

## COMMERCIAL TERMS AND CONDITIONS

### 1. SCOPE

- 1.1 In these terms and conditions, a reference to "Isowall" or "the company" shall be a reference to companies in the Isowall Group consisting of Isowall Southern Africa (Pty) Ltd and its associated companies and a reference to "the customer" shall include a reference to the applicant or customer referred to in any application for an account or quotation to which these terms and conditions are attached.
- 1.2 These terms and conditions shall be subject to any quotation issued by an authorised representative of the company, including any variation recorded in the schedule and in the event of any conflict between the provisions of the quotation and these terms and conditions, the provisions of the quotation shall prevail. By accepting a quotation issued by Isowall whether by means of signature of a copy of the quotation, including but not limited to, acceptance in writing (whether in hard copy or electronically) by payment of a deposit or first payment or by conduct the customer agrees to be bound to the terms of the quotation and the Isowall Group Standard Terms and Conditions, a copy of which will be attached to the quotation and/or will be available on request or will be on the Isowall website at [www.isowall.co.za](http://www.isowall.co.za).
- 1.3 Subject to 1.2, no variation of these terms and conditions shall apply, either at the time the customer's order is accepted or at any time afterwards, unless the variation in question is expressly agreed to in writing and signed by an authorised representative of the company.
- 1.4 If the product set out in the quotation ("the product") is required by the customer for the purpose of another contract between the customer and anyone else, none of the provisions of that other contract shall apply to, or be incorporated in, the agreement between the company and the customer unless expressly confirmed in writing by an authorised representative of the company.
- 1.5 These terms and conditions supersede all previous conditions or agreement without prejudice to any securities or guarantees held by the company.
- 2.1 The agreement concluded when the customer accepts a quotation issued by the company or when the company accepts an order placed on it by the customer will be subject to the terms and conditions contained herein.
- 2.2 Any order placed by the customer only becomes final and binding on receipt and acceptance of such order by Isowall.
- 3.1 The signatory accepting a quotation issued by the company or placing an order with the company hereby binds himself / herself in his / her personal capacity as Shareholder / Director (in the case of a company), Member (in the case of a close corporation) or Owner or Partner as surety and co-principal debtor jointly and severally for the full amount payable by the customer to Isowall and agrees to be bound personally by the terms and conditions contained herein.
- 3.2 The signatory guarantees payment to Isowall for any debts incurred by the Customer and agrees that his/her liability will be for the full amount of the debts incurred by the Customer and that such amounts will become due and payable immediately upon any application for business rescue by the Customer or the liquidation of the Customer. The signatory agrees that the extent of his/her liability will not be affected by any compromise or settlement reached with the Customer pursuant to any business rescue plan as provided for in the Companies Act 71 of 2008.
4. The Customer acknowledges that it does not rely on any representations made by Isowall in regard to the product and/or services set out in the quotation ("the services") or any of its qualities leading up to the conclusion of an agreement other than those contained in this document. All specifications, price lists, performance figures, advertisements, brochures and other technical data furnished by Isowall in respect of the product or services orally or in writing will not form part of the agreement in any way unless agreed to in writing by Isowall.
- 5.1 The Customer agrees that neither Isowall nor any of its employees will be liable for any negligent or innocent misrepresentations made to the Customer.
- 5.2 It is the sole responsibility of the Customer to determine that the product or services ordered are suitable for the purposes of intended use.
- 5.3 The Customer agrees to pay all additional costs resulting from any acts or omissions by the Customer including suspension of work, modification of requirements, failure or delay in giving particulars required to enable work to proceed on schedule or requirements that work be completed earlier than agreed.
- 5.4 Isowall reserves the right at its sole discretion to provide alternative product of the same quality and quantity at the prevailing prices to those ordered by the Customer should such product be superseded, replaced or their manufacture terminated.
- 5.5 The Customer agrees that Isowall will not be held liable for customised product produced on measurements supplied by the Customer. Such products are not returnable and will be for the account of the Customer.
- 6.1 All quotations will remain valid for a period of 30 days from the date of the quotation or until the date of issue of a new Price List, whichever occurs first.
- 6.2 All quotations are subject to the availability of the product or services and subject to correction of good faith errors by Isowall and the prices quoted are subject to any increases in the cost price, including currency fluctuations, of Isowall before dispatch of product and / or commencement of services.
- 6.3 If the Customer disputes the amount of any increase, the amount of the increase may be certified by an independent auditor appointed by Isowall and such certificate shall be final and binding on the Customer.
- 6.4 The Customer hereby confirms that the product or services described on any Tax Invoice issued duly represent the product or services ordered by the Customer at the prices agreed to by the Customer and, where delivery / performance has already taken place, that the product 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 clause 1 above, all orders or agreed variations to orders, whether orally or in writing, shall be binding and subject to these Standard Terms and Conditions and may not be revoked by the customer.
- 6.6 Isowall shall be entitled in its sole discretion to split the delivery / performance of the product or services ordered in the quantities and on the dates determined by Isowall.
- 6.7 Isowall shall be entitled to invoice separately each delivery / performance actually made.
- 6.8 Any delivery note or waybill (copy or original) signed by the customer or a third party engaged to transport the product and held by Isowall shall be prima facie proof that delivery was made to the customer.
- 6.9 The risk of damage to, destruction or theft of product shall pass to the customer on acceptance of any order placed by the customer and accepted by Isowall and the Customer undertakes to comprehensively insure the product until paid for in full. Isowall may recover insurance premiums from the Customer for such ordered and uninsured product.
- 6.10 Delivery, installation and performance times quoted are merely estimates and are not binding on Isowall.
- 6.11 If Isowall agrees to engage a third party to transport the product, Isowall is hereby authorised to engage a third party on the Customer's behalf and on the terms deemed fit by Isowall.
- 6.12 The Customer indemnifies Isowall against any claims against Isowall that may arise from such agreement in clause 6.11.
- 6.13 Repair times and repair costs given are merely estimates and are not binding on Isowall.
- 6.14 Any item handed in for repair may be sold by Isowall to defray the cost of such repairs if the item remains uncollected within 30 days after the Customer has been advised that the repairs have been completed.
- 7.1 Unless a separate written warranty is given by Isowall in respect of an Isowall product all other warranties or guarantees, including common law guarantees, are excluded. Where a third party product is supplied by Isowall the product is subject to the third party warranty, if any, given by the third party and all other warranties or guarantees, including common law guarantees, are excluded..
- 7.2 Liability under clause 7.1 is restricted to the cost of repair or replacement of faulty product or services or the granting of a credit at the sole discretion of Isowall.
- 7.3 No claim by the Customer shall arise unless the Customer has, within 14 days of an alleged breach of contract and/or defect occurring, given Isowall written notice delivered by hand or by electronic mail of such breach or defect, and has afforded Isowall at least 30 days to rectify such defect or breach.
- 7.4 To be valid, claims must be supported by the original Tax Invoice.
- 7.5 The Customer shall return any defective moveable product to the premises of Isowall 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 warranties given by Isowall are immediately null and void should any product be tampered with or should the seals on product be broken by anyone other than Isowall or should the product be used or stored outside Isowall's or the third party manufacturer's specifications.
- 7.7 Any item delivered to Isowall shall serve as pledge in favour of Isowall for present and past debts and Isowall shall be entitled to retain or realise such pledges as it deems expedient at the value as determined in clause 15.1. The sworn or realised value of pledged product will be offset against the Customer's debts and any excess balance will be paid to the Customer. Any shortfall will be recoverable by Isowall from the Customer.
- 8.1 Under no circumstances shall Isowall be liable for any consequential damages including loss of profits or for any delictual liability of any nature whatsoever whether caused negligently or innocently.
- 8.2 Under no circumstances shall Isowall be liable for any damage arising from any misuse, abuse or neglect of the product or services.
9. Delivery of the product or services to the Customer shall take place at the place of business of Isowall.

