# STANDARD TERMS AND CONDITIONS

## 1. DEFINITIONS

CORPORATION: SIA Flexitanks Ltd (Known herein as SIA)

CUSTOMER: Any partnership, association or other body of persons, corporate or unincorporated or individual contracting with the Corporation for the provision of service, advice, and/or information of any other nature or in connection with business dealings;

OWNER: The Owner of the commodity to be conveyed in the flexitanks purchased from the Corporation in terms of an agreement to which these terms and conditions relate.

CONDITIONS: The Standard Terms and Conditions contained hereunder.

INSTRUCTIONS: A statement of the Customer's requirements, which from time to time, is communicated to the Corporation in writing.

FLEXITANKS: Flexible tanks (commercially referred to as “flexitanks”) purchased by the Customer from the Corporation from a range of flexitanks manufactured and offered by the Corporation for the packaging/storage/transport of bulk liquids.

## 2. PRICES

2.1 All flexitanks will be invoiced on prices ruling at the time of dispatch or delivery of the flexitanks.
2.2 All prices are subject to alteration without notice to the Customer.
2.3 All prices quoted exclude VAT.

## 3. PAYMENT

3.1 All invoices shall be payable on presentation or as otherwise agreed in writing between the Customer and the Corporation and the Customer shall pay the amount reflected on the invoice without deduction or set-off together with any outstanding balances by means of:
3.1.1 Bank wire transfer; or
3.1.2 Letter of credit; or
3.1.3 _____

3.2 The Customer shall be responsible for any fees or associated expenses that may be incurred in making payment.

3.3 If any amount owing by the Customer to the Corporation in respect of an open account is not paid on due date, the Customer shall be liable for interest at the rate of 2% per month, capitalised at the end of each and every month on the overdue account.

**4. OWNERSHIP AND RISK**

4.1. Ownership of the flexitanks shall not pass to the Customer until such time as all amounts payable by the Customer in respect of the flexitanks, have been paid in full.
4.2. Risk in and to the flexitanks shall pass to the Customer in accordance with the terms of delivery, dispatch, transport and insurance agreed to between the Customer and the Corporation in writing.

**5. ORDERS OF FLEXITANKS**

5.1. Purchase orders for flexitanks shall be in writing and shall be telefaxed or delivered by post or courier by the Customer to the Corporation, at the latter's domicilium address or such other address as the Corporation may notify the Customer from time to time. Each order shall constitute a distinct and separate offer to contract by the Customer with the Corporation, which offer will be open for acceptance by the Corporation for a period of 10 days from date of receipt thereof. Should the Corporation elect to accept such offer within the afore stated period, it shall notify the Customer in writing by way of an order confirmation whereafter a binding contract shall come into existence between the Customer and the Corporation on the terms and conditions as contained herein.
5.2. Under no circumstances will the Corporation be obliged to accept the purchase order and nor, having accepted a purchase order, will the Corporation have any continuing obligation to accept future purchase orders submitted by the Customer.
5.3. The Customer shall in respect of each purchase order for the flexitanks specify the quantity and shall provide the Corporation with such information as is necessary to enable the Corporation to fulfil the orders.
5.4. The Customer shall pay the Corporation in respect of each flexitank in accordance with clause 3 above, subject to the following:
5.4.1. Upon receipt of a numbered purchase order from the Customer, the Corporation will process the order and shall dispatch in accordance with the terms of delivery, dispatch transport and insurance agreed to between the Customer and the Corporation in writing.
5.4.2. All invoices will include the following information:
5.4.2.1. Description of the flexitanks;
5.4.2.2. Number of units;

5.4.2.3. Invoice number;
5.4.2.4. purchase order number of the Customer;
5.4.2.5. Amount payable by the Customer to the Corporation;

**6. RETURNS**
6.1 Returns of flexitanks will only be accepted for credit, subject to agreement in writing between the Customer and the Corporation on an ad hoc basis.
6.2 All flexitanks supplied correctly per the Customer's order and then subsequently returned for credit will be levied with a 35% restocking / handling charge.
6.3 The flexitanks returned for credit must be accompanied by the Corporation's invoice number and must be recorded on the Customer's return note.
6.4 All flexitanks returned will be subject to inspection for quality prior to credit being authorised.

