

# MachMan

## Engineering Solutions to the Food and Allied Industries

MachMan Pty Ltd    Reg No. 2012/005712/07    VAT no 4960260067

These terms and conditions form the basis upon which Machman (Pty) Ltd ("**the Supplier**") agrees to provide the Customer with its services and supply the customer with its product ("**the Product**").

**Where the Supplier acts as a supplier and/or agent of a third party, the Product supplied shall be subject to said third party's terms and conditions. These terms and conditions will be made available to the customer at all times. Acceptance of this Agreement by the Customer shall be deemed as acceptance of the Third Parties terms and conditions.**

**Make sure that you have read and understood all the terms and conditions in this Agreement and raise any questions which require clarification before signing the Agreement.**

## 1. DEFINITIONS

In these Terms and Conditions, unless clearly otherwise indicated by the context:

- 1.1 "**Acceptance Form**" means the last page of the Quotation which allows for a customer to indicate acceptance.
- 1.2 "**Agreement**" means this agreement and all annexures hereto including the Quotation (as defined) and the Invoice (as defined) as well as the Order Form to which this Agreement is attached ("**the Order Form**");
- 1.3 "**Customer**" means the person or entity identified on the Order Form;
- 1.4 "**Delivery**" means the specific manner, date, time and place as agreed to and recorded in the Quotation between the parties at which point possession and risk of the Product (as defined) shall pass to the Customer;
- 1.5 "**Parties**" mean the parties to this Agreement;
- 1.6 "**Payment Dates**" means the payment dates set out in the Payment Schedule (as defined);
- 1.7 "**Payment Schedule**" means the annexure detailing payment attached to this document;
- 1.8 "**Payment Terms**" means the manner of payment of the Purchase Price (as defined) as set out in the Payment Schedule.

## MachMan Pty Ltd

10 Flamingo Crescent Lansdowne, 7780, Cape town South Africa  
P.O. Box 2717 Clareinch 7740 Cape Town South Africa  
[info@machman.co.za](mailto:info@machman.co.za) Tel: +27 21 761 1301 Fax: +27 86 247 2203

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- 1.9        **“Product”** means the product purchased by the Customer in the specifications and quantities set out in the Order Form and **“Products”** shall bear a corresponding meaning;
- 1.10      **“Purchase Price”** means the price of the Product as set out in the Payment Schedule;
- 1.11      **“Quotation”** means the document supplied to the Customer setting out the specifications and purchase price of the Product.
- 1.12      **“Supplier”** means Machman (Pty) Ltd Registration Number (2012/005712/07)

## 2. ORDER OF SERVICES

- 2.1        The Supplier agrees to sell and the Customer agrees to purchase the Products, on the terms and conditions set out in this Agreement.
- 2.2        The Supplier shall use its best and reasonable commercial endeavours to supply the Products to the Customer in accordance with the Customer’s orders and specifications. The Supplier shall specifically endeavor to construct the Product to adhere to the applicable Food Safety standard and regulations applicable at the time of purchase. The Supplier shall make recommendations with regards to the specifications of parts and materials to ensure adherence to safety regulations.
- 2.3        All diagrams, pictures, schematics, technical drawings or plans are purely for illustrative purposes and any Products delivered may differ from such schematics. **MACHMAN WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF A CUSTOMER’S RELIANCE ON SUCH SCHEMATICS.**
- 2.4        **THE ACCEPTANCE OF A QUOTATION IN WRITING (INCLUDING BY EMAIL) AND/OR COMPLETION OF THE ACCEPTANCE FORM BY THE CUSTOMER TO THE SUPPLIER AND/OR THE PAYMENT OF SAID QUOTATION OR PART THEREOF SHALL CONSTITUTE AN ORDER TO PURCHASE THE PRODUCT SPECIFIED IN THE QUOTATION AND THEREBY THE CUSTOMER SHALL BE DEEMED TO HAVE AGREED TO BE BOUND BY THIS AGREEMENT.**
- 2.5        When formulating the quote, the Supplier must be provided with the following information:

