



General Terms & Conditions of Sale H&R Africa

Scope

Africa

- H&R South Africa (Pty) Ltd.
- H&R South Africa Sales (Pty) Ltd.

113 Trinidad Road, Island View,
Bluff Durban 4052, South Africa

Tel.: +27 31 46687-00

Fax: +27 31 46687-16/7

E-Mail: SaSales@hur.com

<http://www.hur.com>



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For the sake of simplicity and easier reading, only the masculine form has been used.



1. Applicability of the Standard Conditions

All and any business undertaken by H&R, including without limitation the supply of products, services and advice, is and shall be subject to the terms and conditions hereunder ("these conditions"), unless otherwise agreed in writing and signed by H&R. Any conditions or terms imposed by the Customer that are contrary to these conditions shall be null and void and of no force and effect.

2. Definitions

"Customer"	means any person or persons at whose request or on whose behalf or in respect of whom H&R undertakes any business.
"H&R"	means collectively, H&R South Africa Sales (Pty) Ltd., Registration Number 2004/003998/07 and H&R South Africa (Pty) Ltd., Registration Number 2004/004800/07.

3. Order

An order placed by the Customer shall only be binding on H&R if it is placed in writing and accepted in writing by a duly authorised representative of H&R.

4. Prices

- a) Subject to the other provisions of these conditions, the prices at which the products shall be sold will be at H&R's price ruling at the date on which the products are delivered to the Customer. The Customer agrees and acknowledges that the price of the products shall vary as fluctuations in imports, levies, surcharges and other charges imposed by Statute or Regulation or an increase or variation of any of the variables taken into account by H&R in determining its price, may occur from time to time.
- b) Unless otherwise stipulated, all prices are exclusive of VAT.
- c) If the Customer varies its order or if there are delays or changes which are not as a result of any act or omission of H&R, H&R shall be entitled to revise its prices by notice in writing.

5. Discounts

- a) The purchase price of the products is strictly net and not subject to any discounts unless otherwise agreed to in writing by H&R and signed by an authorized manager of H&R.
- b) If any discount is agreed to in writing it shall only be allowed if payment is received by H&R on or before the due date and shall only apply to the actual price of the products supplied.

6. Value Added Tax

The Customer shall be responsible for and undertakes to pay to H&R, at the same time as it is obliged to pay any sum in respect of products supplied or to be supplied and/or services rendered or to be rendered, any tax payable thereon by H&R in terms of the Value Add Tax Act 1991 or any replacement Act.

7. Payment

- a) Unless otherwise specifically agreed to by H&R in writing, all amounts shall be paid by the Customer to H&R, without deduction, demand or set-off, within 30 days of the date of H&R's statement of account.



- b) Any amount not paid on due date shall, at the discretion of H&R, bear interest from the due date until it is paid, at a rate not exceeding 2 percentage points above the published prime overdraft rate from time to time of H&R's principal bankers.
- c) If any amount owing by the Customer to H&R is not paid on the due date then all amounts owing by the Customer to H&R from any cause whatsoever shall become immediately due and payable.

8. Time not of the Essence

- a) The time stated for delivery of the products or the rendering of any service by H&R is approximate only and shall not be a material term to the contract between H&R and the Customer.
- b) Subject to 8.1, H&R will make reasonable efforts to deliver products and render services within the times stated in the contract and late delivery shall not render the contract invalid nor render H&R liable for any claim or damages.
- c) Delivery of the products is dependent on stock availability and shall be made, subject to 8.a) and 8.b), when stocks are available.

9. Delivery and Risk

- a) Unless otherwise agreed in writing, the Customer shall take delivery of the products at H&R's premises or at such other premises as H&R may specify. All risk of loss or damage in and to the products supplied by H&R to the Customer shall pass to the Customer when the Customer takes delivery of the products at such premises. All and any costs of delivery shall be factored into and comprise part of H&R's price, which shall be paid to H&R by the Customer in terms of clause 7.
- b) Where delivery is effected by H&R's transport, or by H&R's transport contractor:-
 - all risks in the products shall remain with H&R until and shall pass to the Customer on the transporting vehicle coming to a stop at the point where the products are to be unloaded;
 - the responsibility for unloading rests with the Customer;
 - H&R reserves the right to pass on to the Customer any additional charges or any other costs whatsoever, including insurance premiums, which may be incurred by H&R as a result of delayed or protracted unloading of the products by or on behalf of the Customer.
- c) Where a delivery is effected by H&R to the Customer through the medium of a transport carrier engaged by or on behalf of the Customer, then and in such event, all risks in and to the products in question shall pass to the Customer on delivery of the products by H&R to the carrier.
- d) Unless the Customer reports in writing an incomplete or short delivery to H&R within 5 days of the consignment in question having been delivered, the Customer shall be precluded from making any claim against H&R in connection with such short or incomplete delivery.
- e) Where the Customer requests that delivery be suspended or delayed to a date later than that originally requested, H&R shall be entitled to charge the Customer a reasonable fee for the storage of such products.
- f) H&R is entitled to withhold delivery of products if the Customer has not made payment of amounts due in respect of previous orders.

