

Microchem Lab Services (Pty) Ltd

**Cape Town (Head Office)**

5 Dairy Street, Stikland Industrial,  
Cape Town, South Africa, 7530  
Tel: +27 (21) 465-6996  
Fax: +27 (21) 465-6983

Website: [www.microchem.co.za](http://www.microchem.co.za)

**Gauteng Micro Lab**

41 Golden Drive  
Morehill, Benoni, South Africa, 1501  
Tel: +27 (11) 425-3775  
Fax: +27 (11) 425-2521

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**STANDARD TERMS AND CONDITIONS OF BUSINESS THAT WILL APPLY TO ALL TRANSACTIONS BETWEEN THE CUSTOMER AND MICROCHEM LAB SERVICES (PTY) LTD AND ITS SUBSIDIARY COMPANIES.**

1. **GENERAL**

Microchem Lab Services (Pty) Ltd (Registration No. 2007/010539/07) (“the Company”) and the Party with whom the Company transacts (“the Customer”) (together the “Parties”) agree that the following terms and Terms and Conditions (the “Terms and Conditions”) shall apply to all written and verbal communications and transactions between them relating to the provision by the Company of its services, which include but are not limited to the provision of goods and services relating to chemical and microbiological analyses and testing or any other services which the Company may render from time to time.

2. **APPLICATION FOR CREDIT AGREEMENT**

- 2.1. The Customer consents to the Company making enquiries into the Customer’s credit record with any credit reference agency or any other party to confirm the details on the credit application. The Company warrants that the information obtained will be kept confidential and will not be used for any unauthorised purpose.
- 2.2. The Company reserves the right to increase, decrease or otherwise alter, suspend or withdraw the credit limit in terms of the credit account granted to the Customer, at its sole discretion and at any time.

3. **CASH ON DEMAND (“COD”) ACCOUNT AND CASH UP FRONT (“COF”)**

- 3.1. Should the application for a credit account be refused, the Company will automatically create a COD account for the Customer.
- 3.2. Transactions entered into on a COD basis are payable by the Customer upon receipt of the invoice relating to the transaction.
- 3.3. Transactions entered into on a COF basis are payable by the Customer upon delivery of the samples relating to the transaction. Samples will be logged upon proof of payment.

4. **PAYMENT TERMS**

- 4.1. A Customer’s first transaction with the Company, irrespective of whether the Customer has been granted a credit account or is dealing with the company on a COD basis, will be payable in cash, in full and in advance.
- 4.2. If the Customer has been approved for a credit account, the Customer undertakes to pay all invoices within 30 (Thirty) days of receipt of such invoice.
- 4.3. In the event the Customer fails to pay in accordance with clause 4.2 above and no prior arrangement for alternative payment has been made with the Company, the Company reserves the right to institute action for the recovery thereof plus interest and costs.
- 4.4. If the Customer is operating under a COD account, the Customer undertakes to pay for all goods and services provided by the Company to the Customer upon receipt of the invoice.
- 4.5. Amounts payable to the Company by the Customer may not be set off against or withheld on account of any such claims unless they have been admitted by the Company in writing.

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5. **LIABILITY FOR DEATH, INJURY, LOSS OR DAMAGE**

- 5.1. Where the transaction between the Parties falls within the ambit of the Consumer Protection Act (the "CPA"), the Company shall not be liable for any injury, death, damage or loss, arising from any source whatsoever, whether direct or indirect, general or special, sustained by the Customer or any other party, including any injury, death, damage or loss suffered pursuant to the Customer's or the third party's reliance on any test results, goods or service supplied by the Company, unless such injury, death, damage or loss is occasioned by the Company's gross negligence, recklessness or wilful unlawful conduct.
- 5.2. Where the transaction between the Parties does not fall within the ambit of the CPA, the Company shall not be liable for any injury, death, damage or loss, arising from any source whatsoever, whether direct or indirect, general or special, sustained by the Customer, or any other party, including any injury, death, damage or loss suffered pursuant to the Customer's or the third party's reliance on any test results, goods or service supplied by the Company.

6. **COMPLAINTS PROCEDURE**

- 6.1. Where goods or services are supplied by the Company to the Customer in terms of a transaction falling outside the ambit of the CPA, no representations or warranties as to quality or freedom from latent defect or fitness for any particular purpose or otherwise shall be binding upon the Company unless made by the Company in writing;
- 6.2. The Customer agrees not to raise any complaint nor dispute liability to the Company unless it has notified the Company of its complaint in writing within 10 (Ten) business days of receipt of the relevant goods or services in question. Subject to the foregoing the Company shall, at its sole discretion and without admitting its liability to do so, remedy any failure by either:
- 6.2.1. replacing the relevant goods or re-performing the relevant services in question; or
- 6.2.2. refunding the whole or part of the price payable by the Customer in respect of the relevant transaction if it has already been paid by the Customer.

7. **DELIVERY AND OWNERSHIP**

- 7.1. Goods will be regarded as having been delivered to the Customer or its agent against signature of the Company's delivery note.
- 7.2. Ownership in any goods sold and delivered to the Customer in terms of a credit account, shall pass to the Customer only when all amounts due by the Customer to the Company have been paid.
- 7.3. Risk in and to the goods shall pass to the Customer on delivery of the goods.
- 7.4. The Company has the right to inform the owner of the premises in which any goods are stored of the right of the Company to retain ownership of goods for which payment has not been made.

