

Putzmeister SA (Pty) Ltd

Sales Agreement General Terms and Conditions (March 2022, Rev2)

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1. FORMATION OF SALES CONTRACT

1.1 A binding sales agreement between Putzmeister SA (Pty) Ltd, registration number 1973/015952/07 ("Putzmeister") and the buyer of any Putzmeister product or spare parts ("customer") listed in ANNEXURE A ("products"), is entered into when:

1.1.1 The customer accepts an offer made by Putzmeister for the sale of any product; or

1.1.2 The customer collects any products from Putzmeister or its agent; or

1.1.3 The customer pays the purchase consideration for any product to Putzmeister or its agent; or

1.1.4 Putzmeister can reasonably conclude through the conduct of the customer that a sales agreement has been formed.

1.2 All sales agreements are governed by these Terms and Conditions and such further terms and conditions that may be contained in the offer, invoice, statement, collection or credit notes ("sale documents") entered into with the customer. The sales agreement, these Terms & Conditions, the sales documents together constitute the sales contract between the customer and Putzmeister containing each party's rights and obligations in terms thereof ("sales contract").

1.3 In the event of any conflict between these Terms & Conditions and the sale documents, then the sale documents shall prevail.

1.4 In the event the customer is a distributor of Putzmeister products, then the distribution agreement between Putzmeister and the distributor shall prevail in the event of any conflict with these Terms & Conditions. If there is any conflict between the distribution agreement and the sale documents, then the sale documents shall prevail.

1.5 Unless otherwise agreed in writing, no terms and conditions included in any purchase order or other purchase documentation emanating from the customer shall be binding upon Putzmeister. Any purchase order received by Putzmeister shall only be regarded as a request for Putzmeister to make an offer to the customer.

1.6 Putzmeister's offers are open for acceptance within the period stated by Putzmeister in the offer or, when no period is stated, within thirty (30) days from the date of the offer.

1.7 Putzmeister may withdraw or revoke any offer made any time prior to receipt by Putzmeister of the customer's acceptance of the offer.

1.8 If Putzmeister receives a purchase order from the customer which is not in response to an offer by Putzmeister, or if Putzmeister receives a purchase order from the customer, or receives acceptance by the customer of any offer which deviates from Putzmeister's offer, such purchase order or acceptance, shall be deemed to be a request for an offer only.

1.9 Putzmeister reserves its rights to change the products and spare parts it sells and update ANNEXURE A without notice to the customer at any time.

2. PRICE

2.1 Any price stated in any sales document for any product shall exclude Value Added Tax ("VAT"), and costs and expenses incurred by Putzmeister in providing the products (such as: delivery, insurance and commissioning costs), unless stated otherwise in the sales contract.

2.2 All prices are denominated in South African Rands, unless stated otherwise in the sales contract.

2.3 No discounts are applicable to any product sold by Putzmeister to the customer, unless otherwise agreed to in writing.

2.4 Putzmeister reserves its rights to change any price arising from exchange rate fluctuations, unless otherwise agreed in writing.

3. PAYMENT

3.1 All payments shall be made by the customer into Putzmeister's designated bank account without set-off, withholding, counterclaim or deduction.

3.2 All payments shall be made in South African Rands, unless agreed otherwise in writing.

3.3 Unless agreed otherwise in writing, payment is due in full within 30 days of invoice.

3.4 Payments shall be made in full by the due date for any payment.

3.5 Putzmeister shall charge interest at the overdraft rate charged by its bankers until such time as all arrears are settled in full.

3.6 Putzmeister reserves its rights to withhold any further deliveries of any products purchased or ordered by the customer until such time as all arrears plus interest thereon have been settled in full. Putzmeister shall not be liable for any damages sustained by the customer howsoever arising as a consequence hereof.

3.7 Any payment received by Putzmeister shall first be used to pay any legal fees & collection commissions incurred by Putzmeister to enforce its rights, thereafter interest due on the arrears, thereafter the arrears and only thereafter for any further products the customer wishes to purchase.

4. COLLECTION OF PRODUCTS

4.1 Putzmeister shall advise the customer when ("collection date") and where ("collection place") the products being purchased may be collected.

4.2 Any collection date advised by Putzmeister to the customer are approximate only. Putzmeister shall not be liable for any reasonable change thereto and further any such changes shall neither constitute a breach of the sales contract, nor provide the customer with grounds to cancel the sales contract

4.3 Putzmeister shall make the products purchased available for collection from its physical address in South Africa or from the physical address of its agent ("collection").

