

## Standard Conditions of Agreement

For the purposes of this Agreement:

"Agreement" shall mean the contract between Gianna Welding SSA and the Customer for the supply of Goods and/or Services. Each order from the Customer for, Gianna Welding SSA Goods or Services which is accepted by Gianna Welding SSA shall constitute a separate Agreement which shall be governed by these terms and conditions:

"Gianna Welding SSA or "we" means Gianna Welding SSA (Pty) Limited (registration number 2015 / 272330 / 07) whose registered office is at 434 Sam Green Road, Unit 23 HGI Bridgeway Business Park, Tunney, Elandsfontein, Johannesburg, 1401;

"Customer" or "you" means the individual, partnership or company entering into the Agreement with Gianna Welding SSA;

"Data Protection Laws" means The Protection of Personal Information Act 2013 and any other directly applicable South African law, regulation or generally accepted requirement relating to privacy, all as may be amended, supplemented, succeeded or replaced from time to time;

"Effective Date" is the date when the last party signs the Agreement and/or account application as the case may be;

"Goods" means any goods or materials sold by Gianna Welding SSA to the Customer;

"Personal Information" has the meaning given to it in Data Protection Laws (and related terms shall have corresponding meanings);

"Product Source" means Gianna Welding SSA's normal source of supply of Goods to the Customer;

"Safety Data Sheet" means a sheet prepared by Gianna Welding SSA containing material safety and other data relating to the applicable Goods; and

"Services" means any services provided by Gianna Welding SSA to the Customer (including, without limitation, the provision of training and technical advice).

"Consignment Agreement" shall mean the contract between Gianna Welding SSA and the Customer for the supply of Goods on a consignment basis.

### 1. DELIVERY, COLLECTION AND COMMISSIONING

- (a) Save as set out in the other terms of this Agreement, or as otherwise agreed in writing between the parties, Gianna Welding SSA will supply Goods against orders placed by the Customer, and which are accepted and confirmed by Gianna Welding SSA. All orders or variations to orders once accepted by Gianna Welding SSA may not be revoked or cancelled by the Customer without Gianna Welding SSA's prior approval.
- (b) Deliveries of all Goods will be made during Gianna Welding SSA scheduled delivery rounds. Any dates quoted for such delivery rounds are estimates only and Gianna Welding SSA shall have no liability if the delivery is not made at the time originally quoted.
- (c) Where Gianna Welding SSA is unable to supply the Goods ordered, in accordance with its scheduled delivery obligation Gianna Welding SSA shall endeavour to notify the Customer in advance and offer it the following options:
  - i) offer alternative delivery times (including split deliveries) for the affected Goods or Services; and/or
  - ii) where possible, offer alternative Goods or Services of equivalent quality or quantity; and/or
  - iii) offer to cancel the part of the order relating to the Goods or Services that Gianna Welding SSA is unable to supply;

If Gianna Welding SSA offers the options set out above (where possible), then Gianna Welding SSA shall not be deemed to have delayed or failed such delivery for the purposes of the rest of this Agreement.

- (d) The Customer acknowledges that collection of Hardgoods (Welding Equipment and Consumables) from a Gianna Welding SSA site shall be at the Customers own and sole risk and the Customer warrants and accepts responsibility for handling and transporting the load safely.
- (e) Prior to signing such delivery note/waybill the Customer shall Inspect the Goods to satisfy itself that these conform in all respects to the quality anti quantity ordered and are free from any defects and suitable for the use for which they are intended, Once signed by or on behalf of the Customer Gianna Welding SSA's delivery note/waybill shall be conclusive evidence of the quantity of the Goods delivered.
- (f) Failure by Gianna Welding SSA to deliver or perform by any time specified by Gianna Welding SSA shall not entitle the Customer to terminate this Agreement and this failure is not material in respect of deliveries or performance.
- (g) All Goods taken on an evaluation or consignment basis by the Customer are deemed sold if not returned within 10 (ten) days of issue in the original condition and in the original packaging, or as specified in the Consignment Agreement signed under separate cover.

