

Terms of Creative Event Solutions (Pty) Ltd t/a Radtrax Recreational Products

Preamble

Entered into between the entity referred to on face of the Invoice hereof trading as Radtrax Recreational Products (Reg. No as referred to on the face of the Invoice hereof) hereinafter referred to as "Radtrax" and the Purchaser hereafter referred to as the "Purchaser". The terms and conditions herein contained shall be binding on Radtrax and the Purchaser and no relaxation or waiver of any of the terms hereof granted by Radtrax at any time shall be deemed to be a waiver of Radtrax's rights in terms hereof, or a novation, or a variation of this agreement. Words implying singular shall also imply plural and word implying male shall also imply female and *vice versa*.

1. The Contract

a) This document shall constitute an offer made by the Purchaser to purchase the goods specified on the Purchase Order or Invoice under the conditions as specified herein.

b) The offer may be accepted either by letter of confirmation from Radtrax or by the actual or intended dispatch to the Purchaser of all or any of the goods in part, so specified on the back hereof, the Purchaser hereby acknowledging that the latter shall be deemed to constitute acceptance.

c) The offer may be accepted on the basis of the Purchaser being required to pay a deposit to Radtrax, the amount of which shall be determined by Radtrax.

d) In the event of a cancellation of the order by the Purchaser, Radtrax may impose a cancellation fee which will be based on:

- The cancellation having been received after delivery being tendered
- The Nature of the Order
- Length of notice of cancellation
- Reasonable potential to find alternative purchaser of ordered goods within a reasonable timeframe
 - Reason for cancellation
 - 3rd party involvement ie manufacturing process specific to this order or contractual obligation by Radtrax to accept ordered goods from 3rd party or similar.

• The order cannot be fulfilled within the specific timeframe recorded on the order. **e)** There will be no refund applicable on a deposit paid in the event of cancellation for already made, in the process of manufacture or confirmed 3rd party orders of Special Order Goods, which shall be any product not readily available from Radtrax's stock.

f) No variation of, addition to or cancellation of any of the terms of this agreement shall be of any force or effect unless it is recorded in writing and signed by a duly authorized representative of Radtrax.

2. Delivery

a) Unless otherwise stated on the face hereof, Radtrax shall deliver the goods to the Purchaser by means of the general postal services or any other delivery service appointed by Radtrax, which shall be at the sole and entire expense of the purchaser, even when for the Purchasers convenience carriage has been prepaid by Radtrax.

b) In the event of such a prepaid carriage, the Purchaser shall pay to Radtrax on demand the cost incurred for such carriage in full and without any deductions.

c) The carrier in question shall be the Purchasers agent and delivery to that carrier shall constitute delivery to the Purchaser and the Purchaser shall bear all risk in the goods from then on.

d) Radtrax shall not be responsible for any damage to goods during transit, provided

that a clean consignment note, not indicating damage or inferior packing, has been issued by the delivery service.

e) Radtrax shall never be bound to the delivery date or time stated on the back hereof, which shall be considered a guideline only, but Radtrax will make all reasonable efforts to deliver goods accordingly.

f) If no delivery date is stated on the back hereof, Radtrax will attempt to deliver as soon as reasonably possible.

g) Radtrax' s obligation to deliver any goods shall always be subject to the availability of the goods to be delivered.

h) Time of delivery of goods shall never be of the essence of this contract, however non-compliance to the Purchaser's specific delivery date request as stated on the back hereof, may give the Purchaser the right to cancel his order with Radtrax.

i) If part deliveries are to be made, then each delivery shall be a separate and divisible contract, provided that for so long as the Purchaser is in breach of any of its obligations in respect of any such deliveries, Radtrax shall be entitled to:

i) suspend further deliveries

ii) cancel the order or invoice and in either event without prejudice to its rights under common law.

j) If any amount is due and payable by the Purchaser under this or any other contract with Radtrax, Radtrax shall have the undisputed right until such amount is paid in full with interest, to suspend any or all further deliveries.

k) Notwithstanding anything to the contrary herein contained and notwithstanding any of the terms stipulated on the credit application. Radtrax reserves the right to suspend or reduce deliveries at any time if it considers the amount outstanding (whether due or not) has reached the limit to which it is prepared to allow the Purchaser credit or if it comes to its notice that the Purchaser's financial position has deteriorated or if it no longer considers the Purchaser credit worthy for any reason whatsoever.

l) Goods containing any variation not exceeding 10 percent in mass, size, finish, or any other specification shall be accepted by the Purchaser as being in accordance with the order and latitude to a maximum of 10 percent of over or short delivery, shall be allowed in regard to the quantity ordered.

m) The Purchaser shall be entitled to return goods for refund or exchange within 10 Business Days of having received same, subject to the following conditions:

- The goods have not been used, are not damaged and are in their original packing
 - The goods have not been specifically manufactured for the Purchaser
 - The goods have not been specifically ordered from a 3rd party by Radtrax for the Purchaser and in terms of the Purchaser's order.

