



## **RECTRON GENERAL TERMS AND CONDITIONS OF SALE**

**These terms and conditions together with the Dealer Application, Cash or Credit Terms and Conditions (whichever is applicable), the Warranty Policy and the Repair and Replacement Policy and Service procedure form this Agreement.**

**This Agreement applies to all transactions and/or business between Rectron and the Dealer.**

### **1. INTERPRETATION AND DEFINITIONS**

#### **1.1 In this Agreement:**

1.1.1 Clause headings are for convenience and reference only and shall not be used in its interpretation, and unless the context clearly indicates a contrary intention, an expression which denotes:

- 1.1.1.1 any gender includes the other gender;
- 1.1.1.2 a natural person includes an artificial person;
- 1.1.1.3 the singular includes the plural and vice versa.

1.1.2 The following expressions shall bear the meanings assigned to them below and cognate expressions shall bear corresponding meanings:

- 1.1.2.1 "Agreement" means the Dealer Application, these General Terms and Conditions of Sale, the Cash or Credit Terms and Conditions (whichever is applicable), the Warranty Policy and the Repair and Replacement Policy;
- 1.1.2.2 "CPA" means the Consumer Protection Act 68 of 2008, as amended from time to time, which Act shall apply as contemplated in section 5 thereof;
- 1.1.2.3 "Customer" means any person who has entered into a transaction with the Dealer;
- 1.1.2.4 "Dealer" means the person whose name appears on the Dealer Application next to the caption "Registered/Trading name of Dealer", or if no name appears thereon, or in any other circumstances, any person or persons at whose request or on whose behalf Rectron undertakes to supply any Goods, do any business, or provide any advice or service;
- 1.1.2.5 "Goods" means any items, products or services of whatsoever nature that are supplied to the Dealer in terms of this Agreement;
- 1.1.2.6 "Information" means the information provided by the Dealer and/or Signatory in the Dealer Application or in the course of doing business with Rectron including all personal information as defined by the Protection of Personal Information Act, 4 of 2013;
- 1.1.2.7 "NCA" means the National Credit Act 34 of 2005, as may be amended from time to time;
- 1.1.2.8 "Prime Rate" means the nominal, annual rate of interest from time to time publicly quoted as such by Standard Bank of South Africa Limited calculated on a 365 (three hundred and sixty five) day factor irrespective of whether or not the year is a leap year, as certified by a manager of such bank whose appointment, designation and authority

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shall not be necessary to prove and whose certificate shall be *prima facie* proof of the contents thereof;

1.2.2.9 "Rectron" means Rectron (Pty) Ltd with Registration No. 1995/003772/07;

1.2.2.10 "Signatory" means the individual who signs the Dealer Application and the Cash or Credit Terms and Conditions (whichever is applicable) on behalf of the Dealer as well as any other agreement between Rectron and the Dealer.

## 2. THESE TERMS AND CONDITIONS

- 2.1 It is recorded that the only basis upon which Rectron is prepared to do business with the Dealer is that, notwithstanding anything in the Dealer's enquiry, specification, acceptance, order, other documentation or discussion/s to the contrary, the terms and conditions contained in this Agreement shall operate in respect of any and all business between the Dealer and Rectron.
- 2.2 All and any business undertaken, including any advice, information or service provided, whether gratuitously or not, by Rectron is and shall be subject to the terms and conditions contained in this Agreement.
- 2.3 To the extent that this Agreement appears on the reverse of an invoice or any other documentation of Rectron and there is no relevant Dealer Application, the Dealer shall be deemed to be the person to whom the invoice or other document is addressed, and the Signatory shall be deemed to be the person signing the invoice or other documentation. The terms and conditions of this Agreement shall apply *mutatis mutandis* to such person and Signatory.

