

STANDARD TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1 For the purpose of these Conditions, unless the context indicates otherwise, the words and expressions set out below shall have the meanings assigned to them and cognate expressions shall have corresponding meanings, namely:
- 1.1.1 **"Affiliate"** the directors, managers, shareholders or members, agents, representatives, holding companies and subsidiary companies (as those terms are defined in the Companies Act) of the Company;
- 1.1.2 **"Business Day"** any day other than a Saturday, Sunday or official public holiday within the meaning of the Public Holidays Act, 1994;
- 1.1.3 **"Company"** Respiratory Care Africa Proprietary Limited, a private limited liability company duly incorporated in accordance with the company laws of the RSA under registration number 1998/017606/07;
- 1.1.4 **"Companies Act"** the Companies Act, 2008;
- 1.1.5 **"Conditions"** these standard terms and conditions of purchase of Goods and Services, which are set out in this document and which may be amended by the Company by way of notice in writing from time to time;
- 1.1.6 **"CPA"** the Consumer Protection Act, 2008;
- 1.1.7 **"Customer"** the association, close corporation, company, department of the national government, concern, enterprise, firm, partnership, joint venture, person, trust, undertaking, collective investment scheme, any other similar entity as contemplated in the Quotation in question;

- 1.1.8 **"Delivery Date"** (i) the date by which the Goods are to be delivered by the Company to the Customer, as specified in the Order in question or (ii) the date by which the Services are to be rendered by the Company to the Customer, as specified in the Order in question;
- 1.1.9 **"Goods"** the goods specified in the Quotation in question;
- 1.1.10 **"Invoice Date"** the date on which the Company issues the Invoice to the Customer (which date is reflected on the Invoice);
- 1.1.11 **"Invoice"** the tax invoice which complies with all the requirements of the VAT Act and is issued by the Company to the Customer for the Goods provided and/or Services rendered;
- 1.1.12 **"Order"** a purchase order for Goods and/or Services placed/issued by the Customer with the Company and which Order the Company has received and processed in terms of these Conditions;
- 1.1.13 **"Party"** the Customer and the Company (or any one of them as the context requires);
- 1.1.14 **"Personal Information"** has the meaning given to that term in the POPI Act, but which will include, but may not be limited to, the Customer's name and surname, birth date, gender, country of residence, identity number, email address, physical and postal addresses, telephone number, location information and such other personal information as defined in the POPI Act;
- 1.1.15 **"POPI Act"** the Protection of Personal Information Act, 2013;
- 1.1.16 **"Price"** the price of the Goods and/or Services as specified in the Invoice in question;

- 1.1.17 **“Prime Rate”** the publicly quoted prime rate of interest (percent, per annum, compounded monthly in arrear and calculated on a 365 day year irrespective of whether or not the year is a leap year) as published by The Absa Bank Limited (or its successor) as being its prime rate from time to time, as certified by any manager of such bank (whose authority, appointment and/or designation need not be proved);
- 1.1.18 **“Process”** has the meaning given to that term in the POPI Act;
- 1.1.19 **“Quotation”** the quotation issued by the Company, which amongst other things, sets out the Goods and/or Services which the Company offers to provide to the Customer;
- 1.1.20 **“RSA”** the Republic of South Africa;
- 1.1.21 **“Services”** the services to be provided by the Company to the Customer as specified in the Quotation in question and subject to these Conditions;
- 1.1.22 **“VAT”** value-added tax as defined in the VAT Act;
- 1.1.23 **“VAT Act”** the Value Added Tax Act, 1991; and
- 1.1.24 **“ZAR”** the South African Rand.

2. EXTENT OF ORDER

These Conditions govern all Orders placed by the Customer and all contracts and sub-contracts entered into by the Company with the Customer for the purchase of any Goods from the Company and/or the supply of any Services by the Company, save where expressly varied or altered in writing and signed by or on behalf of both Parties, and constitutes a binding agreement between the Company and the Customer.