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- 2.5.1 the specification and quantity of the Products required;
- 2.5.2 the manner of delivery;
- 2.5.3 the place where delivery of the Products is to be affected; and
- 2.5.4 the date of required delivery.
- 2.6 **ANY DEVIATION FROM OR CONTRADICTIONS OF THE TERMS AND CONDITIONS IN THE ACCEPTANCE FORM WILL BE DEEMED INAPPLICABLE UNLESS EXPRESSLY ACCEPTED BY THE SUPPLIER IN WRITING, EITHER BY EMAIL OR TEXT MESSAGE.**
- 2.7 Each order shall constitute a separate contract and each such contract may be enforceable separately save that a breach of the terms applicable to any one order shall entitle the Supplier to exercise its rights in respect of all outstanding orders. Any default by the Supplier in relation to any one order shall not entitle the Customer to cancel any of its other outstanding orders.
- 2.8 The Customer shall, in respect of each order for the Products to be supplied under this Agreement, be responsible for:
  - 2.8.1 ensuring the accuracy of the order as set out on the Purchase Order.
  - 2.8.2 providing the Supplier with any information which is necessary in order to enable it to provide the Products;
  - 2.8.3 providing the Supplier with any information which is necessary in order to enable the Supplier to obtain parts and materials necessary to complete the order;
  - 2.8.4 complying with all labelling, marketing, health and safety and other applicable legal requirements in the operation of the Product; and
  - 2.8.5 **OBTAINING ANY NECESSARY CERTIFICATION OR OTHER REQUISITE DOCUMENTS, AND PAYING ALL APPLICABLE FEES TO SECURE BESPOKE PARTS INTENDED TO BE INCORPORATED INTO THE PRODUCT;**
- 2.9 Upon the Customer's acceptance of a Quotation, the Supplier shall, as soon as is reasonably practicable, inform the Customer of the Supplier's estimated delivery date of the Products.
- 2.10 **THE SUPPLIER SHALL USE ALL REASONABLE ENDEAVOURS TO MEET THE DELIVERY DATE, BUT TIME OF DELIVERY SHALL NOT BE OF THE ESSENCE AND ACCORDINGLY**

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**THE SUPPLIER SHALL HAVE NO LIABILITY TO THE CUSTOMER IF, NOTWITHSTANDING SUCH ENDEAVOURS, THERE IS ANY DELAY IN DELIVERY. THE DELIVERY DATE QUOTED IS SUBJECT TO STRIKES, LOCKOUTS, BREAKDOWN IN MACHINERY, DEFICIENCY OF WATER OR ELECTRICITY, ACCIDENTS OR OTHER UNFORESEEN CIRCUMSTANCES BEYOND THE SUPPLIER'S CONTROL.**

2.11    The right to ownership of the Products shall not pass to the Customer until the Supplier has received payment in full of the Purchase Price. The Purchase Price is strictly stated and is not subject to discount for prompt payment.

### 3. PURCHASE PRICE & PAYMENT TERMS

3.1    The Customer shall be bound by the Purchase Price and Payment Terms relating to the Product.

3.2    Unless specifically requested otherwise by the Customer, the Purchase Price will be shown in South African Rands and may change should currency fluctuations affect the cost of delivering the Product to the Customer. Should this occur, the Customer will be notified of such changes in writing by the Supplier.

3.3    In addition to the Purchase Price, the Customer shall also be responsible to pay all sales or use taxes, excise taxes, duties, customs, import or export fees and any other taxes, fees or charges of any nature applicable to the Customer's purchase of Products including any reasonable and necessary amounts paid by the Supplier on behalf of the Customer in order to deliver the Product ("the Fees and Charges").

3.4    Where the Supplier agrees to arrange for transport and insurance as agent for the Customer, the Customer shall reimburse to the Supplier the full costs thereof in addition to the Fees and Charges and all the applicable provisions of this Agreement shall apply with respect to the payment of such costs as they apply to payment of the Purchase Price of the Products.

### 4 RISK AND DELIVERY

4.1    Risk in the Product shall be deemed to have passed on delivery to the Customer or to the Customer's agent including a carrier of the Customer when the Product has left the Supplier's premises.

