

CBI ELECTRIC AFRICAN CABLES STANDARD TRADING TERMS

CBI ELECTRIC AFRICAN CABLES **(a division of ATC (Pty) Ltd)**

I. DEFINITION AND INTERPRETATION

I.1 In this Agreement unless inconsistent with the text:

I.1.1 words incorporating the singular include the plural and vice versa;

I.1.2 words signifying one gender includes the other genders as well as artificial persons such as companies, close corporations and trusts, and vice versa;

I.1.3 headings to clauses are for reference only and should not be used in interpreting the meaning of the text;

I.1.4 the following words shall have the meaning assigned to them:

I.1.4.1 “this Agreement” shall mean the Standard Trading Terms set out in this document together with the annexures hereto;

I.1.4.2 “the Application” shall mean the application form completed by the Customer in applying for credit facilities with the Company;

I.1.4.3 “Company” means CBI ELECTRIC _African Cables, a division of ATC (Pty) Ltd (registration number 1955/003773/07);

I.1.4.4 “Contract Price” means the price quoted by the Company and accepted by the Customer for the Product and any service provided by the Company subject to full metal and material escalations as published by AECMSA a month prior to delivery.

I.1.4.5 “Customer” means any party to whom the Company sells Product or delivers a service of any nature;

I.1.4.6 “Order Confirmation” is the Company’s written confirmation of the Customer’s order.

I.1.4.7 “Product/s” means any goods of whatsoever nature purchased by the Customer from the Company;

2. APPLICATION OF STANDARD TRADING TERMS

2.1 This Agreement shall apply to all services rendered by the Company and Product manufactured, assembled or purchased and re-sold, by the Company to any party. If the Company is obliged, in the execution of any duties or responsibilities imposed upon it to comply with common law or legislative enactment of any nature whatsoever, the Company by complying therewith, shall not be deemed to waive nor abandon any of its rights in terms of this Agreement.

2.2 If any of the terms of this Agreement are repugnant to or in conflict with the Law, then and in such event the Company shall be entitled to elect that such provision shall be severed from the remaining provisions of this Agreement which shall not be affected and shall remain in full force and effect.



3. QUOTATIONS

- 3.1 Offers made by the Company shall only be valid quotations if made or confirmed in writing either by an e-mail, letter or facsimile.
- 3.2 Price lists and other Company publications are for information only and do not constitute offers or quotations.
- 3.3 Any quotation by the Company shall remain open for a period of seven (7) days from the date appearing in the quotation, unless revoked earlier by written notice to the Customer or where otherwise agreed to in writing between the Company and the Customer.
- 3.4 Quotations are based on the materials ruling applicable at the time of the quotation and are subject to adjustment in accordance with metal and material escalations as published by AECMSA a month prior to delivery.
- 3.5 The Contract Price quoted shall exclude VAT.
- 3.6 Standard drum lengths per item shall be stipulated.
- 3.7 The Company offers weatherproof/tear-proof drum labels. The Customer shall not be entitled to use or request alternative drum labels.

4. ORDERS

- 4.1 The Customer shall in response to a quotation place an order on the Company for the Product.
- 4.2 Orders shall not be binding on the Company unless they are accepted in writing by the Company by means of an Order Confirmation letter or facsimile.
- 4.3 In certain circumstances the Company shall stipulate minimum order quantities applicable to specific items. The Customer shall not be entitled to Order less than the specified minimum quantity.
- 4.4 The full specification of the Product or reference to the Product must be clearly set out on the order, to recognized and accepted specifications. If no specifications are submitted or if the specifications are incomplete, the Product shall conform to the Company's standard specifications applicable to that type of Product ordered and the normal use to which such product would ordinarily be put.
- 4.5 Should the Customer cancel an Order which has been submitted to the Company, for any reason whatsoever, the Company shall be entitled to, in its sole discretion and without limiting any other remedy which the Company may have in law, claim 75% of total value of the Order from the Customer as its estimated damages for the cancellation of the Order by the Company.

