

## TERMS AND CONDITIONS OF SALE

### TRADE AGREEMENT

- 1 The Customer agrees that
  - a) this Agreement represents the entire Agreement between the Customer and Coltron Electronics (Pty) Ltd Services (Pty) Ltd t/a Coltron Electronics (Pty) Ltd (hereinafter called Coltron Electronics (Pty) Ltd) and that no alterations or additions to this Agreement may be effected unless agreed to by both parties, reduced to writing and signed by the Customer and a duly authorised representative of Coltron Electronics (Pty) Ltd;
  - b) this Agreement will govern all future contractual relationships between the parties
  - c) this Agreement is applicable to all existing debts between the parties;
  - d) this Agreement is final and binding and is not subject to any suspensive or dissolutive conditions;
  - e) any conflicting conditions stipulated by the Customer are expressly excluded;
  - f) these terms supersede all previous conditions of agreement without prejudice to any securities or guarantees held by Coltron Electronics (Pty) Ltd (Pty) Ltd and
  - g) these terms apply to all servants and subcontractors of Coltron Electronics (Pty) Ltd.
- 2.1 The Customer acknowledges that it does not rely on any representations made by Coltron Electronics (Pty) Ltd in regard to the goods and services or any of its qualities leading up to this Agreement other than those contained in this Agreement. Any recommendation, formula, advice, dimension, weight, specifications, price list, performance figure, advertisement, brochure and other technical data furnished by Coltron Electronics (Pty) Ltd in respect of the goods or services orally or in writing is approximate and for information only and will not form part of the Agreement in any way unless agreed to in writing by Coltron Electronics (Pty) Ltd.
- 2.2 The Customer warrants that neither Coltron Electronics (Pty) Ltd (Pty) Ltd nor any of its employees will be liable under any circumstances whatsoever for any loss or damage arising out of the use by the Customer of any misrepresentation, material or information referred to in clause 2.1 whether furnished negligently or innocently.
- 2.3 It is the sole responsibility of the Customer to determine that the goods or services ordered are suitable for the purposes of intended use.
- 2.4 The Customer agrees to pay all costs resulting from any acts or omissions by the Customer including suspension of work, modification of requirements, failure or delay in giving particular requisite to enable work to proceed on schedule or requirements that work be completed earlier than agreed.

- 2.5 Coltron Electronics (Pty) Ltd reserves the right at its sole discretion to provide alternative goods at the prevailing prices to those ordered by the Customer should such goods be unavailable, superseded, replaced or their manufacture terminated.
- 3.1 The Customer acknowledges that all quotations, whether oral or verbal, are dependent on the prevailing rate of exchange applicable to the date and time of the quotation. Any fluctuation in the rate of exchange will immediately affect the quotation price.
- 3.2 All quotations are subject to the availability of the goods or services and subject to correction of good faith errors by Coltron Electronics (Pty) Ltd and the prices quoted are subject to any increases in the cost price, including currency fluctuations, of Coltron Electronics (Pty) Ltd before acceptance of the order.
- 3.3 If the Customer disputes the amount of increase, the amount of the increase may be certified by any independent auditor and such certificate shall be final and binding on the Customer.
- 3.4 The Customer hereby confirms that the goods or services on the Tax Invoice issued duly represent the goods or services ordered by the Customer at the prices agreed to by the Customer and, where delivery / performance has already taken place, that the goods or services were inspected and that the Customer is satisfied that these conform in all respects to the quality and quantity ordered and are free from any defects.
- 3.5 All orders or agreed variations to orders, whether oral or in writing, shall be binding and subject to these standard conditions of agreement and may not be cancelled.
- 3.7 Any delivery note or waybill or job card (copy or original) signed by the Customer or a third party engaged to transport the goods and held by Coltron Electronics (Pty) Ltd shall be prima facie proof that delivery of the goods was made to the Customer and are in accordance with the quality and quantity reflected thereon.
- 3.8 The risk of damage to, destruction or theft of goods shall pass to the Customer on delivery / collection of any order placed in terms of this Agreement.
- 3.9 Delivery, installation, commencement and performance times quoted are merely estimates and are not binding on Coltron Electronics (Pty) Ltd. Coltron Electronics (Pty) Ltd shall not be liable for any loss or damage of whatsoever nature which the Customer may suffer as a result of any incorrect or delayed delivery.
- 3.10 It is the responsibility of the Customer to arrange and contract with a suitable courier service to collect and deliver the goods on the Customer's behalf. If Coltron Electronics (Pty) Ltd however agrees to engage a third party to transport the goods, Coltron Electronics (Pty) Ltd is hereby

authorised, in its sole discretion, to engage a third party on the Customer's behalf and on the terms deemed fit by Coltron Electronics (Pty) Ltd.

