

TERMS AND CONDITIONS for 2021

The following standard terms and conditions will regulate the relationship between TMGSA and the CUSTOMER in respect of all work effected in terms of this agreement.

1. DEFINITIONS

1.1 TMGSA – This shall mean TMGSA Professional Maintenance Service, an independent TMGSA, contracted by the CUSTOMER to affect the work in terms of this agreement.

1.2 CUSTOMER - Shall mean the owner, or occupier of the property at which the work is to be performed, alternatively the owner's agent who warrants that he is duly authorized to bind the owner in this agreement.

1.3 PROPERTY – This shall mean the CUSTOMER'S property at which the work is to be affected and shall be deemed to be at the address reflected on the face hereof unless the contrary is stated.

1.4 WORK - Shall mean all work to be affected in terms of this agreement by TMGSA at the property as specified on the face hereof, it being understood that no additional work shall be deemed to form part of this agreement unless it is specifically recorded in an addendum hereto.

1.5 CONTRACT PRICE – This shall be the amount payable in terms of this agreement as specified on the face hereof in respect of the work to be affected at the property as quoted in the signed quotation.

1.6 DRAWINGS - Shall mean architectural drawings prepared in respect of the work, if the work requires such drawings, which shall be supplied by the CUSTOMER unless TMGSA is specifically instructed to have the drawings prepared by an architect, at such additional fees as may be agreed upon.

1.7 PRACTICAL COMPLETION – This shall mean the date on which the work has been completed and handed over to the CUSTOMER together with TMGSA'S final invoice in respect of the work so completed.

1.8 MATERIALS - Shall mean any and all materials, appliances, and apparatuses to be installed, or used in the execution of the work.

1.9 EQUIPMENT – This shall mean such tools and machinery as may be necessary to execute the work.

2. AGREEMENT

2.1 The CUSTOMER agrees that

(a) this Agreement represents the entire Agreement between the CUSTOMER and TMGSA and any alterations or additions to this Agreement may not be affected unless agreed to by both parties, reduced to writing and signed by the CUSTOMER and TMGSA;

(b) this Agreement will govern all future contractual relationships between the parties, notwithstanding receipt or acknowledgment of the CUSTOMER'S own order form or conditions;

(c) this Agreement is applicable to all existing debts between the parties;

(d) this Agreement is final and binding and is not subject to any suspensive or resolute conditions; **(e)** and conflicting terms, conditions or agreements without prejudice to any securities or guarantees held by TMGSA and;

(f) this Agreement applies to all employees and sub-TMGSA'S of TMGSA.

2.2 The Sub-Contractor hereby binds himself

in his personal capacity as Shareholder (in the case of a company), Member (in the case of a close corporation), or Owner, Partner, or Proprietor, as co-principle debtor jointly and severally for the full amount due to TMGSA and agrees this agreement will apply in the same way to him as soon as any work is excepted.

2.3 Notwithstanding the provisions

of clause 2.1 above, all orders or contracts of sale, or agreed variations thereto, whether oral or in writing, shall be binding and subject to this agreement and may not be canceled by the CUSTOMER.

2.4 The CUSTOMER hereby gives his/her consent for a credit check.

2.5 The invalidity of any part of the Agreement shall not affect the validity of any other part.

3. APPOINTMENT

3.1 The CUSTOMER appoints TMGSA to affect the work at the property and agrees that the terms and conditions as set out herein shall be the Agreement between the parties in respect of the work to be affected.

4. QUOTATION

4.1 All quotations will remain valid for a period of fourteen (14) days from the date of the quotation, or until the date of issue of any new price list, whichever occurs first, or unless specified in writing by TMGSA.

4.2 Delivery and performance times quoted are estimates and are not binding on TMGSA.

4.3 All quotations are subject to the availability of input goods or services and subject to correction of good faith errors by TMGSA, and the prices quoted are subject to any increase in the cost price, including currency fluctuations, to TMGSA before acceptance of the order.

4.4 In the event of the CUSTOMER disputing the amount of the cost increase in clause 4.3 above, the said amount may be certified by an independent auditor and such certificate shall be final and binding on the CUSTOMER.