4.2    If events or circumstances come to the attention of the Supplier, its agents, servants, or subcontractors which, in the opinion of the supplier, make it in whole or in part, impossible or impracticable for the Supplier to comply with a

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Customer's instructions Supplier shall take reasonable steps to inform such Customer of such events or circumstances and to seek further instructions. If such further instructions are not timeously received by the Supplier in writing, Supplier shall, in its sole discretion, be entitled to detain, return, store, sell, abandon, or destroy all or part of the Products concerned at the risk and expense of the Customer.

## 5 OBLIGATIONS OF THE SUPPLIER

- 5.1 The Supplier shall provide the Customer with the supply and delivery of the Product as specified on the Acceptance Form.
- 5.2 The Supplier shall use its best commercial endeavours to ensure that the Customer shall receive the Product timeously, subject to clause 2.10.

## 6 WARRANTIES AND LIABILITY

- 6.1 To the extent that the repair, replacement or correction of components is plausible, the Supplier extends a 1 (one) year warranty in respect of mechanical faults and a 3 (three) month warranty in respect of electrical faults on the Product, calculated from date of delivery.
- 6.2 The warranty extended per clause 6.1 is exclusively limited to the rectification of the fault and specifically excludes costs incurred by the Supplier in respect of labour, replenishment of consumable items, or travel costs. The Customer will be invoiced in respect of these items subsequent to the Supplier honoring its warranty.
- 6.3 Subject to the provisions of clause 6.1, the Supplier will not repair, replace or correct willful or negligent damage to the Product by the Customer or any third party.
- 6.4 Where the Customer deviates or alters the product and/or packaging that was supplied in order to calibrate and/or design the machine, the Supplier shall not be held liable for any reduction in performance of the Product and/or any damage or deterioration in the Product and/or specific parts.
- 6.5 Subject as provided in this agreement, the Supplier warrants to the Customer that all Products supplied under this agreement will be of reasonably satisfactory quality and will comply with any specification agreed.

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- 6.6        **SHOULD THE CUSTOMER FAIL TO MAINTAIN THE PRODUCT TO A REASONABLE INDUSTRY STANDARD, THE WARRANTY EXTENDED IN CLAUSE 6.1 SHALL BE RENDERED VOID.**
- 6.7        **SHOULD ANY THIRD-PARTY TECHNICIAN PERFORM MAINTENANCE OR REPAIRS ON THE PRODUCT, THE WARRANTY EXTENDED IN CLAUSE 6.1 SHALL BE RENDERED VOID.**

## 7 OBLIGATIONS OF THE CUSTOMER

- 7.1        The Customer shall be responsible for:
- 7.2        making payment to the Supplier as set out in Clause 3 above and in terms of the Payment Schedule.
- 7.3        notifying the Supplier of any defect, partial loss or deviation in the Product as soon as the Customer becomes aware of such defect, partial loss or deviation.

## 8 INDEMNITY

- 8.1        **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE SUPPLIER SHALL NOT, EXCEPT IN RESPECT OF DEATH OR PERSONAL INJURY CAUSED BY THE GROSS NEGLIGENCE OF THE SUPPLIER, BE LIABLE TO THE CUSTOMER BY REASON OF ANY REPRESENTATION OR IMPLIED WARRANTY, CONDITION OR OTHER TERM OR ANY DUTY AT COMMON LAW, OR UNDER THE EXPRESS TERMS OF THIS AGREEMENT, FOR ANY LOSS OF BUSINESS, CONTRACTS, PROFITS OR REVENUE OR FOR ANY CONSEQUENTIAL SPECIAL OR INDIRECT LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH ANY ACT OR OMISSION OF THE SUPPLIER (WHETHER OCCASIONED BY THE NEGLIGENCE OF THE SUPPLIER OR ITS EMPLOYEES OR AGENTS OR OTHERWISE) RELATING TO THE SUPPLY OF THE PRODUCTS, THEIR RESALE BY THE CUSTOMER OR THEIR USE BY ANY CUSTOMER.**
- 8.2        The Customer agrees the Supplier shall not be held liable for any loss occurring through vis major or casus fortuitous.
- 8.3        Although the Supplier accepts liability for the risk related to the supply of the Products prior to delivery, the Customer indemnifies the Supplier against all liabilities incurred by the Supplier arising directly or indirectly from or in connection with the Customer's obligations in terms of this Agreement.

