

PMB Gutters cc t/a Superspan Gutters

Standard Terms and Conditions

The terms and conditions contained herein shall apply to any agreement in terms of which SUPERSPAN GUTTERS, its agents, affiliates and successors thereafter referred to as "the Company" agrees to sell to the Customer the goods and / or services, as the case may be, of the Company, irrespective of the circumstances under which the agreement arose and to the exclusion of any terms and conditions which the Customer may seek to make applicable.

PLEASE NOTE: THE SIGNATORY / IES HEREUNDER ACCEPT LIABILITY IN HIS / HER/ THEIR PERSONAL CAPACITY / IES FOR PAYMENT OF THIS ACCOUNT JOINTLY AND SEVERALLY AS CO-DEBTOR WITH THE CUSTOMER.

1. DEFINITIONS

Unless otherwise required or indicated by the context, any reference to the singular shall include the plural and vice-versa, any reference to a gender shall include the other gender, any reference to a natural person shall include juristic persons and vice-versa, and the following words shall have the meanings assigned to them hereunder, namely:-

"**Agreement**" means the agreement arising out of the Company's acceptance of the Quotation read together with these Standard Terms and Conditions.

"**Commencement Date**" means the customers requested date or the closest date agreed upon.

"**Completion Date**" means the date upon which the Company has delivered the Goods and rendered its Services.

"**Company**" means PMB Gutters cc t/a Superspan Gutters, its agents, affiliates and successors.

"**Customer**" means the purchaser and / or debtor and / or surety (where applicable) who accepts / signs the quotation.

"**Purchaser**" shall mean the legal entity whose payment terms are payment on completion i.e. not deferred.

"**Debtor**" shall mean the legal entity whose payment terms are other than payment on completion.

"**Goods**" means and includes any and all of the various guttering components manufactured and / or provided by the Company for sale to the Customer from time to time for any purpose whatsoever as ordered and purchased by the Customer in terms of the quotation. Where applicable the purchase of the Goods shall include the Services.

"**Order/s**" means and includes all documents attached to the accepted quotation, and any specifications relating to the quotation.

"**National Credit Act**" means the National Credit Act 34 of 2005.

"**Parties**" means collectively the Customer, and the Company

"**Quotation**" means any Quotation issued by the Company in terms of clause 3 below.

"**Services**" means the services to be rendered pursuant to the quotation.

"**Surety**" means the signatory hereunder.

2. GENERAL

1 Acceptance by the Company of any quotation signed by the Customer will constitute an agreement upon the terms and conditions hereof

2.2 No amendment, alteration or addition to this Agreement shall be valid unless reduced to writing and signed by the Company. Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions which will continue to be valid and enforceable. If any term or conditions held to be invalid is capable of amendment to render it valid, the Parties agree to negotiate an amendment to remove the invalidity.

2.3 This Agreement shall be governed by, construed and interpreted in accordance with the laws of the Republic of South Africa.

2.4 The Customer acknowledges that he / she / it is aware that the Company's dealers and salespersons have no authority to vary these terms or conditions and the Company shall not be bound by any representations, warranties or undertakings made or allegedly made on its behalf, except to the extent that the same are expressly stated in the quotation.

2.5 Notwithstanding anything to the contrary herein contained, the Company shall have the right, despite its acceptance of the quotation, to cancel this Agreement at any time prior to delivery of the Goods in which case the Company's liability shall be limited to refunding any amounts paid by the Customer on account of the purchase price.

2.6 The Company reserves the right to cancel the Customer's credit status with the Company should the Customer not comply with the terms and conditions stipulated herein

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3. QUOTATIONS

All Quotations given by the Company shall be valid for acceptance by the Customer for a period of 30 (thirty) days from the date on which such Quotation are provided. Quotations are for the quantity indicated, the nature of the work included and the anticipated Services, and any reduction in quantity may affect such quote.

3.2 Quotations will not be offers capable of acceptance so as to bring into existence an Agreement unless such Quotation is incorporated into this Agreement.