4.4 All risks in and associated with the purchased products passes from Putzmeister to the customer at collection.

4.5 The customer shall inspect the purchased products at collection and the signature of the customer, or the customer's collection agent, on the collection note shall be prima facie proof that the customer has inspected the purchased goods and is satisfied with the quality thereof.

4.6 Should the customer require Putzmeister to deliver the purchased products ("delivery"), then:

4.6.1 Putzmeister may agree to do so on such terms & conditions to be agreed upon in writing.

4.6.2 The customer is still required to sign off at collection that the customer is satisfied with the quality of the goods purchased. All risks in and associated with the purchased products passes from Putzmeister to the customer at collection of the purchased products by the delivering agent from the collection place;

4.6.3 All costs associated with the delivery of the products purchased shall be paid for by the customer;

4.6.4 All risks associated with the delivery of the purchased products shall be borne by the customer;

4.6.5 The customer shall have no claim against Putzmeister for any damages to the purchased products being delivered, or any damages

sustained by the customer, as a consequence of the delivery.

4.7 Should the customer, or its agent, fail to collect the purchased products from the collection place on the collection date, then the customer shall be liable for all storage, insurance and other costs incurred by Putzmeister as a result thereof.

5. OWNERSHIP OF THE PRODUCTS

5.1 Ownership of the products passes to the customer when the product price and all ancillary charges have been paid for in full by the customer, unless the customer is a distributor, in which case, ownership passes to the distributor upon collection.

5.2 In the event the purchased products are to be stored on premises leased by the customer, then the customer shall promptly notify the landlord that Putzmeister has retained ownership of the purchased products in terms of the sale agreement until paid for in full.

6. PRODUCT DOCUMENTATION

6.1 Notwithstanding clause 5 above, ownership of all operating manuals, service documentation and the like ("product documentation") and the contents thereof remain the property of Putzmeister.

6.2 The customer may not, without the prior written consent of Putzmeister, make any copies of the product documentation.

6.3 Putzmeister may at any time replace the product documentation for any product purchased by the customer

7. NEW PRODUCT WARRANTIES

7.1 Unless otherwise stated in writing, Putzmeister warrants that all new products sold will be free from workmanship or material defects or a period of 12 months from collection date of the product, ("warranty period").

7.2 Should a product not be free from workmanship or material defects ("warranted defect") during the warranty period, then:

7.2.1 The customer shall immediately notify Putzmeister and in any event not later than 5 business days of the event occurring;

7.2.2 Immediately desist from using the product until such time as the warranted defect has been repaired or replaced by Putzmeister;

7.2.3 Grant access to the product by Putzmeister or its agent to repair or replace the warranted defect at the site where the warranted defect occurred;

7.2.4 If it is not possible for the required repair or replacement work to be carried out at the site where the warranted defect occurred, then the customer is to deliver the defective product to a site specified by Putzmeister for the repairs or replacement to be done;

7.2.5 Putzmeister shall on a best endeavours basis repair or replace the warranted defect as soon as possible;

7.2.6 The labour and component costs of the repair or replacement of the warranted defect shall be for the account of Putzmeister.

7.2.7 The customer shall pay for all travel costs incurred by Putzmeister to travel to the product to repair or replace the warranted defect as well as any transport costs incurred to move the product to be repaired to a site specified by Putzmeister in terms of clause 7.2.4 above.

7.3 Putzmeister has the sole right to determine whether the warrant defect is to be repaired, replaced or a credit granted for the warranted defect.

7.4 Ownership of all replaced components automatically vests in Putzmeister upon the replacement being done.

7.5 The customer shall have no claim against Putzmeister for any damages or losses sustained howsoever arising as a consequence of the

warranted defect.

7.6 Putzmeister does not warrant that any product purchased will be fit for the customer's intended purpose. Putzmeister only warrants that the product purchased will be fit for normal use if used, operated, serviced and maintained in accordance with the product documentation.

7.7 The product warranty excludes

7.7.1 Any other products that need to be used in conjunction with the Putzmeister product purchased, whether such other product is supplied by Putzmeister or not;

7.7.2 Consumable components;

7.7.3 Components not critical to the product's proper functioning;

7.7.4 Cosmetic defects;

7.8 The product warranty is voided if:

7.8.1 The product is not used, stored, maintained or serviced in accordance with the product documentation;

7.8.2 The functional use of the product has been altered in any manner;

7.8.3 The warrant defect arose when the product was being used or operated by a person not certified by Putzmeister as competent to do so;

7.8.4 The components used and technicians employed to maintain and service the product are not from Putzmeister or its designated agent;

7.8.5 The customer attempts, whether directly or indirectly, to repair or replace the warranted defect;

7.8.6 The customer is in material breach of any obligation to Putzmeister.

7.9 In the event that Putzmeister finds that the defect is not covered by the product warranty contained in this clause 7, then the customer shall reimburse Putzmeister for all costs incurred by Putzmeister in attending to the defect.