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8.4        Any period or date of dispatch quoted is given and intended as an estimate only and the Supplier shall not under any circumstances be liable for any loss or damage arising directly or indirectly out of delays in such dispatch.

## 9    **BREACH**

9.1        In the event of either Party failing to meet its obligations under the Agreement, the innocent Party shall be entitled to cancel the Agreement or demand specific performance of the other Party's obligations together with any damages suffered by the innocent Party as a result of such default, provided that the defaulting Party is given 10 business days' written notice to remedy the default.

9.2        If the Customer fails to pay the Purchase Price for the Products (or any part thereof) in accordance with the Payment Schedule or the Customer is the subject of liquidation, sequestration or judicial management proceedings, the Supplier shall be entitled (without prejudice to any other right or remedy it may have) to:

9.2.2     cancel or suspend any further delivery to the Customer under any Purchase Order;

9.2.3     sell or otherwise dispose of any Products which are the subject of any Acceptance Form, whether or not appropriated thereto, and apply the proceeds of sale to the overdue payment; and

9.2.4     charge the Customer interest on the price at the rate of interest charged by the Supplier's banking institution in South Africa on authorised bank overdraft facilities from time to time from the date the payment became due until actual payment is made (irrespective of whether the date of payment is before or after any judgment or award in respect of the same) such interest to be compounded monthly in arrears. The certificate of such banking institution as to the applicable interest rate shall be conclusive and binding on the parties.

9.3        In the event Customer defaults in the payment of the Purchase Price or Fees and Charges the Customer agrees that it will also be responsible to pay all costs, including legal costs on the Attorney and Own client scale and other expenses of collection resulting from any such default by the Customer.

9.4        In the event of any liability by the Supplier arising from breach of contract it is agreed that the maximum amount of damages recoverable shall be limited to

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the contracted price for the Product. In no event, shall the Supplier be liable for consequential, special, punitive or exemplary damages in connection with terms and conditions.

## 10 SPECIAL OBLIGATIONS

- 10.1 The Supplier undertakes to provide Products compliant with the Occupational Health and Safety Act 85 of 1993 (as amended) ("the Act").
- 10.2 It is the obligation of the Customer to ensure that Product specifications and requirements are within the ambit of the Act.
- 10.3 Should a Customer fail to ensure the Product ordered complies with the provisions of the Act, the Supplier's indemnity of liability, as stipulated in clause 8 above, will be applicable and enforceable.

## 11 EXCLUSIONS

- 11.1 It is expressly recorded that the following items and services shall fall outside the scope of the products and services offered by the Supplier:
  - 11.1.2 Any building or civil engineering work.
  - 11.1.3 Any other work required other than stated in the above quote.
  - 11.1.4 Main electrical supply to the system control panel.
  - 11.1.5 Pneumatic clean & dry air supply to the system control panel.
  - 11.1.6 Product supply to the product hopper.
  - 11.1.7 Product, bottles, labels and tamper seals to test the machine before dispatch.
  - 11.1.8 Transportation,
  - 11.1.9 Installation
  - 11.1.10 Commissioning
  - 11.1.11 Training

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### 11.1.12 Change Parts

- 11.2      In the event that the Supplier and Customer agree to include the provision of one of the aforementioned items or services, it shall be reflected on the Quotation as a separate charge.

