

STANDARD TERMS AND CONDITIONS OF SUPPLY



1. These standard terms and conditions of supply ("**Terms and Conditions**") read with orders placed, quotations, service level agreements and/or credit applications, approved by Nuweigh, attaching these Terms and Conditions or incorporating them by reference ("**this Agreement**") shall apply to any goods supplied and services rendered by Nuweigh CC (registration number 2006/006321/23) ("**Nuweigh**") to the named entity purchasing such goods and/or services, as indicated in any such orders placed, quotations, service level agreements and/or credit applications ("**Customer**").
2. Whole agreement and non-transferability
 - 2.1 The Customer agrees that these standard terms and conditions of supply ("**Terms and Conditions**") (a) read with orders placed, quotations or credit applications approved attaching these Terms and Conditions or incorporating them by reference represent the entire agreement between the Customer and Nuweigh and that no alterations or additions to them may be effected unless agreed to by both parties, reduced to writing and signed by the Customer and a duly authorised representative of Nuweigh; (b) will, in the absence of any other agreement, govern all future contractual relationships between the parties; (c) are final and binding and are not subject to any suspensive or resolutive conditions, and any conflicting terms and conditions stipulated by the Customer are expressly excluded; (d) supersede all previous terms and conditions of sale without prejudice to any securities or guarantees held by Nuweigh and (e) apply to all servants and subcontractors of Nuweigh.
 - 2.2 Should the Customer be granted an account at Nuweigh such account is personal to the Customer and is for the sole and exclusive use of the Customer to whom it was granted and the Customer may under no circumstances allow any third party to purchase goods from Nuweigh using such account facility.
 - 2.3 To the extent that any provision in these Terms and Conditions conflict with any provision contained in any order placed, quotations, services level agreements, credit applications or any other agreement referred to herein, the relevant provision contained in these Terms and Conditions will prevail.
3. **Representations, suitability, modification and alternatives**

The Customer acknowledges that it does not rely on any representations made by Nuweigh in regard to the goods and services or any of its qualities other than those contained in this Agreement.

 - 3.1 All specifications, price lists, performance figures, advertisements, brochures and other technical data furnished by Nuweigh in respect of the goods or services verbally or in writing will not form part of this Agreement in any way unless agreed to in writing by Nuweigh.
 - 3.2 The Customer agrees that neither Nuweigh nor any of its employees will be liable for any innocent misrepresentations made to the Customer.
 - 3.3 It is the sole responsibility of the Customer to determine that the goods or services ordered are suitable for the purposes of intended use. unless recorded in writing between the parties, Nuweigh has no knowledge of the particular purpose for which the Customer wishes to acquire the goods.
 - 3.4 The Customer agrees to pay all costs resulting from any acts or omissions of the Customer including suspension of work, modification of requirements, failure or delay in giving particular authority to enable work to proceed on schedule or requirements that work be completed earlier than agreed.
 - 3.5 Nuweigh reserves the right at its sole discretion to provide alternative goods to those ordered by the Customer should the equipment used to manufacture the goods be superseded, replaced or terminated.
 - 3.6 If Nuweigh is prevented or hindered from carrying out its obligations in terms of this Agreement by circumstances beyond its control, including adverse weather conditions, the late delivery of equipment from its suppliers, the shortage of goods to be supplied, strikes, lock-outs, natural disasters, inability to secure labour, power, materials or supplies or by reason of an act of God, war, civil disturbance, riot, state of emergency, fire, or change in legislation, then the performance of such obligations shall be suspended for such time as the circumstances referred to above continue, and Nuweigh shall not be liable for any delay in the completion of the work occasioned by such circumstances.
 - 3.7 Nuweigh reserves the right to effect changes or make improvements to the goods at any time without notice to the Customer.
4. **Quotations**
 - 4.1 Quotations given by Nuweigh shall only be valid if signed by a duly authorised representative of Nuweigh.
 - 4.2 All quotations will remain valid for a period of 30 days only from the date of the quotation and are exclusive of Value Added Tax..
 - 4.3 All quotations are subject to the availability of the goods or services and subject to correction of bona fide errors by Nuweigh.
 - 4.4 Nuweigh may, before acceptance of the order, increase any quotation due to, inter alia and without limitation, increases in the cost price including currency fluctuations, save and except that in respect of transactions in terms of which the Customer has requested a quotation, Nuweigh shall not increase the quoted price unless it has informed the Customer of any proposed increase and the Customer has agreed thereto.
 - 4.5 Quotations do not include the following-

