

## **TERMS AND CONDITIONS OF SALE**

### **1. INTRODUCTION**

- 1.1. Trenic Industries ("Trenic") is a private company located at Unit C, Building 2, Woodlands Drive Office Park, 5 Woodlands Drive and with registration number 2004/034624.
- 1.2. These Terms and Conditions of Sale govern the Customer's use of the Trenic website and the purchasing of Goods and Services from the Trenic outlet.
- 1.3. These Terms and Conditions of Sale apply to Trenic Customer's who are consumers for the purpose of the Consumer Protection Act, 68 of 2008 ("CPA") and the Customer's attention is drawn to these Terms and Conditions of Sale because they are important and should be carefully noted.
- 1.4. If there is any provision in these Terms and Conditions of Sale that the Customer does not understand, the Customer may contact Trenic and request that these be explained.
- 1.5. Access to the Goods and Services, content and downloads available on Trenic website may be classified as "electronic transactions" as defined in terms of the Electronic Communications and Transactions Act, 25 of 2002 ("ECTA").
- 1.6. If there is a conflict of meaning between the terms on the Trenic website and any other terms, policies or notices, the latter will take preference where it applies to the Customer's use of the Trenic website.
- 1.7. Nothing in these Terms and Conditions of Sale are intended or should be understood to unlawfully restrict, limit or avoid any right or obligation, as the case may be, for Trenic or the Customer in terms of the CPA, the ECTA and Protection of Personal Information Act 4 of 2013 ("POPIA").

### **2. DEFINITIONS**

- 2.1. In this agreement, unless the context indicates otherwise, the words and expressions set out below shall have the meanings assigned to them and cognate expressions shall have a corresponding meaning, namely:
  - 2.1.1. "Agreement" means these terms and conditions of sale.
  - 2.1.2. "Customer" means any natural or juristic person, who makes use of the Seller's Services or purchases any of its Goods.
  - 2.1.3. "Goods" means all Goods supplied by the Seller to the Customer from time to time.
  - 2.1.4. "Parties" means the Seller and the Customer and "Party" means any one of them.
  - 2.1.5. "Seller" means Trenic Industries (Pty) Ltd (Registration Number:2004/034624/07) and/or any of its associated businesses.
  - 2.1.6. "Services" means all Services supplied by the Seller to the Customer from time to time.

### **3. ORDERS AND PAYMENT**

- 3.1. The purchase price of all Goods and Services shall be stated on the Seller's quotation or invoice.
- 3.2. Unless otherwise specified in writing by the Seller, all quotations provided by the Seller in respect of Goods and Services shall remain valid for a period of 7 (seven) days from the earlier of the date of issue of the relevant quotation or the date of issue of any new list of prices.
- 3.3. An agreement of sale will only be deemed as completed once:-

