

# STANDARD TERMS AND CONDITIONS OF SALE

## 1. DEFINITIONS

- 1.1 In these Conditions the words defined shall have the meanings assigned to them hereunder :
- 1.1.1 "ISEGEN" – ISEGEN South Africa (Pty) Limited including its agents, nominees and contractors who may from time to time be appointed by ISEGEN;
- 1.1.2 "CUSTOMER" – the person, partnership, firm, association, company or close corporation or other entity applying for credit from ISEGEN in terms of this application for credit;
- 1.1.3 "Conditions" – these standard terms and conditions of sale;
- 1.1.4 "Products" – all the products and goods sold by ISEGEN to the CUSTOMER.
- 1.2 Unless inconsistent with the context, words relating to any gender shall include the other genders, words relating to the singular shall include the plural and vice versa and words relating to natural persons shall include associations of persons having corporate status by statute or common law.
- 1.3 For sales outside the Republic of South Africa and the common customs union, trade terms shall be interpreted in accordance with Incoterms 2000. Title shall pass to Purchaser at the same time as the risks of loss or damage under Incoterms 2000. If these Conditions do not specify trade terms as defined in Incoterms 2000, title and risk of loss shall pass to Purchaser upon delivery into the custody of the carrier.

## 2. CONCLUSION OF CONTRACT

- 2.1 The CUSTOMER may place an order for Products in writing, which order shall constitute the CUSTOMER's offer.
- 2.2 ISEGEN shall be entitled to accept the CUSTOMER's order in whole or in part.
- 2.3 Upon acceptance by ISEGEN of the CUSTOMER's order a contract of sale upon the terms set forth in these Conditions shall be deemed to have been concluded between the CUSTOMER and ISEGEN in respect of the Products which ISEGEN has agreed to supply.
- 2.4 Any order form delivered to ISEGEN which reflects the CUSTOMER's name shall be deemed to have emanated from the CUSTOMER, and shall be binding on the CUSTOMER, notwithstanding that such order may have been given or signed by a person not duly authorised by the CUSTOMER.
- 2.5 Each order that is accepted by ISEGEN shall constitute a separate and distinct contract of sale in respect of the Products forming the subject matter of such order.

## 3. DELIVERY

- 3.1 Each order of Products shall be delivered in such manner as may be expressly agreed between ISEGEN and the CUSTOMER in respect of such order.
- 3.2 Where the Products are to be transported to the CUSTOMER by any carrier (whether such carrier is appointed by the CUSTOMER or ISEGEN), such carrier shall be deemed to be the CUSTOMER's agent, and delivery to such carrier at ISEGEN's warehouse shall be constitute delivery to the CUSTOMER.
- 3.3 Where the Products are transported to the CUSTOMER by any carrier who is employed or appointed by ISEGEN, such carrier shall be deemed to be ISEGEN's agent, and delivery shall take place upon delivery of the Products at the address / location designated or provided by the CUSTOMER.
- 3.4 If the price of Products is quoted inclusive of delivery costs, then ISEGEN shall be liable for the delivery charges and ISEGEN shall have the right to select the means of transportation. In all other instances the CUSTOMER shall be liable for the costs of delivery of the Products.

