

LINKWEIGH-IN (PTY) LTD

TERMS AND CONDITIONS

1 INTERPRETATION

1.1 In these Terms & Conditions:-

1.1.1 The headings to the clauses are for reference purposes only and shall not aid the interpretation of the clauses which they relate to.

1.1.7.6

Linkweigh-In (Pty) Ltd or which come under the control of Linkweigh-In (Pty) Ltd on the instructions of the Customer.

"Intended Use" means the purpose for which the manufactured Goods are used by the Customer.

1.1.2 Any reference to "**Parties**" shall include the Parties' respective successors-in title and, if permitted in these Terms and Conditions, their respective cessionaries and assignees.

1.1.7.7

"Law" means the common law and any applicable Constitution, statute, by-law, proclamation, regulation, rule, notice, treaty, directive, code of practice, charter, judgment or order having force of law in South Africa, and any interpretation of any of them by any court or forum of law;

1.1.3 Any reference to one gender shall include the other gender.

1.1.4 Words in the singular number shall include the plural and *vice versa*.

1.1.7.8

"Linkweigh-In (Pty) Ltd" means Linkweigh-In (Pty) Ltd, registration number 2012/004889/07, with its principal place of business at 172 Voortrekker Road, Brakpan, Gauteng;

1.1.5 If any definition in this clause 1 contains a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to such provision as if it was a substantive provision in the body of these Terms and Conditions.

1.1.7.9

"Quotations" means the quoted price by the Linkweigh-in (Pty) Ltd for the Goods from Linkweigh-In (Pty) Ltd or for the supply of Services.

1.1.6 These Terms and Conditions and any other terms and/or conditions agreed between the Parties shall be governed in all respects by the Law of the Republic of South Africa.

1.1.7.10

"Services" means collectively, any Manufacturing Services, Repair Services or Supply Services as contemplated by the terms and conditions.

1.1.7 Unless inconsistent with or otherwise indicated by the context, the following words and expressions shall have the meanings set out opposite them:-

1.1.7.11

"Service Contract" means Linkweigh-In (Pty) Ltd's written hard copy service level agreement that may exist in addition to these standard terms and conditions.

1.1.7.1 **"Addendums"** means the credit facility application agreement to be read with these Terms and Conditions as well as any other addendums not expressly mentioned;

1.1.7.12

"Terms and Conditions" means the terms and conditions hereinafter set out which governs the contractual relationship between the Parties.

1.1.7.2 **"Cleared Funds"** means payment by EFT, Credit Card, Debit Card, Corporate Card or a Fleet Card and any other manner which may be deemed by Linkweigh-In (Pty) Ltd at its sole and absolute discretion.

1.1.7.3 **"Customer"** means any natural person or juristic entity at whose request or on whose behalf Linkweigh-In (Pty) Ltd undertakes any business.

1.1.7.4 **"Credit Agreement"** means the agreement in place in terms of which credit is extended to the Customer by Linkweigh-In (Pty) Ltd, upon approval by Linkweigh-In (Pty) Ltd of the Customer's credit application to the satisfaction of Linkweigh-In (Pty) Ltd as to the Customer's creditworthiness, and which is to be read with these Terms and Conditions, governing the terms of credit granted to the Customer;

1.1.7.5 **"Goods"** means the Goods manufactured, sold, handled, transported, Serviced and/or dealt with by or on behalf of or at the instance of

2.4

Unless the Parties agree in writing, specifically to the contrary, these Terms and Conditions shall prevail in the event of the Customer itself having trading terms and

2 GENERAL APPLICATION OF BUSINESS

2.1 Business is undertaken by Linkweigh-In (Pty) Ltd strictly subject to these Terms and Conditions which shall be deemed to be incorporated in and be a part of any agreement between Linkweigh-In (Pty) Ltd and the Customer.

2.2 Linkweigh-In (Pty) Ltd may in its absolute and sole discretion refuse to accept any order or any class of the order and shall not be obliged to give any reasons for such refusal.