5. WARRANTY

- 5.1 The Company warrants that the Product complies with the standard specification stated on the quotation and that it has been manufactured with high grade materials and in with good workmanship. All Products manufactured by the Company shall fall under warranty on the following terms:



- 5.1.1 The Company undertakes to correct and make good defects which may arise through the normal and proper use of the Product and which are due solely to faulty manufacturer's design, material or workmanship;
- 5.1.2 The warranty shall be for a period of twelve (12) months from the date of delivery, or if delivery cannot be made on account of delays caused by circumstances beyond the Company's control, from the date the Product is ready for dispatch by the Company, which date shall be communicated to the Customer;
- 5.1.3 The Company shall, in its sole discretion, repair or replace the defective portion of the Product, or where this is not possible, reimburse the client for the defective portion.
- 5.1.4 The repaired or replaced portion of the Product will be delivered to the place where the Product was initially delivered at no additional cost;

6 LIMITATION OF LIABILITY

Notwithstanding anything contained herein, the company shall not be liable for any loss of profits or consequential losses of any nature which the Customer may sustain as a result of the failure to carry out any of its obligations in terms of this Agreement, a quotation, Order Confirmation or invoice and the Customer waives all and any claim which it may have against the Company in respect of loss of profits, consequential or indirect damages

7 PAYMENT

- 7.1 Should the Customer not have a credit facility with the Company, payment of the Contract Price shall be paid by the Customer prior to delivery of the Product.
- 7.2 Should the Customer make payment of the Contract Price prior to the due date the Customer shall be entitled to the discount specified on the Order Confirmation from the Company.
- 7.3 Payment shall be affected by the Customer into the Company's bank account: Nedbank, Account Number: 1729426492, Branch Code: 172937, and immediately fax proof of payment to the Company. The Customer shall be deemed to have paid only once the Company has received the proof of payment.
- 7.4 Payment shall be made in the currency invoiced. The rate of exchange applicable to export sales shall be the rate of exchange applicable on the date of payment.
- 7.5 The Company is entitled to appropriate any payment received from or on behalf of the Customer to any indebtedness of the Customer to the Company from whatsoever cause arising.
- 7.6 The Customer shall pay interest on any amount not paid on the due date, reckoned from the due date to date of payment at the Standard Bank of South Africa Limited's prime overdraft rate, plus 3% (three percent). A certificate signed by any Manager of the Standard Bank of South Africa Limited, whose authority and appointment it shall not be necessary to prove, shall be *prima facie* proof of the prime overdraft rate prevailing from time to time.
- 7.7 The Customer shall not be entitled to withhold payment of the Contract Price for any reason whatsoever, notwithstanding that a dispute may be pending between the parties or as a retention or as a result of a third party not paying the Customer for the Product on-sold to them, nor shall the Customer be entitled to make any deduction from the Contract Price or to set off any alleged claim against the amounts due by the Customer to the Company.



- 7.8 The Company shall not accept or give performance bonds or surety bonds, unless otherwise agreed to in writing and signed by a duly authorized representative of both the Customer and the Company.

8 **CERTIFICATE**

A certificate issued and signed by a director or a duly authorized manager of the Company, whose authority need not be proved, stating the amount owing by the Customer and/or the amount of interest payable in respect of this Agreement is *prima facie* proof of the facts stated therein, and the amount of the indebtedness of the Customer to the Company. The certificate may be used in support of any application by the Company for judgment by default, provisional sentence or Summary Judgment or any other legal proceeding

9 **OWNERSHIP**

- 9.1 Ownership in the Product remains vested in the Company until the Customer has paid all amounts owing to the Company.

- 9.2 The Customer shall prior to installation and commissioning keep the Product in his possession and control and exercise care in the use thereof and will at his own cost and expense maintain the Product in proper working order and protect it from loss or damage and keep the Product free from attachment, hypothec or other legal charge or process.

- 9.3 The Customer will advise the Company of the full name and address of the landlord where the Products are kept prior to installation within seven (7) days of the date of delivery in order that the Company may notify the landlord of its ownership in the Product. Should the Customer fail to so notify the Company, the Customer hereby indemnifies and holds the Company harmless against any action, attachment or claim by the landlord in respect of the Products.

