



OLI ELECTRICAL VIBRATORS (PTY) LTD
t/a OLI SOUTH AFRICA
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Company Registration Number: 2008/011439/07

WOLONG



OLI SOUTH AFRICA – STANDARD TERMS AND CONDITIONS OF SALE

By ordering, purchasing, or receiving any products, good or services from OLI South Africa, you irrevocably and immediately agree and bind yourself to the terms and conditions of sale and service as disclosed hereunder.

1 Definitions

In these Standard Terms and Conditions, including the annexures to these Standard Terms and Conditions, unless a contrary intention clearly appears the following terms shall have the meanings assigned to them in this clause and cognate expressions shall have corresponding meanings -

- 1.1 "Business Day" - any day in the Republic of South Africa other than a Saturday, Sunday or public holiday;
- 1.2 "CPA" - the Consumer Protection Act No. 68 of 2008 and any associated regulations;
- 1.3 "Credit Event" – is when, in relation to the Purchaser:
 - 1.3.1 an order or declaration is made for the administration, custodianship, bankruptcy, liquidation, sequestration, winding-up, dissolution or placing under supervision for business rescue proceedings (and whether provisional or final);
 - 1.3.2 it is unable (or admits inability) to pay its debts generally as they fall due or is otherwise insolvent;
 - 1.3.3 any act is committed which, if such act was committed by an individual, would be an act of insolvency within the meaning of section 8 of the Insolvency Act No 24 of 1936 or any equivalent legislation in any jurisdiction to which such person is subject;
 - 1.3.4 it ceases to carry on business contemplated in its constitutional documents;
 - 1.3.5 it fails to satisfy any judgment awarded against it within 5 (five) business days -
 - 1.3.6 it fails to pay the Seller any amount owing to it;
- 1.4 "goods/products" – used interchangeably, and can refer to any equipment, machinery, parts, products or other item sold by the Seller to the Purchaser, whether specifically referred to in supporting purchase documentation or not;
- 1.5 "OLI" – OLI Electrical Vibrators t/a OLI South Africa
- 1.6 "Purchaser" - any person who orders or purchases goods from the Seller, and shall include its agents, employees, administrators, assigns, trustees, curators, representatives and executors;
- 1.7 "Seller" – OLI Electrical Vibrators t/a OLI South Africa, Registration number: 2008/01143/07;
- 1.8 "Services" are the maintenance, repair, and operational testing services offered by the Seller in respect of its products.
- 2 In these Standard Terms and Conditions, where any provision is qualified by the words "to the extent permitted by law" the Seller and the Purchaser agree that such provision shall only apply to the extent that the laws of the Republic of South Africa allow same to apply, on the basis that if the Seller is precluded from applying –
 - 2.1 any such provision then the terms of such provision which the Seller is precluded from applying shall not apply; or
 - 2.2 the full terms of any provision, then such provision shall not apply and shall be severed from these Standard Terms and Conditions, and the remaining provisions hereof shall be of full force and effect.
- 3 The Purchaser does hereby accept to be bound by the terms and conditions set out herein.
- 4 Quotations are valid for a period of 30 (thirty) days from date of issue.
- 5 These Standard Terms and Conditions shall apply to all contracts of sale of goods and/or supply of services by the Seller to the Purchaser and no terms or conditions appearing in any of the Purchaser's documents, including the Purchaser's buying order, which are at variance with these conditions shall be binding on the Seller.
- 6 Should any order be given to the Seller on an order form reflecting the Purchaser's name as the entity from which the order emanates, such order shall be deemed to have emanated from the Purchaser, notwithstanding the fact that such order may have been given or signed by a person not authorised by the Purchaser and such order will be deemed to constitute a valid order.
- 7 Unless otherwise agreed in writing by the Seller, payment of the full purchase price of the goods and services shall be made by the Purchaser to the Seller by means of Electronic Funds Transfer (EFT) and shall be on account of any indebtedness of the Purchaser. Payment will be considered made when the amounts reflect finally and unconditionally in the banking account of the Seller. No payments by way of cash or any other negotiable instrument will be accepted by the Seller unless expressly agreed by a Director of the Seller.
- 8 In the event of any of any fraudulent activities which are perpetrated whereby a change of banking details is advised on the Seller's letterhead or by other means, the Purchaser agrees that any payment made to any other bank account shall not constitute a valid discharge of the Purchaser's obligation to make such payment. The Purchaser shall be obliged to notify the Seller of any receipt by it of a notification of change of banking details and shall only give effect thereto if same is confirmed telephonically and in writing by a Director of the Seller. All losses suffered as a result of any amounts being paid by the Purchaser into any bank account other than the account of the Seller shall be borne solely by the Purchaser.
- 9 Should the Purchaser become subject to a Credit Event the whole balance outstanding by the Purchaser to the Seller will immediately become due and payable.
- 10 Notwithstanding anything contained herein, in the event of the Seller granting credit terms to the Purchaser, the Seller reserves the right to withdraw such credit terms at its sole discretion if it believes that the Purchaser's financial position has deteriorated after the date that the credit terms were granted. Further, it is specifically recorded that any credit limit granted by the Seller to the Purchaser to the Seller is for the sole benefit the Seller, and the Purchaser shall not be entitled to rely on said credit limit as justification for any limitation of indebtedness to the Seller.
- 11 Should the Purchaser not make payment within 30 days of the due date for payment for any goods purchased or services provided then the Purchaser shall be obliged to pay the Seller interest thereon at the Prime Rate plus 2% (two percent) calculated from the due date until payment (both dates inclusive) which interest shall be calculated daily and compounded monthly in arrears on the last day of each month. The "Prime Rate" shall mean the rate publicly quoted by The South African Reserve Bank, from time to time, as being its prime rate (expressed as a nominal annual compounded monthly in arrear rate), calculated on a 365 (three hundred and sixty five) day a year factor, irrespective as to whether or not the year is a leap year and prima facie proven, in the event of there being a dispute in relation thereto, by a certificate signed by any manager of the aforesaid bank (whose appointment, qualification or authority need not be proven).
- 12 To the extent permitted by law, the Seller shall incur no liability in respect of the non-delivery or late delivery of any goods ordered by the Purchaser or failure by the Purchaser to collect the goods, and Purchaser's damages, costs or losses shall be limited to a refund of any amounts paid in respect of the goods.

