

**KNORR-BREMSE SOUTH AFRICA (PROPRIETARY) LIMITED**  
**STANDARD TERMS & CONDITIONS OF SALE**

**1 DEFINITIONS**

- 1.1 "Company" means Knorr-Bremse South Africa (Proprietary) Limited, or its successor.
- 1.2 "Customer" means the party who or which purchases the Products from the Company, and includes the Customer's representatives, successors and permitted assigns.
- 1.3 "CPA" means the Consumer Protection Act, 68 of 2008.
- 1.4 "Contract" means any contract or agreement arising out of the acceptance of any offer, whether that contract arises out of an offer made by the Company and accepted by the Customer, or an offer made by the Customer and accepted by the Company, and includes the terms and conditions of any agreement between the parties regarding installation, if applicable.
- 1.5 "Products" means the products of the Company which form the subject matter of the Contract, including but not limited to railway and automotive systems and parts.

**2 IMPORTANT NOTICES**

- 2.1 This document contains the terms and conditions on which the Company sells the Products to customers who are consumers for the purposes of the Consumer Protection Act, 68 of 2008 ("CPA"). Any customer of the Company who is not a consumer for the purposes of the CPA is not entitled to the benefits of these terms and conditions and any goods and/or services provided by the Company to such a person shall be provided on the basis of the Company's standard terms and conditions, copies of which are available from the Company upon request.
- 2.2 This agreement contains terms and conditions which appear in similar text style to this clause and which:
- 2.2.1 may limit the risk or liability of the Company or a third party; and/or
- 2.2.2 may create risk or liability for the Customer; and/or
- 2.2.3 may compel the Customer to indemnify the Company or a third party; and/or
- 2.2.4 serves as an acknowledgement, by the Customer, of a fact.
- 2.3 The Customer's attention is drawn to these terms and conditions because they are important and should be carefully noted.
- 2.4 Nothing in this agreement is intended to or must be understood to unlawfully restrict, limit or avoid any rights or obligations, as the case may be, created for either of the Customer or the Company in terms of the CPA.

**3 GENERAL**

These standard terms and conditions form the entire agreement between the parties regarding the subject matter hereof, save insofar as any incidental documentation (such as credit application forms, quotations) may be required for reference purposes to establish variables (such as prices and quantities) which are specific to a contract and are not recorded herein. No other terms or conditions, whether express, tacit or implied shall apply to a contract irrespective of the circumstances under which the contract arose. No alteration or variation of these terms and conditions shall be of any force or effect unless and until recorded in writing and signed by the Company and the Customer. All provisions and the various clauses of this contract are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this contract which becomes unenforceable in any jurisdiction, whether due to voidness, invalidity illegality, unlawfulness or for any other reason whatsoever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as not forming part of the contract and the remaining provisions and clauses of this contract shall remain of full force and effect.

**4 QUOTATIONS**

- 4.1 Quotations submitted by the Company will, unless otherwise stated therein, be capable of acceptance so as to bring into existence a contract, within a period of 30 (thirty) days from the date of the relevant quotation, whereafter it will be subject to withdrawal and/or alteration by the Company.
- 4.2 The Company's distributed publications are maintained as sources of general information and are not binding in any way.
- 4.3 All prices quoted exclude Value Added Tax, charges for installation of the Products, surcharge and delivery, unless otherwise stated therein.
- 4.4 Notwithstanding clause 4.1 above and clause 6.1 below, quoted prices in respect of Products may be increased by the Company at any time, prior to delivery, in the event of -
- 4.4.1 a change in the Customer's order, in respect of either the Products or their designs;
- 4.4.2 where the Products are either imported or manufactured from imported material, in the event of an escalation in any importation costs, including without limiting the generality of the foregoing, the foreign exchange rate, raw materials and costs of carriage;
- 4.4.3 where the Products are manufactured locally, in the event of any increase in accordance with standard and relevant SEIFSA formulae and indices applicable from time to time.
- 4.5 Where quoted prices specifically include installation charges, such charges may be increased at any time prior to commencement of installation, due to an increase in labour charges, transportation, equipment or insurance costs or due to a revision or variation by the Customer of the installation project.

