



## STANDARD TERMS AND CONDITIONS OF SALE

### 1. ADDITIONAL DEFINITIONS

Unless otherwise expressly stated, or the context otherwise requires, the words and expressions listed below shall, when used in the Agreement, including this definitions clause, bear the meanings ascribed to them:

- 1.1. "**Agreement**" means the Terms and Conditions of the Sale Agreement, together with these Standard Terms, the Credit Application Form attached as annexure "A" where applicable, and any other annexures attached thereto;
- 1.2. "**Business Day**" means any day (excluding Saturday, Sunday and a public holiday) in the Republic of South Africa;
- 1.3. "**Customer**" means the person/entity who signs the Terms and Conditions of the Sale Agreement;
- 1.4. "**CPA**" means the Consumer Protection Act 68 of 2008 as amended from time to time;
- 1.5. "**Ecoguard**" means Ecoguard Biosciences (Pty) Ltd as fully identified in Terms and Conditions of Sale Agreement;
- 1.6. "**NCA**" means the National Credit Act of 2005, as amended from time to time;
- 1.7. "**NCR**" means the National Credit Regulator;
- 1.8. "**Parties**" means Ecoguard and the Customer and "Party" shall mean either one of them as the context requires;
- 1.9. "**Standard Terms**" means these standard terms and conditions which are listed on Ecoguard's website, which may be amended by Ecoguard from time to time and which form part of the Agreement;
- 1.10. "**Terms and Conditions of Sale Agreement**" means the Terms and Conditions of Sale Agreement which is signed by Ecoguard and the Customer;
- 1.11. "**VAT**" means Value-Added Tax payable in terms of the VAT Act;
- 1.12. "**VAT Act**" means the Value-Added Tax Act 1991, as amended.

### 2. CUSTOMER'S RIGHT TO CANCEL ADVANCE BOOKING OR ORDER (LIMITED APPLICATION)

- 2.1. Subject to clause 2.2 below, the Customer has the right to cancel any advance booking, or order for any Products made by it;

- 2.2. If Ecoguard makes a commitment or accepts an order to supply Products it may however:
  - 2.2.1. Require payment of a reasonable deposit in advance; and
  - 2.2.2. Impose a reasonable charge for cancellation of the order or booking.

### **3. CUSTOMER'S RIGHT TO CHOOSE OR EXAMINE PRODUCTS (LIMITED APPLICATION)**

- 3.1. Despite any statement or notice to the contrary, the Customer shall not be held responsible for any loss or damage to any Products displayed by Ecoguard, unless the loss or damage results from any action by the Customer amounting to gross negligence or recklessness, malicious behaviour or criminal conduct;
- 3.2. If any Products are displayed in or sold from open stock, the Customer has the right to select or reject any particular item from that stock before completing the transaction;
- 3.3. If the Customer has agreed to purchase the Products solely on the basis of a description or sample, or both, provided by Ecoguard, the Products delivered to the Customer shall in all material respects and characteristics correspond to that which an ordinarily alert customer would have been entitled to expect based on the description or on a reasonable examination of the sample, as the case may be;
- 3.4. If the supply of the Products is by sample, as well as by description, the Products supplied shall correspond with the sample and also with the description provided.

### **4. CUSTOMER'S RIGHT TO RETURN THE PRODUCTS (LIMITED APPLICATION)**

- 4.1. This clause is in addition to and not in substitution for:
  - 4.1.1. The right to return unsafe or defective Products, contemplated in clause 9 below; or
  - 4.1.2. Any other right in law between Ecoguard and the Customer to return the Product and receive a refund.
- 4.2. Subject to clauses 4.3 to 4.6 below, the Customer may return the Products to Ecoguard and receive a full refund of any consideration paid for the Products, if Ecoguard has delivered Products intended to satisfy a particular purpose communicated to Ecoguard and within 10 (ten) Business Days after delivery to the Customer, the Products have been found to be unsuitable for that particular purpose.
- 4.3. Clause 4.2 does not apply with respect to any Product if after having been supplied to, or at the direction of the Customer, the Products have been partially or entirely disassembled,

physically altered, permanently installed, affixed, attached, joined or added to, blended or combined with, or embedded within, other product or property;