5. PROVISION OF MATERIALS AND EQUIPMENT

5.1 Unless the contrary is specified on the face hereof, TMGSA shall provide all materials and equipment necessary for the proper execution of the work. All materials shall be of the kind and quality as described on the face hereof, alternatively in terms of the architect's specifications, if applicable and TMGSA shall upon the request of the CUSTOMER furnish him with vouchers to prove that the materials are of such standard.

5.2 TMGSA reserves the right, at its sole discretion, to provide alternative products at the prevailing prices to those ordered by the CUSTOMER, should those products have been superseded, replaced or otherwise become unavailable.

5.3 Products are sold "voetstoots" with no warranty against latent defects. All guarantees, including common law guarantees, are hereby specifically excluded.

5.4 If the CUSTOMER supplies any materials or equipment, and or, accessories to be utilized in the work, TMGSA shall not be responsible for any defects thereto, nor is the quality thereof, it is agreed that TMGSA shall accept such materials, and accessories, in the condition in which it delivered to be utilized in the execution of the work. Extra costs incurred through the use of defective materials or equipment supplied shall be for the CUSTOMER'S account.

5.5 All fixed and unfixed materials purchased by TMGSA shall be deemed to be under the control of TMGSA and subject to his lien for payment of any amounts which may become owing in terms of the Agreement. It is recorded that any materials which have been purchased by TMGSA and affixed to the property shall remain the property of TMGSA until payment in full has been affected by the CUSTOMER. Once payment in terms of the agreement has been affected in full, all materials which have been fixed to the property shall become the sole and exclusive property of the CUSTOMER and all unfixed materials shall be removed from the property, the unfixed materials being deemed to be the property of TMGSA.

5.6 During the execution of the work, the CUSTOMER shall take reasonable steps to protect all material on his property from the risk of loss, theft, or damage thereto, in TMGSA'S absence. In the event of loss, or theft the CUSTOMER agrees to replace such material, at his expense. TMGSA shall, during his presentation on the property, be responsible for all materials on the property and shall exercise the same caution to protect the CUSTOMER'S interests in the material from the risk of loss, theft, or damage.

5.7 It is recorded that the CUSTOMER shall not be entitled to insist on detailed costing's in respect of all materials, it being recorded that the work is performed in terms of a fixed cost, as specified on the face hereof, and that the costs of the materials have been factored into such price irrespective of the costs thereof to TMGSA.

6. LAWS, BYLAWS AND REGULATIONS

6.1 TMGSA shall comply with any Act of Parliament, regulations, and bylaws of any local authority and/or any public service company, or authority relating to the work, as may be applicable and required, provided that if any fees are payable to any statutory body, or similar entity, the costs thereof shall be for the CUSTOMER'S account, it is recorded that the contract price stipulated on the face hereof is exclusive of any additional fees, charges, or taxes that may be payable pursuant to this particular clause.

6.2 There shall be no obligation upon TMGSA to ensure that the work as directed by the CUSTOMER and/or the architect does not encroach on building regulations, or building lines, the CUSTOMER, or his agent, being solely responsible to ensure compliance in this regard.

7. EXECUTION OF WORK IN ACCORDANCE WITH AGREEMENT AND DRAWINGS

7.1 TMGSA shall not make any variation to the drawings, if applicable, and shall affect the work strictly in accordance with the drawings, alternatively the specifications of the work as recorded on the face hereof. Any deviation from the drawings or specifications on the face hereof shall only be affected if it is properly recorded and signed by TMGSA and the CUSTOMER, or his architect if applicable, and without such written variation in respect of the work, TMGSA shall not be obliged to give effect to any additional requirements, or instructions from the CUSTOMER.

7.2 If the CUSTOMER requires any additional work, variations, or alterations from the work as specified on the face hereof, he shall advise TMGSA thereof and TMGSA shall, within Forty-Eight (48) hours, inform the CUSTOMER of the cost and time implications occasioned by such a variation. If the CUSTOMER accepts the additional costs and time implications, a written acknowledgment specifying the additional costs and time required for purposes of completion of the work shall be prepared by TMGSA and presented to the CUSTOMER for his signature. On an acceptance signature by the CUSTOMER TMGSA shall immediately proceed to give effect to the CUSTOMER'S instructions, as varied by the written acknowledgment.