4. **ORDERS**

Upon signature/authorisation the quotation will constitute the order. All order must possess and be accompanied by sufficient information to enable the Company to process the order, and the Company shall not be responsible for verifying the accuracy of such information nor for any delays caused or harm suffered by the Customer as a result of incorrect information being provided. The person submitting any Order Form on behalf of the Customer shall be deemed to have the authority to bind the Customer.

No order may, once submitted by the Customer, be amended, cancelled or varied without the written consent of the Company, provided that the Customer shall be liable for all costs and chargers occasioned by such amendment, variation or cancellation, including but not limited to cost wasted by the Company.

5. **PURCHASE PRICE**

The purchase price of the Goods will be in accordance with the:-

Quotation, provided that the Company may alter such purchase price in the event that there is any increase in the cost of the Goods, labour or transport between the date on which this Agreement is accepted by the Company and the date on which the Goods are delivered or the Services rendered or in the case of a Customer on credit, the date of the delivery of the goods from time to time. The Company will, at the Customer's request, provide the Customer with reasonable proof of such increases: or, If no Quotation is given, the Company's list price ruling at the time of delivery of the Goods shall apply.

6. **ACCOUNTS AND PAYMENT**

Payment is due on the Completion Date and against presentation of an invoice by the Company or in accordance with clause 7.2 below. Payment may not be withheld as a result of a dispute between the Customer and the Company.

Value-Added Tax (VAT) shall be payable on all Goods and Services as set out in the quotation.

Any dispute which the Customer may have with regard to such invoice must be notified in writing by the Customer to the Company within 7 (seven) days of the date of such invoice in which event the entries of such invoice shall be conclusive evidence of the transaction and proof of the amount owing by the Customer.

All amounts payable by the Customer shall be made to the Company free of deduction or set-off and shall be made by way of cash or electronic transfer into the Company's Bank Account as set out in the invoice and in the manner prescribed therein.

All outstanding amounts shall bear interest at a rate equivalent to the maximum permissible finance charge rate allowed from time to time in terms of the National Credit Act 34 of 2005.

In the event of a breach by the Customer to fulfill any of its obligations in terms of this Agreement, including for the avoidance of doubt any payment due, and upon notice being provided to the Customer in terms of clause 13 all amounts owing by the Customer to the Company shall become immediately due and payable with effect from the date of such breach, without the obligation of the Company to give any prior written notice or demand to the Customer and the Customer shall forfeit all Discounts of whatsoever nature granted to it by the Company and the Company shall be entitled to invoice the Customer for the amounts that were subject to the Discount.

The Company reserves the right to perform a credit check on the Debtor with one or more of the registered credit bureaus when assessing this application.

The Company reserves the right to cancel the Debtor's credit status with the Company should the Debtor not comply with the terms and conditions stipulated herein.

The Company reserves the right, at its sole discretion, and without prior notice, to rescind the credit facilities as detailed hereunder, including but not limited to the following circumstances.

upon ascertaining that any information supplied by the Debtor in the application form is false, and / or
if the Debtor be liquidated / sequestrated, placed under judicial management or makes any offer of compromise, and / or
if the Debtor fails to comply with any of these conditions, and / or
if the account of the Debtor is mismanaged in any way.

If at any time any amount of money due by the Debtor to the Company is overdue for payment, the Company shall be entitled to suspend all deliveries to the Debtor until all such monies are paid or at the election of the Company to cancel all existing and outstanding Orders in either of which events the Debtor shall have no claim against the Company

The Debtor undertakes not to sell or alienate its business without 14 (fourteen) days prior written notice to the Company and full settlement of all amounts due and owing.

7. **DELIVERY OF GOODS AND EXECUTION OF SERVICES**

Whilst the Company will use its reasonable endeavours to deliver the Goods timeously, the Company shall not be liable for any loss or harm suffered by the Customer as a result of any delay in delivery. For the purposes of clarity the Parties hereby record that time is not of the essence with regard to the Goods ordered.

Due to possible delays caused by manufacture and supply of the Goods, the Customer acknowledges that certain of the Goods ordered may be delivered at different times. The Customer hereby agrees that it shall accept delivery of all Goods, as and when they are delivered to it by the Company. The Customer further acknowledges that the Company shall be entitled to invoice the Customer upon delivery of each item of the order, and the Customer shall be obliged to pay for such Goods in accordance with clause 6.

