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South Africa

**JUNE 2019**

**GENERAL TERMS AND CONDITIONS OF SALE**

**1. INTERPRETATION**

The seller and the customer agree that –

- 1.1 the clause headings in these conditions are for convenience and shall not be used in their interpretation;
- 1.2 unless the context clearly indicates a contrary intention, an expression which denotes –
  - 1.2.1 any gender includes the other genders;
  - 1.2.2 a natural person includes an artificial person and vice versa;
  - 1.2.3 the singular includes the plural and vice versa

**2. DEFINITIONS**

In terms of these general terms and conditions of sale, the following expressions shall have the meaning assigned to them, unless inconsistent with or expressly indicated otherwise by the context:

- 2.1 “Seller” shall mean Alaris Antennas who undertakes to execute the Order.
- 2.2 “Customer” is the client who has placed an order on the seller.
- 2.3 “Order” shall mean the purchase order or document to which these general terms and conditions of sale are attached which combine make up the whole of the agreement between the Customer and the seller.
- 2.4 “Price” shall mean price (s) as stated in the Order.

**3. APPLICATION**

- 3.1 These terms shall apply to every agreement between the seller and the customer.
- 3.2 These terms constitute the general terms and condition of sale of each agreement.
- 3.3 These terms and conditions shall take precedence of over any terms and conditions which may be contained in the customer’s order or other documentation.

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(PTY) LTD (formerly Poynting Inventions (Pty) Ltd)

Co Reg No 2013/048197/07

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3.4 Occurrence of any of the following events: placement of Order; receipt of order acknowledgement; despatch of Goods against the Order; informing the customer of the despatch or delivery of the Goods, shall be deemed to constitute acceptance by the customer of the conditions of the Order and these General Terms and conditions of sale. The time and place of acceptance shall be the time and place of the first occurrence of any of the above events.

3.5 These terms and conditions may only be altered with the express written agreement of the seller.

#### **4. ASSIGNMENT**

The customer shall not have the right to cede, assign or transfer any of its rights or delegate any of its obligations arising out of this contract without first obtaining the seller's written consent.

#### **5. ORDERS AND DELIVERY**

5.1 The delivery date shall not be of the essence of this contract and any such date shall be construed as an estimate. The seller shall use its best endeavours to deliver the goods or render the services within a reasonable period of any delivery date but shall not be liable for any loss, damage or consequential damages of whatsoever nature suffered as a result of a delivery date not being met.

5.2 The seller shall be entitled in its election to terminate this contract or to a reasonable extension of time to comply with its obligations if delayed by force majeure or by reason of directions of the customer, civil commotion, local combination of workmen, strikes or lockout and causes beyond the control of the seller, and shall not be liable to the customer by reason of such termination or delay. Further, any time limits shall be extended automatically by the length of the period between the date of this contract and receipt by the seller from the customer of all documentation required by the seller to proceed without interruption to completion of the contract, and/or receipt by the seller of all materials necessary for the manufacture of the goods.

5.3 The seller shall be entitled to suspend any delivery while the customer is in breach of any of the terms of this or any other contract between it and the customer.

5.4 Unless otherwise agreed to in writing by the seller, the seller delivers goods or services to the customer. The customer shall before the stipulated delivery date, furnish the seller with complete written instructions concerning the packing and transportation of the goods and shall pay all packing and transportation costs and costs incidental thereto. Should the customer fail to do so timeously, the seller has the right to appoint a carrier on behalf of the customer to store the goods. The customer shall be liable to the seller for a daily storage charge at the rate of 1 % (one percent) of the price per month or part thereof together with all reasonable sums incurred by the seller in respect of the storage of the goods including handling charges, cartage and insurance which storage shall be deemed to have commenced on the date on the date which the goods are tendered for delivery by the seller. The storage of the goods shall be at the customer's own risk.

5.5 The seller may affect delivery of any of the goods at different times and the customer shall accept delivery in instalments as the seller may determine.

5.6 The customer shall have the right to inspect the goods at the time and premises of the seller before accepting them. This right shall be deemed waived if not exercised before the stipulated or deemed delivery date as the case may be.

5.7 Late specification of the colour may result in delay of delivery.

5.8 Export Permits: This proposal and resulting sales order is subject to the relevant export permits being granted by the South African (RSA) authorities. The customer being quoted in this proposal is to support and supply the relevant documentation required for these applications. No penalties against the seller are applicable in the event of this permit being refused by the RSA Authorities.

5.9 All products / projects seller supplies are accompanied by ATP (Acceptance Test Procedure) results and / or by FAT (Factory Acceptance Test) results. Additional documentation and certificates such as e.g. a certificate of compliance will be supplied on request.

5.10 All orders shall show the seller as the shipper on the contract of transport, unless otherwise agreed.

5.11 Should the customer fail to accept delivery as per the date stipulated in the Confirmation of Purchase Order , the risk of loss or damage to the goods together with all and any expenses pursuant, including but not limited to insurance, storage and further delivery charges shall be borne by the customer.

5.12 The seller shall not be obliged to accept or act upon any changes, modifications or additions to original customer's instructions if such changes, modifications or alterations were given subsequent to the seller's acceptance of the customer's order.

