

## **TERMS AND CONDITIONS**

### **1. Scope of Application**

All products and services supplied by Vale Traders CC T/A Portatank (Hereinafter referred to as Portatank) shall be governed on the basis of these terms and conditions of purchase.

### **2. Goods or services**

Goods or services defined as the subject matter of any order placed by the Customer and accepted by Portatank.

### **3. Price**

3.1 The purchase price of any goods or services supplied or rendered by Portatank shall be the price reflected in the written quotation sent by Portatank to the Customer from which an order will be generated and accepted by the Customer.

3.2 The purchase price excludes erection/fitting unless otherwise stated and prices exclude delivery from East London.

### **4. Orders**

4.1. Orders placed by the Customer for the goods or services, shall be made in writing to Portatank.

4.2 If the Customer fails to take delivery of the products ordered, through the direct/indirect act/omission of the Customer, its agent, representative or employee the Customer shall be liable to pay the reasonable costs of storing, insuring and the handling of goods, until delivery takes place.

### **5 Payment**

5.1 Standard terms of payment are 50% deposit on confirmation of order, the balance payable on completion.

- 5.2 In the event that any agreement between Portatank and the Customer is governed by the National Credit Act (“NCA”), then any interest payable shall be calculated according to the interest rate provided for in the NCA.
- 5.3 In the event that any agreement between Portatank and the Customer is governed by the National Credit Act (“NCA”) Payment is full is to be made 30 (thirty) days from date of receipt of the Invoice.
- 5.4 In the event that the Customer is unable to pay Portatank for the goods delivered, Portatank shall have the right to charge the Customer with a penalty fee for the restocking of the unpaid goods and damage caused to the goods due to the direct/indirect act/omissions of the Customer its employees or agents, during the period the goods were in the Customers possession.

## **6. Delivery**

- 6.1 Deliveries shall be made within a reasonable period after conclusion of the agreement, and the parties specifically agree that there shall be no specific time or specific date agreed upon for the delivery of the goods, Portatank shall ensure that the goods will be delivered within a reasonable time period.
- 6.2 Delivery periods are only regarded as having commenced upon payment confirmation being received by Portatank.
- 6.3 Where you are a “consumer” as defined in the Consumer Protection Act 68 of 2008, please refer to the Refund Policy as to your rights in the event of late delivery.
- 6.4 Notice of claims arising out of damage in transit must be lodged by the Customer directly with the carrier and Portatank shall be provided with a copy of the notice.
- 6.5 The Customer will be liable for any damage to or deterioration of the product after delivery due to improper handling, storage or consolidation by the Customer or any of the customer’s agents, representatives or employees.
- 6.6 Delivery will be deemed to have taken place upon signature of the delivery note by the Customer, its employees or agent.
- 6.7 Should the Customer provide its own transport it is specifically recorded that the company will strictly adhere to all statutory and regulatory legislation in respect of road transport (and will accept no liability for non-compliance by the Customer, its employees or agents with such legislation)

- 6.8 Should the delivery of the product be delayed due to unforeseen circumstances in which the Portatank has no control over, the Customer shall be informed immediately of the delay and my provide Portatank with an opportunity to deliver the goods as soon as is reasonably possible taking into consideration the reason for the delay.

## **7 Risk and Ownership**

Risk in the products shall pass to the Customer or the authorised representative, agent or employee on delivery. Portatank shall retain ownership of the products until payment has been received in full.

## **8 Termination of sales**

- 8.1 Portatank reserves the right, for purposes of preventing suspected fraud, to refuse to accept or process payment on any order, and/or to cancel any sale concluded between the Customer and Portatank, in whole or in part, on notice to the Customer. Portatank shall only be liable to refund monies already paid by the Customer (see Refund Policy in this regard below), and accepts no other liability which may arise as a result of such refusal to process any order/sale.
- 8.2 Where the Customer is a “consumer” as defined in the Consumer Protection Act 68 of 2008, the Customer may cancel any order prior to the delivery thereof and will be subject to a reasonable cancellation fee to cover actual costs and losses of Portatank as a result of the cancellation.
- 8.3 In addition to 8.1 above, if you are a consumer please consult the Refund Policy below on cancellation due to late delivery.