NOTE: This clause limits and excludes the rights and remedies of the Purchaser and places various risks, liabilities, obligations and legal responsibilities on the Purchaser.
- 13 Signature by the Purchaser, or by any representative of the Purchaser, to the Seller's delivery or collection note shall be regarded as acceptance by the Purchaser that the goods reflected in such note have been properly and completely received. Goods that are posted or are to be transported by a carrier according to the Purchaser's instructions shall be deemed to have been delivered to the Purchaser on receipt of the goods by the Post Office or Carrier, as the case may be . .

NOTE: This clause limits and excludes the rights and remedies of the Purchaser and places various risks, liabilities, obligations and legal responsibilities on the Purchaser.

- 14 Risk in and to the goods shall pass to the Purchaser on delivery by the Seller or collection by the Purchaser.
- 15 Notwithstanding the delivery of any goods to the Purchaser, ownership thereof shall not pass until the Seller has received payment of the full purchase price. The Seller shall at its own discretion be entitled to demand the return of possession of any of the goods which have not been paid for and in respect of which payment is overdue, and apply for the necessary relief.
- 16 The Purchaser shall not permit or allow the goods or any portion thereof to become subject to any landlord's lien or hypothec until the price payable therefor has been settled in full, on the basis that the Purchaser shall be obliged to inform the landlord of the premises at which the goods are stored from time to time (to the extent that such premises are not owned by the Purchaser), in writing, of the Seller's ownership of the goods and to provide the Seller on request with an acknowledgement of receipt from the aforesaid landlord of such notification.
- 17 To the extent permitted by law, the Purchaser shall have no claim for short or defective delivery or collection unless the Purchaser has specified on the Seller's delivery note and/or invoice the details of the alleged short or defective delivery.
- NOTE: This clause limits and excludes the rights and remedies of the Purchaser and places various risks, liabilities, obligations and legal responsibilities on the Purchaser.**
- 18 To the extent permitted by law, the Seller shall be exempted from and shall not be liable under any circumstances whatsoever for any direct or indirect loss or damages of any nature (including without limitation consequential damages) or any loss of profit which the Purchaser may suffer as a result of: a defect in the goods; the goods failure to perform to desired specifications; any breach by the Seller of any of its obligations; or arising out of the use of the goods.
- NOTE: This clause limits and excludes the rights and remedies of the Purchaser and places various risks, liabilities, obligations and legal responsibilities on the Purchaser.**
- 19 The Seller does not supply, as part of the goods or services, any item, service, goods or product not specifically recorded in the original quotation by the Seller.
- 20 To the extent permitted by law, the Seller shall have no liability in respect of any claim –
- 20.1 based on defective goods where such defect arose directly or indirectly as a result of the Purchaser failing to comply with generally accepted operation, maintenance, repair, or storage conditions applicable for such product and/or the Seller's specific instructions in relation thereto (the Seller's Motor Manual etc), or where such defect is directly attributable to the negligence of the Purchaser;
- 20.2 in respect of any defect in any perishable goods unless the Purchaser inspects such goods at the time of delivery thereof to the Purchaser and notifies the Seller in writing of any such defects forthwith on delivery;
- 20.3 in respect of any goods (other than perishable goods) unless the Purchaser notifies the Seller thereof, in writing, within five days after delivery to or collection by the Purchaser.
- NOTE: This clause limits and excludes the Purchaser's rights and remedies.**
- 21 The Seller does not warrant the product will be fit for any purpose other than that specifically recorded in the original quotation.
- 22 To the extent permitted by law, the Purchaser hereby agrees to indemnify the Seller against all claims of whatsoever nature which may be made against the Seller by any third party arising out of the use of the goods sold by the Seller to the Purchaser and/or the services provided by the Seller to the Purchaser, unless such claims arise out of gross negligence of the Seller.
- NOTE: This clause limits and excludes the Purchaser's rights and remedies and places various risks, liabilities, obligations and legal responsibilities on the Purchaser.**
- 23 In the event that the Seller has agreed to attend to any portion of the delivery or installation of the goods, the Purchaser must ensure that the site for such delivery is prepared and ready to receive the goods. Any delays which result from the Purchaser's failure to ensure that the site is prepared will entitle the Seller to charge the Purchaser for the additional costs of labour, storage, or transportation as the case may be.