## 2. CUSTOMER'S DUTIES AND RESPONSIBILITIES

The Customer shall:

- (a) provide free of charge adequate and safe access to the Customer's sites and facilities (including labour for loading and unloading, Gianna Welding SSA Goods) as are reasonably necessary for Gianna Welding SSA (subject to Gianna Welding SSA complying with a Customer's reasonable site safety rules) to carry out its duties and rights under this Agreement;
- (b) ensure that it and all of its employees, contractors and subcontractors comply with all legislation (including but not limited to the Occupational Health and Safety Regulations, Environmental Impact Assessments, etc.), municipal bylaws and the like thereof ("laws") applicable to the use of the Goods on its premises and indemnifies Gianna Welding SSA against any and all liability incurred by Gianna Welding SSA as a result of the Customer or any of its employees', contractors' or subcontractors' failure to comply with the laws.

## 3. TITLE AND RISK

- (a) Property in any Goods shall only pass to the Customer on receipt by Gianna Welding SSA In full of:
  - i) the price (and value-added tax in terms of the Value-Added Tax Act 89 of 1991 "VAT") for the relevant Goods; and
  - ii) all other sums due from the Customer under this Agreement: and
  - iii) all sums due from the Customer under any Other contracts, agreements or arrangements between the Customer and Gianna Welding SSA.
- (b) Until such time as the property in any Goods has passed to the Customer under Clause 4(a) the Customer shall:
  - i) hold such Goods as a fiduciary of Gianna Welding SSA;
  - ii) not pledge or allow any encumbrance, lien, charge, or other interest to arise or be created over the Goods; and
  - iii) not dispose of or deal with the Goods or any interest in them, except that the Customer may, and subject to the other terms of this Agreement, on its own account use the Goods in the ordinary course of its business. The risk of loss or damage to Goods shall pass to the Customer upon delivery to or collection by the Customer.

## 4. PRICE AND PAYMENT

- (a) The prices for the Goods will be adjusted by Gianna Welding SSA from time to time to reflect changes In Gianna Welding SSAs' costs, which may occur with or without notice to the Customer, but such changes shall not affect orders that have already been accepted by Gianna Welding SSA.

- (b) Gianna Welding SSA shall be entitled to invoice each delivery separately. Gianna Welding SSA will provide the Customer with a tax invoice: (1) for cash sales at the point of delivery; or (2) for credit approved Customers a tax invoice will be dispatched shortly after order processing. (3) Gianna Welding SSA will also provide a monthly statement to account Customers where there have been transactions on the account during that month.
- (c) The Customer agrees that the full amounts for all Goods ordered shall be due and payable by it, either: (1) cash at the point of ordering; or (2) if the Customer is a credit approved Customer, full payment must be received by Gianna Welding SSA in cleared funds within the granted credit period (as notified by Gianna Welding SSA from time to time) measured from the date of the relevant monthly statement. Cheques shall not be used as a means of payment.
- (d) Gianna Welding SSA may at its absolute discretion increase or decrease credit terms provided to the Customer. Without prejudice to its other rights or remedies (including its rights of termination) Gianna Welding SSA may withdraw any credit terms provided to the Customer in the event that the Customer fails to make any payment due to Gianna Welding SSA.
- (e) All quotations:
  - i) will remain valid for a period of 30 days from the date of quotation.
  - ii) are subject to the availability of the relevant, Goods; and
  - iii) are subject to the correction of good faith errors by Gianna Welding SSA.
  - iv) For the avoidance of doubt quotations shall not affect Goods which are subject to contracted pricing.
- (f) Gianna Welding SSA should be notified of any error on an invoice within 14 days of date of the invoice. By paying an invoice the Customer certifies that the invoice is correct and waives any rights to challenge such invoice at a later date.
- (g) The Customer agrees that where it fails to pay any sum by the due date Gianna Welding SSA may at its discretion:
  - (a) charge interest on the overdue debts at an annual rate equal to 5% above the prime overdraft rate charged by First National Bank, if that Act is not applicable, such interest shall be calculated daily and compounded monthly from the date payment first became overdue;
- (h) All prices and charges are expressed exclusive of VAT which shall be charged and paid as applicable, in addition to such prices and charges.
- (i) If at any time Gianna Welding SSAs' costs change due to government action or to a change in the law, Gianna Welding SSA reserves the right to adjust prices to take account of such change in its costs.
- (j) Gianna Welding SSA shall have the right upon reasonable notice to enter the Customer's sites to audit and inspect any Gianna Welding SSA Consignment Goods.
- (k) Where the Customer is a juristic person, the Customer undertakes to inform Gianna Welding SSA in writing within 7 days of any change greater than 20% of the legal or beneficial ownership of the Customer, and failure to do so will constitute a material breach of this Agreement. Upon receipt of such written notification, Gianna Welding SSA reserves the right, at its sole discretion, to withdraw any credit facility advanced to the Customer.
- (l) Gianna Welding SSA shall have the right to allocate any payments received by the Customer to any outstanding invoice as it deems fit at its sole and absolute discretion. The right to allocation of payments includes the allocation of any payment made by the Customer to the oldest debt of that Customer. Gianna Welding SSA further has the right to refuse any further credit and/or supply of Goods to a Customer if that Customer fails to make payments in accordance with this Agreement or make appropriate arrangements to settle all existing outstanding debt.

