



## Terms and Conditions of Sales

Haygrove South Africa  
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**1. TERMINOLOGY**

Contracts and orders are accepted and the goods are delivered by Haygrove South Africa (hereinafter called "the Seller") only upon and subject to these terms and conditions of sale. Neither party may introduce any additional terms or attempt to vary or otherwise modify these terms and conditions through the issuance of a purchase order or otherwise without the mutual agreement of both parties in writing.

**2. PLACEMENT AND ACCEPTANCE OF ORDERS**

Any quotation given by the Seller is an invitation to the Buyer to make an offer only and no order of the Buyer placed with the Seller in pursuance of a quotation otherwise shall be binding on the Seller unless and until it is accepted in writing on the Seller's acceptance of order form. For the avoidance of doubt, neither acceptance of a deposit in accordance with Section 8 below nor commencement of work on a purchase order shall be construed as acceptance of an order. All orders shall be placed by signing the letter of quotation provided by the Seller and returning such signed quotation to the Seller. The Seller shall have no obligation to perform under a signed quotation unless and until it is acknowledged by the Seller in writing on its acceptance of order form. In the event an order is not accepted by the Seller, any deposit made in accordance with Section 8 below will be promptly refunded to the Buyer by the Seller.

**3. CANCELLATION**

By signing the letter of quotation the Buyer shall have a binding contract with the Seller. The order or any part of it may only be cancelled by agreement in writing. Where such cancellation renders abortive preparatory work done or expenditure incurred by the Seller to meet the Buyer's requirement, a cancellation charge shall be payable equal to the cost of such preparatory work and (if relevant) the amount of such expenditure.

**4. PRICE**

The price payable by the Buyer for each delivery shall be the price stated at the date of and specified in the quotation or, in the event a quotation was not sought or has expired, in the acceptance of order form. Notwithstanding the foregoing, the Seller reserves the right to vary its price without notice and, unless otherwise expressly specified in the Seller's quotation, goods are supplied at the price current on the date of delivery. The price is exclusive of Value Added Tax which shall be charged to the Buyer at the rate applicable at the date of invoice, and any other taxes (including without limitation excise taxes or import or export duties) relating to the sale, use or the delivery of the goods also shall be charged to the Buyer.

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In the event the Buyer believes that it is exempt from obligations to pay such taxes, the Buyer shall demonstrate such exemption to the Seller's reasonable satisfaction. Prices quoted are in South African Rand unless otherwise agreed. The Buyer shall reimburse the Seller on demand for any expense incurred on the conversion of foreign currencies, bank charges, presenting and / or processing of any payment or otherwise resulted in obtaining South African Rand funds on the sum due.

**5. DELIVERY**

The Seller shall use commercially reasonable efforts to provide delivery on the date requested by the Buyer in the purchase order but such date is not guaranteed. The Seller shall in no case be liable for damages nor shall the Buyer have any right to rescind the purchase order for any delay in delivery. Notwithstanding any other provision herein contained, the Seller may at its option deliver the goods to the Buyer by instalments. Where the goods are delivered by instalments, each such instalment shall be deemed to be sold or supplied under a separate purchase order to which these terms and conditions shall apply and no default in respect of any one instalment shall affect or prejudice due performance as regards any other instalments. If the Buyer shall refuse delivery of any goods made during normal shipment acceptance hours, the Buyer shall pay all of the Seller's costs associated with such failure to accept the shipment, including without limitation any damages expenses or costs relating to loading or unloading of the shipment.

**6. RISK**

The risk in respect of all the goods supplied under these terms and conditions shall pass to the Buyer upon the delivery of the goods to the Buyer.

**7. RETENTION OF TITLE**

**7.1** Notwithstanding that risk in the goods shall pass to the Buyer in accordance with Clause 6, title to the Goods (whether separate and identifiable or incorporated in or mixed with other goods) shall remain with the Supplier until payment in full has been received by the Seller :

**7.1.1** for those goods;

**7.1.2** for any other goods supplied by the Seller;

**7.1.3** of any other monies due from the Buyer to the Seller on any account.

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- 7.2** Until title to the goods passes to the Buyer under Clause 7, the Buyer shall :
- 7.2.1** keep the goods separately and readily identifiable as the property of the Seller;
  - 7.2.2** not attach the goods to real property (without the Seller's consent).
- 7.3** Any resale by the Buyer of goods in which property has not passed to the Buyer shall (as between the Seller and the Buyer only) be made by the Buyer as agent for the Seller.
- 7.4** Goods shall be deemed sold or used in the order delivered to the Buyer.
- 7.5** At any time before title to the goods passes to the Buyer (whether or not any payment to the Seller is then overdue or the Buyer is otherwise in breach of any obligation to the Seller), the Seller may (without prejudice to any other of its rights) :
- 7.5.1** retake possession of all or any part of the goods and enter any premises for that purpose (or authorise others to do so) which the Buyer hereby authorizes;
  - 7.5.2** require delivery up to it of all or any part of the goods.
- 7.6** The Seller may at any time appropriate sums received from the Buyer as it thinks fit, notwithstanding any purported appropriation by the Buyer.