2.3 Linkweigh-In (Pty) Ltd shall be entitled to warehouse, store or hold any order of the Customer and to levy a fee, in addition to any disbursement charge, thereon pending the delivery/collection of the Goods, due to the customer's non-payment.

conditions, even if the latter conditions are apparently incorporated after these Terms and Conditions.

- 2.5 Linkweigh-In (Pty) Ltd is entitled to amend these Terms and Conditions and to publish supplementary terms and conditions which will be available electronically to the Customer on the Linkweigh-In (Pty) Ltd's website www.linkweighin.co.za or at the Linkweigh-In (Pty) Ltd's offices. All amendments and supplements shall take effect 7 (seven) days from the date which such amendment or supplement is published by the Linkweigh-In (Pty) Ltd on its website.

3 **OWNERSHIP**

Ownership shall remain with Linkweigh-In (Pty) Ltd until such time as the order has been paid in full.

4 **QUOTATIONS**

- 4.1 Linkweigh-In (Pty) Ltd will issue a quotation for the Goods from time to time, in accordance with its requirements for Goods and Services, and Linkweigh-In (Pty) Ltd will only be committed to provide same, in accordance with these terms and conditions.

- 4.2 Such quotations shall contain:

- 4.1.1 listing of Goods to be purchased, alternatively Services to be rendered;
- 4.1.2 pricing for each Good type purchased;
- 4.1.3 total price;
- 4.1.4 completion date and collection and/or delivery times; and
- 4.1.5 location for collection and/or delivery and shipping instructions, should same be required.

- 4.3 Delivery and performance times quoted are estimates and are not binding on Linkweigh-In (Pty) Ltd.

- 4.4 All quotations will remain valid for a period of 14 (fourteen) days from the date of the quotation, or until the date of issue of any new price list, whichever occurs first, or unless specified in writing by Linkweigh-In (Pty) Ltd.

- 4.5 All quotations are subject to the availability of input services and subject to correction of good faith errors by Linkweigh-In (Pty) Ltd, and the prices quoted are subject to any increase in the cost price, including currency fluctuations, to Linkweigh-In (Pty) Ltd before acceptance of the order.

5 **PAYMENT**

- 5.1 The Customer shall effect payment for the services to Linkweigh-In (Pty) Ltd strictly within the period specified by Linkweigh-In (Pty) Ltd in its invoice, statement and/or as per the Credit Agreement application.

- 5.2 The Company may at its sole and absolute discretion allow the Customer to pay on extended terms as contained in clause 5 of these terms and conditions, in addition to any terms and conditions as contained on the "Customer Credit Application" form, which form is attached to these terms and conditions.

- 5.3 The Customer will be liable to pay Linkweigh-In (Pty) Ltd interest should any sum be paid on extended terms.

- 5.4 Such interest, as referred to in clause 5.3, will be levied at the prime lending rate charged from time to time by a financial banking institution chosen at the absolute discretion of Linkweigh-In (Pty) Ltd, plus 2% (two percent).

- 5.5 The Customer shall not be entitled, for any cause whatsoever, to withhold, deduct from or defer any amount due to it by Linkweigh-In (Pty) Ltd.

- 5.6 Should the Customer fail to pay Linkweigh-In (Pty) Ltd any sum as invoiced within the time specified per the invoice and/or as agreed between the Parties, the Customer will be in breach of this agreement, which may result in the Customer being placed in default, as per clause 9 of this agreement, alternatively legal action may be instituted by Linkweigh-In (Pty) Ltd at its sole and absolute discretion.

