



8 Josias Blanckenberg Road
Atlantis, South Africa, 7349
Tel: 021 577 1705
Fax: 021 577 1705
info@plantation.co.za
www.plantation.co.za

TERMS AND CONDITIONS ("T&C's") FOR THE SALE OF PRODUCTS

1. GENERAL

- 1.1. The Terms and Conditions of Sale ("**T&C's**") contained in this document shall replace any previous versions thereof and /or any document(s) regulating the terms and conditions of sale of all goods or services ("**PRODUCT(S)**") by Plantation Shutters (Pty) Ltd with registration number: 2013/158979/07 ("**the MANUFACTURER**") to any CLIENT or CLIENTS, which shall include any natural person, trust and/or juristic person (including without limitation a company or firm) placing an order for PRODUCTS ("**CLIENT(S)**").
- 1.2. The MANUFACTURER and the CLIENT as set out herein shall henceforth jointly be referred to as the "**PARTIES**".
- 1.3. These T&C's shall be effective from 1 March 2019 ("**EFFECTIVE DATE**").
- 1.4. The T&C's contained in this document shall prevail over any conflicts with or item(s) contained in the CLIENT's terms of purchase and/or any similar or related documents that contain or state anything to the contrary, whether directly or indirectly, from the EFFECTIVE DATE.
- 1.5. The acceptance of any order by the MANUFACTURER is conditional upon the CLIENT's complete and unconditional acceptance of these T&C's. The CLIENT shall by payment of their deposit be deemed to have accepted these T&C's as indicated in 2.1 below.
- 1.6. When a number of days is prescribed, the days shall be reckoned exclusively of the first day and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday in which case the last day shall be the next succeeding business day.
- 1.7. The headings of the clauses are intended for convenience only and must not be used as an aid to, nor do they affect, the interpretation of the T&C's, and
 - 1.7.1. words in the singular include the plural and vice versa;
 - 1.7.2. words importing any one gender include the other two genders;
 - 1.7.3. a reference to a natural person includes a legal persona; and
 - 1.7.4. the meaning of words so indicated with " " or with the use of capital letters shall be so interpreted as indicated herein, except in a context indicating that some other meaning is intended.

2. QUOTATIONS

- 2.1. All QUOTATIONS by the MANUFACTURER constitute a legal offer to the CLIENT. Where accepted by the CLIENT as set out in 1.5 above by the deposit as indicated therein ("**DEPOSIT**") being paid, same shall constitute an "**ORDER**" or "**ORDER ACCEPTANCE**", being a legally binding Agreement between the PARTIES.
- 2.2. All prices so quoted are valid for 14 (fourteen) days from date of QUOTATION, unless otherwise agreed in writing, or unless a different period is recorded in the MANUFACTURER's terms and conditions applicable from time to time to promotions for certain Products (in which case such different period shall apply).

- 2.3. Prices quoted and agreed include the cost of PRODUCTS, delivery thereof and Value Added Tax thereon ("**VAT**").
- 2.4. No cancellation shall be allowed or accepted once a QUOTATION has been accepted.
- 2.5. All DEPOSITS paid are strictly non – refundable

3. TERMS OF PAYMENT

- 3.1. Unless the MANUFACTURER has agreed with the CLIENT in writing otherwise, the total value of the ORDER must be paid as follows:
 - 3.1.1. a DEPOSIT must be paid as set out in 2.1 above;
 - 3.1.2. such amount prior to installation that results in 90% of the total value of the ORDER having been paid thereafter ("**the 2nd PAYMENT**"); and
 - 3.1.3. the balance on completion.
- 3.2. If payment is not made by the due date interest shall be charged thereon at First National Bank Ltd's prevailing prime interest rate plus 2% or the maximum permissible rate as published in terms of the Regulations of the National Credit Act No 34 of 2005 as amended, whichever is higher, per annum. Such interest shall be payable, calculated from the day following the date the payment is due until the date of its full settlement.
- 3.3. Where a CLIENT has failed or refused to pay as set out in 2.1 above, further ORDERS for PRODUCTS will be suspended until the account is fully paid together with interest thereon. Accordingly, MANUFACTURER reserves the right (without prejudice to any right to damages or other remedy available) to withhold further DELIVERY to the CLIENT until payment in full, including any interest due, is made.

