

**BOARDWALK TRADING 1035 CC T/A FLASHSOLVENTS**  
(Registration number: 2007/010119/23)

**General Terms of Sale (The "Agreement")**

**1. Terminology**

- 1.1 Boardwalk Trading 1035 cc T/A Flash Solvents is hereinafter termed Flash Solvents. The party who places the Order is hereinafter termed the Purchaser.
- 1.2 The goods covered by the Order are hereafter termed the Product.
- 1.3 The Purchaser's order is hereafter termed the Order.
- 1.4 The Order together with Flash Solvent's Order Confirmation and these General Terms of Sale constitute the Agreement between Flash Solvents and the Purchaser. The supply of Product will, at all times, be subject to these terms and conditions.
- 1.5 Whenever the context so permits, the use of the plural shall include the singular and the singular shall include the plural.

**2. Conditions**

- 2.1 Trade terms, including their abbreviations, shall be in accordance with Incoterms (2010 edition) as varied or supplemented in the Agreement.
- 2.2 The Product, specification, prices, terms of payment mode of delivery and specific Incoterms applicable shall be determined in accordance with Flash Solvents' Order Confirmation.

**3. Quality**

- 3.1 The Product sold and purchased in terms of this Agreement shall conform to the specification as set out in the order confirmation.
- 3.2 Certificates of analysis provided or obtained by Flash Solvents shall be deemed conclusive evidence of the matters stated therein.
- 3.3 Should there be an allegation that any Product is unsafe or defective, Flash Solvents shall not be liable for any harm caused where such an alleged unsafe Product characteristic, failure, defect or hazard did not exist in the Product at the time at which it was supplied to the Purchaser by Flash Solvent.

**4. Delivery and Risk**

- 4.1 Risk in respect of the Product shall pass to the Purchaser on delivery.
- 4.2 Ownership in respect of the Product shall pass from Flash Solvents to the Purchaser when the purchase price has been paid in full.
- 4.3 In the event that the Purchaser fails or neglects to pay the purchase price on the due date, Flash Solvents shall have the option at its absolute discretion to recover the Product and claim costs and any other damage incurred, and or to take legal action for the collection of the purchase price and/or any other damages. In the event that such product is delivered into equipment which is the property of the Purchaser, the parties agree that although the Purchaser's and Flash Solvents' Product may have become mixed in the equipment, the Product withdrawn by Flash Solvents in terms of this clause up to the quantity by Flash Solvents will be regarded as the sole property of Flash Solvent.
- 4.4 Flash Solvents will endeavor to dispatch the Products with due promptitude, and within the time indicated.
- 4.5 Flash Solvents may execute the Agreement in installments, in which case all terms and conditions that apply to the Agreement as a whole shall apply to each portion of the Agreement fulfilled.
- 4.6 Should Flash Solvents be prevented from effecting delivery of the Product or any part thereof by reason of any cause whatsoever beyond the control of Flash Solvents; the time for delivery shall be extended until a reasonable time after the operation of the cause has ceased.
- 4.7 Flash Solvents shall not be liable for any loss or damage that may occur as a result of the delays referred to in clause 4.4 & 4.6.
- 4.8 The Purchaser shall inspect the Product after the Products have been delivered and shall within 14 days give notice to Flash Solvents of any shortages or defects therein. If the Purchaser notifies Flash Solvents as such, then such notice shall be accompanied by an affidavit from an independent expert supporting such claim and setting out in detail the basis of such allegation.
- 4.9 Should the Purchaser fail to give such notice, the Products shall conclusively presume to be in all respect in accordance with the Agreement and free from any defect. No allegations of non-compliance received after the period referred to in 4.8 will be entertained.
- 4.10 In the event that Flash Solvents is satisfied that the Products are not in accordance with the Agreement or are so defective, Flash Solvents may elect to replace such quantity of Product which does not conform to specification by an equal quantity of Product or alternatively refund the purchase price to the purchaser against return of the Products or refund the purchase price less the best value at which the Products can be disposed of.
- 4.11 The Purchaser may not return the product to Flash Solvents for any reason unless the parties have agreed in writing to such return and condition thereof.
- 4.12 Weighbridge certificates provided or obtained by the Flash Solvents shall be deemed conclusive evidence of the quantities stated therein.

**5. Price and Payment**

- 5.1 The Order will be executed at the price stipulated in Flash Solvents Order confirmation.
- 5.2 The terms of payment are as stipulated in the Flash Solvents Order confirmation.
- 5.3 All payments to be made by the Purchaser to Flash Solvents hereunder, shall be made gross and without any deduction whatsoever.
- 5.4 Failure to settle an account by the due date as stipulated in the Flash Solvents Order Confirmation shall entitle Flash Solvents to charge the Purchaser interest at a rate of three percentage points above the ruling prime overdraft rate as determined by Standard Bank from time to time.
- 5.5 Prices quoted are exclusive of value added tax.
- 5.6 Flash Solvents may, at its sole discretion, allocate payments received from the Purchaser towards any amount owing by the Purchaser.
- 5.7 A certificate signed by the financial manager of Flash Solvents shall be prima facie proof of the amount owing by the Purchaser.

