



TRADING TERMS & CONDITIONS

Effective Date: 1 July 2022

1 Definitions and Interpretation

In these terms and condition, unless clearly inconsistent with or otherwise indicated by the context:

- 1.1 **"Account"** means a trading account opened and maintained by NJR for a Customer, whether pursuant to a Customer Account Application of otherwise and includes, where the context so requires, any Payment Facility applicable to the Account;
- 1.2 **"Account Customer"** means a Customer who has an Account with a Payment Facility;
- 1.3 **"Cash Customer"** means a Customer who does not have an Account with a Payment Facility;
- 1.4 **"CPA"** means the Consumer Protection Act, 68 of 2008;
- 1.5 **"Customer"** means a person or entity who orders and/or purchases NJR Products from NJR, who may be an Account Customer or a Cash Customer;
- 1.6 **"Customer Account Application"** means an application made by the Customer to any NJR Entity, for a trading account and, if applicable, for a Payment Facility;
- 1.7 **"Delivery"** by NJR of any NJR Products, means the loading and transportation of the of the NJR Products by NJR to the agreed Delivery Address, but excludes the offloading of the NJR Products at the Delivery Address (unless the Customer has requested and NJR has agreed to offload);
- 1.8 **"Delivery Address"** means the address nominated by the Customer and agreed to by NJR for the physical delivery (by NJR) of NJR Products;
- 1.9 **"Delivery Charges"** means NJR's charges for a Delivery;
- 1.10 **"Effective Date"** means the date on which of these NJR Trading Terms become effective and binding as between NJR and the Customer which will, unless the contrary is proved, be deemed to be:
 - 1.10.1 the 'Effective Date' stated at the beginning of this NJR Trading Terms document ("the **Stated Effective Date**"), for all Account Customers as at that date;
 - 1.10.2 the date of the Customer Account Application, for Account Customers for whom an Account is opened after the Stated Effective Date; and
 - 1.10.3 the date on which a Cash Customer places its first Order or otherwise purchases any NJR Products after the Stated Effective Date, for all Cash Customers;
- 1.11 **"NCA"** means the National Credit Act, 34 of 2005;
- 1.12 **"NJR"**:
 - 1.12.1 when used in the context of or with reference to a Customer Account Application and/or an Account opened and operated pursuant thereto, means the particular NJR Entity specified in the Customer Account Application; and
 - 1.12.2 includes, where the context so requires, collectively and individually, NJR Steel Holdings (Pty) Ltd and all its subsidiaries from time to time, and its associated entities which lawfully conduct business under the 'NJR Steel' name/brand, and an **"NJR Entity"** means any one of the aforementioned entities;
- 1.13 **"NJR Products"** means the products and services offered by NJR from time to time and includes, where the context so requires, products which are required to be specially manufactured, sourced or procured by NJR for a Customer;
- 1.14 **"NJR Trading Terms"** means the terms and conditions set out in this 'Trading Terms & Conditions' document, and includes any applicable Payment Facility, Sale Document Terms and Shop Terms, subject to clause 2 below;
- 1.15 **"Order"** means an order or request for NJR Products placed on NJR by or on behalf of a Customer;
- 1.16 **"Payment Facility"** means payment terms / limit which may be granted by NJR to a Customer from time to time, either generally or in respect of a specific Order or Orders, and includes any conditions related thereto;
- 1.17 **"Processing"** and **"Processed"** means where NJR Product is bent, cut, coiled, de-coiled, reinforced, painted, treated, or otherwise fabricated, machined, modified, or altered from its original manufactured condition;
- 1.18 **"Processing Charges"** means NJR's charges for Processing;
- 1.19 **"Quote"** means a quotation, estimate or proposal given by NJR to a Customer in respect of any NJR Product(s);
- 1.20 **"Sale Document Term"** means a term or condition applicable to the supply of any NJR Product(s) by NJR, which is reflected on/in a Quote, invoice, delivery note, statement, or other such document issued by NJR in respect of the NJR Products;
- 1.21 **"Shop Term"** means a term or condition applicable to the supply of NJR Products by NJR, which is clearly displayed to the Customer (including any officer, employee, agent, or representative of the Customer) at the business premises of an NJR Entity;
- 1.22 **"Special Order"** means an Order (or any part thereof) placed by the Customer for NJR Products to be Processed, and Orders for NJR Products which are required to specially manufactured, sourced or procured by NJR for the Customer;
- 1.23 **"Stock"** means stock(s) of NJR Products held by NJR;
- 1.24 headings are for reference only and shall not be used in interpreting the meaning of the text;
- 1.25 words importing the singular shall include the plural and vice versa, words importing the masculine gender shall include the other gender/s and vice versa, and natural persons shall include juristic persons and vice versa;
- 1.26 words, terms, and expressions defined in any clause or sub-clause will, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this document;
- 1.27 reference to any statute, enactment or law means the relevant statute, enactment, or law as at the date of signature hereof, as amended, or re-enacted or substituted from time to time;
- 1.28 a reference to a party includes that party's successors in title and permitted cessionaries and assigns;
- 1.29 the terms / words:
 - 1.29.1 **"entity"** and **"person"** each includes a natural or juristic person, company, close corporation, business, enterprise, firm, undertaking, partnership, joint venture, trust, charity, syndicate, voluntary association, body corporate, statutory body and other association of persons or entities;
 - 1.29.2 **"holding company"**, **"subsidiary"** and **"wholly owned subsidiary"** bear the same meaning given to those terms in the Companies Act, 71 of 2008; and
 - 1.29.3 **"include"**, **"including"** and **"in particular"** will be construed as being by way of example or emphasis only and will not be construed, nor will they take effect, as limiting the generality of any preceding word/s.

