



Terms and Conditions

1. Interpretation and definitions

In these terms and conditions:

“**Client**” means the customer reflected on this quotation which is seeking to transact with the Company;

“**Parties**” means, together, the Client and the Company and “**Party**” shall be construed as either one of them as the context may indicate;

“**Product**” means the product(s) to be manufactured by the Company in terms of a Quotation;

“**PO**” means a signed Client purchase order provided by the Client to the Company in respect of the Product(s) to which this Quotation relates;

“**Quotation**” means the offer by the Company to provide specific goods and services to a Client which shall include these Terms; and Conditions:

“**Terms**” means the terms and conditions of trade set out herein which shall be attached to each Quotation and, upon acceptance thereof by the Client, shall be binding on the Parties; and

“**VAT**” means value-added tax as levied from time to time in terms of the Value-Added Tax Act, 89 of 1991.

2. Agreement

These Terms shall be binding upon the Parties upon the Client accepting this Quotation, whether such acceptance is oral, written, per fax or per email and irrespective of whether this Quotation is signed. The Client is deemed to have read and understood these Terms.

3. Quotation exclusions

3.1. Unless specifically itemised on the Quotation, the Company’s quoted prices exclude:

3.2. VAT, sales tax, import duties and/or any other applicable taxes or surcharges;

3.3. any costs associated with obtaining local authority approval, including but not limited to site surveys, plans, drafting, local authority scrutiny fees, professional engineers’ certified designs, and land surveyor reports (these items must be arranged directly by the Client unless agreed otherwise in writing with Company, in which case the Company may invoice the Client separately for the work carried out in this regard);

3.4. hire or the use of specialised access resources such as cranes, cherry pickers, cradles, scaffolding, rope access, safety gear, vehicles, lifting transport, power generation, etc.;

3.5. additional costs which might be incurred as a result of access difficulties, restrictions and/or any other abnormal or unfavourable site, or other conditions not apparent at the time of Quotation;

3.6. removal, storage, scrapping, refurbishment and/or repositioning of existing prescribed goods or other fixtures and fittings, as well as the making good/ reinstatement of surfaces where such items have been removed;

3.7. any claims submitted by the landlord or third party for variation when the Company makes good/reinstates the area around the Products;

3.8. any costs associated with structural reinforcement and/or waterproofing requirements on site;

3.9. escalations in any costs due to delays or other factors outside of the Company’s control;

3.10. any additional costs relating to exchange rate fluctuations;

3.11. any costs associated with visa, work permits, medical certificates, inoculations or insurance costs;

3.12. site and/or project specific compliance requirements including but not limited to site safety orientation;

3.13. environmental impact assessments, permits and any other requirements

3.14. cost of toll road charges for required transport to and from site, including but not limited to trips for surveys, meetings, transport of Products to site and requirements project management site presence.

4. **Validity**

All Quotations are valid for a period of 30 (thirty) days from date of issue thereof by the Company.

5. **Payment**

5.1. Upon the Client's delivery of a PO to the Company, the Client shall make payment to the Company of a deposit which is equal in value to 75% of the total amount set out in the Quotation. The Company reserves the right to not commence with any work in relation to the Product until such time as such deposit referred to in this clause 5.1 is paid by the Client;

5.2. The remaining balance outstanding must be paid:

5.2.1. where credit terms have been provided by the Company, by no later than 30 days of date of invoice; or

5.2.2. where no credit terms have been provided, immediately upon delivery or shipping, as the case may be.

5.2.3. All payments by the Client to the Company are to be made without deduction or setoff by electronic funds transfer using the reference provided on the Quotation into the bank account nominated for that purpose by the Company, the details for which are as follows:

Account holder: The Cube Brand (Pty) Ltd

Bank: FNB Cheque Account

Account number: 629 3342 2818

Branch code: 260226

5.2.4. If the Client fails to pay the amount set out in Quotation on the due date thereof, the outstanding amount shall be handed over to the Company's attorneys for collection. Any costs in this regard will be for the Client's account. The Company shall also reserve the right to remove any Product(s) from the Client's premises at the Client's expense.