8. ACCESS TO THE WORK SITE

8.1 The CUSTOMER shall afford TMGSA access to the property to perform the work in accordance with TMGSA'S obligations. In this regard, it is specifically agreed and recorded that TMGSA shall have access to the property from 08H00 to 16H00 from Mondays to Fridays and from 09H00 to 14H00 on Saturdays to perform the work and the

CUSTOMER shall make available, at his cost, the necessary water, sanitary facilities and electricity required by TMGSA to give effect to its obligations in terms of this agreement.

8.2 TMGSA shall further, at the same times specified above, have access to any part of the work already completed and handed over to the CUSTOMER for occupation as a right of passage through such occupied parts for purposes of reaching the work site on the property.

9. PRACTICAL COMPLETION

9.1 On the date of practical completion, TMGSA shall hand the work on the property over to the CUSTOMER and render a final invoice in respect of the contract price. The CUSTOMER shall be obliged to accept the work and the final invoice, subject to the CUSTOMER'S rights to insist on the repair of any defects that may manifest it as set out in this agreement.

10. TIME TO COMPLETE WORK

10.1 TMGSA shall commence the execution of the work on a date mutually suitable to the parties, and if such date is specified on the face hereof, then on such date as specified.

10.2 The work shall be completed within a reasonable period from the date of commencement; it being recorded that the CUSTOMER shall have no right in respect of any penalties if the work is not completed within a specified period of time.

11. INDEMNITY

11.1 TMGSA indemnifies the CUSTOMER against any liability, loss, claim, or proceedings of whatever nature arising in common law, or by statute consequent upon personal injuries to, or the death of any person, or employee of TMGSA arising out of, or in the course, or caused by the execution of the work, unless such loss, injury, or death is due to any act, or commission of the CUSTOMER, or his servants, or any agent acting in the interests of the CUSTOMER.

11.2 TMGSA indemnifies the CUSTOMER against any liability, loss, claim, or proceedings consequent upon the loss of, or damage to any moveable, or immovable property arising out of, or in the course of the execution of the work due to any wilful, negligent, or reckless act, or omission by TMGSA, his agents, or servants provided however that TMGSA shall be entitled to act on any reasonable instructions by the CUSTOMER and that the execution of such instruction shall not lead to any liability in terms of this clause.

11.3 Where any loss or damage is insurable by a policy insuring structural damage, fire, riots, strike, damage and special perils, TMGSA does not indemnify the CUSTOMER against such loss of, or damage to any structure being altered, or added, it being deemed that the CUSTOMER will have suitable and adequate structural insurance against the risk against losses in this regard.

12. EXCLUSION OF LIABILITY

12.1 When any loss results as a result of war, invasion, riot, warlike operations, civil unrest, acts of God, or any other act which is beyond TMGSA'S control (via major), TMGSA shall not be liable for any losses which may result because of such action, notwithstanding any clause herein which may have indemnified the CUSTOMER against the risk of damages and/or loss.

13. DELAY IN COMPLETION OF WORK

13.1 If the work is delayed by an act of God, via major, exceptionally inclement weather, or any other cause beyond the reasonable control of TMGSA, TMGSA shall be entitled to an extension for the completion of the work, notwithstanding that the time of completion may have been specified as being of the essence, it being agreed that the time for performance will be extended for such a period as the work may have been interrupted for one of the reasons set out in this clause.

14. SUSPENSION OF WORK

TMGSA shall be entitled to suspend the performance of the work in terms of this agreement in the event of:

14.1 A breach by the CUSTOMER to include, but not be limited to:

14.1.1 Non-payment of any interim invoice, or amounts on the date on which it may be owing in terms of this agreement.

14.1.2 The failure by the CUSTOMER to supply any material in terms of its obligations that may be reasonably required for the performance of the work by TMGSA.

14.1.3 The CUSTOMER not granting TMGSA access to the work, or any part thereof.

14.1.4 The CUSTOMER not making available any electricity, or water which may be required for purposes of the execution of the work.

14.1.5 The CUSTOMER not making available any drawings by an architect, or not arranging for the appointment of an engineer, where required, for the performance of the work.

