



PFERD-SOUTH AFRICA (PTY) LIMITED

TERMS AND CONDITIONS

in respect of the application for payment terms

(VERSION 3 – June 2018)

1. GENERAL

- 1.1 These terms and conditions shall apply to any contract of sale of any goods or services by the Company, regardless as to the person of the offeror.
- 1.2 "the **Company**" means Pferd South Africa (Pty) Ltd.
- 1.3 "the **Customer**" means the person or entity applying for an Account with the Company and any person or entity that contracts with the Company for the purchase of goods or delivery of services.
- 1.4 "the **goods**" means the goods indicated on any company forms, documents, price lists, quotations, delivery notes, orders and invoices.
- 1.5 "**Payment and settlement**" does not refer to the customer's instruction to a bank and means that the funds have been transferred and cleared in the Company's nominated bank account.
- 1.6 **This Agreement** for the application of Payment Terms represents the entire agreement between the Company and the Customer and **shall govern all future contractual relationships** between the Company and the Customer, unless otherwise agreed between the parties in writing.
- 1.7 No **amendment and/or alteration and/or variation and/or deletion and/or cancellation** or agreement to cancel, alter, vary, delete and/or cancel any of the terms of this Agreement (or the whole agreement), whether consensual, unilateral or bilateral, shall be of any force and effect, unless reduced to writing with specific reference to the Customer's contrary documentation and signed by a member of the management board of the Company and a duly authorised representative of the Customer.
- 1.8 No relaxation or indulgence which the Company may at any time grant the Customer shall prejudice or be deemed to be a **waiver of any of the Company's rights** in terms of this agreement.
- 1.9 The **Customer shall not cede its rights** nor assign its obligations to any third party.
- 1.10 The **Company shall at any time, in its sole discretion, be entitled to cede all or any of its rights** and/or assign all or any of its obligations in terms of this Agreement to any third party, upon written notice to the Customer. No such written notice shall be required if the Company cedes any of

its rights to any third party *in securitatem debiti*.

- 1.11 The Customer undertakes to notify the Company within a period of seven days of any **change of address or any changes in the information** as set out in this agreement, failing which the Company shall be entitled to cancel this Agreement forthwith.
- 1.12 The **headings** in this document are included for convenience only and are not to be taken into account for the purpose of interpreting this Agreement.
- 1.13 The Customer hereby acknowledges that he has read and understood each term of this Agreement and accepts them as binding. The Customer warrants that the **signatory hereof has been duly authorised** to contract on its behalf.
- 1.14 The Company's rights in terms hereof shall not be exhaustive and shall be in addition to its **common law rights**.

2. ORDERS AND DELIVERIES

- 2.1 **Orders by the Customer** for the Company's goods or services shall be made in writing to such address, electronically or otherwise, as may be nominated by the Company from time to time.
- 2.2 The Customer shall provide the Company with a **valid order number and a delivery address**, when placing any order with the Company, unless the delivery address is the Customer's principal address indicated on the first page of this agreement which shall be deemed to be the case if no other address is provided.
- 2.3 Oral orders may similarly be accepted by the Company, but the Company will **not be responsible for any errors or misunderstandings** occasioned by the Customer's failure to confirm orders in writing and the Customer shall bear the onus in that regard.
- 2.4 The Company is **not obliged to accept** any orders and, at the discretion of the Company, all orders will be processed in accordance with its normal business practices. Any orders submitted by a Customer shall be deemed to be irrevocable for 21 (twenty one) days.
- 2.5 **Any delivery note (carbon copy or original) signed by the Customer** and held by the Company shall be conclusive proof that full delivery has been made to the Customer as ordered, unless written

notice of a claim is received by the Company within ten (10) days after receipt of the goods by the Customer. The Customer agrees that the signature of any agent, contractor, sub-contractor or employee of the Customer on the Company's official delivery note, invoice, waybill of the delivery note of any authorised independent carrier will constitute reasonable proof of delivery of the goods purchased

- 2.6 Unless the Company and the Customer agree otherwise, **delivery of the goods** shall take place at the Company's factory or store and the risk in and to the goods shall pass to the Customer upon delivery at the Company's premises subject to the examination set out in 2.9 hereunder.
- 2.7 The Customer shall be allowed (on request) an opportunity to **examine the goods** at the Company's premises for the purpose of ascertaining whether the Customer is satisfied with them and whether they correspond in all material aspects and characteristics with what the Customer expected or, if specifically ordered, reasonable conform to the material specifications. If the Company instructs a forwarder and pays for transport on the Customer's specific instruction or special request, this shall not in any way prejudice the Company or be interpreted as appointing the forwarder as agent of the Company, or as varying or waiving any of these terms and conditions. The Company may appoint a carrier or such terms and conditions as it deems fit. In any event, if the Customer requests delivery, that delivery shall be for the account of the Customer, unless otherwise agreed in writing.
- 2.8 If the Company is requested to deliver the goods to the Customer, the **Customer must arrange off-loading of the goods at its exclusive risk**. The risk in and to the goods shall pass to the Customer at the time of arrival at the Customer, but in any event before off-loading.

