

# STANDARD TERMS AND CONDITIONS

**No previous version of these standard terms and conditions, being version 1 will be accepted by TLSA as from 01 JANUARY 2018**

## 1. DEFINITIONS

- The following expressions shall have the following meanings:
- 1.1 Agreement: this agreement;
  - 1.2 CPA: the Consumer Protection Act 68 of 2008 (as amended from time to time);
  - 1.3 Customer: the party entering into this Agreement with TLSA, who can be either a - CPA Customer: a party who is defined as a "consumer" in terms of the Consumer Protection Act; or a Non-CPA Customer: a party who is not a CPA Customer;
  - 1.4 Day: a business day (which excludes a public holiday, Saturday and Sunday);
  - 1.5 Data Message: any information generated, sent, received or stored by electronic means and include, without being limited to, electronic mail and records;
  - 1.6 Goods: domestic household equipment, commercial and industrial laundry and catering equipment including but not limited to spare parts supplied to the Customer by TLSA as described more fully in each Order;
  - 1.7 Instructions: the installation, operation and preventative maintenance manual or disc provided to the Customer by TLSA with the Goods and/or the training provided to the Customer, which manual, disc or training, as the case may be, provides the Customer, among other things, with the necessary instructions to use the Goods;
  - 1.8 Invoice: Pro-forma invoice or tax invoice, whichever is applicable;
  - 1.9 TLSA: Tullis Laundry Solutions Africa (Pty) Ltd (Registration No. 2015/101296/07);
  - 1.10 Party/Parties: either TLSA or the Customer, or both;
  - 1.11 Prime: the publicly quoted prime overdraft rate from time to time of TLSA's bankers evidenced, if required by the Customer, by a certificate of any manager of that institution whose designation it shall not be necessary to prove and whose determination shall constitute prima facie evidence of that rate;
  - 1.12 Price: the purchase price for the Goods and price of services as set out more fully in each Order and/or invoice;
  - 1.13 Order: a written official order for Goods and services placed by the Customer with TLSA;
  - 1.14 Other Protected Parties: members, directors, officers, employees, representatives, agents and independent contractors of TLSA;
  - 1.15 Record: any information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in legible form;
  - 1.16 Services: supply; delivery; installation; commissioning; testing; maintenance; service and repairs of goods supplied by TLSA;
  - 1.17 Specified Warranties: the written leaflet with warranties included in the Goods supplied to the Customer by TLSA.

## 2. ORDER AND AGREEMENT

- 2.1 TLSA may accept or reject any Order placed by the Customer.
- 2.2 A valid and binding agreement between TLSA and the Customer on the terms set out in this Agreement shall come into existence at the time when and place where TLSA accepts the Order. The Customer accepts that the supply of goods and services by TLSA is done solely on TLSA's terms and conditions. Accordingly, no other terms and conditions by the Customer shall be of any force and effect.
- 2.3 Each Order accepted by TLSA shall create a separate agreement. Notwithstanding the aforesaid, the breach of any one such agreement shall, at TLSA's election, constitute a breach of any of or all such agreements.

## 3. SALE

- TLSA sells to Customer who purchases from TLSA the Goods and/or services on the terms of this Agreement.

