and gives no express or implied warranties in respect of the Goods.

## 3) **PRICE**

- a) The purchase price of the goods shall be the price reflected in AUTOMOTIVE REFINISH SOLUTIONS's acknowledgment of order or in limited instances AUTOMOTIVE REFINISH SOLUTIONS's standard price list (as provided by AUTOMOTIVE REFINISH SOLUTIONS to the Customer and valid only period indicated thereon); and (b) excludes all VAT (if applicable) and costs and expenses that may be incurred by AUTOMOTIVE REFINISH SOLUTIONS in provision of the Goods.
- b) AUTOMOTIVE REFINISH SOLUTIONS reserves the right to change its prices from time to time at its discretion. Any price changes shall not apply to already Accepted Orders (as defined in clause 4.c).

## 4) **OFFERS AND ACCEPTANCE OF ORDERS**

- a) AUTOMOTIVE REFINISH SOLUTIONS's quotations are not binding offers but merely invitations.
- b) All orders for Goods ("Order") need to be placed by the Customer in writing, in accordance with AUTOMOTIVE REFINISH SOLUTIONS's standard processes.
- c) A binding agreement for the provision of any Goods ("Accepted Order") only comes into existence upon AUTOMOTIVE REFINISH SOLUTIONS's acceptance of an Order.

## 5) **PAYMENT OF AN ACCEPTED ORDER**

Payment shall be made in full to AUTOMOTIVE REFINISH SOLUTIONS and without any set off, deduction or withholding within 30 days of the date of AUTOMOTIVE REFINISH SOLUTIONS's initial statement relating to an Accepted Order, unless expressly otherwise stated on AUTOMOTIVE REFINISH SOLUTIONS's official tax invoice.

Should the Customer fail to pay any invoice timeously, then:

- a) the amount outstanding will attract interest of 2% above the prevailing prime overdraft rate charged by First National Bank from time to time, compounded monthly, from the due date of payment to the actual date of payment.
- b) all amounts payable by the Customer for Goods delivered to Customer shall immediately become due, owing, and payable irrespective of the dates when the Goods were purchased or delivered; and
- c) AUTOMOTIVE REFINISH SOLUTIONS will be entitled to withhold delivery of Goods pursuant to any Accepted Order until date of payment.
- d) A certificate issued and signed by a representative of AUTOMOTIVE REFINISH SOLUTIONS, whose authority need not be proved, in respect of any indebtedness of the Customer to AUTOMOTIVE REFINISH SOLUTIONS shall be prima facie evidence of the Customer's indebtedness to AUTOMOTIVE REFINISH SOLUTIONS.
- e) Subject to applicable law, AUTOMOTIVE REFINISH SOLUTIONS may allocate payments made by the Customer at its discretion.

## 6) **GOODS FACILITIES**

The Customer shall make all payments net of any applicable tax (direct or indirect), duties or other charges. Without limiting the foregoing, if any amount is withheld in the form of withholding tax, the Customer shall pay AUTOMOTIVE REFINISH SOLUTIONS such amount as would be necessary to ensure that the net amount received by

AUTOMOTIVE REFINISH SOLUTIONS would be equal to the full amount AUTOMOTIVE REFINISH SOLUTIONS would have received had no such withholding been required.

**7) OWNERSHIP & RISK**

- a) All risk in and to the Goods shall pass to the Customer on delivery and each party shall take out insurance as per the agreed Incoterms®.
- b) Ownership in all Goods shall remain vested in AUTOMOTIVE REFINISH SOLUTIONS until the purchase price of such Goods has been paid in full.

**8) DELIVERY**

- a) Delivery shall be affected as per the Parties' agreed Incoterms®.
- b) Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. AUTOMOTIVE REFINISH SOLUTIONS shall not be liable for any delay in delivery.
- c) If AUTOMOTIVE REFINISH SOLUTIONS delivers up to and including 5% more or less than the quantity of Goods ordered, the Customer may not reject them.
- d) If the Customer fails to take delivery, without good cause, of the Goods ordered then the risk in the goods shall immediately pass to the Customer and, the Customer shall be liable to pay AUTOMOTIVE REFINISH SOLUTIONS the reasonable costs of storing, insuring and the handling of such Goods.

**9) DAMAGE IN TRANSIT**

Notice of claims arising out of damage in transit must be lodged and carried out in accordance with the agreed Incoterms®. The Customer shall co-operate and assist AUTOMOTIVE REFINISH SOLUTIONS where it is required to lodge or defend any claims.