14.1.6 Where the CUSTOMER fails to remedy its obligations to enable TMGSA to proceed with the work.

14.2 In the event of TMGSA having to suspend the performance of the work in terms of this agreement TMGSA shall be entitled to immediately: -

14.2.1 Cancel this agreement and retain all amounts paid.

14.2.2 Insist on payment of the balance of the contract price as stipulated on the face hereof.

14.2.3 Remove all unfixed materials from the premises without any compensation to the CUSTOMER.

14.2.4 Remove any machinery and equipment from the premises.

14.2.5 Exercise his lien in respect of payment for all amounts that may be due and owing in terms of the agreement and without prejudice to any of the above, or other rights TMGSA may have in Law, to lock the CUSTOMER out until such payment has been affected.

15. PAYMENT

15.1 The CUSTOMER shall pay TMGSA the amount as stipulated on the face hereof together with all additional costs in respect of additional work, or additional services rendered pursuant to the execution of the work on the dates specified for payment.

15.1.1 By accepting the TMGSA quotation the CUSTOMER accepts TMGSA Terms and Conditions.

15.1.2 TMGSA shall not be bound to CUSTOMER payment terms unless otherwise agreed by TMGSA and the CUSTOMER in a dated written and signed document format.

15.2 The risk of payment by cheque through the post or by electronic funds transfer rests with the CUSTOMER.

15.3 The CUSTOMER shall under no circumstances be entitled to withhold payment, for any reason whatsoever. Withholding of payment shall be deemed to be a material breach of the agreement which would entitle TMGSA to the remedies set out in clause 14.2 above.

15.4 The CUSTOMER is not entitled to set off any amounts due to TMGSA by the CUSTOMER against its indebtedness to TMGSA.

15.5 TMGSA shall be entitled to invoice each delivery or performance separately when executed.

15.6 The CUSTOMER shall pay TMGSA the full amount as stipulated in the invoice within a maximum period of five (5) days of receipt of the invoice.

15.6.1 The CUSTOMER will be charged a 15% interest on outstanding amounts not paid within seven (7) days of the date of invoice every seven (7) days or part thereof until handed over to the debt collecting agent or paid in full.

15.6.2 The CUSTOMER must notify TMGSA within a maximum period of five (5) days of the date of invoice with a written letter by the CUSTOMER explaining payment delay reasons with a written arrangement agreement supplied to the CUSTOMER in terms of TMGSA acceptance of new payment date arrangement.

15.6.3 The CUSTOMER shall pay the fully charged amount issued by a dept. collector agency, law firm or third party for collection of late payments.

15.7 The CUSTOMER agrees that if an account is not settled in full (a) against the order; or (b) within the period agreed in clause 15.6 above, TMGSA is entitled to (i) forward a letter of demand using a third party demanding full and final payment.

15.8 Outstanding accounts are subject to default listings on a national credit bureau database. On payment of the outstanding debt, the default listing will be adjusted to read "Paid Default" until legislation demands complete removal.

15.9 TMGSA reserves the right to provide a national credit bureau with updated personal information.

15.10 The CUSTOMER also consents that TMGSA may use a national credit bureau database for tracing, should the CUSTOMER abscond.

15.11 In the event of any payment not being made on the due date, the amount then outstanding shall bear interest as prescribed in terms of the Usury Act with interest calculated daily and compounded monthly from the date of acceptance of the order.

15.12 In the event of default, all payments shall firstly be appropriated towards interest and costs and thereafter in respect of the capital amount payable in terms of this agreement.

15.13 The CUSTOMER shall be liable to TMGSA for all legal expenses incurred by TMGSA on the attorney-and-own client scale in the event of (a) any default by the CUSTOMER or (b) any litigation in regard to the breach, validity, or enforceability of this agreement. The CUSTOMER is liable for all tracing, collection, or valuation fees incurred as well as for any costs including stamp duties, for any form of security that TMGSA may demand.

15.14 Only payments made into the bank account on the invoice/quotation documents, as per the details reflected on the original quote submitted from TMGSA'S office via e-mail or fax will be recognized and accepted as formal payment. Only electronic fund transfer payments cleared by bank cheques, cash, or deposits will be accepted.

15.15 If any part of Construction or Equipment is used for its intended use the Customer is liable to pay the outstanding amount in full within 3 working days.