## 12 USE OF WEBSITE

- 12.1      The Supplier permits the use of [www.machman.co.za](http://www.machman.co.za) and [www.packagingmachines.co.za](http://www.packagingmachines.co.za) ("the Websites") subject to the Terms and Conditions. By using these Websites in any way, the website user ("User") shall be deemed to have accepted all the Terms and Conditions unconditionally. The User must not use these Websites if the User does not agree to the Terms and Conditions.
- 12.2      The User agrees that it will not in any way use any device, software or other instrument to interfere or attempt to interfere with the proper working of the Websites. In addition, the User agrees that it will not in any way use any robot, spider, other automatic device, or manual process to monitor, copy, distribute or modify the Websites or the information contained therein, without the prior written consent from an authorised Supplier representative (such consent is deemed given for standard search engine technology employed by Internet search websites to direct Internet users to these Websites).
- 12.3      It is prohibited for a User to use the Websites to distribute material which is defamatory, offensive, contains or amounts to hate speech or is otherwise unlawful.
- 12.4      A User is expressly prohibited from displaying, publishing, copying, printing, posting or otherwise using the Websites and/or the information contained therein without the express prior written consent of an authorised Supplier representative.

## 13 GENERAL RIGHTS AND OBLIGATIONS

- 13.1      This Agreement makes up the whole agreement between the Supplier and the Customer.
- 13.2      No amendment, addition or consensual cancellation of the Agreement will be binding unless it is recorded in writing and signed by both Parties.

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- 13.3      The Parties agree to accept any notice and legal processes at the addresses indicated on the Order Form.
- 13.4      Neither Party shall lose any of its rights under this Agreement if it does not immediately and in every instance, insist on them.
- 13.5      Any dispute concerning these Terms and conditions, including a dispute as to the legality, interpretation or application shall be governed by the laws of the Republic of South Africa, without regard to its principles of conflicts of laws.
- 13.6      In the event of the Supplier having to instruct its attorneys to recover moneys from the Customer, the Customer shall be liable for and shall pay all legal costs incurred by the Supplier on an attorney customer basis, inclusive of collection commission.
- 13.7      The Parties acknowledge that each clause of this Agreement is separate. If any clause of this Agreement is or becomes illegal, invalid or unenforceable for any reason or in any jurisdiction, the clause shall be treated as if it had not been written. Should any clause of this agreement be found to be illegal, invalid or unenforceable, this shall have not affect on the validity of the rest of the agreement or affect the legality, validity or enforceability of the clause in another jurisdiction.
- 13.8      Should there be a conflict between the Order Form and these terms and conditions, the provisions of the Order Form shall prevail.
- 13.9      Should the Supplier be liable to the customer in any way the Customer in any way whatsoever reason arising from this Agreement, the Supplier's liability shall be limited to the provisions of clause 8.1.

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### **PAYMENT SCHEDULE:**

#### **1. Payment Terms**

- 1.1. The Supplier will accept payment as follows:
  - 1.1.1. A non-refundable deposit of 50% (Fifty Percent) of the value of the Product payable upon the Customer's written acceptance of a Quotation.
  - 1.1.2. An installment of 40% (Forty Percent) of the value of the Product, payable prior to the release of the Product to the delivery agent.
  - 1.1.3. The balance of 10% of the value of the Product, payable upon completion of delivery of the Product.
- 1.2. All payments are to be made to the Supplier by means of Electronic Funds Transfer into the nominated account of the Supplier.
- 1.3. The Supplier will not commence production until the Customer has furnished the Supplier with proof of payment of the Deposit amount.
- 1.4. The Supplier's displayed payment terms are non-negotiable and are subject to the Rand to Dollar Exchange Rate.
- 1.5. All amounts quoted to Customers are exclusive of VAT.

#### **2. Fees structure per Technician – Rates are updated periodically. Kindly confirm the current rates.**

- |  |                                       |
|--|---------------------------------------|
| 2.1. Hourly rate:                        | R 550.00 (per Hour or part thereof)   |
| 2.2. Call out Fee:                       | R 550.00                              |
| 2.3. Overtime (Saturdays):               | R 800.00 (per Hour or part thereof)   |
| 2.4. Sundays and Public Holidays:        | R 1 200.00 (per Hour or part thereof) |
| 2.5. Contractor or Specialized services: | R 1 200.00 per Hour or part thereof)  |

#### **3. Transportation Costs**

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- 3.1. Delivery Costs of all Products will be stated, together with the Purchase Price, on the Quotation. All Machine transport fees are for the clients account.
  
- 3.2. Any costs associated with the attendance of a technician outside Cape Town at the Customer's premises, will be quoted and invoiced to the Customer prior to the Technician's departure.

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