



**STANDARD TERMS AND
CONDITIONS OF SALE**

STANDARD TERMS AND CONDITIONS OF SALE

These terms and conditions (the **"Sale Conditions"**) govern the sale of Products by Azoteq (Pty) Ltd and its affiliates (**"Azoteq"**). These Sale Conditions shall take precedence over any supplemental or conflicting terms and conditions proposed by the Customer, to which notice of objection is hereby given, unless the Parties expressly agree in writing to conflicting terms in a subsequent agreement. In the event of any conflict between such subsequent agreement and these Sale Conditions, in the specific circumstance of express prior agreement between the Parties, the conflicting terms of the subsequent agreement shall prevail, but only to the extent of the conflict. All remaining provisions of these Sale Conditions shall remain in full force and effect. Neither Azoteq's commencement of performance or delivery shall be deemed or construed as acceptance of the Customer's supplemental or conflicting terms and conditions. Azoteq's failure to object to conflicting or additional terms will not change or add to the terms of the agreement. Placement of an order constitutes acceptance by the Customer of the Sale Conditions. Azoteq's acceptance of the Order will accordingly result in an individual Sale Agreement subject to the herein contained Sale Conditions.

1. DEFINITIONS

1.1 In these Sale Conditions:

"Customer" means the person/entity who places an order for the purchase of the Product;

"Custom Products" means the Product designed and manufactured exclusively for a Customer. This definition further includes a Standard Component that carries Customer specific firmware and/or marking;

"Inco Terms" means International Commercial Terms that are a set of standardised trade terms published by the International Chamber of Commerce and internationally recognised in international trade;

"Overarching Agreement" means the agreement concluded in and between the Parties at the commencement of their relationship as such regulating the ongoing relationship and individual Sale Agreements in and between them;

"Product" means the electronic equipment, components or complete products set out on the relevant Purchase Order reflecting the required/agreed to Specifications, which includes both Custom Product and Standard Product;

"Purchase Order" means the purchase order for the Product placed by the Customer as such reflecting the required/agreed to Specifications;

"Purchase Price" means the purchase price for the Product payable in respect to an individual Sale Agreement following acceptance of a Purchase Order by Azoteq;

"Sale Agreement" means the agreement for the sale of Product/s following acceptance by Azoteq of each individual Purchase Order as read with the Overarching Agreement;

"Sale Conditions" means the standard terms and conditions of sale set out in this document together, to the extent applicable, with any such special terms and conditions agreed in writing

"Specifications" means Azoteq's officially published specifications and/or data sheets in respect of the Product/s or customer specific specifications as may be agreed upon;

"Standard Product" means the Product designed and manufactured by Azoteq as a standard product without use of any Customer intellectual property or confidential information and made available by Azoteq to any third party buyer;

"Warranty Period" means thirty (30) days after delivery of the Products or, in the event that non-conformity cannot reasonably be discovered within such thirty (30) day period, then within ten (10) days of discovery of such non-conformity, but in no event later than six (6) months after delivery of the Product.

2. ORDERS

All orders placed by Customer are subject to written acceptance by Azoteq. All orders must identify the Product, required quantity, timing of delivery and price and any such further special product specific requests as may be required in respect to the Purchase Order.

3. DELIVERY AND ACCEPTANCE

3.1 Deliveries of the Products will be according to Incoterms, as amended by the International Chamber of Commerce from time to time, ex-works at a location specified by Azoteq in the relevant order confirmation or such other delivery terms and address as may be agreed to in writing between the parties from time to time.

- 3.2 Delivery shall be effected and deemed completed when the Product is handed over and signed for in acceptance of delivery to the Customer or his duly authorised agent at the clause 3.1 specified place.
- 3.3 The signature of any employee or agent of the Customer which appears on Azoteq's official delivery note, waybill or invoice, or the delivery note or waybill of any authorised independent carrier, will constitute conclusive evidence of delivery of Product purchased.
- 3.4 Any estimated date of delivery set out and contained in the Purchase Order is an estimate only and Azoteq will accordingly not be liable for any damages flowing from any deliveries taking place beyond such date.

