

iCerMax™ Standard Terms, Conditions & Commentary

These general terms and conditions of sale (“conditions of sale”) govern the offering, sale and delivery of all the goods and/or the provision of all services (hereinafter jointly referred to as “the goods”) from or on behalf of iCerMax (Pty) Ltd, Registration number:

To: .....

Identity /Registration number:.....(“the Customer”)

The customer by its Signature hereto confirms that it has read and understood these conditions of sale and agrees to be bound by them.

.....

For the Customer who warrants his authority to sign on behalf of the Customer

Date .....Place .....

Note: if the customer does not understand any of these conditions of sale, please contact us

Special conditions

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Special Conditions Agreed to by iCerMax .....

1. The Customer agrees that:
  - (a) this Agreement represents the entire Agreement between the Customer and iCerMax (Pty) Ltd a and that no alterations or additions to this Agreement may be effected unless agreed to by both parties, reduced to writing and signed by the Customer and a duly authorised representative of iCerMax (Pty) Ltd;
  - (b) this Agreement will govern all future contractual relationships between the parties;
  - (c) this Agreement is applicable to all existing debts between the parties’
  - (d) this Agreement is final and binding and is not subject to any suspensive or dissolutive conditions;
  - (e) any conflicting conditions stipulated by the Customer are expressly excluded’
  - (f) these terms supersede all previous conditions of agreement without prejudice to any securities or guarantees held by iCerMax (Pty) Ltd and
  - (g) these terms apply to all servants and subcontractors of iCerMax (Pty) Ltd.

2. This Agreement only becomes final and binding on receipt of the acceptance of any order by iCerMax (Pty) Ltd at its business address in Kempton Park.
3. The signatory hereby binds himself/herself in his/her personal capacity as Shareholder (in the case of a company), Member (in the case of close corporations) or Owner or Partner as co-debtor jointly and severally for the full amount due to iCerMax (Pty) Ltd and agrees that these Standard Conditions will apply in the exact same way to him / her.
4. The Customer acknowledges that it does not rely on any representations made by iCerMax (Pty) Ltd in regard to the goods and services or any of its qualities leading up to this Agreement other than those contained in this Agreement.

All specification, price lists, performance figures, advertisements, brochures and other technical data furnished by iCerMax (Pty) Ltd in respect of the goods or services orally or in writing will not form part of the Agreement in any way unless agreed to in writing by iCerMax (Pty) Ltd.

- 5.1 The Customer agrees that neither iCerMax (Pty) Ltd nor any of its employees, agents or distributors will be liable for any product claims of any nature whatsoever, other than in the official literature of the company or on its official website.
- 5.2 It is the sole responsibility of the Customer to determine that the goods or services ordered are suitable for the purposes of intended use.
- 5.3 The Customer agrees to pay all costs resulting from any acts or omissions of the Customer including suspension of work, modification of requirements, failure or delay in giving particular requisite to enable work to proceed on schedule or requirements that work be completed earlier than agreed.
- 5.4 iCerMax (Pty) Ltd reserves the right at its sole discretion to provide alternative goods at the prevailing prices to those ordered by the Customer should such goods be superseded, replaced or its manufacture terminated.
- 6.1 All quotations will remain valid for a period of 30 days from the date of the quotation.
- 6.2 All quotations are subject to the availability of the goods or services and subject to correction of good faith errors by iCerMax (Pty) Ltd and the prices quoted are subject to any increases in the cost price, including currency fluctuations, of iCerMax (Pty) Ltd before acceptance of the order.
- 6.3 If the Customer disputes the amount of increase, the amount of the increase may be certified by any independent auditor and such certificates shall be final and binding on the Customer.
- 6.4 The Customer hereby confirms that the goods or services on the Tax Invoice issued duly represent the goods or services ordered by the Customer at the prices agreed to by the Customer. Where delivery/performance has already taken place, that the goods or services were inspected and that the Customer is satisfied that these conform in all respects to the quality and quantity ordered and are free from any defects.
- 6.5 Notwithstanding the provisions of section 1 above, all orders or agreed variations to orders, whether oral or in writing, shall be binding and subject to these standard conditions of agreement and may not be cancelled.
- 6.6 iCerMax (Pty) Ltd shall be entitled in its sole discretion to split the delivery/performance of the goods or services ordered in the quantities and on the dates it decides. All service rendered with regard to 3rd party installation will relieve iCerMax (Pty) Ltd of all liability as it is the responsibility of the client to ensure the product is installed within the parameters of the prescribed procedure.
- 6.7 iCerMax (Pty) Ltd shall be entitled to invoice each delivery/performance actually made separately. All prices are quoted ex-factory. All iCerMax TM discounts shall be forfeited if payments in full is not made on the due date. No customer settlements of any nature.
- 6.8 Any delivery note or waybill or job card (copy or original) signed by the Customer or a third party engaged to transport the goods and held by iCerMax (Pty) Ltd shall be conclusive proof that delivery was made to the Customer.