- 3.5 ISEGEN shall have the right to deliver the Products in whatever quantities and on however many separate occasions as it in its discretion may decide.
- 3.6 In the event delivery is done in accordance with clause 3.2 above and the CUSTOMER uses any of ISEGEN's delivery equipment in delivering the Products, the CUSTOMER shall be liable to ISEGEN for damage or destruction of such equipment attributable to CUSTOMER. All repairs to the equipment shall be made under the supervision or direction of ISEGEN.
- 3.7 ISEGEN's delivery note or other delivery document signed or counter-signed by the CUSTOMER or any person purporting to be an employee or agent of the CUSTOMER, or any carrier appointed by the CUSTOMER or ISEGEN to deliver the Products, shall for all purposes be deemed to be accurate in all respects and binding on the CUSTOMER and as confirmation by the CUSTOMER that the Products reflected in such delivery document have been properly and completely delivered.
- 3.8 ISEGEN undertakes that the Products will at the time of delivery meet ISEGEN's then current Sales Specifications which are available on its website at ([www.isegen.co.za](http://www.isegen.co.za)). All descriptions, drawings, photographs, illustrations, performance and technical data, dimensions, weights and the like, contained in any promotional or technical literature issued by ISEGEN are subject to variation without notice and are not designed to constitute Sales Specifications.
- 3.9 Insofar as the delivery of Products is concerned, time shall not be of the essence of any contract of sale between ISEGEN and the CUSTOMER and any delivery or despatch dates mentioned in any quotation, order or other documentation shall be approximate only and not of any contractual effect. In the event of any delay in delivery by ISEGEN, or failure to effect delivery, for any reason whatsoever, other than a wilful breach by ISEGEN, then:
- 3.9.1 the CUSTOMER shall not be entitled to cancel the contract; and
- 3.9.2 the CUSTOMER shall have no claim for any loss or damages against ISEGEN as a result thereof.

#### **4. PRICE AND PRICE INCREASES**

- 4.1 The price of the Products shall be as stated by ISEGEN at the time of the conclusion of the contract unless varied in accordance with 4.2.
- 4.2 If prior to delivery of the Products in terms of 3, there is any increase in any taxes or duties and or change in such rate of exchange, or if any laws are promulgated which directly or indirectly increase the cost of the Products to ISEGEN, ISEGEN shall be entitled by written notice to the CUSTOMER to increase the quoted price of the Products to take into account any such increase.
- 4.3 If the CUSTOMER disputes the amount of any increase claimed by ISEGEN, then:
- 4.3.1 the CUSTOMER shall give written notice of dispute to reach ISEGEN prior to the due date of despatch of the Products from ISEGEN's warehouse for delivery to the CUSTOMER;
- 4.3.2 if the dispute cannot be resolved between the parties within 7 (seven) days of such notice, it shall be referred to ISEGEN's auditor for the time being who shall determine the increase in the price of the relevant Products (acting as expert and not as arbitrator), and whose determination shall be binding on the parties. Pending the determination of such dispute, ISEGEN shall be entitled to withhold delivery of the Products.
- 4.4 If the CUSTOMER does not dispute the amount of the proposed increase, in accordance with 4.3.1, then the increased price shall be binding upon the CUSTOMER.

## **5. PAYMENT**

- 5.1 Unless otherwise agreed in writing in respect of each order of the Products, the purchase price shall be payable by the CUSTOMER to ISEGEN within 30 days after the date of ISEGEN's monthly statement reflecting such purchase price, unless otherwise agreed in writing, provided that in respect of any order for Products, ISEGEN may, in its discretion, require security for the payment of the purchase price, or any part thereof, by way of a letter of credit or other security acceptable to ISEGEN.
- 5.2 In the event of ISEGEN accepting any post-dated cheque, promissory note or other bill of exchange from the CUSTOMER in respect of any indebtedness of the CUSTOMER, then the acceptance by ISEGEN of such post-dated cheque, promissory note or bill of exchange shall be without prejudice to ISEGEN's rights in terms of any contract, or according to law.
- 5.3 If the price of any Products is not paid on due date, the CUSTOMER shall be obliged to pay interest thereon at 3% above the publicly quoted prime overdraft interest rate charged by the Standard Bank of South Africa Limited from time to time on monies lent and advanced on unsecured overdraft, calculated and compounded monthly in arrear from the due date to date of payment.
- 5.4 Unless otherwise agreed in writing, all payments shall be made to ISEGEN in South African currency and free of deduction and set-off.
- 5.5 In the event of a CUSTOMER failing to make payment of any amount on due date, then the full amount then owing by the CUSTOMER (whether due or not) shall immediately become due and payable, without prior notice to the CUSTOMER.
- 5.6 A certificate signed by any director of ISEGEN (whose appointment need not be proved) reflecting the amount owing by the CUSTOMER to ISEGEN, and of the fact that such amount is due, owing and payable, shall be *prima facie* proof of the fact therein stated for the purpose of any action (whether by way of provisional sentence or otherwise), proof of debt on insolvency or liquidation, or for any purpose where the amount of such claim is required to be established.