4. ADDITIONAL CHARGES

With the exception of export clearance and delivery to the specified place of Delivery all prices quoted are exclusive of duties, and all taxes, including but not limited to, federal, state and local sales, excise and value added, goods, withholding, services taxes and penalties or interest thereon. The Customer shall accordingly, in addition to the charges provided for in terms of each Sale Agreement, be liable for and pay all taxes, rates, or Governmental levies imposed in respect of the Product/s resulting from each Sale Agreement.

5. PRICES, PAYMENT TERMS AND CREDIT FACILITIES

- 5.1 The Purchase Price for the Product are those prices as set out in the accepted Purchase Order which shall be payable at such place as Azoteq may advise the Customer from time to time.
- 5.2 Unless agreed otherwise, subject to successful credit application, the full Purchase Price is payable on a cash on delivery basis (COD), as supported by electronic commercial documents shared. Notwithstanding anything stated to the contrary, Azoteq reserves the right to require the payment of a deposit prior to attending to the delivery of the Product. In such instances the full Purchase Price less the deposit is payable on a cash on delivery basis.
- 5.3 Such payment shall be made in full in the trading currency indicated by Azoteq in the Purchase Order, without any deduction or set-off, and free of bank exchange or other charges or commission.
- 5.4 If any amount is not paid in full on the due date, then Azoteq may, without prejudice to any rights it may have, immediately suspend the carrying out of its obligations in terms of any Sale Agreement existing between the Customer and

Azoteq at the time until such time at which any default has been cured.

- 5.5 The Customer shall be liable for interest at the 1- month USD LIBOR rate plus 2% calculated daily in arrears on all overdue amounts.
- 5.6 Notwithstanding the granting of credit facilities, Azoteq shall be entitled at any time, without prior written notice, to in their sole discretion withdraw the credit facilities and demand payment of any amount owing to Azoteq by the Customer and Azoteq accordingly reserves the right to review the extent, nature and duration of any credit facilities granted to the Customer at all times.
- 5.7 The Customer undertakes to notify Azoteq within a period of seven (7) days of any change of address or any changes in the Customer specific information set out in the application for credit/schedule of customer's particulars signed by or on behalf of the Customer.
- 5.8 All credits shall be handled as separate financial transactions from the original invoice. There shall be no reduced payment by the Customer for anticipated credits to be received, either at the time of the payment of the original invoice or at the time of providing the credit request.

6. RESCHEDULE AND CANCELLATION

- 6.1. **Reschedule**
- 6.1.1. For Standard Products, Customer may reschedule deliveries without charge by providing Azoteq with written notice at least seven (7) days before the then-current delivery date, provided the cumulative total of any rescheduled dates does not exceed ninety (90) days from the original delivery date.
- 6.1.2. Custom Products may be rescheduled up to two (2) times from the original delivery date without charge if Customer provides Azoteq with written notice at least thirty (30) days prior to the then-current delivery date, and provided the cumulative total of any rescheduled dates does not exceed ninety (90) days from the original delivery date.
- 6.2. **Cancellation**
- 6.2.1. For Standard Product, the Customer may cancel a Purchase Order by providing Azoteq with written notice of at least thirty (30) days before the then-

- current delivery date and paying a 50% cancellation penalty on the cancelled Products.
- 6.2.2. For Custom Product, Customer may cancel a Purchase Order by providing Azoteq with written notice of at least sixty (60) days before the then-current delivery date. **THE CUSTOMER WILL BE LIABLE FOR ALL EXPENSES INCURRED WITH THE MANUFACTURING OF THE GOODS BY AZOTEQ, UP TO THE DATE WHEN AZOTEQ HAS APPROVED IN WRITING THE CANCELATION REQUEST.**

7. OWNERSHIP

- 7.1 Ownership in the Product shall remain with Azoteq until the Purchase Price and any applicable taxes have been paid in full by the Customer to Azoteq, at which point ownership shall pass to the Customer.
- 7.2 Azoteq shall have a creditor's lien over the Product and as such the Product will at all times whilst any amount is outstanding in terms of this Agreement be subject to the general lien of Azoteq for all sums due and payable and becoming due under the Agreement and for other monies due to Azoteq from the Customer, regardless as to whether such monies are owed in respect of this Agreement or any other Agreement entered into by and between Azoteq and the Customer.