**10) CUSTOMER'S COMPLIANCE WITH LEGAL REQUIREMENTS**

- a) The Customer shall comply with all laws and regulations regarding import, transport, storage and use of the Goods.
- b) In performing its obligations under this Agreement, the Customer undertakes to comply with all applicable laws and regulations (in particular, but not limited to, relating to antitrust and anti-corruption)

**11) LIMITATION OF LIABILITY AND INDEMNITY**

Subject to the mandatory provisions of any applicable law:

- a) Under no circumstances whatsoever, including (without limitation) as a result of its negligent acts or omissions or those of its servants, agents or contractors or other persons for whom in law it may be liable shall AUTOMOTIVE REFINISH SOLUTIONS be liable to the Customer for any claims, actions, liabilities, damages, costs and expenses suffered or incurred by the Customer in relation to Goods damaged in the Customer's possession, the use or application of the Goods contrary to any instructions and/or warnings provided or available in respect of the Goods, or any other direct or indirect act or omission by the Customer, its employees or agents resulting in the Goods being damaged or causing harm to any person or damage to any property.
- b) AUTOMOTIVE REFINISH SOLUTIONS shall not be liable for any harm caused by the Goods to a third party if the harm caused to the third party is due to the Customer, its employees, or agents' actions (including the provision of inadequate instructions or warnings) in respect of the Goods to the third party.
- c) AUTOMOTIVE REFINISH SOLUTIONS shall not have any liability for indirect, special, or consequential losses or any of the following losses, regardless of whether same may be classified as direct or indirect losses: loss of profit; loss of revenue, loss of use; loss of goodwill or reputation; loss of anticipated savings and loss of production.
- d) Under no circumstances whatsoever, including (without limitation) because of its negligent acts or omissions or those of its servants, agents or contractors or other persons for whom in law it may be liable shall AUTOMOTIVE REFINISH SOLUTIONS be responsible for any loss, damage, injury, or death, however caused, to the Customer or to any of its agents, employees, or sub-contractors.
- e) The Customer agrees to indemnify and hold AUTOMOTIVE REFINISH SOLUTIONS harmless against all and any claims, losses, demands, liability, costs, and expenses of whatsoever nature, which AUTOMOTIVE REFINISH SOLUTIONS may, at any time sustain or incur arising out of the use of the Goods and any conduct on the part of the Customer or its employees provided that such loss, damage, injury or death is not caused by any wilful action or omission or gross negligence of AUTOMOTIVE REFINISH SOLUTIONS or its employees.
- f) Each party ("Indemnifying Party") hereby indemnifies and holds harmless the other party and its respective directors, officers and employees, (collectively, the "Indemnified Parties") from and against any and all claims, actions, liabilities, damages, costs and expenses asserted against, imposed upon or incurred by the Indemnified Parties as a result of or arising out of any contravention of any applicable law, including the Consumer Protection Act, ("Loss") alleged or proven by a consumer or another person, to the extent that such Loss is

attributable to the negligent or intentional conduct of the Indemnifying Party or any contravention by the Indemnifying Party of such applicable law.

- g) The Indemnified Party shall promptly notify the Indemnifying Party of any Loss in respect of which the Indemnified Party intends to claim indemnification under this indemnity. Notwithstanding anything to the contrary contained herein, the failure of the Indemnified Party to so deliver notice to the Indemnifying Party within 14 (fourteen) days after becoming aware of a Loss shall not relieve the Indemnifying Party of any liability to the Indemnified Party under this indemnity.

## **12. SECURITY**

If there are reasonable doubts as to the Customer's ability to pay, or if the Customer is in default of its payment obligations, AUTOMOTIVE REFINISH SOLUTIONS may, subject to further claims, revoke agreed payment periods and make further deliveries dependant on the provision of sufficient security by the Customer.

## **13. NEGOTIABLE INSTRUMENTS**

Acceptance of any negotiable instrument by AUTOMOTIVE REFINISH SOLUTIONS shall not be deemed to be a waiver of AUTOMOTIVE REFINISH SOLUTIONS's rights under this agreement. In relation to a cheque furnished by the Customer, it waives its right to insist on notice of dishonour or protests being given to it if the cheque is dishonoured.