**7. INSURANCE**
7.1 The Corporation will not be responsible for insuring any commodity/ies to be conveyed in the flexitanks ("the commodity/ies") purchased by the Customer, unless the Customer specifically requests such insurance in writing. In the event of the Corporation being requested to affect such insurance, such insurance shall be subject to the usual exceptions and conditions of the policies of the Insurance Corporation or Underwriters elected by the Corporation in its sole discretion. The Corporation shall elect whether to affect a special policy of insurance in these circumstances or whether alternatively to declare the commodity/ies on any general policy held by the Corporation.
7.2 Any Insurance arranged by the Corporation shall be arranged as Agent for the Customer and all premiums in respect of such insurance shall be payable by the Customer.
7.3 The Customer shall ensure that the commodity/ies are covered by Marine Cargo Insurance or will alternatively arrange such insurance through the Corporation. The cost of any such insurance shall be for the account of the Customer.
7.4 The Customer warrants that the description and particulars of any commodity/ies to be conveyed in flexitanks acquired from the Corporation are full and accurate.

**8. DUTIES OF THE CORPORATION**
8.1 The Corporation shall perform its duties and obligations with a reasonable degree of care, diligence and skill. However, unless specifically stated, time shall not be of the essence. If at any stage in any transaction the Corporation reasonably considers that "to depart" from the Customer's instructions will be beneficial to the Customer, the Corporation will be permitted to do so and will not incur any liability in consequence thereof.

8.2 If subsequent to a written agreement being entered into between the Customer and the Corporation, events or circumstances come to the attention of the Corporation which in the opinion of the Corporation make it wholly or in part impossible for the Corporation to fulfil its duties, it shall take reasonable steps to inform the Customer of such events or circumstances and seek further instructions.
8.3 Should the Customer fail to provide further instructions as contemplated in clause 8.2 above, the Corporation shall be entitled to proceed as it deems necessary and the Customer shall be liable for any additional expenses incurred in this regard.

**9. CUSTOMER INDEMNITY**

9.1 The Customer shall at all times indemnify and hold harmless the Corporation against all liability arising from loss or damage arising out of the Corporation acting in accordance with the Customer's instructions or from any negligent or intentional act/s or omission/s of the Customer. Further, the Customer shall also indemnify the Corporation against any liability incurred by the Corporation when by reason of carrying out the Customer's Instructions the Corporation has become liable or may become liable to a third party.

9.2 The Customer warrants that he is either the Owner or the Authorised Agent of the Owner and also that he is accepting these Conditions not only for himself but also as Agent for and on behalf of the Owner.

9.3 The Customer shall be liable and hereby indemnifies the Corporation in respect of all duties, taxes, levies deposits and outlays of whatever nature levied by any authority in relation to the commodity/ies and for all payments, fines, cost expenses, loss or damage whatsoever incurred or sustained by the Corporation in connection therewith.

9.4 The Customer warrants that the flexitanks will be filled to their correct capacity tolerances and may not be under loaded or overloaded by more than a maximum of +/- 5% capacity, it being specifically recorded that under or over filling the flexitanks outside their tolerances may damage the flexitank and result in damage and/or loss of commodities. The Corporation shall not be liable for any damage or loss of commodities due to the incorrect loading of the flexitanks.

9.5 The Customer shall indemnify the Corporation against any liability, loss, damage, costs or expenses incurred by the Corporation due to the consequences of the Customer's failure to accurately describe the commodity/ies.

9.6 The Corporation shall not be liable for any defects in the flexitanks arising from damage caused by exposing the flexitanks to excessive movement, including where such damage is caused during any transportation of the flexitanks and the Customer indemnifies and holds the Corporation harmless in respect of all claims in this regard.

**10. WARRANTY**

The Corporation warrants that the flexitanks will be free from manufacturing defects provided that they are used by the Customer within 1 (one) year of purchase from the Corporation and provided that the flexitanks are not used to carry any bulk liquids/commodity/ies for a continuous period exceeding 60 (sixty) days at any one time.