## **6. SUSPENSION OF DELIVERIES**

Without prejudice to any other rights that ISEGEN may have in terms of these Conditions, or according to law:

- 6.1 If any amount due by the CUSTOMER to ISEGEN is not paid on due date, ISEGEN shall have the right to suspend all further deliveries of Products to the CUSTOMER and to cancel all sales of Products already concluded.
- 6.2 Notwithstanding anything to the contrary herein contained, ISEGEN shall have the right to suspend any delivery under any contract at any time if in its sole discretion it considers that:
- 6.2.1 the amount owing by the CUSTOMER (whether due or not) has reached the limit to which it is prepared to allow the CUSTOMER credit; or
- 6.2.2 if it comes to its notice that the CUSTOMER's financial position has deteriorated; or
- 6.2.3 if it no longer considers the CUSTOMER to be creditworthy; or
- 6.2.4 the CUSTOMER does not acknowledge that any contract is upon the terms set forth in these Conditions.

## **7. PASSING OF OWNERSHIP AND RISK**

- 7.1 Until such time as the CUSTOMER has paid the purchase price of all Products sold and delivered to it in full, the ownership of, and all rights in and to all such Products shall remain vested in ISEGEN.
- 7.2 ISEGEN shall be entitled to take possession of any Products which have not been paid for in full and in respect of which payment is overdue, in which event the CUSTOMER shall be entitled to a credit in respect of the

Products so returned, being the price at which the Products were sold, or the market value thereof, whichever amount is the lesser. The CUSTOMER shall be liable for all costs incurred by ISEGEN in taking possession of the Products, including the costs of transporting the Products to ISEGEN's warehouse.

- 7.3 Save as may be agreed in writing to the contrary in respect of any order of Products, the risk in and to the Products shall pass from ISEGEN to the CUSTOMER upon delivery to the CUSTOMER as envisaged in 3.2 and 3.3 above.

## **8. CLAIMS AGAINST THE COMPANY AND RETURN OF PRODUCTS**

- 8.1 No claim against ISEGEN arising out of a sale of Products shall be capable of being enforced, and ISEGEN shall not be liable in respect of any claim, unless a written notice setting forth the nature of the claim and the amount claimed has been delivered to ISEGEN within fourteen (14) days of the delivery of the Products in respect of which the claim is made.
- 8.2 Products correctly supplied are not returnable without the prior written consent of ISEGEN and in any event shall not be considered unless arranged within fourteen (14) days of delivery and where accepted will be subject to a 25% handling charge.
- 8.3 The CUSTOMER acknowledges that no returns will be considered of any Products which have been processed, modified or altered to the CUSTOMER's specification.
- 8.4 Products supplied for cash may not be returned under any circumstances.
- 8.5 The CUSTOMER undertakes to :
- 8.5.1 familiarise itself with all Products literature or information ISEGEN provides under ISEGEN's Products stewardship program, including Material Safety Data Sheets (MSDS);
- 8.5.2 follow safe handling, use, selling, storage, transportation and disposal practices, including special practices as CUSTOMER's use of the Products requires and instruct its employees, contractors, agents and customers in these practices
- 8.5.3 take appropriate action to avoid spills or other dangers to persons, property or the environment.
- 8.6 The CUSTOMER hereby indemnifies ISEGEN against all claims (for direct, indirect and consequential damages) and related costs, including all attorney's fees, arising out of the CUSTOMER's non-compliance with the provisions of clause 8.5.