## 3. QUOTATIONS

- 3.1 Any quotation provided to the Dealer is not an offer by Rectron to sell or repair or service the Goods but constitutes an invitation by Rectron to the Dealer to do business with Rectron.
- 3.2 A quotation may be revoked at any time by Rectron.
- 3.3 Rectron may accept or reject in whole or in part any order placed upon it by the Dealer pursuant to the quotation. Accordingly, a contract shall only come into force when Rectron supplies or tenders to supply, the Goods in question to the Dealer.
- 3.4 The quotation is based on rates of exchange, freight charges, insurance, costs of labour and materials and other charges ruling at the date of that quotation. In the event of any variation occurring subsequent to the date of the quotation in any of the aforesaid rates and/or charges, as the case may be, Rectron shall prior to the delivery furnish the Dealer with an amended quotation which quotation is to be accepted or rejected, in writing by or on behalf of the Dealer.

## 4. PLACING OF ORDERS

- 4.1 Orders may be placed by telephone, email or online.
- 4.2 If telephone orders are placed by the Dealer, Rectron may require such orders to be confirmed in writing by the Dealer, prior to the acceptance of Rectron. Rectron will not be responsible for any errors or misunderstandings occasioned by the Dealer's failure to record not only the details of the order correctly but also the Dealer's failure to clearly advise Rectron at the time of placing the order of its specific requirements regarding each and every item included in the order.
- 4.3 In the event of the Agreement being subject to the provisions of the CPA, the Dealer can cancel or withdraw an order but in such event Rectron will be entitled to charge a reasonable cancellation fee.
- 4.4 The Dealer shall provide Rectron with an order number, reference number or other important details when placing an order.
- 4.5 The Dealer undertakes to only allow duly authorised representatives of the Dealer to collect Goods that have been ordered as contemplated in clause 4.4 from Rectron. Rectron does not accept any responsibility and

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shall not be liable in any manner whatsoever if an unauthorised representative of the Dealer collects Goods from Rectron.

- 4.6 All Goods not collected within 4 (four) days of placing the order will automatically be credited from the Dealer's account back into Rectron's Goods system.

## **5. PURCHASE PRICE AND PAYMENT**

- 5.1 Payment is due in accordance with the terms as set out in this Agreement, as amended from time to time, in Rectron's sole discretion.
- 5.2 Orders are accepted by Rectron only on the basis that the prices charged will be those ruling at the date of dispatch of the Goods, unless otherwise expressly stated. A copy of Rectron's ruling prices from time to time may be viewed online.
- 5.3 Unless otherwise expressly stated, prices are exclusive of value added tax ("VAT") which shall be for the account of the Dealer. The Dealer shall pay or reimburse to Rectron the amount of any VAT simultaneously with the purchase price.
- 5.4 The Dealer shall be obliged to pay to Rectron, in addition to the purchase price therein:
- 5.4.1 the amount of any tax, duty or other charge of any nature regulation or enactment of whatsoever nature which comes into force on the date after the date on which any price charged is determined;
  - 5.4.2 any additional costs of any nature whatsoever arising due to factors beyond the control of Rectron as included in an amended quotation issued by Rectron and accepted by the Dealer.
- 5.5 Any expense incurred by Rectron at the instance of the Dealer in modifying or otherwise altering or making additions to the design, quantities or specifications for standard Goods, and any expenses arising as a result of suspension of work by Rectron due to instructions given, or a failure to give instructions by the Dealer, shall be added to the purchase price in respect of the relevant Goods.
- 5.6 The purchase price in respect of any Goods sold by Rectron to the Dealer in terms of this Agreement shall be payable:
- 5.6.1 by the Dealer to Rectron;
  - 5.6.2 by electronic funds transfer or credit card;
  - 5.6.3 immediately on the due date;
  - 5.6.4 in South African currency without deduction, set off or withholding for any reason whatsoever;
  - 5.6.5 during or before the expiry of the credit period recorded on the Dealer Application, which period shall commence upon the issuing of an invoice by Rectron, or as directed by Rectron on its statement / tax invoice, or if there is no credit period indicated, or no credit period has been approved or no Dealer Application is annexed, cash on order.
- 5.7 The purchase price does not include charges for off-loading of the Goods at the Dealer's premises. The Dealer shall provide at its cost the necessary labour, equipment or facilities required for all off-loading of the Goods.
- 5.8 The Dealer shall pay interest at the Prime Rate plus 4% (four percent) on all amounts owing by the Dealer to Rectron which have not been paid on the due date thereof, reckoned from the due date thereof until date of payment. Such interest shall be payable on demand.