3. ACCEPTANCE

- 3.1 The Customer accepts and agrees that these Conditions will become binding on it once the Company has processed the Order and agreed to provide the Customer with the

Goods and/or the Services.

- 3.2 All Orders must be submitted in writing by email to the email address as provided for on the Quotation.
- 3.3 Unless withdrawn prior to acceptance, each Quotation shall be open for acceptance during the period stated therein, or where no period is stated, within a period of 30 days calculated from the date of the Quotation in question, provided that no acceptance of any Quotation shall be binding on the Company unless the Customer has issued and delivered to the Company an Order, which Order is processed by the Company within the aforementioned periods, whichever is applicable.

4. PRICE AND PAYMENT

- 4.1 Unless otherwise specified, prices quoted are in ZAR and the Prices charged will be those set out in the accepted Quotation, following receipt and process of the Order.
- 4.2 The Price shall, unless otherwise stated, exclude VAT and otherwise include all other taxes, packaging, levies and duties of any kind payable by the Customer in connection with the sale of the Goods to the Customer or the provision of Services to the Customer in terms of these Conditions. Without limiting the generality of the foregoing, the Price shall include any and all costs incurred by the Company in executing the Quotation and/or Order.
- 4.3 The Company reserves the right to apply a minimum order charge of ZAR200.00.
- 4.4 Prices Quoted are also inclusive of delivery except where the Customer requests delivery beyond the normal delivery clauses herein. In this respect the Company reserves the right to charge for delivery in order to cover additional costs incurred.
- 4.5 Without limiting the generality of clause 4.1 and 4.2, the Company reserves the right to vary Prices (whether specifically Quoted or otherwise) to take account of increases in the cost arising before despatch.
- 4.6 Where Prices are in accordance with those quoted on a contract, tender or Quotation which has been qualified in respect of exchange rates, the prices will be subject to the exchange rate as qualified on the relevant shipping documentation or alternatively the exchange rate applicable on the date of payment to the overseas supplier and the Company reserves the right to claim for any adverse variances.
- 4.7 The Price shall be paid in full by the Customer to the Company, within 30 calendar days from the date of receipt by the Customer of the Invoice in terms of which (i) the Goods are

despatched to the Customer or (ii) the Services have been rendered to the Customer in accordance with the Order, unless otherwise agreed by both Parties in writing.

- 4.8 The Company shall, in its discretion, be entitled to charge interest on overdue accounts at a rate of 2% above Prime Rate (or such lower rate as it may determine) until the Price is paid in full.
- 4.9 The Company will be entitled to immediately cease supplying Services to the Customer and/or refuse to provide additional Goods to the Customer until such time as it receives payment in full of all Invoiced amounts (including any interest accrued thereon);
- 4.10 Payment shall be made by electronic funds transfer into a bank account nominated in writing by the Company and/or as set out in the Quotation. The Customer shall be and remain liable for any and all amounts paid by the Customer into an incorrect bank account not expressly nominated by a duly authorised representative of the Company.
- 4.11 All payments made by the Customer to the Company shall be without any deductions or set-off of any kind whatsoever in terms of any Order.
- 4.12 Unless the Customer notifies the Company in writing within 2 days of receipt of an Invoice to the contrary, the content of such Invoice will be deemed to be correct and will not thereafter be disputable by the Customer.

5. DELIVERY OF GOODS / RENDERING OF SERVICES

- 5.1 A separate delivery note shall accompany all Goods delivered to the Customer.
- 5.2 Deliveries are expressly contingent and conditional upon delivery by suppliers, delays by carriers, failure of normal source or any other cause beyond the Company's reasonable control, and the Company's delivery obligations to the Customer are qualified accordingly.
- 5.3 Every effort will be made to adhere to the Delivery Date but any delay or failure to maintain the Delivery Date shall not entitle the Customer to cancel any Order or withhold any payment.
- 5.4 Notwithstanding the provisions of this clause 5, the Company will use its reasonable commercial endeavours to notify the Customer in advance of any failure of, or interruption to the delivery of the Goods and/or rendering of the Services, where the Company is in a position to do so.
- 5.5 The Company and the Customer expressly agree that until the Company has been paid in

full for the Goods comprised in the Order, or any other sale contract between the Customer and the Company, all such Goods shall remain the property of the Company, although the risk therein passes to the Customer on receipt of the Goods.