- 4.5.1 the provision of power (electricity) and isolators for any of the goods supplied by Nuweigh; and
- 4.5.2 any additional installations and/or alterations of any nature to the Customer's existing machinery as specified in any regulations.

5. **Delivery and risk**

- 5.1 Any delivery note (copy or original) signed by the Customer, his duly authorised representative, employee or agent shall be conclusive proof that the goods delivered in terms thereof accord with the goods or services ordered by the Customer at the prices agreed to by the Customer and 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.
- 5.2 Notwithstanding the provisions of clause 5.1 above, all orders or variations to orders, whether verbal or in writing, shall be binding and subject to these Terms and Conditions.
- 5.3 Delivery of the goods to the Customer shall take place at the location where the Goods are to be erected, installed or calibrated by Nuweigh ("Site").
- 5.4 Nuweigh shall be entitled to split the delivery / performance of the goods or services ordered in the quantities and on the dates that it decides.
- 5.5 Nuweigh shall be entitled to separately invoice each delivery / performance actually made.
- 5.6 Any delivery note (copy or original) signed by the Customer or a third party engaged to transport the goods and held by Nuweigh shall be conclusive proof that delivery was made to the Customer.
- 5.7 The risk of damage to, destruction or theft of goods shall pass to the Customer once the goods ordered in terms of this Agreement leave Nuweigh's premises, irrespective of who is responsible for delivery of the goods, subject to the provision that if the Customer fails to take delivery of the goods when tendered, the risk therein shall pass to the Customer as soon as delivery is tendered by Nuweigh, even if the goods have not left Nuweigh's premises.
- 5.8 In the event that the Customer fails to take delivery of the goods then all costs directly or indirectly incurred by Nuweigh in storing, maintaining and invoicing for the goods after such tender, shall be paid by the Customer to Nuweigh on demand.
- 5.9 Delivery, installation and performance times given are merely estimates and are not binding on Nuweigh. delays thereto shall confer no rights or remedies upon the Customer. Nuweigh shall not be liable for delays in the supply of goods and/or services which fall outside the control of Nuweigh.
- 5.10 All goods taken on an evaluation or consignment basis by the Customer are deemed sold if not returned within 30 days of issue in the original condition, in the original packaging and with all accessories and manuals intact.
- 5.11 The Customer accepts responsibility for the selection of the Site for the installation of the goods.
- 5.12 The Customer shall be responsible for providing access to the Site for Nuweigh's equipment and material.
- 5.13 The Customer shall be responsible for the supply of water and electricity during the erection and/or installation of the goods and for the provision of toilet facilities for Nuweigh's employees.
- 5.14 Any debris that is required to be removed from the Site in order to facilitate installation of the goods will be subject to a separate charge and a separate agreement, and is excluded from this Contract (however these Terms and Conditions shall be deemed to be included in that agreement as if specifically incorporated therein).
- 5.15 Nuweigh shall not be held responsible for repairing, replacing or making good any damage in the vicinity of the installed goods.