10. Ownership

- a) Ownership of all products delivered shall remain in H&R until H&R has received payment of the full purchase price notwithstanding that the products may have been purchased for resale.



- b) Prior to effecting payment in full, the Customer shall:
- keep the products fully insured, and if any of the products is lost, destroyed or damaged, shall hold the proceeds of insurance for and to the order of H&R; and
 - keep, so far as is practicable, the products separate and clearly identified as the property of H&R; and
 - if the Customer sells the products to a third party, sell the products as between the Customer and such third party as principal, but as between the Customer and H&R the Customer shall sell as the fiduciary agent of H&R. The Customer shall hold the proceeds of any such sale separate and for H&R's account pending payment, or shall, if H&R requires, authorize and direct such third party to pay H&R all sums due to the Customer in respect of the products sold and assign to H&R the debt owed by the third party to the Customer.
- c) The Customer acknowledges H&R's rights to enter upon the Customer's premises, without notice and repossess the products, if the Customer defaults with any payment and/or if the Customer is placed under provisional or final liquidation or sequestration, judicial management or if any other process is levied or enforced upon any of the assets of the Customer or if the Customer ceases or threatens to cease to carry on business or makes any arrangement or composition with its creditors or any equivalent or similar event, then the Customer shall bear the onus of proving that it has not defaulted with any payment and that payment has been made in full to H&R, and/or that it is not under liquidation, sequestration, judicial management or any of the other circumstances aforementioned.

11. Notification of Defects

- a) Within 5 days after receipt of the products the Customer shall be required to advise H&R of any defects, failing which the products shall be deemed to be complete in all respects and without defects.
- b) If H&R agrees that the products are defective H&R's liability shall be limited to replacing such products as against return to it of the defective products.

12. Return of Products

If H&R agrees to accept the return of any products for credit, the Customer shall be liable to pay H&R a handling charge of not less than 10% (ten percent) of the invoiced price of the products returned.

13. No Warranties

- a) H&R gives no warranties and makes no representations as to the suitability of the products for any specific use.
- b) All drawings, photographs, illustrations, specifications, dimensions, weights and the like contained in any literature supplied by H&R under or in connection with any contract of sale made between H&R and the Customer or otherwise communicated to the Customer are provided or made by H&R in the belief that they are accurate as reasonably possible, that they do not constitute a description of the products, nor shall they be taken as representations by H&R nor are they warranted to be true and accurate.

14. Limitation of Liability and Indemnity

- a) Neither H&R nor any of its directors, employees or agents shall be liable for any loss or damage, whether direct, indirect, consequential or otherwise, including any loss of profit, suffered by the Customer or the Customer's officers, employees or agents (if applicable), arising from any cause in connection with the products, whether such loss or damage results from any breach of contract, delict, negligence of any degree or any other cause without limitation.



- b) The Customer hereby agrees and undertakes to indemnify and keep H&R indemnified against all and any loss, injury, damage, fine, liability, tax or other physical charges, penalties and claims (including loss of profit) made by any person of any nature whatsoever and howsoever arising from or in connection with the products delivered and including but not limited to the transport, storage, use and/or sale thereof and including, in particular, any failure whatsoever on the part of the Customer to comply with its obligations set out in clauses 15.a) and 15.b). It is specifically recorded that the customer acknowledges that it shall be held liable for all and any injury to persons or damage to property or environment caused by or arising from the products.
- c) If a Customer sells or disposes of any products supplied to it by H&R to a third party or otherwise permits a third party to use such products, the Customer shall include in the Customer's agreement with the third party a provision in terms of which H&R is afforded a similar limitation of liability to that contemplated in 14.a).
- d) Notwithstanding any other provisions to the contrary, any claim which a Customer has against H&R in connection with or arising out of any business shall lapse and become extinguished unless within:
- 90 days of such claim arising, the Customer gives written notice thereof to H&R and at the same time discloses to H&R in writing the material facts on which the claim is based; and
 - 12 months of such claim arising, the Customer institutes legal proceedings against H&R in respect of the claim by issuing summons out of a court of competent jurisdiction and having such summons served on H&R.
- e) Subject to and without in any way limiting the provisions of clause 14.a), 14.b) and 14.c), H&R's liability to the Customer for any damages sustained by the Customer from any cause whatsoever, including any damages arising out of H&R's negligence or that of its agents, servants, employees or sub-contractors, shall in any event and under all circumstances be strictly limited to the replacement of the defective products, provided that in all circumstances H&R agrees that the products are defective, as set out in clause 11.2.