## **9. EXCLUSIONS**

- 9.1 ISEGEN shall not be liable under any circumstances whatsoever for any loss or damages of any nature whatever, whether direct or indirect, consequential or otherwise, sustained as a result of any Products sold by ISEGEN being defective or not conforming to the description thereof, or as a result of any other cause whatsoever, and ISEGEN's liability in respect of any Products sold by it shall be limited to that provided for in 9.4.
- 9.2 The CUSTOMER acknowledges that :
- 9.2.1 ISEGEN does not warrant or represent that the Products are fit for any particular purpose (whether or not that particular purpose is known to ISEGEN), and the Products shall be regarded as having been sold voetstoots, and without warranty against latent defects therein;
- 9.2.2 no liability whatsoever shall arise on the part of ISEGEN for any representation or warranty made, or alleged to have been made, at any time in respect of any Products sold by ISEGEN to the CUSTOMER.

- 9.3 In respect of any Products sold as sub-standard or as reject or as seconds, the CUSTOMER shall have no claim of any nature whatsoever against ISEGEN, and ISEGEN shall not be liable to the CUSTOMER in any way whatever for any defect, whether latent or patent, in such Products.
- 9.4 If any Products (other than Products of the type described in 9.3) supplied to the CUSTOMER are not in accordance with the specifications agreed to between the CUSTOMER and ISEGEN or defective and a claim lies against ISEGEN in respect of such Products, ISEGEN may at its option decide either to:
- 9.4.1 replace the defective Products; or
- 9.4.2 cancel the sale and reimburse the CUSTOMER in respect of the purchase price paid by the CUSTOMER for such Products, against return of the Products to ISEGEN; or
- 9.4.3 require the CUSTOMER to accept the Products at a reduced purchase price to be agreed, provided that if the parties are unable to agree on the amount of the reduction that question shall be submitted to be resolved by an independent suitably qualified expert, agreed upon between ISEGEN and the CUSTOMER, and failing such agreement, appointed by the President for the time being of the Association of Arbitrators, and that expert's decision (acting as expert and not as arbitrator) shall be final and binding upon ISEGEN and the CUSTOMER; or
- 9.4.4 in the event the Products supplied by ISEGEN are not manufactured by ISEGEN, ISEGEN may cede to the CUSTOMER all its rights in and to any manufacturer's warranty in respect of the defective Products to enable the CUSTOMER to recover directly from the manufacturer, if the relevant warranty does not preclude ISEGEN from ceding its rights to a third party, provided that ISEGEN does not warrant that any claim under the relevant warranty will be met by the manufacturer and ISEGEN shall not be liable to the CUSTOMER if for any reason the manufacturer fails to pay any claim made against it.
- 9.5 Any decision of ISEGEN in terms of 9.4 shall be notified to the CUSTOMER in writing.
- 9.6 If so required by ISEGEN the CUSTOMER shall be obliged to re-deliver the defective Products to ISEGEN at the CUSTOMER's own cost and expense.
- 9.7 ISEGEN shall not be liable under any circumstances whatever for any loss or damage of any nature whatever whether direct or indirect, consequential or otherwise, arising out of any contract with the CUSTOMER and/or relating to any Products sold to the CUSTOMER, ISEGEN's liability being limited to that provided for in 9.4. The CUSTOMER accordingly indemnifies and holds ISEGEN harmless against any claim that may be brought against ISEGEN in consequence of any Products being defective and causing any damage whatsoever whether through accident, negligence, gross negligence, or any other cause.
- 9.8 The CUSTOMER hereby indemnifies ISEGEN against all claims that may arise out of the use of any design, trademark, trade name or part thereof appearing on the Products, by the CUSTOMER.
- 9.9 In the event that the Products are processed further by CUSTOMER, the use of ISEGEN's trademark in connection with CUSTOMER's end products is subject to ISEGEN's express written consent.