- 4.6 An increase in quoted prices will be communicated to the Customer within a reasonable period of time from the time that the Company becomes aware of the increase.

**5 ORDERS**

All orders received will be processed in accordance with normal business practice, in terms of which acceptance by the Company of any order will be subject to authorisation by the Company's financial manager.

**6 ACCEPTANCE OF CONTRACT**

- 6.1 A contract shall come into existence when the Customer provides the Company with written notice of its acceptance of any quotation given by the Company, within 30 (thirty) days thereof, or when the Company accepts in writing any order for the Products placed by a Customer.
- 6.2 The Customer's order or acceptance of a quote is binding on the customer and in the event that the Customer cancels the order or accepted quote, the Company may charge the Customer a reasonable cancellation fee
- 6.3 Notwithstanding what is contained in clause 6.2, the Customer may not cancel an order or accepted quote where that quote relates to products that the Company has been expressly or implicitly required or expected to procure, create or alter specifically to satisfy the Customer's requirements.
- 6.4 The Customer acknowledges that it is aware that the Company's salespersons have no authority to vary these terms or conditions of sale and the Company assumes no liability and shall not be bound by any statements, warranties or representations made by such sales persons save as expressly stated in writing and signed by a manager or director of the Company, duly authorised.
- 6.5 The Customer may only cancel a contract if agreed thereto by the Company in writing and upon payment of reasonable charges based upon expenses already incurred and commitments made by the Company.

**7 PURCHASE PRICE & PAYMENT**

- 7.1 The purchase price of the Products shall be paid to the Company in full and without set-off upon presentation of the Company's tax invoice relating thereto. Where the Customer is identified, by the Company, on the tax invoice as a trade debtor with an active account with the Company, the Customer shall be obliged to pay for all purchases of the Products within 30 (thirty) days of the date of the tax invoice relating thereto, unless otherwise agreed by the Company in writing. The Company may in its sole and absolute discretion offer a settlement discount to any Customer which effects payment to the Company within the aforementioned 30 (thirty) day period.
- 7.2 Should the Customer fail to make any payment on due date then all amounts owing by the Customer to the Company from whatsoever cause, whether or not the date for payment has arrived, will immediately become due and payable by the Customer and the Customer shall immediately forfeit all discounts of whatsoever nature which may have been expressly granted to it by the Company.
- 7.3 Unless otherwise agreed in writing, any amount not paid on due date shall bear interest at the maximum permissible rate of interest applicable in law, from due date until date of payment, both days included.
- 7.4 In the event that a Customer is a foreign person and a fluctuation of more than 5% (five percent) occurs in the rate of exchange between the South African Rand and the currency applicable to the foreign Customer in any period of 30 (thirty) days, the Company shall have the right but not the obligation to increase the purchase price of the Products proportional to any such fluctuation, upon 7 (seven) days' written notice to the Customer.
- 7.5 The Customer hereby consents to the Company -
- 7.5.1 obtaining and utilising credit bureau records and information as the Company requires for credit, risk and affordability assessments as well as tracing purposes and any other purposes contemplated in terms of applicable law; and
- 7.5.2 reporting or releasing any such information to a third party to the extent permitted or required by applicable law.