15. Health, Safety and Legal Compliance

- a) The Customer shall provide its customers and its employees, agents and contractors who may encounter the products with all information contained in the health and safety data sheets provided by H&R (data sheets), or any other information relating to health, safety and environmental data ("the other information") provided by H&R from time to time in connection with the products. The Customer shall be responsible for ensuring that the recommendations set out in the data sheets or the other information are followed by its employees, agents and contractors. The Customer shall impose on its customers these obligations and an obligation to include these obligations in any contract for the sale of the products.
- b) The Customer shall be responsible for ensuring that it and its customers comply with all and any obligations, requirements or recommendations relating to the products delivered hereunder, including but not limited to the storage and use thereof and/or any health and safety or environmental requirements imposed by any law, statute, regulation, directive or requirement in force in or applying to territories, states or other jurisdictions in which the Customer sells the products.
- c) Compliance by the Customer with the recommendations contained in the data sheets or other information shall not exclude the Customer from any other obligation or other recommendations it is required or advised to comply with in relation to the products supplied by H&R by virtue of any law, statute, regulation or directive or from any liability arising out of its failure to comply with such obligations or recommendations.



16. Force Majeure

- a) If any performance by H&R is prevented or delayed by strikes, lock-outs, shortened working hours, shortage of labour or materials, delays in transport, accidents of any kind, machine breakdowns, any default or delay by any sub-contractor or suppliers of the company, war, political or civil disturbances, the elements or any other cause whatever beyond the company's control, then H&R shall have the election either:
- to cancel the contract in question; or
 - subject to 16.b), to extend the time for performance until the cause preventing or delaying performance ceases to apply.
- b) If H&R elects to extend the time for performance in terms of 16.a).2, the Customer shall be entitled to cancel the contract, if H&R does not perform within a period of 90 days following the original date of performance, by giving written notice to that effect to H&R.

17. Cancellation

Notwithstanding the acceptance of the cancellation of a contract by H&R, H&R shall be entitled to recover all damages incurred by it arising from or in connection with such cancellation, including but not being limited to all costs, expenses and loss of profit arising out of or in connection with such cancellation.

18. Notices and Domicilia

- a) All notices to be given in terms of the contract shall be in writing and shall be delivered by hand or sent by prepaid registered post to H&R at 113 Trinidad Road, Island View, Bluff, KwaZulu-Natal, 4052 South Africa and to the Customer at any one of the physical business addresses set out in its credit application, quotation giving rise to the contract or the invoice in respect of the products, which physical addresses the parties select as their domicilium citandi et executandi.
- b) Each party shall be entitled at any time to change its domicilium to any other physical address provided that such change shall take effect only upon delivery or deemed delivery of notice thereof to the other party.

19. General

- a) No agent or employee of H&R, other than the general manager of H&R, has H&R's authority to alter or vary these conditions.
- b) The Customer may not rely on a representation which it claims persuaded it to enter the contract.
- c) No agreement varying, adding to, deleting from or cancelling any of the conditions, and no waiver of any of the conditions, shall be effective unless reduced to writing and, signed by the general manager of H&R.
- d) No indulgence granted by H&R shall constitute a waiver of any of H&R's rights.
- e) H&R refers any claim or dispute against the Customer to its attorneys, and whether or not H&R institutes or defends any legal or arbitration proceedings to enforce or protect its rights, H&R shall be entitled to recover from the Customer all legal costs (on an attorney and own client basis), tracing charges and collection commission incurred by H&R in that regard.
- f) In the event of H&R deciding to institute legal proceedings for the enforcement of any of its rights against the Customer, H&R shall be entitled to do so in the Magistrate's Court which would, but for the amount involved, have jurisdiction.



- g) A certificate signed by the general manager of H&R reflecting particulars of the amount owing by the Customer together with details of all deliveries made to the Customer and the invoices pertaining to such deliveries shall be prima facie proof thereof and of the Customer's indebtedness to H&R.
- h) The Customer may not cede any of its rights or delegate any of its obligations in terms of the contract unless a director of H&R gives prior written consent to the Customer to do so.
- i) Credit facilities allowed by H&R are in H&R's discretion and H&R is entitled, at any time, without notice to the Customer to, vary, curtail or terminate such facilities.
- j) Unless it conflicts with the context of these conditions, words signifying one gender will include the other genders, words signifying the singular will include the plural and vice versa, and words signifying natural persons will include artificial persons and vice versa.
- k) Headings of clauses are inserted for the purpose of convenience only and shall be ignored in the interpretation of these conditions.
- l) If any part of these conditions is or becomes unenforceable, it will be severable from the rest of these conditions which will continue to be binding.
- m) This agreement shall be interpreted and implemented in accordance with the law of the Republic of South Africa.