4. DELIVERY / INSTALLATION

- 4.1. DELIVERY of the PRODUCT is affected or deemed to have been affected to the CLIENT once the CLIENT takes possession of the PRODUCT or when the MANUFACTURER installs the PRODUCT, whichever occurs first (shall constitute "**DELIVERY**").
- 4.2. The address for DELIVERY shall be the CLIENT's address as stated on the QUOTATION unless otherwise agreed between the PARTIES in writing.
- 4.3. Date(s) of DELIVERY are provided for information only. Whilst every effort is made to ensure due performance the MANUFACTURER cannot accept responsibility for damages or consequential loss or damage arising out of delay or failure to DELIVER by a specified date.
- 4.4. Late DELIVERY for any reason whatsoever, shall not constitute grounds for withholding sums or making any payment due and payable or to refuse DELIVERY or to cancel the ORDER or repudiate this Agreement - by the CLIENT.
- 4.5. In addition to the provisions of 4.4 above, where a CLIENT fails to take DELIVERY of the PRODUCT for a period exceeding 14 (fourteen) days as reckoned from the time the CLIENT was first notified of the PRODUCT's readiness for DELIVERY and for any reason whatsoever, the MANUFACTURER will be entitled at its sole discretion to obtain payment of the 2nd PAYMENT notwithstanding DELIVERY not yet being made, together with any resultant costs, including without limitation the cost for storage and insurance, attempted DELIVERY or re-DELIVERY thereof.
- 4.6. Within 7 (seven) days from installation the CLIENT shall sign off and thereby confirm its satisfaction with the PRODUCTS and installation. Failing which, any failure of the CLIENT to sign off alternatively communicate as set out in 4.7 below, shall be constituted as deemed sign off.
- 4.7. Damage regarding defects must be reported in writing to the MANUFACTURER within 7 (seven) days of installation so appropriate measures can be actioned. Once the CLIENT either signs off as set out in 4.6 above or defects have been remedied or addressed, all liability of the MANUFACTURER in the PRODUCT for loss or destruction, breakages, shortages or non-DELIVERY shall cease.

5. RESERVATION OF OWNERSHIP

- 5.1. The PRODUCTS shall remain the property of the MANUFACTURER until full payment has been received (each order or QUOTATION being considered as a whole) or until prior resale in which case the beneficial and legal entitlement of the MANUFACTURER shall attach to the proceeds of the resale or to the claim on those proceeds.
- 5.2. Upon taking possession of the PRODUCTS the CLIENT shall be the custodian of the PRODUCTS for the MANUFACTURER until CLIENT has made payment in full.
- 5.3. The CLIENT's right to possession of the PRODUCTS will cease at the earliest of the following date:
 - 5.3.1. On expiration of any agreed period of credit or the due date for payment of any invoice has passed;
 - 5.3.2. Should proceedings be commenced for the provisional or final liquidation or sequestration of the CLIENT or the CLIENT commits an act of insolvency or effects or attempts to effect a general compromise with its creditors, including any Business Rescue proceedings or any realignment of debt proceedings; and/or
 - 5.3.3. If the CLIENT does or fails to do anything which may in any way imperil the title of the MANUFACTURER to the PRODUCTS.
- 5.4. The MANUFACTURER will have the right if 5.3.1, 5.3.2 and/or 5.3.3 apply, to:
 - 5.4.1. Cancel the agreement and claim damages;
 - 5.4.2. Repossess the PRODUCTS;
 - 5.4.3. Use or sell all or any of the PRODUCTS; and
 - 5.4.4. Enter any premises of the CLIENT to uninstall or remove the PRODUCTS.
- 5.5. The MANUFACTURER's rights and remedies under this clause 5 shall be without prejudice to its other rights as provided in this T&C's or any other law or statute.

6. LIABILITY

All PRODUCTS are sold to the CLIENT on the following conditions, and the MANUFACTURER does not accept any responsibility arising from the CLIENT's failure to follow this provision:

- 6.1. The MANUFACTURER cannot accept responsibility in circumstances where the CLIENT is not present at the DELIVERY/installation address.
- 6.2. The MANUFACTURER cannot guarantee precise colour matching against samples. Minor imperfections not readily apparent at a distance of 1 (one) metre under ordinary light will not be accepted as defects.
- 6.3. Colour matching of finishing PRODUCTS (ex. paints and stains) cannot be guaranteed although every reasonable effort will be made to ensure the accuracy of the finished product.
- 6.4. The MANUFACTURER cannot guarantee the PRODUCTS against slight fading especially as a result of exposure to sunlight where slight fading will occur.
- 6.5. Our shutters effectively control and block the majority of light but are not a complete black out product, and the MANUFACTURER does not guarantee any such black out.
- 6.6. Under no circumstances except in respect of death or personal injury caused by the MANUFACTURER's negligence does the MANUFACTURER accept liability for consequential loss, damage, costs or expenses, howsoever arising and any liability for any such consequential loss damage is hereby specifically excluded. Should a claim be made, the MANUFACTURER's liability is limited to the value of the ORDER placed by the CLIENT.
- 6.7. Tolerance levels of overall panel specifications are plus or minus 2mm per individual panel, and the product will not be considered defective if falling within the tolerance levels. Warp on any component part, vertical or horizontal, shall not exceed 1mm per 300mm and shall not be considered defective if within this tolerance.
- 6.8. Limitations. It is recommended that panels be ordered within our normal specification range. We may exceed the limitation at your request, but in doing so we cannot accept responsibility.

