



When an Agreement is entered into between Metallurgical Testing Labs and a client, through the issuance of an order (formal purchase order or other clear written instruction) these Standard Terms and Conditions of Contract of sale shall apply and are considered enforceable on both parties (unless expressly agreed otherwise at the onset of contract review) as if formally signed.

### Definitions

Where the following words or phrases are used in the Agreement, such words or phrases shall have the meaning assigned thereto in this clause, except where the context clearly requires otherwise:

- **AFSA** means the Arbitration Foundation of South Africa;
- **Agreement** means the Agreement and its associated schedules and/or annexures and/or appendices, including the Work Order(s), specifications for the Services and such special conditions as shall apply
- **Background Intellectual Property** means all Intellectual Property introduced and required by either Party to give effect to their obligations under the Agreement owned in whole or in part by or licensed to either Party or their affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to the Agreement;
- **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;
- **Commencement Date** means the date in which contract review is concluded;
- **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses or provides to the other Party or which otherwise becomes known to a Party, and which is not in the public domain. information concerning the charges, Fees and / or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;
- **Copyright** means the right in expressions, procedures, methods of operations or mathematical concepts, computer program codes, compilations of data or other material, literary works, musical works, artistic works, sound recordings, broadcasts, program carrying signals, published editions, photographic works, or cinematographic works of the copyright owner to do or to authorise the doing of certain acts specified in respect of the different categories of works;
- **Default** means any breach of the obligations of either Party [including but not limited to fundamental breach or breach of a fundamental term] or any Default, act, omission, negligence or statement of either Party, its employees, agents or Subcontractors in connection with or in relation to the subject of the Agreement and in respect of which such Party is liable to the other;
- **Deliverable(s)** means any and all works of authorship, products and materials developed, written, prepared, assembled, integrated, modified or provided by the Service Provider in relation to the Services;
- **Fee(s)** shall mean the agreed price as per the most recent MTL price list.

- **Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to the Agreement;
- **Intellectual Property** means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property;
- **Know-How** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information
- **Parties** mean the Parties to the Agreement together with their subsidiaries, divisions, business units, successors-in-title and their assigns;
- **Party** means either one of these Parties;
- **Permitted Purpose** means any activity or process to be undertaken or supervised by Personnel or employees of one Party
- **Personnel** means any partner, employee, agent, consultant, or supplier, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party, or a person dealing specifically with the company;
- **Purchase Order(s)** means a document communicated to Metallurgical Testing Labs stating the scope of work which is required (this includes email communication and any form of written instructions);
- **Service(s)** the scope of work that MTL supplies to the client
- **Service Level Agreement** or **SLA** means the processes, deliverables, key performance indicators and performance standards relating to the Services to be provided by the Service Provider;
- **Subcontracting** means the outsourcing of any scope of work by MTL to another company working on behalf of MTL
- **Tax Invoice** means the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time issued from MTLs accounts department;
- **VAT** means Value-Added Tax chargeable in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time; and

**General Conditions on sale:**

- **Tender:**
  - Quotations are subject to written confirmation by the seller after the confirmation of order
  - Quotations are valid for a period of 30days, after which they are subject to change.
- **Prices:**
  - All prices which are quoted are exclusive of V.A.T
  - Payment shall not be offset against or withheld on account due to any claims of the purchaser, unless the same are acknowledged by the Seller in writing
  - Should the Seller fail to pay for the service in full within the agreed time frame, the seller reserves the right to hold back any intellectual property of the purchaser until such a time as the account is settled
  - Accounts not paid within 30 days of receipt of statement shall bear interest at 2% above the prime overdraft rate.
- **Delivery:**
  - Dates of service delivery are approximate only and the purchaser shall not be entitled to cancel the contract of sale nor have any claim of whatsoever in nature against the Seller arising out of or flowing from delays in delivery, howsoever caused unless the contrary has been agreed upon in writing and authorized by the responsible person
  - Notwithstanding any such contrary agreement, the Seller shall be entitled to a reasonable extension of time to cover delays caused by fire, strike, tempest, Act of God, accident, malicious acts of a third party, civil or military authorities, insurrections or riots, railway embargoes, lock out, breakdown of machinery, delay in delivery of materials by any third party beyond the Seller's control

- Delivery shall be deemed to have been made when the certificates have been sent to the customer i.e. via email.
- **Performance and Guarantee:**
  - The Seller guarantees quality and accuracy in all work that is carried out. Any deviations to this will result in an amendment and correction at no additional cost to the customer provided that sufficient material is left over for the samples to be re-machined according to specification. Should there not be sufficient material, the purchaser must resupply the sample and the purchaser is liable for this cost
- **The above mentioned warrantee shall not be applicable if any one or more of the following events occur:**
  - If the purchaser fails to report the error to the seller in writing within 14 days of the specific delivery
  - If the purchaser fails to fulfill any of their obligations with respect to the contract of sale contract
  - If the purchaser fails to grant the Seller adequate time and opportunity to carry out all work which the seller may deem necessary
  - If the error is due to the purchaser not supplying the correct or all the necessary information
- **Cancellation:**
  - Notwithstanding anything herein before contained, should the Purchaser breach any of the terms and conditions of the contract (whether material or not) and fail to remedy such breach within 10 days of dispatch of written notice requiring him so to do, or should a Provisional Order of Sequestration or Liquidation or should Default Judgment be obtained against the Purchaser, the Seller shall have the right, notwithstanding any previous waiver, to claim payment of the full balance then owing by the Purchaser or to cancel the contract, retain all monies paid, take repossession of all goods delivered without prejudice to any claim for damages
  - When deposits are paid, cancellation 30 days (or one calendar month) prior to the commencement of the project, the client will be entitled to a refund of the deposit (provided that no work has been carried out). In the event that work has been carried out at the client's request, the client will be liable for the pro-rate amount.
  - When deposits are paid, cancellation 14 days (2 weeks) prior to the commencement of the project, the client will be entitled to a refund of the 50% deposit amount (provided that no work has been carried out). In the event that work has been carried out at the client's request, the client will be liable for the pro-rate amount.
  - When deposits are paid, cancellation 7 days (1 weeks) prior to the commencement of the project, the client will be not be entitled to a refund on the deposit.
- **Jurisdiction:**
  - If any dispute or difference of any kind whatsoever shall arise between the Seller and the Purchaser in connection with, or arising out of the enforcement or cancellation of the contract the Witwatersrand Local Division of the Supreme Court of South Africa shall have exclusive jurisdiction, provided that where the amount involved falls within the jurisdiction of the Magistrate's Court the parties shall have an election also to proceed in the Magistrate's Court Johannesburg. No other Court shall have jurisdiction to hear any claims or disputes.

- **Confidentiality**

- On receipt of the customers sample and order, Metallurgical Testing Labs agrees to keep confidential all information as defined above and shall take active measures to ensure that confidentiality is enforced at all stages. This enforceable confidentiality will extend to all parties contracting with or in business with MTL.