- The goods form part of Radtrax' s regular stock

n) The Purchaser may return defective goods within the period of warranty for either repair, refund or exchange subject to:

- The goods have not been used for an inappropriate purpose
- The goods have not been mishandled
- The goods have not been incorrectly stored, cleaned or maintained
- The goods have not been repaired or attempted to be repaired by a 3rd party, unless authorized by Radtrax in writing

- Radtrax may charge a usage fee for the period of any returned product having been in useful possession.

o) The onus shall be on the Purchaser to inspect all goods upon receipt and failing written notification to the contrary within 48 hours of such receipt, it shall be deemed that the goods have been received by the Purchaser in good order and condition. **p)** The Purchaser may not cancel any order of Special Order goods, due to a portion of such goods received being reject or defect, in which case such defect must be reported to Radtrax in writing, as well as such goods to be physically returned to Radtrax by the Purchaser for inspection. Upon confirmation and acceptance of such

defect by Radtrax, the Purchaser may elect for Radtrax to repair, replace or credit the Purchaser for the defect goods.

q) In the event of Radtrax accepting returned goods as a measure of goodwill and although the above requirements have not been met, Radtrax shall be authorized to charge the Purchaser a processing fee of 20% (Twenty Percent) of the value of returned goods.

3. The Purchase Price

a) Unless otherwise confirmed in writing, all goods shall be paid for in cash on delivery or by credit card, bank guaranteed cheque or electronic transfer prior to delivery and no goods shall be left with the Purchaser unless such payment is made. In the event of the purchaser having obtained or received goods without having made full payment or should such payment prove to be invalid (wholly or partially), the Purchaser herewith irrevocably confirms that he shall have no rights to the goods as delivered by Radtrax whatsoever and ownership of such goods shall continue to rest with Radtrax at all times.

b) If otherwise confirmed in writing or in the event of the Purchaser enjoying a valid credit agreement which terms have been ratified and accepted by a Director, General Manager, Financial Manager or Accountant of Radtrax in writing, then payment shall be made for the full amount including VAT, no later than the specified credit term date, as approved in the credit agreement. No goods may be left with the purchaser in absence of a valid credit agreement or cash payment. In the event of the purchaser having obtained goods without a valid credit agreement or should the Purchaser's payment prove to be invalid, the Purchaser herewith irrevocably confirms, that he shall have no rights to the goods delivered by Radtrax whatsoever and ownership of such goods shall continue to rest with Radtrax at all times.

c) All goods delivered are subject to Value Added Tax.

d) The purchase price shall be duly paid by the Purchaser:

i) in South African currency, or if otherwise applicable, in the official currency of the country in which transaction was conducted

ii) without any deductions or set - off

e) The full amount of the Purchaser's indebtedness or liability arising from this or any other contract between the Purchaser and Radtrax shall immediately become due and payable (not withstanding that such amount may not yet be due and payable):

i) in the event of the purchaser failing to make payment of any amount due under this or any other contract on or before the due date thereof ; or

ii) if any payment made by the Purchaser in respect of any indebtedness under this or any such other contract is dishonoured or not met (wholly or partially); or

iii) if the Purchaser commits any act of insolvency or is sequestered provisionally or finally and /or a provisional or final order of liquidation or judicial management is granted against it ; or

iv) if the Purchaser fails to satisfy any judgment granted against him/it within seven days of the granting of such judgment;

f) Radtrax shall, without prejudice to its rights to enforce payment of amounts due to it, be entitled to charge the Purchaser interest at a rate equivalent to two percent per month on any amount not paid by the Purchaser on the due date thereof, such interest to be calculated from the date when such an amount falls due until the date payment thereof is received by Radtrax in full.

g) Radtrax shall have the sole and undisputed right to appropriate the payment of any amount paid by the purchaser, to any other contract or unpaid goods or deposit as may be required by Radtrax from time to time.

4. Passing of Ownership and Risk

a) The ownership of any goods sold by Radtrax to the Purchaser shall not pass to the Purchaser until payment of the full purchase price thereof has been received by Radtrax without deductions or set off. In the event of the Purchaser being unlawfully in possession of goods that have not been paid for, the Purchaser herewith and irrevocably authorizes Radtrax access to its goods during normal working hours in order to remove such goods from the control or premise of the Purchaser. The purchaser herewith accepts that at no time shall he have any rights to goods not paid for in full and failure to allow the collection of such goods by Radtrax shall constitute theft in a criminal context. A statement signed by a Director, Financial Manager or Accountant of Radtrax, shall be deemed to be prima facie proof of any outstanding or unpaid amount due to Radtrax, and the onus of proving full payment without set off or deduction for any goods received from Radtrax, shall at all times rest with the Purchaser.

