



NEWLYN INVESTMENTS (PTY) LTD

REG NO. 1996/016286/07

P.O. Box 17354
Congella
Durban
4013

39 Florida Road
Morningside
Durban

Tel : (031) 313 6500
Fax : (031) 313 6501

TERMS AND CONDITIONS OF PURCHASE

1. DEFINITIONS

- 1.1. In these terms and conditions the clause headings are for reference purposes only.
- 1.2. Unless the context clearly indicates a contrary intention;
 - expressions, which denote any one gender, shall include the other genders,
 - a person, shall include a natural person, company, partnership, close corporation or any other legal person,
 - the singular shall include the plural and vice versa.
- 1.3. "Buyer" shall mean Newlyn Investments (Pty) Ltd and/or its associated or subsidiary companies and divisions.
- 1.4. "Confidential Information" means all technical, commercial, business or personnel information disclosed or otherwise made available by the Buyer.
- 1.5. "Confidentiality Agreement" means the Newlyn Investments (Pty) Ltd Confidentiality and Non-Disclosure Undertaking,
- 1.6. "Deliverables" shall mean the physical goods, to be supplied and/or rendered in terms of the Order and any activity, work and/or services to be rendered in conjunction with the Delivery of goods and vice versa.
- 1.7. "Delivery" shall mean the completion and/or Delivery of Deliverables in a condition acceptable to the Buyer, Acceptance of the Deliverables is not considered to have taken place until payment has been effected.
- 1.8. "Delivery Note" means a document presented to the Buyer or its agent on Delivery of the Deliverables ordered.
- 1.9. "Invoice" means a document issued by the Seller wherein the amounts owing for Deliverables Delivered to the Buyer are set out.
- 1.10. "Order" shall mean the purchase order placed for the Deliverables.
- 1.11. "Seller" shall mean an entity contracting with the Buyer, for the rendering of Deliverables.



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- 1.12. "Party" shall mean either the Buyer or the Seller as the context denotes.
- 1.13. "Price" means the agreed monetary remuneration to be paid by the Buyer to the Seller in return for the satisfactory rendering of the Deliverables.
2. **ORDER CONSTITUTES ENTIRE CONTRACT**
The Order, additional instructions and references on the face of the Order and these Terms and Conditions of Purchase, shall constitute the entire contract. Any subsequent changes to the Order shall be in writing and signed by the Parties.
3. **ACCEPTANCE**
Unless the Seller repudiates the Order, in writing, within 2 working days from date of Order, acceptance by the Seller will be deemed to have occurred.
4. **PRICE**
Unless otherwise agreed to in writing, Prices stated in the Order shall be fixed and shall not be subject to variation. The Price shall include all costs incurred up to the point of Delivery, unless otherwise stated in the Order. There shall be no adjustment of the Price of Deliverables as shown on the Order unless the Seller stipulates an escalation formula in writing at the time of quoting and the same is accepted by the Buyer.
5. **CUSTOMS DUTIES, EXCISE DUTIES, FORWARDING AND CLEARING COSTS**
In all applicable instances custom duties, excise duties, clearing costs, forwarding costs and all other import/export costs will be incorporated as part of the total Price,
6. **EXCHANGE RATE**
Where the Seller is to effect forward cover any variations in the rate of exchange at the time payment is made shall be for the account of the Seller. Where the Buyer wishes to effect forward cover, the Seller shall be so informed.
7. **RISK**
Risk will pass to the Buyer on Delivery and acceptance of the Deliverables by the Buyer.
8. **PAYMENT**
The Buyer shall endeavour to effect payment, 30 days from the end of the month in which the Deliverables were rendered. Delivery notes must be stamped by the relevant Newlyn Investments (Pty) Ltd receiving function.
9. **QUALITY**
The Seller warrants that all Deliverables will be rendered strictly in compliance with instructions and/or samples furnished and requested by the Buyer or in the absence thereof, will be the best of their respective kinds, Acceptance of the Delivery of the Deliverables by the Buyer shall not constitute a waiver of any warranty.



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10. PACKAGING

Packing cases and materials shall be deemed to be included in the Price of the Deliverables and shall remain the property of the Buyer.

11. INSPECTION AND TESTING

The Buyer shall be entitled to examine, test and inspect the Deliverables at any stage of the rendering and/or production thereof.

12. PERFORMANCE OF WORK

While rendering the Deliverables on a site for which the Buyer is responsible in terms of OHSA 85 of 1993 as amended, the Seller will comply with the said Act.

The Seller shall whilst on the Buyers Site have in operation, a valid and current Workman's Compensation certificate.

The Seller will whilst on the Buyers Site have in operation a valid 3rd party insurance policy to fulfil any liability that arises for property damage, injury or death to any party.