## **14. CUSTOMER'S RIGHTS REGARDING ALLEGEDLY DEFECTIVE GOODS**

Subject to the mandatory provisions of any applicable law:

- a) The Customer shall inspect the Goods immediately following delivery of the Goods for quantity variances and defects.
- b) Any complaints shall then be made in writing to AUTOMOTIVE REFINISH SOLUTIONS at the address stipulated in clause 17.d below: a) immediately where defects are apparent upon reasonable inspection; or b) no later than 7 (seven) days after discovery of the defect, in the case of latent defects but in any event no later than 6 (six) months after receipt of the Goods. The Goods supplied shall otherwise be considered free of defects.
- c) In such case, where the Goods are found to be defective by AUTOMOTIVE REFINISH SOLUTIONS after the Customer has complied with clause
- d) 14.a above, then AUTOMOTIVE REFINISH SOLUTIONS has the right to choose whether to remedy the defect or to supply the Customer with non

## **15. RETURNS POLICY**

Subject to the mandatory provisions of any applicable law:

- a) The Goods are only returnable, at AUTOMOTIVE REFINISH SOLUTIONS's sole discretion and must be returned complete, clean, sealed, undamaged and in their original packaging. The Customer will also need to notify AUTOMOTIVE REFINISH SOLUTIONS of the relevant packaging slip and batch numbers before any return will be considered.
- b) The value of credit or refund for any returned Goods shall be calculated against the payments received by AUTOMOTIVE REFINISH SOLUTIONS with respect to the Goods.
- c) All Goods are to be returned at the Customer's sole risk and expense. Further the Customer shall be liable for a fee of up to 20% (twenty per cent) of the original invoice.

## **16. BREACH**

- a) Should the Customer fail to make any payment of any amount due on the applicable due date, or breach any of the other terms and conditions contained herein (all of which are deemed to be material) or commit an act of insolvency, or allow a judgment to be entered against it, or be provisionally or finally liquidated or sequestered (a "Breach"), and fail and/or refuses to remedy such Breach within 5 (five) business days of written notice by AUTOMOTIVE REFINISH SOLUTIONS calling for such Breach to be remedied, then, without prejudice to and in addition to its other legal remedies and any rights under this agreement, AUTOMOTIVE REFINISH SOLUTIONS shall be entitled to:
  - a. immediately cancel this agreement or any unfulfilled part thereof on written notice to the Customer; and/or
  - b. to claim payment of the full price or the balance thereof (as the case may be) in writing, and failing such payment AUTOMOTIVE REFINISH SOLUTIONS is specifically authorised to repossess all unpaid-for Goods in the possession of the Customer, without further notice to the Customer

#### **17. LEGAL PROCEEDINGS AND NOTICES**

- a) These terms and conditions (including their existence, validity, interpretation, implementation, termination, and enforcement) and all modifications and amendments hereof, shall be governed by and decided upon and constructed and interpreted under and in accordance with the laws of the Republic of South Africa.
- b) For purposes of applying for urgent relief, the Customer and AUTOMOTIVE REFINISH SOLUTIONS hereby consent and submit to the exclusive jurisdiction of the Magistrates Court in any dispute arising from or in connection with this agreement.
- c) A certificate issued and signed by any member or manager of AUTOMOTIVE REFINISH SOLUTIONS, whose authority need not be proved, in respect of any indebtedness of the Customer to AUTOMOTIVE REFINISH SOLUTIONS or in respect of any other fact, including the fact that such Goods were sold and delivered, shall be prima facie (until the contrary is proved) evidence of the Customer's indebtedness to AUTOMOTIVE REFINISH SOLUTIONS and prima facie (until the contrary is proved) evidence of such other fact and prima facie (until the contrary is proved) evidence of the delivery of the Goods.
- d) The Customer's physical address as given on the Goods Application Form shall be recognized as the Customer's address for receipt of notices and execution of 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. AUTOMOTIVE REFINISH SOLUTIONS chooses its domicilium as 21B Fuchsia Street, Nelspruit.
- e) The customer shall be liable for all costs incurred by the supplier in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and own client scale whether incurred prior to or during the institution of legal proceedings or if judgment has been granted, in connection with the satisfaction or enforcement of such judgment.

#### **18. ALTERNATIVE DISPUTE RESOLUTION**

- a) AUTOMOTIVE REFINISH SOLUTIONS and the Customer may agree to refer any dispute arising from or in connection with this agreement to arbitration, which arbitration shall be final and binding on both AUTOMOTIVE REFINISH SOLUTIONS and the Customer and shall only be subject to review by the High Court if one of the established grounds for review exist and under no circumstances shall the arbitrator's decision be appealable to the High Court or any other appropriate body with requisite jurisdiction to hear such a matter.
- b) That arbitration shall be held with only the parties and their representatives present thereat and held in Johannesburg, South Africa. It is the intention that the arbitration shall, where possible, be held and concluded in 21 (twenty-one) business days after it has been demanded. The arbitration shall be subject to the arbitration legislation for the time being in force in South Africa.
- c) The provisions of this clause are severable from the rest of this agreement and shall remain in effect even if this agreement is terminated for any reason

