

CONDITIONS OF SALE

Made and entered between Technical Systems (The "Company") and the legal entity which is invoiced at the reverse side (The "Customer")

- 1 All transactions, quotations, tenders, offers to contract and agreements (whether written or oral) for the sale and delivery of poultry feeding equipment (the "goods") by the Company, shall be subject to these terms and conditions ("the agreement") unless otherwise agreed to in writing and signed by both the Customer and the Company's authorised representatives.
- 2 The Company reserves the right to refuse, in full or in part, any order placed with it and all orders placed with the Company by the Customer constitutes an irrevocable offer to the Company open for acceptance by it, until such time as the order is refused by the Company. No order will give rise to an agreement between the parties until such order is accepted by the Company in writing or by the Company providing the Customer with a quote for the goods ordered.
- 3 The Customer shall be responsible for ensuring that the goods are sufficient and suitable for the Customer's purposes, and the Company shall not be liable to the Customer in the event that the goods are not sufficient and suitable for the Customer's purposes. Goods which are not sufficient and suitable for the Customer's purposes will not be considered defective goods.
- PRICE AND PAYMENT**
- 4 The Company reserves the right to do a credit inspection on the Customer's credibility and in particular its ability to pay. Furthermore, initial payment terms for international Customers will be an irrevocable Letter of Credit.
- 5 The purchase price payable by the Customer shall further be:
- 5.1 exclusive of: Value Added Tax, other taxes or duties (including customs or excise duties), lading charges, any other import charges, and the costs of foreign exchange, which taxes will be payable by the Customer;
- 5.2 nett of any costs and shall, unless otherwise agreed in writing, be an "Ex Works" price;
- 5.3 are not subject to any discount, unless otherwise agreed to between the Company and the Customer in writing.
- 6 The purchase price payable for the goods must be paid in full before the goods will be delivered by the Company, unless otherwise agreed to in writing and signed by both the Customer and the Company's authorised representatives.
- 7 The Customer will make all payments to the Company:
- 7.1 in the invoiced currency, free of bank and other charges, at such address, or into such bank account in the Republic of South Africa as the Company may nominate from time to time
- 7.2 without deduction, set-off or demand for any reason whatsoever
- 8 Payment may be made in cash, or by direct electronic fund transfer ("EFT"). Should payment be made by way of EFT, proof of payment must be faxed to the Company and payment will only be considered completed once payment is reflected in the Company's nominated bank account, unless otherwise agreed to by the Company in writing.
- 9 Without prejudice to any other rights of the Company, the Customer agrees that in the event of any payment not being made on the due date for payment, interest will be charged on the outstanding amount at a rate equal to the prime rate (being the variable interest rate publicly quoted as the prime rate of interest, compounded monthly, at which the Company's commercial bank, lends on unsecured overdraft to its most favoured corporate customers in the private sector, to which a certificate under the hand of any manager for the time being of that bank [whose capacity as such need not be proved] shall, save for any patent error, be prima facie evidence) from time to time, plus 3% (three percent) to accrue as from the due date for payment, until payment is received by the Company.
- SUSPENSION OF THE COMPANY'S OBLIGATIONS**
- 10 Should any amount owed by the Customer to the Company, from any cause whatsoever, whether under this agreement or not, not be paid on the due date for payment, then (without prejudice to any other rights which the Company may enjoy) the Company shall be entitled but not obliged to -
- 10.1 require payment of all amounts then owed to it by the Customer, from whatsoever cause, whether under this agreement or not, which shall on such default become immediately due and payable;
- 10.2 retain in its possession any goods of the Customer, until such time as these amounts have been paid;
- 10.3 suspend, until such time as payment of the outstanding amount is effected, the carrying out of any of its uncompleted obligations, whether such obligations arose from this agreement or not; and
- 10.4 cancel any credit facilities granted to the Customer; and
- 10.5 retain any monies paid by the Customer to the Company prior to the due date for payment of outstanding amount.
- DELIVERY AND PASSING OF RISK**
- 11 Delivery of the goods and passing of risk in the goods shall take place as agreed upon between the parties in respect of each confirmed order in writing. Notwithstanding that risk in and to the goods may have passed to the Customer, the Company reserves ownership in and to the goods and ownership in the goods shall pass to the Customer only once the Customer has made payment of the purchase price, and all additional charges, or interest thereon, in full.