- 5.6 If, for any reason, the Customer is unable to accept delivery of the Goods on the Delivery Date, the Company shall procure the storage and safeguarding of the Goods, either at its own premises or elsewhere on the Company's behalf. The Customer shall within 10 Business Days after receipt of written notice from the Company reimburse and pay to the Company all reasonable costs incurred by the Company in respect of the storage and safeguarding of the Goods in terms of this clause 5.6.

6. REPRESENTATIONS AND WARRANTIES

6.1 The Company warrants that the Goods and the Services shall:

6.1.1 in all respects comply with all relevant requirements of any regulatory authority, statute, statutory rule or order, or other instrument having the force of law which may be in force at the date of delivery of the Goods and/or render of the Services;

6.1.2 if any Goods or Services do not comply with clause 6.1.1, the Company will, at its election, replace the Goods, rectify the breach or refund the appropriate portion of the Price (having regard to any benefit already enjoyed by the Customer in respect thereof), and/or take back the Goods; and

6.1.3 the Company gives no other warranties or representations in relation to the Goods and/or Services except as expressly set out in these Conditions or as may be necessarily applicable in law.

7. RETURNED GOODS

7.1 No Goods may be returned without the written authority of the Company.

7.2 Unless the Company, in its discretion, determines otherwise, no Goods considered as excess stock can be returned to the Company more than 30 days after delivery of the Order by the Customer to the Company.

7.3 Returns and duplicated deliveries where ordered incorrectly are subject to a handling charge of 10% of the original Invoice Price or, if requiring repacking, a charge of 15% of the original Invoice Price.

7.4 Freight must be pre-paid by the Customer on all Goods returned. In the case of defective

Goods or Goods shipped to the Customer through an error by the Company then the Customer will receive credit for the costs of freight.

8. INDEMNITY AND LIMITATION OF LIABILITY

- 8.1 Notwithstanding anything to the contrary herein, the Customer agrees to indemnify the Company (and its Affiliates) and at all times keeps it indemnified against all losses, claims, expenses, damages, injuries, liabilities, actions, demands, proceedings and judgements whatsoever in relation to or arising directly or indirectly out of the provision, installation, delivery, removal and/or maintenance by the Company of the Goods and/or the Services, and the Customer will, on demand, reimburse the Company from time to time for all costs and expenses (including legal and other professional fees) that the Company may reasonably incur in connection with investigating, preparing or defending any such action or claim, whether or not in connection with pending or threatened or actual litigation or arbitration in which the Company is a party and whether or not resulting in any liability on its part, except to the extent that such action or claim is found in final judgement to be the direct result of the Company's fraud, gross negligence or material breach of these Conditions.
- 8.2 Without limiting the generality of clause 8.1, the Company will not be liable for any claim, damage or loss suffered by the Customer caused by and/or attributable to:
- 8.2.1 the Goods and/or Services being delayed, interrupted, suspended or terminated, for whatsoever reason; and/or
 - 8.2.2 technical advice or assistance which the Company is not contractually bound to provide; and/or
 - 8.2.3 which the Company is precluded from recovering from a carrier by reason of the Customer's failure to give notice necessary for the recovery; and/or
 - 8.2.4 circumstances that constitute a *force majeure* event (as contemplated in clause 10); and/or
 - 8.2.5 the Customer's failure to perform any of its obligations under these Conditions; and/or
 - 8.2.6 a power failure or power interruptions at any site from where the Services or any component of the Services are rendered; and/or
 - 8.2.7 any failure or delay by the Customer to report any problems to or raise any queries with the Company.