- 6.9 The risk of damage to, destruction or theft of goods shall pass to the Customer on acceptance of any order placed in terms of this Agreement and the Customer undertakes to comprehensively insure the goods until paid for in full. iCerMax (Pty) Ltd may recover insurance premiums from the Customer for such uninsured goods.
- 6.10 Delivery, installation and performance times quoted are merely estimates and are not binding on iCerMax (Pty) Ltd. If specific requirements (ie: crating) are needed then the onus is on the customer to request them along with them incurring the additional costs.
- 6.11 If iCerMax (Pty) Ltd agrees to engage a third party to transport the goods, iCerMax(Pty)Ltd is hereby authorised to engage a third party on the Customer's behalf and on the terms deemed fit by iCerMax (Pty) Ltd.
- 6.12 The Customer indemnifies iCerMax (Pty) Ltd against any claims that may arise from such agreement in clause 6.11 against iCerMax (Pty) Ltd.
- 6.13 Repair times and repair costs given are merely estimates and are not binding on iCerMax (Pty) Ltd.
- 6.14 Any item handed in for repair may be sold by iCerMax (Pty) Ltd to defray the cost of such repairs if the item remains uncollected within 30 days of the repairs being completed.
- 6.15 The Customer acknowledges all copyrights and shall not duplicate copyrighted material and that each infringement attempt shall immediately render the full prevailing price payable to iCerMax (Pty) Ltd.
- 6.16 The Customer shall indemnify iCerMax (Pty) Ltd against any claims, costs and expenses arising out of the infringement of copyright, patent, trade mark or design supplied by the Customer.
- 7.1 New goods are guaranteed according to the Manufacturers product specific warranties only and all other guarantees.
- 7.2 Liability under Clause 7.1 is restricted to the cost of repair or replacement of faulty goods or services or granting of a credit as the sole discretion of iCerMax (Pty) Ltd.
- 7.3 No claim under this Agreement shall arise unless the Customer has, within 10 days of the alleged breach or defect occurring, given iCerMax (Pty) Ltd 30 days written notice by prepaid registered post to rectify any defect or breach of Agreement.
- 7.4 To be valid, claims must be supported by the original Tax Invoice.
- 7.5 The Customer shall return any defective moveable goods to the premises of iCerMax (Pty) Ltd at the Customer's own cost and packed in the original or suitable packaging and all risks for the duration of repair remain with the Customer.
- 7.6 All guarantees are immediately null and void should any goods be tampered with or should the seals on goods be broken by anyone other than iCerMax (Pty) Ltd staff or should the goods be operated or stored outside iCerMax's specifications.
- 7.7 Any item delivered to iCerMax (Pty) Ltd shall serve as a pledge in favour of iCerMax (Pty) Ltd for present and past debts and iCerMax (Pty) Ltd, shall be entitled to retain or realise such pledges as it deems expedient at the value as determined in 15.1. The sworn or realised value of pledged goods will be offset against the Customer's debts and any excess balance will be paid to the Customer.
8. Under no circumstances shall iCerMax (Pty) Ltd be liable for any consequential damages or for any damage arising from any misuse, abuse or neglect of the goods or services with regard to the iCerMax warranty as set out in the Consumer Protection Act 68, of 2008
9. Delivery of the goods or services to the Customer shall take place at the place of business of iCerMax (Pty) Ltd. The customer shall accept the goods by signing a certificate of its collection.
- 10.1 The Customer agrees that the amount contained in a Tax Invoice issued by iCerMax (Pty) Ltd shall be due unconditionally