6. **Installation Lead Time**

6.1. Lead times shall be agreed upfront, subject to scope of work and all relevant information pertaining to the contract being received with the order.

6.2. The Company will be entitled to an extension of installation lead time as a result of inclement weather, *Force Majeure* (such as strike, lockout, civil commotion or riot) or any other cause beyond the Company's control and which results in a delay to the manufacturing and installation of the Product.

6.3. The Company shall not be responsible for any delays in lead times which are a result of any failures or delays on the part of the Client and any losses incurred by the Company in this regard shall be for the account of the Client.

6.4. Should anything delay the work progress by the Client then the Client will be held liable to the additional costs of work not getting to completion. This applies to extra labour, accommodation, transport, food and beverages as well as any other extra costs not mentioned herein.

7. **Annual Factory Shut Down**

The Company's factory shuts down from approximately 15 December to 10 January annually. Orders for delivery in the year in which the same are placed will close towards the end of October. The specific date for the closing of the order book will be communicated to the Client in September of each year. Orders received after the close off date will be for delivery in the following year unless otherwise agreed to in writing between the Parties.

8. Access to Site

It is the responsibility of the Client or appointed site project manager to ensure that the Company's installers have access to the site once notifying the Client of the on-site start date. Should access to the site be denied, any costs incurred by the Company in respect of installation, including *inter alia* cost of down-time, travel and accommodation, will be for the Client's account. The Company will be entitled to extend the installation date for the period it has been delayed by not having access to site.

9. Landlord approval

- 9.1. The Client is responsible for obtaining the approval of its landlord prior to the placing of any order. On the Company's receipt of an accepted Quotation from the Client, it will be assumed that the Client has received the requisite approval from its landlord, unless the Company is otherwise notified by the Client in writing.
- 9.2. In either event, should a Quotation be accepted, the Client shall remain liable to the Company for the amounts set out therein and neither the Client nor the Client's landlord shall have any claim whatsoever against the Company for any work undertaken by it pursuant to an accepted Quotation.
- 9.3. Pursuant to clause 9.2 above, the Client indemnifies and holds the Company harmless against any claim made by the Client's landlord arising from the failure of the Client to obtain the requisite consents from its landlord.

10. Warranty

- 10.1. The Company warrants for a period of 12 months from date of installations that the Product/s will remain free of faulty design and workmanship, save for electrical components for which such warranty will extend for a period of six months from date of installation. After the lapsing of the relevant warranty periods above, all claims for latent defects shall lapse.
- 10.2. The Company's warranty does not provide cover against normal wear and tear and weathering, nor against any physical damage caused by factors outside of the Company's control for whatsoever cause, howsoever arising.

11. Liens

The Client waives all rights to any lien (right of retention) it may hold over Company.

12. Snags

Should there be any snags after the installation of the product, the Company agrees to rectify such snags, at its own cost, within 7 (seven) working days of being notified by the Client, unless there is any manufacturing required. Snags do not entitle the Client to withhold payment which is due on completion of installation. Snags must be reported to the Company in writing within 30 days of installation, failing which the Company shall not be liable to rectify such snags.

13. Electrical Connection

It is the Client's responsibility and cost to provide wiring leading the electrical current to the Product and for the final connection between the Product and primary wiring to be completed by a registered electrician. The cost of such is not included in the Company's quotation.

14. Council Approval

The Client shall be responsible for obtaining the permission of the owner of the premises and any municipal or any other authority that may from time to time be required for the installation of the Product, and undertakes to comply at all times with the relevant statutory regulations, ordinances and by-laws. The Company, shall without assuming any liability toward the Client and without prejudice to its rights, if requested to do so in writing, assist the Client in providing the necessary documents pertaining to Council's approval. Any Council or engineer's fees will be for the Client's account and are not included in our quotation.