6 **WARRANTIES**

- 6.1 Representations and Warranties of Linkweigh-In (Pty) Ltd:

- 6.1.1 Linkweigh-In (Pty) Ltd represents and warrants to the Customer that:

- 6.1.1.1 Linkweigh-In (Pty) Ltd is duly organised, validly existing and in good standing under the relevant applicable laws and is duly qualified to do business;

- 6.1.1.2 Linkweigh-In (Pty) Ltd has the requisite ability to execute, deliver and perform in terms of agreement, which agreement constitutes a valid and legally binding obligation;

- 6.1.1.3 Linkweigh-In (Pty) Ltd warrants that all Goods will conform with the Product Specifications issued by the Customer compliant to the quotation requirements;

- 6.1.2 Representations and Warranties of the Customer:

- 6.1.2.1 The Customer represents and warrants to Linkweigh-In (Pty) Ltd that:

- 6.1.2.1.1 the Customer is duly organised, validly existing and in good standing under the relevant applicable laws;

- 6.1.2.1.2 the information provided by the Customer to Linkweigh-In (Pty) Ltd, either in writing, verbally or as per the "Customer Credit Application" form is both true and correct.

7 **INSPECTION AND ACCEPTANCE**

- 7.1 The Customer reserves the right to inspect the Goods, in its discretion, at Linkweigh-In (Pty) Ltd's premises, and to reject any Goods due to manufacturing defects or non-conformance with the Product Specifications, by written notice to Linkweigh-In (Pty) Ltd within 10 (ten) business days after delivery and/or collection of the Goods.

- 7.2 Linkweigh-In (Pty) Ltd shall accept no responsibility for the Goods after delivery/collection thereof, except in

accordance with the Customer's right to inspect the Goods and the applicable warranty terms.

8 **SURETY**

The person, affixing his/her signature to these terms and conditions and the personal surety (as referred to in the "Customer Credit Application" form), binds themselves as surety in favour of Linkweigh-In (Pty) Ltd and as co-principal debtor *in solidum* with the Customer in respect of the Customer's indebtedness and/or obligations to Linkweigh-In (Pty) Ltd in whatever amount and for whatever cause, on a renunciation of the benefits of division and/or excussion, with the full meaning and scope of which it declares itself to have full knowledge.

9 **DEFAULT**

9.1 In the event that the Customer shall default in fulfilment in any of its obligations to Linkweigh-In (Pty) Ltd, whether relating to payment of money is due or otherwise, the Customer shall rectify such breach within seven (7) days of receiving written notice from Linkweigh-In (Pty) Ltd.

9.2 Should the Customer not rectify such breach within the period stated as per clause 9.1, Linkweigh-In (Pty) Ltd shall be entitled to:-

9.2.1 Cancel the agreement; or

9.2.2 Claim specific performance from the Customer.

9.3 In the event that Linkweigh-In (Pty) Ltd cancels the agreement, Linkweigh-In (Pty) Ltd shall be entitled to:

9.3.1 Claim immediate payment of all amounts due to it together with interest as set out in clause 5.4 and all legal costs on an attorney-client scale inclusive of collection commission and tracing charges; and

9.3.2 Suspend all Business; and

9.3.3 Retain all Goods which may be in Linkweigh-In (Pty) Ltd's possession until the amounts owing have been paid in full; and

9.3.4 Institute any action it deems appropriate against the Customer in the appropriate South African Court of Law, including any Magistrate's Court, notwithstanding that the amount claimed by Linkweigh-In (Pty) Ltd from the Customer may otherwise exceed the jurisdiction of the Magistrate's Court.

9.4 A certificate by any of the directors of Linkweigh-In (Pty) Ltd (whose appointment or qualifications it shall not be necessary to prove) as to the amount owing by the Customer and to the effect that the date of payment of such amount has arrived, shall for the purposes of any action against the Customer hereunder for provisional sentence or summary judgement or otherwise be sufficient and satisfactory proof of the fact therein stated until the contrary shall have been proved.

10 **GENERAL**

10.1 **Indulgence**

No relaxation, indulgence or delay (collectively referred to as "**Indulgence**") granted by Linkweigh-In (Pty) Ltd shall constitute a waiver of any of Linkweigh-In (Pty) Ltd's rights under these terms and conditions; accordingly, Linkweigh-In (Pty) Ltd shall not be precluded from as a consequence of having granted such indulgence, from exercising any rights against the Customer, which may have arisen in the past or which may arise in the future.

