

SECTION 7: STANDARD GENERAL TERMS AND CONDITIONS OF SALE

7.1 CREDIT TERMS

1. The Customer agrees that the amount contained in an invoice or tax invoice issued by AFROX shall be due unconditionally (a) cash on delivery; or
(b) if the Customer is a credit approved customer, within the granted credit period as specified on the Application for Credit, from the date of an invoice or tax invoice being issued by AFROX.
Should any amount not be paid on due date as per agreed terms the whole amount shall become due, owing and payable irrespective of the date(s) when the goods were purchased.
2. The Customer agrees to pay the amount on the invoice or tax invoice at the offices of AFROX or its appointed agents.
3. The risk of payment by cheque through the post rests with the Customer.
4. The Customer has no right to withhold payment for any reason whatsoever and agrees that no extension of payment of any nature shall be extended to the Customer, and any such extension will not be applicable or enforceable unless agreed to by AFROX, reduced to writing and signed by the Customer and a duly authorised representative of AFROX.
5. The Customer is not entitled to set off any amount due to the Customer by AFROX, against this debt.
6. Any printout of computer evidence tendered by any party shall be admissible evidence.
7. The Customer agrees that in the case of late payment, interest shall be payable to AFROX on the overdue monies, which shall be calculated at the prime overdraft rate of AFROX's Bankers plus five percent from the date of invoice.
8. The Customer agrees that if an account is not settled in full
(a) against delivery; or
(b) within the period agreed in clause 1 above in the case of a credit approved customer;
AFROX is (i) entitled to draw a notice of default to the attention of the Customer for settlement of the account, failing which AFROX will immediately institute action against the Customer at the sole expense of the Customer; or (ii) to cancel this Agreement and take possession of any goods delivered to the Customer and claim damages. These remedies are without prejudice to any other right AFROX may be entitled to in terms of this Agreement or in law. AFROX reserves its right to stop supply immediately on cancellation or on non-payment.
9. A credit approved customer will forthwith lose this approval when payment is not made according to the conditions as set-out in this section. Credit facilities may also be suspended at any time that the customer is in default, without prior notice and/or withdrawn on 10 (ten) business days' written notice to the Customer and the extent and nature of such facilities shall at all times be in AFROX's sole discretion.
10. The Customer hereby selects and nominates the address stated in Section B to Section E above, as the chosen address at which service of all notices and demands will be accepted. Should AFROX proceed with legal action against me/us, I/we confirm that the address as stated in specific Section and Clause above shall be my/our chosen address where I/we shall accept service of a summons and/or application or any court process as may be required.
11. A certificate by one of AFROX's Senior Managers or authorised employees showing the amount due and owing by the Customer to AFROX at any given time shall be *prima facie* proof of the facts therein stated for the purpose of all legal proceedings against the Customer for recovery of the said amount.
12. Ownership of goods sold shall remain vested in AFROX, notwithstanding delivery, until AFROX have received payment in full for the goods purchased and the Customer further agrees that the risk shall pass immediately on delivery of all or any portion of such goods purchased and delivered.
13. Should the Customer or any of its officers or employees become aware at any stage that a third party, i.e. Someone other than the Customer, is using the Customer's account with AFROX, and fails to inform AFROX of such use, then the Customer will be responsible to AFROX for all amounts of money owing to AFROX by the third party with effect from the time that the Customer or its officer(s) or employee(s) will become so aware.
14. Should the Customer be a partnership (including but not restricted to a joint venture) then as between AFROX and all the partners of the Customer, the partnership will be deemed to continue to exist until the date on which AFROX will receive written notice of the termination of the partnership.
15. The Customer hereby declares that the information contained in this application—
 - i. Is complete and accurate in all respects;
 - ii. Will be used to assess the credit worthiness of the Customer; iii. Will be updated by the Customer whenever necessary.
16. The Customer agrees that AFROX may contact any bank, trade reference, credit bureau or other entity referred to in this application, in order to verify any information, set out herein or to obtain further information in regard to the Customer. The Customer further agrees that AFROX may in turn furnish to any credit bureau or other entity seeking a credit reference on the Customer any relevant information regarding the customer's dealings with AFROX.
17. The Customer acknowledges that AFROX's standard terms and conditions of sale, which are set out hereunder, are binding on the Customer.