2 Scope and Application of the NJR Trading Terms

- 2.1 These NJR Trading Terms will be effective and will apply to and regulate all business conducted between NJR and the Customer, with effect on and from the Effective Date.

2.2	These NJR Trading Terms apply to Account Customers and Cash Customers, and, in respect of Account Customers, the NJR Trading Terms form part of the Customer Account Application and apply to the Account.	4.6	If NJR is obliged or agrees to accept the cancellation of any Order and/or the return of any NJR Products, then:
2.3	The NJR Trading Terms (including all rights and benefits conferred on NJR in terms thereof) constitute a <i>stipulatio alteri</i> (i.e., a contract for the benefit of a third party) in favour of each NJR Entity with whom the Customer transacts and may be accepted and enforced by each such NJR Entity at any time, individually or any one or more of them together.	4.6.1	the Customer will pay NJR a 15% handling charge, and/or such other cancellation or handling charge as may be stipulated in any Payment Facility, Sale Document Terms or Shop Terms, and applicable to the Order sought to be cancelled and/or to the NJR Products sought to be returned;
2.4	If there is a conflict between any provision of this 'NJR Trading Terms' document (on the one hand) and any Payment Facility, Sale Document Term or Shop Term (on the other hand), then the provisions of this document will prevail to the extent permitted by law, except where: (i) this NJR Trading Terms document permits the conflicting provision to be changed and/or substituted by the Payment Facility, Sale Document Term or Shop Term; or (ii) the Payment Facility, Sale Document Term or Shop Term expressly or by implication or by its nature is intended or permitted to change and/or substitute the conflicting provision of this NJR Trading Terms document.	4.6.2	where the NJR Products have been collected by the Customer or Delivered by NJR to the Customer: (i) the Customer is responsible for returning the NJR Products to NJR, to the NJR premises from which the NJR Products were purchased; (ii) if NJR is required to collect the NJR Products from or for the Customer, then the Customer will pay NJR's charges in respect of collecting the NJR Products; and
2.5	The termination of the NJR Trading Terms and/or the termination of any Account and/or the business dealings / relationship between NJR and the Customer, for whatsoever reason, will not: (i) affect those NJR Trading Terms which expressly provide that they are intended to survive and operate after any such termination, or which are required to give effect to such termination, or which of necessity or by their nature are intended to survive and/or must continue to have effect after such termination (notwithstanding that the provisions themselves do not expressly provide for this); and (ii) limit or prejudice any accrued rights, remedies, obligations or liabilities of NJR and the Customer, all of which will continue in full force and effect notwithstanding such termination.	4.6.3	where the NJR Products: (i) were Delivered by NJR, the Customer will remain liable for payment of the Delivery Charges; and (ii) are part of a Special Order, the Customer will remain liable for payment of the associated Processing Charges and for NJR's procurement costs.
3	Consumer Protection and Protection of Personal Information	5	Collection and Delivery
3.1	As required by section 49(1) of the CPA, the Customer's attention is drawn to those provisions of the NJR Trading Terms which are in boldface type, which purport to: (i) limit in any way the risk or liability of NJR or any other person; (ii) constitute an assumption of risk or liability by the Customer; (iii) impose an obligation on the Customer to indemnify NJR or any other person for any cause; or (iv) be an acknowledgement of any fact by the Customer.	5.1	The Customer is responsible for collecting and removing NJR Products purchased by it from NJR, unless: (i) the Customer has requested and NJR has agreed to Delivery thereof; and (ii) the Customer has paid the Delivery Charges (subject to any applicable Payment Facility).
