

## This General Terms and Conditions for Purchase and Deliveries

These General Terms and Conditions ("**GTCs**") are entered into between **BSH Home Appliances (Pty) Ltd**, a company registered in accordance with laws of South Africa with registration number 1985/005742/07 ("**BSH**") and \_\_\_\_\_, a company registered in accordance with laws of South Africa with registration number \_\_\_\_\_ ("**the Supplier**").

These GTCs shall apply notwithstanding any conflicting, contrary or additional terms and conditions in any Purchase Confirmation or other document or communication received from the Supplier. These GTCs may only be waived or modified in a written agreement signed by an authorized representative of the Parties. Neither Supplier's issue of an order confirmation nor BSH's failure to object to conflicting, contrary or additional terms and conditions submitted by the Supplier shall be deemed an acceptance of such terms and conditions or a waiver of the provisions of these GTCs by BSH.

### 1 **Definitions**

- 1.1 "**Applicable Law**" means any of the following, from time to time, to the extent same applies to a Party or any Goods, as applicable and wherever occurring:
- 1.1.1 any statute, regulation, policy, by-law, directive, notice or subordinate legislation (including treaties, multinational conventions and the like having the force of law);
  - 1.1.2 the common law;
  - 1.1.3 any binding court order, judgment or decree;
  - 1.1.4 any applicable industry code, policy or standard enforceable by law; or
  - 1.1.5 any applicable direction, policy or order that is given by a regulator;
- 1.2 "**Change Request**" means a written request issued by BSH in respect of any Goods ordered, prior to delivery in respect of such Goods;
- 1.3 "**FOSS**" is Free and Open Source Software provided by the right holder to any users royalty-free with the right to process and/or disseminate on the basis of a licence or other contractual arrangement;
- 1.4 "**Goods**" means any goods, components, parts or products ordered by BSH from the Supplier, as set out in specific Purchase Orders, which Goods shall be supplied by the Supplier to BSH on the terms of the relevant Supply Agreement;
- 1.5 "**GTCs**" means these general terms and conditions of Supply which apply to each consignment of Goods supplied by the Supplier pursuant to a Supply Agreement;
- 1.6 "**Order Confirmation**" means the written confirmation issued by the Supplier on the basis contemplated in clause 2.2;
- 1.7 "**Parties**" means the Supplier and BSH and a reference to a "**Party**" shall be a reference to one of them;
- 1.8 "**Purchase Order**" means a written purchase order issued by BSH to the Supplier setting out the quantity and Specifications of the Goods it wishes to order, as well as any applicable delivery deadlines. The issue of Purchase Orders and call-ups via remote data transmission and EDP printouts, including those from BSH's order centres, shall constitute valid written purchase orders for the purposes of a Supply Agreement;
- 1.9 "**Sales Prices**" means the purchase prices for the Goods, as specified in the relevant quote issued by the Supplier to BSH on request;
- 1.10 "**Specifications**" means the specifications as to quality and type of specific Goods ordered by BSH;
- 1.11 "**Supply Agreement**" means the agreement comprising these GTCs, the Purchase Order and the Order Confirmation, together with any other documentation referred to in the Purchase Order.

### 2 **Purchase Orders**

- 2.1 If BSH wishes to acquire Goods from the Supplier, it shall issue a Purchase Order to the Supplier.
- 2.2 The Supplier shall, within 5 days of receipt of such Purchase Order, issue an Order Confirmation, confirming the mode of transport of the Goods, committed delivery deadlines, Sales Prices, Specifications and other

relevant information relating to the Goods Ordered. If the supplier does not issue an order confirmation within 5 days, the purchase order will be considered as accepted by the supplier.