#### **19. GENERAL**

- a) This agreement represents the entire agreement between AUTOMOTIVE REFINISH SOLUTIONS and the Customer.
- b) The Customer acknowledges that it is aware that AUTOMOTIVE REFINISH SOLUTIONS'S dealers and salespersons have no authority to vary these terms and conditions of sale and AUTOMOTIVE REFINISH SOLUTIONS assume no liability and shall not be bound by any statements, warranties or representations made by such persons.
- c) No amendment and/or cancellation of these terms and conditions, shall be of any force or effect unless reduced to writing and signed by, the Customer, and a director of AUTOMOTIVE REFINISH SOLUTIONS.
- d) The Customer acknowledges that no warranties, representations, or guarantees have been made by AUTOMOTIVE REFINISH SOLUTIONS or on behalf of AUTOMOTIVE REFINISH SOLUTIONS which may have induced the Customer to sign this agreement.
- e) No relaxation or indulgence which AUTOMOTIVE REFINISH SOLUTIONS may give at any time regarding the carrying out of the Customer's obligations in terms of any contract shall prejudice or be deemed to be a waiver of any of AUTOMOTIVE REFINISH SOLUTIONS'S right in terms of this agreement.
- f) The Customer shall not cede its rights nor assign its obligation in terms hereof without AUTOMOTIVE REFINISH SOLUTIONS'S prior written consent thereto.
- g) AUTOMOTIVE REFINISH SOLUTIONS shall at any time in its sole discretion be entitled to cede all or any of its rights in terms of this application for Goods facilities including all terms and conditions to any third party with prior notice to the Customer.
- h) The Customer undertakes to notify AUTOMOTIVE REFINISH SOLUTIONS in writing within a period of 7 (seven) days of any change of address, change in ownership, name change or any changes in information as set out in this agreement and shall likewise inform the Customer of any such changes affecting AUTOMOTIVE REFINISH SOLUTIONS.

- i) Each of the terms herein shall be a separate and divisible term and if any such term becomes unenforceable for any reason whatsoever, then the term shall be severable and shall not affect the validity of the other terms.

#### **20. FORCE MAJEURE (Acts Beyond the Parties' Control)**

To the extent any incident or circumstance beyond AUTOMOTIVE REFINISH SOLUTIONS'S control (including natural occurrences, war, strikes, lock-outs, shortages of raw materials and energy, obstruction of transportation, breakdown of manufacturing equipment, fire, explosion, acts of Government or interrupted electricity supply), reduces or delays the availability or delivery of Goods or delays the availability or delivery of Goods from the plant from which AUTOMOTIVE REFINISH SOLUTIONS receives such Goods, such that AUTOMOTIVE REFINISH SOLUTIONS cannot fulfil its obligations under this agreement, and AUTOMOTIVE REFINISH SOLUTIONS has informed the Customer accordingly and without delay, AUTOMOTIVE REFINISH SOLUTIONS shall:

- a) be relieved from its obligations under this agreement to the extent that AUTOMOTIVE REFINISH SOLUTIONS is prevented from performing such obligations and
- b) have no obligation to procure Goods from other sources. If the aforementioned occurrences last for a period of more than 3 (three) months, AUTOMOTIVE REFINISH SOLUTIONS is entitled to withdraw from the agreement without the Customer having any right to compensation.

#### **21. DISCLOSURE OF PERSONAL INFORMATION**

- a) The Customer understands that the personal information given to AUTOMOTIVE REFINISH SOLUTIONS is to be used by AUTOMOTIVE REFINISH SOLUTIONS for the purpose of assessing the Customer's financial position and ability to adhere to this Agreement. The Customer confirms that the information given is accurate and complete. The Customer further agrees to update the information supplied, in order to ensure the accuracy and completeness of the information given, failing which AUTOMOTIVE REFINISH SOLUTIONS will not be liable for any loss, damage or injury as a result of any inaccuracies or lack of completeness of information and the Customer hereby indemnifies AUTOMOTIVE REFINISH SOLUTIONS against any such loss, damage or injury.
- b) AUTOMOTIVE REFINISH SOLUTIONS has the Customer's consent at all times to contact and request information from any persons, credit bureau or business, including those mentioned in the Goods facility application form and to obtain any information relevant to the Customer's credit or financial assessment, including but not limited to, information regarding the amounts purchased from the suppliers per month, length of time the Customer has dealt with such supplier, type of Goods or services purchased and manner and time of payment.
- c) Subject to applicable law, the Customer agrees and understands that information given in confidence to AUTOMOTIVE REFINISH SOLUTIONS by a third party in respect of the Customer will not be disclosed to the Customer.
- d) The Customer hereby consents to and authorises AUTOMOTIVE REFINISH SOLUTIONS at all times to furnish credit or financial information concerning the Customer's dealings with AUTOMOTIVE REFINISH SOLUTIONS to a credit bureau and to any third party seeking a trade reference regarding the Customer in his dealings with AUTOMOTIVE REFINISH SOLUTIONS.
- e) The Customer consents that AUTOMOTIVE REFINISH SOLUTIONS may in its sole discretion store personal information relating to the Customer indefinitely, unless the Customer objects, in which case such personal information will only be stored by AUTOMOTIVE REFINISH SOLUTIONS if it is permitted to do so in terms of relevant legislation.