10 **DELIVERY AND RISK OF LOSS**

- 10.1 The Contract Price quoted by the Company shall include the cost of delivery of the Product from the Company to the Customer, provided that the designated location for delivery is within a 200km radius of centre of Johannesburg and the delivery is a full load. The Contract Price shall not include the cost of offloading the Product, which cost shall be for the Customers account unless otherwise agreed to in writing and signed by the parties.

- 10.2 The proposed time period for delivery stipulated on the Order Confirmation, calculated from the date of the Order Confirmation, may be varied at the Company's sole discretion without notice to the Customer. The Company will use its best endeavours to meet the proposed delivery date and advise the Customer should the Company anticipate that it will not deliver within the stipulated time periods.

- 10.3 The Company shall not be liable for any loss or damage of any nature whatsoever, nor shall the Customer be entitled to impose any penalty on the Company, should delivery not be made in accordance with the period specified on the Company's documentation, unless otherwise agreed to in writing and signed by a duly authorized representative of both the Customer and the Company.

- 10.4 The delivery of Product shall be subject to the availability of adequate raw materials.



- 10.5 Risk in the Product shall pass to the Customer simultaneously with the delivery of the Product by the Company or its agent to the Customer's principal place of business or at a location nominated by the Customer in the order, once the Product has entered either premise. Should the Product be collected by the Customer from the Company, risk in the Product shall pass to the Customer on signature of the Company's delivery note, or if no such note is signed, on the Product leaving the Company's premise.
- 10.6 Should delivery of any Product not be accepted by the Customer, consignee or party nominated by the Customer to accept delivery, then the Company shall, in its sole discretion –
- 10.6.1 be entitled to store the Product and any part thereof at no risk to the Company and at the expense of the Customer; or
- 10.6.2 dispose of the Product and retain the proceeds therefore as "rouwkoop" or as the liquidated damages for the return and storage of the Product.
- 10.7 The Customer shall immediately upon receipt, check the content of the delivery. On signature of the Company's proof of delivery notice, the Customer is deemed to have received the Product referred to in the delivery notice, without shortage or defect and the Customer shall have no claim against the Company for non-delivery, shortages or damage to the Product. Should the Customer fail to sign the proof of delivery notice prior to the Company's vehicle leaving the point of delivery, the signature of a representative of the Company shall be prima facie proof that the Product was delivered without defect or shortage. .

II EXPORTS

- 11.1 In addition to these standard trading terms the following provisions shall be applicable where Product is exported by the Company outside of the Republic of South Africa:
- 11.1.1 Prices, in respect of, shall be quoted and invoiced in incoterms;
- 11.1.2 The liability for risk of loss or damage to goods in transit shall be determined in accordance with the meaning specified by "Incoterms 2000" for each of the terms "ex-works", "FOR", "FOV", "FAF", "FOB", "C&F Landed", "C.I.F Landed" and "free delivered destination". The delivery of all goods sold by the Company shall be "ex-works" unless otherwise specified in writing by the Customer and accepted in writing by the Company, provided the method of delivery shall be limited to any one of the "Incoterms" recorded in "Incoterms 2000".
- 11.1.3 The Company shall affect marine insurance in respect of CIF sales and will not affect war risk insurance or any other insurance unless specifically requested to do so by the Customer, which shall be for the Customer's account.
- 11.1.4 Any alterations to the insurance or freight charges shown on the Company's quotation, Order Confirmations or other documentation shall be for the account of the Customer unless otherwise agreed to in writing by the Company.
- 11.1.5 Payment shall be made in the currency invoiced. The rate of exchange applicable to export sales shall be the rate of exchange applicable on the date of payment.
- 11.1.6 The Customer, whether or not the cause of payment was due to an act, Instruction or omission of the Company or their agents, if any, shall be liable for the duties, taxes, imports, levies, deposits or outlaid of whatever nature levied by or payable to the authorities, intermediaries or other parties at any port or place, or in connection with the goods and whether at the time of entry and/or any subsequent time, and for any payments, fines, penalties, expenses, loss or damage whatsoever incurred or sustained by the Company in connection therewith or arising therefrom.