## **9 Liability**

- 9.1 Portatank shall not be liable for any harm caused by the goods to a third party if the harm caused to the third party is due to the Customer, its employees or agents providing inadequate instructions or warnings in respect of the goods to the third party.
- 9.2 Portatank shall not be liable to the Customer for damage caused by goods delivered in good order and thereafter damaged in the care of the Customer due to improper care or use or application contrary to any instructions and/or warnings provided, or any other direct or indirect act or omission by the Customer, its employees or agents resulting in the goods being damaged or causing harm to any person or damage property.
- 9.3 Portatank shall endeavour to obtain materials in accordance with the Customer’s specifications but cannot be held liable for goods that may differ slightly in colour,

however still within the frame of the specifications provided by the Customer, due to circumstances beyond their control.

9.4 In so far as the Customer is not a consumer as defined by the Consumer Protections Act 68 of 2008, and goods and services are provided in a business-to-business capacity, accordingly, we accept no liability for any business loss (which includes without limitation, any loss of contracts, loss of profits, loss of revenue or loss of anticipated savings in expenditure or any loss or corruption of data) however caused, even if foreseeable.

9.5 In so far as the Customer is not a consumer as defined in the Consumer Protection Act 68 of 2008, Portatank accept no responsibility for any losses, damages and/or financial losses which may have been suffered through the use of the goods or services for whatever purpose the Customer wishes to use the goods for.

## 10 **Returned goods**

### 10.1 Defects, Returns, Refunds & Guarantees

10.1.1 If the Customer is a “consumer” as defined in the Consumer Protection Act 2008 (“CPA”), the following provision shall apply:

Should the Customer not be satisfied with any product purchased, by reason of a defect, or otherwise, Portatank will remedy the defect. The Customer may, under certain circumstances, be entitled to either be refunded, in full or in part in accordance with the Refund Policy, or have the product replaced, as the case may be. The Refund Policy regulates the Customers rights in this regard, and how products are to be returned to Portatank. Please view the Refund Policy below.

10.1.2 If you are not a “consumer” as defined in the CPA, the following provision shall apply to you:

Goods sold are only returnable at Portatank’s sole discretion or where incorrect goods have been supplied. All goods are to be returned at the Customers expense and the risk in the goods remains with the Customer until the goods are received by Portatank. The value of credit for any returned goods will be calculated as per original invoice.

10.2 Goods sold are not returnable where the goods are free from any defect and are of a quality a Customer is entitled to expect but differ slightly in colour through no fault of Portatank.

## 11. **Collection of goods**

- 11.1 Should Portatank remedy a defect and the goods are ready for collection, the goods may remain with Portatank for a period of 1 month after the Customer has been notified that the goods are ready for collection.
- 11.2 If the goods are not collected within 1 month of the Customer being notified, Portatank reserve the right to charge a storage fee. The storage fee will increase with every month that the goods are not collected.
- 11.3 If the goods have not been collected within 6 months of the Customer being notified that the goods are ready for collection and the Customer has not informed Portatank of its intention to collect the goods and all attempts have been made to inform the Customer that the goods are ready for collection, Portatank reserve the right to retain ownership of the goods.

## 12 **Disclaimer**

- 12.1 Save for Portatank being liable to a Customer:

- 12.1.1 under the CPA in relation to any products sold by Portatank;

Portatank and the Customer (“**Indemnifying Party**”) hereby indemnify and hold harmless the other, and its respective trustees or directors, as the case may be, officers and employees, (collectively, the “**Indemnified Parties**”), from and against any and all claims, actions, liabilities, damages, costs and expenses asserted against, imposed upon or incurred by the Indemnified Parties as a result of or arising out of any contravention of the CPA (collectively, “**Loss**”) proven under the CPA by a consumer himself or herself, or other person contemplated in section 4(1) of the CPA, save to the extent that any such Loss is due to the negligent or intentional conduct of the Indemnified Parties.