7.2 STANDARD TERMS AND CONDITIONS OF SALE

The following terms and conditions of sale are applicable to all sales and supplies by Afrox Malawi Limited and its subsidiaries (herein referred to as "Afrox") to any customer unless expressly agreed in writing to the contrary.

1. PRICES

1.1 Prices, rentals, deposits and other charges appearing in Afrox's quotations, delivery and sale documentation, invoices, catalogues and price lists are those ruling at the date of issue.

2. QUOTATIONS

- 2.1 Quotations are open for acceptance within a period of 14 days only from the date thereof, and orders placed will only be binding upon Afrox upon written confirmation thereof by the customer.
- 2.2 Quotations are based on costs, taxes and duties ruling at the date thereof. Afrox shall be entitled to adjust prices in the event of variation in costs outside their control and on any variation in taxes and duties.
- 2.3 Special delivery charges may be levied where geographic or commercial reasons so require.
- 2.4 The delivery time specified in any quotation is given in good faith and shall not be binding.

3. PAYMENT

- 3.1 Payment shall be made strictly in accordance with the terms of Afrox's invoice or statement. Interest shall accrue on all overdue amounts at a rate equal to 2% above the ending rate charged from time to time by Afrox's bankers until such overdue amounts are paid in full.
- 3.2 In the event of overdue amounts or payment discrepancies, Afrox shall be entitled to stop supply and/or place an account on a COD basis without notice.
- 3.3 Cheques presented in payment will be subject to verification prior to supply of the Goods. Dishonoured cheques will be submitted for publication and be subject to processing charges as may be charged from time to time by Afrox.
- 3.4 The Customer consents to the conducting of creditworthiness check at the election of Afrox prior to the provision of credit facilities or cheque acceptance.
- 3.5 All invoices, quotations and statements are sent "Errors and Omissions Exempt".

4. RISK AND OWNERSHIP

- 4.1 Risk in goods supplied shall pass on to the Customer on delivery, but ownership shall remain with Afrox until the whole of the contract price together with any interest levied thereon has been paid in full.
- 4.2 Cylinders and Gases – the ownership shall remain the property of Afrox until the full contract price is paid for, then only the gas content thereof will become the property of the customer. The cylinder always remains the sole property of Afrox.

5. CYLINDERS AND GASES

- 5.1 Cylinders are provided on a 'lend-lease' basis and the allocation and withdrawal thereof shall be at the sole election of Afrox.
- 5.2 Cylinders and components thereof shall remain the sole property of Afrox and shall be returned to Afrox within seven days of demand failing which Afrox shall recover their property at the Customers cost.
- 5.3 The Customer shall ensure that cylinders are only used for their designed purpose and in accordance with reasonable accepted practice and that cylinders are stored and handled safely and in such a manner as to prevent loss, damage or deterioration of condition.
- 5.4 The Customer shall provide unrestricted access to their premises for purposes of cylinder audits as and when required by Afrox and provide assistance to the auditors. Any additional Afrox cylinders found during the audit shall be confiscated or added to the records and any missing cylinders shall be regarded as lost.
- 5.5 Afrox shall be entitled to charge rentals and deposits on all cylinders allocated to the customer or found in the customer's possession. Cylinder rentals shall be chargeable for each month or part thereof.
- 5.6 Cylinder deposits shall be refunded within thirty days of return of cylinders to Afrox but subject to presentation by the Customer of receipt for deposits paid.
- 5.7 The customer shall be liable for the replacement or repair cost of any cylinders lost or damaged while under the control or in the possession of the customer. In such event deposits for lost or damaged cylinders shall not be refunded.
- 5.8 The Customer shall not take cylinders beyond the borders of Malawi without prior permission in writing from Afrox and shall not lend or rent out cylinders to any other party and will be liable for all cylinders allocated to him.
- 5.9 The Customer shall not exchange cylinders with or have cylinders filled by any gas provider other than Afrox.
- 5.10 The Customer shall not tamper with, repair or modify cylinders or components thereof in any way and under no circumstances shall gas be decanted.
- 5.11 No refund shall be made or credits given for any unused gases returned to Afrox.

