

# ZETTY ELECTRICAL WHOLESALERS

## TERMS AND CONDITIONS OF SALE AND TENDER

Unless expressed to the contrary in writing, the following set of Conditions of Sales & Tender shall be deemed to be incorporated and form part of all contracts concluded between Zetty Bemarking cc. (Reg. No. 1987/0116654/23) trading as Zetty Electrical Wholesalers ("Zetty") and any other party involved in purchasing goods and services ("the Buyer"). The written contract, together with these Conditions, embodies the entire understanding between the parties. No additional promises, conditions or terms may be added except in the form of a written alteration to the contract to be signed by both parties. Should one or more of these Conditions be invalid, the remaining Conditions as applicable shall remain in force unless otherwise agreed in writing. The contract shall, in all respects, be in conformity with South African law, Zetty's country of registration.

1. **VALIDITY.** All quotations shall be valid for acceptance during the period stated in the tender. If no period is stated, the following shall apply: written, verbal quotations shall have a validity period of 30 days from the date of the quotation; telephonic or faxed quotations shall have a validity of 24 hours. Quotations may be withdrawn prior to acceptance. In the event of the order being placed after the expiry of the quotations validity date, the order shall be subject to Zetty's written confirmation. The tender is given as a whole and is indivisible unless otherwise agreed by Zetty.
2. **ACCEPTANCE.** The acceptance of any tender must be accompanied by sufficient information in writing to enable Zetty to proceed with the execution of the order immediately, failing which, Zetty shall be entitled to amend the quoted prices to cover any costs incurred as a result of such delays and extend the delivery date(s). Any goods supplied for sample purposes on a 'Sale or Return' basis, must be returned to Zetty, carriage paid, within one month from date of receipt, or paid for. An order on the Buyer's official order form may not be cancelled once accepted by Zetty. In the event of an order being placed with Zetty, the Buyer shall be estopped from denying the validity of such order notwithstanding the fact that such order may have been given or signed by a person not authorised by the Buyer.
3. **PACKING.** Unless otherwise specified, Zetty's prices include packing in accordance with its standard practice.
4. **LIMITS OF CONTRACT.** The quoted price includes only such goods, accessories and work as are specified therein.
5. **DRAWINGS, TECHNICAL & COMMERCIAL LITERATURE.** All descriptive and shipping specifications, drawings and particulars of masses and dimensions submitted with Zetty's quotation are approximate only, and the descriptions, prices, illustrations, dimensions, standards, performance data and information contained in Zetty's catalogues, price lists and other advertising material are intended merely to present the general picture of the goods and shall not form part of the contract unless specifically stated. After acceptance of Zetty's quotation, a set of certified drawings can be made available. All designs and the copyright in all drawings, technical specifications, information and memoranda furnished by Zetty shall remain its property.
6. **PERFORMANCE.** Any performance figures published by Zetty are based upon its experience and are such as it expects to obtain on test in its works. Zetty accepts no liability for damages for failure to attain such figures unless it has specifically guaranteed the performance figures, subject to the recognised applicable tolerances. The Buyer assumes responsibility that the goods stipulated by it are sufficient and suitable for its purpose. The Buyer shall be responsible for all discrepancies, errors, omissions or ambiguities in drawings and other particulars supplied by it. In the event of Zetty being prevented from fulfilling its obligations due to any cause beyond its control, Zetty shall be entitled to terminate any part of the contract affected, or, if necessary, the whole contract, at its sole discretion. In either event, Zetty shall not be liable for any damages whatsoever sustained by the buyer as a result. In such an event, Zetty shall be entitled to payment in respect for goods and services already supplied and goods already manufactured or ordered.
7. **DELIVERY.** This shall be made at the place specified in the quotation and excludes off-loading and positioning unless otherwise stated. Zetty shall have the right to effect partial deliveries unless otherwise specified. Each delivery, or partial delivery, will be deemed to be sold under a separate contract. Failure by Zetty to be able to make any delivery, or part delivery, shall not entitle the Buyer to cancel the outstanding balance of the order unless the Buyer has given Zetty reasonable opportunity to remedy. Should the Buyer fail to take delivery within a reasonable time, Zetty shall be entitled to claim costs from the Buyer and cancel the remaining value of the contract.
8. **OWNERSHIP.** Risk in the goods shall pass on delivery, but ownership remains vested in Zetty until the invoice has been paid in full. In respect of goods purchased for resale, the Buyer shall sell that stock which has been in its possession longest and its accounting shall reflect this position and be on the FIFO basis, and it shall be deemed accordingly for the purpose of the contract.