10.2 **Waiver of Rights**

10.2.1 The waiver of any right under these terms and conditions shall be binding on the waiving Party only to the extent that the waiver has been reduced to writing and signed by the duly authorized representative(s) of the waiving Party.

10.2.2 If Linkweigh-In (Pty) Ltd is obliged, in the execution of any of its duties and/or responsibilities to comply with the Law then the Linkweigh-In (Pty) Ltd by complying therewith shall not be deemed to waive or abandon any of its rights in terms of these Terms and Conditions and in complying with the Law the Linkweigh-In (Pty) Ltd shall not be deemed to have assumed any onus, obligations, responsibility or liability in favour of the Customer.

10.2.3 No agent or employee of the Linkweigh-In (Pty) Ltd, other than a director or an individual authorised thereto by the board of directors, has the Linkweigh-In (Pty) Ltd's authority to alter or vary the Terms and Conditions nor shall any act or omission of the Linkweigh-In (Pty) Ltd be construed as a variation or waiver of any of these Terms and Conditions.

10.3 **Severability**

10.3.1 Whenever possible, each provision of these Terms and Conditions shall be interpreted in a manner which makes it effective and valid under applicable Law, but if any provision of these Terms and Conditions is held to be illegal, invalid or unenforceable under applicable Law, that illegality, invalidity or unenforceability shall not affect the other provisions of these Terms and Conditions, all of which shall remain in full force;

10.3.2 Should any one or more of the provisions of these Terms and Conditions be unenforceable then such provision(s) shall be severed and the remaining provisions shall be of full force and effect.

10.4 **Force Majeure**

10.4.1 The obligations of either Party under these Terms and Conditions shall be suspended for the duration of any event resulting in either Party being prevented from or delayed in performing any obligation imposed herein where the causal event is not within the reasonable control of the affected party, including without limitation:

10.4.1.1 An act of God, force of nature or climatic conditions, unavoidable accidents; or

10.4.1.2 war, revolution, riot, insurrection, terrorism, vandalism, sabotage or any other unlawful act against public order or authority; ("**Force Majeure Event**"), provided that in any of these

circumstances the party seeking to rely on the benefit of this clause must use its reasonable endeavours to put itself in a position where it is able to meet its obligations under this Agreement as soon as possible; or

10.4.1.3 the loss of electricity supply to Linkweigh-In (Pty) Ltd due to load shedding, or any other cause whatsoever.

10.4.2 In the event that a Force Majeure Event continues for a period of thirty (30) consecutive days, either Party shall have the right to terminate the services of Linkweigh-In (Pty) Ltd.

11 **NON-VARIATION**

No addition to, variation, or agreed cancellation of this agreement, this clause or any of the annexures hereto shall be of any force or effect unless in writing and signed by or on behalf of Linkweigh-In (Pty) Ltd and Customer.

13. **JURISDICTION**

These Terms and Conditions constitute an agreement executed by and between Linkweigh-In (Pty) Ltd and the Customer and/or its agents and wherever made shall be governed by and constituted according to the laws of South Africa and shall be subject to the exclusive jurisdiction of the courts of the Republic of South Africa

12. **CONSUMER PROTECTION ACT**

12.1 In the event that there is any conflict between these Terms and Conditions and the provisions of the Consumer Protection Act 68 of 2008 ("CPA"), the provisions of the CPA shall prevail.

12.2 Neither Linkweigh-In (Pty) Ltd nor any person acting for and on behalf of Linkweigh-In (Pty) Ltd will be liable for any loss, damage or injury whatsoever and howsoever arising including without limitation, all direct and indirect damages, consequential and special losses or damages, sustained by the Customer or any third party. Save and except for gross negligence on the part of Linkweigh-In (Pty) Ltd and any claim in terms of section 61 of the CPA, the Customer hereby indemnifies Linkweigh-In (Pty) Ltd against any and all loss or damage to any property and/or any or 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 Linkweigh-In (Pty) Ltd in relation to the Goods and the services rendered. Under no circumstances shall Linkweigh-In (Pty) Ltd be liable for any damage arising from any misuse or abuse of the Goods.