Any assistance that employees of the Company or employees of agents of the Company may render with off-loading shall be at the **sole risk** of the Customer, who shall be solely responsible for any and all damage of whatever nature caused as a result of such assistance.

If the Customer should choose to collect the goods from the Company's premises using its own or its agent's transport, such **collection shall be entirely at the Customer's risk**, and the Customer shall be responsible for all damage of whatsoever nature caused as a result of or during such collection or thereafter.

- 2.9 The Company shall endeavour to deliver the goods on the dates that the Customer specifies, but shall **not in any way be liable** for any damages which the Customer may suffer as a result of the failure by the Company or its agent to deliver the goods in time. The Customer shall not be entitled to cancel any order by reason of such delay and the Company's right to recover all monies owing to it shall not be affected by failure to effect timeous delivery.
- 2.10 **If the Customer fails to take delivery** of the goods ordered, or in any way delays the delivery of the goods ordered, then the risk in the goods shall pass as at the time the goods were ready for delivery to the Customer and the Customer shall be liable to pay the Company the reasonable costs of storing, insuring and handling the goods, until delivery takes place upon demand.
- 2.11 *Vis Major*, Act of God or *casus fortuitous*, which shall (without limiting the generality of the foregoing) be deemed to include strikes, industrial action, breakdown of machinery, failure of usual sources of supply of materials, war, riot, civil commotion,

insurrection, civil disobedience, act of Government, Provincial or Local Authority, or legislation preventing the effective execution or performance of any part of this contract on the terms and conditions prescribed therein, or other contingencies of whatsoever nature and howsoever arising, beyond the reasonable control of the Company, **shall excuse a delay in or suspension of deliveries**, and the Company may within 30 (thirty) days after the occurrence of such contingency, cancel the Agreement, as a whole, or any remaining part thereof, if such *Vis Major* persists.

- 2.12 Notwithstanding any other provision in this Agreement to the contrary, the Company's **obligations to produce and deliver the goods** will in all cases be subject to the following conditions precedent; (i) the availability to the Company of any materials and supplies required for the manufacturing of the goods; (ii) the timeous receipt of any orders (including all drawings and specifications) required by the Company from the Customer for the manufacture of the goods.

- 2.13 **Time** shall not be of the essence as regards delivery.

3. OWNERSHIP

- 3.1 Notwithstanding passing of all risk in and to all goods sold by the Company to the Customer on delivery, **ownership in all goods sold and delivered** shall remain vested in the Company until the full purchase price has been paid and in the event of a breach of these terms and conditions by the Customer or if the Customer is sequestrated or placed under (provisional) liquidation or judicial management or commits any act of insolvency or enters into any compromise with its creditors or fails to satisfy a judgement granted against it within 7 days of the date of judgement. The company shall without prejudice to any further rights vested in it, be entitled to request any competent court for an urgent order to take possession of such goods and remove them from the premises where they are found. Notwithstanding this, the Company of its duly appointed agents shall at all business hours be entitled to enter the premises and inspect the goods.

- 3.2 The Customer shall **fully insure** the goods purchased from the Company against loss or damage (to a maximum amount equal to the Customer's outstanding obligations in terms of this Agreement), until the full purchase price has been paid by the Customer for such goods.

Pending payment to the Company for goods purchased, all benefits in terms of the insurance policy selected by the Customer relating to the insurance of such goods are hereby ceded to the Company and the Customer shall be obliged, upon written request by the Company to let the Company have a copy of the relevant insurance policy and informs the insurance company accordingly.

- 3.3 Should the Company take possession of any such goods which have not been paid for, the Customer shall be entitled to a **credit** in respect of the goods so returned, being the price at which the goods were invoiced or the value thereof as at the time of return as determined by an independent appraiser of the Company's choice, whatever the lower.