**8 DELIVERY**

- 8.1 Unless otherwise quoted or agreed in writing, delivery of the Products shall be Ex Works.
- 8.2 The Customer acknowledges that delivery dates given in advance are estimated and will be made subject to prior orders on file with the Company. The Company will use its best endeavours to ensure that delivery is completed as soon as is reasonably possible after the estimated delivery date. Notwithstanding the foregoing, the Company shall not be liable for failure to perform or delay in performance hereunder resulting from any cause beyond the Company's control, fire, labour difficulties, transportation difficulties, interruptions in power supply (including but not limited to what may be termed "load shedding" or "black-outs") and delays in usual sources of supply, major changes in economic conditions, breakdown of machinery or any cause beyond the Company's control, or whether caused by negligence or otherwise. The provisions of clause 12.1 below shall apply hereto as if specifically amended.
- 8.3 Subject to a quote or written agreement between the parties providing to the contrary, risk in and to the Products shall pass to the Customer upon delivery, regardless of whether or not the Company has agreed to effect installation of the Products.

Initial	
---------	--

- 8.4 The Customer shall immediately upon receipt of the Products from the Company be allowed to inspect the Products and the Customer must inform the Company of any errors by way of written notice, to be received by the Company within 10 (ten) days of receipt of the Products by the Customer. Should the Customer fail to notify the Company of any claim the Customer may have in terms hereof within the specified 10 (ten) day period such failure shall constitute a complete waiver of any such claim.
- 8.5 Any of the Products delivered to the Customer in error will only be considered for return by the Company provided that such Products are undamaged, have not been tampered with in any way and are not defaced in any way.
- 8.6 If the Customer, due to some fault of its own, cannot accept or should it request the Customer in writing to suspend or delay delivery of the Products, the Company reserves the right to claim any additional costs involved from the Customer.
- 9 **INSTALLATION**
- The Company is under no obligation to effect installation of the Products at the premises of the Customer. However, if the Company agrees in writing, to effect installation of the Products, the following terms and conditions shall apply, unless otherwise agreed in writing:
- 9.1 the Company may use any contractor or sub-contractor of its choice to effect installation;
- 9.2 any deposit in respect of the installation, which may be requested by the Company will, in addition to any other rights which the Company may have in law, be forfeited by the Customer as liquidated damages in the event of a breach by the Customer of any of the terms of the contract;
- 9.3 any drawings, designs, sketches, photographs and/or other descriptive material shall be deemed to be descriptive only and shall not form part of the contract as to detail;
- 9.4 to the extent applicable, the Company shall not commence installation unless the area to which the Products will be attached has been prepared according to the specifications of the Company. The Company shall not be responsible for any delays or additional costs arising out of the failure of the Customer to procure that the relevant area complies with the specifications of the Company. Any additional costs of alterations, delays and/or penalties relating to inadequate area preparation shall be the sole responsibility of the Customer;
- 9.5 the Customer shall, free of charge, provide such on-site assistance to the contractors or sub-contractors appointed by the Company as may reasonably be required for the performance and execution of the installation, including, but not limited to, the provision of water, power, lighting, toilet facilities and protective cover from adverse weather conditions such as rain and hail;
- 9.6 the Company will use its best endeavours to ensure that installation is completed as soon as is reasonably possible after the date on which installation commences, but time for the completion of installation shall only be of the essence if a completion date is agreed in writing with the Company. Notwithstanding this, no responsibility will be accepted by the Company for delays due to forces beyond its reasonable control; and
- 9.7 the Customer indemnifies and holds harmless the Company against any and all liability which may arise in the event of death or injury to, or pecuniary loss suffered by, any contractor, sub-contractor or employee of the Company in the course and scope of his/her employment in connection with the installation, as a result of the negligence or wilful misconduct of the Customer, its officers, employees or agents.
- 10 **OWNERSHIP**
- Notwithstanding prior delivery and the passing of risk, ownership of and title to the Products shall remain vested in the Company until the purchase price, and any other amounts owing to the Company in respect of the Products or the installation thereof (if applicable), have been paid in full and without set-off, on which date ownership of the Products will be deemed to be transferred to the Customer. Until the date of transfer of ownership, the Customer will not do or omit to do anything which may adversely affect the Company's proprietary rights in and to the Products. Without limiting the generality of the foregoing, the Customer shall notify its Landlord (if applicable) that the Products are owned by the Company. In addition, the Customer agrees that until the date of transfer of ownership, regardless of whether or not such Products have been installed, that the Products shall at all times remain separately identifiable regardless of whether the Products have been installed or not.
- 11 **WARRANTIES**
- 11.1 The Company gives only the following warranties in respect of the Products -
- 11.1.1 it has title to the Products and has the unencumbered right to sell and install the Products; and
- 11.1.2 unless otherwise agreed in writing, the Company will at its sole discretion and at its expense replace or repair any Products manufactured and installed by the Company, on a carry in basis only, within a reasonable time, if the Customer notifies the Company in writing of any defects in respect of the Products within 12 (twelve) months from the date of installation and such Products are determined by the Company on a good faith inspection thereof, to be defective in respect of materials and/or workmanship. The Company will not be liable to compensate the Customer for any damages sustained by the Customer whilst the Products are being repaired, nor shall it be liable for any other damages, including consequential damages, relating to the replacement or repair of the Products.
- 11.1.3 In addition and concurrent to the warranty given in 11.1.2 above, the Products are supplied with a six month warranty of quality against defects, within the meaning of the CPA.
- 11.2 Notwithstanding the provisions of clause 11.1 above:

- 11.2.1 Unless the Customer has specifically informed the Company of the intended use of the Product, the Company does not warrant that the Products purchased by the Customer will be fit for the purpose that the Customer intends using the Products for;
- 11.2.2 if any defect in the products, or the components of the Products, relates to alterations contrary to the instructions or after leaving the control of the Company, the Company will not be liable for those defects, including in respect of any possible liability in terms of the implied warranty of quality contained in the CPA ;
- 11.2.3 any warranty provided by the Company will cease to apply if any material information provided by the Customer, specifically insofar as the intended use of the Product is concerned, is incomplete or incorrect or if there is any material change in operating conditions or any misuse, abuse or material neglect of the Products by the Customer.
- 12 **LIMITATIONS**
- 12.1 In addition to any other specific exclusions of liability contained herein and unless otherwise expressly stated herein, the parties agree that the Customer shall have no claim against the Company for any loss or damage, of any nature, occasioned by any defect in any goods supplied, or any failure to provide adequate instructions in respect of any hazards that might arise from the use or incorrect use of the goods save to the extent that such loss or damage is contemplated in section 61 of the CPA, and provided that nothing in these terms and conditions must be construed as in any way limiting the rights of the Company to raise such defences as may be available to it at common law or in terms of any statute.
- 12.2 Notwithstanding the provisions set out in clauses 11.2.1 and 12.1 above, in the event that the Company provides advice regarding the application of the Products at the request of the Customer, the liability of the Company in respect of the non-suitability of the Products for the purpose for which they are used will be limited to the selling price of those Products.
- 13 **DEFAULT**
- 13.1 Should the Customer fail to make payment upon due date of any amount due and owing, or commit any other breach of the terms of a contract, the Company shall be entitled, at its option without notice and without prejudice to any other right which it may have, including the right to claim damages arising out of the breach or the termination of the contract, to cancel such contract forthwith, and/or to declare all amounts owing by the Customer to be immediately due and payable; and/or to suspend the carrying out of any of its then uncompleted obligations until payment is made; and/or to terminate any credit facilities granted to the Customer.
- 13.2 No relaxation which the Company may have permitted on any occasion in regard to the carrying out of the Customer's obligations shall prejudice or be regarded as a waiver of the Company's rights to enforce those obligations on any subsequent occasion.
- 14 **ASSIGNMENT**
- The Customer may not actually or purportedly cede, assign or otherwise alienate any rights or obligations which it may have in terms hereof or in terms of any contract with the Company, without the Company's written consent, which consent will not be unreasonably withheld.
- 15 **NOTICES AND DOMICILIUM**
- 15.1 The parties hereto select as respective addresses for service of any documents the addresses set out in any order contemplated in terms hereof.
- 15.2 Any written notices in respect of this contract shall be sent by telefax or delivered by hand and shall be deemed to have been received on the day of transmission or delivery, whichever is applicable.
- 16 **GOVERNING LAW & JURISDICTION**
- 16.1 This agreement and any contract shall be subject to the laws of the Republic of South Africa.
- 16.2 In terms of Section 45 of the Magistrates Court Act of 1944, as amended, the Customer hereby consents to the jurisdiction of the Magistrates Court having jurisdiction in terms of Section 28 of the said Act in respect of any action to be instituted against the Customer by the Company in terms of the contract. It shall nevertheless be entirely within the discretion of the Company as to whether to proceed against the Customer in such Magistrates Court or any other court having jurisdiction.
- 16.3 In the event of the Customer committing any breach of the contract or in the event of the Company being required to take any legal action, the Customer agrees and undertakes to pay the Company's legal costs as between attorney and own client including collection commission, tracing fees, valuation charges, transport costs and other expenses in connection therewith.
- 17 **SURETYSHIP**
- In the event that the Customer is a juristic person, the signatory to this contract hereby unconditionally and irrevocably binds himself/herself to the Company as surety for and co-principal debtor of the Customer in respect of any and all of the Customer's duties and obligations under this contract, and renounces the benefit of the legal exceptions of excussion and division, non-indebtedness, error in calculation and revision of accounts, the force and effect of which he/she acknowledges himself/herself to be fully acquainted with.
- 18 **CESSION OF BOOK DEBTS**
- 18.1 The Customer hereby cedes, assigns, transfers and makes over to the Company, as security for any debt which may arise under this contract, for the duration of this contract all of the Customer's present and future rights to and interests in, all claims that the Customer may have against all natural persons, trusts, partnerships, associations, syndicates and any juristic person whomsoever and whatsoever, which owe any amount of any nature whatsoever and howsoever arising to the Customer ("Rights and Interests"), as