- 2.3 On issue of the Supplier's Order Confirmation, a specific Supply Agreement shall come into existence. In this regard:
- 2.3.1 a Supply Agreement may not be varied or cancelled by the Supplier, unless otherwise agreed by BSH in writing;
- 2.3.2 BSH may at any time prior to delivery of any Goods issue a Change Request. The Supplier shall examine BSH's Change Request and determine the impact of such Change Request on the consignment of Goods to which it relates and notify BSH of the effect of the requested changes on such order (including, without limitation, deadlines, scheduling, acceptance terms and remuneration) and shall submit a quotation for - implementing the Change Request within 3 Business Days of receipt thereof at prices in line with prevailing market rates. Only when BSH notifies the Supplier of its acceptance of its quotation for the change in writing shall the Change Request be implemented.
- 2.4 For the purposes of clarity each Purchase Order confirmed by an Order Confirmation shall give rise to a discrete Supply Agreement.

### 3 **Sales Prices**

- 3.1 BSH may from time to time request Sales Prices for specific Goods from the Supplier, which Sales Prices the Supplier shall provide to BSH. Such Sales Prices are intended to be indicative and the Supplier shall confirm the actual Sales Prices when it issues its Order Confirmation in terms of clause 2.2. Where any Sales Prices are varied by the Supplier, any such variation shall be subject to the written approval of BSH. Sales Prices shall include all packaging required in respect of any Goods.
- 3.2 If BSH wishes to order Goods for which it does not have Sales Prices it shall request a quote from the Supplier prior to placing the Purchase Order.
- 3.3 Unless otherwise agreed by the Parties in writing with the exception of South African VAT, BSH shall not be liable for the payment of any taxes, duties, or tariffs in respect of any Goods.

### 4 **Payment**

- 4.1 The Supplier shall invoice BSH for all Goods supplied to BSH by the Supplier as soon as possible after delivery of the Goods in accordance with the provisions of the Supply Agreement. An invoice shall only be valid if it reflects BSH's purchase order number.
- 4.2 The Supplier shall send a statement at the end of each month reflecting the amounts invoiced by the Supplier to BSH for Goods supplied by the Supplier during the preceding month and all invoices in respect thereof.
- 4.3 BSH shall pay all such amounts within 45 days of statement, without deduction or set-off.
- 4.4 Payment of invoices by BSH shall not constitute any acknowledgement by BSH that the Goods delivered comply with the provisions of the Supply Agreement.
- 4.5 Should the BSH dispute any amount reflected in any invoice or statement in good faith, BSH shall advise the Supplier of such disputed amounts, together with the reasons for disputing same, in writing within 30 days of any invoice, provided that BSH shall pay all undisputed amounts in respect of such invoice; and BSH shall not be entitled to withhold any such undisputed amounts pending resolution of the dispute.

### 5 **Delivery, Title and Risk of Loss**

- 5.1 Unless otherwise specified in the Order Confirmation, all Goods supplied under a Supply Agreement shall be supplied delivery duty paid to the delivery address specified by BSH in the Purchase Order ("**Delivery Address**") and ownership and risk in the Goods shall pass on acceptance of delivery by BSH. The Supplier shall be responsible for unloading the Goods at BSH's Delivery Address.
- 5.2 Notwithstanding the provisions of clause 5.1, the risk in Goods which require assembly or installation shall pass upon written acceptance thereof by BSH, which shall not be unreasonably delayed. If BSH fails to accept any such Goods and persists in such failure for more than 7 days after receipt of written notice from the Supplier requiring it to accept such Goods, such Goods shall be deemed to have been accepted by BSH upon the lapsing of such 7 days period.