3.2	All personal and other information collected by NJR from or in respect of a Customer will be processed and held in accordance with the provisions of the Protection of Personal Information Act, 4 of 2013, and NJR's Personal Information Policy from time to time. The NJR Personal Information Policy is accessible on the NJR website (https://www.njrsteel.com), and a copy thereof will also be provided to the Customer on request.	5.2	Where the Customer collects NJR Products:
4	Stock, Orders, Cancellations, Returns	5.2.1	the Customer must provide appropriate trucks/vehicles, and, if required, the equipment and labour, to load and transport the NJR Products at/from the relevant NJR premises; and
4.1	NJR does not represent or warrant that it will hold Stock (or sufficient Stock) of any NJR Products at any time and from time to time.	5.2.2	NJR will be deemed to have delivered the NJR Products to the Customer when possession thereof is tendered by NJR for loading and removal by the Customer.
4.2	The Customer is responsible for the accuracy of all Orders, including the lengths, sizes, grade, and quantities of NJR Products required to be Processed, and for confirming availability of Stock.	5.3	Where NJR Delivers NJR Products:
4.3	Orders and Quotes are subject to Stock availability.	5.3.1	NJR is only obliged to: (i) deliver the NJR Products to the Delivery Address and within the agreed timeframes; and (ii) offload NJR Products at the Delivery Address where NJR has agreed to offload the NJR Products;
4.4	NJR will not reserve any Stock without an official Order from the Customer, and, in respect of:	5.3.2	NJR will be deemed to have delivered the NJR Products when the NJR Products are tendered for offloading at the agreed Delivery Address;
4.4.1	Account Customers, NJR will only reserve the Stock: (i) the Customer's Account is in good standing; and (ii) any stipulated deposit or minimum payment has been paid; and	5.3.3	the Customer is responsible for: (i) providing appropriate equipment (cranes, forklifts, trolleys, etc) and employees / labour to off-load the NJR Products from the NJR truck / vehicle at the Delivery Address; and (ii) checking the NJR Products at the time of Delivery, and will immediately notify NJR in writing of any shortages, damage, or other issues regarding the NJR Products;
4.4.2	Cash Customers, only if and when the Customer has paid in full for the NJR Products Ordered.	5.3.4	any NJR Products not accepted by the Customer must be returned on the same truck / vehicle which Delivered those NJR Products to the Delivery Address;
4.5	Save to the extent that it is obliged to in terms of the CPA, NJR does not have to (but NJR can if it wants):	5.3.5	if the Customer is unable or otherwise fails to commence offloading of the NJR Products within 30 minutes of arrival of the NJR Products at the Delivery Address, or if the offloading commences but is halted or delayed for more than 30 minutes: (i) NJR is allowed (but is not obliged) to offload all or any part of NJR Products at the most convenient place (for NJR) at the Delivery Address, and such offloading will likewise constitute delivery of the offloaded NJR Products; (ii) NJR is entitled cancel the Delivery and leave the Delivery Address with the NJR Products that were not offloaded; (iii) Delivery of the NJR Products may be re-scheduled to a date and time agreed by NJR; and (iv) NJR will be entitled to charge (and the Customer will be obliged to pay) an additional Delivery Charge for the additional Delivery.
4.5.1	accept verbal Orders and Orders placed by the Customer without an order number; or	5.4	Without derogating from the provisions of clause 5.3, signature of a NJR delivery note, receipt, invoice, or other such document by the Customer (including any employee, agent, or representative of the Customer) will be <i>prima facie</i> proof of delivery of the NJR Products reflected in such document.
4.5.2	accept the cancellation of any Special Order or the return of any NJR Products which form part of any Special Order, but NJR may accept the return of all or any part thereof subject to such terms and conditions as NJR may determine; or	6	Quotes, Prices, Payment
4.5.3	accept the return of any NJR Product which has been altered or modified by the Customer in any way, or which has been damaged or has rusted or otherwise deteriorated in condition and/or value after delivery to the Customer.	6.1	NJR is allowed, at any time and from time to time, in its discretion, to change its prices for the NJR Products.