All the Sellers staff, vendors and sub-vendors will first be obliged to undergo induction before entering the Buyers site.

13. DELIVERY

The Seller shall effect Delivery of the Deliverables on the date of Delivery indicated on the Order. Should the Seller fail to render the Deliverables on the dates stipulated in the Order, the Seller shall be liable, for a sum equal to 1% (one percent) of the total Price for each overdue day or part thereof.

14. SPECIFICATIONS, SOFTWARE, DRAWINGS ET AL

The Buyers' specifications, software, dongles, drawings and any information and/or goods supplied by the Buyer or becoming available or known during the rendering of the Delivery are considered Confidential Information and are the exclusive property of the Buyer and shall be returned by the Seller to the Buyer upon demand or upon completion of the Order. The Seller shall impose these obligations on its successors in business, assignees, sub vendors, suppliers and employees and shall ensure strict compliance therewith.

15. PATENTS

The Seller hereby indemnifies the Buyer against any claim by a third party for infringement of letters, patent, trademarks, registered design and/or copyright arising out of or as a consequence of the production, rendering, use or sale of the Deliverables.



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16. SUB CONTRACTING AND ASSIGNMENT

The Seller shall not cede, assign, transfer or sublet the Order, or any portion thereof, without the Buyer's written consent. Such permission granted shall in no way release the Seller from any of its obligations or duties at law or as set out in the Order in its entirety.

17. FORCE MAJEURE

Neither Party shall be held liable in respect of failure to fulfil their obligations to deliver when the reason for such failure is caused by, or arises from, any act of God or circumstances which could not be reasonably and practicably avoided in the ordinary conduct of that Party's business.

18. BUYER'S REMEDIES

Where the Buyer reasonably believes a continued association with the Seller is contrary to its security or business interests, the Buyer reserves the right to cancel this Order and withdraw from it at its sole discretion with complete and total impunity from any claim or action.

19. RELEVANT LEGISLATION

All Deliverables and the rendering thereof, shall comply with the requirements of all laws, by-laws and, regulations applicable thereto.

20. WAIVER

No relaxation or indulgence, which the Buyer may grant to the Seller, shall debar the Buyer from insisting upon the Seller's strict compliance with the terms and conditions of the Order.

21. APPLICABLE LAW

Regardless of the place of execution, performance or domicile of the Parties, this Order and all modifications, variations and amendments hereof shall be governed by and constructed under and in accordance with the laws of the place the Order was placed from/in.

22. INDEMNITY

The Seller indemnifies the Buyer against any claim, damage, loss or expense of whatever nature, due to or resulting from any negligence or breach on the Seller's part or the part of its employees, sub-vendors, agents or third parties or assignees, whether contractual, statutory or otherwise.

23. THE SELLERS USE OF BUYER'S PLANTOR EQUIPMENT

Plant, tools, equipment and other property provided to the Seller, its servants, agents or assignees by the Buyer shall be at the Seller's sole risk and any loss or damage caused to or caused by the same shall be the Seller's sole responsibility and the Seller hereby indemnifies the Buyer against any loss, damage, claim or proceedings in respect thereof albeit that such loss, damage, claim or proceedings may have occurred at the Buyers nominated Delivery site or by the Buyers breach, default, action, inaction and/or negligence.



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- 24. JIGS, DIES, TEMPLATES, MOULDS, PATTERNS, PRINT POSITIVES, TOOLS, INSTRUMENTS, PROPRIETARY INFORMATION AND THE LIKE (CARE, CONTROL OF AND OWNERSHIP OF)**
Where the Buyer supplies the Seller with any of its property or information for purposes of rendering the Deliverables the Seller shall not use or remove the same from its premises without the express prior written authorisation of the Buyer. The Seller shall, keep such equipment or information in good condition, fair wear and tear excepted. All risk and responsibility for any loss or damage to such equipment and/or information shall be with the Seller who shall effect and maintain a policy of insurance against loss, damage or theft of same. Where the cost of jigs, dies, templates, moulds, patterns, print positives, tools, instruments, proprietary information and the like are included in the Sellers Price, ownership thereof shall vest in the Buyer immediately and not on final payment of Price.
- 25. SET OFF**
If the Seller is liable to the Buyer in respect of any breach of Order terms and conditions, the Buyer shall be entitled to deduct or set off against any monies due to the Seller.
- 26. NON-APPLICABILITY / SEVERABILITY**
The non-applicability of any clause will not affect the applicability of other clauses in the Terms and Conditions applied to this Order.
- 27. EXCLUSION OF LIABILITY RELATING TO LOSS OF PROFIT, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES AND THIRD PARTIES**
Under no circumstances, shall the Buyer be liable to the Seller for consequential, special or indirect damages, however so arising.