- 5.3 The Supplier shall provide BSH with all documents that are required for the safe operation of the Goods and/or those specified in the Specifications.
- 5.4 Time is of the essence in respect of the delivery of Goods and BSH reserves the right to reject any Goods which are delivered later than any delivery deadlines committed to by the Supplier in a Supply Agreement (including the timeous completion by the Supplier of any assembly, installation or other services requiring acceptance).
- 5.5 The Supplier shall notify BSH in writing as soon as it becomes aware of any delay in the delivery of any Goods ("**Delay Notification**") and shall act in accordance with BSH's instructions in response to any such Delay Notification. The Supplier shall issue a Delay Notification even if it is not responsible for the delay. In such circumstances, BSH may, on written notice to the Supplier:
- 5.5.1 accept the delay in delivery, provided that acceptance of delay shall not;
- 5.5.2 cancel the relevant Supply Agreement, in whole or in part, without liability to the Supplier;
- in both instances without derogating from BSH's right to claim any damages or losses incurred by BSH arising out of such delay.
- 5.6 BSH shall, to the extent operationally feasible for BSH, dispose of all packaging material in respect of Goods and charge the costs of Supplier to the Supplier. If BSH is unable to dispose of such packaging, it shall notify the Supplier in writing, in which event the Supplier shall collect such packaging from BSH on a regular basis and duly dispose of it at its own cost.

## 6 ***Incoming goods inspection***

- 6.1 Upon delivery of any Goods which do not require assembly, installation or other services requiring acceptance, BSH shall inspect such Goods to determine whether they correspond to the Specifications and other requirements of the Supply Agreement and whether there are any visible transport damages or visible defects.
- 6.2 The Supplier hereby indemnifies and holds BSH harmless against any additional costs and/or other damages incurred by BSH arising out of the delivery of Goods which do not meet the Specifications or which are damaged in transit.

## 7 ***Spare parts for obsolete series production requirements***

- 7.1 The Supplier undertakes to supply spare parts for all Goods supplied during the term of these GTCs for no less than 10 years after the delivery of such Goods, at market-related prices. These GTCs shall likewise apply to the supply of such spare parts.
- 7.2 BSH may, within 6 months after the end of production of any Goods or components ("**EOP**") order spare parts to cover BSH's interim requirements in respect of Goods ordered under these GTCs.
- 7.3 The Supplier may also, subject to the written consent of BSH, supply spare parts from current production, at no additional cost to BSH and without any impairment of the quality of the spare parts.
- 7.4 After EOP, Spare parts shall be supplied to spare parts warehouses notified by BSH to the Supplier.

## 8 ***Third Party Rights***

- 8.1 The Supplier hereby warrants that all Goods provided in terms of a Supply Agreement:
- 8.1.1 do not infringe the intellectual property rights of any third party; and
- 8.1.2 are free of any other third-party rights;
- and the Supplier hereby indemnifies and holds BSH harmless against any claims, losses or damages suffered by BSH arising out of any third party claims in respect of the Goods, including any damages suffered by BSH or any of its customers arising out of any delays caused due to a breach of the warranty contemplated in clause 8.1. In addition, the Supplier shall, at BSH's option:
- 8.1.3 attempt to obtain a licence from the property right holder; or
- 8.1.4 accept the return of the Goods at the Supplier's cost.