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7.5. In the event of:

- 7.5.1. the Customer breaching any of these Conditions; or
- 7.5.2. the Customer failing to pay any amount due and payable on due date; or
- 7.5.3. the Customer suffering any civil judgment to be taken or entered against it; or
- 7.5.4. the Customer causing a notice of surrender of its estate to be published in terms of the Insolvency Act No. 24 of 1936, as amended; or
- 7.5.5. the Customer's estate being sequestrated in terms of the laws of insolvency; or
- 7.5.6. the Customer being wound up whether provisionally or finally and whether voluntarily or by the court or being deregistered; or
- 7.5.7. the Customer dying;

without detracting from any other remedy which it may have, the Company shall have the right to repossess the goods sold and delivered to the Customer, if any, and without prejudice to its other rights, the Company shall have the right to claim specific performance of all the Customer's obligations whether or not such obligations would otherwise then have fallen due for performance, or to claim damages from the Customer.

**8. CANCELLATION**

8.1. Where the CPA applies to the transaction:-

- 8.1.1. orders for goods that the Company expressly or implicitly was required or expected to procure, create or alter specifically to satisfy the Customer's requirements ("special order goods") may not be cancelled except with the written consent of the Company;
- 8.1.2. the cancellation of any other order must be made in writing and will be subject to a reasonable cancellation penalty, calculated by the Company and payable on demand.

8.2. Where the CPA is not applicable to the transaction, the transaction may only be cancelled with the prior written consent of the Company.

**9. BREACH**

- 9.1. If a Party commits a breach of any provision of these Terms and Conditions and fails to remedy such breach within 7 (Seven) days after receiving written notice from the other Party requiring it to do so, then the Party aggrieved by such breach shall be entitled, without prejudice to its other rights in law and as set out in this Agreement, to cancel this Agreement or to claim specific performance of any obligation, whether or not the due date for performance has arrived, in either event without prejudice to the aggrieved Party's right to claim damages.
- 9.2. The Customer shall pay any legal and other costs incurred by the Company as a result of any breach by the Customer of these Terms and Conditions or any failure by it to pay any amount for which the Customer is liable, on the scale as between attorney and own Client, whether or not action is instituted, and such costs shall include any commission which the Company is required to pay to its attorneys as a result of any action taken by them;

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10. **APPLICABLE LAW**

- 10.1. The contract incorporating these Terms and Conditions shall be governed by and construed in accordance with South African Law.
- 10.2. If any dispute arises between the Parties out of these Conditions, the Company shall be entitled, but not obliged, at its sole discretion, to institute proceedings in any magistrates court which otherwise has jurisdiction notwithstanding that the amount in issue may exceed the limits of such jurisdiction and the Customer hereby consents to the jurisdiction of such court;

11. **DISPUTE RESOLUTION**

- 11.1. The Parties shall endeavour to amicably settle any dispute.
- 11.2. If no amicable settlement is reached within 60 days from notice of dispute sent by one Party to the other, the parties shall refer to arbitration according to the following provisions:
  - 11.2.1. The matter shall be referred to the Arbitration Foundation of South Africa and the arbitration referred to in 11.2 shall be held in Cape Town. The Rules of the Arbitration Foundation, as amended, of South Africa will apply.
  - 11.2.2. Each Party irrevocably agree that the decision of the arbitrator in the arbitration proceedings shall be final and binding and shall be carried into effect.
- 11.3. The arbitrator shall be, if the question in issue is:-
  - 11.3.1. primarily an accounting matter, an independent chartered accountant of at least 10 years standing;
  - 11.3.2. primarily a legal matter, a practicing Senior Counsel of not less than 5 years standing as such;
  - 11.3.3. any other matter, an independent person agreed upon between the parties to the dispute and, failing agreement, a person appointed by the President for the time being of the Cape Law Society.

12. **NOTICES**

- 12.1. Each of the Parties shall be entitled from time to time by written notice to the other to vary its domicile to any other address within the Republic of South Africa, which is not a post office box or poste restante.
- 12.3. Any notice required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing.

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12.4. Any notice given and any payment made by one party to the other ("the addressee") which: -

12.4.1. is delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be presumed, until the contrary is proved, to have been received by the addressee at the time of delivery;

12.4.2. is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicilium for the time being, shall be presumed, until the contrary is proved, to have been received by the addressee on the Fourth day after the date of posting;

12.4.3. is given by email, shall be deemed (in the absence of proof to the contrary) to have been received on the day of transmission where it is transmitted during normal business hours of the receiving instrument and the next business day where it is transmitted outside those business hours.

13. **ENTIRE AGREEMENT**

The Customer acknowledges that these Terms and Conditions and the contract to which they relate constitute the entire agreement between the Parties and that no act or representation contrary thereto has been done or made by the Company or its directors, agents, servants and no variation hereof shall be of any force or effect unless contained in writing and signed by both the Customer and the Company.

14. **NO WAIVER**

No extension of time or indulgence granted by the Company to the Customer shall be deemed in any way to effect, prejudice or derogate from the rights of the Company in terms hereof, nor shall it in any way be regarded as a waiver by the Company of any of its rights in terms hereof.

15. **SURETYSHIP**

15.1. By signing or applying for a credit account the undersigned hereby jointly and severally bind myself as a continuing and covering surety for and co- principal Debtor with the aforementioned Customer to and in favour of the Company for all amounts which may now or in the future become due and payable by the Customer to the Company for any cause whatsoever and for the due performance by the Customer of all its obligations to the Company in respect of the credit facility entered into between the Company and the Customer.

15.2. By signing or applying for a credit account I hereby renounce the benefits of excussion and division the meaning and effect whereof I acknowledge that I am aware.

15.3. By signing or applying for a credit account I agree further that any extension of time or any indulgence granted by the Company to the Customer shall not release me from my liability hereunder nor shall it operate as a waiver or novation of any of the rights of the Customer in terms of this Deed of Suretyship nor shall it prejudice the rights of the Company arising out of this Deed of Suretyship in any manner whatsoever.