



Terms and Conditions of: PEXMART CC
Registration no. 1995/055606/23 (herein after referred to as "Pexmart")

Your attention is specifically drawn to the following and is to be carefully noted:

1. IMPORTANT NOTICE:

These terms and conditions contain certain terms and conditions which appear in similar text style to this clause and which:

- 1.1.1. **may limit the risk or liability of PEXMART; and**
- 1.1.2. **may create risk or liability for yourself and/or your company/employer; and**
- 1.1.3. **may compel you and/or your company/employer to indemnify PEXMART or a third party; and**
- 1.1.4. **may serve as an acknowledgement, by you and/or your company/employer, of a fact**
- 1.1.5. **You and/or your company/employer acknowledges, agrees to and understands the terms and conditions contained herein as well as the language (English) used herein.**

1.2. **Your attention is drawn to these Terms and Conditions because they are important and should be carefully noted.**

1.3. Nothing in these Terms and Conditions is intended or must be understood to unlawfully restrict, limit or avoid any right or obligation, as the case may be, created for either you or PEXMART.

2. DEFINITIONS:

2.1. Customer/Client means the person who accepts the quotation or who authorises PEXMART to carry out the work. The terms Customer and Client shall be used interchangeably in this agreement.

2.2. Authorized person means any person authorized by the Customer/Client to Order the work or accept the work so done by PEXMART.

3. EMAIL/TELEPHONIC/VERBAL ORDERS:

3.1. Any order via email, telephone or verbally in any form by the client/customer **shall be deemed and treated as an acceptance of the offer by the Customer.**

3.2. The agreement/contract between PEXMART and the Customer shall come into effect immediately upon acceptance of the quotation by the Customer.

3.3. These Terms and Conditions shall not be altered, modified or varied unless expressly agreed in writing by the duly authorized member of PEXMART.

4. PRICE:

4.1. The price shall be the price quoted by PEXMART at the time of the customer placing the order.

4.2. **All quotes are valid for 7 (SEVEN) days only.**

4.3. All quotations given are estimates only and may be subject to change upon viewing customers' exact specifications.

4.4. Any variation to the price will be charged and invoiced accordingly to the customer placing the order.

4.5. Prices include labour only unless materials are specifically listed.

4.6. All materials to be supplied by client unless quoted for by PEXMART. In such instance, the quote will specify which materials are supplied by PEXMART and at what price.

5. PAYMENT:

5.1. Orders will require an amount to be paid as a deposit, which will be indicated on the proforma invoice to be provided to the customer and is paid in advance unless stated otherwise.

5.2. Where applicable payment shall be made strictly within 30 days of PEXMART's monthly statement. Due dates of Invoices are clearly stated on PEXMART's statements and invoices.

5.3. Payment is due on the due date, should this date fall on a Sunday, Saturday or public holiday, the debt shall become due on the following day immediately preceding the due date.

5.4. **Should funds not show in the bank account of Pexmart on the due date, it will be viewed/deemed to be late payment.**

5.5. PEXMART shall charge interest on all overdue accounts at the rate of 24% per annum compounded monthly.

5.6. In the event of non-timeous payment, PEXMART reserves the right to charge full tariffs and void any discounts granted as well as any guarantees granted.

5.7. In the event that payment is not made in accordance with these terms and conditions, or at all, such conduct will be construed as a material breach. PEXMART shall be entitled to cancel any and all of the agreements, or perceived agreements, between the parties hereto, and proceed with any claim they may be entitled to, without prejudice.

6. DELIVERY:

6.1. Delivery times quoted are estimates only and time shall not be of the essence of the contract.

6.2. Delivery shall be deemed to take place upon signature of the delivery note.

6.3. All risk in the goods shall pass to the Customer (including its appointed agent) at the time of delivery.

6.4. The Customer/Client shall inform PEXMART (in writing or verbally) of whom shall be responsible to accept delivery and/or work on the Customer/Client's behalf (the authorized person). In the event of the Customer/Client not being personally available at the delivery address and failing to specifically inform PEXMART of the identity of such authorized person who will be responsible for the acceptance of the delivery on the