## 12 **Warrantees and Indemnities**

The Customer warrants that should the products purchased from Portatank be used and sold to consumers, consumers as defined in the Consumer Protection Act 68 of 2008, any description of the products whether on the products, in supporting documentation, or in any other document, video recording, sound recording, or live presentation shall not be misleading or deceptive, whether explicitly or implicitly, by commission or by omission, and the Customer further warrants that to the extent that said descriptions do not comply with the above, or with the provisions of the Consumer Protection Act 68 of 2008 in general, the Customer indemnifies and holds harmless Portatank against any

and all claims based on deception or misrepresentation of the goods, their safety, their quality, or their purpose.

### **13 Legal proceedings**

- 14.1 Regardless of the place of execution or performance under these terms and conditions or domicile of the Customer, these terms and conditions and all modifications and amendments hereof, shall be governed by and decided upon and constructed under and in accordance with the laws of the Republic of South Africa.
- 14.2 Subject to the 'Disputes' clause of these Terms and Conditions, Portatank and the Customer submit to the non-exclusive jurisdiction of the South African courts.
- 14.3 All legal costs, including attorney/own client costs, tracing agent's fees and collection charges which the aggrieved party may incur in taking any steps pursuant to any breach by the other party to the agreement or enforcement of these terms and conditions shall be borne and paid by the party against whom the rights are being enforced to the enforcing party, whether or not legal proceedings are commenced.

### **14 Disputes**

- 14.1 Save for urgent or interim relief which may be granted by a competent court, in the event of any dispute of any nature whatsoever arising between the Customer and Portatank on any matter provided for in, or arising out of these Terms, and not resolved, then such a dispute shall be submitted to confidential arbitration in terms of the rules of the Arbitration Foundation of South Africa or in the case where you are a consumer as defined under the Consumer Protection Act 68 of 2008, any Ombud or other dispute resolution mechanism in terms of the Consumer Protection Act, or the National Consumer Commission
- 14.2 Where a statutory or accredited ombud has jurisdiction in terms of the Consumer Protection Act, all disputes falling under the jurisdiction of said ombud shall be referred to the ombud for a recommendation.
- 14.3 Where there is no ombud as contemplated in 16.2 and the dispute is one falling under the Consumer Protection Act, an Alternative Dispute Resolution Agent referred to therein shall be appointed to mediate the dispute or, by agreement between the Customer and BASF, the dispute will be referred to Arbitration as contemplated in 16.1 .
- 14.4 The arbitrator must be a person agreed upon by the parties and shall at least hold a tertiary qualification in the technical field of the dispute, except where the dispute relates predominantly to the interpretation of this agreement or any law, regulation, or by-law, in which case the appointed arbitrator shall have at least 10 years practical experience as an attorney in private practice or as an advocate of the High Court.

## **15 General**

- 15.1 This contract represents the entire agreement between Portatank and the Customer and shall govern all future contractual relationships between Portatank and the Customer.
- 15.2 No amendment and/or alteration and/or variation and/or deletion and/or addition and/or cancellation of these terms and conditions, shall be of any force or effect unless reduced to writing and signed by a director of Portatank. No agreement purporting to obligate Portatank to sign a written agreement to amend, alter, vary, delete, add or cancel these terms and conditions, shall be of any force or effect, unless reduce to writing signed by a director of Portatank.
- 15.3 The Customer shall not cede its rights nor assign it's obligation in terms hereof without prior written consent from Portatank.
- 16.4 The Customer undertakes to notify Portatank in writing within a period of 7 (seven) days of any change of address, change in ownership, name change or any changes in information as set out in this agreement.
- 16.5 Each of the terms herein shall be a separate and divisible term and if any such term becomes unenforceable for any reason whatsoever, then the term shall be severable and shall not affect the validity of the other terms.
- 16.6 Provided that they do not conflict with any of the terms and conditions contained herein, such as general practices, terms and conditions applicable to the industry in which Portatank conducts business shall be applicable to all dealings between Portatank and the Customer.

## **17 Force Majeure**

To the extent any incident or circumstance beyond either party's control (including natural occurrences, war, strikes, lock-outs, shortages of raw materials and energy, obstruction of transportation, breakdown of manufacturing equipment, fire, explosion, acts of Government), reduces the availability of products such that the Portatank cannot fulfill its obligations under this agreement, Portatank shall be relieved from its obligations under this agreement to the extent that it is prevented from performing such obligations.

## **18 Copyright & other Intellectual Property Rights**

- 18.1 Any and all intellectual property including these Terms, vests in Portatank and all rights not expressly granted are reserved.