4. GOODS RETURNED

- 4.1 Goods returned will only be received back at the **sole discretion** of the Company provided they are returned in the same condition as originally supplied. Soiled or damaged goods will be deemed to have been sold to the Customer and will not be accepted back for credit.

- 4.2 Under no circumstances will the Company be liable for damage arising from **misuse or abuse** of the goods.
- 4.3 Where machinery is supplied the Customer is limited to the **factory guarantee** that may exist. It is the responsibility of the Customer to return such machinery to the premises of the Company.
- 4.4 The amount to be credited to the customer for goods returned will be calculated at the invoice value when the goods were purchased minus a **10% handling charge**, provided the Company accepts the return.
- 4.5 The Customer Services and Credit Control Departments **must be notified** of the relevant invoice and delivery note before any claim will be considered.
- 4.6 All goods are to be returned at the **Customer's expense** and the risk in the goods remains with the Customer until the Company receives and accepts the goods at the Company's premises.

5. QUOTATIONS AND PRICING

- 5.1 All quotes will remain valid for a period of **21 days** from the date of the quote.
- 5.2 **The price of goods** will be in accordance with the Company's official price list ruling for them at the date on which they are delivered to the purchaser.
- 5.3 The prices of the goods as set out in the official price list **do not include** transportation costs, delivery costs, or VAT, which will be charged as an extra.
- 5.4 The Company has the right, **without notice** to the Customer, to change the prices of its goods from time to time.
- 5.5 The Company price lists shall be considered merely as a **guide** to the Customer.
- 5.6 **Trade discounts** are allowed at the sole discretion of the Company.

6. PAYMENT

- 6.1 The Customer agrees that **any amount due and payable to the Company shall be determined and proven by a certificate** issued by the Company and signed on its behalf by any duly authorised person, which authority need not to be proven. Such certificate shall be binding and shall be prima facie proof of the indebtedness of the Customer, and shall be a liquid document for the purposes of obtaining provisional and summary judgement herein or to prove a claim in insolvency of the Customer.
- 6.2 Payment is to be made to the Company's bank as nominated from time to time free of bank exchange or any other set-off or deduction, **30 (thirty) days from date of the Company's statement**, unless otherwise agreed to in writing by the Company.
- 6.3 The Customer carries the risk associated with or arising from the method elected to effect payment.
- 6.4 Should any amount **not be paid by the Customer on due date** then the whole amount in respect of all purchases by the Customer ("the principal sum") shall thereupon forthwith become due, owing and payable without further notice, irrespective of the date when the goods were purchased.
- 6.5 The Customer shall not be entitled to **claim set-off or deduction of any amounts from any payment due** by the Customer to the Company for goods or

services supplied or any other cause arising, unless such amount has been confirmed to be incorrect by the Company or a final judgment has been granted in favour of the Customer.

- 6.6 The Company may appropriate all payments made by the Customer to such accounts as it will in its sole discretion decide.
- 6.7 The Company shall have the right, without notice, to **suspend facilities and deliveries or demand cash** and to exercise all its other rights if any amount due by the Customer remains unpaid.
- 6.8 If any amount owed by the Customer is **not paid on due date**, then without prejudice to any other right it may have, the Company may immediately suspend the carrying out of its then uncompleted deliveries until the payment is made.
- 6.9 If **more than one delivery** is to be made then each delivery will be invoiced separately.
- 6.10 The contract price is **strictly net** and not subject to any discounts unless otherwise agreed in writing.

Any discount agreed in writing shall only be allowed if payment is received by the Company on or before the agreed date and shall only apply to the actual price of the invoiced goods.

- 6.11 The Company reserves the right and sole discretion not to allow any **settlement discount**.
- 6.12 **Any dispute** shall not relieve the Customer from any liability for the due and timeous performance of all its obligations in terms of this Agreement.
- 6.13 Payment must be made and will only be accepted in the **currency of the invoice**, unless otherwise agreed in writing.