- 24 The Seller shall be entitled to bring any action or proceeding against the Purchaser in any competent court, and that all costs incurred in any action including costs on an attorney/client scale and attorneys collection commission will be paid by the Purchaser. The Purchaser and the Seller agree that the laws of South Africa will govern any dispute between the parties.
- 25 The Purchaser hereby chooses as its *domicilium citandi et executandi* for all purposes arising out of these Standard Terms and Conditions the address selected by the Purchaser and Seller as contained in these Standard Terms and Conditions, alternatively the address expressly recorded and by notifying the Seller, alternatively the Purchaser in writing.
- 26 Any notice required to be given by either party to the other in terms of this agreement shall be in writing and shall either be delivered by hand or be forwarded by pre-paid registered post or by telegram or fax; and unless and until the contrary is proved, a notice:
- 26.1 sent by pre-paid registered post shall be deemed to have been received on the fourteenth calendar day after posting;
- 26.2 sent by e-mail or telefax shall be deemed to have been received on the first business day following that on which it was sent;
- 26.3 delivered by hand will be deemed to have been received at the moment of delivery directly to the parties to this agreement.
- 27 Unless the context otherwise requires, the words importing the singular shall include the plural and vice versa, a natural person shall include an artificial person and vice versa and the one gender shall include the other gender and vice versa.
- 28 The Purchaser shall not, under any circumstances, be entitled to withhold or set-off payments to the Seller. A certificate from a manager or director of the Seller shall constitute *prima facie* proof of the Purchaser's indebtedness.
- 29 Where the Seller renders services to the Purchaser, including maintenance, repair, and interim operation of products (primarily on-site at the Purchaser's address), and Seller's obligations shall be limited as follows:
- 29.1 The Seller will charge for the services on the basis it deems appropriate, and reserves the right to charge increased rates for labour and parts where such is required urgently.
- 29.2 The Seller will attend to services and call-out to the Purchaser's premises when possible, but will not be obligated to do so under any circumstances.
- 29.3 The Seller shall only perform its service at the date and time of its own discretion, on business days, from 09:00 to 17:00.
- 30 If the products ordered by the Purchaser are special order goods as defined in the CPA, the Purchaser shall not enjoy the rights afforded by Section 17 of the CPA, which include the cancelling of any advance order or booking.
- 31 The Seller may require payment of a reasonable deposit for any products in advance; and the Seller may impose a reasonable cancellation charge (which may be the entirety of the deposit) in the event of the Purchaser cancelling the order. The Purchaser acknowledges that the deposit and cancellation charge levied by the Seller is reasonable and fair in the circumstances.
- 32 Should the Purchaser return products in accordance with this agreement, a restocking charge might be levied by the Seller. In addition, the Purchaser will be liable for any costs incurred by the Seller in the transportation, storage, and installation of the goods both with respect to the original delivery and the return of the goods .
- 33 Any warranty/guarantees provided by the Seller with respect to the products will be limited to that which is described in any supporting documentation provided by the Seller, failing that the warranty/guarantee shall be limited to a period of 2 (two) years from the date of purchase in respect of any electrical parts and 1 (one) year from date of purchase for mechanical components.
- 34 The Purchaser shall notice the Seller, in writing, within 5 (five) days of a defect becoming apparent. The Seller's warranty is not applicable where the defect results from repairs conducted by the Purchaser, or abnormal use or operational conditions. The Seller agrees to repair and replace defective parts at its sole discretion, subject to the terms and conditions set out herein.
- 35 Should any of the Seller's goods be returned, which are perceived to be defective ("the defective machinery"):
- 35.1 The Purchaser may not return products to the Seller without the Seller's express prior written consent, which consent will specify the terms of the return;
- 35.2 The defective machinery shall be returned to the Seller at its specified place of business by the Purchaser;
- 35.3 The Purchaser shall complete and sign an order for a replacement machine;
- 35.4 The Seller shall provide the replacement machinery;
- 35.5 The Seller will invoice the Purchaser with the costs of the replacement machinery;

