

AKS LINING SYSTEMS (PTY) LTD

COMPANY REG NUMBER: 2010/019605/07

Standard Terms & Conditions of Service & Carriage

- 1 **Validity**
 - 1.1 These standard terms and conditions of service and carriage are valid for all supplies, services and offers by AKS Lining Systems (Pty) Ltd to its customers for which the business/service/offer is part of or within the scope of the operation of the company. Unless expressly otherwise agreed in writing, these standard terms and conditions of service and carriage apply exclusively. The Customer agrees that – where other terms and conditions may be used or relied on – the following terms and conditions of service and carriage apply without contradiction. Any indulgence afforded by AKS Lining Systems will not be valid consent to amend these terms and conditions. Any changes or amendments to these terms and conditions of service and carriage shall be made in writing to be legally binding.
- 2 **Offers**
 - 2.1 Offers are not binding in every respect. A contract is considered to be concluded only with the dispatch of a written order confirmation from AKS Lining Systems or on acceptance of the quotation provided to the Customer by AKS Lining Systems.
- 3 **Prices & Payment**
 - 3.1 Imported or locally manufactured products and/or components of the materials are based on an exchange rate, which will be communicated to the Customer on the quotation. Should exchange rate correction be necessary, AKS Lining Systems will inform the Customer accordingly.
 - 3.2 The Customer will be required to obtain a bank approved credit guarantee, or similar negotiable instrument, before the commencement of any order. AKS Lining Systems shall have absolute discretion in deciding the validity and acceptability of the credit guarantee or negotiable instrument obtained.
 - 3.3 All prices are subject to change and will be communicated to the Customer timeously.
 - 3.4 The Customer is obliged to pay the purchase price accordingly to the agreed payment term. Provided that no separate payment conditions have been agreed, the purchase price has to be paid within 30 days from the date of invoice.
- 3.5 Should the Customer not fulfill any payment obligation to AKS Lining Systems, including from previous orders completed, AKS Lining Systems is entitled to declare all its outstanding invoices due and payable, even if other terms of payment have been agreed upon.
- 4 **Delivery of Materials**
 - 4.1 AKS Lining Systems shall manufacture, load at its premises and deliver to the Customer at the aforementioned address all materials ordered and included in the issued tax invoice, unless agreed otherwise by both parties and reduced to writing.
 - 4.2 Notwithstanding AKS Lining Systems arranging for the materials to be delivered, the Customer shall be responsible for off-loading and unpacking of all the material(s).
 - 4.3 Should AKS Lining Systems discover that delivery dates cannot be adhered to, AKS Lining Systems shall immediately notify the Customer in writing within 24 (Twenty-Four) hours of the discovery, stating the cause for the delay and present a revised schedule for the deliveries, which the Customer reserves the right to accept or decline on reasonable grounds.
 - 4.4 Objectively justified and reasonable changes of service and delivery liabilities, especially reasonable exceeding delivery periods by AKS Lining Systems on the basis of force majeure such as fire, flood, earthquake and other acts of God, embargo on export and import, difficulties with energy (including issues related to load-shedding and ESKOM) or raw-materials supply are considered to be accepted in advance where such circumstances directly affect the obligations of AKS Lining Systems.
 - 4.5 AKS Lining Systems is not obligated to make delivery if the Customer is in default with any payment owing to AKS Lining Systems.
 - 4.6 Depending on the agreed terms of delivery, AKS Lining Systems selects the most favourable transit route. Additional costs incurred due to special transport requests of the Customer, will be at the Customer's expense.
 - 4.7 Should AKS Lining Systems' trucks be unduly delayed by the Customer or its representative for more than 48 (forty-eight) hours, AKS Lining Systems shall be entitled to return the undelivered materials back to AKS Lining Systems' premises,

the cost of which will be for the Customer's account.

5 Orders

5.1 The Customer may submit orders pertaining to the required material at any time by way of an official customer issued purchase order and sanctioned by the duly authorized representative of the Customer.

5.2 AKS Lining Systems will confirm the order in writing to the Customer, which order will be subject to these Terms & Conditions.

6 Ownership & Risk

6.1 AKS Lining Systems shall be responsible for and assume the risk of all materials while on AKS Lining Systems' premises and while in transit (unless agreed otherwise between the parties and reduced to writing). Once the materials are delivered, risk and ownership are transferred to the Customer accordingly.