7. ACCOUNT FACILITIES

- 7.1 The Customer understands that the decision to grant a **deferred payment date** to the Customer or to withdraw same is and remains at all times in the sole discretion of the Company.
- 7.2 The Company further reserves the right to reduce the amounts and payments deferred, by written notice, which reduction will take effect on delivery of the written notice to the Customer. All amounts thereupon not being deferred any longer shall immediately become, **subject to clause 6.2 above**, due, owing and payable.
- 7.3 The **credit limit** granted to the Customer shall not be deemed to be a limit of the Customer's indebtedness to the Company. The credit limit extended to the customer may be temporarily increased to exceed the agreed credit limit without limiting the Company's rights to recover any amounts due from the Customer.
- 7.4 The Customer understands that the **personal information** given in this agreement is to be used by the Company for the purposes of assessing its credit worthiness. The Customer confirms that the information given by it in the Application for Deferment of Payment is accurate and complete. The Customer further undertakes to update the information supplied, as and when necessary in order to ensure the accuracy of the above information, The Customer expressly agrees that the furnishing of wrong or incomplete information may result in loss to the Company.
- 7.5 The Customer hereby authorises the Company at all times to contact and **request information** from

any persons, credit bureau or businesses, including those mentioned in the credit application form, or any statutory credit bodies and obtain any information relevant to the Customer's credit assessment, including but not limited to, credit history including applications for credit, credit agreements, pattern of payment, default under any such agreements and termination of agreements. Such information will only be used for the purpose permitted or required in terms of applicable legislation.

7.6 All information received, compiled, retained or reported and pertaining to the Customer shall and will be kept **confidential** by the Company and the Company shall -

- I. use that information only for a purpose permitted or required in terms of national legislation or applicable provincial legislation; and
- II. report or release that information only to the Customer or to another person -

(a) to the extent permitted or required by national legislation or applicable provincial legislation; or

(b) as directed by the instructions of the Customer, or an order of a court.

7.7 The Customer may **terminate this Agreement** at any time by paying the then unpaid balance of debt outstanding. In the event that the Customer is in default, the Company may immediately suspend or, at its sole discretion, cancel the agreement and request full settlement of all amounts then outstanding, and settlement to be effected within 21 days of the date of the request.

7.8 The Company may **cancel the contract** or any uncompleted part of it if the Customer commits a breach of the terms and conditions or the contractor being an individual dies or is provisionally or finally sequestrated or surrenders or makes application to surrender his estate, or be it a partnership, the partnership is terminated; or being a company or close corporation is placed under a provisional or a final order of liquidation or judicial management, or has a judgement recorded against it, which remains unsatisfied for 7 (seven) days; or compromises or attempts to compromise generally with any of the other Customer's creditors.

7.9 Any **condonation** of any of the provisions hereto or any other act or relaxation, indulgence or grant the part of the Company shall not in any way operate or be deemed to be a waiver by the Company of any rights under this Agreement, or be construed as a novation thereof.

7.10 Upon the **cancellation of the Agreement** for any reason whatsoever all amounts then owed by the Customer to the Company in terms of the Agreement shall immediately become due, owing and payable.

8. ACCOUNTS AND STATEMENTS

8.1 Statements, invoices and the like may be delivered -

- I. in writing, either to the Customer in person or by short message service, mail, fax, e-mail or other electronic form of communication, to the extent that the Company is equipped to effect such facilities, as directed by the Customer when making the request.

8.2 The **customer statement will include** all or any of the following:-

- I. the current balance of the Customer's account;

II. any amounts credited or debited during a period specified in the statement.

III. any amounts currently overdue and when each such amount became due; and

IV. any amount currently payable and the date it became due.

8.3 The Company is not required to provide information more than **three years** after the account was closed.

9. WARRANTIES AND GUARANTEES

9.1 Subject to any express warranty or guarantee by the Company in writing, and which is intended to form part of this agreement, the Company does not:-

- (i) give **any warranty or guarantee**, or make any representations whatsoever in respect of the goods or the fitness of the goods or any part thereof for any particular purpose, whether or not that purpose is known to the Company;

(ii) **accept liability** for any defect (latent or patent) in the goods or part of them.

9.2 **All goods supplied will be to the Company's stated specification.** All specifications, illustrations, drawings, diagrams, price lists, dimensions, performance figures, advertisements, brochures and other technical data furnished by the Company in respect of the goods, and whether in writing or not, are furnished only on the basis that they will not form part of the contract or be relied upon by the Customer for any purpose, unless and to the extent that they are expressly warranted or guaranteed in writing by the Company and are, as such, expressly stated by the Company to form part of the contract.

9.3 If any goods or any part of them are to be **supplied in accordance with any specific specification**, measurements, or other instructions furnished by the Customer, the Customer shall not have any claim of any nature whatsoever against the Company (i) for any loss or damage sustaining by Customer as a result of any error, discrepancy or defect in those specifications, measurements or other instructions; (ii) if the goods in question are not suitable for the purpose for which they are required whether those purposes were known to the Company, or not.

