

ANNEXURE B
[WARRANTY AND STANDARD TERMS AND CONDITIONS]
EFFECTIVE 01/09/2002

AMALGAMATED PUMPING SUPPLIES SA (PTY) LTD
TERMS AND CONDITIONS OF SALE

1. **WARRANTY**

Amalgamated Pumping Supplies SA (Pty) Ltd (“Amalgamated Pumping Supplies”) warrants that the products supplied by it in terms of this agreement are free from defects in material and workmanship for a period of 12 months calculated from (and including) the date of delivery (fair wear and tear excepted): provided that:

 - 1.1. Amalgamated Pumping Supplies liability in terms of this warranty will be no greater than the warranty or guarantee supplied to Amalgamated Pumping Supplies by its suppliers and or manufacturers.
 - 1.2. The warranty only applies if the products concerned are used in accordance with Amalgamated Pumping Supplies specifications.
 - 1.3. The warranty only applies if the duty of the product supplied is or was utilised in accordance with the specifications given to Amalgamated Pumping Supplies to quote / tender on.
 - 1.4. The warranty does not apply in the event that the products have been damaged by accident or otherwise (other than as a result of defects in material or workmanship) or have been misused or have been altered in any way whatsoever.
 - 1.5. The warranty does not apply in the event that the products have been given to any party other than Amalgamated Pumping Supplies to inspect, make drawings of, strip or dismantle, alter or work on in any way.
 - 1.6. The warranty only applies if the purchaser adheres strictly to the terms of payment.
 - 1.7. The warranty does not apply if parts or components were free issued to us.
 - 1.8. Every effort is made to ensure that necessary parts are required to conduct repairs. However should any parts replacement or repair be required these are for the customers account and would be excluded from any repair warranty claims.

2. **CLAIMS**
 - 2.1 The purchaser is required to submit to Amalgamated Pumping Supplies any claim against Amalgamated Pumping Supplies in terms of this agreement (including claims arising from the warranty referred to in 1 hereof):
 - 2.1.1 in writing;
 - 2.1.2 accompanied by the defective product (or part thereof); and
 - 2.1.3 to Amalgamated Pumping Supplies head office; within 30 days (or such longer period of time as Amalgamated Pumping Supplies may agree to in writing) of the occurrence giving rise to the claim, failing which, it will be deemed that the purchaser has waived any such claim.
 - 2.2 The purchaser undertakes to furnish Amalgamated Pumping Supplies in writing with all information, documentation and details relating to the claim and/or the occurrence giving rise to the claim on demand made therefore by Amalgamated Pumping Supplies.
 - 2.3 The provisions of this clause 2 are subject to 5.2 hereof.
 - 2.4 Claims shall be waived should any products have been given to any party other than Amalgamated Pumping Supplies to inspect, make drawings of, strip or dismantle, alter or work on in any way.

3. **DOCUMENTATION**
 - 3.1 All illustrations, descriptive matter, drawings, dimensions, quantities, weights and specifications relating to the products (or any part thereof) and which are supplied to the purchaser by Amalgamated Pumping Supplies are approximate and do not form part of this agreement. For the sake of clarity it is recorded that the warranty referred to in 1 hereof does not apply in respect of any such documentation.
 - 3.2 Amalgamated Pumping Supplies does not warrant or represent that the products will be suitable for the purpose for which they are intended to be used or that same will fulfill the purchaser’s needs; the purchaser is obliged to ensure the needs are satisfied in this regard.

4. **PATENTS**
 - 4.1 Subject to 4.2, 4.3 and 4.4 hereof, Amalgamated Pumping Supplies indemnifies the purchaser against any claim of infringement of Letters of Patent or Registered Design (published at the date of this agreement) by the use or sale of the product (or any part thereof) supplied by Amalgamated Pumping Supplies in terms hereof; such indemnification includes all legal costs awarded against the purchaser in any legal proceedings instituted in respect of such claim.
 - 4.2 The purchaser undertakes:
 - 4.2.1 to advise Amalgamated Pumping Supplies in writing immediately when any claim (or any possible or threatened claim) in respect of which the indemnification referred to in 4.1 hereof applies but in any event, not later than 2 (two) days after receipt by the purchaser for any claim (whether by way of letter of demand, summons or otherwise); and
 - 4.2.2 together with such written advice, to furnish Amalgamated Pumping Supplies with a true and complete copy of any letter of demand, summons or application or any documentation relating to such claim, failing which, the indemnification referred to in 4.1 hereof will not apply, provided that if any relief is claimed on an urgent basis, the purchaser, immediately on receipt of any documentation relating to such urgent relief, will advise Amalgamated Pumping Supplies thereof in writing and will provide Amalgamated Pumping Supplies with a true and complete copy of such documentation, failing which, the indemnification referred to in 4.1 will also not apply.

