

**TERMS & CONDITIONS OF SALE**

**1. DEFINITIONS**

- 1.1 "the Seller" shall mean Blue Chip Lubricants (Pty) Ltd.
- 1.2 "the contract" shall mean any contract or agreement arising out of the acceptance of any offer whether that contract arises out of:
  - an offer made by the Seller and accepted by the Purchaser;
  - an offer made by the Purchaser and accepted by the Seller.
- 1.3 "products" shall mean the products sold to the Purchaser, including the manufacture of products to be supplied.
- 1.4 "the Purchaser" shall mean the person or entity applying for an account or who has placed an order with the Seller, or any person with whom the Seller contracts as a result of any offer to purchase products from the Seller, and includes the Purchaser's representatives, successors and permitted assignees.

**2. GENERAL**

- 2.1 These Terms & Conditions shall apply to any contract in terms of which the Seller agrees to sell any products, irrespective of the circumstances under which the contract arose, and to the exclusion of any terms and conditions which the Purchaser may seek to make applicable.
- 2.2 Should the Purchaser in any way purport to alter or attach any conditions which vary, amend or are in conflict with the Terms & Conditions set forth herein, then the Terms & Conditions set forth herein shall prevail and shall be of full force and effect unless and until recorded in writing, with specific reference to the contrary documentation, and signed by the Seller and the Purchaser.

**3. ACCEPTANCE OF CONTRACT**

A contract shall come into existence when the Seller accepts any order for products placed by the Purchaser, or when a Purchaser accepts any offer to sell products made by the Seller, by conveying such acceptance, whether oral or written to the Seller.

**4. PRICE**

- 4.1 The purchase price payable by the Purchaser for the products shall be the Seller's list price at the date of the contract, unless otherwise agreed in writing.
- 4.2 The Seller reserves the right to increase the list price if, prior to delivery and/or dispatch of the products, the cost of the Seller's cost of raw material or components is increased.
- 4.3 The purchase price quoted does not include Value Added Tax, which shall be paid by the Purchaser in addition to the purchase price.
- 4.4 The purchase price quoted does not include the price of pallets which may be required to deliver the products.
- 4.5 The purchase price includes transport in and around the Gauteng area ONLY, and on condition the order exceeds R1000, 00. The cost of delivery of the products to any other area is for the account of the Purchaser.
- 4.6 The Seller shall not be bound by any errors and/or omissions made in relation to the sale of goods, whether they be in respect of arithmetical errors, incorrect ruling prices or otherwise.

**5. DELIVERY & OFF-LOADING**

- 5.1 Time is not of the essence of the contract and any date stipulated by the Seller for delivery is intended as an estimate only.
- 5.2 The Seller shall not be liable in any way whatsoever for any loss or damage (including consequential loss) which may result from non-delivery on the time or date stipulated, nor shall any such delay confer upon the Purchaser any right to rescind the contract.
- 5.3 If any of the Seller's obligations in terms of this contract shall be prevented, hindered or interfered with by reason of any industrial action or by reason of any cause whatsoever beyond the Seller's reasonable control, the Seller shall have the right to suspend or cancel the contract without prejudice to the Seller's right to recover all monies owing to the Seller as at the date of suspension or cancellation.
- 5.4 Unless otherwise agreed in writing by the Seller, delivery shall be effected by the Seller or by an independent haulier appointed by the Seller.
- 5.5 All products delivered by the Seller or its appointed haulier shall be off-loaded by the Purchaser's employees.
- 5.6 Where the Seller's employees or the employees of its appointed haulier assist in the off-loading of any products, they shall be deemed to be acting on the instructions and with the authorisation of the Purchaser, and shall not be held responsible for any loss or damage.
- 5.7 The Seller shall not be liable for any loss or damage, direct or indirect, consequential or otherwise, sustained by the Purchaser during the off-loading of any products.

**6. RISK**

- 6.1 Should the Seller or its appointer haulier deliver the products, risk in and to the products shall pass to the purchaser on delivery of the products to the Purchaser. However, ownership and dominium in such goods remains vested in the Seller until the entire purchase price in respect thereof and any overdue interest and/or associated costs and/or charges payable thereof have been paid for by the Purchaser to the Seller in full.
- 6.2 Should the Purchaser or its appointed haulier collect the products from the Seller, risk in and to the products shall pass to the Purchaser on collection of the Products from the Seller's premises.
- 6.3 If a haulier is appointed by the Purchaser, the haulier shall be deemed to be the agent of the Purchaser.

(BCL) Initial.....Date:.....

(Customer) Initial.....Date:.....

**7. DAMAGED PRODUCTS**

- 7.1 The Purchaser shall inspect all deliveries for damages to containers prior to offloading and should not accept delivery of any damaged or leaking containers.
- 7.2 The Seller shall not be liable for products lost as a result of containers being damaged during off-loading or after delivery.

