

ZEN OIL

TERMS AND CONDITIONS FOR SUPPLY OF GOODS & SERVICES

PLEASE INITIAL ALL PAGES AND ADDENDUMS

1 INTERPRETATION

1.1 In these Terms & Conditions:-

1.1.1 The headings to the clauses are for reference purposes only and shall not aid the interpretation of the clauses which they relate to.

1.1.7.3

gratuitously or not, by the Company for and on behalf of the Customer in terms of these Terms and Conditions.

1.1.2 Any reference to “Parties” shall include the Parties’ respective successors-in title and, if permitted in these Terms and Conditions, their respective cessionaries and assignees.

1.1.7.4

“Company” means ZEN OIL PRODUCTS (Proprietary) Limited or whatever trade name it may assume from time to time, its holding company and its subsidiary companies, and includes the Company’s servants, agents and/or representatives.

1.1.3 Any reference to one gender shall include the other gender.

“Customer” means any natural person or juristic entity at whose request or on whose behalf the Company undertakes any Business.

1.1.4 Words in the singular number shall include the plural and *vice versa*.

1.1.7.5

“Credit Agreement” means the agreement in place in terms of which credit is extended to the Customer by the Company, upon approval by the Company of the Customer’s credit application to the satisfaction of the Company as to the Customer’s creditworthiness, and which is to be read with these Terms and Conditions, governing the terms of credit granted to the Customer;

1.1.5 If any definition in this clause 1 contains a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to such provision as if it was a substantive provision in the body of these Terms and Conditions.

1.1.6 These Terms and Conditions and any other terms and/or conditions agreed between the Parties shall be governed in all respects by the Law of the Republic of South Africa.

1.1.7.6

“Goods” means the Goods supplied by the Company to the Customer and includes any containers and/or equipment used in connection with or in relation to the Goods.

1.1.7 Unless inconsistent with or otherwise indicated by the context, the following words and expressions shall have the meanings set out opposite them:-

1.1.7.7

“Law” means the common law and any applicable Constitution, statute, by-law, proclamation, regulation, rule, notice, treaty, directive, code of practice, charter, judgment or order having force of law in South Africa, and any interpretation of any of them by any court or forum of law;

1.1.7.1 “Addendums” means the credit facility application agreement and insurance agreement to be read with these Terms and Conditions as well as any other addendums not expressly mentioned;

1.1.7.8

“Point of delivery” shall unless otherwise specifically stated, be the places respectively endorsed on the documents relating to the agreement in question or

1.1.7.2 “Business” means all and any business undertaken, including any advice, information or services provided, whether

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the agreement as between the Parties reached in accordance with these Terms and Conditions as being the place at which the Goods are to be collected or received by the Company or the place at which the Goods are to be delivered by the Company as the case may be.

1.1.7.9 **“Terms and Conditions”** means the terms and conditions hereinafter set out which governs the contractual relationship between the Parties.

1.1.7.10 **“Transfer of Possession”** means the transfer of possession of Goods from the property of the Company into or onto the property of the Customer at the Point of Delivery.

2 **GENERAL APPLICATION OF BUSINESS**

2.1 Business is undertaken by the Company strictly subject to these Terms and Conditions which shall be deemed to be incorporated in and be a part of any agreement between the Company and the Customer.

2.2 The Company deals with the provision and supply of Goods only on the basis set out in these Terms and Conditions.

2.3 To the extent that the Company in fulfilling its obligations to the Customer, is subject to specific rights and obligations, whether contractual or otherwise, with third parties (whether acting as agents or subcontractors to the Company or not) which are more onerous to the Company than those contained in these Terms and Conditions and any other terms and/or conditions agreed between the Parties, those more onerous rights and obligations shall be incorporated herein and be passed onto the Customer in its relationship with the Company, (without imposing any additional liability on the Customer not already catered for herein), whether or not inconsistent with these Terms and Conditions and any other terms and/or conditions agreed between the Parties, and the Company undertakes to make available such terms and conditions to the Customer.

2.4 Unless the Parties agree in writing, and specific mention of Clause(s) within this agreement are made specifically to the contrary, these Terms and

Conditions shall prevail in the event of the Customer itself having trading terms and conditions, even if the latter conditions are apparently incorporated after these Terms and Conditions.

2.5 The Company is entitled to amend these Terms and Conditions and to publish supplementary terms and conditions which will be available electronically to the Customer on the Company’s website, www.zenoil.co.za or at the Company’s offices. The client may request terms and conditions, and any clarification thereof, at any time by way of written request made to info@zenoil.co.za. All amendments and supplements shall take effect 7 (seven) days from the date which such amendment or supplement is made by the Company.