- 4.3 All such claims will be resisted and/or settled by Amalgamated Pumping Supplies (at its cost) on the purchaser's behalf. Should failure occur to permit Amalgamated Pumping Supplies to conduct any proceedings (including, but not limited to, arbitration proceedings and settlement negotiation referred to in 4.1 hereof will not apply.
- 4.4 The indemnity referred to in 4.1 hereof does not apply in respect of:
- 4.4.1 Any infringement arising from or which is due to Amalgamated Pumping Supplies having followed a design or instruction furnished by the purchaser as envisaged in 3.1 hereof or otherwise.
- 4.4.2 The use of the products supplied in a manner, or for a purpose, or in a country not specified by the Purchaser or disclosed to Amalgamated Pumping Supplies at the date of this agreement.
- 4.5 4.5.1 The purchaser warrants in favour of Amalgamated Pumping Supplies that any design and/or instruction furnished by the purchaser to Amalgamated Pumping Supplies does not and, consequently, will not, cause Amalgamated Pumping Supplies to infringe any Letters of Patent, Registered Design or Trade Mark in the execution of your order.
- 4.5.2 The purchaser indemnifies Amalgamated Pumping Supplies against all claims of any nature arising from any such infringement and will (on demand) re-imburse the capital amount of such claim together with all costs (including legal costs calculated on an attorney-and-own-client scale) incurred by Amalgamated Pumping Supplies in resisting and/or settling any such claim made against it; all such claims will be resisted and/or settled by Amalgamated Pumping Supplies and the purchaser will grant Amalgamated Pumping Supplies all reasonable assistance which Amalgamated Pumping Supplies may require in so resisting and/or settling any such claim.
5. TERMS OF PAYMENT
- 5.1 All amounts payable by the purchaser to Amalgamated Pumping Supplies in terms of this agreement will be paid within 30 days of the date of invoice (unless otherwise agreed to in writing by Amalgamated Pumping Supplies). All such payments will be made in the currency of the Republic of South Africa, free of any deduction, set-off or bank charges at the address indicated on the invoice (or such other place in the Republic of South Africa designated in writing by Amalgamated Pumping Supplies).
- 5.2 Any liability of Amalgamated Pumping Supplies in terms of this agreement is subject to the purchaser's due compliance with the terms of payment.
- 5.3 Without prejudice to any rights and remedies of Amalgamated Pumping Supplies and notwithstanding any legal rule to the contrary, payments made by post will only have been validly made when the payment is received by Amalgamated Pumping Supplies and if made by any instrument, other than cash, when such instrument has been honoured. The purchaser also bears the risk of such payment not being delivered by post timeously or at all, whether as a result of loss, theft, delay or any other reason.
- 5.4 All amounts payable to Amalgamated Pumping Supplies in terms of this agreement which are not paid on the due date for payment will (without prejudice to any other rights and remedies of Amalgamated Pumping Supplies) bear interest at a rate per annum equal to the prime overdraft rate per annum charged from time to time by Standard Bank Ltd of South Africa (and, failing such bank, any other commercial bank/s registered in the Republic of South Africa and nominated by Amalgamated Pumping Supplies from time to time) plus 2% such interest will be compounded monthly in arrears (and, if the date of payment is not the last day of a month, then compounded finally on the date of payment) and will be calculated from the due date for payment until the date of payment (both dates included).
6. PRICE VARIATIONS
- 6.1
- 6.1.1 Amalgamated Pumping Supplies will be entitled to, on demand, recover from the purchaser any extra cost which arises from insufficient and/or incorrect instructions received from the purchaser or (but subject to 14.7 hereof) arising from any amendments. For the purposes hereof "extra cost" will mean any amount which Amalgamated Pumping Supplies becomes liable to pay whether in respect of wages, materials or otherwise in respect of the work which Amalgamated Pumping Supplies would not have been liable to pay but for the purchaser's action or default.
- 6.1.2 In the event of a dispute on the amount of such extra cost, the decision of The President of the South African Institute of Mechanical Engineers will be final and binding.
- 6.2 If the product (or any part hereof) supplied in terms hereof has to be imported, the price is based on the rates of exchange, freight, insurance premiums, lighterage, landing charges, port duties, customs duties and railage as at the date of this agreement or as specified by Amalgamated Pumping Supplies in writing; provided that any variance in such rates or charges between the aforesaid date and the date upon which any of the charges are incurred, will result in the price being adjusted by the amount of the increase or decrease in such charges.
- 6.3 Any variation in the cost of labour and materials between the date of this agreement and the date of delivery, will be added to or deducted from the price (as the case may be). The amount of such increase or decrease will be determined in accordance with the SEIFSA Contract Price Adjustment Clause and Formula For Contracts For Manufacture and Erection of Pumps and/or any recognised formula pertaining to the country of origin.
- 6.4 The price is based on the current rates of exchange as at the date of this agreement. Any difference between the rates of exchange on which the price was based and the rates at which any payment is remitted will be for the purchaser's account and will be payable on demand.
7. DELIVERY
- 7.1 The time of delivery is dependent upon full details, information, plans and all other documents required to carry out the work being supplied by the purchaser to Amalgamated Pumping Supplies at the date of this agreement, enabling work to commence and proceed without delay or interruption. Any delay in supplying same will result in an automatic extension of the time for delivery equal to the period of such delay and at Amalgamated Pumping Supplies election, to revision of the price.
- 7.2 Amalgamated Pumping Supplies will not be liable in any way whatsoever if completion or delivery is rendered impossible or delayed by reason of acts of God or viz major or by reason of inclement weather or by reason of fire, war, civil commotion, local combination of workmen, strikes, lock-outs, non-availability of labour and/or materials or as a result of anything beyond the control of Amalgamated Pumping Supplies or as a result of anything which Amalgamated Pumping Supplies could not have foreseen at the date of this agreement or by reason of any breach,