9. **LIABILITY FOR DELAY.** All dates quoted for delivery by Zetty are based upon information available at the time of preparing the quotation and are dependent upon Zetty receiving all the necessary information and drawings to enable it to commence work immediately upon the placing of the order and to proceed without interruption or modification. All delivery dates are estimates and Zetty shall not be liable for late delivery unless specifically agreed in writing. In all cases, whether a time for delivery has been agreed or not, the time for delivery shall be extended by a reasonable period if the delay in delivery is caused by instructions, or lack thereof, from the Buyer or by industrial dispute or by reason of Force Majeure, or by any cause whatsoever beyond Zetty's reasonable control. A contract shall not be cancelled on the grounds of Zetty's delay unless Zetty shall have first received reasonable notice of the Buyer's intention to insist on adherence to the contractual delivery dates, thus affording Zetty a reasonable opportunity to remedy the situation.
10. **VARIATIONS & SUSPENSIONS.** Prices quoted may be fixed, subject to foreign exchange, Contract Price Adjustment (CPA) or other conditions as stipulated in the quotation. Unless otherwise stated, the amount of all duties, taxes and other charges applicable to the manufacture and/or sale of the goods shall be borne by the Buyer. Where a CPA formula is applicable, a certificate issued by Zetty's Auditors, acting as experts and not as arbitrators, as to the variations in Zetty's costs shall be binding upon the Buyer. In the event of variation of work on the Buyer's instructions, or lack thereof, Zetty shall be entitled to increase the contract price by a sum of money sufficient to cover the extra expenses incurred by Zetty as a direct or indirect consequence of such variation(s). In the event of suspension of work, or delay of delivery date(s) by the instruction of the Buyer, or its agent, or failure by the Buyer, or its agent, to provide Zetty timeously with free issue materials, full details, instructions, drawings or other documents or information required, and that this suspension or delay would cause an invoice to be raised in a financial month later than proposed in the quotation, Zetty reserves the right to either invoice progress payments to cover the costs of materials and labour incurred to date, or increase the contract price to cover costs involved including the cost of finance required.
11. **TERMS OF PAYMENT.** Unless otherwise stated in the quotation or otherwise agreed in writing, all payments will be in the currency of Zetty's country of registration and the terms of payment shall be as follows:
  - 11.1 **CASH SALES** may be paid by cash or cheque, which must be endorsed by the drawer, made payable to 'Cash' or 'Bearer', and uncrossed. Zetty reserves the right to impose a limit over which the cheque must be bank guaranteed, in which case it would be crossed and made out to 'Zetty Electrical Wholesalers'. No post dated cheques can be accepted. Bank transfers (including electronic payments) are accepted, but the goods may only be released once the transfer is received into Zetty's local bank account.
  - 11.2 **NO CREDIT.** The Buyer acknowledges that Zetty is not a credit provider and that the National Credit Act No. 34 of 2005 does not apply to any purchases made by the buyer. All purchases made must be settled in full as covered by 11.3.
  - 11.3 **ACCOUNT SALES,** with the exception of sales covered by 11.4, to Buyers with approved account facilities, are payable in full on or before the end of the month following that month during which Zetty's invoice was raised (within 30 days of invoice date). In order to qualify for any settlement discount offered, payment must be received by Zetty by due date. Bank transfers (including electronic payments) are accepted. All payments must be accompanied by a remittance advice giving sufficient information to enable the Zetty accounts department to correctly allocate the monies received against the invoices outstanding. In the absence of proper information and when only part payment is received will be allocated to the oldest amount(s) due.
- 11.4 Notwithstanding all other terms of payment, Zetty shall be entitled to call for payment in advance, or for security for the outstanding balance of the order value, if, at any time, it has reasonable grounds for doubting the Buyer's ability to pay. Counter claims may not be set off against payments nor any payments be withheld on account of any counter claim by the Buyer unless such counter claims are accepted by Zetty in writing. The obligation of Zetty under the contract may only be enforced in the event of the Buyer having made all payments timeously and not having breached any of the other terms or conditions of the contract.
12. **ARREARS.** Should the Buyer's account remain unpaid after the end of the month following that month during which the invoice was raised, Zetty reserves the right to withhold further supplies until the arrears are paid and that Zetty is satisfied of the Buyer's continued credit worthiness. While supplies are being withheld, goods may not be supplied as 'cash sales' as the monies received by Zetty will be deemed to be in part payment of the oldest debt(s). Interest may be charged by Zetty on all overdue amounts at a rate of 3% above the prime lending rate charged by Zetty's bankers. A certificate from any manager or accountant of any branch of Zetty's bank as to the governing rate shall be final and binding upon the Buyer. Without waiving any other rights contained in the contract, both parties are entitled to enter into a separate written agreement regarding account payments.