- 3.11 The Customer indemnifies Coltron Electronics (Pty) Ltd against any claims that may arise from such agreement in clause 3.10 against Coltron Electronics (Pty) Ltd.
- 3.12 Repair times and repair costs given are merely estimates and are not binding on Coltron Electronics (Pty) Ltd. Coltron Electronics (Pty) Ltd shall not be liable for any loss or damage of whatsoever nature which the Customer may suffer as a result of any unforeseen costs and/or delayed repairs.
- 3.13 Any item handed in for repair may be sold by Coltron Electronics (Pty) Ltd to defray the cost of such repairs if the item remains uncollected within 30 days of the repairs being completed.
- 3.14 All goods taken on a demonstration basis by the Customer are deemed sold if not returned within 14 days of issue in the original condition, in the original packaging and with all accessories and manuals intact.
- 3.15 The Customer acknowledges all copyrights and shall not duplicate copyrighted material and that each infringement attempt shall immediately render the full prevailing price payable to Coltron Electronics (Pty) Ltd.
- 3.16 The Customer shall indemnify Coltron Electronics (Pty) Ltd against any claims, costs and expenses arising out of the infringement of copyright, patent, trade mark or design supplied by the Customer.
- 4.1 New goods are guaranteed according to the Manufacturer's product specific warranties only and all other guarantees including common law guarantees are hereby specifically excluded. Services are guaranteed for a period of 3 months against faulty workmanship and parts are guaranteed according to the Manufacturer's product specific warranties. This notwithstanding, Coltron Electronics (Pty) Ltd reserves the right to alter, amend or change any Manufacturer's product specific warranties as applicable and undertakes to inform the Customer of any and all such alterations, amendments or changes upon the sale of the goods.
- 4.2 Liability under Clause 4.1 is restricted to the cost of repair or replacement of faulty goods or services or granting of a credit at the sole discretion of Coltron Electronics (Pty) Ltd.
- 4.3 No claim under this Agreement shall arise unless the Customer has, within 2 days of the alleged breach or defect occurring, given Coltron Electronics (Pty) Ltd 30 days written notice by prepaid registered post to rectify any defect or breach of Agreement.

- 4.4 The Customer shall return any defective moveable goods to the premises of Coltron Electronics (Pty) Ltd at the Customer's own cost and packed in the original or suitable packaging and all risks for the duration of repair remain with the Customer.
- 4.5 Any goods returned by the Customer to Coltron Electronics (Pty) Ltd for credit after 2 days from date of delivery shall be subject to a handling fee of 10 % of the invoice amount applicable to the returned goods. Credit shall only be considered if the goods are returned within 7 days of the invoice date provided that such returned goods are not defective in any way, are in their original saleable condition and packaging supplied by Coltron Electronics (Pty) Ltd and are accompanied by the original invoice. Should the Customer comply with these provisions, credit will be passed at Coltron Electronics (Pty) Ltd.'s current price for the goods or the original purchase price whichever amount is the lesser. Coltron Electronics (Pty) Ltd shall not accept the return of any software if the packaging or any seals of the software has been opened or tampered with in any way.
- 4.6 All guarantees are immediately null and void should any goods be tampered with or should the seals on goods be broken by anyone other than Coltron Electronics (Pty) Ltd or should the goods be operated or stored outside the Manufacturer's specifications.
- 4.7 Any item delivered to Coltron Electronics (Pty) Ltd shall serve as a pledge in favour of Coltron Electronics (Pty) Ltd for present and past debts and Coltron Electronics (Pty) Ltd shall be entitled to retain or realise such pledges as it deems expedient at the value as determined in 15.1. The sworn or realised value of pledged goods will be offset against the Customer's debts and any excess balance will be paid to the Customer.
- 5.1 Under no circumstances shall Coltron Electronics (Pty) Ltd be liable for any consequential damages including loss of profits or for any delictual liability of any nature whatsoever.
- 5.2 Under no circumstances shall Coltron Electronics (Pty) Ltd be liable for any damage arising from any misuse, abuse or neglect of the goods or services.
6. Delivery of the goods or services to the Customer shall take place at the place of business of Coltron Electronics (Pty) Ltd or whatsoever location as agreed upon in writing by Coltron Electronics (Pty) Ltd.
- 7.1 Payment will be made strictly in accordance with the accepted provisions of the credit agreement as it exists between Coltron Electronics (Pty) Ltd and the Customer. Should no credit agreement exist or should such agreement have been cancelled by Coltron Electronics (Pty) Ltd and notice to that effect given to the Customer then all purchases are made cash on order. All payments shall be payable in cash unless otherwise accepted by Coltron Electronics (Pty) Ltd and shall be paid by the Customer free of exchange in South African currency at the offices of Coltron
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Electronics (Pty) Ltd or at such other place as Coltron Electronics (Pty) Ltd may designate in writing.