## 9 **Warranties**

- 9.1 Supplier warrants to BSH that all Goods shall materially comply with the Specifications of such Goods set out in the relevant Supply Agreement and the Supplier shall comply with all Applicable Laws relevant to the shipping, export and import of the Goods.
- 9.2 Supplier hereby warrants all Goods supplied pursuant to a Supply Agreement against defects in workmanship and quality:
- 9.2.1 in respect of any Goods supplied which are incorporated in any BSH products, a period of 36 months from the date on which the relevant product is supplied to an end customer;
- 9.2.2 in all other cases, a period of 12 months from the passing of risk in the relevant Goods to BSH.
- 9.3 Should a warranty claim arise in respect of either clause 9.1 or 9.2, the Supplier shall, at the written election of BSH,
- 9.3.1 replace or remedy the defective Goods; or
- 9.3.2 apply a reasonable price reduction to the Goods supplied and reimburse BSH the relevant amounts within 7 days of receipt of BSH's written election.
- 9.4 In urgent cases (e.g. to prevent interruption of production), BSH may remedy the defective Goods itself, at the Supplier's expense. The Supplier shall reimburse BSH the relevant amounts within 7 days of receipt of BSH's written notice of the circumstances contemplated in this clause arising.
- 9.5 The cost of returning all defective Goods subject to warranty shall be for the Supplier's account. Risk in the relevant defective Goods shall pass to the Supplier once such Goods are shipped from BSH.
- 9.6 In cases of subsequent fulfilment, the Supplier undertakes to bear all expenses necessary for the purpose of subsequent fulfilment, in particular but without limitation transportation costs, travel costs, labour costs and the cost of materials as well as costs of removal and subsequent reinstallation.
- 9.7 All Goods must comply with Applicable Law relating to the restriction of the use of certain hazardous substances in electrical and electronic equipment. Furthermore, hazardous substances must be specified and their conformity confirmed to BSH using the BSH Declaration List or in such other form as may be specified by BSH (<http://www.bsh-group.de/index.php?page=1144>).

## 10 **BSH Tools, Materials etc.**

- 10.1 Tools, moulds, samples, models, profiles, drawings, test specifications, standard specification sheets, art work masters and gauges provided by BSH to the Supplier ("**BSH Tools**"), as well as Goods manufactured according to them may not be disclosed or provided to any third parties, nor used by the Supplier for any purpose other than fulfilling its obligations under a Supply Agreement.
- 10.2 BSH shall retain title to all BSH Tools and all materials or parts supplied by BSH to the Supplier ("**BSH Materials**"). Such BSH Materials may only be used by the Supplier for the purposes of supplying Goods in terms of Supply Agreements.
- 10.3 The BSH Materials must be protected against unauthorised inspection and use and shall be returned to BSH on the written request of BSH, within 7 days of receipt by the Supplier of such request. The Supplier shall be liable for all damage or loss to such BSH Materials, fair wear and tear excepted.

## 11 **Foreign trade**

The Supplier shall notify BSH in writing of any permit requirements relating to the (re-)export of the Goods according to South African, European, US export and customs regulations, applicable to the contractual relationship, and of export and customs regulations of the country of origin of the Goods. For this purpose, the Supplier shall provide BSH with all necessary information. This includes, without limitation:

- 11.1 all relevant export list numbers;
- 11.2 the Export Control Classification Number (ECCN) of the U.S. Commerce Control List if the Goods fall within the scope of the U.S. Export Control Administration Regulations;
- 11.3 the customs tariff number according to the current commodity classification of foreign trade statistics and the HS Code (Harmonized System);

- 11.4 declaration of origin (non-preferential origin) of each item of Goods;
- 11.5 the Supplier's declaration on the preferential origin for suppliers from the European Union (if requested by BSH);
- 11.6 preference certificates for non-European suppliers (if requested by BSH).

At BSH's written request, the Supplier shall provide all other foreign trade data relating to the Goods (and their components) to be delivered in terms of a Supply Agreement and notify BSH immediately (before delivery of the relevant Goods) in writing of any changes to the above data.

## 12 **Open Source Software**

- 12.1 The Supplier undertakes that its service includes only FOSS, the use thereof having been previously approved in writing by BSH.
- 12.2 If the Supplier uses approved FOSS, the Supplier shall be obliged, irrespective of its obligation to comply with the terms of the licence, to provide BSH with a list of all FOSS components used, indicating the licence respectively to be used, a copy of the full licence text and the existing copyright information and copyright notices, and to make available the corresponding source code of the FOSS components.

## 13 **Corporate social responsibility**

The Supplier undertakes to comply with the laws of the respectively applicable legal system(s), not to tolerate any form of corruption and bribery, to respect the fundamental rights of its employees and the prohibition on child and forced labour. The Supplier shall furthermore assume responsibility for the health and safety of its employees at the workplace, provide for fair pay and working hours, comply with environmental legislation and use its best efforts to promote and demand compliance with such principles from its own suppliers.