**8. ERRORS, SHORTAGES & RETURNS**

- 8.1 All products are guaranteed full mass as stated on containers on delivery and the Seller shall not be responsible for any loss of mass or volume of products by drying or evaporation thereafter.
- 8.2 The Purchaser shall immediately upon receipt of any products from the Seller, inform the Seller of any errors and/or shortages by way of written notice to be received by the Seller within 5 (five) days of receipt of the product. Should the Purchaser fail to inform the Seller of any such errors or shortages as aforesaid, then the Purchaser shall have no claim whatsoever against the Seller in regard thereto.
- 8.3 Any products delivered by the Seller to the Purchaser in error shall be considered for credit by the Seller provided that such products:
  - 8.3.1. are returned undamaged by the Purchaser within 7 (seven) days of its receipt thereof, and
  - 8.3.2 are in their original packing and have not been unpacked or used in part, and
  - 8.3.3 are not defaced by price labels or other markings.
- 8.4 Any products collected by the Purchaser in error shall be considered for credit by the Seller provided that the pre-requisites contained in 9.3.1, 9.3.2 and 9.3.3 are complied with.
- 8.5 Should the Purchaser wish to return any product which are not defective and have not been delivered or collected in error, the Purchaser shall be obliged first to obtain the written consent of the Seller. Should the Seller accept the return of such products, the Seller shall be entitled to charge a handling fee of 10% of the value of the purchase in respect thereof.
- 8.5 The relevant invoice or delivery note number must be quoted in respect of any products returned by the Purchaser to the Seller for credit.

**9. RETURNABLE CONTAINERS, FLOWBINS & PALLETS**

- 9.1 All returnable containers, flowbins & pallets supplied by the Seller shall be charged for at the Seller's ruling or usual price at the date of the contract, and the cost thereof shall be listed separately in the relevant invoice.
- 9.2 The Seller undertakes to refund the price charged, subject to a discretionary handling fee, to the Purchaser for such returnable containers and pallets, provided that:
  - 9.2.1 the returnable containers have not been used by the Purchaser for any purpose,
  - 9.2.2 the returnable containers are delivered at the Purchaser's cost, in good usable condition, without undue delay and in any event by not later than 2 (two) months after the delivery thereof, to the factory or store from which they were despatched to the Purchaser, or
  - 9.2.3 if the Seller has undertaken to collect such returnable containers, such containers shall be loaded by the Purchaser on the Seller's vehicle at the sole risk of the Purchaser who shall be responsible for damage of whatsoever nature caused as a result of, or during such loading operations. If the Purchaser requires assistance with the loading of the returnable container from the Seller's employees, then such loading shall be at the sole risk of the Purchaser who shall be responsible for all damage of whatsoever nature caused as a result of or during such loading.
- 9.3 Although the Seller will endeavour to arrange for the collection of returnable containers, the onus is on the Purchaser to return such containers, at its cost.

**10. DISCLAIMER**

All products are sold voetstoots and without any warranties whatsoever and the Seller shall not be liable for any loss of profit or any loss or damage, direct or indirect, consequential or otherwise, sustained by the Purchaser, arising out of any defect whatsoever, latent or patent.

**11. STANDARD SPECIFICATIONS & WARRANTIES**

- 12.1 Unless specifically stated otherwise, all products supplied will be to the Seller's standard specification.
- 12.2 Any recommendation, statement or suggestions relating to the use of any products supplied by the Seller to the purchaser is given in good faith, and warranty is given by the Seller that the products will be suitable for the purpose for which they are intended, and any implied warranty or condition (statutory or otherwise) is excluded.

**12. ACCOUNTS**

- 12.1 Credit Facilities may be withdrawn by the Seller at any time without prior notice, and the Seller reserves the right to review the extent, nature and duration of such facilities at any time.**
- 12.2 The indication on the face hereof of the amount of credit required is merely a guide and shall not bind the Seller should more or less credit be afforded at any time.

(BCL) Initial.....Date:.....

(Customer) Initial.....Date:.....

**13. ACCOUNT PAYMENTS**

13.1 Payment of accounts shall be within 30 (thirty) days from date of the Purchaser's statement ("the due date").

**13.2 No settlement discount will be allowed unless confirmed in writing.**

13.3 Should the purchaser fail to make any payment which is due and owing within the aforesaid 30 (thirty) day period, then the company has in its sole discretion, the right to call in all the amounts outstanding by the Purchaser to the Seller from whatsoever cause, whether or not the date of payment has arrived, and these will immediately become due and payable by the Purchaser.

13.4 Any amount not paid on the due date shall be liable for interest at the maximum rate in terms of Standard Bank's prime lending rate. Interest will be calculated and charged monthly and added to the principal debt.

13.5 The Seller shall have the right to suspend deliveries if any amount due by the Purchaser is unpaid.

**14. RETENTION OF OWNERSHIP**

14.1 Ownership of the products sold in terms of the contract shall remain with the Seller and shall not pass to the Purchaser until the purchase price is paid in full.