7.2 The risk of payment by cheque through the post rests with the Customer.

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 Coltron Electronics (Pty) Ltd, reduced to writing and signed by the Customer and a duly authorised representative of Coltron Electronics (Pty) Ltd.

8.2 The Customer is not entitled to set off or deduct any amount due to the Customer by Coltron Electronics (Pty) Ltd against this debt.

8.3 Any discount or rebate offered by Coltron Electronics (Pty) Ltd shall be forfeited if payment in full is not made on or before the due date.

The Customer agrees that a certificate signed by any Director of Coltron Electronics (Pty) Ltd shall be prima facie evidence of the amount due and payable to Coltron Electronics (Pty) Ltd by the Customer including any interest and costs for the purposes of judgement, including provisional sentence or summary judgement, and of claims against insolvent or deceased estates. Proof of the appointment or authority of the signatory shall not be required in such certificate.

8. The Customer agrees that interest shall be payable at the maximum legal interest rate prescribed in terms of the Usury Act on any moneys past due date to Coltron Electronics (Pty) Ltd and that interest shall be calculated daily and compounded monthly from the date of acceptance of the order.

9.1 The Customer agrees that if an account is not settled in full

- a) against order; or
- b) within the period agreed in clause 7.1 above in the case of a Credit Approved Customer; or if the Customer commits a breach of any of these conditions, or being an individual, is provisionally or finally sequestrated or surrenders his estate, or being a partnership, is being dissolved, or being a company or close corporation is placed under a provisional or final order of judicial management or liquidation, or compromises or attempts to compromise generally with its creditors or if an order in terms of section 65 of the Magistrates Court Act 32 of 1944, as amended is issued against the Customer, or if he commits or permits any act that may prejudice the rights of Coltron Electronics (Pty) Ltd; then in any of these events Coltron Electronics (Pty) Ltd may in its sole discretion either;

- (i) be entitled to immediately institute action against the Customer at the sole expense of the Customer; or
- (ii) cancel the agreement and take possession of any goods delivered to the Customer by giving the Customer written notice to that effect; or
- (iii) claim damages. Furthermore, Coltron Electronics (Pty) Ltd shall be entitled to immediately suspend any delivery or service while the Customer is in breach of any of the terms of any contract between it and Coltron Electronics (Pty) Ltd. In the event of a breach and without restricting or revoking any other rights Coltron Electronics (Pty) Ltd may have in law, Coltron Electronics (Pty) Ltd shall have the right to claim from the Customer the following costs: if payment by cheque is referred to drawer for whatsoever reason, an amount of R380.00 per affected cheque; if the Customers debit order is returned due to lack of funds, an amount of R380.00; if default necessitates the telephonic contact of the debtor by Coltron Electronics (Pty) Ltd, an amount of not more than R50.00 per call; if default necessitates a personal visit by Coltron Electronics (Pty) Ltd, an amount of R800.00 per visit; Cost for issuing a Letter of Demand at R160.50; subject to the maximum costs recoverable in terms of the Magistrates Court Act 32 of 1944 as amended, Attorneys Act 33 of 1979 and Debt Collections Act 114 of 1998.

9.2 These remedies are without prejudice to any other right Coltron Electronics (Pty) Ltd may be entitled to in terms of this agreement or in law.

9.3 A Credit Approved Customer will forthwith lose this approval when payment is not made according to the conditions of 7.1 and all amounts then outstanding shall immediately become due and payable.