15. **Proprietary interests**

All the work including preliminary work, prototypes, renders or otherwise relating to the product shall remain the property of the Company and may not be reproduced or used in any form whatsoever without the Company's written consent. A proprietary interest of the right to advertize work on social media; an interest held by the Company together with all appurtenant rights.

Therefor the Company shall be entitled to claim the full right to advertize with Text, Videos, and Photography any New Projects, Upcoming Work,

Refurbished Projects or Cleaning Projects given form any client, company or Enterprise occurring to any site.

16. **Ownership and risk**

16.1. The risk of loss or damage to the products to be manufactured and supplied by the Company shall be assumed by the Company and shall only pass to the Client when delivery in accordance with the Clients requirements has been effected, including, but not limited to, signing of delivery notes and completion of offloading at the premises intended by the Client.

16.2. Thereafter the Company shall be entitled to claim full payment of the purchase price from the Client for any physical damage occurring to the Product with effect from its arrival to the Client's site.

16.3. Products which are stored at the Company's premises are for the Client's risk and the Company shall not be liable for any damages or loss which may occur to Products stored at its premises on the Client's behalf.

17. **Interest**

Interest will be levied on all outstanding amounts/balances at the prime rate plus 2%, per annum applicable to the financial institutions of FNB.

18. **Cancellation**

Should the Client cancel an accepted Quotation (whether such acceptance was written, oral or by e-mail), the Company shall be entitled to claim damages from the Client and such damages shall include, but not be limited to, the expenditure incurred in fulfilling the terms of the Quotation.

19. **Breach of Contract**

Subject to any other provisions of this agreement providing for the remedy of any breach of any provision hereof, should any Party ("**Defaulting Party**") commit a breach of any provision of these Terms and fail to remedy such breach within 14 days after receiving written notice from the other Party ("**Aggrieved Party**") requiring the Defaulting Party to do so, then the Aggrieved Party shall be entitled, without prejudice to its other rights in law, to terminate the agreement (constituted of an accepted Quotation) or to claim specific performance of all of the Defaulting Party's obligations whether or not due for performance, in either event without prejudice to the Aggrieved Party's right to claim damages.

20. **Limitation of liability**

The Company's standard limitations of liability are as follows:

20.1. In respect of any defective materials and/or faulty workmanship, the Company's sole liability shall be to replace or repair or rectify, as may be necessary, any such defective materials and/or faulty workmanship.

20.2. The Company's liability in respect of defective materials or faulty workmanship shall be limited to defects which appear during the warranty period indicated above and shall not extend to defects which appear after the prescription of that period; provided that the total limit of the Company's liability shall not exceed the total sum of the Agreement;

23. The foregoing sets out the Company's sole and total legal liability (whether contractual, delictual, or otherwise arising), including liability for negligent acts or omissions arising from delay in completion or defects of whatsoever nature in any portion of the Quoted upon works whensoever and howsoever arising.

21. **Indemnity**

a. The use of any Products is entirely at the Client's own risk.

b. The Company shall not be liable for any for any loss or damages (including consequential or special damages or loss of profits), loss of life, bodily injury or damage to or loss of property, of whatsoever nature and

howsoever caused, and whether or not caused the Company, its directors, its officers, servants, agents or any other person acting on behalf of the Company, arising out of or connected in any way with the installation and use of the Products, including

- i. The occupation of any part of the works by the Client or his tenants;
- ii. Interference with any servitude or other right that is the unavoidable result of the execution of the works including the weakening of or interference with the support of land adjacent to the site unless resulting from any negligent act or omission by the contractor or his subcontractors; iii. Physical loss or damage to an existing structure and the contents thereof;

except if such loss or damage arises directly or indirectly from the gross negligence or wilful misconduct of the Company or any person acting for or controlled by the Company.