6. **Return and repair policy**

6.1 **Return and repair of defective goods**

- 6.1.1 Within 6 (six) months after delivery the Customer may return to the premises of Nuweigh any goods which: (i) are not reasonably suitable for the purposes for which they are generally intended; and/or (ii) are not of good quality, in good working order and free of any defects; and/or (iii) will not be useable and durable for a reasonable period of time; and/or (iv) do not comply with applicable safety standards.
- 6.1.2 Nuweigh shall repair or replace the failed, unsafe or defective goods at Nuweigh's cost or grant the Customer a credit equivalent to the price paid by the Customer for the goods.
- 6.1.3 If, within 3 (three) months after repair by Nuweigh, the defect or unsafe feature has not been remedied or a further defect or unsafe feature is discovered, Nuweigh shall replace the failed, unsafe or defective goods at Nuweigh's cost or grant the Customer a credit equivalent to the price paid by the Customer for the goods.

6.2 **Return and repair of goods**

- 6.2.1 Notwithstanding the provisions of clause 6.1.1 above, within 10 (ten) days of delivery the Customer may return to Nuweigh goods in accordance with section 20 of the Consumer Protection Act No 68 of 2008 ("the Consumer Protection Act").
- 6.2.2 Nuweigh shall be entitled to levy a charge upon returned goods in accordance with section 20 of the Consumer Protection Act.
- 6.2.3 Nuweigh shall grant the Customer a credit equivalent to the price paid by the Customer for the goods, less the charge referred to in clause 6.2.2 above.

- 6.2.4 Notwithstanding the provisions of clause 6.1 above, Nuweigh may, in its sole discretion, repair goods delivered to the Customer.
- 6.2.5 The Customer hereby acknowledges and agrees that Nuweigh shall be entitled to levy a charge for the repair of goods.
- 6.2.6 Repair times and repair costs given are merely estimates and are not binding on Nuweigh, save and except in respect of transactions where the Customer has requested an estimate of the repair costs to be incurred before the repair is undertaken, Nuweigh shall not increase any estimated repair costs unless it has informed the Customer of any proposed increase and the Customer has agreed thereto.
- 6.2.7 Any item handed in for repair may be sold by Nuweigh to defray the cost of such repairs if the item remains uncollected within 30 days of the date of notice to the Customer that the repairs have been completed.
- 6.2.8 Goods which are returned to Nuweigh will only be accepted if in the original packaging and in a saleable condition.

7. **Maintenance and Servicing**

Nuweigh is not responsible for the maintenance and servicing of the goods. It does however provide maintenance services in relation to the goods supplied. It is recommended that the Customer concludes a maintenance contract with Nuweigh. Should the Customer conclude such a maintenance contract with Nuweigh, the terms and condition contained herein shall be deemed to form part of that maintenance contract as if specifically incorporated therein.

8. **Cancellations**

- 8.1 The Customer may not cancel any orders or variations to orders for goods which Nuweigh is expressly or implicitly required or expected to procure, create or alter specifically to satisfy the Customer's requirements.
- 8.2 Cancellations will only become effective upon written acknowledgment by Nuweigh of receipt of notification of the cancellation.
- 8.3 Nuweigh shall be entitled to impose a reasonable cancellation charge for cancellation of an order.

9. **Guarantees, liability, and safety**

- 9.1 New goods are guaranteed according to the Manufacturer's product specific warranties or agreed specification and the implied warranty of quality as contained in the Consumer Protection Act only and all other guarantees including common law guarantees are hereby specifically excluded. Repairs and parts are guaranteed according to the warranty on repaired goods contained in the Consumer Protection Act for a period of 3 months against faulty workmanship. Parts are also guaranteed according to the Manufacturer's product specific warranties.
- 9.2 Liability under clause 9.1 above is restricted to the cost of repair or replacement of faulty goods or services or granting of a credit.
- 9.3 No claim under this Agreement shall arise unless the Customer has, within 14 days of the alleged defect occurring, given Nuweigh 30 days written notice by prepaid registered post to rectify the defect in question.
- 9.4 To be valid, claims must be supported by the original delivery note or invoice or tax invoice.
- 9.5 All guarantees are immediately null and void should any goods be tampered with or should the goods be operated or stored outside the Manufacturer's specifications.
- 9.6 Any item delivered to Nuweigh shall serve as a pledge in favour of Nuweigh for present and past debts and Nuweigh shall be entitled to retain or realise such pledges as it deems expedient at the value as determined in clause 13.3 below. The sworn or realised value of pledged goods will be offset against the Customer's debts and any remaining balance will be paid to the Customer.
- 9.7 Under no circumstances shall Nuweigh be liable for any damage arising from any misuse or abuse of the goods.