5. LIABILITY AND EXCLUSIONS

- (a) Gianna Welding SSA shall have no liability of whatsoever nature, howsoever arising subject to this Clause 5. Notwithstanding any other provision of this Agreement, but subject to Clause 5(b), Gianna Welding SSA shall have no liability arising out of or in connection with this Agreement, the Goods, howsoever arising, for any:
- i) other loss or damage (whether direct or indirect); or
  - ii) loss of or damage to revenue, profits, savings, use, contracts, goodwill, or business (whether direct or indirect); or
  - iii) consequential or indirect loss or damage,

When used or referred to in this Clause 5 the term "howsoever arising" shall cover all causes and actions giving rise to liability whether in contract, delict (including negligence), restitution, for breach of statutory duty, misrepresentation or otherwise.

- (b) Nothing in this Agreement limits or excludes either Party's liability;
- i) for death or personal injury to the extent (hat it results from that Party's negligence; or 2, for fraud or fraudulent misrepresentation; or 3, to the extent not permitted by law.
- (c) Gianna Welding SSA accepts liability, to the extent that it results from breach of contract or Ginna Welding SSA's gross negligence in connection with the performance of this Agreement, for the Customer's proven losses, costs, expenses, or damage:
- i) caused by Gianna Welding SSA supplying any defective Goods up to a limit of an amount equal to Gianna Welding SSA's price for the relevant Goods, for any one incident; and
  - ii) arising from delay or failure by Gianna Welding SSA in delivery of any Goods up to a limit of an amount equal to Gianna Welding SSA's price for the Goods that Gianna Welding SSA has failed to deliver or, for any one incident; and
- (d) The provisions of Clause 5(c) shall not apply to physical damage to the Customer's real property and Gianna Welding SSA accepts liability for physical damage to the Customers real property to the extent that it results from wilful breach of contract or Gianna Welding SSA's gross negligence in connection with the performance of this Agreement subject to a limit of ZAR 1,000,000 (One Million Rand) per claim or series of claims arising out of the same event or circumstances.
- (e) Gianna Welding SSA shall not be liable for any shortage, loss, damage or discrepancy in Goods unless notified to Gianna Welding SSA in writing within 14 days of receipt of the relevant Goods by the Customer. This exclusion of liability shall not apply if the Customer proves that it was not reasonably possible to notify Gianna Welding SSA within this time period, and such notification was given as soon as was practicable and in any event within 14 days after the Customer became aware, or could reasonably be expected to have become aware, of the claim.
- (f) Subject to the other terms of this Agreement where any shortage, loss, damage, defect, or discrepancy in Goods is notified to Gianna Welding SSA in accordance with Clause 5(e), Gianna Welding SSA shall at its option rectify the shortage, loss, damage or discrepancy in the Goods free of charge, or refund or forego an appropriate proportion of the price for Goods. If Gianna Welding SSA complies with this obligation it shall have no further liability in respect of or arising from the relevant Goods under this Clause 5(f).
- (g) Under no circumstances shall Gianna Welding SSA be liable for any damage arising from any misuse, abuse or neglect of the Goods by any person other than Gianna Welding SSA or its employees or authorised agents.
- (h) The Customer shall indemnify and keep indemnified and hold harmless Gianna Welding SSA at all times against all claims, demands. liability loss, damages, costs (including legal costs on a full indemnity basis) and expenses incurred by Gianna Welding SSA arising out of or in connection with Gianna Welding SSA's presence on the Customer's or its nominee's site except to the extent caused by the negligence of Gianna Welding SSA.
- (i) The Customer and Gianna Welding SSA both recognise that it is open to either party to consider insuring against the risks apportioned in this Clause 5.