8. RISK ON DELIVERY

Risk of loss or damage to the Product shall pass to the Customer upon delivery of the Product in question, notwithstanding that ownership may not have passed in terms of clause 7 above.

9. WARRANTIES

- 9.1 Azoteq warrants that, when delivered, the Product will be free from defects in material and workmanship and will conform to the Specifications (the "**Warranty**"). The Warranty does not extend to any Product that has been subjected to:
- 9.1.1 Improper installation or storage.
- 9.1.2 Improper maintenance.
- 9.1.3 Use for any purpose other than that for which it was designed.
- 9.1.4 Repairs or alterations not authorised by Azoteq.
- 9.1.5 Accidents, damage, abuse or misuse.
- 9.1.6 Abnormal or unusual operating conditions or applications.
- 9.1.7 Operating conditions or applications above the rated capacity or specifications of the Product.

- 9.2 In compliance with the Warranty, Azoteq undertakes to provide free of charge corrections to, or replacements for, the whole or any part, as the case may be, which does not so comply and conform as is warranted in clause

9.1 hereof, on condition that non-compliance or non-conformity is notified in writing to Azoteq within 30 days of the event giving rise to the warranty claim, together with the relevant details surrounding the events that gave rise to the claim.

- 9.3 All defective Products are to be returned at the Customer's expense to Azoteq whose obligations under the Warranty shall be limited to correction or replacement (at Azoteq's discretion) of defective or non-conforming parts of Product.

- 9.4 The decision to replace or correct an alleged defective Product, as contemplated in this clause 9, shall at all times remain within the sole discretion of Azoteq, save that such decision shall not be unreasonably refused.

- 9.5 Azoteq makes no representation or warranty that the Product complies with any regulatory or legislative requirements of the Customer's country of origin or any jurisdiction outside the Republic of South Africa. The Customer acknowledges and accepts that it is solely responsible for ensuring that the Product is compliant, suitable and useable in the country in which it intends to use the Product and for the purpose for which the Customer intends to use the Product. Azoteq shall not be liable, and the Customer indemnifies Azoteq against any loss or damage resultant from non-compliance, restriction, or limitation affecting the use, importation, or operation of the Product in the Customer's country of origin or the jurisdiction in which the Customer intends to use the Product.

- 9.6 The Warranty is in lieu of all other warranties expressed or implied, and accordingly Azoteq does not give any warranty or guarantee or make any representation in respect of the Product or the fitness of the Product or any part thereof of any particular purpose, whether or not that purpose is known to Azoteq or not. **IT IS ACCORDINGLY RECORDED THAT SAVE AS EXPRESSLY PROVIDED IN THESE TERMS AND CONDITIONS, ALL IMPLIED**

WARRANTIES, TERMS AND CONDITIONS (WHETHER STATUTORY OR OTHERWISE) ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. IN PARTICULAR, AZOTEQ MAKES NO WARRANTY RESPECTING THE MERCHANTABILITY OF THE PRODUCTS OR THEIR SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND WARRANTIES AGAINST LATENT DEFECTS.