- Customer/Client's behalf, the Customer/Client hereby authorizes PEXMART to deliver the purchased item/s to any natural person present at the nominated address who is over the age of 16.
- 6.5. In the event that the Client/Customer becomes aware that they and/or their authorized person shall not be available at the delivery date, it is the Client/Customer's responsibility to inform PEXMART within 24 hours prior to delivery. Failing which the Customer/Client shall be responsible for wasted costs herein.
 - 6.6. Should no-one be present at the nominated address at the time of delivery, the purchased item/s will be returned to PEXMART. The Client/Customer shall be liable for the wasted costs of delivery and related costs.
7. **CANCELLATIONS:**
- 7.1. **Once an order has been accepted by a client via email, telephonic or verbal, NO cancellations will be accepted.**
 - 7.2. **Should the client cancel the order the client will remain responsible for the payment of the full invoiced price where the goods have already been manufactured or is in the process of being manufactured.**
 - 7.3. **A handling fee of 25% of the invoice amount will be charged upon any cancellations.**
8. **OWNERSHIP:**
- 8.1. **Ownership of the goods shall not pass to the Customer until full payment of all outstanding invoices.** The client is obliged to return to PEXMART all goods belonging to PEXMART, upon request in the event of non-payment of invoices.
 - 8.2. Notwithstanding any other rights PEXMART may have, PEXMART reserves the right to remove all goods, at the Customer's expense in the event of non-payment.
9. **GUARANTEE/WARRANTEE:**
- 9.1. Only workmanship performed and/or materials supplied by PEXMART will be covered by our warrantee.
 - 9.2. No third party must have tampered with the workmanship and/or materials of PEXMART whatsoever.
 - 9.3. The client must provide PEXMART with the opportunity to remedy the defective workmanship and/or material within a reasonable time.
 - 9.4. In the event that PEXMART is unable to remedy the defective workmanship and/or materials, the client may elect to be repaid the amount of invoice issued by PEXMART less materials, alternatively, the client shall obtain 3 quotes from manufacturers, suppliers and/or welders approved by PEXMART, to remedy the defective work. PEXMART shall select one of the quotes and pay for same to a maximum of PEXMART's original invoice less materials, where applicable.
 - 9.5. Defective workmanship and/or materials is to be reported to PEXMART, in writing, within five working days of delivery of the goods/materials.
 - 9.6. PEXMART does not guarantee goods installed which were supplied by the client whatsoever.
- PEXMART will only guarantee goods which were supplied by PEXMART and specifically guaranteed by PEXMART in writing.
- 9.7. PEXMART shall not be responsible whatsoever for defects which have occurred due to the following:
- 9.7.1. Misuse, neglect, lightning, accident or improper storage;
 - 9.7.2. Improper installation, handling or by repair or alteration not effected by PEXMART.
 - 9.7.3. Customers failure to switch off sensitive equipment prior to commencement of work by PEXMART.
 - 9.7.4. Any defects/faults and the like which occur as a result of problems with the installation of anything which was not installed by PEXMART. PEXMART only guarantees their work and/or goods.
 - 9.7.5. In the event of the defect being caused by 9.7.1, 9.7.2, 9.7.3 or 9.7.4 above, the Customer shall be liable for inspection, shipping, handling, removal, work conducted, labour and the like incurred by PEXMART in connection with the alleged faulty good/service.
10. **PRODUCT INSTALLATION SPECIFICATIONS:**
- 10.1. All products shall be installed according to manufacturer guidelines where applicable.
11. **LIABILITY OF PEXMART:**
- 11.1. The Customer understands that digging, grinding or excavating and so forth might occur and that this may cause noise, vibrations or dust. PEXMART shall not be liable for complaints in connection with such noise, vibrations or dust.
 - 11.2. The Customer understands that when digging, grinding or excavating, damage may be sustained. **The customer indemnifies PEXMART against any claim or liability against PEXMART in this regard.**
 - 11.3. It is the Customer's responsibility to inform PEXMART of the location of water pipes, electrical wiring, sewage or drainage lines under the surface of the ground. Failure to do so may result in damage to above. **The Customer indemnifies PEXMART against any claim or liability as a result of the customer's failure to adequately point out the location of water pipes, electrical wiring, sewage or drainage lines on the premises.**
 - 11.4. **The customer indemnifies PEXMART against any claim or liability that be brought against PEXMART or which PEXMART may suffer in the course of or arising out of the provision of any of the Services or related to the goods, unless caused by PEXMART's gross negligence or wilful misconduct, but subject to relevant applicable laws.**
 - 11.5. **PEXMART will not be responsible for any consequential damage that the customer may suffer do to any actions or inactions of PEXMART.**