## 6. BREACH AND TERMINATION

- (a) Without affecting any other rights or remedies that Gianna Welding SSA may have, Gianna Welding SSA may cancel any order the Customer has placed and/or terminate this Agreement immediately at any time by written notice to the Customer if the Customer:
- i) has any corporate action, application, order, proceeding or appointment or other step taken or made by or in respect of It for any composition or arrangement with creditors generally, winding-up other than for the purpose of a bona fide scheme of solvent reconstruction or amalgamation, dissolution, administration, receivership (administrative or otherwise) or bankruptcy, or if it is unable to pay its debts as they fall due, or if it ceases to trade or if a distress, execution or other legal process is levied against any of its assets which is not discharged or paid out in full within three working days or if any event analogous to any of the foregoing shall occur in any jurisdiction in which the Customer is incorporated, resident or carries on business; or
  - ii) fails to make any payment due to Gianna Welding SSA; or
  - iii) there is a material change in the ownership of the shares in the Customer, or any parent company.
- (b) Without prejudice to either party's other rights and remedies either party may terminate this Agreement by written notice at any time if the other party is in material breach of any of its terms and (in the case of a remediable breach) the breach is not remedied within 28 (twenty- eight) days of receipt of a notice specifying the breach and requiring it to be remedied.
- (c) Termination shall be without prejudice to any accrued rights of either party.
- (d) If this Agreement is terminated and any charges which are payable in instalments are still outstanding, an amount representing the outstanding instalment shall become due and payable by the Customer on termination of this Agreement. The Customer shall immediately pay to Gianna Welding SSA all of the Gianna Welding SSAs' outstanding unpaid invoices and interest and, in respect Goods supplied but for which no invoice has been submitted, Gianna Welding SSA shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- (e) The Customer shall be liable to Gianna Welding SSA for all legal expenses on the scale incurred by Gianna Welding SSA in the event of (a) any default by the Customer or (b) any litigation in regard to the validity and enforceability of this Agreement. The Customer shall also be liable for any tracing, collection or valuation fees incurred as well as for any costs, including stamp duties, for any form of security that Gianna Welding SSA may demand. Gianna Welding SSA shall be entitled to use any and all means including utilization of a debt collection agency or credit bureau to assist in the collection of monies owed by the Customer to Gianna Welding SSA and in addition Gianna Welding SSA shall have the right to list the Customer With the credit bureau if the Customer's account is in arrears.

## 7. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- (a) Gianna Welding SSA's trademarks and names shall not be used otherwise than as applied by Gianna Welding SSA to Goods.
- (b) No right or license is granted under this Agreement to the Customer under any patent, trademark copyright, registered design, or other intellectual property right, except the right to use Goods as permitted under this Agreement. No warranty is given as to whether that use, or re-sale will infringe the rights of any third party.
- (c) Any know-how, information or documents supplied at any time by Gianna Welding SSA to the Customer shall be treated as confidential by the Customer and shall not be disclosed to any third party or used for any purpose other than for the purpose of this Agreement without the prior written consent of Gianna Welding SSA unless and until the same is public knowledge other than through default of the Customer or comes into the Customer's possession bona fide from a third party.
- (d) Gianna Welding SSA retains all intellectual property rights in its drawings, specifications, data and all other information and documents prepared by Gianna Welding SSA for the Customer in whatever medium.