## 14 **Business liability insurance and product liability insurance**

The Supplier shall at all times during the term of any Supply Agreement maintain appropriate business liability and product liability insurance and to maintain them for at least 5 years after the last order placed by BSH in terms of these GTCs.

## 15 **Breach.**

Should either Party commit a material breach of this Agreement, and fail to remedy such breach within 30 days of having been called upon in writing by the other to do so; then the aggrieved Party may, in its discretion, terminate this Agreement on written notice to the defaulting Party, in which event such termination shall be without prejudice to any claims which the aggrieved Party may have for damages against the defaulting Party occasioned by the termination of the relevant Supply Agreement in terms of this clause.

## 16 **Confidentiality**

- 16.1 Each Party acknowledges that it may obtain or have access to information about the other Party that is proprietary or confidential in nature ("**Confidential Information**"). Confidential Information may be used by the Parties only in carrying out the purposes of the Agreement. Each Party agrees that it will maintain the confidentiality of and not disclose to third parties or use, without the prior written consent of the other Party, the other Party's Confidential Information (except to make necessary disclosures to the disclosing Party's employees, lenders, counsel, or consultants).
- 16.2 Each Party shall be responsible for the unauthorized disclosure of any Confidential Information by its employees and agents. For purposes of this clause 16, "**Confidential Information**" does not include information that;
  - 16.2.1 now is, or subsequently becomes, publicly known through no fault of the disclosing Party;
  - 16.2.2 was in the possession of the disclosing Party before or at the time of disclosure and was not previously obtained from the other Party, or
  - 16.2.3 otherwise lawfully becomes available to the disclosing Party from another source.
- 16.3 The obligations contained in this clause 16 shall survive termination of the Supply Agreement.

**17 Access to Personal Information.**

The Parties acknowledge that in fulfilling their obligations in terms of a Supply Agreement, they may have access to the personal information of each other and their respective staff. Each Party shall, in respect of personal data protection, comply strictly with all Applicable Laws relating to data privacy and shall implement any technical and organizational measures to protect such personal information.

**18 Force Majeure**

- 18.1 If the performance of any Supply Agreement is rendered impossible owing to acts of God, public insurrections, floods, fires, strikes, lockouts, pandemics, epidemics, lockdowns, states of emergency, curfew, or other industrial disturbances, inability of the Supplier to obtain Goods (if inability is industry-wide among suppliers similar to the Supplier), inability to obtain electric power, water, fuel or other utilities or services necessary to operate the Supplier facilities or other circumstances of substantially similar character such that they are beyond the reasonable control of the Party affected (collectively, "**Force Majeure**"), any Party so affected shall promptly notify the other Party in writing of the event of Force Majeure and the effect of the Force Majeure event on such Party's ability to perform its obligations pursuant to a Supply Agreement.
- 18.2 The failure of any Party to perform its obligations under a Supply Agreement due to Force Majeure shall not constitute a default under, or any breach of, the Supply Agreement. The affected Party shall promptly resume performance pursuant to the Supply Agreement after it is no longer subject to Force Majeure.

**19 Limitation of liability.**

Neither party shall be liable for any, loss of profits, goodwill, business, clients, contracts, revenue, the use of money, anticipated savings or data; or any special, indirect or consequential loss and such liability is excluded whether it is foreseen, foreseeable, known or otherwise.