- 3.3.1. the Customer has placed their order with the Seller either electronically, in writing or through oral agreement;
  - 3.3.2. the Customer receives an order confirmation from the Seller via the Customers specified email; and
  - 3.3.3. delivery or collection has taken place.
- 3.4. The Seller shall keep a record of all oral orders for Goods or Services including orders per telephone. However, such oral orders must be confirmed in writing by the Customer to prevent any errors from occurring.
- 3.5. If the Customer needs to obtain a sales record of their transaction to purchase Goods or Services through the Seller's website, the Customer can contact the Seller within 30 (thirty) days of the transaction to receive such record.
- 3.6. When a Customer places Goods in their basket on the Seller's website, this does not constitute:-
  - 3.6.1. an agreement of sale between the Seller and the Customer; and/or
  - 3.6.2. an order for such Goods and as such, the Seller may remove such Goods from the Customers shopping basket if stock becomes unavailable and the Customer cannot hold the Seller liable if such product is not available when they place their order with the Seller at a later stage.
- 3.7. The Customer acknowledges and confirms that neither the Seller nor its employees have agreed to or have made any representations to agree to any terms of payment other than on a cash basis or to allow any discount, unless such terms of payment or discount are approved in writing by a director of the Seller.
- 3.8. Subject to clause 3.9, unless otherwise agreed by the Seller in writing, payment of all Goods delivered to or Services provided to the Customer by the Seller shall be made on a Cash on Delivery ("COD") basis. Accordingly, the purchase price of the Goods or Services sold by the Seller to the Customer shall be paid by the Customer to the Seller immediately upon delivery of the Goods or Services to the Customer or upon collection of the Goods by the Customer, without deduction or set off, for any reason whatsoever.
- 3.9. Where a payment facility has been granted by the Seller to the Customer in writing, payment shall be made in full within 30 (thirty) days from date of delivery or collection, as the case may be, of the Goods which shall be accompanied by a tax invoice.
- 3.10. Should any amount not be paid by the Customer in accordance with the aforementioned provisions, then the Customer shall be liable to pay interest in respect of amounts unpaid as at due date at the greater of a rate of 2% per month or such other amount of interest as may be permitted to be charged in respect of incidental credit agreements from time to time under the NCA from the due date until the date of full payment of the outstanding amount.
- 3.11. A certificate by one of the Seller's directors (whose appointment as such shall not be necessary to prove) reflecting the amount payable by the Customer from time to time shall be prima facie proof of the amount payable by the Customer to the Seller in terms of this Agreement.
- 3.12. The Seller shall be entitled to allocate any payments made by the Customer to any outstanding amounts due by the Customer to the Seller from time to time, in its sole discretion.
- 3.13. The Seller shall have the right to suspend the provision of Goods or Services to the Customer if any amount owing and payable by the Customer remains unpaid.

- 3.14. Before a Customer is required to make payment for Goods and Services sold on Trenic's website, the Customer will be given the opportunity to review the order in its entirety which will enable the Customer to approve, correct and/or withdraw the order.

#### **4. AGE RESTRICTIONS ON SALES**

- 4.1. No transaction concluded between the Seller and a person under the age of 18 (eighteen) shall be binding upon the Seller unless written consent thereto is received from a parent or legal guardian. If a parent or legal guardian supervises a person under the age of 18 (eighteen) or gives their consent to enter a transaction with the Seller, then such person agrees to be bound to these Terms and Condition of Sale.
- 4.2. The Seller reserves its right to request proof of identity prior to concluding any transaction.

#### **5. AVAILABILITY OF STOCK**

- 5.1. When the Customer places their order with the Seller, this order is subject to product availability. The Customer acknowledges that stock of all Goods on the website and in store is limited and that pricing may change at any time without notice to the Customer.
- 5.2. The Seller will take all reasonable steps to monitor stock levels to ensure that advertised Goods are available at the displayed price, for the period specified. The Seller strives to minimise out-of-stock situations and will take all reasonable steps to ensure that when stock is no longer available, that such offers are removed from the website and in-store advertisements.
- 5.3. When Goods are no longer available, the Seller will notify the Customer as soon as reasonably possible and the Customer will be entitled to be refunded the full amount paid to the Seller.
- 5.4. Clearance campaigns might be implemented from time to time where stock is available in limited quantities. In these circumstances, the Seller is not obliged to source stock or offer a similar or upgraded item for this sale as stock will no longer be available in future.

#### **6. DELIVERY**

- 6.1. The Goods or Services shall be collected by the Customer on a date and at a time and place as agreed between the Seller and the Customer, unless the Seller and Customer agree that the Seller will deliver the Goods or Services to the Customer, in which case the Seller will be entitled to charge the Customer a delivery fee, determined at the Seller's sole discretion, and published from time to time on the website, for such delivery.
- 6.2. The Seller will dispatch the Customer's order within 30 (thirty) days of sending an order confirmation to the Customer, unless expressly agreed otherwise.
- 6.3. The Seller undertakes to use its reasonable commercial endeavours to adhere to the agreed date, time and place for the delivery of Goods and Services. The Customer acknowledges and confirms that in every case the agreed delivery date and time will only be approximate and time shall not be of the essence. The Seller accordingly shall not be liable for any loss incurred or damages suffered howsoever arising out of any delay in effecting delivery at the agreed date and at the agreed time. The Seller will, however, try to ensure a smooth delivery process.
- 6.4. The Seller will notify the Customer timeously of any delivery delays, should the product have to be sourced.