Notwithstanding anything to the contrary herein contained, the Company shall be entitled in its sole and absolute discretion to delay the Commencement Date as specified for a period not exceeding 30 (thirty) days from the Commencement Date.

In the event that the Customer's structure for the installation is not ready for the Company to commence work on the Commencement Date, or in the event that the Company is unable to commence its work by the Commencement Date for any reason or default not attributable to the Company, the Company shall be entitled to cancel this Agreement on written notice to the Customer and to claim payment of an amount equivalent in 30% (thirty per centum) of the purchase price or withhold any payment received as a deposit as agreed damages in the event of any such cancellation, which payment shall be made without prejudice to any other claims which the Company may have against the Customer for any reason whatsoever or howsoever arising.

When necessary existing gutters and material will be dismantled and if so specified herein, existing gutters will be removed from site by the Company. If the Customer requires existing guttering to be reused in whole or in part, any part so used is not subject to any warranty as to its effectiveness or quality and no guarantee shall be provided by the Company that such existing guttering is re-usable in conjunction with the Company's products.

Although care is taken not to damage creepers, shrubs and plantings, these may have to be trimmed back without the Customer's consent unless specifically requested to the contrary.

Although care is taken with regard to gutter drainage, if any roofline is not level or if the roofline does not slope in the direction of any relevant downpipe or if the roof overhang into the gutter is too great, the Company in its sole and unfettered discretion may install guttering as level as possible, or alternatively may change positions of down pipes to suit run-off and / or may install splash plates, each of which shall be additional cost to the Customer over and above the purchase price.

Should replacement of fascias or barge boards be necessary or painting of any areas necessary, no warranty or undertaking is given in regard to exact or appropriate matching of existing colour, texture or materials.

If during the execution of the work, the Company in its discretion considers that the structure or any portion thereof, is not suitable for the fixing of the guttering specified whether by reason of inferior timber, condition of plaster or condition of brickwork or for any other reason, the Company may call upon the Customer to remedy the position at the Customer's expense and in the event of the Customer failing to do so within 7 (seven) days after having received written notice from the Company to comply, the Company shall at its election be entitled to cancel the Agreement and claim payment equivalent to 30% (thirty per centum) of the purchase price from the Customer, as being the agreed amount in the event of such cancellation, without prejudice to any other claims which the Company may have against the Customer.

The Company or its agents will issue an invoice on the Completion Date, and in such event shall be prima facie proof of the discharge by the company of its obligations in terms of this Agreement

8. **RISK AND OWNERSHIP**

All risk in and to the Goods for any loss or damage, whether total or partial from any cause what so ever and howsoever arising, shall pass to the Customer upon deemed or actual delivery of the Goods to the Customer.

Ownership in and to the Goods shall remain the property of the Company and shall only pass to the Customer once payment of all invoices has been made by the Customer to the Company.

The Customer shall not save with the written consent of the Company, which consent may be withheld in its sole and absolute discretion of the Company, sell, pledge, alienate, hypothecate or otherwise dispose of the Goods until ownership in such Goods has passed to the Customer in terms of clause 8.2

9. **REJECTIONS AND RETURNS**

The Customer shall immediately upon installation of the Goods inform the Company of any errors, defects, or shortages by way of written notice to be received by the Company within 7 (seven) days of receipt of the Goods by the Customer. Should the Customer fail to notify the Company of any claim within such 7 (seven) days, such failure shall constitute a complete waiver of any such claim.

9.2 In the event that the Company elects to recover possession of the Goods, this shall be subject to the Customer being responsible for payment of all transport costs, any taxes, import or storage costs.

10. **COMPANY'S WARRANTIES AND GUARANTEES**

Over and above 10.3 The Company hereby UNIQUELY guarantees all installed gutters against LEAKING for a period of TEN YEARS and our money back guarantee if our designed rain-water system doesn't perform in terms of our specification.