- 12 In respect of each delivery the Customer shall ensure that an authorised person will sign the necessary export documents/ delivery note upon receipt of the goods, thereby acknowledging that the goods/material are correct according to the Commercial Invoice. The Customer confirms that a signature by its authorised representative on the Company's export documents/delivery note shall constitute *prima facie* proof of delivery of the goods purchase, unless the contrary is proved by the Company.
- 13 Time shall not be of the essence in the agreement and the performance by the Company of its obligations arising from the agreement, in particular, delivery dates, shall be treated as approximate only. Delivery time, if notified to the Company, will be accepted in good faith and every endeavour will be made by the Company to deliver in due time, but the Company shall not be responsible for delays in delivery date due to the breakdown of machinery, strikes, Act of God, labour disputes, war, acts of terrorism, adverse weather, lockout, riot, vis major, civil commotion, fire, delays or transportation crises, accidents, regulations or orders of any Governmental or Statutory bodies or persons due to other causes beyond the Company's control, including the non-availability of raw materials.
- 14 The Company hereby undertakes that the goods will comply with the Company's specifications as in use at the time of delivery. If the specifications to the Customer's contract calls for a special design requirement, the Company will only be bound by such specifications if accepted in writing. In the event of the goods being supplied on the Customer's specific specifications, the Customer shall not have any claim of any nature whatever against the Company:
- 14.1 for any loss or damages sustained by the Customer as a result of any error, discrepancy or defect in those specifications, measurements of other instructions;
- 14.2 if the goods in question are not suitable for the purposes for which they are required, whether those purposes are known to the Company, or not.
- DEFECTIVE GOODS:**
- 15 The Customer shall inspect the goods immediately upon delivery thereof, and must within 14 (fourteen) days from the date of receipt delivery, notify the Company in writing of any defective goods. Should the Customer fail to timely give written notice of such defective goods, the Customer shall be deemed to have waived all the rights and benefits of this clause. The written notice to be delivered to the Company shall specifically reference the relevant invoice, packing slip and batch numbers and provide detailed information regarding the defect(s) of the goods (including the quantity and reasons for the defect).
- 16 The Customer undertakes to provide the Company with every reasonable opportunity and assistance to verify the correctness of any claim of defect and will furnish the Company with a sample(s) of the defective goods. The Company will conduct such tests on the samples as it deems appropriate and will inform the Customer in writing of its findings.
- 17 The Company's liability in respect of defective goods will be limited to, at its sole discretion, repairing or replacing the goods as soon as is reasonably possible after receipt of all of the defective goods from the Customer, after having informed the Customer in writing that it acknowledges the Customer's claim.
- 18 The Company is not liable for any costs to effect the replacement of the defective goods, except freight and shipping charges incurred from the point of supply to the customer, to be returned to the company. Any other costs including distribution, return and technical replacement cost to and from the clients, agents and distributors of the Customer, are specifically excluded.
- EXCLUSION OF LIABILITY**
- 19 The Customer indemnifies the Company, who shall be exempted from, and shall not be liable under any circumstances whatever for:
- 19.1 any claims, losses or damages of any nature, whether direct, indirect, consequential, loss of profits, death or bodily injuries which may be suffered by the Customer and/or any person arising out of or in connection with the provisions of this agreement or as a result of any defect in the goods whether or not caused by the negligence of the Company or its agents, employees or representatives. Consequential or special damages as used herein include, but are not limited to, lost or damaged goods, costs of transportation, lost sales, lost orders, lost income, increase overhead, labour and incidental costs and operational inefficiencies. To the fullest extent permitted by law, the Customer also indemnifies the Company against any damages, loss or injury to any person and or property sustained by a third party arising from the installation and/or use of the Goods;
- 19.2 any claim for any alleged defective delivery or defective goods, unless the Customer have complied with clauses 15 to 17 above, in which event the Company's liability shall be as set out in clauses 17 and 18 and the Company shall under no circumstances be responsible for any costs, expenses or damages howsoever arising.