- 6.5. The Parties agree that the signature of the Customer or its employees, representatives or agents on the Seller's delivery note shall be prima facie proof of delivery to and acceptance of the Goods reflected thereon by the Customer.
- 6.6. If the Seller is prevented from gaining clear and uninterrupted access to the agreed delivery place, any and all additional expenses incurred by the Seller will be for the account of the Customer.
- 6.7. The Seller will not be liable for any incorrect order or delivery where the Customer made an error in the information that they provided to the Seller.

## **7. DISPLAYING OF PRICES AND IMAGES**

- 7.1. All pricing displayed on the Trenic's website and in-store is set out in South African Rands, is inclusive of the current South African Value Added Tax, is subject to price changes and may change without warning or notification to the Customer.
- 7.2. Please note that all prices displayed exclude the cost of delivery.
- 7.3. The Seller takes the utmost care to ensure that the description, availability, purchase price and delivery charges of Goods on the Website and in-Store are accurate. However, should there be any errors of whatsoever nature on the website or in store, the Seller shall not be liable for any loss, claim or expense relating to a transaction based on any error, save in the case of any incorrect purchase price, to the extent of refunding the Customer for any amount already paid, or otherwise as set out in clause 9.
- 7.4. Where pricing on the website differs from the actual in-store pricing, the applicable price will be the lesser of the two prices, unless the lesser price is made in error and the Seller has taken reasonable steps to rectify the error.
- 7.5. Where there is a website-specific promotion for online purchases only, such promotional pricing will not be honoured. If a mistake is made or we have displayed the incorrect price or image, we will correct this as soon as we are made aware of the incorrectly displayed price or image.

## **8. MAINTENANCE AND REPAIR**

- 8.1. Save as otherwise prescribed by applicable legislation, the Parties agree that the Seller's liability in terms of a manufacturer's warranty shall be limited to the cost of repair or replacement of faulty Goods or Services.
- 8.2. An estimate for repair or maintenance Services shall be provided by the Seller to the Customer prior to commencing any repair or maintenance Services in respect of any Goods.
- 8.3. No repair or maintenance Services shall be effected unless the Customer, in writing, either declines the offer for an estimate and authorises the repair or maintenance work or pre-authorises the costs of repair or maintenance.
- 8.4. The Customer hereby agrees that any item returned for a repair or maintenance may be sold by the Seller to defray the cost of such repair or maintenance if the item remains uncollected by the Customer for a period of 30 (thirty) days after notice by the Seller to the Customer that such item is ready for collection.

## **9. REFUNDS AND EXCHANGES**

- 9.1. Within 7 (seven) days of placing an order or upon concluding an agreement of sale, the Customer is entitled to cancel the order, in writing, for any reason whatsoever.
- 9.2. If the Goods have already been collected or delivered to the Customer, the Customer will bear the costs of returning the Goods to the Seller's outlet, which must be done within 7 (seven) days from the date of cancellation.
- 9.3. The Customer shall receive a full refund within 30 (thirty) days from the date of cancellation, subject to producing the original receipt and ensuring the product is in its original packaging and condition. Should the product not be in its original packaging, a handling fee of up to 15% of the value of the Goods returned to the Seller as per the CPA.
- 9.4. In the regrettable event that the Customer receive Goods which are damaged, faulty or are incorrect, the Customer must notify the Seller within 6 (six) months of delivery thereon, return the Goods to the Seller and request that the Goods be exchanged or repaired, as per the CPA.

## **10. COMPLAINTS**

- 10.1. Complaints in respect of Goods or Services must be made by the Customer in writing and delivered to the Seller within 10 (ten) days of receipt of the Goods or Services. Subject to applicable law, failure to deliver a complaint in writing to the Seller within the prescribed time shall be deemed to be an acknowledgement by the Customer that the Goods were received in good order and condition and shall preclude it from making any claim whatsoever against the Seller.