## **10. BREACH**

ISEGEN shall be entitled without prejudice to any other rights that it may have in terms of these Conditions or according to law:

- 10.1 to cancel any contract and/or any part thereof subsisting with the CUSTOMER and to claim return of the Products sold thereof; or
- 10.2 to claim from the CUSTOMER immediate payment of any monies due by the CUSTOMER to ISEGEN notwithstanding any earlier agreement for credit, whether same is due for payment or not, if :

- 10.2.1 the CUSTOMER fails to pay on the due date for payment thereof any amount due to ISEGEN under any contract; or
- 10.2.2 any cheque, promissory note or bill of exchange given to ISEGEN in respect of any indebtedness of the CUSTOMER under any contract is dishonoured by non-payment; or
- 10.2.3 an application is made or a resolution is passed for the provisional or final sequestration or liquidation of the CUSTOMER's estate or placing it under judicial management, or if the CUSTOMER becomes subject to any bankruptcy or business rescue procedures or proceedings; or
- 10.2.4 the CUSTOMER commits any act of insolvency in terms of Section 8 of the Insolvency Act; or
- 10.2.5 the CUSTOMER enters into any compromise with its creditors generally; or
- 10.2.6 the CUSTOMER fails to satisfy any default judgement granted against it within seven (7) days after date of judgment.

## **11. FORCE MAJEURE**

- 11.1 Subject to the following provisions of this clause 11, neither party shall be responsible to the other for its failure to perform or any delay in performing any obligation under this agreement in the event and to the extent that such failure or delay is caused by force majeure.
- 11.2 For the purposes of this agreement, force majeure shall mean any circumstance which:
  - 11.2.1 is beyond the reasonable control of the party giving notice of force majeure ("the affected party") and for which it is not responsible; and
  - 11.2.2 is not a circumstance which the affected party could, by the exercise of a standard of care and skill which could reasonably be expected of that party, have avoided.
- 11.3 Subject to the above, force majeure includes but is not limited to war (whether declared or not), revolution, invasion, insurrection, riot, civil, commotion, mob violence, sabotage, blockade, embargo, boycott, the exercise of military or usurped power, fire, explosion, theft, storm, flood, drought, wind, lightning, or other adverse weather condition, epidemic, quarantine, accident, breakdown of machinery or facilities, strike, lockout or labour dispute, acts or restraints of government imposition, or restrictions of or embargoes on imports or exports.
- 11.4 Notwithstanding the provisions of 11.2 :
  - 11.4.1 a labour dispute, strike or lockout which could be resolved by the affected party acceding to the demands made of it shall be deemed to be an event of force majeure; and
  - 11.4.2 inability to comply with this agreement because of a lack of funds shall in no circumstances be treated as an event of force majeure.
- 11.5 The affected party shall give notice thereof to the other immediately upon the occurrence of an event of force majeure.
- 11.6 If the event of force majeure is of such a nature that it will result in impossibility of performance of an obligation going to the root of the contract, the party not so affected ("the other party") shall be entitled, on receipt of notice of the force majeure event, to terminate this agreement upon notice to the affected party but shall not be entitled to recover any damages which it may suffer as a result of such premature termination.
- 11.7 If the event of force majeure is of such a nature that it will not result in impossibility of performance of the obligation in question but will delay the performance thereof, the affected party shall be entitled to such extension of time in which to perform that obligation as may be reasonable in the circumstances, taking into account the interests of both parties : provided that if such force majeure situation persists for a period in excess of 30 days, the other party shall be entitled to terminate this agreement but shall not be entitled to recover any damages which it may suffer as a result of such premature termination.