- 4.4. Products returnable in terms of clause 4.2 above must be returned to Ecoguard at Ecoguard's risk and expense, within 10 (ten) Business Days after delivery to the Customer;
- 4.5. Upon return of any Products in terms of this clause Ecoguard must refund to the Customer the Price paid for the Product, less any amount that may be charged in terms of clause 4.6 below;
- 4.6. In determining the right of Ecoguard to impose a charge contemplated in clause 4.5 above, if any Products returned to Ecoguard in terms of this clause are:
  - 4.6.1. In the original unopened packaging, Ecoguard may not charge the Customer any amount in respect of the Products;
  - 4.6.2. In their original condition and repackaged in their original packaging, Ecoguard may charge the Customer a reasonable amount for:
    - 4.6.2.1. Use of the Products during the time they were in the Customer's possession, unless they are Products that are ordinarily consumed or depleted by use, and no such consumption or depletion has occurred; or
    - 4.6.2.2. Any consumption or depletion of the Product, unless that consumption or depletion is limited to a reasonable amount necessary to determine whether the Products were acceptable to the Customer; or
  - 4.6.3. In any other case, Ecoguard may charge the Customer a reasonable amount:
    - 4.6.3.1. As contemplated in clause 4.6.2 above; and
    - 4.6.3.2. For necessary restoration costs to render the Products fit for re-stocking, unless, having regard to the nature of the Products, and the manner in which they were packaged, it was necessary for the Customer to destroy the packaging in order to determine whether the Products were fit for the intended purpose, in a case contemplated in clause 4.2 above.

## **5 CUSTOMER'S RIGHT TO SAFE, GOOD QUALITY PRODUCTS (LIMITED APPLICATION)**

- 5.1 The Parties agree in respect of the supply of all Products by Ecoguard to the Customer, that the Customer:
  - 5.1.3 Has been expressly informed that the particular Products were offered in a specific condition;
  - 5.1.4 Has expressly agreed to accept the Products in that condition, or knowingly acted in a manner consistent with accepting the Products in that condition.

## **6 IMPLIED WARRANTY OF QUALITY (LIMITED APPLICATION)**

6.1 The implied warranty contained in section 56 of the CPA shall not apply to the Products supplied to the Customer due to the fact that Ecoguard is deemed to have clearly and expressly stated the condition in which the Products are sold to the Customer and the Customer is deemed to have indicated:

- 6.1.1 That it expressly agrees to the Products being sold in the aforesaid condition; and
- 6.1.2 That it has not specifically informed Ecoguard of any particular purpose for which it wishes to acquire or use the Products.

## **7 WARNING CONCERNING FACT AND NATURE OF RISKS (LIMITED APPLICATION)**

7.1 To the extent that Ecoguard packages any hazardous or unsafe Products for supply to the Customer, Ecoguard shall display on or within that packaging a notice that meets the requirements of section 22 of the CPA, and any other applicable standards, providing the Customer with adequate instructions for the safe handling and use of those Products;

7.2 Clause 7.1 does not apply to any hazardous or unsafe Products to the extent that a substantially similar label or notice has been applied in terms of any other public regulation;

7.3 To the extent that Ecoguard installs any hazardous or unsafe Products contemplated in clause 7.1 for the Customer, or supplies any such Products to the Customer in conjunction with the performance of any services, Ecoguard shall give the Customer the original copy of:

- 7.3.1 Any document required in terms of that subsection; or
- 7.3.2 Any similar document applied to those Products in terms of another public regulation.

## **8 CUSTOMER'S RIGHTS WITH RESPECT OF DELIVERY (LIMITED APPLICATION)**

8.1 Unless otherwise agreed in writing, it is an implied condition of every transaction for the supply of the Products that:

8.1.1 Ecoguard is responsible to deliver the Products purchased:

8.1.1.1 On the agreed date and at the agreed time (although the Parties agree that the aforesaid dates and times shall be given in good faith and shall be treated as an approximate indication of when the Customer can expect to receive deliver of the Products), if any, or otherwise within a reasonable time after concluding the transaction;

8.1.1.2 At the agreed place of delivery; and

8.1.1.3 At Ecoguard's cost; or

8.1.2 The agreed place of delivery of the Products is Ecoguard's place of business; and

- 8.1.3 Products to be delivered remain at Ecoguard's risk until the Customer has accepted delivery of them, in accordance with this clause.
  
- 8.2 The Customer shall be deemed to have accepted delivery of the Products on the earliest of the following circumstances:
  - 8.2.1 When the Customer expressly or implicitly communicates to Ecoguard that the Customer has accepted delivery of such Products; or
  - 8.2.2 When the Products have been delivered to the Customer, and:
    - 8.2.2.1 The Customer does anything in relation to the Products that would be inconsistent with Ecoguard's ownership of the Products; or
    - 8.2.2.2 After the lapse of a reasonable time the Customer retains the Products without intimating to Ecoguard that the Customer has rejected delivery of them.
  