10.1 The Customer agrees that the amount contained in a Tax Invoice issued by Isowall shall be due and payable unconditionally (a) cash on order; or (b) if the Customer is an Isowall credit approved customer, within 30 days from the end of the month in which a Tax Invoice was issued by Isowall.

10.2 The Customer agrees to pay the amount on the Tax Invoice at the offices of Isowall.

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 Isowall, reduced to writing and signed by the Customer and a duly authorised representative of Isowall.

11.2 The Customer is not entitled to set off any amount due to the Customer by Isowall 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 Isowall may be determined and proven by a certificate issued and signed by any director or manager of Isowall, whose authority need not be proven or 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 tendered 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 Electronic Communications and Transactions Act 25 of 2002 have not been met.

13.1 The Customer agrees that interest shall be payable at the rate of 2% above the prime rate as certified by **First National Bank** on any moneys not paid by the Customer on due date to Isowall 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 Isowall by the Customer shall become prescribed before the passing of a period of six years from the date the debt falls 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 an Isowall credit approved customer; Isowall is: (i) entitled to immediately institute action against the Customer at the sole expense of the Customer; or (ii) to cancel the agreement and take possession of any product delivered to the Customer and claim damages. These remedies are without prejudice to any other right Isowall may be entitled to in terms of the agreement or in law. Isowall reserves its right to stop supply immediately on cancellation or on non-payment by the customer.

14.2 An Isowall credit approved customer will forthwith lose approval of supply on credit when payment is not made according to the conditions of clause 10.1(b) and all amounts then outstanding shall immediately become due and payable.

14.3 Isowall shall be entitled to withdraw credit facilities at any time within its sole discretion.

15.1 In the event of cancellation of an agreement to supply product and/or services to the Customer by Isowall, Isowall shall be entitled to repossess any product that has been delivered to the Customer that remains unpaid by the due date.