**11. CUSTOMER CLAIMS**

11.1 The Customer warrants that the description and particulars of any commodity/ies to be conveyed in the flexitanks are full and accurate and indemnifies the Corporation against any liability, loss, damage, costs or expenses incurred by the Corporation which may result from the Customer's failure to accurately describe the commodity/ies.

11.2 Any claim made against the Corporation by the Customer shall be in writing and shall be made without delay. In the event of delay in presentation of any claim by the Customer against the Corporation causing prejudice to the Corporation, the Corporation shall be relieved of all and any liability in respect of such claim.
11.3 The Customer acknowledges that it has familiarized itself with all procedures and safety precautions undertaken by the Corporation to minimize any possible contamination of the commodity/ies in transit and accepts that the Corporation does not warrant that the flexitanks are suitable for the conveyance of any particular commodity/ies.
11.4 Notwithstanding anything to the contrary herein contained, the Corporation's liability to the Customer shall be limited to the Corporation undertaking the repair or replacement of any commodity/ies transported in the flexitanks which have been damaged due to proven manufacturing faults of the flexitanks. Notwithstanding the above, the Corporation shall not be liable for any consequential damages of any nature whatsoever and howsoever arising.

11.5 **Consequential Loss:** All of these terms reject any liability for consequential loss, either specifically or by omission. It is not possible to insure against consequential loss, because theoretically there could be no limit to such a claim.

11.6 **Please note that withholding any monies owing to SIA Flexitanks Ltd as an offset or deferment on account of any claim or counter-claim is illegal.**

**12. DELIVERY OF FLEXITANKS**
12.1 If the Customer or any other person or body duly authorised by the Customer does not take delivery of the flexitanks on the agreed date place then the Corporation shall be entitled, at the Customers expense, to store such flexitanks, and in such circumstances the Corporation shall have no further liability to the Customer in respect of those goods. Alternatively, the Corporation shall be entitled to dispose of the flexitanks in a reasonable manner having first given the Customer not less than 21 days notice in writing of its intention so to do. In any circumstances involving sale of the Customer's flexitanks, the Corporation shall give credit to the Customer for the sale of such flexitanks after deduction of the Corporation's costs of sale. Any advice of information given by the Corporation to the Customer shall be for the Customer's use only.

If the Customer passes such information on to third parties then the Customer shall indemnify the Corporation in respect of any damage, costs, claims, loss or liability arising out of any third party on such advice or information. Unless otherwise agreed in writing, the Corporation shall give any such advice to the Customer gratuitously and without liability whatsoever.
12.2 Lien:
The Corporation shall be entitled to exercise a lien over any property of the Customer, in the possession and under the control of the Corporation, as security for payment of any amount which may be owing to the Corporation by the Customer in respect of any other product delivered by the Corporation to the Customer.

**13. SHORTAGE OR LOSS**
13.1 The Corporation shall not be liable for any alleged shortages or discrepancies in order unless the Customer provides the Corporation with written notice within seven (7) days of receipt of the flexitanks.
13.2 The Corporation does not accept any responsibility whatsoever for any damages, shortage or loss in transit, to the flexitanks.

**14. LEGAL COSTS**
In the event of the Corporation engaging the services of an Attorney or collection agency to collect from the Customer any amount which has fallen due by it to the Corporation, then in addition to any other Legal charges for which the Customer may have become legally liable, all such collection costs incurred shall be for the account of the Customer, to the extent permitted by Act 34 of 2005 (as amended).

**15. WITHDRAWAL OF CREDIT FACILITIES**
The Corporation may withdraw credit facilities at any time without prior notice and the extent and nature of such facilities shall at all time be at the Corporation's sole discretion.