- 8.3 Should Ecoguard tender delivery to the Customer of any Products, Ecoguard shall, on request, allow the Customer a reasonable opportunity to examine the Products, which the Parties agree shall be a period of 24 (twenty four) hours, for the purpose of ascertaining whether the Customer is satisfied that the Products:
  - 8.3.1 Are of a type and quality reasonably contemplated and meet the tests set out in clauses 3.3 and 3.4 above; and
  - 8.3.2 In the case of a special-order, reasonably conform to the material specifications of the special order.

## **9 LIABILITY FOR DAMAGE CAUSED BY GOODS**

- 9.1 Except to the extent contemplated in clause 9.2 below, the producer, importer, distributor or retailer, of the Products, including Ecoguard, is liable for any harm, as described in clause 9.2 below, caused wholly or partly as a consequence of:
  - 9.1.1 Supplying any unsafe Products;
  - 9.1.2 A Product failure, defect or hazard in any Product; or
  - 9.1.3 Inadequate instructions or warnings provided to the Customer pertaining to any hazard arising from or associated with the use of the Products, irrespective of whether the harm resulted from any negligence on the part of the producer, importer, distributor, retailer or Ecoguard, as the case may be.
  
- 9.2 Harm for which a person may be held liable in terms of this clause includes:
  - 9.2.1 The death of, or injury to, any natural person;
  - 9.2.2 An illness of any natural person;
  - 9.2.3 Any loss of, or physical damage to, any property, irrespective of whether it is movable or immovable; and

- 9.2.4 Any economic loss that results from harm contemplated in 9.2.1-9.2.3 above.
- 9.3 Liability of Ecoguard in terms of this clause does not arise if:
- 9.3.1 The unsafe Product characteristic, failure, defect or hazard that results in harm is wholly attributable to compliance with any public regulation;
- 9.3.2 The alleged unsafe Product characteristic, failure, defect or hazard:
- 9.3.2.2 Did not exist in the Product at the time it was supplied by Ecoguard to the Customer; or
- 9.3.2.3 Was wholly attributable to non-compliance by the Customer with instructions provided by Ecoguard, in which case clause 9.3.2.1 does not apply.
- 9.3.3 It is unreasonable to expect Ecoguard to have discovered the unsafe Product characteristic, failure, defect or hazard, having regard to Ecoguard's role in marketing the Product to the Customer; or
- 9.3.4 The Customer's claim for damages is brought more than 3 (three) years after the:
- 9.3.4.1 Death or injury of a person; or
- 9.3.4.2 Earliest time at which a person had knowledge of the material facts about an illness; or
- 9.3.4.3 Earliest time at which a person with an interest in the Product had knowledge of the material facts about the loss or damage to that Product; or
- 9.3.4.4 The latest date on which the Customer suffered any economic loss.
- 9.3.5 The Customer acknowledges that Ecoguard shall have no responsibility or liability of any kind, whether for breach of warranty or otherwise arising or resulting from:
- 9.3.5.1 Malfunction, failure or unavailability of the Product to the extent that Ecoguard has maintained industry accepted standards typically associated with the Product;
- 9.3.5.2 Errors in the functioning of the Product resulting from abuse, negligence, improper or inappropriate use of all, or any part of the Product by the Customer;
- 9.3.5.3 A failure to supply the Product/s to the extent that such failure is due to any default, delay, act or omission of the Customer or as a result of the Customer's third party dependencies beyond the control of Ecoguard.

## 10 THE CPA

- 10.1 The Parties agree that the provisions of the CPA as contained in clauses 2 to 8 shall not apply to the Customer if the Customer qualifies as an exempt enterprise, which is defined in section 2 (b) of the CPA as a juristic person whose asset value or annual turnover, equals

or exceeds the current threshold value determined by the Minister, being R 2 000 000.00 (two million rand);

- 10.2 The Customer specifically undertakes that it shall notify Ecoguard in writing at the Effective Date whether its asset value or annual turnover is more or less than the threshold value determined by the Minister and that should its asset value or annual turnover fall above or below the aforesaid threshold during the course of the Agreement that it shall immediately notify Ecoguard of this fact.