## **6. RETURNS/REPLACEMENTS**

- 6.1 Rectron shall replace or pass a credit on Goods purchased within 7 (seven) days from Rectron's invoice, provided that the Goods are unused, unopened and in their original condition and packaging.
- 6.2 Rectron reserves the right to levy a reasonable handling charge on Goods that are or have been returned for credit to and accepted by Rectron;
- 6.3 If the Goods have been opened but unused, Rectron will charge for the cost of re-packaging.

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- 6.4 If the Goods have been opened and used, Rectron will charge for the cost of repackaging, the cost of usage and the cost of setting the Goods back to factory default settings.
- 6.5 If the Goods have been physically damaged (refer to the Warranty Policy) then Rectron may refuse to pass a credit on the Goods and will only do so at Rectron's sole and absolute discretion.
- 6.6 If any accessories, manuals, software, media, cables and the like are missing, Rectron will charge the Dealer for the cost of the replacement of the said item.
- 6.7 Rectron reserves the right to charge any reasonable fees for the costs or any losses occasioned by the return of the software to Rectron in whatever form. This excludes software that is sold as part of a bundle with other Goods.
- 6.8 Software that has been opened/used/activated will not be accepted for credit by Rectron.

## **7. RISK**

The risk of damage to or destruction of any relevant Goods passes to the Dealer on delivery thereof by Rectron to the Dealer or on collection thereof by the Dealer from Rectron.

## **8. IMPORTED GOODS**

Where the Goods or any part thereof are to be imported, this Agreement is subject to the condition that Rectron's order is accepted and confirmed by Rectron's own suppliers and that delivery is made thereunder in due course.

## **9. DELIVERY**

- 9.1 Any delivery date indicated by Rectron shall merely be regarded as the estimated date of delivery which shall not bind Rectron to effect delivery on or near such date and shall not constitute a reason to withhold, defer or set off either in whole or in part the purchase price or give rise to a claim for damages unless caused by the gross negligence of Rectron or its agent.
- 9.2 The Dealer shall accept delivery whenever it is tendered and shall not be entitled to withhold or defer any payment, not be entitled to a reduction in the price, nor to any other right or remedy against Rectron, its servants, agents or any other persons for whom it is liable in law (the Agreement between Rectron and the Dealer as contemplated in this clause is for the benefit of Rectron's servants, agents or any other persons for whom Rectron is liable for in law) whether for losses, costs, damages, expenses, interest or otherwise on account of delays in effecting delivery, partial delivery or non-delivery, occasioned by the gross negligence on the part of Rectron, its servants, agents or any other persons for whom it is liable in law, or not.
- 9.3 If the Goods are to be delivered by road, the Dealer shall ensure that the delivery destination shall be easily accessible to road transport vehicles. The Dealer shall be responsible for off-loading the Goods at the delivery destination.
- 9.4 The Dealer shall be obliged to inspect all Goods upon delivery and shall endorse the delivery note as to any missing or damaged Goods. No claims for missing or damaged Goods shall be valid unless the delivery note has been endorsed as aforesaid and unless, in addition, the Dealer notifies Rectron in writing within 3 (three) business days of the delivery of the Goods of the claim in question and the Goods relating to such claim, furnishing full details in regard thereto. The Dealer shall bear the onus of proving that upon delivery, any Goods are missing or damaged or that the Dealer's order was in any way not complied with.
- 9.5 If Rectron is unable to deliver the Goods to the Dealer due to any act or omission on the part of the Dealer, it shall be entitled to charge the Dealer for the storage of the Goods.
- 9.6 The Dealer shall be obliged to furnish information necessary for the delivery of the relevant Goods to be effected and if the Dealer fails or refuses to do so, or if it fails or refuses to take delivery, the Goods shall be deemed to have been delivered to the Dealer upon notification.

