

## TERMS AND CONDITIONS

### 1. ADVERTISING & MARKETING

1.1 The Company may from time to time advertise or market its products or goods either directly or indirectly. In respect of direct marketing sales, all invoices will clearly stipulate such sales. The Consumer Protection Act 68 of 2008 is applicable to transaction unless specifically excluded by the Act.

### 2. PLACING ORDERS

2.1 The Customer will place a clear and unambiguous order with the Company, in acceptance of an offer/s for work and/or services advertised by the Company, setting out specifications and other details before the commencement of work.

2.2 The Company will not be held liable for inaccuracies in the finished product to the extent of vague or incomplete instructions issued by the Customer.

2.3 Any additional work occasioned by vague or incomplete instructions from the Customer will be billed at the applicable rate, in addition to the quoted price.

2.4 By accepting the Company's quotation/order form, the customer agrees to the company's terms and conditions as set out in this document.

### 3. PAYMENT TERMS

3.1 The price of goods and/or services, VAT exclusive, is the price stated on the pro-forma invoice or the invoice. A 50% non-refundable deposit will be payable on confirmation of order, with the balance payable on completion of manufacture, prior to release of the finished product.

3.2 Where a customer requires partial delivery, a 100% payment is required prior to the release of the finished product.

3.3 Interest at 2% per month will be charged on overdue accounts after 60 days from the notice of completion of manufacture.

3.4 Where a SADC Certificate is required for exports, the Company will require full payment be made, inclusive of transport, the necessary import declarations and 7-10 work days to process the application.

3.5 A staggered payment plan, no longer than 3 month's duration, may be agreed. If, after 3 months, the purchase price remains outstanding, the Company reserves the right to sell the goods to defray costs.

3.6 Prices are valid for 30 days from the date of purchase recorded on the invoice.

### 4. CANCELLATION

4.1 Cancellation of advanced, reservations, bookings or orders will attract a 20% cancellation fee that the Customer accepts as fair and reasonable.

### 5. DELIVERY

5.1 The Customer shall make its own prior arrangements for collection and delivery for all goods purchased from the Company unless otherwise agreed to in writing.

5.2 The Company shall be indemnified against any loss or damage which may arise from any third party conduct in respect of the collection and delivery from the Company on behalf of the Customer.

5.3 In certain circumstances, and by prior arrangement between the parties the Company may either credit or pay to the Customer or their agent for collection and delivery charges. However, such payment shall not be construed as an acceptance, tacit or otherwise on the Company's part, and the policy regarding indemnification as set out in Clause 5.2 above will continue to apply.

5.4 The Company will not be held liable for any delays occasioned by any agent of the Customer.

5.5 If the seller is required to deliver the goods to a specific address, it is the responsibility of the customer to timeously provide the seller with the delivery address. Should the customer fail to timeously provide the Seller with the details for delivery, the customer will uplift the goods from the seller and the customer will forfeit all costs, if any, paid for delivery and will become liable for any additional/wasted/storage costs incurred. Although the seller undertake to deliver goods without delay, it's understood that delivery could take up to anything from 14 to 30 days to deliver.

### 6. STORAGE

6.1 Goods will be held in storage for collection after completion free of charge for a period of 7 days, where after a storage fee will be levied. Whilst in the storage facility, the Company will not be held liable for any damage caused to the goods by any cause whatsoever.

### 7. COMPLAINTS, RETURNS AND REFUNDS

7.1 The Customer will inspect all goods upon delivery or collection.

7.2 The Company will not be liable for any damages which are noted after the date of delivery or collection.

7.3 The Customer has 10 days within which to lay a complaint for loss, damage or incomplete goods.

7.4 For a refund to be effected, the onus is on the Customer to forward to the Company a copy of his/her Identity Document, a cancelled cheque or a signed letter from his/her bank confirming the Customer's banking details. No refunds will be paid into third party accounts.

7.5 Goods may not be returned if they are either partly, or entirely disassembled, physically altered, permanently installed, affixed, attached, joined or added to, blended or combined with other goods or property.

7.6 The customer can Not return items purchased unless the goods are defective.

### 8. INSTALLATION

8.1 The Company offers installation services at an additional fee, subject to the necessary infrastructure being arranged and assembled by the Customer.

8.2 While every precaution will be taken while carrying out the installation, the Company will not be held liable for any damage arising during the process.

8.3 Where the Company or its agents are unable to commence installation on the agreed date as a result of the necessary infrastructure not being in place through the fault of the Customer or its agents, the Company will not be liable for any such losses or damages incurred thereby, and the Customer will be liable for any costs occasioned by the Company or its agents in this regard. In this instance, or where the necessary infrastructure is not up to the requisite standard, the Company may elect not to install the goods, and shall not be liable for any expenses incurred by the Customer in respect of installation by a third party.

### 9. WARRANTIES

9.1 The Company warrants to the Customer that for a period of 6 months from the collection/delivery date of the goods, they will be (a) new and free from defects related to workmanship, material and design, (b) adhere to the relevant specifications, (c) be fit for the purpose for which it was purchased and function accordingly, (d) be free and clear of all liens security interests or other encumbrances and (e) not infringe on or misappropriate any other party's intellectual property rights.

