



ECO3 South Africa (Pty) Ltd
Unit B1a
Isando Business Park
Hulley Road
Isando
South Africa

SECTION B – Standard Terms and Conditions of Sale

THE APPLICANT or its duly authorised agent does hereby apply for credit facilities with ECO3 and in consideration thereof THE APPLICANT does hereby accept the following terms and conditions:

1. Credit Terms

- 1.1 THE APPLICANT agrees that any amount reflected in a Tax Invoice shall be due and payable unconditionally (a) Cash on Delivery; or (b) if THE APPLICANT is a Credit Approved Customer, within 30 (thirty) days from the end of the month in which a Tax Invoice has been issued by ECO3. Settlement is effected only on receipt of cash or Electronic Funds Transfer (EFT) or similar payment instrument and shall be made to ECO3 free of exchange and without deductions of any nature. Any credit facilities granted to THE APPLICANT by ECO3 is entirely at the discretion of ECO3 and may be withdrawn or amended at any time by ECO3.
- 1.2 THE APPLICANT agrees to accept the receipt of electronic format statements, tax invoices, shipment documents (proof of delivery), credit and debit notes from ECO3, which may be transmitted via email, and the following conditions thereto as required by South African Revenue Services and in terms of the provisions of the Value-Added Tax Act for the issuing of tax invoices, credit, and debit notes:
 - 1.2.1 Electronic documents (tax invoices, credit, and debit notes) will be transmitted and issued to THE APPLICANT in 128bit encrypted PDF file format.
 - 1.2.2 Both THE APPLICANT and ECO3 shall retain the electronic documents in original encrypted format for a period of five years from the date of the delivery to which it relates.
 - 1.2.3 The transmitted electronic document will constitute the original statement, tax invoice, credit, or debit note. No other tax invoice, credit or debit note will be issued in respect of any specific delivery, unless as a copy of the original document.
- 1.3 Should THE APPLICANT have a valid reason to dispute an entry raised on a tax invoice, it shall do so within 14 (fourteen) days of the date of ECO3's dispatch of such invoice to THE APPLICANT, failing which such entry shall be deemed to be correct and payable.

2. Change of address

THE APPLICANT undertakes to notify ECO3 in writing within 7 (seven) days of any change of address.

3. Change of ownership

THE APPLICANT undertakes to notify ECO3, in writing, within 20 (twenty) days of any change in ownership of THE APPLICANT'S business, or should THE APPLICANT be a company, of its share transactions whereby the majority shareholding is affected. THE APPLICANT acknowledges that immediately upon any change of Ownership in THE APPLICANT any outstanding amount whether due or not shall be deemed to be forthwith payable by THE APPLICANT to ECO3.

4. Domicilium

- 4.1 THE APPLICANT chooses its *Domicilium Citandi et Executandi* (in other words, the address at which THE APPLICANT will accept all notices, legal documents, and the like, whether or not THE APPLICANT is still present at such chosen address) for all purposes arising out of this application at the physical address stipulated in Section A, clause 3.2 of this application
- 4.2 Notwithstanding the provisions of clause 4.1 above, the APPLICANT hereby consents to the service of notices, legal processes, and all other communications contemplated in terms of this application, at the email address furnished by the APPLICANT in Section A, clause 3.7, which email address shall, for all purposes, constitute a valid and effective *domicilium citandi et executandi* in terms of this agreement. Service by Registered Email shall be deemed to have been received on the date of transmission, provided that such transmission occurs during business hours, failing which, service shall be deemed to have occurred at 09:00 on the next business day.

5. Consent to sharing information and retention periods

- 5.1 ECO3 takes responsibility for THE APPLICANT'S personal information collected and processed by it as a responsible party in compliance with the Protection of Personal Information Act No. 4 of 2003 (POPIA).
- 5.2 ECO3 has, with THE APPLICANT's consent, obtained the personal information of THE APPLICANT for the purposes of making credit risk management decisions and preventing fraud, THE APPLICANT hereby warrants that ECO3 has permission to: -
 - 5.2.1 Carry out a credit enquiry on THE APPLICANT and the Directors/Members/Partners/Trustees/Principals of THE APPLICANT from time to time with one or more credit bureaus, credit information agents, credit insurance companies or other creditors (trade references) of THE APPLICANT in terms of this agreement.
 - 5.2.2 ECO3 may transmit information to credit bureaus, credit information agents, credit insurance companies or other creditors of THE APPLICANT concerning THE APPLICANT'S performance in meeting the obligations in terms of this agreement.
 - 5.2.3 If THE APPLICANT fails to meet the obligations in terms of this agreement, ECO3 may record THE APPLICANT'S failure(s) with credit bureaus, credit information agents, credit insurance companies or other creditors of THE APPLICANT.
- 5.3 Such information shall be retained for the periods stipulated in any applicable law, but no longer than the duration of the validity of this agreement, or necessary for the conduct of proceedings in any court or tribunal that have commenced or are reasonably contemplated. Where THE APPLICANT has not used a facility under this agreement for 12 (twelve) months, THE APPLICANT may be required to re-apply for such a facility.