- 9.8 **NEITHER NUWEIGH NOR ANY PERSON ACTING FOR OR ON BEHALF OF NUWEIGH WILL BE LIABLE FOR ANY LOSS, DAMAGE OR INJURY WHATSOEVER AND HOWSOEVER ARISING INCLUDING WITHOUT LIMITATION, ALL DIRECT AND INDIRECT, CONSEQUENTIAL AND SPECIAL LOSSES OR DAMAGES, SUSTAINED BY THE CUSTOMER OR ANY THIRD PARTY. SAVE AND EXCEPT FOR ANY CLAIM IN TERMS OF SECTION 61 OF THE CONSUMER PROTECTION ACT, THE CUSTOMER HEREBY INDEMNIFIES NUWEIGH AGAINST ANY AND ALL LOSS OR DAMAGE TO ANY PROPERTY AND/OR ANY AND ALL LOSS, DAMAGE AND/OR INJURY SUFFERED BY ANY PERSON, INCLUDING CONSEQUENTIAL LOSS OR DAMAGE, ARISING FROM OR IN CONNECTION WITH OR AS A RESULT OF ANY ACT OR OMISSION OF NUWEIGH IN RELATION TO THE GOODS, THE SERVICES RENDERED, THE WORKMANSHIP OR THE SUPPLY AND DELIVERY OF THE GOODS. UNDER NO CIRCUMSTANCES SHALL NUWEIGH BE LIABLE FOR ANY DAMAGE ARISING FROM ANY MISUSE OR ABUSE OF THE GOODS.**

[Customer to initial]

- 9.9 Any technical advice supplied to the Customer is given in good faith, in the context of the laws, ordinances, by-laws rules, regulations, orders and directives ("laws") in force at that time, and on the basis of the information disclosed by the Customer to Nuweigh. Nuweigh accepts no responsibility for changes in law or any loss or damage incurred by the Customer arising out of a failure by the Customer to disclose all relevant facts and circumstances necessary for the preparation of the technical advice.
- 9.10 The Customer acknowledges that it will at all times comply strictly with all instructions on the cautionary labels on Nuweigh products and with any instructions booklet or chart issued by Nuweigh (which may be viewed on Nuweigh's website: www.nuweigh.co.za and may be obtained from Nuweigh on request).
- 9.11 The Customer is responsible and must ensure that all users of the goods, are provided with the necessary and correct training in the use of the goods. supporting information in this regard may be viewed on Nuweigh's website: www.nuweigh.co.za and may be obtained from Nuweigh upon request.
- 9.12 The Customer acknowledges that collection of the goods from Nuweigh shall be at its own risk and that the Customer is responsible for handling and transporting the good safely, and compliance with all relevant laws including the road transportation act no 74 of 1977.