<b>8. TERMS OF PAYMENT</b>
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Unless otherwise agreed, the Buyer shall pay 40% of the price of the goods as a deposit due (a) in the case of goods ordered pursuant to a fixed quotation, together with the signed quotation; or (b) in the case of goods ordered without knowledge of the price for the order, within five (5) days of receipt of the Seller's acceptance of the order form specifying the price of the goods. The remaining 60% of the balance of the price of the goods shall be due on delivery of the goods to the Buyer. Unless otherwise specified on the Seller's quotation, prices shall not include, and the Seller shall invoice the Buyer separately, for charges for services provided by the Seller, including without limitation training and hoop bending. Where the goods are delivered in instalments the Buyer shall be obliged to pay for each instalment upon the terms set forth above. In the event that the Buyer has not made timely payment in accordance with this Section 8, the Seller shall be entitled to interest on that part of the purchase price not yet paid at the rate of the lesser of (a) 1.5% of the unpaid balance owed to the Seller for each day that payment is overdue; or (b) the maximum amount allowable by law.

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Such right to interest shall be in addition to any other remedies available to the Seller, including without limitation the right to repossess and / or resell the goods in accordance with Section 7 above.

**9. TOLERANCES**

Gauges, weights, chemical composition and sizes will, so far as possible, be adhered to but reasonable excesses and deficiencies thereof shall be accepted by the Buyer, who shall not be entitled to reject any goods or to require replacement of any goods on the ground that they are not precisely as specified.

**10. SELLER'S WARRANTY / BUYER'S CLAIM**

**10.1** The Seller warrants that the goods shall be free from defects in materials or workmanship. EXCEPT AS SET FORTH IN THIS SECTION 10, THE SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE GOODS OR ANY SERVICES PERFORMED BY THE SELLER IN CONNECTION WITH THE GOODS AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Claims for goods damaged in transit or for shortages in delivery shall be made by the Buyer by written notice to the Seller and its carriers within three (3) days of delivery. Claims for breach of warranty shall be made in writing to the Seller within four (4) weeks of the date of delivery. In the event of a claim brought in accordance with this Section 10, the Seller undertakes, at the Seller's option, to replace, repair or refund the purchase price for those goods for which the Seller determines a breach of warranty exists or damage has occurred in transit. Such replacement, repair or refund shall be the sole remedy for the Buyer for the breach of warranty or goods that are damaged in transit. SAVE FOR PERSONAL INJURY OR DEATH FOR WHICH THERE IS NO LIMIT OF LIABILITY, IN NO EVENT SHALL THE SELLER BE LIABLE FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES. THE SELLER'S LIABILITY SHALL BE LIMITED TO REPLACEMENT, REFUND OR REPAIR AS SET FORTH IN THIS SECTION 10 AND THE SELLER SHALL NOT BE LIABLE FOR ANY CLAIM OR LOSS ASSOCIATED WITH ANY CONSEQUENTIAL OR INCIDENTAL OTHER DAMAGES, REGARDLESS OF THEIR BASIS, WHETHER IN CONTRACT OR IN TORT ON THE PART OF THE SELLER, ITS EMPLOYEES OR ITS AGENTS ARISING OUT OF OR IN CONNECTION WITH ANY DEFECT OF THE GOODS OR ANY ACT, OMISSION, NEGLIGENCE OR DEFAULT OF THE SELLER, ITS EMPLOYEES, OR AGENTS.

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- 10.2** The Buyer acknowledges that the Seller is required to attend a variety of establishments over which the Seller has no control of the environment or the biological hazard control regime of it. Accordingly the Buyer is responsible for giving the Seller such reasonable direction in respect of the Seller's attendance at the Buyer's premises as the Buyer sees fit in respect of any potential risk that the Seller may pose in relation to the spreading of any disease, virus, infection or other biological hazard (if any) that may present a risk to the Buyer's livelihood, business or premises. In the absence of any direction or prior notification from the Buyer the Seller shall take such reasonable precautions as it sees fit but it shall not be responsible for any disease, infection, virus or other biological hazard that may affect the Buyer's business, livelihood or premises howsoever caused.
- 10.3** Save in respect of personal injury or death for which nothing in these Terms and Conditions shall limit the liability the Seller's liability to the Buyer under this agreement shall not exceed R100 000.00.

**11. INDEMNITY**

The Buyer shall indemnify, defend and hold harmless the Seller and its employees, shareholders, officers, directors, affiliates, subcontractors and other agents against any and all claims, liabilities, damages, costs and expenses arising out or relating to (a) customisation or modification of the goods that results in direct or indirect infringement of or misappropriation of the intellectual property rights of a third party provided that such customisation or modification was conducted in accordance with the Buyer's specifications or instructions; (b) failure to assemble, disassemble, unpack, handle, unload, use and otherwise operate the goods in accordance with the user manual and other instructions provided, from time to time, by the Seller; or (c) use or operation of tools or material supplied by the Buyer. For the avoidance of doubt, the Buyer recognises that the goods sold hereunder have limitations in their ability to handle extremes in certain types of weather including, without limitation, high winds and heavy snow, and that the Seller shall have no liability associated with damages or loss caused by the Buyer's failure to follow the Seller's manuals and instructions for such weather conditions.