10. INDEMNITY AND EXCLUSIONS

- 10.1 The Customer shall not be entitled to claim, and Azoteq shall not be liable for, loss of profits or revenue, promotional or manufacturing expenses, overheads, business interruption cost, loss of data, removal or reinstallation costs, injury to reputation or loss of buyers, punitive damages, IP infringement, loss of contracts or orders or any indirect, special, incidental or consequential damages of any nature. The Customer's recovery from Azoteq for any claim shall not exceed the Purchase Price paid for the affected products irrespective of the nature of the claim whether in contract, delict, warranty, or otherwise. The Customer will indemnify, defend and hold Azoteq harmless from any claims based on (a) Azoteq's compliance with Customer's designs, specifications, or instructions, (b) modification of any products by anyone other than Azoteq, or (c) use in combination with other products. Azoteq shall be exempt from and shall not under any circumstances be liable for any indirect, special or consequential damages of any nature or any loss of profit or other special damages of any nature for any breach by Azoteq of its obligations under these Sale Conditions and each agreement to which these Sale Conditions apply, provided that nothing in this clause shall exclude or limit Azoteq's liability for any losses arising directly from its gross negligence or wilful misconduct.
- 10.2 Insofar as any of the services to be rendered by Azoteq in terms of each agreement are rendered by any of its employees, agents or subcontractors, the provisions of 10.1 is stipulated for their benefit as well as that of Azoteq and they shall each be exempted accordingly.
- 10.3 The Customer shall not have any claim of any nature whatever against Azoteq for any failure by Azoteq to carry out any of its obligations under the individual Sale Agreement to which these Sale Conditions apply where such failure is as a result of vis major, including but not limited to, any strike, lock-out, shortage of labour or materials,

delays in transport, accidents of any kind, any default or delay by a sub-contractor or supplier of Azoteq, riot, political or civil disturbances, the elements, loadshedding, or any other act of God, any act of any State or Government or any other authority, or any other cause whatever beyond Azoteq's control.

- 10.4 Should either Party be prevented from carrying out its contractual obligations as a result of a vis major event, as contemplated in clause 10.3 above, as a result of a vis major event lasting continuously for a period of thirty (30) days, either Party shall be entitled, after due consultation with the other Party in an effort to come to a mutually acceptable arrangement, to terminate the Sale Agreement on written notice to the other party, without liability.

11. SUB SYSTEMS

It is the responsibility of the Customer to ensure that the Specifications be agreed upon by a third party(s) if the Product forms part of or is integrated into a system supplied to the Customer by the third party(s).

12. INTERPRETATION

- 12.1 The headings in this document shall not be taken into account in the interpretation thereof having been included for purposes of convenience and unless the context otherwise requires, terms used herein shall bear the meanings normally ascribed to them in the electronics industry.
- 12.2 Unless inconsistent with the context words relating to any gender shall include the other genders, words relating to the singular shall include the plural and vice versa and words relating to natural persons shall include associations of persons having corporate status by statute or common law.
- 12.3 No indulgence, concession or waiver granted by Azoteq to the Customer will in any way affect or limit Azoteq's rights in terms hereof.

13. SEVERABILITY

If any term, condition, provision or performance, or any part of a term, condition, provision or performance of the Sale Agreement is determined to be

invalid, illegal, unlawful or unenforceable to any extent, that term, condition, provision or performance or the relevant part thereof shall be severed from the remaining terms, conditions, provisions and performance of the Sale Agreement, or amended to make it valid, legal, lawful and enforceable, in such a manner as to leave the amended Sale Agreement substantially the same in essence, and the Sale Agreement so amended shall remain in force and effect.

14. ASSIGNMENT

Neither party shall be entitled to cede its rights or delegate its obligations in respect of any Agreement to which these Sale Conditions apply without the prior written consent of the other Party, such consent not to be unreasonably withheld.