- 6.9. If the CLIENT is not on site when property is surveyed or installed the shutters will be fitted in accordance to the MANUFACTURER's standard practices unless agreed in writing prior to confirmation. Where the CLIENT elects to have the installation done contrary to the MANUFACTURER's said recommendation then liability will fall on the CLIENT itself.
- 6.10. The MANUFACTURER accepts no responsibility for changes in any aspect of the window or window surround including without limitation the window handles, alarms, sensors, or any additions to window or the surround after the final measure and the ORDER has been placed. Any PRODUCTS that do not fit as a result of this will still need to be paid in full and any remakes or further work required will be charged in addition to the ORDER.
- 6.11. The Plantation Security Shutter is intended to provide a primary security barrier and the MANUFACTURER does not guarantee that the use of the Plantation Security Shutter as a security barrier will entirely protect against or prevent crime.
- 6.12. Since our PRODUCTS are made to special order, the Consumer Protection Act No. 68 of 2008 as amended does not apply and no cancellation (regardless of when) can be accepted once an ORDER has been accepted. Accordingly, the CLIENT shall be liable for the full value of the ORDER.

7. **GUARANTEE**

All PRODUCTS are subject to either a 5 (five) or 12 (twelve) year quality and workmanship guarantee, depending on the PRODUCT. Please refer to our Product Quality Guarantee (the "**Guarantee**") for further information.

8. **ENTIRE AGREEMENT**

These T&C's together with the particulars contained in the ORDER ACCEPTANCE as more fully set out below from the MANUFACTURER shall constitute the entire agreement between the PARTIES. Where there is any conflict or inconsistency between the ORDER ACCEPTANCE and these T&C's, these T&C's shall prevail.

9. **WARRANTY ON CAPACITY**

Each PARTY warrants that:

- 9.1. It has the legal capacity and has taken all necessary corporate action required (where applicable) to empower and authorise it to enter into and implement this Agreement on the terms and conditions herein set out.
- 9.2. This Agreement constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms.

10. **NON-WAIVER**

The failure by any of the PARTIES to enforce any provision of this Agreement shall not affect in any way that PARTY's right to require performance of the provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself.

11. **NOVATION**

No PARTY may cede any or all of that PARTY's rights or delegate any or all of that PARTY's obligations under this Agreement without the prior written consent of the other PARTY.

12. **GOVERNING LAWS AND LEGAL PROCEEDINGS**

- 12.1. The validity of this Agreement, its interpretation, the respective rights and obligations of the PARTIES and all other matters arising in any way out of it or its expiration or earlier termination for any reason shall be determined in accordance with the laws of South Africa.

12.2. The PARTIES hereby consent and submit to the jurisdiction of the Magistrate's Court, in any dispute arising from or in connection with this Agreement.

12.3. The PARTIES agree that any costs awarded will be recoverable on an attorney-and-own-client scale, plus VAT.

13. DISPUTE RESOLUTION

13.1. Any disputes arising from or in connection with these T&Cs and the ORDER ACCEPTANCE shall on written demand by either Party be submitted to arbitration in Cape Town in accordance with the Arbitration Foundation of South Africa ("AFSA") rules.

13.2. The Parties shall jointly nominate the arbitrator, provided that if the Parties shall be unable to agree either on the identity of the arbitrator within 10 (ten) business days of the nomination having been called for in writing (subject to the calculation of such period to exclude any business days that fall on or between the 15th of December and the 15th of January), then the arbitrator shall be nominated by the President for the time being of the Cape Law Society or its successor-in-title or the Executive Director of the South African Institute of Chartered Accountants or its successor-in-title.

13.3. The arbitrator's award with respect to the dispute shall be final and binding on the parties and the Parties shall have no right of appeal. However the PARTIES shall not be prevented from approaching a court of competent jurisdiction for an interdict or for relief on an urgent basis.

14. SEVERABILITY

If any part of this Agreement is void, illegal, unenforceable, or in conflict with any law of the state or local Government over this Agreement, the validity of the remaining portions or provisions shall not be affected thereby.

15. AMENDMENT OF THESE T'S&C'S

The MANUFACTURER reserves the right to amend these T's&C's from time to time. Any new version of the T's&C's will be displayed on the MANUFACTURER's website together with the date on which it will become effective. It is the CLIENT'S obligation to visit the MANUFACTURER's website on a regular basis in order to determine whether any amendments have been made.