**12. SUSPENSION OF DELIVERIES**

In the event that the Buyer fails to pay is delinquent in payment of any sum owed to the Seller in accordance with a purchase order and its corresponding invoice, then in addition to any other rights granted to the Seller in Section 7 above, the Seller shall have the right to either suspend all further deliveries until the default is cured or to cancel the purchase order so far as any of the goods remain to be delivered there under.

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**13. FORCE MAJEURE**

Notwithstanding anything to the contrary contained herein, neither the Buyer nor the Seller shall be liable for any delay or failure to perform under any purchase order as a result, in whole or in part, to an event outside of the reasonable control of the non-performing party, including without limitation an act of God, action by any government, civil war, strikes, lock-outs or other labour disputes, embargoes, fire, flood, trade disputes, unfavourable weather, any material becoming unavailable (and irreplaceable whether at all or at commercially acceptable prices), acts of terrorism, acts of war, customs delays and delays resulting from governmental homeland security measures.

**14. USE OF SELLER'S EQUIPMENT**

In connection with the purchase of the goods by the Buyer hereunder, the Seller may make available to the Buyer certain equipment utilised in connection with hoop bending and drilling legs into the ground. In such event, the Buyer acknowledges and agrees that (a) it will provide competent personnel to operate the equipment; (b) it has read and understood and will follow all of the Seller's instructions (whether written or oral) regarding the operation of the equipment; (c) the sale of the goods hereunder does not constitute a commitment by the Seller to install the goods; and (d) the Buyer shall have no property right to the equipment as a result of the Buyer's use of the equipment for hoop bending or drilling in of the legs.

**15. INSOLVENCY AND BREACH**

In the event that (a) the Buyer shall commit any breach of these terms and conditions and shall fail to remedy such breach (if capable of remedy) within a period of thirty (30) days from receipt of a notice in writing from the Seller requesting such remedy; or (b) any distress or execution is levied upon any of the goods or property of the Buyer; or (c) the Buyer offers to make any arrangements with or for the benefit of its creditors or commit any act of bankruptcy or has a receiver or administrator appointed for the whole or any part of its property or assets; or (d) an order is made or a resolution is passed or analogous proceedings are taken for the winding up of the Buyer (save for the purpose of reconstruction or amalgamation without insolvency and previously approved in writing by the Seller), the Seller shall thereupon be entitled without prejudice to its other rights hereunder forthwith to terminate further deliveries until the default has been made good. Notwithstanding any such termination the Buyer shall pay the Seller for all the goods delivered up to and including the date of termination.

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**16. TERMINATION**

The Seller shall be entitled to terminate an order upon one week's notice to the Buyer if the Seller is unable to fulfil an order.

**17. SUB-CONTRACTING AND ASSIGNMENT**

The Seller reserves the right to sub-contract the fulfilment of any order or part thereof. The Seller shall be entitled to assign any order but the Buyer shall not.

**18. PARTIAL COMPLETION**

In the case of partial completion of an order, the Seller shall be entitled to reasonable payment in respect of all work done by it, without prejudice to its rights should non-completion be caused by the Buyer or be the result of a termination of an order by the Seller in accordance with Section 15 above.

**19. INTELLECTUAL PROPERTY**

The Buyer acknowledges that any drawings, sketches, quotations and other documents supplied by the Seller with the goods and the actual design and construction of the goods constitutes valuable intellectual property of the Seller and, as such, the Buyer agrees not to (a) challenge, damage or otherwise threaten such rights; (b) use or disclose, directly or indirectly, such materials, design and construction to any third parties without the prior written consent of the Seller, or (c) copy or otherwise manufacture the goods or any materials distributed with or otherwise relating to the goods or services provided in connection with the goods.

**20. TOOLS**

All tools whether made specifically for the Buyer's order or not and whether the Buyer pays the whole or any part of the cost thereof shall be and remain the property of the Seller.

**21. NOTICES**

**21.1** Any notice or other communication to be given under these conditions must be in writing and may be delivered or sent by prepaid first class letter post or facsimile transmission.

**21.2** Any notice or document shall be deemed served if delivered, at the time of delivery, if posted forty eight (48) hours after posting; and if sent by facsimile transmission at the time of transmission.

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**22. SEVERANCE**

If at any time one or more of the provisions of these terms and conditions is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, then the validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

**23. WAIVER**

No waiver of any breach of any term hereof shall be deemed a waiver of any proceeding or succeeding breach of the same or any other term.

**24. THIRD PARTY RIGHTS**

A person who is not party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

**25. APPLICABLE LAW**

These terms and conditions and each associated purchase order shall be governed by and construed in accordance with the laws of South Africa. The parties hereby submit to the exclusive jurisdiction of the South African Courts.

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**Client Signature**

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**Print Name**

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**Date**

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