

OPTIMUM ENERGY SALES TERMS AND CONDITIONS

Last Updated on 1st October 2009

PLEASE READ THESE TERMS AND CONDITIONS OF SALE CAREFULLY. BY ORDERING, AND/OR ACCEPTING ANY QUOTATION OR PROPOSAL, AND/OR PAYING, OR PARTLY PAYING FOR, AND/OR RECEIVING ANY GOODS OR SERVICES FROM OPTIMUM ENERGY, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS DESCRIBED HEREIN AND BY ALL TERMS, POLICIES AND GUIDELINES INCORPORATED BY REFERENCE. IF YOU DO NOT AGREE TO ALL OF THESE TERMS, DO NOT ORDER OR ACCEPT GOODS OR SERVICES FROM OPTIMUM ENERGY.

1.1 These terms and conditions of use ("Sales Terms and Conditions") apply to your procurement of goods and or services from Optimum Energy, and do not alter in any way the terms or conditions of any other agreement you may have with Optimum Energy Services (Pty) Ltd ("Optimum Energy", "OE", "we", "us"), its subsidiaries or affiliates.

2. Order Placement and Payment

2.1 We are not responsible for delayed deliveries caused by any problems which may arise due to the importation (some of our suppliers are not South African) or exportation of goods ordered. Unless otherwise agreed, we do not deliver goods outside of South Africa. If you are a non South African client we will provide goods ex works Johannesburg.

2.2 All goods remain the sole property of OE until fully paid for. All amounts due shall be paid without retention, set off or deduction. You hereby acknowledge Optimum Energy's right to recover goods that are not fully paid for, where any portion of the payments are more than 60 days outstanding as per the agreed payment terms and that you agree not to unreasonably obstruct such recovery, and that you are liable for all costs of such recovery.

2.3 Notwithstanding clause 2.2, all risks associated with the goods purchased pass to you on delivery of goods to the specified delivery address. You hereby acknowledge that any person receiving the goods at the delivery address provided by you are authorised to do so. We are not responsible for any delays or loss due to incorrectly supplied delivery addresses.

2.4 Should you for any reason wish to cancel your order you may, at Optimum Energy's sole discretion, be liable for all shipping costs and any other costs that may arise from Optimum Energy's processing of your order, including the full landed cost of the products or services ordered. In all cases where we are in a position to accept your cancellation, which we shall decide solely at our discretion, an additional handling fee of 35% of the cancelled order may be charged which you hereby accept. You must advise us in writing of your

OPTIMUM ENERGY SALES TERMS AND CONDITIONS

Last Updated on 1st October 2009

cancellation and any such cancellation must be signed by the person who made the original purchase.

- 2.5 We do not accept returned goods that we supplied correctly according to your order. In no circumstance will we accept any returns that have, in our sole opinion, been used or marked, or the packaging has been opened, or the goods or packaging is incomplete, or has been damaged after the risk of delivery has passed from ourselves. Please check your order carefully and if you have any queries please contact us before you confirm your order. Please check your delivery equally carefully before accepting it.
- 2.6 Unless otherwise agreed payment terms are strict 100% on order.
- 2.7 We only accept payment in ZAR (Rand) via EFT into our bank account (our banking details will be provided on our Invoice).
- 2.8 Prices listed on our site may be displayed in ZAR, USD or EUR. Please note that the exchange rates used to display each currency are estimates which may change from time to time. You hereby acknowledge that the final price in ZAR (Rand) will only be confirmed when your order is confirmed by us. In cases where goods ordered are supplied by foreign suppliers, the final price confirmed by us will be valid for a limited period that will be indicated on the order confirmation you receive. We reserve the right in the event of late payment or in the event of any form of payment which is not 100% up front, to invoice additional amounts owing due to exchange rate variations on outstanding amounts and you hereby agree to pay such amounts.
- 2.9 Optimum Energy hereby reserves the right to not accept any order, in part or its entirety, for any reason. We also hereby reserve the right to cancel any order, in part or its entirety, for any reason at any time with the provision that we hereby undertake to refund any relevant amounts paid, in full, within 7 working days and to notify you of any such cancellation within 24 hrs of that occurrence.

3. Product Warranty

- 3.1 Some of the Optimum Energy products may be supplied with a warranty, the terms of which shall be defined by the documentation supplied with the relevant product.
- 3.2 In the event of a Warranty Claim, Optimum Energy shall not have any liability for that Warranty Claim if the claim is as a result of:
 - 3.2.1 damages to the product by the end-user or any third party;

OPTIMUM ENERGY SALES TERMS AND CONDITIONS

Last Updated on 1st October 2009

3.2.2 neglect to use, operate or maintain the product in accordance with the correct procedures.