- 6.2 A Quote (and the prices stated therein) will be valid for the period stated in the Quote, and if no period is stated then the Quote will be valid for 7 days: **Provided that Quotes for non-stock products will be subject to increase in accordance with any increase in the price thereof to NJR in getting the products into stock.**
- 6.3 NJR Products are sold to the Customer on a cash basis: Provided that Account Customers will pay for NJR Products in accordance with the applicable Payment Facility granted to the Customer unless alternative payment terms have been Quoted or otherwise stipulated by NJR for any particular Order.
- 6.4 The Customer will pay all amounts due by it to NJR:
- 6.4.1 to the supplying NJR Entity into the banking account stipulated by that NJR Entity in writing; and
- 6.4.2 by the due date for payment, without demand, deduction or set-off of whatsoever nature or for whatsoever cause, and free of any and all exchange, bank, or other like charges.
- 6.5 **If the Customer fails to pay any amount by the due date for payment thereof, then NJR is entitled, in its election and without prejudice to any other rights or remedies available to the Customer, to charge and be paid interest on the overdue amounts at the rate of 2% (two percent) per month (subject to the maximum rate permissible in terms of the NCA), calculated from due date to date of payment.**
- 7 Risk and Ownership**
- 7.1 **Risk in and to the NJR Products will pass to the Customer on delivery (or tendered delivery) of the NJR Products by NJR to the Customer.**
- 7.2 **Ownership of the NJR Products will remain vested in NJR until paid for.**
- 8 Warranties and Limitations on NJR's Liability**
- 8.1 In respect of the NJR Products, NJR gives the implied warranties in section 56(1) of the CPA, and any warranties stipulated in any Sale Documents Terms or Shop Terms applicable to the NJR Products on a transaction-by-transaction basis.
- 8.2 **Save as stated in clause 8.1, NJR doesn't give any warranties or guarantees in respect of the NJR Products.**
- 8.3 **Subject to the provisions of the CPA, NJR will not be responsible or liable for any loss, damage, cost, or expense, suffered or incurred by the Customer arising from: (i) any errors in or arising from verbal Orders or Orders placed by the Customer without an order number, as contemplated in clause 4.5.1; (ii) the Customer failing to load and remove NJR Products, as contemplated in clause 5.2; (iii) the Customer failing to offload NJR Products, as contemplated in clause 5.3; (iv) NJR cancelling a Delivery and leaving the Delivery Address with NJR Products, as contemplated in clause 5.3.5; (v) the delayed or partial delivery of any NJR Products for any reason; or (vi) the Delivery of any NJR Product by NJR, including any damage to any property or injury to any employee of the Customer.**
- 8.4 **NJR's liability for the breach of any warranty will be limited to, and will be fully discharged by, at the election of NJR: (i) the replacement of the NJR Products; or (ii) a refund of the amount paid by the Customer for the NJR Products: Provided that regard will be had to: (i) any use of the NJR Products by the Customer; (ii) and any alteration or modification made by the Customer; (iii) any damage or other deterioration in the condition or value of the NJR Products after they were delivered to the Customer.**
- 8.5 **NJR will not under any circumstances be liable to the Customer for any indirect or consequential loss or damages of whatsoever nature and from whatsoever cause, including any loss of profit, trade, custom, or business, and any loss or damages arising from any breach of any third-party contract.**
- 9 Breach and Insolvency**
- 9.1 If:
- 9.1.1 the Customer fails to pay any amount by the due date for payment thereof (in which event no notice to remedy is required to be given by NJR);
- 9.1.2 breaches any other provision of the NJR Trading Terms and fails to remedy the breach within 5 days after receiving written notice from NJR to do so;
- 9.1.3 where the Customer is a juristic person - the Customer is liquidated or placed under winding-up (whether provisionally, finally, voluntary or compulsory), or if any similar insolvency proceedings are initiated in respect of the Customer including the commencement of business rescue proceedings; or