- 11.1.7 The Company shall bear no liability in consequence of the fact that there may be a change in rate of duty, freight, railage or cartage, or any other tariff, before or after the performance by the Company of any act involving a less favourable rate or tariff or by virtue of the fact that a saving might have been affected in some other way had any act been performed at a different time.

12 PERMITS

- 12.1 The Customer shall obtain and maintain in force all necessary permits –
- 12.1.1 to enable the Product to be delivered into the country of destination specified by the Customer;
- 12.1.2 to enable payments to be affected in accordance with this Agreement.

13 MAINTENANCE

- 13.1 Should the Company be requested to perform maintenance work by any third party whatsoever, whether in respect of Product supplied by the Company or on a site where the Company's product has not been installed, the Company:
- 13.1.1 shall be entitled to charge it's usual hourly rate for labour;
- 13.1.2 be entitled to use the third parties or Customers equipment where available and suitable;
- 13.1.3 is hereby indemnified by the third party or Customer against any liability, loss, claim or proceedings of whatsoever nature whether arising at common law or otherwise as a result of damage to the property or equipment on which the maintenance work is conducted, personal injury to, or the death of any person whomsoever arising out of or in the course of or caused by the execution of the works due to any act or omission of the Company and its agents.

14 INDULGENCE

No relaxation or indulgence including the acceptance of late payments by the Company is deemed to be a waiver by the Company of any of its rights to enforce strict compliance by the Customer of any of his obligations in terms hereof nor is such relaxation or indulgence a novation of any of the terms and conditions of this Agreement.

15 NO VARIATION

No variation, amendment or addition to this Agreement will be of any force and effect unless agreed to by the Company in writing.

16 COSTS

- 16.1 All duties and levies payable in respect of this Agreement or any suretyship or securities given in respect hereof are payable by the Customer on demand.
- 16.2 All costs and disbursements, including legal costs on an attorney and client scale, incurred by the Company in recovering possession of the Product or in tracing the Customer and/or the Product, collecting or endeavoring to collect all or any amounts payable by the Customer to the Company or otherwise and all collection commissions, storage charges, costs of valuation of the Product, costs of sale including the costs of repairing and restoring the Product to a saleable condition, selling commissions, dismantling, removal and all other charges of a like nature are payable by the Customer to the Company on demand.



17 JURISDICTION

- 17.1 The Customer hereby consents to the jurisdiction of the Magistrate's Court having jurisdiction over the person in respect of all legal proceedings connected with this Agreement notwithstanding that the value of the matter in dispute might exceed the jurisdiction of the Magistrate's Court.
- 17.2 Notwithstanding the foregoing the Company is entitled to institute action in the High Court having jurisdiction.

18 DOMICILIUM

- 18.1 The parties hereby chose *domicilium citandi et executandi* for all notices and processes at their respective addresses as given on the Application. Any notice of any change of address must be given in writing by the party concerned and delivered by hand or sent by registered mail to the other party. The address so notified then becomes the *domicilium citandi et executandi*.
- 18.2 In the event of either party indicating a telefax number in the schedule hereto or in the credit application form, the parties agree that unless the contrary is proved any notice sent by telefax is deemed to have been received on the day of dispatch thereof.

19 LAW TO APPLY

This Agreement is in all respects governed and construed in accordance with the laws of the Republic of South Africa.

20 CONFLICT

Should there be a conflict between the provisions of this Agreement and the Terms and Conditions of Credit Facilities or any other representations made by the Company in its quotations, Order Confirmations or other documentation, the terms of this Agreement shall prevail

electric

african cables



POWER BY INNOVATION... INNOVATION THROUGH PARTNERSHIPS

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A member of the REUNERT Group



CBI ELECTRIC AFRICAN CABLES STANDARD TRADING TERMS

CBI ELECTRIC AFRICAN CABLES (a division of ATC (Pty) Ltd)

As Witnesses:

1. _____
2. _____

for and on behalf of:

THE COMPANY, who by his/her signature
warrants that he/she is duly authorised hereto

As Witnesses:

1. _____
2. _____

for and on behalf of:

THE CUSTOMER, who by his/her signature
warrants that he/she is duly authorised hereto

Name: _____

Name: _____

Date: _____

Date: _____

Place: _____

Place: _____



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