

**TRX Electronics cc**  
**TERMS AND CONDITIONS OF CREDIT AND SALE**

**1. INTERPRETATION**

In this agreement unless the context otherwise indicates:

- 1.1 "the/this agreement" means these terms and conditions of credit and sale together with the credit application form attached hereto;
- 1.2 "goods" means electronic components and related products to be sold to the purchaser from time to time in terms of this agreement;
- 1.3 "TRX ELECTRONICS cc" means TRX Electronics Closed Corporation (Registration Number 1996-6135-23)
- 1.4 "the purchaser" means the entity indicated in the credit application form attached hereto;
- 1.5 "sale transaction" means individual sale transactions concluded between TRX ELECTRONICS cc and the purchaser for the sale and delivery of goods pursuant to the provisions hereof.

**2. GRANTING CREDIT**

- 2.1 Subject to the written approval of the financial manager of TRX ELECTRONICS cc, the purchaser shall be entitled to place orders for goods up to the maximum amount stipulated on the credit application form ("the credit limit").
- 2.2 Notwithstanding 2.1 above, the credit limit may be increased by TRX ELECTRONICS cc in its sole discretion on request of the purchaser, provided that an application for a new credit limit is submitted by the purchaser, and is approved by the financial manager of TRX ELECTRONICS cc.
- 2.3 Subject to 2.1 and 2.2, should the purchaser exceed the credit limit at any time, TRX ELECTRONICS cc shall at its sole discretion and without prejudice to any of its rights or remedies in terms hereof, be entitled to refuse to accept an order for or deliver goods ordered, even though any outstanding and all amounts due in respect of goods already delivered are not yet payable.
- 2.4 It is recorded and understood that notwithstanding anything to the contrary herein contained, the credit Agreement Act 75 of 1980 is not applicable to this agreement, inter alia, due to the nature of the goods sold in terms hereof.
- 2.5 The credit limit and/or the provisions of credit may be varied or terminated at any time by TRX ELECTRONICS cc in its sole and absolute discretion and without notice, for any reason including the breaches of any of the provisions of this agreement by the purchaser.
- 2.6 Should the provision of credit be terminated by TRX ELECTRONICS cc for any reason, then all amounts outstanding in respect of goods delivered but not yet paid, will immediately become due and payable on demand.
- 2.7 This agreement and in particular the terms and conditions relating to the sale of goods shall govern each and every individual sale transaction concluded between TRX ELECTRONICS cc and the purchaser for goods sold and delivered.

**3. PRICE**

- 3.1 In respect of any sale transaction, the price of the goods shall be the price contained in a written quotation signed by the duly authorized representative of TRX ELECTRONICS ("the quotation"), provided that, the price of the goods may be adjusted by TRX ELECTRONICS cc itself if –
  - 3.1.1 the purchaser places its order more than 7 (seven) days after the date of the quotation; and/or
  - 3.1.2 the volume ordered by the purchaser differs from that on which the quotation is based; and/or
  - 3.1.3 the price payable to TRX ELECTRONICS cc to its suppliers for the goods increases after the date of the quotation; and/or
  - 3.1.4 the price payable in South African Rand ("ZAR") for the foreign currency stipulated in the quotation ("the quoted exchange rate") increases due to a depreciation of the ZAR in relation to the relevant foreign currency; and/or
  - 3.1.5 any duties, levies or penalties are imposed by the relevant authorities on the importation or delivery of the goods which were not payable on the date of the quotation.
- 3.2 In each of the circumstances contemplated in 3.1 above, the purchase price payable by the purchaser for the goods shall be increased by the same proportion of the increased amounts expressed as a percentage payable by TRX ELECTRONICS cc.
- 3.3 All quoted prices and other amounts referred to in this agreement are exclusive of VAT.

**4. PAYMENT**

- 4.1 Any amount payable pursuant to this agreement shall be due at the date when a statement is issued by TRX ELECTRONICS cc and payable within 30 (thirty) days of the date of such statement. All amounts due shall be paid in full without any deduction or set-off.
- 4.2 Any amount not paid within 30 (thirty) days of the date of statement shall bear interest compounded monthly in arrears at Absa's prime annual interest rate charged on unsecured overdrawn current accounts to its most favoured corporate clients in the private sector from time to time. In the case of a dispute as to the interest so payable, the rate shall be certified by any manager or assistant manager of any branch of Absa, whose decision shall be final and binding on the parties and whose appointment and authority it shall not be necessary to prove.

**5. OWNERSHIP AND RISK**

- 5.1 Ownership in the goods shall pass to the purchaser when the total purchase price in respect of the goods purchased has been paid in full and received by TRX ELECTRONICS cc.
- 5.2 The purchaser shall exercise due care in storage and use of the goods and shall not be entitled to pledge, damage, dispose of or in any way encumber or alienate the goods until it has been fully paid for.
- 5.3 Risk in the goods shall pass to the purchaser on delivery as provided for in 6.