9.2 The Company will not be liable for variances in the colour of fabrics as received from their suppliers.

### 10. INDEMNIFICATION

10.1 The Customer shall defend, indemnify, and hold harmless the Company its subsidiaries, affiliates, successors or assigns and its respective directors, officers, shareholder, and employees (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, action, judgment, interest, penalty, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder (collectively, "Losses") arising out of or occurring in connection with Company's performance of its obligations or the Company's negligence, wilful misconduct or breach of the Terms of this Order or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party.

10.2 The Company shall not enter into any settlement without the Customer's prior written consent.

### 11. CONFIDENTIAL INFORMATION

11.1 All non-public, confidential or proprietary information of the Company, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, pricing, discounts or rebates, disclosed by the Company to the Customer, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Order is confidential, solely for the use of performing the Order and may not be disclosed or copied unless authorized by the Company in writing.

11.2 Upon the Company's request, the Customer shall promptly return all documents and other materials received from the Company.

11.3 The Company shall be entitled to injunctive relief for any violation of this Section.

11.4 This Section shall not apply to information that is: (a) in the public domain;

(b) rightfully and legally known to the Company at the time of disclosure; or

(c) rightfully and legally obtained by the Company on a non-confidential basis from a third party.

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12. **INSURANCE**
- 12.1 The Customer shall be liable for goods that it or its agents uplift from the Company, and shall adequately insure such goods with Goods in Transit (GIT) cover for the period after upliftment from the Company until delivery to the Customer.
- 12.2 The Company accepts no liability whatsoever to insure any goods that have left its possession and been delivered to or uplifted by the Customer or its agents.
13. **COMPLIANCE WITH LAW**
- 13.1 The Company warrants and represents to the Customer that it is in compliance with and shall remain in compliance during performance of this Order and ensure that its employees, agents, contractors and subcontractors (the "Personnel") comply with the Company's Supplier Code of Ethics, available on the Company's website, and all applicable laws, regulations and ordinances.
- 13.2 The Company has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits required by law to carry out its obligations under the Order.
- 13.3 The Company shall comply with all export and import laws of all countries involved in the sale of Goods under this Order.
- 13.4 The Company assumes all responsibility for shipments of Goods requiring any government import clearance.
- 13.5 If the Company fails to comply with the laws, orders, rules, ordinances and regulations and as a result the Customer is fined, the Company agrees to pay the fine and costs incident thereto or reimburse the Customer for payment.
- 13.6 To the extent that the Company's Personnel are required to enter onto the Customer's site or property, the Company shall ensure that Personnel comply with the Customer's health, safety and environmental policies and standards.
14. **FORCE MAJEURE**
- 14.1 Neither party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party ("Force Majeure Event").
- 14.2 Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, terrorist acts, riots, strike, or embargoes.
- 14.3 Customer's economic hardship or changes in market conditions are not considered Force Majeure Events.
- 14.4 Company shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under the Order.
15. **WAIVER AND RELEASE OF LIENS**
- 15.1 Upon the Company receipt of amounts properly invoiced, the Company waives and releases all rights to, for itself and its subcontractors, and at its sole cost shall obtain prompt removal of any lien fixed against the Customer, for Goods or Services performed under this Order.
16. **NOTICES**
- 16.1 All notices, consents, claims, demands, waivers and communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of this Order or to such other address that may be designated by the receiving in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (return receipt requested, postage prepaid).
- 16.2 A Notice is effective only upon receipt of the receiving party.
- 16.3.1 The Purchaser acknowledges that **Pagoda Tents** is the marketing agent only. It accordingly bears no liability regarding the obligations of **David Pam Jang Traders**. Accordingly any claims of any legal nature must be directed to the manufacturing company, **David Pam Jang Traders**, Customer Care line: 0870560466.
- Pagoda Tents shall be entitled to proceed with legal action against any person who defames and/or attempts to defame Pagoda Tents through any means including but not limited to social media despite the provisions of clause 16.3.1 above. Pagoda Tents shall further be entitled to all costs, including but not limited to attorneys and advocates fees should it become necessary to protect its rights. Pagoda Tents further reserves its right to claim damages as a result of such claim being made against it. For all purposes relating to this contract including the giving of any notice, the payment of any sum or the serving of all legal documents we hereby provide you with our domicillium address; Gosai & Co, 105 Sixth Avenue, Morningside, Durban.
17. **INCONSISTENT TERMS**
- 17.1 The terms found on the face of this Order shall govern over the terms and conditions herein. Any separate written overriding agreement signed by both parties shall govern over the terms of the Order.
18. **SEVERABILITY**
- 18.1 If any term or provision of this Order is found invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term of this Order or invalidate or render unenforceable such term in any other jurisdiction.
19. **MISCELLANEOUS**
- 19.1 The Customer shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Order without the Customer's prior written consent.
- 19.2 Any purported assignment or delegation in violation of this Section shall be null and void.
- 19.3 No assignment shall relieve the Customer of any of its obligations hereunder.
- 19.4 No modification, alteration or amendment of the Order shall be binding unless agreed to in writing and signed by the Customer and the Company.
- 19.5 No waiver by any party of any of the provisions of the Order shall be effective unless explicitly set forth in writing and signed by the party so waiving.
- 19.6 No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Order by either party shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or privilege hereunder preclude any other exercise of any additional right, remedy, or privilege.

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