7.10 Save for the product warranties set out in this clause 7, no other product warranties of whatsoever nature are given by Putzmeister.

8. USED PRODUCT WARRANTIES

8.1 Unless otherwise agreed in writing, any product sold by Putzmeister that was previously owned by another party, shall have a limited warranty of 3 months as set out in the used product's warranty documentation from collection of the used product sold ("warranty period").

8.2 Clauses 7.2 to 7.10 above read with clause 8.1 above shall mutatis mutandis (the necessary changes having been made) apply to used products sold.

9. OTHER WARRANTIES

9.1 Putzmeister and the customer each warrant to the other that

9.1.1 They are not aware of the existence of any fact or circumstance that may impair their ability to comply with all their obligations in terms of the sales contract;

9.1.2 They will not be in violation of any other constituting or governance document to which they are a party and accordingly the sales contract is binding upon themselves

9.1.3 They have the necessary resources and expertise to discharge their obligations in terms of the sales contract;

9.1.4 They have obtained the requisite authorisations to enter into the sales contract and the obligations imposed are valid and binding on themselves;

9.1.5 They are going concerns;

9.1.6 They have not passed any resolution, nor intend passing such a resolution, for their voluntary winding-up;

9.1.7 They have not entered into, nor do they intend to, a compromise with their creditors or any scheme of arrangement;

9.1.8 They have not been placed under business rescue, nor are they aware of any such application being brought against them;

9.1.9 They have not received any demand in terms of section 345 of the Companies Act 61 of 1973 as read with Item 9 of Schedule 5 of the Companies Act 71 of 2008 that has not been satisfied in full;

9.1.10 No application for their winding-up has been brought, or is pending;

9.2 Each warranty shall be a separate and independent warranty which is not limited by reference to, or inference from the terms of any other warranty.

9.3 If any of the warranties are promissory in nature, or relate to a future event, it will be deemed to have been given as at the date for fulfilment of the promise, or for the happening of the event, as the case may be.

10. EXEMPTION OF LIABILITY

10.1 Putzmeister shall not be liable for any losses or damages, howsoever arising, sustained by the customer, or its employees, or any other person, from the purchase and use of any product purchased by the customer from Putzmeister.

10.2 The customer irrevocably and unconditionally indemnifies Putzmeister and holds Putzmeister harmless against any claims brought against it arising from the products purchased and used by the customer, its employees or any other person from Putzmeister.

11. FORCE MAJEURE

11.1 A force majeure event means an unforeseeable event occurring which is beyond the reasonable control, directly or indirectly, of the affected party, provided:

11.1.1 Such event, despite the exercise of reasonable diligence and efforts, cannot be prevented, avoided or removed by the affected party;

11.1.2 Such event materially adversely affects the ability of an affected party to fulfil its obligations in terms of the sales contract; and includes:

11.1.3 Acts of God,

11.1.4 Acts of government;

11.1.5 Expropriation or confiscation of facilities;

11.1.6 Acts of war, rebellion and sabotage, or damage resulting therefrom;

11.1.7 Riots, strikes and lockouts;

11.1.8 Floods, fires, lightning; 11.1.9 Pandemics, excluding COVID19;

11.1.10 Other perils;

11.2 If a party claims that a force majeure event has arisen, the affected party shall immediately notify the other party in writing, whereafter

execution of the parties obligations in terms of the sales contract is suspended without penalty until such time as the force majeure event has passed, unless otherwise agreed in writing.

11.3 In the event that it is reasonably foreseen by any party that the force majeure event will endure for longer than 6 months, then the sales contract shall terminate as at the date of the notice given. In such an event, the Parties shall negotiate in good faith to determine the terms and conditions of such termination. Should the parties fail to reach agreement, then the parties may proceed to mediation or in terms of clause 15 below.

12. INTELLECTUAL PROPERTY & CONFIDENTIAL INFORMATION

12.1 Intellectual property means, without limitation, the following with respect to Putzmeister's products ("intellectual property"), whether registered or not:

- 12.1.1 all secret knowledge
- 12.1.2 copyrights patents and trademarks;
- 12.1.3 technical information and specifications;
- 12.1.4 manufacturing techniques;
- 12.1.5 designs;
- 12.1.6 circuit diagrams;
- 12.1.7 product documentation;
- 12.1.8 blueprints;
- 12.1.9 electronic artwork;
- 12.1.10 samples;
- 12.1.11 devices;
- 12.1.12 demonstrations;
- 12.1.13 formulae;
- 12.1.14 information about materials;
- 12.1.15 marketing and business information generally.