The Company hereby warrants for a period of 12 (twelve) months from the Completion Date that the Goods and Services will be free from defects in workmanship under normal use. This warranty shall only extend to the repair or replacement of Goods due to defects in workmanship and it is agreed that the Company shall not be liable for any defect or deficiency of Goods or Services which, in the opinion of the Company, is due to wear and tear, a force majeure, or the improper or unskilled handling and / or use of the Goods, or by any repair or attempted repair or dismantling of the Goods carried out by any person not authorized to do so by the Company.

Upon fulfillment by the Customer of all of its obligations in this agreement, the Customer is hereby given a 15 (fifteen) year guarantee against corrosion, rusting, flaking or peeling in respect of aluminium Goods provided by the Company and which guarantee is limited to the replacement of these aluminium Goods should they become defective.

This guarantee is in lieu of any common law guarantee, warranty or understanding which would otherwise be applicable to the Goods and Services. This guarantee does not cover damage resulting from building movements, abnormal atmospheric

conditions, structural defects or mechanical or external physical causes, inclusive of any damage caused as a result of force majeure, nor any damage resulting from the improper or unskilled handling and / or use of the aluminium Goods.

To be valid, guarantee claims must be supported by the original invoice.

The guarantee period shall commence from the Completion Date.

This guarantee is non assignable and / or transferable and attaches only to the property.

Save as provided above, the Company makes no warranties, representations, guarantees or conditions, express or implied whatsoever, in respect of the Goods or Services.

11. LIMITATION OF LIABILITY

Notwithstanding anything to the contrary in this Agreement, under no circumstances, howsoever arising, shall the Company be liable for damages which in the aggregate exceed the purchase price paid by the Customer for the Goods and Services.

Under no circumstances shall the Company be liable for any indirect, consequential, punitive or like damages which may arise pursuant to this Agreement.

The Company will not be liable to the Customer or any third party for any loss or damage arising directly in connection with any delay, failure, break-down, damage or injury caused by the Goods, or any of them.

12. FORCE MAJEURE

13. Save for the obligation to pay any amount pursuant to this Agreement, the Customer shall not have any claim against the Company arising from any failure or delay in the performance of any obligation of the Company under the Order, caused by an act of force majeure which includes but is not limited to, fire, flood, war, strike, complete or partial shut down or lockout of the plant by reason or inability sufficient raw materials or power, industrial dispute, government action, laws or regulations, riot, terrorism or civil disturbances, and / or other similar or different occurrence beyond the reasonable control of the Company.

14. BREACH AND TERMINATION

The Company shall have the right summarily to terminate this Agreement, without prejudice to any other rights it may have in law, whether to claim damages or otherwise, in the event of either.

The Customer committing a breach of any term of this Agreement and failing to remedy that breach within 7 (seven) days of receipt from the other Party of written notice requiring such breach to be remedied: or

The Customer being provisionally or finally liquidated or placed in judicial management, whether provisionally or final: or

The Customer ceasing or threatening to cease to carry on its normal line of business in the Republic of South Africa or defaulting or threatening to default in the payment of its liabilities generally, or committing any act or omission which would, in the case of an individual, be an act of insolvency in terms of the Insolvency Act. 1936 (as amended): or

Any information supplied by the Customer herein is false.

The Customer consents to the jurisdiction of the Magistrates Court for any action instituted by the Company in respect of any matter arising from this Agreement or any action pursuant to this transaction.

Should the Company institute legal proceedings against the Debtor, all legal costs incurred will be for the Customer's account on the scale as between attorney and own client, including collection commission at the relevant Law Society tariff and tracing charges.

15. NOTICES AND DOMICILIUM

The Parties hereto select as their respective domicilia citandi et executandi the addresses set out in the quotation.

Any notice addressed to a Party at its physical or postal address shall be delivered by hand or sent by telefax.

Any notice shall be deemed to have been given

If hand delivered or sent by courier, on the day of delivery.

If sent by telefax, on the date and time of sending of such telefax, as evidenced by a telefax confirmation printout

16. INTELLECTUAL PROPERTY

All right, title and interest in and to any work, design or invention by the Company, in relation to its products, the installation thereof and the "look and feel" thereof shall vest in the Company and the Customer shall have no right, title or interest to any of the foregoing whatsoever or howsoever arising.

17. CREDIT CHECKS

The customer hereby agrees to the Company carrying out whatever checking routines it may deem necessary.