## **11. PAYMENT FACILITY**

- 11.1. The Seller reserves the right to withdraw any payment facilities granted to the Customer at any time without prior notice and the nature and extent of such facilities shall at all times be in the Seller's sole discretion.
- 11.2. Despite the fact that the Seller may grant the Customer a payment facility up to a certain amount, the Seller reserves the right to increase or decrease such amount at its sole discretion. The payment facility amount shall not under any circumstances be construed as the limit of a Customer's indebtedness to the Seller.

## **12. OWNERSHIP**

- 12.1. Until full payment is received by the Seller from the Customer, ownership of all Goods, even after delivery to the Customer or to any person on the Customer's behalf, shall remain vested in the Seller. The Customer accordingly undertakes not to sell such Goods to any of its customers until it has paid the Seller thereof.
- 12.2. Notwithstanding that ownership may vest in the Seller after delivery of the Goods to the Customer, all risk in the Goods shall pass to the Customer upon delivery of the Goods by the Seller to the Customer.
- 12.3. The Customer shall at all times keep the Goods sold to it adequately insured against all loss.

## **13. WARRANTIES**

- 13.1. Other than as prescribed by applicable legislation:-
  - 13.1.1. All Goods are supplied in accordance with the Seller's principal standards of quality and the Seller gives no warranty, of any nature whatsoever, whether express or implied regarding the Goods or Services.

- 13.1.2. All warranties and/or guarantees in respect of the Goods shall be immediately null and void if any Goods are tampered with or the seals of the Goods are broken by anyone other than the Seller or its appointed nominee, or the Goods are operated outside the manufacturer's specifications and/or instructions.
- 13.1.3. The Parties agree that the Seller, its employees and representatives shall not be liable for any claim for loss or damages whatsoever, including consequential damages however arising, whether as a result of breach of contract or arising in delict or whether as a result of any act or omission including any negligent act or omission on the part of the Seller its employees and representatives or otherwise arising from or in connection with the sale of Goods or Services by the Seller to the Customer.

#### **14. GOVERNING LAW AND JURISDICTION**

- 14.1. Any dispute arising from or in connection with these Terms and Conditions of Sale shall be governed and interpreted in accordance with the laws of the Republic of South Africa.
- 14.2. The Customer and the Surety hereby consent and submit to the jurisdiction of the South Africa courts regarding all proceedings, transactions, applications or the like instituted by either Party against the other arising from these Terms and Conditions of Sale.
- 14.3. In the event of any dispute arising between the Customer and the Seller out of this Agreement, the Parties consent to the jurisdiction of the relevant Magistrate's Court having jurisdiction under the Magistrates Court Act 32 of 1944. Alternatively, the Seller may, at its option, institute proceedings in the appropriate division of the High Court of South Africa. In the event of the latter, the Customer and Surety, hereby consent to the jurisdiction of such High Court.
- 14.4. Nothing in this clause or the Terms and Conditions of Sale limits the Customers right to approach any court, tribunal or forum of competent jurisdiction in terms of the CPA.

#### **15. DISPUTES**

- 15.1. No dispute between the Seller and the Customer shall release the latter from its obligations to make payment in terms of this Agreement. The Customer's sole remedy against the Seller in respect of any dispute between the Seller and the Customer shall be to recover payment from the Seller should the dispute be resolved in its favour.

#### **16. LIMITATION OF LIABILITY**

- 16.1. The Seller shall not be held liable for any inaccurate information published on their website and/or any incorrect prices displayed on their website, save where such liability arises from the gross negligence or wilful misconduct of the Seller, its employees, agents or authorised representative.
- 16.2. To the extent permissible by law, the Seller will not be liable for any direct, indirect, special or consequential loss or damages however arising out of the Customers use of any of the Sellers Goods or Services.
- 16.3. The Seller will not be liable for any direct, indirect, special or consequential loss or damages howsoever arising out of the Customers use of the Sellers website.
- 16.4. The Customer hereby indemnifies the Seller against any loss or damage that the Customer or any third party may suffer as a result of the use of the Sellers website or Goods and Services.