2.6 Notwithstanding any prior dealings between the Company and Customer, all documents and other matters (including cash, cheques, bank drafts and other remittance) sent to the Company through the post shall be deemed not to have been received by the Company unless and until they are actually delivered to the Company by the postal authorities or placed in the Company’s post office box if so addressed.

3 **ORDERS FOR SUPPLY OF GOODS**

3.1 Orders by the Customer given to the Company shall:

3.1.1 be precise, dated and clear;

3.1.2 be in writing;

3.1.3 be timeously provided by the Customer and in advance of the Company having to render the services for provision of goods;

3.1.4 shall state all required information as required by the Company

3.2 Instructions not complying with the requirements of clause 3.1, shall not be binding on the Company.

3.3 Following receipt of an order by the Company from the Customer, the Company shall provide the Customer with a quotation/proforma invoice.

4 **QUOTATIONS/PROFORMA INVOICES**

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The Company shall be entitled at any time by notice to the Customer to revise its quotation if circumstances necessitate it. If the Customer then elects not to proceed, the Company may cancel or resile from the amended quotation in circumstances where it becomes impracticable or uneconomical for the Company to carry out the Business at the quoted rate. And the Customer shall have no claim whatsoever against the Company for any loss that the Customer might incur as a result of the Company cancelling or resiling from the quotation or agreement.

5. PAYMENT

5.1 Unless a written agreement to grant credit has been entered into by the Company, (which credit agreement forms an addendum hereto), or any other agreement is reached between the Parties in writing, the terms of payment shall be cash on delivery. These terms and conditions shall apply and be read in conjunction with the written credit agreement notwithstanding the fact that it is concluded separately hereto.

5.2 In the event of the Company agreeing to grant credit as aforesaid, the Customer will be granted credit in accordance with the credit agreement, the payment terms of which will require payment to be made to the Company by the last day of the calendar month following the date of the invoice, any payment due, received more than 3 days after the due date will automatically attract a 1% late payment fee on the amount due.

5.3 In addition to the charges for the services rendered to the Customer by the Company, all disbursements incurred by the Company on behalf of the Customer shall be paid by the Customer to the Company without set-off, immediately upon presentation of an account in respect thereof by the Company to the Customer.

5.4 The Customer shall not under any circumstances be entitled to make any deductions or to set off any amount whatsoever and howsoever arising from such invoices owing to the Company by virtue (but without derogating from the generality thereof) of any real or alleged counter claim by the Customer against the Company.

5.5 All amounts paid by the Customer to the Company shall be allocated by the Company to

such liabilities as the Company may in its sole discretion determine. The Customer conversely shall not be entitled to stipulate or allocate payments to any particular outstanding amount.

5.6 In the event of any sum(s) due to the Company as aforesaid not being paid on due date, the Company shall be entitled to give to the debtor 7 (seven) days prior written notice that should payment of the debt not be made in full within the said period of 7 (seven) days, the Company will have the right to pursue alternative legal remedies to its availability and immediately cease the provision of continued services to the Customer.

5.7 The Company shall be entitled to payment by the Customer of its legal costs on an attorney and own client scale, for the recovery of funds due to it in terms hereof or any non-payment by the Customer, which the Customer shall be liable for.

6. SURETY

As stipulated herein, the person, affixing his/her signature to these terms and conditions, binds itself as surety in favour of the Company and as co-principal debtor *in solidum* with the Customer in respect of the Customer's indebtedness and/or obligations to the Company in whatever amount and for whatever cause, on a renunciation of the benefits of division of *excussion*, with the full meaning and scope of which it declares itself to have full knowledge.

7. CUSTOMERS WARRANTIES

7.1 The Customer warrants that:-

7.1.1 The person representing the Customer in contracting with the Company is duly authorised and legally able to do so, is either the owner or the authorized agent of the owner of any Goods in respect of which it instructs the Company, and that each such person is bound by these Terms and Conditions.

7.1.2 In authorising the Customer to enter into any agreement with the Company and/or in accepting any document issued by the Company in connection with such agreement, the owner, sender or consignee is as surety bound by these Terms and Conditions for

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itself and its agents and for any Parties on whose behalf it or its agent may act, and in particular, but without limitation and without foregoing the generality hereof, it accepts that the Company shall have the right to enforce against them jointly and severally any liability of the Customer under these Terms and Conditions or to recover from them any sums to be paid by the Customer which upon proper demand have not been paid as in accordance with the provisions of the suretyship at the end of this document.

7.1.3 That it will not withhold any necessary or pertinent information, and herewith indemnifies the Company against all claims, losses, penalties, damages, expenses and fines whatsoever, whensoever and howsoever arising as a result of a breach of the foregoing whether negligently or otherwise.

7.1.4 It indemnifies the Company, director, servant, employee, agent or independent contractor of the Company against any claim made against them in connection with the Goods or the dealing with or of such Goods by any third Party in respect of any Business conducted.