- 11.6. **It is specifically noted by the Customer that PEXMART is not responsible for any pre-existing damage whatsoever even when such pre-existing damage only becomes apparent after work by PEXMART has been undertaken.**
- 11.7. **The Customer is responsible to ensure that all regulations, laws, by-laws and the like have been complied with prior to commencement of work by PEXMART. PEXMART will not be liable for wasted costs, resultant damages or the like whatsoever in the event that the client has failed to obtain all necessary and relevant permits or has failed to comply with relevant regulations, laws, by-laws or the like. The Customer specifically warrants that it has obtained all relevant permits, has complied with all regulations and applicable legislation prior to placing of the Order.**
- 11.8. **The Customer is responsible to ensure that all relevant permits have been obtained prior to commencement of work by PEXMART. PEXMART will not be liable for wasted costs, resultant damages or the like whatsoever in the event that the client has failed to obtain all necessary and relevant permits. The Customer specifically warrants that it has obtained all relevant permits, has complied with all regulations and applicable legislation prior to placing of the Order.**
12. **CUSTOMERS/CLIENTS OBLIGATIONS:**
- 12.1. Customer/client shall arrange access to the premises as well as all power points and water points.
- 12.2. Customer/Client is responsible to switch off and unplug any and all sensitive/ other equipment prior to PEXMART commencing work. PEXMART is not responsible for damage which may occur to such sensitive equipment as a result of client's failure to switch off such sensitive equipment.
- 12.3. Customer/Client shall ensure that animals are locked away, if for whatsoever reason an incident does occur, the Customer/Client will be held liable for all medical expenses.
- 12.4. PEXMART staff are not permitted to work on live power whatsoever. The client shall arrange that power is switched off and on by themselves alternatively an authorized representative.
- 12.5. **Where an order is accepted for goods/material and delivery/collection has taken place, the onus rests on the client to make sure that there are no faults. The client has 5 days to report said faults. PEXMART shall not accept any returns, or provide credit to the client after the 5 day period has expired.**
- 12.6. **No Buyout or specifically manufactured items will be accepted for credit, nor will cancellations of orders be accepted once items have been manufactured or received into stock.**
13. **CIRCUMSTANCES BEYOND CONTROL OF PEXMART/FORCE MAJEURE:**
- 13.1. In the event that PEXMART is prevented from performing its obligations under any agreement with client by an event beyond its control (such as transportation problems of supplier and the like) or a *Force Majeur "Act of God"*, PEXMART will be excused for its delay in performing its obligations under the contract, or, in an extreme case (ie war, invasion, riot, violent commotion, terrorism, natural catastrophes and the like) it may be excused from having to perform the contract at all.
14. **LEGAL:**
- 14.1. The customer agrees that the premises of delivery, principal place of business or residential address shall be the customer's domicile for all legal purposes.
- 14.2. Any failure on the part of you or PEXMART to enforce any right in terms hereof shall not constitute a waiver of that right.
- 14.3. No indulgence, extension of time, relaxation or latitude which any party (the "grantor") may show grant or allow to the other (the "grantee") shall constitute a waiver by the grantor of any of the grantor's rights and the grantor shall not thereby be prejudiced or stopped from exercising any of its rights against the grantee which may have arisen in the past or which might arise in the future.
- 14.4. This Agreement shall be governed by and construed in accordance with South African law.
- 14.5. The parties agree to the jurisdiction of the magistrates court in connection with any dispute arising out of or from this agreement, the effect of this is that the parties consent to the jurisdiction of the Magistrates court notwithstanding the fact that the amount would otherwise be beyond the jurisdiction of the High Court.
- 14.6. Neither party is precluded from approaching the High Court or similar court with jurisdiction to hear any dispute in connection with or arising from this agreement.
- 14.7. All costs incurred by PEXMART in connection with default of the Customer and/or in connection with any and all of PEXMART rights, shall be recoverable from the customer on attorney and own client scale.
- 14.8. In the event of an account having to be handed over to PEXMART's attorneys for collection due to non payment, the client will be liable for all costs on the attorney and own client scale including collection commission.
15. **SEVERABILITY:**
- 15.1. If any term, condition, provision or performance, or any part of a term, condition, provision or performance of this 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 this Agreement, or amended to make it valid, legal, lawful and enforceable, in such a manner as to leave the amended Agreement substantially the same in essence, and this Agreement so amended shall remain in force and effect.