#### **17. BREACH**

- 17.1. Should the Customer fail to make any payment to the Seller under this Agreement or should the Customer breach of any of the material provisions of this Agreement and fail to remedy such breach within 7 (seven) days after receiving a written demand from the Seller that such breach be remedied, the Seller shall be entitled to claim specific performance or cancel this agreement, in either instance, without prejudice to the Seller's right to claim damages.
- 17.2. In the event that the Seller opts to cancel this Agreement:-
  - 17.2.1. All amounts then owed by the Customer to the Seller from any cause whatsoever shall become due and payable; and
  - 17.2.2. The Seller may take possession of any Goods delivered to the Customer in respect of which ownership has not yet passed.

## **18. CESSION OF BOOK DEBTS**

- 18.1. The Customer does hereby irrevocably and in rem suam cede, pledge, assign, transfer and make over unto and in favour of the Seller all of its right, title, interest, claim and demand in and to all book debts of whatsoever nature and description and howsoever arising which the Customer may now or at any time hereafter have against all and any persons, companies, corporations, firms, partnerships, associations, syndicates and other legal personae whomsoever ("the Customer's debtors") without exception as a continuing covering security for the due payment for every sum of money which may now be due or any time hereafter be or become owing by the Customer to the Seller.
- 18.2. Should it transpire that the Customer at any time entered into prior deeds of cession or otherwise disposed of any of the right, title and interest in and to any of the book debts which will from time to time be subject to this cession, then this cession shall operate as a cession of all the Customer's reversionary rights. Notwithstanding the terms of the foregoing cession, the Customer shall be entitled to institute action against any of its debtors provided that all sums of money which the Customer collects from its debtors shall be collected on the Seller's behalf and provided further that the Seller shall at any time be entitled to terminate the Customer's right to collect such monies/debts.

## **19. LEGAL COSTS**

- 19.1. The Customer shall pay all legal costs, including attorney and own client costs and collection commission, which the Seller may incur in taking any steps pursuant to any breach of this Agreement.

## **20. DOMICILIUM**

The Seller hereby chooses the following address as its domicilium citandi et executandi for all purposes relating to this Agreement:

5 Woodlands Drive Office Park  
Woodmead  
2191

- 20.1. The Customer here by appoints the address as set out in point 7 of the Customer Application as its domicilium citandi et executandi for all purposes relating to this Agreement.
- 20.2. No variation of such domicilium shall be binding on the Customer or the Seller unless written notification thereof has been received in writing.

## **21. CREDIT CHECKS**

- 21.1. The Customer hereby consents to the Seller contacting and requesting information from any persons, credit bureau or business, to obtain any information relevant to the Customer's credit assessment, including but not limited to information regarding the amounts purchased from suppliers per month, the length of time customer has dealt with each supplier, type of Goods purchased and manner and time of payment.
- 21.2. The Customer understands that the personal information given is to be used for the purposes of assessing credit worthiness.
- 21.3. The Customer warrants that all the information furnished in the Customer Application or otherwise to the Seller is true and correct, up-to-date, relevant, complete, and valid.
- 21.4. The Customer hereby consents to and authorises the Seller at all times to furnish credit information concerning the Customer's dealing with the Seller to any credit bureau and to any third party seeking a trade reference regarding the Customer in his dealings with the Seller.

## **22. CONFIDENTIALITY**

- 22.1. The Parties to this Agreement agree that each shall treat as confidential all information provided by a Party to the others regarding such party's business and operations. All confidential information provided by either Party hereto shall only be used by the other Party for the purposes of rendering Goods and Services pursuant to this Agreement and, except as may be required in carrying out the terms of this Agreement, shall not be disclosed to any third party without the prior consent of such providing Party.
- 22.2. The foregoing shall not be applicable to any information that is publicly available when provided or which thereafter becomes publicly available or which is required to be disclosed by any regulatory authority in the lawful and appropriate exercise of its jurisdiction over a party, any auditor of the parties hereto, by judicial or administrative process or otherwise by applicable law or regulation.