## 4. DELIVERY

- Notwithstanding any other provision to the contrary, the obligation to deliver goods shall in all cases be subject to the following conditions: -
- 4.1 The availability of goods (the customer must check with the relevant sales person, the availability of stock at time of Order. Serial equipment is generally ex-stock).
  - 4.2 Unless otherwise stated in the relevant Order, the Goods shall be delivered by TLSA to the Customer at the Customer's sole costs which costs include but are not limited to machine moving and rigging.
  - 4.3 Timeous receipt by TLSA of any designs and specifications that may be required from the Customer provided that such designs and specifications shall be given to TLSA for description purposes only and shall not form part of this agreement, and TLSA shall under no circumstances whatsoever be held liable thereof.
  - 4.4 TLSA will provide the Customer with a time and date, within a reasonable period after it has accepted the Order, on when the Goods will be delivered to the Customer's nominated site.
  - 4.5 Should the time and/or date of delivery change for any reason whatsoever for either Party, they will notify the other and arrange and agree on an alternative reasonable delivery time and/or date.
  - 4.6 Time shall not be of the essence of any contract of sale between TLSA and the Customer, and any delivery or dispatch dates mentioned in any quotation, order or other documentation emanating from TLSA shall be approximate only and shall not have any contractual effect on TLSA.
  - 4.7 Save for a CPA Customer, under no circumstances shall the Customer be entitled to withdraw from or cancel the Order on account of any delay in delivery except with the express written consent of TLSA.
  - 4.8 Save for a CPA Customer's right to inspect the goods upon delivery, a signed delivery note shall constitute prima facie proof that the goods have been delivered to and received by the Customer in good condition as signed for by the Customer, its employee, agent or representative.

## 5. RISK, BENEFIT AND OWNERSHIP

- 5.1 Ownership in the Goods shall pass to the Customer upon the payment in full of the Purchase Price.
- 5.2 All risk and benefit of the Goods shall pass to the Customer upon physical delivery of the Goods by TLSA to the Customer's nominated site for delivery. In the case where Goods are delivered to the Customer by the Customer's nominated transporters, all risk shall pass to the Customer when the Goods are handed over by TLSA to the said transporter.

## 6. PRICE AND PAYMENT

- 6.1 The Customer shall pay the Price in accordance with the payment terms described on the invoice issued by TLSA to the Customer in relation to the Goods and/or Services.
- 6.2 The Customer shall not under any circumstances whatsoever for any reason whatsoever deduct or set-off any amounts due as indicated on TLSA's account, unless by written consent of a duly authorized official of TLSA. Payment shall be made in South African Rand or any other applicable currency stated thereto and into a bank account as stipulated by TLSA from time to time.
- 6.3 The Purchase Price of goods does not include any payments in respect of installation or any other services provided by TLSA to the Customer (if any).
- 6.4 The Purchase Price of goods quoted by TLSA to the Customer prior to TLSA accepting the Order is subject to change according to the applicable exchange rate. Save for a CPA Customer, if the Purchase Price of goods is more than such quoted Purchase Price when TLSA accepts the Order, the Customer shall not be entitled to withdraw from or cancel the Order on

- 6.5 account of such increase. Unless specifically stated, the Price excludes any and all taxes (including value added tax), duties, tariffs, and/or levies. The Customer shall be liable to pay all such taxes, duties, tariffs and/or levies on demand to TLSA.
- 6.6 If the Customer fails to pay the Price on the due date thereof as set out in the invoice issued by TLSA to the Customer in relation to the Goods and/or Services, the Price shall bear interest at a rate equal to 2% per annum above Prime or the maximum rate allowable by law, whichever is the greater, compounded monthly in arrears. Furthermore, should the customer fail to effect payment of the purchase price of the goods on the due date thereof as set out in the invoice issued by TLSA, then the Customer unequivocally grants TLSA access to the premises where the goods are kept and further irrevocably authorizes TLSA to remove the goods therefrom during all reasonable hours. All costs associated with the removal of the goods shall be solely for the Customer's account notwithstanding TLSA's right to claim further damages.
- 6.7 Until the Customer has paid the Purchase Price of goods in full, the Customer shall be obliged to take whatever steps may be necessary to protect TLSA's title in and to the Goods. In this regard, the Customer undertakes to prevent any damage to or loss of the Goods, including, without limitation, by insuring the Goods (and indicating TLSA as an additional insured) and by not selling, ceding, assigning, transferring, pledging or otherwise encumbering the Goods, or allowing them to become subject to any lien of whatsoever nature, or delivering possession of the Goods to any other person.
- 6.8 TLSA may allocate any payments made to it by the Customer pursuant to this Agreement to any other amounts due and owing by the Customer to TLSA.