## **11 CREDIT (ONLY APPLICABLE TO INCIDENTAL CREDIT SALES)**

- 11.1 The Parties agree that the Credit afforded to the Customer by Ecoguard in terms of this Agreement constitutes an incidental credit agreement as defined in section 1 of the NCA;
- 11.2 The Customer's application for the Credit is subject to Ecoguard's credit assessment, approval criteria and conditions being satisfied. Ecoguard has the discretion, based on these criteria to decline or approve the Customer's application;
- 11.3 An incidental credit agreement in respect of the Credit offered by Ecoguard to the Customer has been concluded between the Customer and Ecoguard, the terms of which are contained in this Agreement;
- 11.4 The Customer understands that:
- 11.4.1 The credit grantor in terms of this Agreement is Ecoguard;
- 11.4.2 The Customer is the consumer/credit receiver and its addresses are as furnished by it on the Credit Application Form and in clause 13.1 of the Terms and Conditions of Sale Agreement.
- 11.5 As per the Customer's instruction on the Credit Application Form, the Customer agrees that Ecoguard can market to and communicate with the Customer and share the Customer's personal information with its business partners for the purposes of marketing goods and services, unless the Customer has chosen/chooses to opt out of receiving such communications at any time;
- 11.6 The Customer understands that the terms and conditions applicable to this Agreement will at all times be subject to the provisions of the NCA, to the extent applicable;
- 11.7 The Customer confirms that it fully understands and appreciates the risks and costs of the proposed Credit and the rights and obligations it has under this Agreement.

**12. ACCOUNT FEES AND COSTS (ONLY APPLICABLE TO INCIDENTAL CREDIT SALES)**

12.1. Ecoguard reserves the right to charge the Customer:

12.1.1. An initiation fee on opening the Customer's account;

12.1.2. A default administration charge should the Customer's account be in arrears or should the Customer be in breach of the payment terms contained in this Agreement;

12.1.3. Any collection costs that Ecoguard may incur in enforcing the Customer's monetary obligations under this Agreement, including all collection charges, tracing fees and legal charges, to be calculated on the attorney client scale, alternatively in accordance with the costs allowed by the Attorney's Act, Supreme Court Act, Magistrates Court Act and Debt Collectors Act to the extent that the NCA is applicable;

12.1.4. All costs associated with the handing over of the Customer's account to a debt collection agency for recovery of arrear amounts;

12.1.5. A transaction based service fee as determined by Ecoguard from time to time, which shall be debited to the Customer's account for cheques issued by the Customer and returned by the bank for whatever reason, or for debit orders that are not processed by the bank due to a lack of funds.

**13. EARLY SETTLEMENT (ONLY APPLICABLE TO INCIDENTAL CREDIT SALES)**

The Customer may at any time settle its account early by paying to Ecoguard the settlement amount owing at the date of settlement. The settlement amount consists of the unpaid principal debt (which amount is the balance owing excluding any other charges on the Customer's statement) together with any other charges accrued up to the settlement date.

**14. ACCOUNT TERMINATION BY CUSTOMER (ONLY APPLICABLE TO INCIDENTAL CREDIT SALES)**

The Customer may at any time terminate this Agreement by paying Ecoguard the settlement amount owing on the Customer's account at the date of termination and notifying Ecoguard of the Customer's intention to terminate the Agreement.

**15. CONFIDENTIAL AND PERSONAL INFORMATION AND CREDIT BUREAUS (ONLY APPLICABLE TO INCIDENTAL CREDIT SALES)**



- 15.1. The Customer agrees that Ecoguard may request and receive any confidential and consumer credit information from any credit bureau, other register or any third party at any time, including requesting a bureau score for credit vetting purposes, statistical modeling and management of the Customer's Credit with Ecoguard and the Customer confirms that this consent also covers such information that has already been received by Ecoguard;
- 15.2. Ecoguard shall share the above-mentioned confidential and consumer credit information (including information regarding non compliance with the Customer's obligations under this Agreement) as well as any information regarding the Customer's account, including the Customer's application, opening and closing of the Customer's account, with any other credit provider and credit bureau for, amongst other things, the purposes of such credit bureau sharing such information with other potential credit providers and credit bureau;
- 15.3. The credit bureau provides to credit providers a profile and possibly a score as to the Customer's creditworthiness, based on the information Ecoguard shares with such bureau;
- 15.4. The Customer's confidential information and consumer credit information may be used by Ecoguard for marketing and ancillary purposes on condition that the Customer has authorised Ecoguard to do so. The Customer understands that it is at all times entitled to inform Ecoguard of its intention to withdraw from this authorisation;
- 15.5. Ecoguard may disclose the Customer's confidential and consumer credit information as set out in above to various credit bureaus;
- 15.6. The Customer may at any time contact any credit bureau and request that the Customer's consumer credit information be disclosed to it;
- 15.7. Any data regarding the Customer to which Ecoguard becomes entitled in terms of this Agreement may be made available to any prospective purchaser or transferred to any party should Ecoguard either sell its business to such party or if such party obtains control over Ecoguard.