9.4 The Company shall in no circumstances whatsoever be liable for any **loss of profit or any damage**, direct or indirect, consequential or otherwise, sustained by the Customer. Without derogating from the generality of the foregoing the Company shall not be liable for gross negligence or the gross negligence of any of its agents or employees.

9.5 Subject to and without in any way limiting the provision of **clause 9.4** the Company's liability to the Customer for any damages, sustained by the Customer from any cause whatever, including any damages arising out the Company's negligence or that of its servants, agents or subcontractors, shall in any event and under all circumstances be limited to the replacement of defective goods.

9.6 The Company **disclaims all liability** to the Customer in connection with the Company's performance or the Customer's use of the goods supplied and in no event will the Company be liable to the Customer for delictual, special, indirect or consequential damages including but not limited to, loss of profits.

9.7 The Company will not incur any liability of whatsoever nature to the Customer or any third party for the **accuracy and/or efficiency of the designs**

or specifications of the goods, either in respect of new or repeat orders placed by the Customer.

9.8 The Customer hereby indemnifies the Company for any claims of third parties, arising out of the supply of the goods by the Customer to the third party from any cause whatsoever and however arising.

9.9 All warranties and guarantees cease to exist if goods aren't handled as prescribed. The Customer undertakes to only use the goods according to the Company's instruction manual. The Customer undertakes to ensure that all its employees follow the instruction set out in the instruction manual.

10. JURISDICTION AND LEGAL PROCEEDINGS

10.1 All provisions and the various clauses and sub-clauses of this agreement are notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision, clause or sub-clause of this agreement, which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as pro non scripto and the remaining provisions, clauses and sub-clauses of this agreement shall remain in full force and effect. The parties declare that it is their intention that this agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

10.2 The Customer's domicilium as given on the first page of this document, is hereby chosen by the Customer as the Customer's domicilium citandi et executandi (domicilium) for all purposes in terms of this agreement, whether in respect of the serving of any court process, notices, or communications of whatever nature.

10.3 Any notice shall be deemed to have been received by the Customer within five days of it having been sent by prepaid registered mail to the Customer's business or postal address chosen by the Customer or on the business day following the date of it having been faxed or e-mailed to any of the Customer's fax numbers or e-mail addresses or in the event of it having been delivered by hand to the customer, on the day of delivery.

10.4 Regardless of the place of execution or performance under these terms and conditions or domicile of the Customer, the terms and conditions of this Agreement (including its validity) and all modifications and amendments hereof, shall be governed by and decided upon and construed in accordance with the laws of the Republic of South Africa.

10.5 A certificate issued and signed by a director or manager of the Company, whose authority need not be proved, in respect of any indebtedness of the Customer to the Company, delivery of the goods or in respect of any other fact, shall constitute prima facie evidence of the Customer's indebtedness to the Company and prima facie evidence of the delivery of the goods and prima facie evidence of such other fact.

10.6 The Customer shall pay all legal costs, including attorney and client costs, counsel's fees, tracing agent's fees and collection charges which the Company may incur in taking any steps pursuant to any breach of these conditions by the Customer.

10.7 Any dispute arising out of or in connection with this agreement (including its validity) shall be referred to

arbitration in terms of the commercial rules of the Arbitration Foundation of South Africa ("AFSA") before one arbitrator in the English Language and in Johannesburg.

10.8 The arbitrator must be a person agreed upon by the parties or, failing such agreement within 10 (ten) days of arbitration having been requested, the arbitrator shall be appointed by AFSA.

10.9 Nothing contained in this clause 10 shall prevent either party to seek relief from the High Court of South Africa in case of any matter having to be decided on an urgent basis, pending the outcome of arbitration to be instituted. For the purpose of such relief sought the parties hereby agree that the South Gauteng High Court, Johannesburg, shall have jurisdiction in that regard.

10.10 These terms and conditions, read together with the Application for Deferment of Payment signed by the parties, constitute the whole of the agreement between the parties relating to the matters dealt with herein. No undertaking, representation, terms and conditions or any variation or addition relating to the subject matter hereof not incorporated herein or reduced to writing and signed by the parties shall be binding.

11. TRUSTS, CLOSE CORPORATIONS AND SOLE PROPRIETORS

11.1 Deed of surety must be completed in full, also bearing signature of witnesses.

11.2 A Tax clearance certificate confirms the Customer's compliance and by completing this credit application the Customer confirms that it is compliant and up to date with all statutory obligations.

(Duly authorised) (Duly authorised)

Name Name

Position Position