3. Pursuant to clause 21.2 above, the client hereby irrevocably acknowledges and agrees that any loss or damage (set out more fully at clause 21.2 above) arising from, or in any way connected with, the use of the Product which is suffered by the Client and/or any other person making use of the Product whilst the same is under the Client's care and control shall be for the Client's account and the Client shall be solely liable in respect of the same.
4. If, notwithstanding the foregoing, a claim for loss or damages arising from the use of the Product as aforesaid is made against the Company by any person (including, but not limited to, those persons specified in clause 21.3 above), the Client hereby irrevocably and unconditionally indemnifies the Company from any such claim made in this regard.

22. Insurance against loss or damage

The Client shall at its own expense effect and maintain adequate insurance cover for all loss or damage which may be suffered by the Company and the Client as a result of any incident arising out of, or in connection with the supply of Products and in accordance with Clause 16 – Ownership and risk and shall keep in force insurance covering the following risks:

1. all Products (whether or not property has passed to the Client), which remain in the possession of the Company or its sub-contractors;
2. all free issue material supplied by the Client for the Company's use; and
3. all products which are in transit (including during loading or unloading),
4. for the purchase price plus 10 per cent and shall keep such Products and free issue material so insured from commencement of this Agreement from delivery, installation, commissioning, handover and maintenance of the Products (as the last to occur may be) to the Client's satisfaction.
5. All insurances required to be taken out pursuant to this Clause 22 shall:
 1. where possible, name the Client and the Company as an insured and be treated as primary insurances which will be required to respond in priority to any insurance taken out by the Company in respect of the same or similar risk;
 2. include a cross liability provision stipulating that such insurances shall apply as though separate policies had been issued to each insured;
 3. provide that the insurer waives all right of subrogation against any and all other parties included as the insured.

23. No waiver of rights

Any condonation of any breach of the provisions of these Terms or other act or relaxation, indulgence or grace on the part of the Company shall not in any way operate as, or be deemed to be, a waiver by the Company of any of its rights under these Terms or be construed as a novation thereof.

24. Jurisdiction

In terms of Section 45 of the Magistrate’s Court Act no. 32 of 1944, the Parties hereby consent to the Jurisdiction of the Magistrate’s Court. Notwithstanding the foregoing, the Company shall in its sole discretion be entitled to institute action in any court with competent jurisdiction.

25. Variations

No addition to, variation or consensual cancellation of these terms of use shall be of any force or effect unless in writing and signed by or on behalf of each of Client and the Company.

26. Severability

The invalidity, illegality or unenforceability of any provisions of these Terms of use shall not affect the continuation in force of the remainder of these terms of use, save in the event that any material term hereof is deemed invalid, illegal or unenforceable.

27. Entire agreement

The Quotation (which for the avoidance of any doubt to the contrary shall include these Terms) when accepted in accordance with clause 2 constitutes the whole agreement between the Client and the Company and any other terms whether express or implied or excluded herefrom and any variations, cancellations or additions to these Terms shall be of no force or effect unless reduced to writing and signed by the Parties or their duly authorized signatories.

28. Application of Laws

These terms and conditions shall be governed by the laws of the Republic of South Africa.

29. Conflicts

Should any provision in these Terms conflict with any provision which is contained in a written agreement between the Company and the Client that is already in place as at the date of signature hereof and the same are incapable of being read together, the provision/s in the pre-existing agreement shall prevail.

30. Add-ons

Should any item, labour, transport, as well as any other add-ons not mentioned herein be added to the signed agreement between the Company and the Client from date hereof, additional payment by the Client will be due and must first be paid to Company before work can further commence.

31. Client Warranty

The Client, by its signature here under, warrants that the information submitted in this application is true and correct in all respects and that it is entirely familiar with the terms and conditions contained herein.

Dated at _____ on this the _____ day of _____ Year

AS WITNESSES:

1. _____	[INSERT NAME OF CLIENT]
2. _____	Print Name: Capacity: Who warrants that he is duly authorised here to.

We trust that the above meets with your approval and look forward to being of service.

Yours Faithfully,