10.1 In the event of cancellation, the Customer shall be liable to pay

- a) the difference between the selling price and the value of the goods at the time of repossession and
- b) all other costs incurred in the repossession of the goods. The value of repossessed or retained pledged goods shall be deemed to be the value placed on them by any sworn valuator after such repossession, and such valuation shall be conclusive proof of the value. If the goods are not recovered for any reason whatsoever, the value shall be deemed to be nil.

10.2 The Customer hereby consents and irrevocably authorises Coltron Electronics (Pty) Ltd to enter its premises to repossess any goods delivered and indemnifies Coltron Electronics (Pty) Ltd completely against any damage whatsoever relating to the removal of repossessed goods.

- 10.3 In the event of cancellation Coltron Electronics (Pty) Ltd is entitled not to produce any unmade balance of a contract and to recover any loss sustained thereby from the Customer.
- 11.1 Ownership and dominium in all goods supplied by Coltron Electronics (Pty) Ltd to the Customer, whether such goods are attached to other property or not, shall remain vested in Coltron Electronics (Pty) Ltd until such goods have been fully paid for by the Customer.
- 11.2 The Customer shall not allow the goods to become encumbered in any manner prior to the full payment thereof and shall advise third parties of the rights of Coltron Electronics (Pty) Ltd in the goods.
- 11.3 If any goods supplied to the Customer are of a generic nature and have become the property of the Customer by operation of law (confusio or commixtio) the Customer shall be obliged on notice of cancellation of the agreement to retransfer the same quantity of goods in ownership to Coltron Electronics (Pty) Ltd.
- 12.1 The Customer shall be liable to Coltron Electronics (Pty) Ltd for all legal expenses on the attorney-and-own client scale of an attorney and counsel incurred by Coltron Electronics (Pty) Ltd in the event of
- a. any default by the Customer or
  - b. any litigation in regard to the validity and enforceability of this agreement. The Customer shall also be liable for any tracing, collection or valuation fees incurred as well as for any costs, including stamp duties, for any form of security that Coltron Electronics (Pty) Ltd may demand.
- 12.2 The Customer shall pay three thousand Rand into court or furnish sufficient security in lieu of costs in any action instituted by or against the Customer.
- 12.3 The Customer agrees that Coltron Electronics (Pty) Ltd will not be required to furnish security in terms of Rule 62 of the Rules of Court of the Magistrate's Courts or in terms of Rule 47 of the Law of the Supreme Court 59 of 1959.
- 13 The Customer agrees that no indulgence, relaxation, latitude or extension of time whatsoever by Coltron Electronics (Pty) Ltd will affect the terms of this agreement or any of the rights of Coltron Electronics (Pty) Ltd and such indulgence shall not constitute a waiver by Coltron Electronics (Pty) Ltd in respect of any of its rights herein. Under no circumstances will Coltron Electronics (Pty) Ltd be estopped from exercising any of its rights in terms of this Agreement.
- 14 The Customer hereby consents, in terms of Section 45 of the Magistrates Court Act of 1944 as amended to Coltron Electronics (Pty) Ltd instituting any proceedings arising out of this contract in the Magistrates Court for the district of RANDBURG otherwise having jurisdiction in terms of
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Section 28 of the Magistrates Court Act notwithstanding the fact that such proceedings are otherwise not within the jurisdiction of that court. Coltron Electronics (Pty) Ltd however reserves the right, in its sole discretion, to institute any action arising from this agreement in the High Court of South Africa.

- 15.1 Any document shall be deemed duly presented to and accepted by the Customer
- (i) within 3 days of prepaid registered mail to any of the Customer's business or postal addresses or to the personal address of any director, member or owner of the Customer; or
  - (ii) within 24 hours of being faxed to any of the Customer's fax numbers or any director, member's or owner's fax numbers; or
  - (iii) on being delivered by hand to the Customer or any director, member or owner of the Customer; or
  - (iv) within 48 hours if sent by overnight courier;
  - (v) within 24 hours of being telexed to the Customer's telex number or
  - (vi) within 7 days of being sent by surface mail
- 15.2 The Customer chooses its address for legal execution the address as the business address or the physical addresses of any Director (in the case of a company), Member (in the case of a close corporation) or of the Owner(s) or Partner(s).
- 15.3 The Customer undertakes to inform Coltron Electronics (Pty) Ltd in writing within 7 days of any change of Director, Member, Shareholder, Owner or Partner or address or 14 days prior to selling or alienating the Customer's business and failure to do so will constitute a material breach of this agreement. Upon receipt of such written notification, Coltron Electronics (Pty) Ltd reserves the right, at its sole discretion, to withdraw any credit facility advanced to the Customer.
- 15.4 The Customer hereby consents to the storage and use by Coltron Electronics (Pty) Ltd of the personal information that it has provided to Coltron Electronics (Pty) Ltd for establishing its credit rating and to Coltron Electronics (Pty) Ltd disclosing such information to credit control companies, banks and other institutions involved in rating credit. The Customer agrees that Coltron Electronics (Pty) Ltd will not be held liable for the good faith disclosure of any of this information to such third parties and that no further specific consent needs to be obtained for the transfer of such information to a specific third party.
- 15.5 In the event of any default by the Customer of any provision of this agreement, the Customer hereby consents and authorises Coltron Electronics (Pty) Ltd to furnish the name, credit record and repayment history of the Customer to any credit bureau as a delinquent debtor.
- 16 The Customer agrees to the Standard Rates of Coltron Electronics (Pty) Ltd for any goods or services rendered, which rates may be obtained on request.