**6. Indemnity**

- 6.1 The Purchaser indemnifies Flash Solvents and holds Flash Solvents harmless against any claims or actions resulting from:
  - 6.1.1 any unauthorized representations or Product warranties made by the Purchaser;
  - 6.1.2 any negligent acts of the Purchaser or its employees or contractors regarding the Products or the use of Products;
  - 6.1.3 any loss, damage or liability resulting from, or arising out of the use, transport or storage of the Products after they have been delivered in accordance with this Agreement. The Purchaser acknowledges that he/she is familiar with the characteristics and inherent hazards contained in the Products;
  - 6.1.4 claims by third parties for damage, death or injury arising from the Purchaser 's failure to provide them with the information in respect of, but not limited to, inherent hazards, correct use or storage of the Product.
  - 6.1.5 breach by the Purchaser of this Agreement
- 6.2 The Purchaser acknowledges that it is familiar with the use, characteristics and inherent dangers of the Product.
- 6.3 The Purchaser acknowledges that the Product may require special handling, storage, transportation, treatment or use to comply with applicable safety and environmental laws, and Purchaser will take all action necessary to comply with these laws and avoid spills or other dangers to persons, property or the environment.
- 6.4 In the event that it becomes necessary for Flash Solvents to furnish any information related to this agreement, or any other future dealings between the parties, to a third party, the Purchaser unequivocally consents that Flash Solvents may furnish such information.

**7. Liability**

- 7.1 Flash Solvents does not give any warranties in respect of the Products or their use, and all warranties implied by law are, where possible, expressly excluded. The Purchaser waives any claim for loss, damage or liability which it might have against Flash Solvents arising from, but not limited to, claims based on the Products not being suitable for the Purchaser's purposes.