5.13 The seller reserves the right to suspend, delay or cancel the delivery of some or all of the goods if the customer has been placed under sequestration, judicial management or liquidation whether such order be provisional or final.

## **6. PRICES**

The prices payable by the customer to the seller for the goods shall be the ruling prices stipulated in writing by the seller at the time of order for the goods placed.

## **7. CANCELLATION OF ORDER**

No cancellations of orders are permitted.

## **8. OWNERSHIP OF GOODS**

8.1 Ownership of the goods will, notwithstanding delivery, only pass to the customer against payment of the whole of the contract price.

8.2 For as long as the seller retains ownership in the goods delivered –

8.2.1 The customer shall have no right to dispose of or part with possession of the goods whether by way of sale or pledge or otherwise and in the event of the goods being interfered with by any third party, the customer shall immediately notify the seller by way of telephone call, fax or electronic communication. The cost incurred in any action to prevent the interference shall be paid by the customer on demand and the seller shall cede its claim for costs against the third party to the customer;

8.2.2 The customer shall be obliged to insure the goods for the full price against the usual risks and to maintain the goods in good order and condition. Monies received under the insurance policy shall be applied first in payment of the price to the seller.

## **9. INTELLECTUAL PROPERTY**

All intellectual property of the product supplied to the customer is retained by the seller. The term "Inventions" shall include all inventions, improvements, know-how, product ideas, new products, discoveries, methods, developments, software and works of authorship which are or were generated, created, conceived, reduced to practice or became owned in connection with the Order.

## **10. CONTRACTUAL PRICE AND PAYMENT THEREOF**

10.1 The prices payable by the customer to the seller for the goods shall be the ruling prices stipulated in writing by the seller at the time the order for the goods is placed.

10.2 All orders are governed by the Incoterms® 2010, ICC publication quoted and will dictate the delivery of the goods and the insurance related thereto.

10.3 Payment terms: prepayment by EFT unless credit facilities have been applied for and approved. Cheques are not accepted.

10.4 All bank charges outside of South Africa are for the account of the customer.

10.5 Late payment shall bear interest calculated on a daily basis thereof at the maximum legal rate chargeable in terms of the Usury Act No 73 of 1968 on money lending transactions equal to the overdue amount.

10.6 The customer shall be liable for all costs incurred by the Seller in collecting or enforcing payment of any amount due to it from the customer, calculated on the attorney and client scale.

10.7 The seller shall be entitled to appropriate any payment received by the customer to the debt of the customer, which the seller may in its sole election determine, notwithstanding the customer's stipulation to the contrary. The customer shall not be entitled to withhold any sum payable to the seller or to make any deductions there from or set any such sum off against any sum, which is actually or allegedly owed to the customer by the seller.

## **11. WARRANTY**

11.1 Products are covered by a 1-year carry-in warranty.

11.2 This warranty covers manufacturing faults and product defects.

11.3 It does not cover damage due to environmental factors or abuse.

11.4 Any products deemed faulty by the customer within the warranty period should be sent back to seller at the customer's cost as per the seller's RMA policy. Seller will evaluate the product and determine whether the fault is covered by warranty or not.

11.5 For warranty repairs:

11.5.1 Seller will not charge for the repair/replacement of any parts

11.5.2 Seller will pay for return shipping to customer

11.6 For non-warranty repairs:

11.6.1 Seller will invoice the customer for the repair/replacement of any parts

11.6.2 The customer will pay for return shipping to customer

## **12. LIABILITY AND EXCLUSION THEREOF**

12.1 The seller shall not be liable for any loss or damage whatever suffered by the customer or any other person as a result of –

12.1.1 the goods or any part thereof defective in any way or failing to conform wholly or partly, with any warranty or guarantee given by the seller;

12.1.2 any delay in delivering the goods or any part thereof;

12.2 The seller shall not be liable to the customer or any other person for any loss of profit, other special damages or any consequential damages whatever arising out of any breach by the seller of any of its obligations, including gross negligence under these conditions or out of other cause whatever.

12.3 The customer indemnifies the seller against any claim which may be made against the seller by any other person in respect of any matter for which the liability of the seller is excluded in terms of 5.1 or 5.2

12.4 Subject to the other provisions of these conditions, the customer may not return any goods unless the Seller's Return Material Authorisation (RMA) policy is followed.

12.5 All goods entering South Africa for return must be done under Customs supervision.

12.6 The seller shall relinquish liability of the goods as per the Incoterms® 2010 rules.

## **13. APPLICABLE LAW**

The construction, validity and performance of obligations in terms of this agreement, and any other terms and/or conditions duly agreed between the seller and customer, and the determination of another dispute between those parties arising out of the alleged improper or non-performance thereof, based on any cause of action whatsoever shall be governed in all respects by the Law of the Republic of South Africa and the Courts of that country shall have exclusive jurisdiction over this disputes.

## **14. ARBITRATION**

Any dispute arising out of the or in connection with an order to which these terms and conditions relate shall be settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules, seating / forum in Johannesburg, South Africa