- termination or cancellation of any agreement concluded by Amalgamated Pumping Supplies with any person relating to the products or part thereof (but other than a breach by Amalgamated Pumping Supplies or other such termination or cancellation arising from a breach by Amalgamated Pumping Supplies).
- 7.3 Orders for goods stated to be for delivery from stock are subject to Amalgamated Pumping Supplies not having sold or having committed itself to any other party in respect of such stock and/or to such stock being available at the date of this agreement.
- 7.4 Delivery will be effected by Amalgamated Pumping Supplies delivering the products to the railway station siding, airport or seaport determined by Amalgamated Pumping Supplies or such other point stated in our quotation. All risk in and to the product passes to the purchaser on delivery and, notwithstanding any pre-payment of transport charges or anything to the contrary contained herein, Amalgamated Pumping Supplies liability ceases on delivery to such point or on the collection of the product by the purchaser or the purchasers transport agent.
- 7.5
- 7.5.1 Should the purchaser fail to give Amalgamated Pumping Supplies forwarding instructions within seven days after notification by Amalgamated Pumping Supplies that the goods are ready for dispatch or should the purchaser fail to take delivery after having given Amalgamated Pumping Supplies forwarding instructions. Amalgamated Pumping Supplies will be entitled to arrange for storage either at Amalgamated Pumping Supplies premises or elsewhere, same will be done entirely at the purchaser's risk. Amalgamated Pumping Supplies accepting no liability whatsoever in this regard. All storage and other charges incurred by Amalgamated Pumping Supplies will be payable by the purchaser on demand.
- 7.5.2 Should the purchaser fail to take delivery within a reasonable period of time of receipt of written notice from Amalgamated Pumping Supplies requiring the purchaser to do so. Amalgamated Pumping Supplies will be entitled to terminate this agreement by written notice to that effect and to recover all damages suffered.
- 7.6 Subject to the provisions of this clause 7, Amalgamated Pumping Supplies will only be liable for late delivery if Amalgamated Pumping Supplies has, in writing, agreed to the payment of a penalty or liquidated damages for such late delivery, provided that Amalgamated Pumping Supplies liability will be limited to the amount so agreed or to the amount actually payable by the purchaser as a penalty (whichever is the lesser).
- 7.7 Amalgamated Pumping Supplies reserves the right to invoice and deliver any item of equipment that is being delayed by free issue items.
- 7.8 The delivery period will commence from Amalgamated Pumping Supplies receipt of an official written order.
8. OWNERSHIP
- 8.1 Notwithstanding delivery of the goods, it is specifically agreed that it is the intention of the parties that the products supplied in terms hereof will not accede to any other property (whether movable or immovable) and that as far as any other goods or equipment are concerned, the products, for the purposes of accession, will be deemed to be the principal items.
- 8.2 Ownership of the products (and all items forming part thereof) will at all times remain vested in Amalgamated Pumping Supplies and will not pass until the price has been paid in full.
9. LIABILITY
- 9.1 Notwithstanding anything to the contrary contained in this agreement, Amalgamated Pumping Supplies liability howsoever arising in terms of this agreement or in delict or by operation of statute will not extend beyond the obligations specifically assumed by Amalgamated Pumping Supplies in terms of this agreement.
- 9.2 Amalgamated Pumping Supplies:
- 9.2.1 gives no warranties (express or implied) and makes no representations in respect of workmanship, materials, fitness for purpose, merchantability or products liability other than as contained in this agreement;
- 9.2.2 in respect of bought out or proprietary items not of Amalgamated Pumping Supplies own manufacture, gives no greater warranty and accepts no greater liability than that given or accepted by Amalgamated Pumping Supplies and enforceable against the supplier and/or manufacturer thereof;
- 9.2.3 gives no warranties in respect of goods used other than in accordance with Amalgamated Pumping Supplies specifications or for defects arising through fair wear and tear or neglect;
- 9.2.4 will in no event be liable for any loss of profits, loss of use, loss of production, loss of contracts, loss of custom or goodwill or for any special, indirect or consequential damages howsoever arising.
10. SECURITY
- Amalgamated Pumping Supplies, by written notice to that effect given to the purchaser, will be entitled to require that the purchaser furnishes security to it for the due and proper performance of all or any of the purchaser's obligations in terms of this agreement any such security required will be in a form and on terms as required by Amalgamated Pumping Supplies.
11. APPLICABLE LAW
- This agreement will be governed by the laws of the Republic of South Africa.
12. ARBITRATION
- 12.1 Unless otherwise agreed by the parties in writing or unless Amalgamated Pumping Supplies elects in writing that same will be determined by litigation:
All disputes or differences which arise between the parties concerning any matter regulated by this agreement (including the validity or the cancellation of this agreement), will be finally resolved by an arbitrator/s in accordance with the Rules of the Arbitration Foundation of Southern Africa which are applicable from time to time; the arbitrator/s will be nominated by such Foundation.
- 12.2 Failing such Foundation or such Rules, such disputes or differences will be resolved in terms of the Arbitration Act No. 42 of 1965 (as amended) or any legislation in substitution thereof subject to Amalgamated Pumping Supplies approval.
- 12.3 In the event that any disputes or difference is to be resolved by litigation, then the party instituting such legal proceedings may, at its election institute such proceedings in any Magistrate's Court which would otherwise have jurisdiction in respect thereof, notwithstanding that the amount claimed exceeds the jurisdiction of such Court and the parties hereby consent to such Magistrate's Court having jurisdiction in respect thereof. If such party however elects to institute such proceedings in

