



MEISTER COLD STORE

REG NO: 2013/208599/07
26 47360 Street
South Mead Industrial Park
Pinetown 3610

PostNet Suite 53
Private Bag X7005
Hillcrest
3650

Tel: 031-791-3140 / Fax: 031-791-0030 / Website: www.meistercoldstore.co.za

SECTION B – Terms and Conditions of Contract

THE APPLICANT or its duly authorised agent does hereby apply for credit facilities with NAZARETH COLD STORAGE (PTY) LTD T/A MEISTER COLD STORE (NAZARETH COLD STORAGE) and in consideration thereof THE APPLICANT does hereby accept the following terms and conditions:

1. Credit terms

THE APPLICANT agrees that the amount reflected in a Tax Invoice/statement as issued by NAZARETH COLD STORAGE shall be due and payable unconditionally (a) Cash on Delivery; or (b) if THE APPLICANT is a Credit Approved APPLICANT, within seven (7) days from the statement having been issued by NAZARETH COLD STORAGE to the APPLICANT. Settlement is affected only on receipt of cash or EFT or similar payment instrument and shall be made to NAZARETH COLD STORAGE free of exchange and without deductions of any nature. Any credit facilities granted to THE APPLICANT by NAZARETH COLD STORAGE is entirely at the discretion of NAZARETH COLD STORAGE, and may be withdrawn at any time without prior notice, and that the decision as to whether or not to grant credit facilities to the APPLICANT is at the sole discretion of NAZARETH COLD STORAGE.

2. Change of address

THE APPLICANT undertakes to notify NAZARETH COLD STORAGE in writing within seven (7) days of any change of address.

3. Change of ownership

THE APPLICANT undertakes to notify NAZARETH COLD STORAGE, in writing, within twenty-one days (21) of any change in Ownership of THE APPLICANT'S business, or should THE APPLICANT be a company, of its share transactions whereby the majority shareholding is affected, failing which notice the entire balance owing, whether due or not, will immediately be deemed to be due and payable by THE APPLICANT. In addition to the foregoing, THE APPLICANT acknowledges that immediately upon any change of Ownership in THE APPLICANT any outstanding amount whether due or not shall be deemed to be forthwith payable by THE APPLICANT to NAZARETH COLD STORAGE.

4. Domicilium

THE APPLICANT and the signatory hereto chooses *domicilium citandi et executandi* (in other words, the address at which the Applicant and the signatory will accept all notices, legal documents and the like, whether or not the Applicant and/or the signatory is still at the address chosen) for all purposes arising out of this application at the physical address stipulated in Section A, clause 3.2 of this application.

5. Consent to sharing information and retention periods

5.1. For the purposes of making credit risk management decisions and preventing fraud, THE APPLICANT hereby warrants that NAZARETH COLD STORAGE has consent to: -

5.1.1. Carry out a credit enquiry on THE APPLICANT and the Directors/Members/Partners/Trustees/Principals of THE APPLICANT from time to time with one or more credit bureaus, credit information agents, credit insurance companies or other creditors (trade references) of THE APPLICANT'S in terms of this agreement.

5.1.2. NAZARETH COLD STORAGE may transmit details to credit bureaus, credit information agents, credit insurance companies or other creditors of THE APPLICANT'S of how THE APPLICANT has performed in meeting his/her/its obligations in terms of this agreement.

5.1.3. If THE APPLICANT fails to meet his/her/its commitments to NAZARETH COLD STORAGE, NAZARETH COLD STORAGE may record THE APPLICANT 'S non-performance with credit bureaus, credit information agents, credit insurance companies or other creditors of THE APPLICANT.

5.2. Such information shall be retained for periods as stipulated in any applicable law, but no longer than the duration of the validity of this agreement. Where THE APPLICANT has not used a facility under this agreement for 24 months, THE APPLICANT will be required to re-apply for such a facility.

6. Pricing increments

6.1. Prices quoted by NAZARETH COLD STORAGE are determined from time to time and are subject to increases, at the discretion of NAZARETH COLD STORAGE. NAZARETH COLD STORAGE shall be entitled to increase the cost of goods delivered or services rendered to THE APPLICANT with prior written notice.

6.2. The purchase price for any goods ordered shall be NAZARETH COLD STORAGE'S standard price for such goods prevailing as at the delivery date irrespective of when the order for such goods were placed by THE APPLICANT.

7. Valid orders

In the event of any order being given to NAZARETH COLD STORAGE on an order form reflecting THE APPLICANT'S name as the entity from which the order emanates, such order shall be deemed to have emanated from THE APPLICANT, notwithstanding the fact that such order may have been given or signed by a person not authorised by THE APPLICANT and such order will be deemed to constitute valid delivery. It is further the sole responsibility of THE APPLICANT to determine that goods ordered are suitable for the purposes of the intended use.