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- 9.7 If Rectron agrees to engage a third party to transport the Goods, Rectron is hereby authorised to engage a third party on the Dealer's behalf and on the terms deemed fit by Rectron. The Dealer hereby indemnifies Rectron against any claims that may arise from such Agreement against Rectron. The Dealer shall reimburse Rectron for any cost incurred in arranging special delivery, including but not restricted to, the costs of necessary disbursements and insurance. Any documentation purporting to evidence the said extra costs will be deemed to be prima facie proof thereof.
- 9.8 The Dealer warrants that any Signatory to any tax invoice, delivery note or other documentation of Rectron made out in the name of, or to the Dealer, is duly authorised to bind the Dealer in respect of the relevant transaction.

## 10. BREACH

- 10.1 Subject to clause 9.2, if the Dealer breaches any of the terms and conditions of this Agreement or any other agreement with Rectron or fails to pay any amount payable by it on due date or commits any act of insolvency or endeavours to compromise generally with its creditors or does or causes to be done anything which may prejudice Rectron's rights hereunder or at all, or allows any judgment against it to remain unsatisfied for 7 (seven) days or is placed into provisional or final liquidation or business rescue or under provisional or final sequestration or if his estate is voluntarily surrendered, or is under an administration order or debt rehabilitation as provided for in the NCA, Rectron shall have the right, without prejudice to any other right which it may have against the Dealer, to elect to:
- 10.1.1 treat as immediately due and payable all outstanding amounts which would otherwise become due and payable over the unexpired period of the Agreement and to claim such amounts as well as any other amounts in arrears including interest and to cease performance of its obligations hereunder as well as under any other agreement with the Dealer until the Dealer has remedied the breach; and/or
  - 10.1.2 cancel this Agreement and retake possession of any of the Goods sold; and/or
  - 10.1.3 claim damages.
- 10.2 Rectron shall not be obliged to comply with its obligations in terms hereof or in terms of any other applicable agreement in any respect whatsoever for so long as the Dealer is indebted to Rectron in any amount whatsoever in respect of any cause whatsoever or fails to comply with any other obligations to Rectron, whether arising out of this Agreement or otherwise.
- 10.3 The Dealer agrees that the amount due and payable to Rectron shall be determined and proven by a certificate issued by Rectron and signed on its behalf by any person duly authorised by Rectron, which authority need not be proven. Such certificates shall be binding on the Dealer and shall be prima facie proof of the indebtedness of the Dealer.
- 10.4 The Dealer hereby indemnifies Rectron against any and all damage of whatsoever nature, howsoever and by whomsoever caused in relation to the removal of Goods, excluding any gross negligence by Rectron, and without derogating from the generality of the foregoing, the removal of repossessed Goods from the premises of the Dealer or any other premises where the Goods may be found.

## 11. DOMICILIUM AND NOTICES

- 11.1 The Dealer chooses its domicilium citandi et executandi ("domicilium") for the purpose of the giving of any notice, the payment of any sum, serving of any process and for any other purposes arising from this Agreement at its physical and email addresses as set out in the Dealer Application. The Dealer agrees that should any notice be received in terms of the NCA that such notice may be given by pre-paid registered post.