#### **22. NOTICES**

- a) Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing and if received or deemed to be received by the addressee as stipulated in clauses 22.b) and 22.c) below.
- b) Any notice to a party sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its domicilium citandi et executandi to which post is delivered shall be deemed to have been received on the 7th business day after posting (unless the contrary is proved).
- c) Any notice to a party delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its domicilium citandi et executandi shall be deemed to have been received on the day of delivery.

#### **23. TERMINATION**

This agreement shall commence on the day of last party signing and shall continue for indefinite period unless terminated by either party on two months written notice to the other.

**24. CONTINUING COVERING SURETYSHIP**

- a) I, by my signature hereof bind myself jointly and severally as surety for and co-principal debtor in solidum with the Customer for the due performance of any obligations (whether present or future) of the Debtor and for the payment of all sums of money which the Debtor may now and from time to time hereafter owe or be indebted to AUTOMOTIVE REFINISH SOLUTIONS and the successors and assigns of AUTOMOTIVE REFINISH SOLUTIONS from whatsoever cause arising, whether such indebtedness be incurred by the Debtor solely, or jointly or in partnership with any other person or persons, company or companies, subject to the following –
- b) it is agreed and declared that AUTOMOTIVE REFINISH SOLUTIONS shall be at liberty, without affecting the rights of AUTOMOTIVE REFINISH SOLUTIONS hereunder, to release securities and to give time
- c) to or compound or make any other arrangements with the Debtor or other person or persons, company or companies aforesaid without reference to or approval of me, and that in the event of liquidation, business rescue, insolvency or compromise, no such liquidation, business rescue, insolvency or compromise and no dividend/s or payment/s which AUTOMOTIVE REFINISH SOLUTIONS may receive from the Debtor or any other person or persons, company or companies, or from me shall prejudice the rights of AUTOMOTIVE REFINISH SOLUTIONS to recover from me to the full extent of this suretyship any sum which after the receipt of such dividend/s or payment/s may remain owing by the Debtor;
- d) in the event of any liquidation, business rescue or sequestration of the Debtor I bind myself not to file any claim against the Debtor in competition with AUTOMOTIVE REFINISH SOLUTIONS. Further, in the event of any composition or compromise by the Debtor, whether in terms of the company law or insolvency law, or under common law, I also undertake not to file any claim against the Debtor in competition with AUTOMOTIVE REFINISH SOLUTIONS.
- e) I renounce the benefit of excussion, simultaneous citation and division with the force and effect of which I acknowledge myself to be fully acquainted.
- f) my liability for any amount owing shall not be limited to any payment limit or credit granted by AUTOMOTIVE REFINISH SOLUTIONS.
- g) I agree that this suretyship is to be in addition and without prejudice to any other suretyship/s and security/ies now or hereafter to be held by AUTOMOTIVE REFINISH SOLUTIONS and that it shall remain in force as a continuing security notwithstanding any intermediate settlement of account and notwithstanding my death or legal disability until such time as AUTOMOTIVE REFINISH SOLUTIONS receives written notice from me or from my executor/s, curator/s or other legal representative, as the case may be, terminating it; provided that the provisions of the suretyship shall continue to be of force and effect in respect of all obligations and indebtedness already incurred by the Debtor on the date of termination;
- h) for the purposes of any action against me hereunder, for provisional sentence or otherwise, a certificate signed by the auditor/s of AUTOMOTIVE REFINISH SOLUTIONS as to the amount owing by the Debtor and to the effect that the due date of payment of such amount has arrived shall be prima facie proof of the facts stated therein.
- i) I choose domicilium citandi et executandi for all purposes herein as the same address as the Customer's address given in the Goods Application Form and all notices required to be given to me/us in terms hereof shall be considered duly given if posted to me to the said address.
- j) no indulgence, latitude, or extension of time which may be granted or allowed to the Debtor shall in any way affect my liability hereunder; 24(i) all acknowledgements of debt, admissions of liability and judgments by or against the Debtor shall be binding on me