8. Defaulting in payment

8.1. Should the Applicant breach this agreement and fail to remedy such breach within five (5) days of receiving written notice to remedy such breach from the NAZARETH COLD STORAGE'S then it shall be entitled to either terminate this agreement and claim damages from the Applicant as a consequence of such termination, alternatively claim specific performance of the Applicant's obligations in terms hereof, as well as any damages suffered.

8.2. In the event of THE APPLICANT failing to remedy a defaulting in making payment of any amount that has become due and owing, then the full balance outstanding (whether due or not) will immediately become due and payable without notice to THE APPLICANT.

9. Interest on overdue accounts

NAZARETH COLD STORAGE shall be entitled but not obliged to charge late payment interest on any overdue amount at the rate of two percent (2%) above the ruling Standard Bank overdraft rate from time to time or at the maximum rate permissible in terms of the National Credit Act (if applicable). It is specifically agreed that interest payable in terms of this provision arises by operation of law and not by operation of contract.

10. Proof of Claims

A certificate signed by a manager or any director of NAZARETH COLD STORAGE - whose position and signature shall not be necessary to prove - reflecting the amount owing by THE APPLICANT to CONSOL, in respect of the credit facilities granted to THE APPLICANT relating to THE APPLICANT'S dealings with NAZARETH COLD STORAGE, and of the fact that such amount is due, owing and unpaid shall be considered as adequate proof – on its mere production - of the outstanding amount for the purpose of any action (whether by way of provisional sentence or otherwise), proof of debt on insolvency or for any purpose whatsoever where the amount of such claims is required to be established, and it shall rest with THE APPLICANT to prove that such amount is not owing and/or due and unpaid.

11. Consent to jurisdiction

Notwithstanding the amount which may at any time be owing by THE APPLICANT to NAZARETH COLD STORAGE, the parties do hereby consent, in terms of Section 45 of the Magistrates Court Act (No 32 of 1944 as amended), to the Jurisdiction of the Magistrate's Court for the determination of any action or proceeding which may be brought by NAZARETH COLD STORAGE against THE APPLICANT arising out of any transaction between the parties, it being recorded that NAZARETH COLD STORAGE shall be entitled, but not obliged, to bring any action or proceeding in the said court.

12. Recovery of legal /collection costs

Should NAZARETH COLD STORAGE instruct its attorneys or collection agent to collect any overdue amounts, or to take any action against THE APPLICANT in the implementation or protection of NAZARETH COLD STORAGE'S rights, NAZARETH COLD STORAGE shall be entitled to the recovery of all legal or collection costs arising there from, on the scale as between attorney, agent or collection agency and own client.

13. Non-waiver of rights

Any condonation of any breach of any of the provisions hereof or other act or relaxation, indulgence or grace on the part of NAZARETH COLD STORAGE shall not in any way operate as or be deemed to be a waiver by NAZARETH COLD STORAGE of any rights under this contract, or be construed as a novation thereof.

14. Special and General Lien/ Reservation of Ownership

All goods stored shall be subject to a special and general lien for moneys due to the NAZARETH COLD STORAGE from the APPLICANT, until such time as THE APPLICANT has paid the amount due in full in respect of any purchase and or storage of goods. The ownership in and to all such goods shall remain vested in NAZARETH COLD STORAGE. NAZARETH COLD STORAGE shall, in its sole discretion, without notice to THE APPLICANT, be entitled to take possession of any such goods/amounts which have not been paid for and in respect of which payment is overdue. In the event of a breach of contract by THE APPLICANT, NAZARETH COLD STORAGE shall be entitled to claim possession of the goods (which have not been paid for) and a credit in respect of the goods so returned being the price at which the goods are sold or the value thereof as determined by NAZARETH COLD STORAGE. THE APPLICANT hereby waives any right it may have for spoliation order against NAZARETH COLD STORAGE in the event that NAZARETH COLD STORAGE takes possession of any goods.

15. ACCESS TO THE STORAGE FACILITIES

- 15.1. NAZARETH COLD STORAGE has the right to restrict all entry to and control all exit and movement within its premises without affording any reason therefor.
- 15.2. Only a Visitor approved by NAZARETH COLD STORAGE, will be allowed access to the its premises
- 15.3. No Visitor, may enter or leave the premises except through the designated entrance and exit points designated for such purpose
- 15.4. Minors are not allowed into the premises without prior written consent
- 15.5. No Visitor, may enter the or be on the premises, unless:
 - 15.5.1. the Visitor is authorised access to or exit from the premises; and
 - 15.5.2. they have a written job card from the applicant instructing him to perform work at the premises
 - 15.5.3. they have a delivery note or collection order note from the Applicant;

16. RESTRICTED ZONES

The Applicant is vicariously liable and responsible for all acts of any Visitor whose presence in the premises in any way arises from or is connected with the business of the Applicant and must ensure that no such Visitor under any circumstances:

- 16.1. enters NAZARETH COLD STORAGE's Operational Areas save for a purpose related to the Applicant's operations; or
- 16.2. stands, sits or walks under or near any suspended load.