- 9.1.4 where the Customer is a natural person or trust - the Customer is sequestrated (whether provisionally, finally, voluntary or compulsory), or if any similar insolvency proceedings are initiated in respect of the Customer, or the Customer commits an act of insolvency as contemplated in section 8 of the Insolvency Act, 24 of 1936 (as amended);
- then and upon the happening of any of these events NJR is allowed, in its election and without prejudice to any other rights or remedies available to NJR, to:**
- 9.1.5 **claim and be paid the full outstanding balance owing by the Customer to NJR at that time, notwithstanding that the due date for payment thereof may not have arrived;**
- 9.1.6 **withdraw, suspend, or otherwise vary any Account and/or any Payment Facility granted to the Customer; and/or**
- 9.1.7 **withhold sales and/or deliveries to the Customer or continue supplying the Customer on a cash basis.**
- 9.2 **The Customer will pay all costs and disbursements incurred by NJR in enforcing its rights against the Customer and/or enforcing performance by the Customer of any of its obligations to NJR, whether pursuant to the NJR Trading Terms or otherwise, including legal costs on the scale as between attorney and client.**
- 10 Domicilium and Notices**
- 10.1 Each Account Customer chooses as its *domicilium citandi et executandi*, the physical and e-mail addresses stipulated as such in its Account Application, for all purposes arising out of or in connection with the NJR Trading Terms and the Customer's business dealings with NJR, at which address(es) all notices and processes arising out of or in connection with the NJR Trading Terms and Customer's business dealings with NJR, its breach or termination, may be validly delivered or served on the Customer.
- 10.2 An Account Customer is allowed, by written notice to NJR, to change its *domicilium* to any other address provided that such new address is or includes a physical address (which is not a *poste restante*) within the Republic of South Africa.
- 10.3 Notwithstanding anything to the contrary herein, a written notice or communication actually received by a Customer from NJR will be adequate written notice or communication to the Customer.
- 11 Proof of Indebtedness**
- A certificate signed by any manager or director of NJR, whose capacity and authority need not be proved, shall be *prima facie* proof of the evidence stated therein in respect of any indebtedness of the Customer to NJR or in respect of any other fact, for the purpose of obtaining a judgement or an order against the Customer in any competent court.
- 12 Applicable Law and Jurisdiction**
- 12.1 The NJR Trading Terms and all business dealings between NJR and the Customer will be governed and construed in accordance with the laws of the Republic of South Africa.
- 12.2 The Customer consents to the jurisdiction of the Magistrate's Court having jurisdiction over its person in respect of all legal proceedings arising from the NJR Trading Terms and its business dealings with NJR, notwithstanding that the amount of the matter in dispute may exceed the court's jurisdiction: Provided that NJR shall be entitled to institute such proceedings in any High Court having jurisdiction.
- 13 Cession and Assignment**
- 13.1 NJR is allowed to cede and assign all or any part of its rights and/or obligations under the NJR Trading Terms and any Account.
- 13.2 The Customer is not allowed to cede or assign any of its rights or obligations under the NJR Trading Terms or any Account, without the prior written consent of NJR.
- 14 Indulgences**
- No relaxation or indulgence granted by NJR to the Customer in regard to any of the NJR Trading Terms (or in respect of any Account) shall be deemed to be a waiver of any of NJR's rights in terms of the NJR Trading Terms (or Account).
- 15 Severability**
- If any provision of the NJR Trading Terms is or becomes illegal, invalid, or unenforceable, such provision shall be severed, and the remaining provisions of the NJR Trading Terms shall continue unaffected.