8. NOTICES

- (a) Any notices under this Agreement shall be in writing and signed by or on behalf of the party giving it.
- (b) Any such notice may be served by delivering it personally or by sending it by pre-paid recorded delivery post or email at or to the address shown above of the relevant party or any other address which it may from time to time notify in writing to the other parties.
- (c) Any such notice delivered personally shall be deemed to be received when delivered; any notice sent by pre-paid registered post shall be deemed to be received 5 days after posting and in proving the time of dispatch it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and posted; and any such notice sent by email transmission shall be deemed to have been received at the time of transmission, and in proving the service of the same it shall be sufficient to show a delivery receipt from an email address that the other party has nominated (where applicable) or has otherwise consistently used to communicate with the other party.
- (d) The parties choose as their domicilium citandi et executandi the addresses provided in accordance with Clause 8(b) above, or if the Customer is a juristic person its registered address from time to time.

9. ASSIGNMENT

- (a) Gianna Welding SSA shall be entitled to cede, assign, novate, charge, or hold on trust for another all or any of its rights and obligations under this Agreement on giving written notice to the Customer, but without any further consent of the Customer being requested. Gianna Welding SSA shall be entitled to sub-contract any of its obligations under the Agreement provided that Gianna Welding SSA shall remain liable for the acts and/or omissions of its subcontractors.
- (b) The Customer shall not without the prior written consent of Gianna Welding SSA cede, assign, novate, charge, or hold on trust any of its rights or subcontract any of its obligations under this Agreement in whole or in part to any third party.

10. GENERAL

- (a) If by arrangement with the Customer, Goods, are supplied to an Affiliate of the Customer who is not a party to this Agreement, the Customer shall be liable in full for all claims, actions and/or obligations as if the services were supplied to that Customer directly. The onus will further rest on the Customer to ensure that such an Affiliate understands the terms and conditions of this Agreement and shall procure proof that such person agrees to be bound in full by the terms of this Agreement as though a party to this Agreement. The Customer herewith indemnifies and holds harmless Gianna Welding SSA against any consequences (including any claim made by such person which he could not make if a party to this Agreement) of the Customer failing to do so or of such person not fulfilling the obligations applicable to it under this Agreement. Any order from or supply for such person shall be on behalf of the Customer and is made pursuant to the terms of this Agreement. Nothing in this Clause 14 shall relieve the Customer of any of its obligations under this Agreement, in particular, without limitation, payment or any Charges and any liability in relation to Gianna Welding SSA Equipment. For the purposes of this Clause 'Affiliate' means in relation to the Customer, a Company which is, from time to time, a subsidiary or holding company of the Customer, or is a subsidiary of the Customer's holding company.
- (b) This Agreement cannot be varied, added to, or cancelled by agreement otherwise than by means of a further written agreement between the parties. No relaxation of the terms of this Agreement and no indulgence which one party may grant to the other, will in any way operate as an estoppel against the former party or be deemed to be a waiver of his rights, or in any other way limit, alter, or prejudice those rights.
- (c) If any provision of this Agreement is or becomes invalid, illegal, or unenforceable in any way under any law, it shall to the extent of such invalidity, illegality or unenforceability be deemed severable, and the remaining provisions of this Agreement and the remainder of such provision shall continue in full force and effect.
- (d) This Agreement contains the entire agreement between the parties. Neither party will have any right or remedy arising from any undertaking, warranty, or representation not included in this document.
- (e) The Customer acknowledges and agrees that:

1. in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty (in each case whether negligently or innocently made), or understanding of any person (whether party to the Agreement or not) which is not expressly set out in these terms and/or the Agreement; and
2. the only remedy available to it for breach of any statement, representation or other term that is expressly set out in the Agreement shall be for breach of contract under the terms of this Agreement.

Nothing in this Clause 7(e) shall, however, operate to limit or exclude any liability for fraud or fraudulent misrepresentation.