any High Court having jurisdiction in respect of such matter, then the other party will not be entitled to be awarded on the scale in the Magistrate's Court by virtue of the provisions of this clause.

13. COSTS

The purchaser will be liable for all costs (including legal costs calculated on an attorney-and-own-client scale and collection commission) incurred by Amalgamated Pumping Supplies in enforcing its rights under this agreement, whether or not legal proceedings are instituted.

14. GENERAL

- 14.1 In this agreement the words "the date of this agreement" will mean the date of receipt by Amalgamated Pumping Supplies of your written order.
- 14.2 This agreement relates only to the products (including accessories and material forming part thereof) supplied by Amalgamated Pumping Supplies in terms hereof.
- 14.3 In the event of any conflict between the English and Afrikaans text of these terms and conditions, the English text will prevail.
- 14.4 Should any one or more of the terms contained in this agreement be invalid, the other terms will remain in force.
- 14.5 This document constitutes the whole agreement between the parties in regard to the matters regulated by this agreement.
- 14.6 Amalgamated Pumping Supplies will not be bound by any representations nor by any warranties not expressly recorded in this agreement.
- 14.7 No amendments or consequential cancellation of this agreement will be of any force or effect unless in writing and signed by or on behalf of the parties.
- 14.8 Neither party may cede any of its rights in terms of this agreement to any other person without the prior written consent of the other party.
- 14.9 Goods/Products are supplied on the understanding that the Owners/Directors/Shareholders/Members/Partners bind themselves as surety/sureties for and co-principal debtor jointly and severally with Amalgamated Pumping Supplies.