3.2.3 unauthorised modification(s) to the product by the end-user or any third party;

3.3 Optimum Energy's only liability in respect of a Warranty Claim shall be at Optimum Energy's option to:

3.3.1 supply the distributor or end user, at no cost, with replacement product, or part thereof, which performs substantially the same as the defective product, or

3.3.2 repair the defective product or part thereof.

3.4 In the event of a warranty claim, the distributor or end user will return all damaged, faulty or defective products and components for inspection, at their own cost, accompanied by a formal written warranty claim. Optimum Energy shall at its sole discretion decide whether such claim is valid or not.

4. Services Provided

4.1 **STANDARD OF CARE** – Optimum Energy shall provide all consultation, audits, investigations, project management, research, problem solving, installations and any other professional services (the Services) with such skill, care and diligence as is ordinarily exercised by similar consultants or service providers in similar circumstances at the time the Services are provided. Optimum Energy shall provide you with the opportunity to provide feedback regarding the provision of the Services at any reasonable time you request it.

4.2 **RIGHT OF ENTRY, PERMITS, SITE INFORMATION AND UTILITIES** – All necessary permits and licenses shall be provided by you (the client) including right of entry for Optimum Energy and its subcontractors to carry out the Services. This includes all relevant and necessary site information, induction courses, documents and other particulars concerning the provision of the Services including but not limited to any on-site hazardous materials and underground utilities, at your own cost. You acknowledge that Optimum Energy may rely on such information. You hereby agree that Optimum Energy may charge, at its standard rates, for additional time spent waiting for access to the site where such access was required to carry out the Services. Arrangement, coordination and provision of such access is your responsibility, not Optimum Energy's. Optimum Energy

OPTIMUM ENERGY SALES TERMS AND CONDITIONS

Last Updated on 1st October 2009

will not be liable for delays to agreed service provision time schedules arising from lack of access to the site.

4.3 SAFETY – Optimum Energy shall be responsible only for its activities and that of its employees and nothing shall imply that Optimum Energy has any responsibility for job site safety which is the responsibility of you, the client, or your agents or contractors. Any environmental, health, or safety policies or procedures you require Optimum Energy to abide by during provision of the Services shall be provided in advance. If no policies or procedures are provided, Optimum Energy shall abide by its own policies and procedures in the provision of the Services. At no time shall Optimum Energy be deemed to be in control of the project site unless by prior written agreement in connection with specific Services. You shall provide all assistance listed in the Proposal including but not limited to transportation, accommodation, equipment, emergency services and communication. Should these not be available on arrival at the project, Optimum Energy reserves the right to suspend all work and recover any costs incurred such as time, travel and accommodation, etc., from you.

4.4 All Fees and Expenses for the Services, as set out in the accepted proposals or quotations, shall be paid without retention, set off or deduction. Payment shall be in Rand unless expressly agreed otherwise. If Rand are not the currency of the country in which the Services are provided, the exchange rate for payment from local currency to Rand shall be that at the time of invoice. Where this Agreement has been entered into or authorised by an Agent (or a person purporting to act as an Agent) on behalf of the Client, the Agent and the Client shall be jointly and severally liable for payment of all accounts due to Optimum Energy under this Agreement. All monies payable by the Client to Optimum Energy shall be paid according to the agreed terms of payment expressed in the quotation or proposal. Monies not paid within that period shall attract interest from the date of the invoice until payment at a rate of 1% per month, plus debt collection fees where applicable. In the event of any dispute with an invoice you shall notify Optimum Energy within ten (10) days of receipt of the invoice and the parties will promptly meet to resolve the dispute. Unless such notification is received by Optimum Energy, you hereby agree the invoice will be deemed valid and payment is due under the terms of this Condition.

5. Disclaimer

5.1 ALL PRODUCTS AND OR SERVICES SUPPLIED BY OPTIMUM ENERGY ARE PROVIDED "AS IS" AND OPTIMUM ENERGY AND ITS DIRECTORS, MEMBERS, EMPLOYEES, SUPPLIERS, CONTENT PROVIDERS, AGENTS AND AFFILIATES

OPTIMUM ENERGY SALES TERMS AND CONDITIONS

Last Updated on 1st October 2009

EXCLUDE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE. OPTIMUM ENERGY WILL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING FROM THE USE OR SALE OF THOSE PRODUCTS OR SERVICES, OR THE UNAVAILABILITY OF THE SAME, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS AND DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL AND CONSEQUENTIAL DAMAGES. THE FUNCTIONS EMBODIED ON OR IN THE PRODUCTS AND OR SERVICES ARE NOT WARRANTED TO BE UNINTERRUPTED OR WITHOUT ERROR. UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, YOU, NOT OPTIMUM ENERGY, ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION DUE TO YOUR USE OR SALE OF THOSE PRODUCTS OR SERVICES.