## 7. CREDIT APPLICATIONS

- 7.1 The Customer consents to TLSA making enquiries about its credit record with any credit reference agency and any other party. TLSA may also provide credit reference agencies with information regarding the Customer's payment history with TLSA.
- 7.2 In the event, the Customer is afforded a credit facility with TLSA, the Customer acknowledges and accepts that full payment shall be made within 30 days net from date of statement unless otherwise expressly agreed to by TLSA;
- 7.3 Credit facilities may be withdrawn by TLSA at its sole discretion at any time without prior notice to the Customer. TLSA strictly reserves its rights to review the extent, nature and duration of such facilities at all times.

## 8. WARRANTIES

- 8.1 In addition to any statutory warranty to which a CPA Customer may be entitled, TLSA provides to the Customer Specified Warranties, which differ, depending on the type of Goods sold by TLSA to the Customer.
- 8.2 In respect of Goods supplied for commercial usage: customers are afforded a Warranty which is limited to the supply of parts only. Warranties are applicable only in cases where any work (including without limitation; installation and commissioning) is carried out on the Goods by a suitably qualified employee of TLSA or its authorised agent. Any parts supplied to the Customer under the Warranty, shall be subject to the Customer returning the defective part to TLSA. Parts that are faulty due to customer negligence, abuse, misuse etc. will be charged for. All travel, call out and labour charges shall be solely for the account of the Customer at all times.
- 8.3 Unless otherwise agreed to in the Order, the specified Warranties, will remain in effect from date of delivery of the Goods for the period of the specified Warranty.
- 8.4 The relevant time periods for the specified Warranties are as follows:

Speedqueen	3 Years	Fagor	1 Year	Jensen	1 Year
Tullis/Ipsos/Primus	3 Years	Sewoong	1 Year drop off	Ilsa	1 Year
Girbau	3 Years	Tullis/Fagor	1 Year	Sidi	1 Year
Tullis/Image	1 Year	Tullis/Grandimpianti	1 Year	Blultalia	1 Year

\*\* Any product not specified in clause 8.4 above shall carry a 6 month-period.
- 8.5 The specified Warranties do not apply, and TLSA shall not be liable to the Customer, in the following circumstances: -
  - 8.5.1 where the recommended service and maintenance procedures are not followed;
  - 8.5.2 for any damage to or malfunction of the Goods arising from any cause whatsoever (other than as a result of a defect in material or workmanship of the Goods or the gross negligence of TLSA) including, but not limited to:
    - 8.5.2.1 customer negligence and willful damage;
    - 8.5.2.2 abuse of the Goods;
    - 8.5.2.3 misuse of the Goods;
    - 8.5.2.4 failure to use the Goods in accordance with the Instructions;
    - 8.5.2.5 improper installation of the Goods;
    - 8.5.2.6 transportation damage to the Goods after delivery of the Goods to the Customer;
  - 8.5.3 For any damage to clothing or the Goods caused by foreign objects placed in the Goods;
  - 8.5.4 for any consequential damages of the Customer arising from any defect in material or workmanship or any malfunction of the Goods other than as provided for in the CPA;
  - 8.5.5 If the serial number on the Goods have been removed;
  - 8.6 Any service under the specified Warranties shall only be carried out if the specified Warranties have been produced and duly completed and sent to TLSA as provided for in the Specified Warranties.
  - 8.7 A valid and original proof of purchase of the Goods is required by TLSA in order to validate the Specified Warranties.

## 9. DISCLAIMER

- Except for the Specified Warranties and any statutory warranty to which a CPA Customer may be entitled, TLSA makes no representations and gives no warranties or guarantees whatsoever (express or implied) in connection with the Goods.