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- 7.2 Notwithstanding anything contained herein or elsewhere, Flash Solvents shall not be liable, whether in contract or in delict, for any consequential loss that may be suffered by the Purchaser as a result of any delays in the delivery of the Product that may occur, save to the extent that Flash Solvents may be liable for any losses pursuant to section 47 of the Consumer Protection Act, 2008 (if applicable).
- 7.3 The Purchaser indemnifies and holds Flash Solvents harmless against any claims from end users. To this end the Purchaser warrants that it is/will be insured against such claims.
- 7.3.1 In the event of bodily injury or death caused by Flash Solvents gross negligence or willful misconduct, Flash Solvents' liability shall be limited to such extent as an arbitrator or court of law may deem just having regard to the degree to which Flash Solvents' gross negligence or willful misconduct contributed to the bodily injury or death (or to such liability as may be determined in terms of this section 61(5) of the Consumer Protection Act, 2008, if applicable).
- 8. Warranty**
- 8.1 The Purchaser warrants that it has complied with all statutory requirements and is in possession of all the necessary permits, authorizations or any other official documents required for the purchase of Flash Solvents' Products. The Purchaser indemnifies and holds Flash Solvents harmless for any loss or damage, direct or consequential, caused by or arising from a breach of the warranty contained in this clause.
- 8.2 Flash Solvents makes no warranty, express or implied, statutory or otherwise, concerning any Products including, without limitation, warranties concerning fitness for a particular purpose, merchantability, quality, correspondence with any description or sample and/or the infringement of any patent based on (a) any combination of any product with other materials or (b) the use of any product in any manufacturing process. All warranties implied by law are expressly excluded, except such warranties as may be implied in terms of the Consumer Protection Act, 2008 (if applicable).
- 9. Variation of Agreement**
- 9.1 This Agreement, read with any Annexures thereto, constitutes the sole Agreement between the Parties in regard to the subject matter thereof and supersedes all prior and contemporaneous negotiations, offers, discussions, promises, representations, agreements and understandings of the Parties with respect thereof. Any inconsistencies introduced by the Purchaser's order shall not apply unless expressly agreed to in writing by Flash Solvents.
- 9.2 No addition to or variation or agreed cancellation of this Agreement shall be of any force or effect unless agreed to in writing and signed by or on behalf of both Parties.
- 10. Intellectual Property**
- 10.1 Except as otherwise agreed upon in writing by the parties, the proprietary interests of all intellectual property in relation to the Product shall remain vested in Flash Solvents and no part of the Agreement shall be construed as investing upon the Purchaser any right, title or interest to such intellectual property.
- 10.2 If the Purchaser uses or sells the Product in such a manner as to infringe any patent rights of any third party, Flash Solvents shall not be responsible for such infringement nor for any alleged infringement arising from the Purchaser's action in relation to the Product and the Purchaser hereby agrees to indemnify Flash Solvents from and against all liability including legal costs arising there from.
- 10.3 Except as permitted by express prior consent in writing by Flash Solvents, the Purchaser shall not use or cause or allow to be used by any other person or entity over which it exercises control either directly or indirectly ("Controlled Persons") as a part of any company or business name, or in any other manner in connection with the advertising and sale of the Product(s), any trademark or trade name adopted, owned, or used by Flash Solvents.
- 10.4 The Purchaser agrees not to use any Flash Solvents Trademarks for the purpose of representing, selling, and offering for sale or use, any goods other than the Product(s).
- 10.5 Immediately upon termination of this Agreement, the Purchaser shall remove from its premises and discontinue the use of any and all signs, labels, stationery, advertising, and reading materials with Flash Solvents Trademarks that, in Flash Solvents opinion, may create confusion in business.
- 11. Confidentiality**
- 11.1 The Purchaser undertakes to treat as confidential and not to use or disclose to any third party without Flash Solvents prior written consent any information, technical knowledge, specifications, chemical make-up, data, materials and/or other communications of a confidential nature, either in tangible or non-tangible form, relating to or useful in connection with the design, construction or operation of the facilities and/or feedstock and/or products and/or business of Flash Solvents, disclosed to the Purchaser or that came to the Purchaser's knowledge pursuant to its contact with Flash Solvents.
- 11.2 This undertaking excludes information which the Purchaser can establish (a) at the time of disclosure, is, or, after disclosure, becomes generally known or available to the public through no act or failure to act by the Purchaser; (b) was already known to it prior to the disclosure by Flash Solvents; or (c) was rightfully acquired and free from restriction from a third party having an unrestricted right to disclose the same.
- 12. Governing Law and Jurisdiction**
- This Agreement is governed by and construed in accordance with the laws of South Africa. In connection with matters relating to this Agreement, the Purchaser hereby consents to the jurisdiction of the Magistrates Court, notwithstanding that the amount claimed may be higher than the Court's jurisdiction. Flash Solvents may, however, in its sole discretion, decide to institute action in the relevant High Court having jurisdiction. The parties may by mutual written agreement opt to refer any dispute or difference arising out of or relating to this Agreement (whether arising before or after termination of this Agreement) to arbitration. The Parties agree that in such event, such arbitration shall be according to the rules then in effect of the Arbitration Foundation of Southern Africa ("AFSA"). Such arbitration shall be conducted in the English language before one arbitrator appointed in accordance with said rules. Any award will be final and not subject to appeal. Such agreement to arbitrate shall be enforceable in, and judgement upon any award may be entered in any court of any country having appropriate jurisdiction. A dispute shall be deemed to have arisen when either Party notifies the other Party in writing to that effect. These provisions shall not prevent either Party approaching any court or other judicial forum in any country having appropriate jurisdiction to obtain interim relief in cases of urgency or any other order in aid of arbitration proceedings. Nothing herein contained shall be construed as divesting the Purchaser of any right it may have to refer any dispute to any ombud, court, tribunal or other forum for disputed resolution as contemplated in the Consumer Protection Act, 2009 (if applicable).
- 13. Notices**
- All notices given in terms of this Agreement will be delivered to the parties at the respective addresses stated in the Order until changed in writing by either party.
- 14. Assignment**
- This Agreement is between Flash Solvents and the Purchaser as principals and is not assignable by either party except with the written consent of the other party.
- 15. Force Majeure**
- 15.1 Neither party shall be liable for its failure to perform due to contingencies reasonably beyond its control, including, but not limited to, acts of God, flood, fire, war, accident, labour disputes or shortages, riots, sabotage, governmental laws, ordinances, rules and regulations, lack of equipment or feedstock, or inability to transport Product. The affected party will give the other party reasonable notice of any such contingency. In the event that Flash Solvents is unable under existing conditions to supply the requirements of all its customers, Flash Solvents may distribute its available supply among its customers, including affiliates, departments and divisions of Flash Solvents, on such basis as Flash Solvents may deem fair and reasonable. Flash Solvents shall have the right to omit during the period of such contingency all, or any portion of the quantity so omitted. The Purchaser hereby releases Flash Solvents from liability for any resulting incomplete fulfillment of this Agreement.
- 15.2 Force majeure notwithstanding, the Purchaser shall not be relieved from payment of any amount due in terms of this Agreement.
16. The Purchaser warrants that it is not a Consumer in terms of the Consumer Protection Act. It further undertakes to, forthwith, notify Flash Solvents of a change in this status.