13. **GUARANTEE**
  - 13.1 **AGENCY PRODUCTS.** Zetty passes onto the Buyer all conditions and benefits of the Principal's guarantee. In all cases, the Principal will, at its expense and through Zetty, make good any defects in material and workmanship of its products under proper use and within its guarantee, being twelve months from the date of delivery from Zetty to the Buyer. Liability is limited to the repair or replacement of the product, at the discretion of the Principal, and this liability specifically excludes injury or consequential damage to other equipment or production losses or penalty claims no matter how caused. Such repair or replacement shall take place at the premises of either the Principal or Zetty, as required by the Principal. The Buyer alone is responsible for any costs of removal and re-installation, packaging, insurance and transport of the goods to and from Zetty's premises. (Agency covers all formal agreements where Zetty represents the Principal as an Agent/Dealer/Distributor/Stockist or where Zetty has included the product in its own catalogue).
  - 13.2 **NON-AGENCY PRODUCTS,** excluding 13.3, are not covered by any guarantee unless specifically agreed in writing by Zetty.
  - 13.3 **MANUFACTURED PRODUCTS** (manufactured by Zetty) are covered by a guarantee equivalent to 13.1 where Zetty becomes the Principal, for the product as a whole item. In respect of goods designed by the Buyer, or its agent, Zetty's guarantee covers workmanship but shall be limited to the individual component guarantees (if any) and not the product as a whole item.
  - 13.4 The Buyer shall not be entitled to cancel the contract by virtue of any defects occurring in the goods.
  14. **CONSEQUENTIAL DAMAGES.** All goods are supplied and all work is done on the condition that Zetty shall in no way be liable to the Buyer or any other party, for loss of contracts or profits or any loss or damage, whether direct or indirect, general, specific or consequential, howsoever caused or incurred, including such loss or damage attributable to its' negligence or the negligence of its servants, employees or agents, or to any acts, omissions or defaults, or failure to carry out or fulfil its obligations, or to defective and/or poor materials, workmanship or design.
  15. **SHORTAGES IN DELIVERY & DAMAGE IN TRANSIT.** No claim for shortages or receipt of damaged goods will be entertained unless made within seven days of delivery, or in the event of non-delivery within twenty four hours of invoicing. When the quoted price includes delivery, Zetty will replace or repair, free of charge, goods damaged in transit to the point of delivery.
  16. **RETURNS.**
    - 16.1 Equipment correctly supplied by Zetty to the Buyer in accordance with the Buyer's instructions may not be returned for a refund.
    - 16.2 Returns for repair or warranty claims are accepted at the goods receiving counter and, at all times, a Repair Note must be received by the Buyer or its agent or representative. Warranty claims must be accompanied by a copy of Zetty's original invoice or delivery document.
    - 16.3 Before any goods can be returned for credit, written authorisation must be obtained from Zetty's Management. Goods must be sent to Zetty by the Buyer under cover of a suitable returns note, duly authorised, together with a copy of Zetty's original invoice or delivery note specifying the full reason for return and details of any replacement equipment ordered.
    - 16.4 Any authorisation for return given is subject to final acceptance after thorough inspection and testing of the returned goods. Equipment considered for return must be unused, in its original packaging and in a re-saleable condition and acceptable in terms of the following categories. Returnable equipment includes those purchased within 5 days: locally stocked standard products, full drums or reels of locally stocked cable and wire; electronic components, provided that they have never been fitted. Non-Returnable equipment includes those purchased over 5 days: cut lengths of cable, wire or rope, equipment specially imported or manufactured for the Buyer, locally purchased standard equipment, subject to the original suppliers conditions, other equipment as specified by Zetty in the quotation as non-returnable.
    - 16.5 Zetty shall have the right to charge a handling fee on all correctly supplied goods which it agrees to accept for return. This fee would normally be waived when goods of equal or greater value have been purchased in replacement of those goods being returned. The following fees are expressed as a percentage of the net invoiced amount.
      - Standard stock items - 15%,
      - Instruments - up to 50%,
      - Locally sourced specially purchased standard equipment - subject to the original suppliers' conditions.
  17. **CANCELLATION.** Zetty shall have the right to terminate the contract if: the Buyer is liquidated or commits an act of insolvency or allows a judgement against it to remain unsatisfied for more than seven days, and/or; the Buyer breaches any of the terms or conditions of the contract. Termination of the contract would be without prejudice to Zetty's rights and claims for such damages as it has sustained as a result of the breach of contract. Failure of Zetty to react to a breach of the contract by the Buyer may not be construed as a waiver by Zetty of any of its rights in terms of the contract. Upon cancellation of the contract of any reason, all amounts owing by the Buyer of Zetty in terms of the contract shall immediately become due and payable.
  18. **JURISDICTION OF THE MAGISTRATES COURT** Both parties agree that either party shall be entitled to institute legal proceedings against the other which might arise out of, or in connection with the contract in any Magistrates' Court in Zetty's country of registration having jurisdiction on the matter, notwithstanding that the claim or value of the matter in dispute might exceed the jurisdiction of the Magistrates Court. All costs incurred by Zetty in enforcing its rights under the contract against the Buyer shall be borne by the Buyer including costs on the Attorney and Client scale.