- 35.6 The Seller shall examine the defective machinery returned to it;
- 35.7 If the defect in the machinery is as a result of an inherent defect in the machine, the Seller will then credit the Purchaser with the amount of the invoice referred to in paragraph 35.5 above;
- 35.8 Should the defect in the machinery be due to misuse or abuse of the machinery and that defect is not covered by the warranty, then the Purchaser will be liable for the full invoice price as referred to in paragraph 35.5 above;
- 35.9 No warranty will be considered unless a claim is officially lodged by the Purchaser in completing the Seller's warranty claim form.
- 36 Should the Purchaser not be satisfied with the decision made by the Seller, they/it may proceed to have the dispute referred to Arbitration as referred to in these Standard Terms and Conditions.
- 36.1 The Arbitration shall be held in the town/city of the principal place of business of the Seller;
- 36.2 The Arbitration shall be held within 30 (thirty) days after it has been demanded;
- 36.3 The Arbitration shall be held before an arbitrator which has been mutually agreed upon between the parties, and failing agreement, the arbitrator shall be selected by the Association of Arbitrators;
- 36.4 The parties agree that the decision by the Arbitrator shall be final and binding on all parties and shall be made an order of court, of any court with a competent jurisdiction;
- 36.5 The parties agree that the arbitrator shall be entitled to make an order as to the costs of the arbitration;
- 36.6 The rules of the Association of Arbitrators of Southern Africa (2018 Edition) will be applicable, unless specifically agreed otherwise between the parties in writing.
- 37 It may occur that the Seller does not have sufficient stock on hand in respect of machines required by the Purchaser of a particular voltage, and if the Purchaser requires the Seller to wind the machine to the exact voltage specifications of the Purchaser, the costs of such re-winding shall be for the account of the Purchaser.
- 38 Any condonation of any breach of any of the provisions hereof or other act or relaxation, indulgence or grace on the part of the Seller shall not in any way operate as or be deemed to be a waiver by the Seller of any rights hereunder, or be construed as a novation thereof.
- 39 Each clause of these Standard Terms and Conditions is severable, the one from the other and if any one or more clauses are found to be invalid or unenforceable, that clause/clauses shall not affect the balance of these Standard Terms and Conditions, which shall remain of full force and effect.
- 40 These Standard Terms and Conditions together with the Seller's official quote contains the entire agreement between the parties and any other terms thereof whether express or implied are excluded herein and any variations, cancellations or additions to this contract shall not be of any force or effect unless reduced to writing and signed by the parties or their duly authorised representatives.

LOCATION: _____

DATE: ____ / ____ / ____

DATE: ____ / ____ / ____

The Purchaser's *domicilium citandi et executandi*:

The Seller's *domicilium citandi et executandi*:

Unit 14
Jan Smuts Business Park
Jones Road
Jet Park
1457



Purchaser's Signature

Sellers signature

P. R. Eksteen
General Manager
OLI South Africa