**6. DELIVERY**

- 6.1 TRX ELECTRONICS cc shall deliver the goods to the purchaser at the approximate time and place stipulated in the order form, and the purchaser shall be obliged to take delivery of the goods when tendered.
- 6.2 Unless otherwise stipulated, TRX ELECTRONICS cc will at all times endeavour to deliver the goods to the purchaser as soon as possible after an order has been placed. The purchaser shall not be entitled to rely on any indication given to the purchaser, whether indicated on the order form or indicated prior to or at any time of placing the order of thereafter, of the time at which delivery shall take place, which shall merely be an estimate, and TRX ELECTRONICS cc shall not be liable or accountable to the purchaser for any claims, loss or damages suffered in relation hereto.
- 6.3 Provided that TRX ELECTRONICS cc has ordered the goods from its suppliers within a reasonable time of the purchaser placing an order, no delay (whether occasioned by a delay in delivery to TRX ELECTRONICS cc by its suppliers or carriers or by other causes beyond its control such as acts of God, state interventions, industrial action, civil upheaval, epidemics, embargoes or sanctions) shall give rise to right of claim for loss, damages or cancellation by the purchaser.
- 6.4 In the event that TRX ELECTRONICS cc had the goods in stock at the time of making quotation, such goods shall only be delivered to the purchaser if they have not been sold to another person subsequent to making the quotation but prior to the purchaser placing an order for such goods.
- 6.5 Unless TRX ELECTRONICS cc receives written notice to the contrary within 7 (seven) days of the date of delivery of the goods to the purchaser, a delivery note signed by the purchaser shall be a prima facie proof that the goods were delivered timeously, in the ordered quantities, in good order and free of any and all patent and latent defects.
- 6.5 Notwithstanding anything to the contrary herein contained and without prejudice to TRX ELECTRONICS cc's rights and obligations at law in terms hereof, TRX ELECTRONICS cc shall be entitled from time to time and in its discretion to withhold delivery of any goods ordered should any amount due to TRX ELECTRONICS cc be outstanding for longer than 30 (thirty) days. Tender of delivery of such withheld goods, against payment of such outstanding amount and payment of the purchase price in respect of such goods in cash, shall be deemed to be good for tender of delivery for the purpose of complying with TRX ELECTRONICS cc's obligations in terms of this clause 6.

**7. SPECIFICATIONS AND END USE**

- 7.1 At the purchaser's request in writing, TRX ELECTRONICS cc shall supply the purchaser with any manufacturer's specifications in respect of the goods.
- 7.2 Determining the suitability of any goods purchased for any particular use or purpose is the purchaser's sole responsibility and TRX ELECTRONICS cc shall not be liable if the goods are not so suited..
- 7.3 TRX ELECTRONICS cc warrants that, to the best of its knowledge and belief, the goods comply with the manufacturer's specifications. If the purchaser can show, to TRX ELECTRONICS cc reasonable satisfaction and by the use of an objective, non-destructive test, that the goods do not comply with such manufacturer's specifications, then subject to 7.4, TRX ELECTRONICS cc shall, against the return of the goods, pass a credit note in favour of the purchaser in an amount equal to the purchase price paid by the purchaser of the goods.
- 7.4 The credit note referred to in 7.3 shall only be valid for a period of six months, and shall only be passed in favour of the purchaser if the goods are returned in the same good order and condition as at delivery and within 7 (seven) days after delivery.

**8. NO LIABILITIES OR WARRANTIES**

- 8.1 Subject to the clause 8.3 and notwithstanding anything to the contrary herein contained, TRX ELECTRONICS cc shall have no liability for any loss or damage of whatsoever nature, including but not limited to indirect and consequential damages and loss of profits, however arising out of or in connection with this agreement or the goods and whether caused by latent or patent defects in the goods, use of the goods, delay in the delivery of the goods, non-suitability of the goods or otherwise.
- 8.2 TRX ELECTRONICS cc makes no warranties or representations about the goods or the merchantability or fitness thereof for any purpose, and the only representations and warranties made are those made by the manufacturers of the goods and which are specified in the manufacturer's specifications and warranties (if applicable).
- 8.3 The purchaser hereby indemnifies TRX ELECTRONICS cc and holds it harmless against any liability, loss, damage or claim of whatsoever nature suffered by any third party in relation to any act or omission by the purchaser or the purchaser's members, employees, representatives, agents or assigns or any third party in relation to the goods and the use thereof and/or arising from the provisions of this agreement.