## 10. LIABILITY

- 10.1 The Customer agrees that TLSA and Other Protected Parties shall not (under any circumstances whatsoever) be liable for any damages or loss of whatsoever nature, including consequential loss, arising out of any cause whatsoever including, without being limited to, death or personal injury to the Customer, the loss, destruction or of damage to any property belonging to the Customer arising from any cause whatsoever, other than as a result of the gross negligence of TLSA and the Other Protected Parties.
- 10.2 The Customer indemnifies each of TLSA and the Other Protected Parties against any claim for damages or loss, including consequential loss, arising out of any cause whatsoever, brought by any person arising from any cause whatsoever, other than as a result of the gross negligence and willful misconduct of TLSA and the Other Protected Parties.

## 11. ORDER AMENDMENT AND CANCELLATION

- 11.1 The Customer may not amend any Order for any reason whatsoever unless consented to by TLSA.
- 11.2 A Non-CPA Customer may not cancel any Order for any reason whatsoever unless consented to by TLSA.
- 11.3 A CPA Customer may cancel an Order for any reason whatsoever, in which event TLSA shall be entitled to impose a reasonable charge for such cancellation. Notwithstanding the aforesaid, TLSA shall not be entitled to impose a charge for such cancellation in the circumstances set out in 6.4 or if the CPA Customer is unable to honour the Order in the circumstances set out in the CPA.

## 12. BREACH BY THE CUSTOMER

- If the Customer:
  - 12.1 breaches any provision of this Agreement and fails to rectify such breach within 5 days of

- receipt of a written notice delivered to it by TLSA, calling upon the Customer to rectify such breach; or
- 12.2 being a natural person commits any act of insolvency or assigns, surrenders or attempts to assign or surrender his/her estate; or
- 12.3 allows a default judgment to remain unsatisfied for a period of 7 days or be refused rescission within 14 days of any default judgment; or
- 12.4 is sequestrated, or placed under business rescue, or wound up, whether provisionally or finally; or
- 12.5 compromises with any of its creditor/s or endeavors to attempt to do so, then and upon the occurrence of any of these events (all of which are deemed to be material) TLSA shall be entitled at its election, to seek specific performance of the Customer's obligations in terms of this Agreement, or to cancel this Agreement, in either instance without prejudice to TLSA's right to claim such damages as it may have suffered by reason of such breach.

- 17.7 Legal costs: In the event TLSA instructs an attorney and/or institutes legal action against the Customer for any reason arising out of this agreement, then the Customer shall be liable for TLSA's costs on an attorney and own client scale up to and including but not limited to tracing costs, interest and collection commission. All payments made by the Customer shall firstly be allocated towards such fees and disbursements, thereafter to interest and finally to the capital.
- 17.8 Warranty of authority: Customer warrants that the person who places the Order with TLSA is duly authorised to place the Order on behalf of Customer.

**13. ADMISSIBILITY OF DATA MESSAGES**

Subject to the provisions of 14:

- 13.1 The parties agree that they may conclude binding agreements by means of Data Messages and that a requirement in this Agreement that a notice, Order or other document be in writing shall be satisfied if such notice, Order or other document is:
  - 13.1.1 in the form of a Data Message; and
  - 13.1.2 accessible in a manner useable for subsequent reference (including without limitation, a hard copy print-out thereof).
- 13.2 Information and Data Messages shall not be denied legal effect, validity or enforceable solely on the grounds that same are wholly or partly in electronic form.
- 13.3 Information shall not be denied legal effect, validity or enforceable solely on the grounds that it is not contained in the Data Messages purporting to give rise to such legal effect, but merely referred to in such Data Message.
- 13.4 No information shall be deemed to be incorporated into a Data Message unless such information is referred to in a way in which a reasonable person would have noticed the reference and incorporation of such information, and such information is made accessible to the other party in a form in which it may be read, stored and retrieved by the other party on request.