- (a) cash on order; or
  - (b) if the Customer is a Credit Approved Customer, within 30 days from the date of a Tax Invoice issued by iCerMax (Pty) Ltd.
- 10.2 The Customer agrees to pay the amount on the Tax Invoice at the offices of iCerMax (Pty) Ltd or at such other place iCerMax (Pty) Ltd may designate in writing.
- 10.3 The risk of payment by cheque through the post rests with the Customer.
- 11.1 The Customer has no right to withhold payment for any reason whatsoever and agrees that no extension of payment of any nature shall be extended to the Customer and any such extension will not be applicable or enforceable unless agreed to by iCerMax (Pty) Ltd, reduced to writing and signed by the Customer and a duly authorised representative of iCerMax (Pty) Ltd. Any complaints made must be in writing and submitted within 10 working days. There is no validation to withhold payment for any reason what so ever.
- 11.2 The Customer is not entitled to set off any amount due to the Customer by iCerMax (Pty) Ltd against this debt.
- 11.3 All discounts shall be forfeited if payment in full is not made on the due date.
- 12.1 The Customer agrees that the amount due and payable to iCerMax (Pty) Ltd may be determined and proven by a certificate issued and signed by any independent auditor. Such certificate shall be binding and shall be prima facie proof of the indebtedness of the Customer.
- 12.2 Any printout of computer evidence rendered by any party shall be admissible evidence and no party shall object to the admissibility of such evidence purely on grounds that such evidence is computer evidence or that the requirements of the Computer Evidence Act have not been met.
- 13.1 The Customer agrees that interest shall be payable at the maximum legal interest rate prescribed in terms of the Usury Act on any moneys past due date to iCerMax (Pty) Ltd and that interest shall be calculated daily and compounded monthly from the date of acceptance of the order.
- 13.2 The Customer expressly agrees that no debt owed to iCerMax (Pty) Ltd by the Customer shall become prescribed before the passing of a period of ten years from the date the debt fall due.
- 14.1 The Customer agrees that if an account is not settled in full:
- (a) against order; or
  - (b) within the period agreed in clause 10.1 above in the case of a Credit Approved Customer; iCerMax (Pty) Ltd is:
    - entitled to immediately institute action against the Customer at the sole expense of the Customer; or
    - to cancel the agreement and take possession of any goods delivered to the Customer and claim damages. These remedies are without prejudice to any other right iCerMax (Pty) Ltd may be entitled to in terms of this Agreement or in law. iCerMax (Pty) Ltd reserves its right to stop supply immediately on cancellation or on non payment.
- 14.2 A Credit Approved Customer will forthwith lose this approval when payment is not made according to the conditions of 10.1 (b) and all amounts then outstanding shall immediately become due and payable.
- 15.1 In the event of cancellation, the Customer shall be liable to pay
- (a) the difference between the selling price and the value of the goods at the time of repossession and
  - (b) all other costs incurred in the repossession of the goods. The value of repossessed or retained pledged goods shall be deemed to be the value placed on them by any sworn valuator after such repossession, and such valuation shall be conclusive proof of the value. If the goods are not recovered for any reason whatsoever, the value shall be deemed to be nil.
- 15.2 The Customer irrevocably authorises iCerMax (Pty) Ltd to enter its premises to repossess any goods delivered and indemnifies iCerMax (Pty) Ltd completely against any damage whatsoever relating to the removal of repossessed goods.