9. CORRUPTION AND FRAUD

- 9.1 The Customer shall comply with all anti-corruption laws as may be applicable, including those of the jurisdiction in which it or the Company is registered and those of the jurisdiction where the relevant Order is to be fulfilled. Failure by the Customer to comply with the applicable anti-corruption laws shall entitle the Company summarily to terminate the Order.
- 9.2 The Company shall not be liable for any claim, loss or damage arising from or associated with the failure by the Customer to comply with any anti-corruption laws or associated with the termination of agreement between the Parties pursuant to this clause 9, and the Customer shall keep the Company harmless and indemnified for any claim, loss or damage of such nature.

10. FORCE MAJEURE

- 10.1 If either Party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under these Conditions and/or the Quotation and/or the Order ("**the Affected Party**") due to any cause beyond the reasonable control of the Affected Party, including without limiting the generality of the foregoing any strike, lock-out, labour dispute or other industrial action, insurrection, sabotage, terrorism, civil commotion, political or civil disturbance, riot, invasion, war, threat of or preparation of war, fire, explosion, storm, flood, subsidence, epidemic or other natural or physical disaster or act of God, impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport, any act of any state or government or any other authority having jurisdiction over either Party, then the Affected Party shall be relieved of its obligations during the period that such event and its consequences continue but only to the extent so prevented and shall not be liable for any delay or failure in the performance of any of its obligations in terms of these Conditions or for any loss or damage (general, special or consequential) which the other Party may suffer due to or resulting from such delay or failure, provided that written notice shall, within 48 hours of the occurrence constituting *force majeure*, be given by the Affected Party to the other Party concerned, and provided further that the obligations to give such notice shall be suspended to the extent necessitated by such *force majeure*.
- 10.2 Any Party invoking *force majeure* shall use its reasonable endeavours to terminate the circumstances giving rise to *force majeure* and upon termination of the circumstances giving rise thereto, shall forthwith give written notice thereof to the other Party concerned.
- 10.3 The Parties agree that should the circumstances giving rise to *force majeure* continue for

more than 3 months, the Party who has not claimed *force majeure* may terminate the Order in question by notice in writing to the other Party.

11. NATURE OF RELATIONSHIP

11.1 The Company is an independent contracting party and the relationship between the Company and the Customer in terms of the Conditions does not constitute, nor may it be construed as constituting, a fiduciary relationship, partnership or employment.

11.2 Other than as may be expressly set out in the Conditions, the Company shall incur no liability of any nature whatsoever for or on behalf of the Customer and the Customer shall have no authority to bind the Company by any representations, statements or agreements made or concluded by it.

12. ARBITRATION

12.1 Any dispute between the Parties in regard to any matter arising out of any Quotation and/or Order and/or Invoice and/or these Conditions or their interpretation or any Party's rights and obligations under any Quotation and/or Order and/or Invoice and/or these Conditions or their cancellation or any matter arising out of their cancellation, shall be submitted to and determined by arbitration. Unless otherwise agreed to, such arbitration shall be held in Johannesburg and shall be held in a summary manner with a view to it being completed as soon as possible.

12.2 There shall be one arbitrator whose appointment shall be agreed upon between the Parties, but failing agreement between them within a period of 10 Business Days after the arbitration has been demanded, either of the Parties shall be entitled to request the chairperson for the time being of the Johannesburg Bar Council to make the appointment who, in making his appointment, shall have regard to the nature of the dispute.

12.3 The decision of the arbitrator shall be final and binding on the Parties, and may be made an order of any court of competent jurisdiction. Each of the Parties hereby submits itself to the jurisdiction of the Gauteng Local Division of the High Court of South Africa, Johannesburg, should the other Party wish to make the arbitrator's decision an order of that court.