Directors:
D S Reynolds (Managing)
S Marais (Alternate)

www.ECO3.com
(Reg. No. 1986 / 002483 / 07)

5.4 ECO3 will only use THE APPLICANT's personal information for the purpose for which it is required, to collect, process, and share THE APPLICANT'S personal information, in order to give effect to the provisions contained in this agreement. THE APPLICANT'S personal information is collected and processed by ECO3'S staff, representatives, and sub-contractors and ECO3 makes every effort to protect and secure THE APPLICANT'S personal information. THE APPLICANT is entitled at any time to request access to the information ECO3 has collected, processed, and shared.

6. **Pricing increments**

6.1 Prices quoted by ECO3 are determined from time to time and are subject to increases, at the discretion of ECO3. ECO3 shall be entitled to increase the cost of goods delivered or services rendered to THE APPLICANT **with** prior written notice.

6.2 Unless otherwise specified, ECO3 prices include packing and delivery in accordance with its standard practice. ECO3 reserves the right to make additional charges if THE APPLICANT requires a method of packing or delivery different to that normally employed by ECO3.

7. **Quantities, representations, orders, use and availability**

7.1 THE APPLICANT acknowledges that it does not rely on any representations made by ECO3 in regard to the goods and services or any of its qualities leading up to this agreement other than those contained in this agreement. All specifications, price lists, performance figures, advertisements, brochures, and other technical data furnished by ECO3 in respect of the goods or services orally or in writing will not form part of the agreement in any way unless agreed to in writing by ECO3.

7.2 In the event of any order being given to ECO3 on an order form reflecting THE APPLICANT'S name as the entity from which the order emanates, such order shall be deemed to have emanated from THE APPLICANT, notwithstanding the fact that such order may have been given or signed by a person not authorised by THE APPLICANT, and such order will be deemed to constitute valid delivery. It is further the sole responsibility of THE APPLICANT to determine that the goods ordered are suitable for the purposes of the intended use.

7.3 All quotes are subject to the availability of the goods or services and subject to correction of *bona fide* errors by ECO3 and the prices quoted are subject to any increases in the cost price, including currency fluctuations, of ECO3 before acceptance of the order.

7.4 Once THE APPLICANT has provided instructions to the ECO3, for the manufacture of goods to specific requirements or specifications, such order shall be deemed final and non-cancellable. THE APPLICANT acknowledges and agrees that they are obligated to pay for the goods in full, regardless of whether they still wish to receive the goods or not, once the order has been confirmed and manufacturing has commenced. In the event that THE APPLICANT attempts to cancel the order after confirmation, THE APPLICANT shall remain liable for the full payment of the goods, including any costs incurred by the ECO3, in the process of manufacturing or preparing the goods. This clause shall apply unless otherwise expressly agreed to by both parties in writing.

8. **Delivery**

8.1 THE APPLICANT agrees that any signature of any agent, contractor, sub-contractor, or employee of THE APPLICANT on ECO3'S official delivery note/invoice/waybill, or the delivery note of any authorised independent carrier, will constitute valid delivery of the goods purchased, with the understanding that ECO3 has notified THE APPLICANT of such delivery and both parties have accepted the terms of such delivery. Notwithstanding the foregoing, deliveries effected by ECO3 by any other means shall not be invalidated.

8.2 ECO3 shall be bound by the agreed date of delivery and should ECO3 not be able to deliver on such date, THE APPLICANT will be informed of such late delivery and such delivery will have to be authorised by THE APPLICANT.