10. Payment

- 10.1 The Customer agrees that the amount contained in an invoice or tax invoice issued by Nuweigh ("Contract Price") shall be due unconditionally (a) cash on delivery ("COD"); or (b) if the Customer is a credit approved Customer, within the granted credit period as specified on the Credit Application from the date of an invoice or tax invoice being issued by Nuweigh.
- 10.2 The Customer agrees to pay the amount on the invoice or tax invoice at the offices of Nuweigh or its appointed agents.
- 10.3 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 Nuweigh, reduced to writing and signed by the Customer and a duly authorised representative of Nuweigh.
- 10.4 The Customer is not entitled to set off any amount due to the Customer by Nuweigh against this debt.
- 10.5 Cheques will only be accepted as a means of payment if prior written arrangements have been made with Nuweigh management, but the risk of payment by cheque through the post shall remain with the Customer.
- 10.6 Customers paying by cheque are required to produce a valid South African Identity Book or passport, and all cheques shall be subject to clearance by Vericheque (or any similar service provider) prior to the release of any goods.
- 10.7 The Customer shall be liable for any fees incurred by Nuweigh arising from dishonoured cheques and all dishonoured cheques shall be listed with Vericheque (or any similar service provider) and all credit bureaus.
- 10.8 If the Customer has a COD account with Nuweigh, bank guaranteed cheques shall be required for any purchases above R5000, if the Customer does not have a COD account with Nuweigh, a bank guaranteed cheque shall be required for any purchase above R2000.
- 10.9 Should the Customer pay by cheque for any purchase above R 15 000, the goods shall not be released until such time as the cheque has been cleared through Nuweigh's bank account.
- 10.10 The Customer is required to have an account with Nuweigh through which all payments shall be facilitated.
- 10.11 The Customer shall make payment in advance to Nuweigh for any additional work.
- 10.12 If the cost of the additional work is still to be ascertained, the Customer and Nuweigh must agree to the cost thereof prior to the commencement of such additional work.

11. Variation and Adjustment of Prices

- 11.1 Any variation order or additional work must be recorded in writing and agreed to by all parties
- 11.2 Unless otherwise stated in this Agreement, the Contract Price shall include all costs, duties, fees, insurance and transport to the named destination. Any subsequent increase in the rate of exchange, freight, insurance, loading

charges, duties and railway rates ruling on the date of acceptance of this Agreement shall be for the account of the Customer.

12. Evidence and interest

- 12.1 The Customer agrees that the amount due and payable to Nuweigh may be determined and proven by a certificate issued and signed by any independent auditor. Such certificate shall be binding and shall be prima facie proof of the indebtedness of the Customer,
- 12.2 Any printout of computer evidence tendered by any party shall be admissible evidence.
- 12.3 The Customer agrees that in the case of late payment, interest shall be payable to Nuweigh on the overdue monies which shall be calculated at the prime overdraft rate of Nuweigh's Bankers plus four percent from the date of invoice.

13. Remedies

- 13.1 The Customer agrees that if an account is not settled in full (a) against delivery; or (b) within the period agreed in clause 10.1 above in the case of a credit approved Customer; Nuweigh is (i) entitled to 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 Nuweigh may be entitled to in terms of this Agreement or in law. Nuweigh reserves its right to stop supply immediately on cancellation or on non-payment.
- 13.2 A credit approved Customer will forthwith lose this approval when payment is not made according to the conditions of 13.1 above.
- 13.3 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.
- 13.4 The Customer irrevocably indemnifies Nuweigh against any damage of whatsoever nature arising from the removal of repossessed goods.
- 13.5 In the event of cancellation Nuweigh shall be entitled not to deliver any undelivered balance of a contract and to recover any loss sustained thereby from the Customer.

14. Ownership

- 14.1 All goods supplied by Nuweigh remain the property of Nuweigh until such goods have been fully paid for whether such goods are attached to other property or not.
- 14.2 The Customer is not entitled to sell or dispose of any unpaid goods without the prior written consent of Nuweigh. 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 Nuweigh in the goods.
- 14.3 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 this Agreement to retransfer the same quantity of goods in ownership to Nuweigh.

15. Legal expenses, indulgence and jurisdiction

- 15.1 The Customer shall be liable to Nuweigh for all legal expenses on the attorney-and-own client scale of an attorney and counsel incurred by Nuweigh 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 Nuweigh may demand.
- 15.2 In the event of any dispute of whatsoever nature arising between the parties to this Agreement, that dispute shall at the election of Nuweigh be referred to and be determined by arbitration in accordance with the rules of procedure of the Arbitration Foundation of Southern Africa.
- 15.3 No indulgence whatsoever by Nuweigh will affect the terms of this Agreement or any of the rights of Nuweigh and such indulgence shall not constitute a waiver by Nuweigh in respect of any of its rights herein. Under no circumstances will Nuweigh be stopped from exercising any of its rights in terms of this Agreement.
- 15.4 This Agreement and its interpretation is subject to South African law.