6. Intellectual Property Rights

- 6.1 OWNERSHIP AND USE OF WORK PRODUCT – Intellectual property and copyright in all drawings, reports, specifications, bills of quantity, calculations, software, and other documents (“work product”) provided by Optimum Energy in the provision of the Services shall remain the property of Optimum Energy. Subject to your compliance with your obligations under this Agreement, Optimum Energy grants you a non-exclusive, non-transferable license, to use the work product for the purposes described in the attached Proposal. You shall not use, or make copies of, such work product in connection with any work not included in the attached proposal without prior express written consent from Optimum Energy. If you are in breach of any obligation to make a payment to Optimum Energy, Optimum Energy may revoke the license to use the work product and you shall return to Optimum all originals and copies of work product provided under the Services.
- 6.2 THIRD PARTY RELIANCE – Unless expressly agreed by Optimum Energy, no third party may have the benefit of or rely on any Services or work product provided under this Agreement. You indemnify, defend, and hold Optimum Energy harmless against any unlicensed use of or reliance on said Services or work product
- 6.3 CONFIDENTIALITY – Neither the Client nor Optimum Energy shall disclose to third parties or use for any purpose (other than providing or benefiting from the Services) any information provided by the other unless required by law or the information is already available to the public, or the other consents to the disclosure

OPTIMUM ENERGY SALES TERMS AND CONDITIONS

Last Updated on 1st October 2009

7. Limitation of Liability

- 7.1 IN NO EVENT SHALL OPTIMUM ENERGY, ITS DIRECTORS, MEMBERS, EMPLOYEES OR AGENTS BE LIABLE FOR ANY DIRECT, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR ANY OTHER DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF PROFITS OR LOSS OF DATA, WHETHER IN AN ACTION IN CONTRACT, DELICT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE) OR OTHERWISE, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OR SALE OF OPTIMUM ENERGY PRODUCTS AND OR SERVICES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES CAUSED BY OR RESULTING FROM YOUR RELIANCE ON ANY INFORMATION OBTAINED FROM OPTIMUM ENERGY, OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR EMAIL, ERRORS, DEFECTS, VIRUSES, DELAYS IN OPERATION OR TRANSMISSION OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT RESULTING FROM ACTS OF GOD, COMMUNICATIONS FAILURE, THEFT, DESTRUCTION OR UNAUTHORISED ACCESS TO OPTIMUM ENERGY'S RECORDS, PROGRAMS OR SERVICES. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF OPTIMUM ENERGY, WHETHER IN CONTRACT, WARRANTY, DELICT (INCLUDING NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED), PRODUCT LIABILITY, STRICT LIABILITY OR OTHER THEORY, ARISING OUT OF OR RELATING TO THE USE OR SALE OF THE PRODUCTS AND OR SERVICES SUPPLIED EXCEED ANY COMPENSATION YOU PAY, IF ANY, TO OPTIMUM ENERGY FOR THEM.
- 7.2 Notwithstanding the terms of any of the other clauses in section 7, Optimum Energy shall not be liable in any way, including any damage or consequential costs caused by incomplete or inaccurate information provided by the Client or any third parties.
- 7.3 Notwithstanding the terms of any of the other clauses in section 7, Optimum Energy will be deemed discharged from all liability in respect of the goods and services, whether under the law of contract, tort, or otherwise, on the expiration of one (1) calendar year from the completion of the services or delivery of the goods, or the termination of this Agreement, whichever is earliest. The Client shall not be entitled to commence any action or claim whatsoever against Optimum Energy or any of its employees, agents or sub-consultant or sub-contractors in respect of the goods or services provided after that date.

OPTIMUM ENERGY SALES TERMS AND CONDITIONS

Last Updated on 1st October 2009

8. Dispute Resolution and Governing Law

8.1 These Sales Terms and Conditions will be governed, construed and take effect in all respects in accordance with the laws of the Republic of South Africa. Any dispute relating in any way to your procurement of goods or services from Optimum Energy shall be submitted to confidential arbitration to be held in Sandton under the rules of the Arbitration Foundation of Southern Africa (or its successor in title), to which arbitration you hereby consent; except that, to the extent you have in any manner violated or threatened to violate Optimum Energy's intellectual property rights, Optimum Energy may seek interdictory, injunctive or other appropriate relief in any applicable court in the Republic of South Africa, and you consent to exclusive jurisdiction and venue of such courts. The arbitrator's award shall be binding and may be entered as a judgment in any court of competent jurisdiction. To the fullest extent permitted by applicable law, no arbitration under this Agreement shall be joined to an arbitration involving any other party subject to the General Site Terms, whether through class arbitration proceedings or otherwise.