15.2 In the event of cancellation of the agreement by Isowall, it is entitled not to produce any unmade balance of any order or any accepted quotation and to recover any loss sustained thereby from the Customer.

15.3 The Customer will remain liable for the full amount due to Isowall in respect of any order once accepted by Isowall. The Customer will not be released from the Customer's obligation to make payment in full in respect of such order in the event of the Customer informing Isowall that it no longer wishes to proceed with the order. In the event of Isowall, in its sole and unfettered discretion, agreeing to a written request from the customer to cancel such order this will be done on such terms as determined by Isowall, which terms will include, but not be limited to, the payment of a handling fee equal to 25% of the full invoice amount to be paid by the customer to Isowall.

16.1 All product supplied by Isowall shall remain the property of Isowall until such product has been fully paid for whether such product is attached to other property or not.

16.2 The Customer is not entitled to sell or dispose of any product unpaid for without the prior written consent of Isowall. The Customer shall not allow the product to become encumbered in any manner prior to the full payment thereof and shall advise third parties of the rights of Isowall in the product.

16.3 If any product supplied to the Customer is of a generic nature and has become the property of the Customer by operation of law (*confusio* or *commixtio*) the Customer shall be obliged on notice of cancellation of the agreement to retransfer the same quantity of product in ownership to Isowall.

16.4 The Customer agrees to accept any quantity that does not exceed or fall short of the quantity ordered by no more than 5% as good and complete performance and may request to pay Isowall only the proportionate contract price for the actual quantity dispatched which request will not be unreasonably refused.

17.1 The Customer shall be liable to Isowall for all legal expenses on the attorney-and-own-client scale incurred by Isowall 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 Isowall may demand.

17.2 The Customer agrees that Isowall 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 Isowall will affect the terms of the agreement by Isowall to supply product and/or services to the Customer or any of the rights of Isowall and such indulgence shall not constitute a waiver by Isowall in respect of any of its rights herein. Under no circumstances will Isowall be stopped from exercising any of its rights in terms of such agreement.

19. The Customer hereby consents that Isowall shall have the right to institute any legal action in either the Magistrate's Court or the North Gauteng High Court at its sole discretion. These South African courts shall have exclusive jurisdiction in any litigation between the parties arising from whatsoever source.

20.1 Any document shall be deemed duly presented to, and accepted by, the Customer (i) within 5 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 (ii) 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 (iii) on being delivered by hand to the Customer or any director, member or owner of the Customer; or (iv) within 48 hours if sent by overnight courier or (v) within 7 days of being sent by surface mail; or (vi) within 24 hours of being e-mailed to any e-mail address provided by the Customer.

20.2 The Customer chooses its address for any notification or service of legal documents or processes as the business address or the physical addresses (*domiciliumcitandi* et *executandi*) of any Director (in the case of a company), Member (in the case of a close corporation) or of the Owner(s) or Partner(s).

20.3 The Customer undertakes to inform Isowall 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, Isowall 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 Isowall of the personal information that it has provided to Isowall for establishing its credit rating and to Isowall disclosing such information to credit control companies, banks and other institutions involved in rating credit. The Customer agrees that Isowall will not be held liable for the good faith disclosure of any of this information to such third parties and that no further specific consent needs to be obtained for the transfer of such information to a specific third party.

20.5 The Customer hereby consents that Isowall can provide personal information of the Customer to third parties, if the Customer has indicated Isowall as a trade reference to third parties and the Customer agrees that Isowall will not be liable for the good faith disclosure of any of this information to such third parties.

20.6 The Customer hereby agrees that any credit facility granted to the Customer by Isowall is a variable credit facility and that Isowall shall be entitled to increase its credit limit from time to time.

21. Each provision of the agreement is severable from the other provisions. Should any provision be found to be invalid or unenforceable for any reason, the remaining provisions of the agreement shall nevertheless remain binding and continue with full force and effect.

22. Any order is subject to cancellation by Isowall due to acts of God or any circumstance beyond the control of Isowall, including (without restricting this clause to these instances): inability to secure labour, power, materials or supplies, war, civil disturbance, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation.

23. Any order is subject to cancellation by Isowall if the Customer breaches any of these terms and conditions or makes any attempt of compromise, is liquidated, sequestrated or judgement is recorded against the Customer or any of its principals.

24. The Customer agrees that Isowall will be immediately and irrevocably released from any contractual damages and penalty obligations should any event in clause 22 or 23 occur.

25. If the National Credit Act 34 of 2005 is applicable the following clauses shall not be applicable to this Agreement: clause 5.1, clause 19 and clause 20.6.

26. If the Consumer Protection Act 68 of 2009 is applicable the following clauses shall not be applicable to this Agreement: clauses 5.1, 6.2, 6.4, 6.9, 7.1, 7.2, 7.3, 7.4, 7.5, 8.1, 11.2, 13.2, 17.1, 19, 20.1, 20.2, 20.6.

27. This Agreement and its interpretation is subject to South African law.