## **23. DISCLOSURE OF PERSONAL INFORMATION**

- 23.1. The Consumer confirms that they understand that the purpose for the collection and/or distribution of their personal information is to conclude a sale agreement which the Consumer wishes to enter into with the Seller and that the personal information provided may only be processed for the specific purposes of complying with their obligations in terms of this Agreement.
- 23.2. The Parties agree that if personal information will be processed for additional purposes beyond the original purpose for which it was obtained, explicit written consent must be obtained beforehand from the other Party.
- 23.3. Performing the obligations as set out in this Agreement, the Parties shall at all times:-
  - 23.3.1. comply with the provisions of all laws, which regulate the protection of personal data, including but not limited to the POPIA;
  - 23.3.2. comply with all laws, policies, and procedures relating to the protection, storage, handling, privacy, processing and retention of data as well as the destruction of data, including personal data;
  - 23.3.3. ensure that it shall not sell, offer for sale or dispose of or attempt to dispose of or create or allow the encumbrance over any personal data;
  - 23.3.4. ensure that it does not disclose personal data other than in terms of this Agreement;

- 23.3.5. ensure that it processes data for only the express purpose for which it was obtained;
- 23.3.6. ensure that it has all reasonable technical and organisational measures in place to protect the personal data from unauthorised access and/or use.

#### **24. GENERAL**

- 24.1. This Agreement governs the sale of Goods or Services by the Seller to the Customer. In the event of any inconsistency between the provisions of this Agreement and any order form, delivery notes or other documents of the Seller, the provisions of this Agreement shall prevail.
- 24.2. This Agreement contains the entire agreement between the Parties in relation to the subject matter hereof.
- 24.3. No party shall have any claim or right of action arising from any undertaking, representation or warranty not included in this Agreement.
- 24.4. Any latitude or extension of time which may be allowed by any Party shall not under any circumstances whatsoever act as an estoppel or be a waiver of that party's rights hereunder.
- 24.5. No alteration or variation to, or consensual cancellation of, this Agreement shall be of any force or effect unless it is recorded in writing and signed by all the parties to this Agreement.
- 24.6. If any clause or term of this Agreement should be invalid, unenforceable or illegal, then the remaining terms and provisions of this Agreement shall be deemed to be severable therefrom and shall continue in full force and effect unless such invalidity, unenforceability or illegality goes to the root of this Agreement.
- 24.7. The Customer may not cede, assign or otherwise transfer any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the Seller. The Seller shall be entitled to cede its rights and delegate its obligations under this Agreement.
- 24.8. Any failure on the part of the Customer or the Seller's to enforce any right in terms hereof shall not constitute a waiver of that right.

#### **25. CHANGES TO THESE TERMS AND CONDITIONS OF SALE**

- 25.1. The Seller may, in its sole discretion, change to this Agreement at any time. It is the Customer's responsibility to regularly check this Agreement and make sure that they are satisfied with the changes. Should the Customer not be satisfied, they must not place any further orders with the Seller.
- 25.2. Any such change will only apply to the Customer's use of the website after the change is displayed on the website. If the Customer uses the website after the Agreement has been changed, they will be deemed to have accepted such changes.

#### **26. SIGNATURES**

SIGNED BY THE CUSTOMER AT \_\_\_\_\_ ON THIS THE \_\_\_\_\_<sup>ST/ND/RD/TH</sup> DAY OF \_\_\_\_\_ 20\_\_\_\_

FOR AND ON BEHALF OF THE CUSTOMER, HE BEING DULY AUTHORISED HERETO

SIGNED BY THE SURETY (FOR PURPOSES OF CLAUSE 14)

AT \_\_\_\_\_ ON THIS THE \_\_\_\_\_<sup>ST/ND/RD/TH</sup> DAY OF  
\_\_\_\_\_ 20\_\_\_\_\_

FOR AND ON BEHALF OF THE CUSTOMER, HE BEING DULY AUTHORISED HERETO

SIGNATORY'S FULL NAME

\_\_\_\_\_

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_