Initial	
---------	--

continuing covering security for the due, proper and timeous performance in full by the Customer of all of its duties and obligations under this contract, which cession, assignment and transfer the Company hereby accepts.

18.2 Notwithstanding that the Rights and Interests are ceded as security for any debt which may arise under this contract to the Company, whilst this contract remains in force and provided that the Customer is not in breach of this contract, the Customer shall, subject to the remaining provisions of this clause 18, be entitled to proceed against its debtors for the recovery of all of its claims, including the right to institute proceedings and collect any monies payable, in respect of such claims shall remain with the Customer.

18.3 In the event that the Customer breaches any of its obligations in as contemplated in clause 13 (and in addition thereto), the Customer hereby nominates, constitutes and appoints irrevocably and concerning its affairs, any representative of the Company, whose appointment it shall not be necessary to prove, to be its true and lawful attorney and agent with the power for substitution for it and on its behalf to do or cause to be done whatsoever shall be requisite as fully and effectually to all intents and purposes as the Customer may or could do if personally present, and acting herein, hereby ratifying, allowing and confirming and promising and agreeing to ratify, allow and confirm all and whatsoever its said attorney and agent or its substitute and substitutes shall lawfully do or cause to be done, by these presents.

18.4 Any amount realised by the Company in excess of the amount owing by the Customer shall be repayable to the Customer within a reasonable time after the complete, unconditional and irrevocable payment and performance in full of the duties and obligations under this contract by the Customer.

19 SIGNATURE

Each signatory hereto hereby warrants that he/she has due authority to sign this contract on behalf of the Company and/or the Customer, as the case may be.

Signed in acceptance: \_\_\_\_\_

Full names: \_\_\_\_\_

**For and on behalf of:** \_\_\_\_\_  
**(Customer)**

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Full names: \_\_\_\_\_

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Full names: \_\_\_\_\_

For and on behalf of: **Knorr-Bremse SA (Pty) Ltd**

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Full names: \_\_\_\_\_

Date: \_\_\_\_\_