8 SUB-CONTRACTING BY THE COMPANY

8.1 Any Business conducted by the Company may, in the absolute discretion of the Company, be fulfilled by the Company itself, by its own servants performing all or part of the relevant services, or by the Company employing, instructing or entrusting the service delivery to third Parties on such conditions as may be stipulated by or negotiated with such third Parties for the purposes of such services, or such part thereof as they may be employed to carry out.

8.2 Where the Company employs third parties to perform all or any of the functions which it has agreed to perform, the Company shall have full responsibility to the Customer for any acts or omissions of such third parties. Liability of these third-party acts or omissions will follow those as set out in any insurance agreement with the Company.

9 LIMITATION OF COMPANY'S LIABILITY AND INDEMNITY

9.1 The Company shall not be liable for any loss or

damage whatsoever unless such loss or damage:

9.1.1 occurs whilst the Goods are in the actual custody of the Company and under its actual control; and

9.1.2 is proved to have been directly attributable to the wilful act or omission of the Company;

9.1.3 is excluded in terms of any other provision of these terms and conditions.

9.2 In all such events the burden of proving such wilful act or omission shall at all times rest upon the Party alleging it.

9.3 Notwithstanding anything to the contrary contained herein or in any Law, the onus of proving the Customer has complied with these Terms and Conditions shall at all times be on the Customer.

9.4 The Customer shall be fully responsible for any and all goods once possession of said goods has been transferred from the possession from the Company to the Customer.

9.5 Notwithstanding the provisions of the law, the onus remains with the Customer to ensure the Goods received by the Customer are in the condition, any reasonable or industry standard method the Customer deems fit, and that the quantity(ies) that has been agreed upon as stipulated under Clause 3.1 of this agreement prior or upon Transfer of Possession of said Goods. The Customer agrees that Company shall not be held liable for any loss, damage, penalties, costs, fines, injury, or any other claims for any defects, contamination, incorrect quantity(ies) once Transfer of Possession has been completed unless reasonably proven otherwise.

9.6 The Company shall not be liable for any claims, damages, costs, penalties, loss, injury of whatsoever nature that may arise due to incorrect, unlawful, negligent, nefarious use, storage or handling by the Customer of the Company's Goods.

9.7 The onus remains solely on the Customer to manage its own affairs including but not limited to, make themselves aware of, ensure and enforce all applicable laws, regulations and procedures, are adhered to for, but not limited to,

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the usage, storage and handling of Goods from the time that Transfer of Possession of said Goods takes place.

9.8 The onus remains solely with the Customer to ensure that all the Customer's equipment, including but not limited to, transfer, storage, use, handling, ancillary and supporting equipment is in a safe condition, maintained to a reasonable standard in line with industry standards, laws, regulations or otherwise.

9.9 Delivery dates and times as announced by the Company are approximations and are non-binding. If the Company is not able to Deliver on that date or time, the Company shall give the Customer reasonable notice where it is reasonably practicable to do so.

9.10 The Customer shall have no claim to loss, damages, penalties, costs or any claims whatsoever for delays in deliveries within a reasonable timeframe.

9.11 Should the Customer fail to take Transfer of Possession of Goods as agreed upon without prior written arrangements or without reasonable premise, the Company shall be entitled to claim costs associated with non-delivery which may include but not limited to, storage fees, travel costs and handling fees.

10. COSTS

10.1 Save where otherwise agreed between the Company and the Customer, all work undertaken by the Company shall be charged for at the rate specified in the Company's quotation as amended from time to time or in respect of the Company's usual charges in relation to the Business and as set out in the Company's invoice, payable as in terms of the invoice issued to the Customer.

10.2 The Customer shall be liable for payment of the Company's account for any services rendered as envisaged herein, including any additional charges of whatsoever nature, levied by the authorities in connection with the Goods, and for any payments, fines, expenses, loss or damage incurred or sustained by the Company in connection therewith.

11. DEFAULT

11.1 In the event that the Customer shall default in fulfilment in any of its obligations to the Company, whether relating to payment of money is due or otherwise, the Company shall be entitled to:-

11.1.1 Cancel the agreement; or

11.1.2 Claim specific performance from the Customer.

11.2 In the event that the Company cancels the agreement, the Company shall be entitled to:

11.2.1 Claim immediate payment of all amounts due to it together with interest and all legal costs on an attorney-client scale inclusive of collection commission and tracing charges; and

11.2.2 Suspend all Business; and

11.2.3 Institute any action it deems appropriate against the Customer in the appropriate South African Court of Law, including any Magistrate's Court, notwithstanding that the amount claimed by the Company from the Customer may otherwise exceed the jurisdiction of the Magistrate's Court.