**14. NOTICES AND DOMICILIUM**

The parties choose as their *domicilium citandi et executandi* ("Domicilium") for all purposes their address as stated in the Order. Either party may change its Domicilium by giving notice in writing to the other party. Any notice to a party's Domicilium shall be in writing and shall be deemed to have been received on the 7<sup>th</sup> day after the date of posting, if sent by prepaid registered post, or on the date of delivery or transmission if delivered by hand, transmitted by facsimile or by electronic transmission. Notwithstanding the aforesaid, any notice (or other statement of TLSA which is of particular interest to a CPA Customer) shall only be deemed to have been received by such CPA Customer if such notice has been sent by prepaid registered post (and not by any other means).

**15. FORCE MAJEURE**

Neither party hereto shall have any liability by reason of failure to fulfil any obligations in terms of this Agreement if such failure is occasioned by force majeure including, but not limited to, events such as acts of God, fire, accident, government act, explosion, industrial dispute or any other act, omission or event beyond the reasonable control of such party. The parties agree that, in the event that force majeure occurs as contemplated herein, the duration of the parties obligations to each other, shall be extended by the period for which such force majeure continues. However, should force majeure last more than four (4) months, the Party who has not claimed force majeure may terminate the agreement on written notice to that effect.

**16. RESTRAINT**

The Customer agrees not to solicit any employee of TLSA for the purposes of offering employment to such employee or seeking services from the employee in his/her private capacity. Any such incident reported to TLSA shall entitle TLSA to terminate any agreement with the Customer forthwith and further pursue a claim for damages, notwithstanding any other rights and remedies that are available to TLSA.

**17. GENERAL**

- 17.1 Entire agreement: This Agreement constitutes the sole agreement applicable to the supply of Goods and services by TLSA and no agreement sought to be imposed by the Customer shall be of any force or effect.
- 17.2 Interpretation: If there is a conflict between this Agreement and any Order or any other correspondence relating to any Order then the terms of this Agreement shall prevail, unless expressly provided otherwise. The clause headings in this Agreement are intended for convenience only and shall not affect the construction or interpretation of this Agreement. The doctrine of the *contra proferentum* rule shall be excluded from the application and interpretation of this agreement.
- 17.3 Variation: No amendment or modification to this Agreement shall be effective unless in writing and signed by an authorized representative of TLSA.
- 17.4 Waiver: No relaxation or indulgence granted or given by TLSA to the Customer or failure by TLSA to exercise any right shall be deemed to be a waiver of any of TLSA's rights in terms of this Agreement and such relaxation or indulgence shall not be deemed to be novation of any of the terms of this Agreement.
- 17.5 Applicable Law & Jurisdiction: This Agreement shall be governed and construed according to the laws of the Republic of South Africa. The Customer hereby consents and submits to the jurisdiction of the Magistrate's Court having jurisdiction of TLSA's offices situated at 4 Simon Park, Brunton Circle, Foundersview South, Modderfontein, Gauteng in respect of all proceedings in connection with this Agreement notwithstanding that the amount claimed or the value of the matter in dispute exceeds such jurisdiction. In any event TLSA shall be entitled, at its option, to institute any proceedings in connection with this Agreement against the Customer in any other court of competent jurisdiction.
- 17.6 Severance: If any provision of this Agreement, which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereto.

**I/We, the undersigned, hereby confirm that I/we have read and understood the provisions of this Agreement, which terms and conditions I/We acknowledge shall form part of and shall govern each order / transaction / agreement between me/us and TLSA for the provision of goods and services by TLSA. The latest version, which shall always be the applicable one is set out on the TLSA website [www.tullislaundry.co.za](http://www.tullislaundry.co.za). I/We, also acknowledge that the fact, nature and effect of all the clauses that pertain to risk or liability, indemnities, acknowledgements of facts and the nature and limitations of the Goods, as indicated above in bold, have been drawn to my/our attention and that I/we have had adequate opportunity to read and understand the provisions of this Agreement and that I/we understand and hereby agree to all provisions, terms and conditions thereto.**

Signed at \_\_\_\_\_ (place) on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

Full Name: \_\_\_\_\_ Designation: \_\_\_\_\_

(full signature of duly authorised representative)

Witness