15. BREACH

- 15.1 In addition to the other rights available to it Azoteq may, without notice to the Customer, cancel the Sale Agreement to which these Sale Conditions apply as well as any other Sale Agreement in place at the time if the Customer:
- 15.1.1 fails to pay any amount due to Azoteq on due date for payment thereof and fails to remedy that breach within ten days of receipt of written notice by Azoteq; or
- 15.1.2 commits any other material breach of any of these Sale Conditions and fails to remedy that breach within thirty days of receipt of written notice by Azoteq to remedy that breach; or
- 15.1.3 is placed under a provisional or final winding-up or sequestration or judicial management order or in any way attempts to compromise with its creditors.
- 15.2 The Customer may cancel each individual Sale Agreement to which these Sale Conditions apply if Azoteq commits any material breach of these Sale Conditions and fails to remedy that breach within thirty days of receipt of written notice from the Customer to remedy that breach.
- 15.3 Upon termination in terms of 15.1 or 15.2 above for any reason whatsoever:
- 15.3.1 all amounts then owed by the Customer to Azoteq from whatsoever cause shall immediately become due and payable; and
- 15.3.2 Azoteq may retake possession of any Product in respect of which ownership has not passed to the Customer.
- 15.4 Either Party's rights in terms of this clause shall not be exhaustive and shall be in addition to its common law rights.

16. GENERAL

- 16.1. The Sale Agreement constitutes the whole of the agreement between the Parties hereto relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of each individual Sale Agreement not incorporated in such agreement, shall be binding on any of the Parties.
- 16.2. No variation, addition, deletion, or agreed cancellation will be of any force or effect unless in writing and signed by or on behalf of the Parties thereto. Failure or delay on the part of any Party in exercising any right, power or privilege thereunder will constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 16.3. Any consent or approval required to be given by any Party will, unless specifically otherwise stated, not be unreasonably withheld.
- 16.4. Each Party agrees that, in its respective dealings with the other Party under or in connection with the Sale Agreement, it shall act in good faith.
- 16.5. The Overarching Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement as at the date of signature of the Party last signing one of the counterparts.
- 16.6. The Sale Agreement shall be governed, construed, interpreted and take effect in accordance with the laws of the Republic of South Africa. If any provision hereof shall be held to be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 16.7. The Parties hereby consent and submit to the exclusive jurisdiction of the High Court of the Republic of South Africa, Western Cape Division, Cape Town in any dispute arising from or in connection with this Agreement.

17. DOMICILIA AND NOTICE

For all purposes under the Agreement or any amendment thereof, or with regard to any matter arising there out or in connection therewith, the Parties choose as their domicilium citandi et executandi the address specified on the Overarching Agreement, provided that either Party shall be entitled to nominate a substitute address as that Party's domicilium citandi et executandi, by written notice to that effect given to the other Party. Any notice required or permitted to be given by either Party to another in terms of the Agreement shall be in writing addressed in the name or the latter (and in the case of Azoteq marked for the attention of its Managing Director) and shall be delivered to the addressee at the addressee's domicilium citandi et executandi established for the time being in terms thereof.

person(s) to provide Azoteq with their Personal Information for processing and indemnifies and hold harmless Azoteq against any liability or loss which may be incurred by Azoteq or its employees as a result of any breach of such warranty.

18. CERTIFICATE OF INDEBTEDNESS

The Customer confirms that a certificate signed by financial manager of Azoteq setting out the amount owing by the Customer to Azoteq shall constitute prima facie proof that the said amount is due, owing and unpaid, and be sufficient for the purposes of obtaining summary judgment or provisional sentence against the Customer. Where the quantum of Azoteq's claim is thereafter disputed by the Customer, the Customer shall bear the onus of disproving that the said amount is due, owing and payable.

19. PROTECTION OF PERSONAL INFORMATION.

In terms of the Protection of Personal Information, Act No. 4 of 2013 (POPIA), everyone has the right to privacy including the right to the lawful collection, retention, dissemination and use of one's personal information. In order to give effect to this right, Azoteq acknowledges that it is under a duty to provide the Customer with a number of details pertaining to the processing of personal information, before such information is processed, which details are housed under the Azoteq's Website, Legal Notices Page, SECTION 18 – INFORMED CONSENT NOTICE (the "**Section 18 Notice**"). By providing Azoteq with personal details, the Customer voluntarily consent's to Azoteq processing the Personal Information as set out under the Section 18 Notice. Where the Customer provides Azoteq with another person's Personal Information for processing, the Customer confirms and warrants that it has obtained the required permission from such