13. DOMICILIUM CITANDI ET EXECUTANDI

13.1 Each Party chooses the address set out opposite its name below as its *domicilium citandi et executandi* at which all notices, legal processes and other communications must be

delivered for the purposes of these Conditions:

- 13.1.1 the Company at the physical address and email address displayed on the Quotation;
and
- 13.1.2 the Customer at the physical address and email address displayed on the Order.
- 13.2 Any notice or communication required or permitted to be given in terms of these Conditions shall be valid and effective only if in writing, but it shall be competent to give notice by electronic mail. Any notice by electronic mail to a Party at its electronic mail address shall be deemed, unless the contrary is proved, to have been received within 2 hours of transmission where it is transmitted during normal business hours or within 2 hours of the opening of business on the first Business Day after it is transmitted where it is transmitted outside those business hours.
- 13.3 Any Party may by written notice to the other Party change its chosen address to another physical address and/or its chosen electronic mail address to another electronic mail address, provided that the change shall become effective on the 10th Business Day after the receipt of the notice by the addressee.
- 13.4 Any notice to a Party actually received by or on behalf of that Party shall be valid and effective, regardless of whether it was addressed to and/or delivered to the correct address and/or electronic mail address.

14. GOVERNING LAW

The validity of these Conditions, their interpretation, the respective rights and obligations of the Parties and all other matters arising in any way out of these Conditions or their performance shall be determined in accordance with the laws of the RSA.

15. JURISDICTION

- 15.1 Each of the Company and the Customer hereby consents and submits to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division (Johannesburg) for the purposes of all or any legal proceedings arising from or concerning these Conditions.
- 15.2 Nothing in these Conditions shall prevent the Company and/or the Customer from seeking relief on an urgent or interlocutory basis from any High Court of South Africa with jurisdiction.

16. PROTECTION OF PERSONAL INFORMATION

- 16.1 For purposes of this clause 16, capitalised terms shall have the meanings given to them in the POPI Act. The Company has determined that it shall be the Responsible Party in respect of the Customer's Personal Information and accordingly, it shall comply with its obligations pursuant to the POPI Act by taking appropriate, reasonable technical and organisational measures to secure the integrity and confidentiality of the Customer's Personal Information in its possession or under its control.
- 16.2 As contemplated in section 11(1)(b) of the POPI Act, in order for the Company to carry out actions for the conclusion and performance of the Order, to which the Customer is a Party, the Company is required to collect certain Personal Information from the Customer and the Customer is required to provide certain Personal Information to the Company. Should the Company not be able to collect and/or obtain the required Personal Information of the Customer, the Company will not be able to carry out actions for the conclusion and performance of the Order.
- 16.3 This Personal Information may be collected by the Company in various ways, but will principally be provided directly to the Company by the Customer when, amongst other things, the Customer issues and delivers the Order to the Company and corresponds with the Company via email and/or reports a problem with the Goods and/or Services to the Company.
- 16.4 The Company may also be required to provide some of this Personal Information to third party suppliers or service providers of the Company, for purposes of providing the Goods and/or rendering the Services to the Customer, provided that the Company shall Process the Personal Information only in accordance with the POPI Act.
- 16.5 Provided that the Customer has provided adequate proof of identity to the Company, the Customer is advised of its right, pursuant to section 23(1) of the POPI Act and in accordance with clause 16.9 to:
- 16.5.1 confirm, free of charge, whether or not the Company holds Personal Information about the Customer; and
- 16.5.2 request from the Company the record or a description of the Personal Information about the Customer held by the Company, including information about the identity of all third parties, or categories of third parties, who have, or have had, access to this Personal Information.

- 16.6 The Company shall notify the Customer in writing of any estimate of fees and/or the requirement of a deposit applicable to a request pursuant to clause 16.5.2.
- 16.7 A Customer is entitled in terms of section 24 of the POPI Act and in accordance with clause 16.9, to request that the Company correct or delete certain Personal Information of that Customer in the Company's possession and/or under its control that is inaccurate, irrelevant, excessive, out of date, incomplete, misleading or obtained unlawfully or destroys or delete a record of Personal Information about the Customer that the Company is no longer authorised to retain.
- 16.8 The Customer may object to the Processing of their Personal Information for purposes of direct marketing by the Company in accordance with clause 16.9.
- 16.9 In order to exercise the rights in clauses 16.5, 16.7 and 16.8, the Customer must send an email with the relevant details to the information officer of the Company at: willie@rca.co.za and attach the prescribed forms in terms of the POPI Act, where relevant and applicable.
- 16.10 The Customer also has the right to lodge a complaint in writing with the Information Regulator at POPIAComplaints@inforegulator.org.za, in relation to the unlawful Processing of the Customer's Personal Information by the Company (see <https://justice.gov.za/inforeg/contact.html> for more details).