**16. ARBITRATION**
16.1. Should any dispute arise between the parties to this agreement in regard to:
16.1.1. The interpretation of; or
16.1.2. The carrying into effect of; or
16.1.3. Any of the parties rights and obligations in terms of this agreement; or
16.1.4. The termination of or arising from the termination of; or
16.1.5. The rectification of this agreement;
Then the dispute shall be submitted to and decided by arbitration.
16.2. The arbitration shall be held:
16.2.1. in Texas;
16.2.2. with only the parties and their representatives present thereat;

**17. JURISDICTION**
Unless clause 25 applies, any dispute arising under these Standard Trading Conditions shall be decided by arbitration in accordance with the London Maritime Arbitrators Association Rules in the City of London and shall be referred to a single Arbitrator to be appointed by the parties hereto. English law to apply. If the parties cannot agree upon the appointment of a single Arbitrator, the dispute shall be settled by three Arbitrators, each party appointing one Arbitrator, the third being appointed by the two Arbitrators so chosen.

**18. TERMINATION**
18.1. Without prejudice to the rights of the aggrieved party to claim damages, this agreement may be cancelled:

18.1.1. by either party, in the event of the other party committing a breach of any of the material terms of this agreement and failing to remedy such breach within a period of 14 (fourteen) days after receipt of written notice drawing attention to the breach and requiring it to be remedied;
18.1.2. by either party, if the other party is at any time wound up liquidated, sequestrated or placed in judicial management, whether final or provisional;
18.1.3. by either party if they effect a compromise with their creditors, necessitated by either party being unable to pay its debts;
18.1.4. by the Corporation, if for reasons beyond its control it is unable to supply the flexitanks for an extended period of time; without prejudice to the aggrieved

party's rights to claim damages or to any other remedies available in law to the aggrieved party.

18.2 Upon termination of this agreement all unfilled orders for the flexitanks shall be cancelled.

**19. FORCE MAJEURE**
Notwithstanding any other provision in this agreement, no default, delay or failure to perform on the part of the Corporation shall be considered a breach of this agreement if such default, delay or failure to perform is shown to be due entirely to causes beyond the reasonable control of the Corporation including, but not limited to, causes such as strikes, lock-outs or other labour disputes, riots, civil disturbance, actions or
inaction of governmental authorities or suppliers, epidemics, wars, embargoes, storms, floods, fires, earthquakes, acts of God or the public enemy, nuclear disasters or default of a common carrier.

**20. GENERAL PROVISIONS**

20.1 In the event of the Customer being a Company, certified copies of the Certificate of Incorporation, Certificate to Commence Business and Articles of Association and Memorandum of Agreement must be furnished within SEVEN (7) DAYS of signature of the Application and in the event of the Customer being a Close Corporation, a Certified Copy of the Founding Statement should be furnished within the time period stated herein.
20.2 The Customer shall furnish a Resolution of the Company/Close Corporation authorizing the representative of the Company/Close Corporation to apply for Credit facilities with which the Corporation must be furnished within SEVEN (7) DAYS of signature of this Agreement.

20.3 Words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include the feminine gender and words importing persons shall include partnerships and bodies corporate.
20.4 No alteration, cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by both parties or their duly authorised representatives.

20.5 This document contains the entire agreement between the parties and no party shall be bound by any undertaking, representations, warranties, promises or the like not recorded herein, save that the Customer shall be bound by the terms of delivery, dispatch, transport and insurance agreed between the parties.

20.6 No indulgence, lenience or extension of time which the Corporation may grant or show to the Customer, shall in any way prejudice the Corporation or preclude the Corporation from exercising any of its rights in the future.
20.7 No cession, delegation or assignment of any rights or obligations in terms of these standard terms and conditions will be of any force or effect unless in writing and signed by or on behalf of the parties.
20.8 Any term or provision of these standard terms and conditions found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable will not affect the other terms or provisions hereof or the whole of these terms and conditions, but such term or provision will be deemed to be modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties will be construed and enforced accordingly, preserving to the fullest permissible extent the intent and the agreement of the parties to which these terms and conditions relate.
20.9 Each provision of these standard terms and conditions is severable, the one from the other.

**21. NOTICES**
21.1 The Corporation and the Customer nominate their respective domicilii citandi et executandi at the addresses reflected in the _____annexed hereto, for service upon them of all notices and process in connection with these terms and conditions.
21.2 Each of the parties shall be entitled from time to time by written notice to the other to vary their domicilii citandi et executandi to any other address which is not a post office box or poste restante.