16. General

- 16.1 Any notice shall be deemed duly accepted by the Customer (i) within 5 days of mailing by prepaid registered mail to any of the Customer's business or postal addresses or to the personal address of any director, member, partner or owner of the Customer; or (ii) within 24 hours of being faxed to any of the Customer's fax numbers or any director's, member's, partner's or owner's fax numbers; or (iii) on being delivered by hand to the Customer or any director, member, partner or owner of the Customer; or (iv) within 48 hours if sent by overnight courier.
- 16.2 The Customer chooses 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) as its address for service of all notices and process.
- 16.3 The Customer undertakes to notify Nuweigh in writing:

- 16.3.1 of any change of director, member, shareholder, owner or partner and any change of the Customer's address within 7 days of such change taking effect; and
- 16.3.2 of any disposal of the Customer's business 14 days prior to such disposal taking effect.

Failure to notify Nuweigh will constitute a material breach of this Agreement.

- 16.4 The Customer hereby consents to the storage and use by Nuweigh of the personal information that it has provided to Nuweigh for establishing its credit rating and to Nuweigh disclosing such information to credit control companies, banks and other institutions involved in rating credit. The Customer agrees that Nuweigh will not be held liable for the bona fide disclosure of any of this information to such a third party and that no further specific consent need be obtained for the transfer of such information to a specific third party.
- 16.5 Nuweigh reserves its right to renew its pricing structure in accordance with market, economic and other relevant circumstances.
- 16.6 Nuweigh may, at its sole discretion, levy charges in respect of copy documentation requested by the Customer.
- 16.7 The invalidity of any part of this Agreement shall not affect the validity of any other part.
- 16.8 Any order or supply is subject to cancellation by Nuweigh due to force majeure including but not limited to including any adverse weather conditions, the late delivery of equipment from its suppliers, the shortage of goods to be supplied, strikes, lock-outs, natural disasters, inability to secure labour, power, materials or supplies or by reason of an act of God, war, civil disturbance, riot, state of emergency, fire, or change in legislation.
- 16.9 This Agreement and/or any order or supply is subject to cancellation if the Customer breaches any term of this Agreement or makes any attempt of compromise, is liquidated/sequestered, or if a judgement is recorded against the Customer or any of its principals.
- 16.10 The Customer agrees that Nuweigh will immediately and irrevocably be released from any contractual damages and penalty obligations should any event in clauses 16.8 or 16.9 occur.
- 16.11 Unless the context clearly indicates a contrary intention, any expression which denotes (a) any gender includes the other genders; (b) a natural body includes a body corporate and vice versa; and (c) the singular includes the plural and vice versa. Headings are for convenience only and are not to be taken into account for the purpose of interpretation.
- 16.12 Nuweigh retains all intellectual property in its drawings, specifications, data, and all other documents prepared by Nuweigh for the Customer in whatever medium.
- 16.13 Nuweigh's trademarks and names shall not be used otherwise than as applied by Nuweigh to the goods.
- 16.14 Any know-how information or documents supplied at any time by Nuweigh to the Customer shall be treated as confidential and shall not be disclosed by the Customer to any third party.

17. **E-Commerce**

If goods and/or services are purchased through Nuweigh's website or other e-commerce process, then these Terms and Conditions read with the terms and conditions applicable to the use of the Nuweigh website are valid, binding and enforceable as against the Customer.

18. **Breach**

- 18.1 Should the Customer fail to observe or perform any of the terms, conditions and/or obligations of this Agreement, and fail to rectify such breach within 7 (seven) days after having been given notice in writing by Nuweigh, then, without prejudice to any other remedies which it may have, Nuweigh shall be entitled at its discretion either:
 - 18.1.1 to cancel the Agreement and to claim such damages as it may suffer, or
 - 18.1.2 to enforce compliance with the provisions of the Agreement and to claim such damages as it may suffer as a result of such breach.