- 15.3 In the event of cancellation iCerMax (Pty) Ltd is entitled not to produce any unmade balance of a contract and to recover any loss sustained thereby from the Customer.
- 16.1 All goods supplied by iCerMax (Pty) Ltd remain the property of iCerMax (Pty) Ltd until such goods have been fully paid for whether such goods are attached to other property or not.
- 16.2 The Customer is not entitled to sell or dispose of any goods unpaid for without the prior written consent of iCerMax (Pty) Ltd. The Customer shall not allow the goods to become encumbered in any manner prior to the fully payment thereof and shall advise third parties of the rights of iCerMax (Pty) Ltd in the goods.
- 16.3 If any goods supplied to the Customer are of a generic nature and have become the property of the Customer by operation of law (confusion or commixtio) the Customer shall be obliged on notice of cancellation of the agreement to retransfer the same quantity of goods in ownership to iCerMax (Pty) Ltd.
- 17.1 The Customer shall be liable to iCerMax (Pty) Ltd for all legal expenses on the attorney-and-own client scale of an attorney and counsel incurred by iCerMax (Pty) Ltd 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 iCerMax (Pty) Ltd may demand.
- 17.2 The Customer agrees that iCerMax (Pty) Ltd will not be required to furnish security in terms of Rule 62 of the Rules of Court of the Magistrate's Courts or in terms of Rule 47 of the Law of the Supreme Court 59 of 1959.
18. The Customer agrees that no indulgence whatsoever by iCerMax (Pty) Ltd will affect the terms of this agreement or any of the rights of iCerMax (Pty) Ltd and such indulgence shall not constitute a waiver by iCerMax (Pty) Ltd in respect of any of its rights herein. Under no circumstances will iCerMax (Pty) Ltd be stopped from exercising any of its rights in terms of the Agreement.
19. The Customer hereby consents that iCerMax (Pty) Ltd shall have the right to institute any legal action in either the Magistrate's Court or the High Court at its sole discretion.
- 20.1 Any document shall be deemed duly presented to and accepted by the Customer
- (a) Within 3 days of prepaid registered mail to any of the Customer's business or postal addresses or to the personal address of any director, member or owner of the Customer; or
  - (b) Within 24 hours of being faxed to any of the Customer's fax numbers or any director, member's or owner's fax numbers; or
  - (c) On being delivered by hand to the Customer or any director, member or owner of the Customer;
  - (d) Within 48 hours if sent by overnight courier;
  - (e) Within 24 hours of being telexed to the Customer's telex number or
  - (f) Within 7 days of being sent by surface mail.
- 20.2 The Customer chooses its address for legal execution as the business address or the physical addresses of any Director (in the case of a company), Member (in the case of close corporations) or of the Owner(s) or Partner(s).
- 20.3 The Customer undertakes to inform iCerMax (Pty) Ltd in writing within 7 days of any change of Director, Member, Shareholder, Owner or Partner or address or 14 days prior to selling or alienating the Customer's business and failure to do so will constitute a material breach of this Agreement. Upon receipt of such written notification, iCerMax (Pty) Ltd reserves the right, at its sole discretion, to withdraw any credit facility advanced to the Customer.
- 20.4 The Customer hereby consents to the storage and use by iCerMax (Pty) Ltd of the personal information that it has provided to iCerMax (Pty) Ltd for establishing its credit rating and to iCerMax (Pty) Ltd disclosing such information to credit control companies, banks and other institutions involved in rating credit. The Customer agrees that iCerMax (Pty) Ltd will not be held liable for the good faith disclosure of any of this information to such a third party and that no further specific consent need to be obtained for the transfer of such information to a specific third party.

21. The Customer agrees to the Standard Rates of iCerMax (Pty) Ltd for any goods or services rendered, which rates may be obtained on request.
22. The invalidity of any part of the Agreement shall not affect the validity of any other part.
23. Any order is subject to cancellation by iCerMax (Pty) Ltd due to Acts of God from any cause beyond the control of iCerMax (Pty) Ltd, including (without restricting this clause to these instances): Inability to secure labour, power, materials or supplies, or by reason of an act of God, war, civil disturbance, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation.
24. Any order is subject to cancellation by iCerMax (Pty) Ltd if the Customer breaches any term of this Agreement or makes any attempt of compromise, liquidation, sequestration, termination of judgement is recorded against the Customer or any of its principals.
25. The Customer agrees that iCerMax (Pty) Ltd will be immediately and irrevocably released from any contractual damages and penalty obligations should any event in clause 23 or 24 occur.
26. This Agreement and its interpretation is subject to South African law and the Customer consents to the exclusive jurisdiction of the South African Courts referred to in 19. The Customer agrees to have read the warranty and acknowledges the implications, rights and duties, that the terms and conditions infer upon the subject.
27. Force majeure shall irrevocably apply in exempting iCerMax (Pty) Ltd from damage, loss or cost as a result of restriction within unreasonable circumstances towards the Customer, including but not limited to all acts of God or any beyond control circumstances. In the extreme event of a force majeure notice will immediately be given to the Customer detailing the reasons for the delay along with the schematic expected time of delivery given forward. If the expected time period is estimated to be longer than 60 days, post the day of Force majeure notification, both parties reserve the right to withdraw from the agreement without running the risk of incurring liability towards them.
28. All Terms and Conditions as well as all trade practices are strictly coherent with the iCerMax (Pty) Ltd Warranty and are irrevocably applied alongside the Warranty.

Signed at ..... on this the ..... Day of .....

Name : ..... Date .....

Signature .....