16. GUARANTEES AND WARRANTIES

16.1 TMGSA shall complete the work to the reasonable satisfaction of the CUSTOMER according to acceptable standards of workmanship. All work shall be guaranteed against latent defects as a result of defective workmanship for a period of twelve (12) months from the date of practical completion. Superficial cracks that may appear as a result of materials drying shall not be regarded as defects. Any claims in respect of defective materials shall be directed by the CUSTOMER to the supplier and TMGSA shall assist in lodging the claim without assuming any liability.

17. CLAIMS

17.1 Any defects to the work shall be communicated to TMGSA within seven (7) days from the date of practical completion. TMGSA shall be afforded an opportunity to within fourteen (14) days from receipt of such claim inspect the defects and/or workmanship which does not meet with the CUSTOMER'S approval and;

17.1.1 If TMGSA is of the view that the work is of an acceptable standard, it shall notify the CUSTOMER, in writing, of its findings as well as the reasons therefore.

17.1.1.1 If the CUSTOMER does not accept TMGSA'S findings, he shall be entitled, within a period of fourteen (14) days from the date of notification by TMGSA, to refer the matter to arbitration to resolve the complaint. TMGSA may at its own discretion be entitled to appoint an architect of no less than ten (10) years of experience in the Building and Construction Industry as an arbitrator. All costs in this instance will be for the CUSTOMER'S account.

17.1.1.2 If the matter is referred to arbitration, the arbitrator shall be requested to complete his findings within a period of thirty (30) days and his finding shall be final and binding upon both parties.

17.1.2 If TMGSA is of the view that the work is of the unacceptable standard then any defects in the workmanship, TMGSA supplied materials, or damage to the work, or the premises which are as a result of defective material supplied by TMGSA, or inadequate workmanship shall be repaired by TMGSA, within a period of fourteen (14) days, to the reasonable satisfaction of the CUSTOMER, at TMGSA'S costs.

17.2 If the CUSTOMER does not notify TMGSA within seven (7) days of any defect in the workmanship and material, it shall be deemed to have been completed to the reasonable satisfaction of the CUSTOMER and the CUSTOMER shall have no further right of recourse against TMGSA in respect of any repairs or defects.

17.3 If the CUSTOMER has a claim as a result of latent defects, he will address such a claim to TMGSA, in writing, within the warranty period of twelve (12) months, setting out in detail the nature and extent of the latent defects.

18. SUB TMGSA'S

18.1 TMGSA shall be entitled to employ the services of any sub-TMGSA provided that the amounts payable to the sub-TMGSA are paid by TMGSA and that the sub-TMGSA performs his mandate in terms of the same or similar conditions to that contained herein.

19. GENERAL

19.1 The agreement shall be governed in all respects by the Laws of the Republic of South Africa.

19.2 The terms and conditions contained herein, read with the nature and extent of the work and the costs reflected on the face hereof, shall constitute the entire agreement and shall not be varied unless same is reduced to writing, duly signed by, or on behalf of TMGSA and the CUSTOMER.

19.3 The CUSTOMER consents in terms of Section 45 of the Magistrate's Court Act, 32 of 1944, to TMGSA instituting any action, or proceedings for enforcing any of its rights under this agreement in the Magistrate's Court of any district having competent jurisdiction by virtue of Section 28 of the same Act. The aforesaid shall however not preclude TMGSA from instituting action in any division of the High Court which may exercise competent jurisdiction.

19.4 TMGSA shall be entitled to cede and assign any of its rights, or obligations under this agreement to any third party without prior notification to, or any consent of the CUSTOMER.

19.5 The parties choose their addresses specified on the face hereof as its addresses for service of all legal processes and any notice delivered by hand shall be deemed to be received on the day it is so delivered, alternatively if same is posted by prepaid registered post, then within four (4) days of the date of actual posting of the notice.

Client

Quotation nr	_____	Invoice Nr	_____
Deposit amount	_____	50 % or Reflects on Quotation or Invoice	
Completion	_____	40% completion	
Final Payment	_____	10% on final sign off	

Work will only commence once Quotation has been signed and proof of deposit emailed to us.

Outstanding amount on the day of completion.

Bank Details

Netbank – Account No: 1062929985, Branch Code: 191042

I _____, position held _____

On behalf of _____ this day ____ / ____ /20__

Address _____

Accept the Quotation as specified and fully understand the Terms & Conditions.

Signature _____

Only send this page to – accounts@tmgsa.co.za