6. SUPPLY AND DELIVERY

6.1 Goods should be examined immediately on receipt. No claim in respect of any damage or apparent defect in the goods will be considered by Afrox unless full details of such damage or apparent defect have been furnished in writing by the Customer to Afrox within seven days of the receipt of the goods.

6.2 In all cases where the goods are sent by a carrier other than Afrox, the goods shall be at the risk of the Customer from the time the goods are handed over to the carrier and Afrox shall not be liable for any loss or damage that may occur thereafter.

6.3 Afrox shall in no way be penalised for delay in delivery and the Customer shall not be entitled to reduce or cancel the order in such event unless agreed to in writing with Afrox.

7. GUARANTEE

7.1 The goods supplied by Afrox are guaranteed to conform to the relevant Afrox specifications, but the Customer must continually satisfy itself that the goods supplied are suitable for its intended application. No warranty is given as to merchantability or fitness for use.

7.2 Should the goods fail to conform to the above guarantee, Afrox shall to the exclusion of any other remedy available to the Customer and at Afrox's election, either replace to point of delivery or pass a credit for such goods. Any claim in this regard must be lodged in writing with Afrox within seven days after the date of delivery of such goods failing which all liability on the part of Afrox shall cease.

7.3 Return of defective goods shall be the responsibility of the Customer.

7.4 The Customer shall not permit any repairs or inspections to be carried out on any goods other than by Afrox or its authorised agents. Failure to comply shall result in the above guarantee being rendered null and void.

8. LIABILITY AND INDEMNITY

8.1 The Customer shall not have any right of action against Afrox, its agents, employees, representatives or independent contractors and Afrox will not be liable for any loss (including economic loss), damage or injury whether direct, indirect or consequential suffered by the Customer howsoever arising and from whatsoever cause.

8.2 The Customer hereby indemnifies Afrox against all liability for loss (including economic loss), damage or injury whether direct, indirect or consequential suffered by any third party arising from the commission of a relict by the Customer or howsoever else.

8.3 The Customer shall bear sole civil and criminal liability in respect of any damage or offence occasioned by a breach of clause 7.4, and indemnifies Afrox accordingly.

9. VIZ MAJOR

9.1 Notwithstanding anything to the contrary contained herein, Afrox shall not be liable for failing to fulfil any of its obligations if such failure is due to war, civil disturbance, riots, acts of terrorism, fire, storm, industrial dispute, quarantine, breakdown of equipment or vehicles, acts of God or state or to any other cause which is beyond Afrox's reasonable control.

10. SAFETY

10.1 The Customer's attention is drawn to cautionary labels for gases, equipment, vessels, containers and products supplied by Afrox and the procedures and precautions relating to the handling and use of such in regulations and codes of practice promulgated by the Malawian Authorities together with user information published by Afrox from time to time. The Customer shall also draw the above to the attention of all persons engaged in the handling and use of gases, equipment, vessels, containers and products supplied by Afrox.

11. LEGAL PROCEEDINGS

11.1 Any legal proceedings arising shall be governed by the laws of Malawi and adjudged in the relevant Malawian Court. The Customer shall be liable for all legal costs incurred by Afrox, on an attorney and client scale, including collection, commission and tracing charges.

12. WAIVER OR INDULGENCE

12.1 No waiver or indulgence granted by Afrox to the Customer in respect of any matter or thing whatsoever shall be a continuing waiver or indulgence or constitute a novation of any kind.

13. VARIATION AND PRECEDENCE

13.1 No representations, undertakings, guarantees or warranties, or variation of any of these terms or conditions shall be binding unless recorded in writing and signed by both parties.

13.2 The supply of goods by Afrox shall be governed by these terms and conditions irrespective of the Customers conditions of purchase or any terms and conditions contained in the Customer's enquiry and order documentation and the customers order shall be accepted on such basis.

13.3 In the event of Afrox and the Customer entering into a written agreement containing terms and conditions which conflict with the terms and conditions stated herein, the terms and conditions of the written agreement shall take precedence.