## 12. SET-OFF

The purchase price in respect of each sale of Products shall be payable without deduction, set-off or demand. The CUSTOMER shall not be entitled to deduct from the purchase price the amount of any alleged claim or counter-claim against ISEGEN. ISEGEN shall be entitled to set-off any amount which may be payable by it to the CUSTOMER against the purchase price payable by the CUSTOMER in respect of the Products.

## 13. CESSION BY ISEGEN

ISEGEN shall, at any time, in its sole discretion, be entitled to cede all or any of its rights in terms of this Agreement and Deed of Suretyship to any third party, without prior notice to the CUSTOMER.

## 14. RELAXATION INDULGENCES

Any condonation of any breach of any of the provisions hereof or other acts or relaxation indulgence or grace on the part of ISEGEN shall not in any way operate as or be deemed to be a waiver by ISEGEN of any rights under this Contract or be construed as a novation thereof.

## 15. CHANGE OF OWNERSHIP OF THE CUSTOMER'S BUSINESS

If at any time there is any change in ownership of the CUSTOMER's business, or should the CUSTOMER be a company or close corporation, any change in shareholding or change of members' interests, without the prior approval of ISEGEN, then all amounts then owing by the CUSTOMER, whether due or not, will immediately be deemed to be due and payable by the CUSTOMER to ISEGEN, and in addition, ISEGEN shall be entitled to exercise the rights accorded to it in terms of 6 and 10 which shall apply *mutatis mutandis*.

## 16. LEGAL CHARGES

In the event of a dispute between ISEGEN and the CUSTOMER resulting in ISEGEN instructing its attorneys to institute any proceedings against the CUSTOMER, regardless of the nature thereof, the CUSTOMER shall be liable for and pay all legal costs incurred by ISEGEN on an attorney and own client scale, including any collection commission.

## 17. INTERPRETATION AND JURISDICTION

- 17.1 This contract shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.
- 17.2 The Courts of the Republic of South Africa shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, which may arise out of or in connection with the sale and delivery of Products to the CUSTOMER and each of the parties irrevocably submits to the jurisdiction of such courts. Process by which any proceedings are instituted may be served on each of the parties by being delivered to the party's *domicilium citandi et executandi* referred to in 18.1. Nothing contained in this clause shall however affect the right to serve process in another manner permitted by law.
- 17.3 ISEGEN shall be entitled, at its sole discretion, to institute action against CUSTOMER on this contract in any Magistrate's Court, notwithstanding that the amount claimed might exceed the jurisdiction of such Court. The CUSTOMER hereby consents to the jurisdiction of both these Courts.

## **18. DOMICILIA**

- 18.1 All notices by the one party to the other shall be given in writing by prepaid registered post, telegrams, or delivery by hand –
- 18.1.1 to ISEGEN at Sapref Park, 284 Refinery Road, Isipingo, KwaZulu Natal, South Africa;
- 18.1.2 to the CUSTOMER at the trading address referred to in the Application for Credit Facilities which addresses the parties choose as their respective *domicilia citandi et executandi*.
- 18.2 The parties shall be entitled to change the address as referred to in 18.1 from time to time provided that any address selected by either of them shall be situated in the Republic of South Africa and any such change shall only become effective upon receipt of notice in writing by the other party of such change.

## **19. NO OTHER CONDITIONS BINDING**

- 19.1 ISEGEN shall not be bound by any oral statements, recommendations, figures, advises, formulae, specifications, prices quoted, acceptances or representations unless they are in writing and signed on behalf of ISEGEN by its duly authorised representative.
- 19.2 All sales of Products by ISEGEN are subject to these Conditions, and no other conditions shall be binding on the parties notwithstanding that such conditions may be annexed to, contained in or incorporated by reference in, any documents exchanged between ISEGEN and the CUSTOMER and purport to regulate the terms of any purchase by the CUSTOMER.
- 19.3 No variation or consensual cancellation of these Conditions, or any contract referred to in 2.4 shall be binding upon ISEGEN unless it is in writing and signed by a duly authorised representative of ISEGEN.