**9. BREACH**

Subject to the other provisions of this agreement, in the event of one of the parties ("the defaulting party") committing a breach of any of the terms of this agreement or being placed into liquidation or being sequestrated whether provisionally or finally, and failing to remedy such breach within a period of 14 days after receipt of a written notice from the other party ("the aggrieved party") calling upon the defaulting party so to remedy, then the aggrieved party shall be entitled, at its sole discretion and without prejudice to any of its other rights in terms hereof or in law, either to claim specific performance of the terms of this agreement or to cancel this agreement forthwith and without further notice, claim and recover damages from defaulting party.

**10. DOMICILIUM**

- 10.1 The purchaser hereby chooses as its domicilium citandi et executandi for all purposes under arising from this agreement its street address provided to TRX ELECTRONICS cc in the credit application form.
- 10.2 Any notices sent by facsimile shall be deemed to have been received on the date of transmission provided that the transmission report does not indicate otherwise and if posted by registered post, on the fourth day after posting.
- 10.3 Any party shall notify the other in writing on 10 (ten) days' notice of change in address, provided that no address may be changed to a post office box or poste restante.

**11. COSTS**

The purchaser hereby agrees to pay TRX ELECTRONICS cc or its legal representatives on demand all tracing fees, legal costs on an attorney and own client scale and collection commissions payable by TRX ELECTRONICS cc in respect of any action or proceedings which may be instituted against the purchaser in terms of or arising out of this agreement.

**12. CERTIFICATE OF INDEBTEDNESS**

- 12.1 The purchaser hereby agrees that a certificate signed by any director of TRX ELECTRONICS cc (whose appointment, qualification or authority need not be proved) reflecting the amount of the purchaser's indebtedness to TRX ELECTRONICS cc or any increases or additional changes referred to in 3.1 and the fact that same is due and payable –
- 12.2 will be prima facie proof of the amount of the purchaser's indebtedness and the fact that same is due and payable; and
- 12.3 will in absence of evidence to the contrary, be sufficient proof for the purposes of TRX ELECTRONICS cc obtaining provisional sentence or summary judgment against the purchaser.

**13. JURISDICTION**

- 13.1 In terms of section 45 of the Magistrate's Court Act 1944, as amended, the purchaser hereby consents to the jurisdiction of the Magistrate's Court in respect of any action to be instituted by TRX ELECTRONICS cc against the purchaser in terms of or arising out of this agreement, notwithstanding the fact that the claim may exceed the jurisdictional limits of the Magistrate's Court.
- 13.2 Notwithstanding the provisions of 14.1 above, TRX ELECTRONICS cc shall in its sole discretion be entitled to proceed in any High Court in respect of any action instituted against the purchaser in terms hereof.

**14. CANCELLATION**

Notwithstanding anything to the contrary herein contained, and without prejudice to any of TRX ELECTRONICS cc' rights in terms hereof or at law, in the event of the purchaser unlawfully canceling any order placed for goods, or unlawfully repudiating any of its obligations in terms of this agreement, TRX ELECTRONICS cc shall be entitled to claim as pre-estimated liquidated damages any and all cancellation fees and/or penalties which TRX ELECTRONICS cc may have to pay to its suppliers as a result of the aforesaid cancellation or repudiation together with the cost of all freight, insurance, import duties and levies and all other costs relation to the importation and procurement of the goods as well as the costs relating to the importation and procurement of the goods as well as the costs relating to the return thereof to the original supplier together with an amount equal to 10% of the sale price of the goods.

**15. GENERAL**

- 15.1 The clause headings in this agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 15.2 Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 15.3 If any definition contains a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive provision in the body of this agreement, notwithstanding that it is only in the interpretation clause.
- 15.4 If any period is referred to in this agreement by way of reference to a number of days, the days shall be reckoned exclusively to 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 succeeding business day.
- 15.5 This agreement shall be governed by and constructed and interpreted in accordance with the law of the Republic of South Africa.
- 15.6 The purchaser acknowledges that at the time of signing the application form, the said form was completed fully and the particulars set forth therein are true and correct.
- 15.7 If any provisions of this agreement are found to be unlawful, unenforceable or invalid, it shall be deemed to be separate and severable from the remaining provisions of this agreement and to the extent that same is unlawful, unenforceable or invalid, be deemed to be pro non scripto.
- 15.8 No extension of time or other indulgences granted by TRX ELECTRONICS cc to the purchaser in respect of its obligations will constitute a waiver or novation of or otherwise affect any of TRX ELECTRONICS cc's rights to enforce strict compliance with the terms of this agreement.
- 15.9 No party shall be entitled to cede, assign or delegate any of its rights and/or obligations in terms of arising from this agreement to any third party without the prior written consent of the other party first being had and obtained.
- 15.10 No alteration, consensual cancellation, novation or variation of, addition to this agreement and no waiver of any right arising from this agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by the parties or their duly authorized representatives.
- 15.11 This agreement constitutes the whole agreement between the parties and no party shall be bound by undertakings, representations, warranties and promises or the like not recorded herein.