6.2 All materials supplied will be dispatched from AKS Lining Systems' yard.

6.3 The Customer has to call AKS Lining System's attention to any local, legal or other regulations, especially standards, which relate to the execution of delivery as well as the compliance with any security and registration regulations, if applicable.

6.4 Should a third-party attempt attachment of any goods belonging to AKS Lining Systems, the normal interpleader proceedings shall apply. All expenses incurred in connection with the aforementioned interpleader proceedings are to be reimbursed to AKS Lining Systems by the Customer.

6.5 Plans, sketches and other technical information as well as, *inter alia*, folders, catalogues and samples remain the intellectual property of AKS lining Systems.

7 Testing of Materials

7.1 The Customer may appoint an independent third-party laboratory, approved and agree to by all parties, to test the material supplied by AKS Lining Systems, to ensure that the material complies with the approved project specifications and applicable annexure, if any;

7.2 Should the Customer request testing as per clause 7.1 above, all costs of said testing will be for the Customer's account.

7.3 Testing requested under this clause, however, must not affect the delivery schedule, obligation

to make payment and/or any other obligation recorded in terms of these Terms & Conditions.

8 Obligations of AKS Lining Systems

8.1 AKS Lining Systems undertakes to provide material which conforms to the quotation provided to the Customer by AKS Lining Systems and shall be subject to these Terms & Conditions.

9 Warranty

9.1 AKS Lining Systems will, upon full receipt of the payment by the Customer or on express request from the Customer, provide the Customer with a written warranty for the materials delivered or collected, which will be applicable for a period of 10 years.

10 Prevention

10.1 No Party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent: -

10.1.1 such default or delay is caused, directly or indirectly, by fire, flood, earthquake, highwinds, power failures or ESKOM related issues, elements of nature or acts of God, riots, civil disorder, rebellions or revolutions in any country or any other cause beyond the reasonable control of such Party.

11 Proprietary Rights

11.1 The Customer acknowledges and agrees that all rights in and to AKS Lining System's Intellectual Property made available to the Customer by AKS Lining Systems from time to time, vest and shall remain vested in AKS Lining Systems and that AKS Lining Systems is the owner thereof.

12 Limitation of Liability

12.1 AKS Lining Systems will only be liable for damages in cases of intent or gross negligence. Claims for compensation of damages are limited to the amount of the order value. Replacement of the escaped profits are excluded.

12.2 Liability for consequential damages is expressly excluded.

13 Govern law & Jurisdiction

13.1 AKS Lining Systems and the Customer agree that any dispute that arises between AKS Lining Systems and Customer, will be adjudicated by the relevant Magistrate's court in Cape Town, South Africa. This does not, however, prohibit any party to approach any other competent forum in South-Africa for the required relief sought.

- 14 Alternative Relief Sought
- 14.1 Notwithstanding any clause in these Terms & Conditions, no party will be prohibited to approach a competent court for the necessary relief sought in respect of any dispute arising out of the agreement between the parties.
- 15 Variation and Cancellation
- 15.1 No agreement varying, adding to, deleting from or cancelling any provision of these Terms & Conditions, shall be effective unless reduced to writing and signed by the parties to this Agreement or their duly authorised representatives. It is recorded that there exists no collateral and/or other agreements and that this is the sole agreement entered into by and between the parties.
- 16 Ethics
- 16.1 Any material offer, payment, consideration, or benefit of any kind made by AKS Lining Systems, which constitutes or could be construed as an illegal or corrupt practice, as an inducement or reward for the award or in execution of this contract constitutes grounds for terminating AKS Lining Systems' obligation to Provide the Goods or taking any other action as appropriate against AKS Lining Systems (including civil or criminal action).
- 17 Conflict between these Terms & Conditions and any Further Agreement

- 17.1 Should any conflict arise between these Terms & Conditions and any further agreement entered between the respective parties, or a delivery note or any other document, the terms of these Terms & Conditions will prevail.
- 18 Whole Agreement and No Amendments
- 18.1 These Terms & Conditions agreed to by the parties constitutes the whole agreement between the parties relating to the subject matter hereof;
- 18.2 No amendment or consensual cancellation of this Agreement or any provision of these Terms & Conditions, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of these Terms & Conditions shall be binding unless recorded in a written document signed by the parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given; and
- 18.3 No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

Full Name:

Date:/...../.....

Capacity:

Signature:

Full Name:

Date:/...../.....

Capacity:

Signature:

(DULY AUTHORISED FOR AND ON BEHALF OF THE RESPECTIVE PARTIES)