17. CONFIDENTIALITY

The Company and the Customer shall keep all information supplied to, or acquired by it in connection with these Conditions strictly confidential, shall not use such information or any part thereof for any purpose other than permitted under these Conditions, except as contemplated herein or with the consent of the other Party or in accordance with an order of court of competent jurisdiction or in order to comply with any law or government regulation by which the Party concerned is bound.

18. INTERPRETATION

- 18.1 In these Conditions, unless the context requires otherwise:
- 18.1.1 words importing any one gender shall include the reference to the other genders;
- 18.1.2 the singular shall include the plural and *vice versa*;
- 18.1.3 a reference to a "person" includes a reference to an individual, partnership, company,

close corporation, other body corporate, a trust, an unincorporated association or a joint venture and that person's legal representatives, successors and permitted assigns;

18.1.4 where any number of days is prescribed in these Conditions, that number shall be determined exclusively of the first day and inclusively of the last day, unless the last day falls on a day which is not a Business Day, in which case the last day shall be the immediately succeeding Business Day.

18.2 If the day for performance of any obligation to be performed in terms of these Conditions should fall on a day which is not a Business Day, the relevant day for performance shall be the immediately succeeding Business Day.

18.3 In these Conditions, the headings have been inserted for convenience only and shall not be used for nor assist or affect its interpretation.

19. GENERAL

19.1 These Conditions read with each Quotation and/or Invoice and/or Order placed hereunder contain the entire agreement between the Parties in relation to the subject matter hereof.

19.2 In circumstances of the CPA being expressly applicable to these Conditions, the provisions of the CPA will prevail (to the extent necessarily required) should there be any conflict between these Conditions and the provisions of the CPA.

19.3 Neither Party shall have any claim or right of action arising from any undertaking, representation or warranty not included in these Conditions.

19.4 No agreement to vary, add to or cancel, these Conditions shall be of any force or effect unless reduced to writing and signed by or on behalf of the Parties to the Invoice in question.

19.5 Each Party warrants that it is acting as a principal and not as an agent for an undisclosed principal.

19.6 The Customer will not be entitled to assign, cede, delegate or transfer any rights, obligations, share or interest acquired in terms of the Conditions and/or the Goods and/or the Services, in whole or in part, to any other party or person without the prior written consent of the Company.

19.7 No extension of time, relaxation or indulgence granted by the Company to the Customer

will be deemed to be a waiver or tacit amendment of the Company's or the Customer's rights in terms hereof, nor will any such relaxation or indulgence be deemed to be a novation or waiver of the terms and conditions of these Conditions.

- 19.8 Each of the provisions of these Conditions will be considered as separate terms and conditions and in the event that these Conditions are affected by any legislation or any amendment thereto, or if the provisions herein contained are by virtue of that legislation or otherwise, held to be illegal, invalid, prohibited or unenforceable, then any such provisions shall be ineffective only to the extent of the illegality, invalidity, prohibition or unenforceability and each of the remaining provisions hereof shall remain in full force and effect as if the illegal, invalid, prohibited or unenforceable provision was not a part hereof.
- 19.9 All costs, charges and expenses of any nature whatever which may be incurred by the Company in enforcing its rights in terms of these Conditions, including without limiting the generality of the foregoing, legal costs on the scale of attorney and own client and collection commission, irrespective of whether any action has been instituted, will be recoverable on demand from the Customer against which such rights are successfully enforced and will be payable on demand.