14.2 Where the products are to be stored at leased premises, the Purchaser hereby undertakes promptly to inform the Lessor thereof that the Seller has retained the right of ownership over all products which are the subject matter of this contract.

14.3 The Purchaser shall at all times advise the Seller in writing of the premises where the goods are ordinary kept if same is different to the Purchaser's principal address reflected on the first page of this agreement.

**15. DEFAULT**

15.1 Should the Purchaser:

15.1.2 fail to make payment upon due date of any amount due and owing, or

15.1.3 commit any other breach of the terms of any contract and remain in default of such breach after receipt of 14 (fourteen) days written notice from the Seller to the Purchaser calling upon the Purchaser to remedy such breach, or

15.1.4 being any individual, die or his estate be provisionally sequestrated or surrendered, or

15.1.5 being a partnership, the partnership be terminated, or

15.1.5 being a company, the company be placed under provisional and final order of liquidation or judicial management, or,

15.1.7 compromising or attempting to compromise generally with the Purchaser's creditors, or

15.1.8 have any judgement granted against him/it,

**THEN**

15.2 the Seller shall be entitled at its option and without prejudice to any other right which it may have, including the right to claim damages arising out of the breach or the termination of the contract:

15.2.1 to declare all amounts owing by the Purchaser to be immediately due and payable,

15.2.2 to suspend the carrying out of its then uncompleted obligations until payment is made,

15.2.3 to terminate any credit facilities granted to the Purchaser,

15.2.4 to retake possession of all products and returnable containers in the possession of the Purchaser,

15.2.5 the Seller's rights in terms clause of 14.1 shall not be exhaustive and shall be in addition to any other rights it may have whether under any contract, or at common law or otherwise.

15.2.6 No relaxation which the Seller may have permitted on any occasion in regard to the carrying out of the Purchaser's obligations shall prejudice or be regarded as a waiver of the Seller's rights to enforce those obligations on any subsequent occasion.

**16. NOTICES**

16.1 Any written notice in respect of this contract shall be delivered by prepaid registered post or by hand.

16.2 Notices delivered shall be deemed to have been received:

- on the fifth business day after posting, if delivered by prepaid registered post,

- on the day of delivery if delivered by hand on a business day.

**17. WAIVER**

17.1 No waiver of any of the terms and conditions of the contract shall be binding or effectual for any purpose unless expressed in writing and signed by both parties, and any such waiver shall be effective only in the specific instance and for the purpose given.

17.2 No failure or delay on the part of either party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

**18. ASSIGNMENT**

The Purchaser shall not be entitled to cede or assign any of its rights or obligations in terms of the contract of sale without the prior consent of the Seller.

(BCL) Initial.....Date:.....

(Customer) Initial.....Date:.....

**19. DOMICILIUM**

The Purchaser chooses *domicilium citandi et executandi* at the last address given by the Purchaser to the Seller for the delivery of any products, or at such address as it may advise the Seller from time to time.

**20. JURISDICTION & COST**

20.1 In terms of Section 45 of the Magistrates Court Act No.32 of 1944 (as amended). The Purchaser hereby consents to the jurisdiction of the Magistrates Court having jurisdiction in terms of Section 28 of the said Act in respect of any action to be instituted against the Purchaser by the Seller, in terms of the contract.

20.2 It shall nevertheless be entirely within the discretion of the Seller as to whether to proceed against the Purchaser in such Magistrate Court or any other court having jurisdiction.

20.3 The Seller shall be entitled to recover all charges of whatsoever nature which may be incurred by the Seller in enforcing any of the provisions of this contract, including, without limitation, by virtue of the foregoing, all legal costs including costs as between attorney and client, collection, commission and tracing agent's fees.

**21. APPLICABLE LAW**

Any contract will be governed and interpreted in accordance with the National Credit Act of 2005 and the laws of the Republic of South Africa.

**22. DISCLOSURE OF COMPANY AND PERSONAL INFORMATION**

22.1 The Purchaser confirms that the information given by it in this credit application is accurate and complete.

22.2 The Purchaser further agrees to update the information supplied, as and when necessary in order to ensure the accuracy of the above information, failing which, the Seller shall not be liable for any inaccuracies.

22.3 The Purchaser hereby gives the Seller permission to obtain any information, financial or trade, or relating to creditworthiness, from the Purchaser's auditors, bankers or trade references and to obtain and furnish such information to or from any credit bureaux or any like institution.

22.4 To the extent to that the National Credit Act of 1995 applies to this agreement, the Seller shall give the Purchaser 20 (twenty) business days' notice before any adverse information concerning the Purchaser is reported to a credit bureaux, and shall provide a copy of that information to the customer on request.

***Please note that this Credit Application now supersedes all previous Credit Application agreements between yourselves and Blue Chip Lubricants (Pty) Ltd.***

(BCL) Initial.....Date:.....

(Customer) Initial.....Date:.....