- 20 No waiver or alteration to any of these conditions will be binding on the Company unless accepted in writing and signed by hand by an authorised representative of the Company.
- WARRANTY**
- 21 The Company warrants that the goods are and will be rust free for a period of 6 (six) months from the date of leaving the Company's factory, subject to the Customer following the necessary and reasonable precautions to apply, handle, transport and store the products under such conditions as to prevent its exposure to corrosive elements or conditions, which precautions the Customer hereby undertakes to take. The Company does not accept liability for any damages which may be caused to the goods due to rust or corrosion caused by incorrect handling, transport or storage of the goods or which arises after the aforesaid period of 6 (six) months and the Customer hereby specifically indemnifies the Company against any such claims.
- 22 The Company extends a 10 (ten) year and 5 (five) year warranty, respectively, against all defects arising from faulty workmanship or materials during the aforesaid periods, commencing on the date of delivery to the customer in respect of the specific products and systems as set out hereunder as follows:
- 22.1 A 10 (ten) year warranty for the following products:
- 22.1.1 Pan Feeder Auger products designed and suitable for straight Line Pan Feeder applications and NOT for bends.
- 22.1.2 Fatiqless™ Cross Auger products designed for and to be used in bends, such as silo to house feeding.
- 22.1.3 Infini-T™ Auger mother coil for both Pan Feeder and Fatiqless™ Cross Auger products as defined above
- 22.1.4 The Chain
- 22.1.5 The 90° corner unit
- 22.1.6 Flat wire and specifications thereof
- 22.1.7 No guarantee applies to Auger that is manufactured from Technical Systems flat wire.
- 22.2 A 5 (five) year warranty for the following system:
- 22.2.1 Infini-T™ Recoiling system
- 23 The respective warranties do not apply to damage caused by improper use, lack of proper maintenance and mishaps or physical damage caused by other actions or for defects and damage arising after the expiry of the warranty periods referred to above.
- 24 This warranty does not cover consequential damages and/or loss of or damage to the goods due to negligence or misuse by the Customer.
- 25 The following will render the warranties null and void:
- 25.1 any attempt to alter, dismantle or change the standard specifications of the goods;
- 25.2 failure to install and operate the goods in accordance with the instructions as provided by the manufacturer/the Company;
- 25.3 if all components of the Infini-T™ Recoiling system are not original equipment supplied by the manufacturer or the Company;
- 25.4 malfunctions or failure resulting from misuse, abuse, negligence, alteration, accident, or lack of proper maintenance or a failure to comply with the conditions of sale by the Customer shall not be considered defects under the warranty and will be excluded.
- 26 This warranty is made to the Customer and is not transferable.
- 27 The warranty obligation, including defects liability arising from faulty workmanship, is subject to the terms of this Agreement.
- 28 This warranty applies only to systems for the care of poultry, pig and livestock. Any other applications of the goods are not covered by this warranty. The warranty for the Infini-T™ Recoiling system applies only when used together with the Company's Infini-T™ Auger mother coil in terms of the manual, instructions or specifications supplied by the Company. In the event of the mother coil being used with another recoiling system, this warranty will only cover the mother coil if such other recoiling system has been approved by a representative of the Company in writing prior to or on installation of the mother coil and system by the Customer.
- JURISDICTION**
- 29 All matters arising out of this agreement shall be subject to the laws of South Africa and legal action arising under these terms and conditions shall be litigated only in the appropriate court having jurisdiction in the Republic of South Africa, which court both parties acknowledge to have exclusive jurisdiction in relation to any legal action brought hereunder or in connection herewith.
- 30 The Company shall be entitled to institute any proceedings against the Customer arising out of the agreement, in any Magistrate's Court having jurisdiction over the Customer even if the cause of action in question exceeds the jurisdiction of that Court. This provision shall in no way be construed as limiting the Company's entitlement to proceed out of any other competent Court.
- 31 In the event that the Customer should breach any of its obligations under this agreement and it should become necessary for the Company to take legal action against the Customer, the Customer shall be liable to the Company for all costs so incurred, and shall include all counsel's fees as on brief, tracing fees, collection charges by legal counsel or debt collectors, disbursements, and legal costs which costs shall be recoverable from the Customer on an attorney and client basis.