8.3 Each delivery is considered as a separate contract and the price thereof is payable accordingly.

8.4 Whilst ECO3 will endeavour to ensure that goods are delivered timeously, it shall not be responsible for any delays in the delivery of such goods, and THE APPLICANT shall not be entitled to refuse acceptance of such late deliveries.

8.5 The risk in and to the goods shall pass from ECO3 to THE APPLICANT at the time of delivery notwithstanding that ownership will not pass to THE APPLICANT until full payment of the purchase price has been made. Delivery shall be deemed to have taken place against signature of ECO3'S delivery note, proof of posting if the goods are posted to THE APPLICANT, or delivery to the Road Carrier if the goods are transported by ECO3. The Road Carrier shall act as the agent of THE APPLICANT.

9. **Repairs and Warranties**

9.1 Goods are warranted either under ECO3's specific warranties or those provided by the original manufacturer. Where explicitly stated, certain goods may be sold to THE APPLICANT on the basis that ECO3 accepts no responsibility for latent defects. In such cases, all product warranties are expressly excluded.

9.2 If a product supplied by ECO3 to THE APPLICANT is found to be defective and a warranty applies, THE APPLICANT must notify ECO3 within fourteen (14) days of discovering the defect and, where applicable, arrange for the goods to be returned to ECO3.

9.3 ECO3's liability under clause 9.2 is limited to either replacing the defective goods or issuing a credit equal to their value. All returned goods must be accompanied by the original tax invoice issued by ECO3.

9.4 All warranties and guarantees shall be immediately void if the goods are tampered with, seals are broken, or the goods are used outside of their specified operating conditions. Damage resulting from lightning strikes, power surges, spikes, or other uncontrollable events is not covered under any warranty.

9.5 If ECO3 determines that returned goods are not defective, the goods will be returned to THE APPLICANT, who will be liable for a handling fee equal to ten percent (10%) of the value stated on the original tax invoice.

9.6 For goods returned for repair, THE APPLICANT must approve a cost estimate before any work is undertaken. If repaired items are not collected within ninety (90) days of completion, ECO3 reserves the right to sell such items to recover costs.

9.7 Any recommendations, formulas, figures, advice, specifications, illustrations, diagrams, price lists, dimensions, weights, or other information provided by ECO3 are approximate and for reference only. Unless expressly confirmed in writing, such information does not form part of the sale agreement.

9.8 Any model or sample shown to THE APPLICANT is intended to illustrate the general type and quality of goods only and shall not be interpreted as a guarantee that the goods supplied will conform exactly to the model or sample.

9.9 ECO3 makes no representations and provides no warranties or guarantees of any kind regarding the goods or their suitability for any specific purpose, unless expressly stated in writing whether on product labels, shade card inserts, data sheets, circulars, current printed product brochures, or other official documentation.

10. Resale of goods

- 10.1** THE APPLICANT shall not be entitled to dispose of any goods delivered to it to any third party nor to apply or use any goods on behalf of any third party without the prior written consent of ECO3.
- 10.2** Where any goods disposed of by THE APPLICANT to any third party without such written consent any warranties given by ECO3 in respect of the goods shall forthwith and ipso facto cease to be of any force or effect. THE APPLICANT shall be deemed to have indemnified ECO3 against all claims of any nature whatsoever which may be made against ECO3 by any third party arising directly or indirectly from any such disposal, and against all damages, losses, costs or expenses incurred by ECO3 in respect of any such claim.
- 10.3** Where goods are disposed of to any third party by THE APPLICANT with consent of ECO3, THE APPLICANT shall only dispose of such goods on the terms contained in these conditions of sale.
- 10.4** If THE APPLICANT disposes of the goods with the written consent of ECO3 but on terms other than those contained in these conditions of sale, THE APPLICANT shall be deemed to have indemnified ECO3 against any claim of any nature whatsoever which may be made against ECO3 by any third party arising directly or indirectly from such disposal.

11. Copyright

THE APPLICANT acknowledges ECO3 intellectual property rights in the goods and shall not infringe such intellectual property rights.

12. Assignment

THE APPLICANT 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 ECO3's written consent.

13. Payment to ECO3

All payments shall be made to ECO3'S place of business from where the goods were ordered. In the event of any payments being mislaid, lost in the post, or transferred to the incorrect banking account THE APPLICANT shall remain liable to ECO3 for payment. Should ECO3 at any time advise THE APPLICANT of any change to ECO3'S banking account details THE APPLICANT shall confirm such change with a Manager of ECO3 before effecting any further payments, provided however that nothing contained herein shall be interpreted as obliging ECO3 to afford THE APPLICANT any such indulgence to effect payment after due date.