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- 11.2 Each of the Parties shall be entitled from time to time, by written notice to the other, to vary its domicile to any other address which is not a post office box or poste restante.
- 11.3 Any notice given and any payment made by any Party to any other ("the addressee") shall be in writing and if:
- 11.3.1 delivered by hand during the normal business hours of the addressee at the addressee's chosen domicile for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;
  - 11.3.2 posted by pre-paid registered post to the addressee at the addressee's chosen domicile for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the 4th (fourth) day after the date of posting;
  - 11.3.3 transmitted by email to the addressee's email address shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the 1st (first) business day after the date of transmission.

## **12. WHOLE AGREEMENT**

- 12.1 This Agreement constitutes the whole agreement between the Dealer and Rectron relating to the subject matter hereof.
- 12.2 No amendment or consensual cancellation of this Agreement or any provision or term thereof or of any agreement, bill or exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provision or terms of this Agreement or of any agreement, bill or exchange or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by an authorised representative of Rectron. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 12.3 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, bill or exchange or any agreement, bill or exchange or any other document issued or executed pursuant to or in term of this Agreement shall operate as a waiver of Rectron and/or the Dealer's rights entrenched in the CPA with regard to enforcement of this Agreement.
- 12.4 Rectron shall not be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract between Rectron and the Dealer or not (unless as otherwise stipulated in the Warranty Policy).
- 12.5 No person other than a duly authorised representative of Rectron has any authority to delete, amend or in any respect vary any of these conditions or accept any other conditions or agree to a consensual cancellation hereof.

## **13. NO CESSION**

The Dealer shall not be entitled to cede or assign any rights and/or obligations which it may have in terms of this Agreement to any third party.

## **14. COSTS**

The Dealer shall be liable for all costs incurred by Rectron in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and own client scale and costs of counsel as on brief whether incurred prior to or during the institution of legal proceedings or if judgment has been granted, in connection with the satisfaction or enforcement of such judgment.

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15. **EXEMPTION AND INDEMNITY**

- 15.1 The Dealer shall have no claim of any nature whatsoever for damages, a remission of the purchase price, cancellation or otherwise, against Rectron, its servants, agents or others on whose behalf Rectron would be liable, in respect of any loss or damage sustained by the Dealer of any nature whatsoever or any damage caused to the assets of the Dealer or assets kept on its premises by any third parties or in regard to the Dealer’s business or sustained by any of its dealers’, howsoever caused including the negligent (excluding grossly negligent) acts or omissions of Rectron, its servants, agents, or any other persons for whom Rectron is liable for in law.
- 15.2 Under no circumstances whatsoever including as a result of its negligent (excluding grossly negligent) acts or omissions or those of its servants, agents, or contractors or other persons for whom in law it may be liable, shall Rectron be liable for any consequential loss sustained by the Dealer.
- 15.3 In the event that the Dealer who acts as a supplier to the Customer and as such becomes a supplier as defined in the CPA, and such Dealer does not comply with the provisions of the CPA in any manner whatsoever and the Customer proceeds with a claim against Rectron, the Dealer indemnifies Rectron to the fullest extent permitted in law against any claims made against Rectron by the Customer.

16. **SEVERABILITY**

Each paragraph or clause in this Agreement is severable, the one from the other and if any paragraph or clause is found by any competent court to be defective or unenforceable for any reason whatsoever, the remaining paragraphs or clauses shall be of full force and effect and continue to be of full force or effect.

17. **FORCE MAJEURE**

Any transaction is subject to cancellation by Rectron due to force majeure from any cause beyond the control of Rectron, including, without restricting the generality of the foregoing, inability to secure labour, power, materials or supplies, or by reason of an act of God, war, civil disturbances, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation.

18. **LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa and the Parties hereby submit to the non-exclusive jurisdiction of the courts.

19. **GENERAL**

- 19.1 This Agreement is personal to the Dealer, which may not without the written consent of Rectron assign, mortgage, charge or dispose of any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder.
- 19.2 The Dealer is an independent contractor and nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of principal and agent or employer and employee between the Parties.

SIGNED ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_\_.

\_\_\_\_\_  
FULL NAME

\_\_\_\_\_  
SIGNATURE