- (f) This agreement shall be governed by South African law.
- (g) These South African courts shall have exclusive Jurisdiction in any litigation between the parties arising from whatsoever source. The parties consent to the jurisdiction of the Magistrate's Court in terms of Section 45 of Act 32 of 1944 that has jurisdiction over them in terms of Section 2B of the aforementioned Act, but without depriving the parties from their rights to approach any competent court with jurisdiction, including the High Court.
- (h) The Customer hereby acknowledges that the storage, processing, and use of their personal information provided to Gianna Welding SSA is necessary for pursuing the legitimate Interests of Gianna Welding SSA. In particular, but without limitation, Customer acknowledges that the above processing activities would include:
1. providing any trade references requested by the Customer;
  2. establishing the Customer's credit rating and to Gianna Welding SSA disclosing such information to credit control companies, banks and other institutions involved in rating credit; and
  3. disclosing Customer information to any third party where required by law or in order to protect the rights, property, or safety of Gianna Welding SSA its employees or members of the public and whether arising in connection with the Customer's breach of this Agreement or otherwise; and
- (i) When the Customer provides Gianna Welding SSA with Personal Information about third parties or such Personal Information is obtained by Gianna Welding SSA or on its behalf, from the Customer (including from the Customer's employees, agents, and other representatives) in connection with the Agreement ("Shared Personal Information"):
1. The Customer warrants and undertakes that it will be responsible for ensuring that there is a lawful basis on which the Shared Personal Information can be processed (the "Processing Purpose"), including in respect of the disclosure of Shared Personal Information to Gianna Welding SSA and processing of Shared Personal Information by Gianna Welding SSA in connection with the Processing Purpose and performance of Gianna Welding SSA' obligations under the Agreement;
  2. The Customer warrants and undertakes that it will be responsible for ensuring that appropriate privacy notices and/or policies, are communicated to the relevant Data Subjects which explain how the Shared Personal Information will be processed, including the fact that the Shared Data may be disclosed to Gianna Welding SSA in connection with the Processing Purposes and performance of Gianna Welding SSA' obligations under the Agreement;
  3. Gianna Welding SSA and the Customer each agree not to do or permit anything to be done through act or omission which would cause the other to incur any liability under Data Protection Laws; and
  4. Gianna Welding SSA and the Customer each agree to comply with Data Protection Laws at all times in respect of the processing of the Shared Personal Information.

## 11. WARRANTY FOR GOODS

- (a) Subject to clause 1 (m), Gianna Welding SSA warrants that: at the time of delivery the Goods is to the specification set out in the relevant Gianna Welding SSA Safety Data Sheet. All warranties and conditions which arise from statute and relate to the supply of goods and services are excluded from this Agreement except to the extent that such exclusion is prevented by law.

- (b) Recommendations relating to the use of the Goods made by Gianna Welding SSA in its technical literature or in response to a specific enquiry or otherwise are given in good faith, but no warranty is given by Gianna Welding SSA as to the suitability of the Goods for any particular purpose.
- (c) Technical advice or training supplied to the Customer by Gianna Welding SSA shall be prepared or delivered in good faith, in the context of the law in force as at the date of its preparation and on the basis of the matters and Information disclosed by the Customer to Gianna Welding SSA. Gianna Welding SSA accepts no responsibility for subsequent changes in law which may affect the conclusions of and/or recommendations In technical advice or training or for any loss or damage Incurred or suffered by the Customer arising out of a failure by the Customer to disclose facts or circumstances necessary for the preparation of technical advice or training.

## 12. EXPORT CONTRACTS

If the Customer is located outside South Africa the following additional provisions shall apply, unless otherwise agreed:

- (a) all Goods shall be supplied ex-works as defined in accordance with Incoterms as in force on the date of this Agreement:
- (b) the Customer shall be responsible for complying with any legislation or regulations governing the export of the Goods from South Africa and import into the country of destination and for the payment of any duties;
- (c) the Customer may at its cost inspect the Goods at Gianna Welding SSA's works before shipment, at a time to be agreed, and Gianna Welding SSA shall rectify any defects notified by the Customer during such inspection. Gianna Welding SSA shall not be liable for any defect discovered after shipment from Gianna Welding SSA which would have been apparent on inspection (whether or not carried out), or any claim in respect of damage during transit;
- (d) in the event of a claim under warranty the Customer shall arrange and pay for transport of defective Goods to Gianna Welding SSA and replacement and/or replacement or repaired Goods shall be supplied to the Customer and
- (e) payment shall be made by means of cash in advance.