12.2 Without the prior written consent of Putzmeister, the customer shall keep confidential and will not disclose to any person the details of all the transactions and agreements contemplated in the sales contract, or any information relating to Putzmeister and its intellectual property ("confidential information").

12.3 The customer shall keep all confidential information confidential and disclose it only to their officers, directors, employees, consultants, financiers and professional advisers who:

- 12.3.1 Have a need to know (and then only to the extent that each such person has a need to know);
- 12.3.2 Are aware that the confidential information must be kept confidential;
- 12.3.3 Are aware of the customer's obligations in relation to such confidential information in terms hereof;
- 12.3.4 Have been directed by the customer to keep the confidential information confidential and who have undertaken to keep the

12.4 The obligations of the customer in relation to the maintenance and non-disclosure of confidential information in terms does not extend to information that:

12.4.1 Is disclosed to the customer but at the time of such disclosure such information is in the lawful possession or control of the customer already;

12.4.2 Is not subject to an obligation of confidentiality;

12.4.3 Is or becomes public knowledge, otherwise than pursuant to a breach of the sales contract by the customer;

12.4.4 Is required by the provisions of any law, statute or regulation, or during any court proceedings, or by the rules or regulations of any regulatory authority to be disclosed and, subject to the provisions of clause

12.5 below, the customer has taken all reasonable steps to limit, as far as reasonably possible, the extent of such disclosure and has consulted with Putzmeister prior to making such disclosure.

12.5 Before any announcement, statement or disclosure containing any confidential information is made pursuant to the requirements of the provisions of any law, statute or regulation, or of the rules or regulations of any regulatory authority ("required disclosure"), the customer shall use all commercially reasonable endeavours to provide Putzmeister with a written draft of the required disclosure at least 48 hours before the proposed time of the publication of the required disclosure and the customer and Putzmeister shall also use all commercially reasonable endeavours to agree the wording and timing of all required disclosures. If a written draft cannot be provided to Putzmeister or agreement cannot be reached by the time that any such required disclosure must be made, the customer shall be entitled to publish the relevant required disclosure (on notice to Putzmeister attaching a copy of the relevant required disclosure) notwithstanding that such agreement has not been reached, but in so doing it shall not disclose more than the minimum information that it is compelled to disclose in order to ensure minimum compliance with the relevant requirements. Written drafts of any required disclosures shall be given to Putzmeister in the most expeditious manner reasonably available.

12.6 Notwithstanding the provisions of this clause 11, the customer may pass any information received from Putzmeister and which has otherwise come into the customer's possession while acting in the ordinary course of business, provided that in all cases such information is supplied on a confidential basis and used by the recipient only for the bona fide purposes for which it was disclosed.

13. PROTECTION OF PERSONAL INFORMATION

13.1 The customer acknowledges that it is familiar with the provisions of Protection of Personal Information Act 4 of 2013 ("POPI") and that the customer knows and understands its rights in terms thereof and as such hereby consents (as data subject) to:

13.1.1 Voluntarily provide its information to Putzmeister for the purpose of: 13.1.1.1 Performance required by the sales contract;

13.1.1.2 The enforcement of rights or obligations in the sales contracts, in accordance with section 13 of POPI;

13.1.2 The processing of the customer's information by Putzmeister (as responsible party) in accordance with section 11(1) of POPI, which the customer acknowledges and agrees is necessary to carry out actions for the conclusion or performance of the sales contract;

13.1.3 Putzmeister collecting the customer's information from another source to maintain Putzmeister's legitimate interests in accordance with section 12(2)(d)(v) of POPI, which the customer acknowledge and agrees is required by Putzmeister to enforce its rights in the sales contract;

13.1.4 The processing of the customer's special information (as defined in POPI) by Putzmeister (as responsible party);

13.1.4.1 Generally, in accordance with section 27(a) of POPI, in so far as the special information pertains to or is required by Putzmeister to enforce any of its rights in the sales contract;

13.1.4.2 In accordance with section 27(b) of POPI for the establishment, exercise or defence of a right or obligation in law, which the customer acknowledges and agrees will be the case where the customer's special information pertains to, or is required by Putzmeister to enforce any of its rights in terms of the sales contract;

13.1.4.3 The transfer of the customer's information by Putzmeister (as responsible party) to a third party who is in a foreign country, generally, in accordance with section 72(1)(b) of POPI, in so far as the personal information pertains to, or is required by Putzmeister to enforce any of its rights in terms of the sales contract.