11.3 A certificate by any of the directors of the Company (whose appointment or qualifications it shall not be necessary to prove) as to the amount owing by the Customer and to the effect that the date of payment of such amount has arrived, shall for the purposes of any action against the Customer hereunder for provisional sentence or summary judgement or otherwise be sufficient and satisfactory proof of the fact therein stated until the contrary shall have been proved.

12. GENERAL

12.1 **Indulgence**

No relaxation, indulgence or delay (collectively referred to as "**Indulgence**") granted by the Company shall constitute a waiver of any of the Company's rights under these Terms and Conditions; accordingly, the Company shall not be precluded from as a consequence of having granted such indulgence, from exercising any rights against the Customer which may have arisen in the past or which may arise in the future.

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12.2 Waiver of Rights

12.2.1 The waiver of any right under these Terms and Conditions shall be binding on the waiving Party only to the extent that the waiver has been reduced to writing and referring to specified clause(s) in this agreement, and signed by the duly authorized representative(s) of the waiving Party.

12.2.2 If the Company is obliged, in the execution of any of its duties and/or responsibilities to comply with the Law then the Company by complying therewith shall not be deemed to waive or abandon any of its rights in terms of these Terms and Conditions and in complying with the Law the Company shall not be deemed to have assumed any onus, obligations, responsibility or liability in favour of the Customer.

12.2.3 No agent or employee of the Company, other than a director or an individual authorised thereto by the board of directors, has the Company's authority to alter or vary the Terms and Conditions nor shall any act or omission of the Company be construed as a variation or waiver of any of these Terms and Conditions.

12.3 Severability

12.3.1 Whenever possible, each provision of these Terms and Conditions shall be interpreted in a manner which makes it effective and valid under applicable Law, but if any provision of these Terms and Conditions is held to be illegal, invalid or unenforceable under applicable Law, that illegality, invalidity or unenforceability shall not affect the other provisions of these Terms and Conditions, all of which shall remain in full force;

12.3.2 Should any one or more of the provisions of these Terms and Conditions be unenforceable then such provision(s) shall be severed, and the remaining provisions shall be of full force and effect.

12.4 Force Majeure

12.4.1 The obligations of either Party under these Terms and Conditions shall be suspended for

the duration of any event resulting in either Party being prevented from or delayed in performing any obligation imposed herein where the causal event is not within the reasonable control of the affected party, including without limitation:

12.4.1.1 An act of God, force of nature or climatic conditions, unavoidable accidents; or

12.4.1.2 war, revolution, riot, insurrection, terrorism, vandalism, sabotage or any other unlawful act against public order or authority; ("**Force Majeure Event**"), provided that in any of these circumstances the party seeking to rely on the benefit of this clause must use its reasonable endeavours to put itself in a position where it is able to meet its obligations under this Agreement as soon as possible.

12.4.2 In the event that a Force Majeure Event continues for a period of thirty (30) consecutive days, either Party shall have the right to terminate the services of the Company.

13. NON-VARIATION

No addition to, variation, or agreed cancellation of this agreement, this clause or any of the annexures hereto shall be of any force or effect unless in writing and signed by or on behalf of the Company and Customer

14. JURISDICTION

These Terms and Conditions constitute an agreement executed by and between the Company and the Customer and/or its agents and wherever made shall be governed by and constituted according to the laws of South Africa and shall be subject to the exclusive jurisdiction of the courts of the Republic of South Africa.

15. CONSUMER PROTECTION ACT

15.1 In the event that there is any conflict between these Terms and Conditions and the provisions of the Consumer Protection Act 68 of 2008 ("**CPA**"), the provisions of the CPA shall prevail.

15.2 Neither the Company nor any person acting for and on behalf of the Company will be liable for

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any loss, damage or injury whatsoever and howsoever arising including without limitation, all direct and indirect damages, consequential and special losses or damages, sustained by the Customer or any third party. Save and except for gross negligence on the part of the Company and any claim in terms of section 61 of the CPA, the Customer hereby indemnifies the Company against any and all loss or damage to any property and/or any or all loss, damage and/or injury suffered by any person, including consequential loss or damage, arising from or in connection with or as a result of any act or omission of the Company in relation to the

Goods and the services rendered. Under no circumstances shall the Company be liable for any damage arising from any misuse or abuse of the Goods.

ON BEHALF OF ZEN OIL PRODUCTS (PTY) LTD

THUS DONE AND SIGNED at.....on this the Day of

SIGNATURE:

NAME: Christo Mihalitsianos

CAPACITY: Director

(Being duly authorised to sign thereto)

ON BEHALF OF (THE CUSTOMER)

THUS DONE AND SIGNED at.....on this the Day of

SIGNATURE:

NAME:

CAPACITY:

(Being duly authorised to sign thereto)

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