14. Reservation of ownership

Until such time as THE APPLICANT has paid the purchase price in full in respect of any purchase of goods, the ownership in and to all such goods shall remain vested in ECO3. ECO3 shall, in its sole discretion, without notice to THE APPLICANT, be entitled, but not obliged, to take possession of any such goods which have not been paid for and in respect of which payment is overdue, in which event THE APPLICANT shall be entitled to a credit in respect of the goods so returned being the price at which the goods are sold, or the value thereof as determined by ECO3. THE APPLICANT hereby waives any right it may have for a spoliation order against ECO3 in the event that ECO3 takes possession of any goods.

15. Responsibility for losses, damages, or delays

- 15.1** ECO3 will not in any way be responsible for losses, consequential losses, damages, or delays sustained by THE APPLICANT, irrespective of whether this is caused by or arising from any error, discrepancy, defect on specifications, measurements or other instructions, natural disasters, unavoidable accidents of any kind, acts of the State's enemies, riots, lockouts, cessation of labour, transport delays, shortened hours of labour, insurrection, infectious diseases, war, the imposition of any trade boycotts or sanctions of trade restrictions by any government, authority, company or organisation or person or persons, whether within the Republic of South Africa or anywhere else, or any other cause or contingency whatsoever beyond the control of ECO3.
- 15.2** ECO3 provides no guarantees or warranties (whether express or implied) as to the suitability of any goods for any purpose for which they are required.

16. Defaulting in payment

In the event of THE APPLICANT defaulting in making payment of any amount that has become due and owing, then the full balance outstanding (whether due or not) will immediately become due and payable without notice to THE APPLICANT.

17. Interest on overdue accounts

ECO3 shall be entitled to charge THE APPLICANT interest at the rate of 2% (two percent) per month from the moment any debt becomes overdue, provided however that nothing contained herein shall be interpreted as ECO3 affording THE APPLICANT any indulgence to make payment after due date.

18. Proof of Claims

A certificate signed by any manager or director of ECO3 - whose position and signature shall not be necessary to prove - reflecting the fact that an amount is due, owing and unpaid by THE APPLICANT, shall be *prima facie* proof – on its mere production – of the outstanding amount owing to ECO3 for the purpose of any legal action (whether by way of provisional sentence or otherwise), proof of a debt in insolvency proceedings, or for any other purpose whatsoever where the amount of such indebtedness is required to be established, and it shall rest with THE APPLICANT to prove that such amount is not owing and/or due and unpaid.

19. Consent to jurisdiction

Notwithstanding the amount which may at any time be owing by THE APPLICANT to ECO3, the parties do hereby consent, in terms of Section 45 of the Magistrates Court Act (No 32 of 1944 as amended), to the Jurisdiction of the Magistrate's Court for the determination of any action or proceeding which may be brought by ECO3 against THE APPLICANT arising out of any transaction between the parties, it being recorded that ECO3 shall be entitled at its sole discretion, but not obliged, to bring any action or proceeding in either the district or regional division of the said court.