14. RELATIONSHIP BETWEEN THE PARTIES

14.1 The relationship between the customer and Putzmeister inter se (between themselves) shall be governed by the sales contract and nothing contained therein shall be deemed to constitute a partnership, joint venture or the like between them.

14.2 Neither party shall by reason of the actions of the other party incur any personal liability as a co-partner to any third party and no party shall be entitled to authorise, represent or to hold out to any third party that the relationship between the parties is that of a partnership, joint venture or the like as aforesaid.

14.3 The Parties shall deal with each other in the utmost good faith.

15. BREACH

15.1 In the event of a breach by any party to the sales contract, the aggrieved party shall give written notice to the offending party, affording the offending party 7 (seven) days, or such other notice period that is deemed reasonable in the circumstances, to remedy the breach.

15.2 Should the offending party fail to remedy the breach as demanded, then the aggrieved party may submit the matter to arbitration on the following basis:

15.2.1 The provisions of the Arbitration Act 42 of 1965 and the Rules for the Conduct of Arbitrations published by the Association of Arbitrators (Southern Africa) shall apply;

15.2.2 The arbitration shall be held in Gauteng, South Africa;

15.2.3 The parties shall use their best endeavours to ensure that the arbitration is held, concluded and a decision handed down as soon as possible;

15.2.4 The arbitrator shall be a mutually acceptable retired judge, failing which, an appointment shall be made by the Johannesburg Society of Advocates, who shall be a senior counsel having not less than 20 (twenty) years' experience in these matters, upon application by either Party hereto;

15.2.5 The arbitrator's decision shall be final and binding;

15.2.6 The arbitrator may make any award as to costs as they deem fit and proper in the circumstances. 15.3 For the purposes of making clauses 15.2.5 and 15.2.6 above an order of court, the customer and Putzmeister submit to the jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg.

15.4 Notwithstanding the above provisions in respect of arbitration, either party may at their own cost proceed against the other party in any competent court having jurisdiction should they prefer to do so.

16. DOMICILIUM CITANDI ET EXECUTANDI

16.1 The parties choose as their domicilium citandi et executandi for all purposes in terms of the sales contract the addresses stipulated in the sales documents or as stipulated in terms of any notice given in terms of this clause 16.

16.2 Any party may change their domicilium citandi et executandi provided written notice is given to the other party.

16.3 Any notice or communication required, or permitted to be given, shall be valid and binding only if it is in writing and delivered to a party's domicilium citandi et executandi as per clause 16.4 below.

16.4 Any written notice to a party may be delivered by

16.4.1 Hand during business hours, which shall be deemed to have been received on the first business day after delivery; or

16.4.2 Email, which shall be deemed to have been received on the first business day after successful transmission; unless the contrary is proved.

16.5 Notwithstanding anything to the contrary contained in this clause 16, a written notice or communication actually received by a party shall be adequate proof of receipt thereof, notwithstanding that it was not sent or delivered to a party's chosen domicilium citandi et executandi or not delivered in accordance with clause 16.4 above.

17. WHOLE AGREEMENT AND NON-VARIATION

17.1 No variation to the sales contract, inclusive of this clause, shall be of effect and force unless reduced to writing and signed by the customer and Putzmeister.

17.2 No extension of time or waiver or relaxation of any of the provisions or terms in the sales contract shall operate as an estoppel against any party in respect of their rights, nor shall it operate so as to preclude such party thereafter from exercising its rights.

18. GENERAL

18.1 The customer may not cede, delegate and / or assign any of its rights and / or any of its obligations in terms of the sales contract without the prior written consent of Putzmeister.

18.2 The sales contract is to be interpreted and implemented in accordance with the laws of the Republic of South Africa.

18.3 The sales contract will be binding on any of the heirs, executors and administrators of any successor-in-title to any party.

18.4 No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and / or whether it was negligent or not.

18.5 Should any clause or sub-clause be void for vagueness, or for any other reason whatsoever, then that clause or sub-clause shall be capable of being severed from the remainder of the sales contract which shall remain of full force and effect and shall be binding on the parties hereto.

PRODUCTS

The complete range of the following products, services and spares thereon are supplied by Putzmeister:

1. Putzmeister Mortar Machines.
2. Putzmeister Stationary Concrete Pumps.
3. Putzmeister Truck Mounted Concrete Boom Pumps.
4. Putzmeister Delivery Lines.
5. Putzmeister Batching Plants.
6. Putzmeister Concrete Mixers.
7. Putzmeister Underground Pumps.
8. Putzmeister Industrial Pumps.
9. SANY products

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