- 17 The invalidity of any part of this Agreement shall not affect the validity of any other part.
- 18 Any order is subject to cancellation by Coltron Electronics (Pty) Ltd due to Acts of God from any cause beyond the control of Coltron Electronics (Pty) Ltd, including (without restricting this clause to these instances): inability to secure labour, power, materials or supplies, war, civil disturbance, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation.
- 19 The Customer hereby waives the benefits of the legal exceptions of *non numeratae pecuniae*, *non causa debiti*, *de errore calculi*, *de duobus vel pluribus reis debendi*, review of accounts and no value received and hereby declares himself to be fully acquainted with the meaning of this waiver.
- 20 The Customer agrees that Coltron Electronics (Pty) Ltd will be immediately and irrevocably released from any contractual damages and penalty obligations should any event in clause 11 through 19 occur.
- 21 Although the provisions of this agreement are self-explanatory, the Customer warrants that he has read and understands the provisions contained herein.
- 22 The signatory warrants that he is the duly authorised representative of the Customer and that he has full capacity, whether legal or otherwise, to enter into any contractual agreement with Coltron Electronics (Pty) Ltd.
- 23 This Agreement and its interpretation is subject to South African law and the Customer consents to the exclusive jurisdiction of the South African Courts referred to in 19.

This done and signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

FULL NAME

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IDENTITY NUMBER

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SIGNATURE

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DESIGNATION

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(Referred to as "the Applicant"/authorised person on behalf of "the Applicant")

Who declares that he/she is authorised to do so for or on behalf of "the Applicant"/legal entity referred to as the Applicant. Letter of authority to be attached hereto for validation.

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FULL NAME

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IDENTITY NUMBER

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SIGNATURE

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(Referred to as "the First Witness")

FULL NAME

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IDENTITY NUMBER

---

SIGNATURE

---

(Referred to as "the Second Witness")

SURETYSHIP

I/We, the undersigned;

\_\_\_\_\_ Identification No.: \_\_\_\_\_  
(Referred to a "the First Surety")

and

\_\_\_\_\_ Identification No.: \_\_\_\_\_  
(Referred to a "the Second Surety")

and

\_\_\_\_\_ Identification No.: \_\_\_\_\_  
(Referred to a "the Third Surety")

by my/our signature(s), I/We hereby interpose and bind myself/ourselves jointly and severally unto and in favour of COLTRON ELECTRONICS (PTY) LTD T/A COLTRON ELECTRONICS (PTY) LTD (hereinafter referred to as "the Credit Grantor") its orders or assign, as surety in *solidium as co-principal debtor* with;

\_\_\_\_\_ (hereinafter referred to as "the Principal Debtor") for the due and punctual payment by the principal debtor to the Credit Grantor of any amount, which is now, or, which may hereafter become owing by the principal debtor to the Credit Grantor from any cause of indebtedness however arising.

I/We accept the terms and conditions, as stated herein to be binding upon me/us and in the event of one paying the others to be released.

I/We renounce all the benefits of the legal exception; cession of action, no cause of debt, exclusion; division, no value received and revision of accounts with the full force and meaning and effect which I declare to be fully acquainted with.

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
As Surety and Co-Principal Debtor  
First Surety

\_\_\_\_\_  
As Surety and Co-Principal Debtor  
Second Surety

\_\_\_\_\_  
As Surety and Co-Principal Debtor  
Third Surety