17. DAMAGES TO STORED GOODS

The Applicant and/or its Visitors undertake that:

- 17.1. all goods to be delivered by it to, or received by it from NAZARETH COLD STORAGE will be free of damage or defects, of such nature as might render the goods unsafe for storage at NAZARETH COLD STORAGE's premises
- 17.2. the Applicant and/or its Visitor will immediately report any damage of goods to NAZARETH COLD STORAGE at the exit/entry gate of the premises, before such goods enters or leaves the premises;
- 17.3. where any goods are found to be damaged upon delivery, such goods will not be removed by it from the premises unless the Applicant has signed a certificate, certifying that the goods were delivered to NAZARETH COLD STORAGE in a damaged condition

18. DISCLAIMER

- 18.1. Entry into NAZARETH COLD STORAGE's premises are at the sole risk of the Applicant and/or Visitor(s).
- 18.2. Neither NAZARETH COLD STORAGE nor any of its employees or agents, are liable for any death, injury, loss or damage of whatever nature and howsoever arising, whether direct, indirect, consequential or otherwise (including any loss of profit) suffered by the Applicant or the Applicant's officers, employees, agents or Visitor(s), or any third parties, arising from any incident which occurred within the premises as a result of the wilful misconduct, acts, omissions, delicts, negligence of any degree on the part of, or breach of contract by, the Applicant or the Applicant's officers, employees, agents or Visitor(s), and/or any third party claiming through them.

19. INDEMNITY

- 19.1. The Applicant indemnifies NAZARETH COLD STORAGE , and holds them harmless against any claim of whatsoever nature, whether for loss or damage, and whether direct, indirect, consequential or otherwise, including any loss of profit, suffered and or instituted against NAZARETH COLD STORAGE by a third party or by any Visitor as a result of any incident which occurred on the premises of the Terminal, whether or not such claim, loss or damage is attributable to any wilful misconduct, breach of contract, delict, negligence of any degree or any other cause, without limitation, on the part of the Applicant or the Applicant's officers, employees, agents or Visitor.
- 19.2. Notwithstanding any other provisions to the contrary, any claim which the Applicant believes it may have against NAZARETH COLD STORAGE in connection with or arising out of any incident will become extinguished unless:
 - 19.2.1. within thirty (30) days of the happening of the event that could give rise to the claim, the Applicant gives written notice thereof to NAZARETH COLD STORAGE, which notice must contain all material facts on which the claim is based, and thereafter, irrespective of whether or not the claim is repudiated NAZARETH COLD STORAGE;
 - 19.2.2. within twelve (12) months of such claim arising, the Applicant institutes legal proceedings against NAZARETH COLD STORAGE in respect of the claim by service on NAZARETH COLD STORAGE's of legal process issued by it in a court of competent jurisdiction and having such summons served on the Terminal at the following address:

20. Severability of clauses

Each clause of these conditions of sale 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 conditions of sale, which shall remain of full force and effect.

21. Entire agreement

- 21.1 This contract contains the entire agreement between the parties and any other terms thereof whether express or implied or excluded here from 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 signatories. The agreement shall be governed by the laws of the Republic of South Africa. THE APPLICANT and THE SURETY / SURETIES, by their signatures hereunder, confirm that the information submitted in this application is true and correct in all respects and that they are entirely familiar with the terms and conditions contained herein.
- 21.2. No indulgence of any nature granted by NAZARETH COLD STORAGE at any time to the Customer and/or Visitor will constitute a waiver of any of its rights or preclude it from strictly enforcing such rights thereafter

22. GENERAL

- 22.1. NAZARETH COLD STORAGE has the right to refuse to accept any goods for storage, and will in those circumstances furnish the Applicant with reasons for such refusal;
- 22.2. The instruction from the Applicant to NAZARETH COLD STORAGE in respect of any particular storage requirements shall be made in writing, fully and accurately completed at the time that the goods are received by the NAZARETH COLD STORAGE.
- 22.3. The Applicant shall pay NAZARETH COLD STORAGE within a maximum of thirty (30) days from date of the NAZARETH COLD STORAGE's statement to the Applicant. If the Applicant fails to do so, the Courier NAZARETH COLD STORAGE may charge interest on overdue amounts at the then interest rate prescribed by in terms of these terms and conditions
- 22.4. The Applicant may raise queries on the NAZARETH COLD STORAGE's invoice during this thirty (30) day period and NAZARETH COLD STORAGE will resolve such queries during this period. If no queries are timeously raised, the invoice is deemed correct and undisputed.
- 22.5. Even if queries are raised by the Applicant which are not resolved within the thirty (30) day period, the Applicant remains liable to pay within the thirty (30) day period, all undisputed items on the invoices.
- 22.6. The Applicant is not entitled to withhold payment of any amount due to NAZARETH COLD STORAGE beyond the due date for payment. The Applicant is not entitled to set off any alleged damages or loss

which the Client has suffered in respect of the goods against any amount due, owing and payable to the TRAVEL MEISTER.

22.7. The Applicant shall remain responsible to the TRAVEL MEISTER for all charges until they are paid.

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