20. Dispute Resolution

- 20.1** Any dispute or claim arising from or related to this Agreement will first be submitted to a mediation process to attempt an amicable settlement between the Parties. This process is intended to resolve the issue without resorting to formal legal proceedings.
- 20.2** The dispute will be referred to a skilled, experienced, and accredited mediator. ECO3 may initiate the mediation by sending a written request (Request for Mediation) to THE APPLICANT. This request must clearly identify the nature of the dispute and propose at least three possible mediators for selection. The request must be delivered via email to the APPLICANT'S designated address.
- 20.3** Within five (5) Business Days of the Request for Mediation being sent, the following steps will occur:
20.3.1 Each Party will appoint a senior representative with authority to negotiate a settlement and participate in the mediation process.
20.3.2 Both Parties will arrange an urgent virtual pre-mediation meeting to occur within five (5) Business Days after the Request for Mediation is delivered. This is a preparatory step to facilitate the mediation process.
- 20.4** The mediator will be agreed upon by both Parties. If the Parties are unable to reach an agreement, the Chairperson or Secretary of Mediation in Motion Mediators (NPO) may appoint a mediator upon written request from either Party.
- 20.5** Once a mediator is appointed, both Parties will enter into a formal *Agreement to Mediate*, which ensures that the mediation will be confidential and conducted on a without-prejudice basis, meaning anything discussed cannot be used in later legal proceedings.
- 20.6** Both Parties and their representatives agree to cooperate fully in the mediation process, with the aim of resolving the dispute efficiently and cost-effectively, striving to reach an amicable agreement.
- 20.7** Unless agreed otherwise, the Parties will share the costs of the mediation equally. Each Party will bear its own legal costs if they choose to have legal representation at the mediation, as well as any additional expenses.
- 20.8** The mediation process will begin as soon as possible and, unless agreed otherwise in writing, will be conducted within 15 (fifteen) Business Days from the delivery of the Request for Mediation.
- 20.9** Formal legal proceedings cannot be initiated until:
20.9.1 THE APPLICANT has failed to engage in mediation, or
20.9.2 The mediator determines, in good faith, that an amicable resolution is unlikely to occur. However, if necessary, the Aggrieved Party may seek urgent court relief to compel compliance with the mediation process or proceed with formal legal actions. In cases where the non-compliant Party is at fault, they will be liable for the costs of such proceedings, even if they ultimately succeed in defending the case.
- 20.10** If the mediation is unsuccessful, or if THE APPLICANT fails to engage, the dispute (or any unresolved part of it) can proceed to the next step of the dispute resolution process, as defined by the remaining provisions of this agreement.

21. Recovery of legal/collection costs

Should ECO3 instruct its attorneys or collection agent to collect any overdue amounts, or to take any action or initiate any arbitration proceedings against THE APPLICANT in the implementation or protection of ECO3 rights, ECO3 shall be entitled to the recovery of all legal and/or collection costs arising therefrom, on the scale as between attorney / agent / collection agency, and client, including the costs of advocates where so employed, and on the highest permissible tariff/scale.

22. Financial Intelligence Centre Act (FICA)

- 22.1** THE APPLICANT acknowledges ECO3'S obligations in terms of section 29(1) of FICA and unconditionally and irrevocably indemnifies and holds ECO3 harmless against any claim of whatsoever nature instituted against ECO3 by a third party arising from any action taken by ECO3 in discharging its obligations in terms of FICA. This specifically includes for THE APPLICANT declaring that the proceeds of the sale of any of the goods or services provided by ECO3 to THE APPLICANT: -
22.1.1 are not received from unlawful activities, or
22.1.2 are not linked to an offence of terrorist financing, or
22.1.3 have not been used for money laundering purposes, or
22.1.4 have not been used to assist an offence being committed that relates to money laundering or terrorist financing.
- 22.2** It is further noted that ECO3 is an Accountable Institution in terms of FICA. Any cash transaction in excess of the threshold prescribed from time to time will be reported to the Financial Intelligence Centre without any further reference to THE APPLICANT.

23. Non-waiver of rights

Any condonation of any breach of any of the provisions hereof or other act or relaxation, indulgence, or grace on the part of ECO3 shall not in any way operate as or be deemed to be a waiver by ECO3 of any rights under this contract or be construed as a novation thereof.

24. Severability of clauses

Each clause of these conditions of sale is severable, the one from the other, and if any one or more clauses are found to be invalid or unenforceable, that clause/clauses shall not affect the balance of these conditions of sale, which shall remain of full force and effect.

25. Entire agreement

- 25.1** These terms and conditions represent the entire agreement between the parties, and any other terms whether express or implied, and any variations, cancellations or additions to this contract, shall not be of any force or effect unless reduced to writing and signed by the parties or their duly authorised signatories. This agreement shall be governed by the laws of the Republic of South Africa. THE APPLICANT, by the affixation of the signatures hereunder, confirm that the information submitted in this application is true and correct in all respects and that THE APPLICANT is entirely familiar with the terms and conditions contained herein.
- 25.2** The Parties agree that this agreement and any supporting documentation may be executed by way of electronic signature, as contemplated in the Electronic Communications and Transactions Act 25 of 2002. Where such electronic signature is utilised, the Parties warrant that it constitutes a valid, binding, and enforceable method of acceptance of the terms and conditions contained herein. Each Party further confirms that such signature is applied by a duly authorised representative and waives any right to dispute the authenticity or enforceability thereof solely on the basis that it is in electronic form.