**20 Product liability**

- 20.1 If any consumer or other third-party institutes any product liability claim in accordance with Applicable Law against BSH which is attributable to the Goods (whether incorporated in BSH products or not) or based on other acts or omissions of the Supplier for infringement of Applicable Laws, the Supplier shall hold harmless and indemnify BSH from any such claims and shall reimburse BSH for any costs incurred by BSH in connection therewith. This indemnity shall include any costs incurred by BSH in connection with the defence of unjustified claims asserted by third parties.
- 20.2 If the Goods are required to be recalled or subject to any other product safety measures (e.g. warnings, replacements, product modifications or retrofits) ("**Product Remediation Measures**") that are reasonably required to prevent potential harm to consumers or other users, BSH will inform the Supplier, if and to the extent possible and reasonable, about the type and scope of any such Product Remediation Measures and give the Supplier the opportunity to comment thereon. Nothing in this clause shall derogate from BSH's rights in terms of the Supply Agreement or Applicable Law.
- 21 **Notices.** The Parties select as their respective addresses for the service of legal notices, the physical addresses set out beneath their signatures below, provided that either Party may change its address details on written notice to the other, provided that in respect of its physical address, such change shall take effect 14 days after delivery of such written notice.
- 22 **No Assignment.** The Supplier shall not be entitled to cede its rights or delegate its obligations or otherwise transfer the benefit or burden of all or any part of a Supply Agreement without the prior written consent of BSH, which consent shall not be unreasonably withheld or delayed.

**23 General**

- 23.1 The Parties shall at all times owe each other a duty of good faith.
- 23.2 Nothing shall be construed as creating a partnership between the Parties and neither Party shall have any authority to incur any liability on behalf of the other or to pledge the credit of the other Party.
- 23.3 Each Supply Agreement shall constitute the entire agreement between the Parties in respect of the subject matter thereof.
- 23.4 No amendment or modification to a Supply Agreement shall be effective unless in writing and signed by authorised signatories of the Parties.

- 23.5 No granting of time or forbearance shall be or be deemed to be a waiver of any term or condition of a Supply Agreement and no waiver of any breach shall operate a waiver of any continuing or subsequent breach.
- 23.6 Each Supply Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such law.
- 23.7 The Parties hereto hereby consent and submit to the jurisdiction of such Southern Gauteng High Court of South Africa, Johannesburg, in any dispute arising from or in connection with this Agreement. The Parties hereby irrevocably waive any objection, including that of inconvenient forum, that they may now or hereafter have to the laying of venue for any suit, action or proceeding arising out of or relating to a Supply Agreement.
- 23.8 Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of this Agreement.
- 23.9 References to:-
- 23.9.1 persons shall include companies, corporations and partnerships;
- 23.9.2 any Party shall, where relevant, be deemed to be references to, or to include, as appropriate, their respective successors or permitted assigns;
- 23.9.3 the singular shall include the plural and vice versa;
- 23.9.4 any one gender shall include a reference to all other genders; and
- 23.9.5 any enactment shall be deemed to include references to such enactment as re-enacted, amended or extended from time to time.
- 23.10 The expiration or termination of a Supply Agreement shall not affect such of the provisions of such Supply Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 23.11 When any number of days is prescribed in a Supply Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a business day, in which case the last day shall be the next business day.
- 23.12 The rule of construction that an agreement shall be interpreted against the party responsible for the drafting or preparation of the agreement, shall not apply.

<b>Signed at:-</b>	
<b>Date:-</b>	
<b>Signature</b>	
For and on behalf of <b>THE SUPPLIER</b>	
<b>Name</b>	
<b>Designation</b>	
I warrant that I have been duly authorised to sign this Agreement	
<b>Physical Address</b>	
<b>Email:</b>	
<b>Marked for the attention of:</b>	

<b>Signed at:-</b>	
<b>Date:-</b>	
<b>Signature</b>	
For and on behalf of <b>THE SUPPLIER</b>	
<b>Name</b>	
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<b>Email</b>	
<b>Marked for the attention of:</b>	

<b>Signed at:-</b>	
<b>Date:-</b>	
<b>Signature</b>	
For and on behalf of <b>BSH Home Appliances (Pty) Ltd</b>	
<b>Name</b>	
<b>Designation</b>	
I warrant that I have been duly authorised to sign this Agreement	
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