## **16. THE NCA (ONLY APPLICABLE TO INCIDENTAL CREDIT SALES)**

- 16.1. The Customer agrees that the protection afforded to consumers in terms of the NCA shall not be afforded to it in the event that:
  - 16.1.1. The Customer is a juristic person whose asset value or annual turnover, together with the combined asset value or annual turnover of the Customer's related juristic

persons, at the Effective Date, equals or exceeds the threshold value determined by the Minister in terms of section 7(1) of the NCA;

16.1.2. The Customer is the state or an organ of state; or

16.1.3. This Agreement is classified as a large agreement in terms of section 9(4) of the NCA, in terms of which the Customer is a juristic person whose asset value or annual turnover is, at the Effective Date, below the threshold value determined by the Minister as referred to in clause 16.1.1 above.

## **17. BREACH**

Save as provided to the contrary herein if either Party breaches this Agreement and fails to remedy that breach within 20 (twenty) Business Days of receipt of written notice from the other Party calling for the breach to be remedied, then that Party shall be entitled, without prejudice to any other rights that it may have, whether under this Agreement or in law, to cancel this Agreement without notice or to claim immediate specific performance of all the defaulting Party's obligations, whether or not due for performance, in either event without prejudice to the aggrieved Party's right to claim damages.

## **18. GOVERNING LAW**

The law governing this Agreement, including without limitation its interpretation and all disputes arising out of this Agreement, is the law of South Africa. The Parties submit to the exclusive jurisdiction of the South African courts in respect of any matter arising from or in connection with this Agreement, including its termination. The Parties further consent to the jurisdiction of the Magistrates' Court having jurisdiction.

## **19. INTERPRETATION**

19.1. Clause and paragraph headings are for purposes of reference only and shall not be used in interpretation;

19.2. Unless the context clearly indicates a contrary intention, any word connoting:

19.2.1. Any gender includes the other two genders;

19.2.2. The singular includes the plural and vice versa;

19.2.3. Natural persons includes artificial persons and vice versa;

19.2.4. Insolvency includes provisional or final sequestration, liquidation or judicial management.

19.3. When any number of days is prescribed such number shall exclude the first and include the last day unless the last day falls on a Saturday, Sunday, or a public holiday in the Republic of South Africa, in which case the last day shall be the next succeeding Business Day;

19.4. A reference to an enactment is a reference to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;

- 19.5. The rule of interpretation that a written agreement shall be interpreted against the Party responsible for the drafting or preparation of that agreement shall not apply;
- 19.6. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- 19.7. The *eiusdem generis* rule shall not apply and accordingly, whenever a provision is followed by the word "including" and specific examples, such examples shall not be construed so as to limit the ambit of the provision concerned;
- 19.8. Where any term is defined within the context of any particular clause in this Agreement, then, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, the term so defined shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in the definition clause.

## **20. GENERAL AND MISCELLANEOUS**

### **20.1 SOLE RECORD OF AGREEMENT**

This Agreement constitutes the sole record of the agreement between the Parties and shall apply to all orders for Products and/or Time and Material Services received by Ecoguard from the Customer. Neither Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded in the Agreement.

### **20.2 NO AMENDMENTS EXCEPT IN WRITING**

No addition to, variation of, or agreed cancellation of the Agreement (including the provisions of this clause) shall be of any force or effect unless in writing and signed by or on behalf of the Parties. In particular, the Parties agree that any term or condition which may be contained on any order, written or verbal, and which is at variance with the terms of the Agreement, shall be of no force or effect unless incorporated in a document signed by both Parties and which has been prepared specifically for the purpose of varying the terms of the Agreement.

### **20.3 WAIVERS**

No relaxation or indulgence, which any Party may grant to any other, shall constitute a waiver of the rights of that Party and shall not preclude that Party from exercising any rights which may have arisen in the past or which might arise in future.

### **20.4 SURVIVAL OF OBLIGATIONS**

Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.

20.5 APPROVALS AND CONSENTS

An approval or consent given by a Party under this Agreement shall only be valid if in writing and shall not relieve the other Party from responsibility for complying with the requirements of this Agreement nor shall it be construed as a waiver of any rights under this Agreement except as and to the extent otherwise expressly provided in such approval or consent, or elsewhere in this Agreement.