- 18.2 All the content, trademarks and data on Portatank's website, including but not limited to, software, databases, text, graphics, icons, hyperlinks, private information, designs and agreements, are the property of or licensed to Portatank and as such are protected from infringement by local and international legislation and treaties.

## **REFUND POLICY**

### **1. Late Delivery**

- 1.1 If the Customer is a Consumer as defined in the Consumer Protection Act 68 of 2008, and a product purchased is not delivered within the agreed delivery period, or where no specific period was agreed, within 30 days after having purchased the Product, the Customer is entitled to a refund of the amount paid by the Customer for the product/s.
- 1.2 If the Customer is a Consumer as defined in the Consumer Protection Act 68 of 2008, the Customer may refuse to accept delivery of any product delivered substantially later than the agreed time and you may not be charged anything for the abortive delivery.
- 1.3 If the Customer is a consumer as defined by the Consumer Protection Act 68 of 2008 and late delivery has taken place and the Customer has not accepted delivery tacitly through use thereof or explicitly by signing a delivery note, and the Customer has notified Portatank of the late delivery and the refusal to accept the late delivered products within 10 business days of the late delivery, if the products are not collected by Portatank within a further 20 business days they shall be considered to be unsolicited products.

### **2. Early Cancellations – Penalty Fee**

- 2.1 The Customer is entitled to cancel (either in whole or in part) any sale without attracting any cancellation and/or administration charges if you cancel prior to the manufacturing and/or packaging of the products so sold for delivery.
- 2.2 If timeously cancelled as aforesaid, the Customer will be fully refunded in respect of such cancelled sale (including delivery charges), without any administrative or other charges being payable; provided that, should a sale only be partially cancelled and delivery charges as re-calculated on the value of the revised order exceed the delivery charges as calculated on the original order, the Customer shall be liable for the amount of such excess delivery charges.



### **3. Defective/Damaged/Unsuitable Products**

**If the Customer is a consumer as defined in the Consumer Protection Act 2008, the following provisions apply:**

- 3.1 General Rule: If at the longest within 6 months after delivery of a product to the Customer,
  - 3.1.1 The Customer finds that the product is defective or unsuitable for the purpose for which it was indicated in the product description (or otherwise generally intended) (hereinafter referred to as being “**Defective**”); and
  - 3.1.2 The Customer arranges to return such product to Portatank for inspection in the manner described in the ‘Arranging Returns’ section below (being the ONLY manner in which returns will be accepted) and the product is subsequently found:
    - 3.1.3 to indeed be Defective, Portatank undertake to remedy the defect as far as is possible;
    - 3.1.4 not to be Defective, the Customer will be liable for the costs incurred in having such product returned to Portatank and then re-delivered to the Customer;
    - 3.1.5 where the Customer, or someone unauthorised to do so by Portatank, has altered or damaged the product, the Customer should refuse to accept delivery of any product which is visibly damaged. If it is only reported after 48 hours, it is reasonable for Portatank to determine that the damage was caused after the products were delivered to the Customer.

### **4. Arranging Returns**

- 4.1 If a Customer wants to return a product purchased from Portatank for any reason permitted under this Refund Policy, the Customer must in all instances first notify Portatank thereof to inform them of the reason for the return by contacting Portatank via either:
  - 4.1.1 Email at: [tarpsandcanvas@sainet.co.za](mailto:tarpsandcanvas@sainet.co.za) or [tcel@sainet.co.za](mailto:tcel@sainet.co.za)
- 4.2 Once the Customer has successfully logged its return as aforesaid. The Customer must ensure that the Product to be collected is packed so as to comply with the following:
  - 4.2.1 the Product is properly protected;
  - 4.2.2 save where being returned due to being Defective or in terms of 3.2.1., if the Product is still in its original packaging, together with all accessories, instructions and documentation (if any), and in perfect condition for the purposes of resale, except in the case of returns related to 3.2.1 and 3.2.2 above, and
  - 4.2.3 Please treat products and packaging with reasonable care while in your possession. Nothing herein detracts from any right Portatank may have to hold the Customer liable for any damage caused to a product (including its packaging) while in the Customers possession.