b) The risk in and to the goods sold hereunder shall pass to the Purchaser on delivery thereof, notwithstanding the reservation of ownership herein.

c) If payment of the purchase price of any goods sold to the Purchaser becomes overdue in whole or in part, then, without prejudice to any of its other rights, Radtrax shall be entitled and without notice, to cancel the sale and legally recover possession of all or any of its goods.

d) If good have been left with a customer on a cash payment basis and such cash payment is found to be invalid, fraudulent or not forthcoming, Radtrax shall be entitled, without notice, to immediately enter the Purchasers premises during normal working hours, for the purpose of re-taking possession of its goods.

e) If third parties try to assert or substantiate rights to any goods in which Radtrax still has proprietary rights, the Purchaser shall be obliged to inform Radtrax of any such action immediately and Radtrax shall be entitled to take whatever action it may deem fit to protect its rights, including cancellation of the sale and repossession or resale of the goods. In the event of any such cancellation of the sale, the Purchaser shall continue to bear all risk in the goods and shall keep the goods safe until repossessed or re-delivered by Radtrax and, upon request from Radtrax, the Purchaser undertakes to hand over and return the goods to Radtrax. The Purchaser shall affect re-delivery to Radtrax, at Radtrax's request, and at the Purchaser's own cost and risk.

f) The provisions of clause 4 shall prevail, notwithstanding anything to the contrary contained in these Conditions of Sale.

5. Price Increases

a) The purchase price is based on the cost to Radtrax of materials, freight, import duties and on prevailing exchange rates at the time of order. In the event of any increase in such costs or the change in any rate causing an increase in the cost to Radtrax, Radtrax shall have the right to increase the purchase price with prior notice to the Purchaser.

b) If the Purchaser disputes Radtrax' s right to increase the purchase price in terms of clause 5(a) or the amount of any such increase then that dispute shall be determined by an independent Auditor, whose decision shall be final and binding for both Radtrax and the Purchaser. The costs incurred in respect of such Auditor shall be borne by Radtrax and the Purchaser in equal parts.

c) Any price increase for the reasons as listed above, shall not entitle the Purchaser to hold Radtrax to a quoted price, but merely entitles the Purchaser to cancel his order. The Purchaser confirms to be fully acquainted with the variables applicable to the importation of goods and having made provision for such potential price increases when placing his order.

6. Exclusions

a) Any statement, recommendation, figure, advice, formula, specification, date, illustration, diagram, price list, dimension, mass, performance, estimate or drawing given by Radtrax to the Purchaser, unless recorded in writing and signed by the Purchaser and Radtrax:

i) shall not under any circumstances form part of the contract or be regarded as a representation inducing the contract;
ii) has been given as a general guide only and is not intended to be relied upon as being necessarily correct

b) Radtrax shall not be liable under any circumstances whatever for
i) any loss of profit or other special damages or any indirect or consequential

damages arising out of any breach by it of any of its obligations under this contract; or

ii) any claim for alleged shortages in delivery, unless written notice of such a claim is received by Radtrax within 24 hours of the delivery of such goods (where written notice of a shortage will not amount to an admission by Radtrax as to the correctness thereof); and

iii) any loss or damage of whatever nature, including consequential loss or damage arising out of delays or failure to deliver due to fire, explosion, unavoidable breakdown of machinery, government acts and/or regulations, strikes, war, any Acts of God, weather problems, natural disasters, 3rd party transportation delays and any other circumstances which are reasonably beyond the control of, and unforeseen by, Radtrax.

c) Radtrax' s liability for any claim or breach shall never exceed the value of the goods of the subject matter of the contract giving rise to the claim or breach.

d) The Purchaser shall not have any damages claim of any nature whatsoever against Radtrax for any failure by Radtrax or its authorized agents or representatives to carry out any obligations under the contract.

e) Radtrax does not give any warranty or guarantee or make any representations whatsoever in respect of the goods or their fitness for any purpose (whether or not this purpose is known to Radtrax) and the Purchaser herewith undertakes to ensure that he is familiar with all aspect of the product prior to placing his order.

f) Radtrax shall not be liable for any latent or other defect whatsoever in the goods, if: **i)** the goods have been subjected to any kind of process or treatment after

delivery, or

ii) the goods were sold substandard it being specifically recorded and agreed that Radtrax did not and could not have had knowledge of any defect

therein.

g) If in any event other than that referred to in paragraph 6(f) herein, the Purchaser alleges that the goods were defective at the date of delivery or were not in accordance with the contract, the Purchaser, even if it is able to substantiate such allegations, shall have no claim whatsoever against Radtrax unless such a complaint is received in writing by Radtrax and the alleged defective goods are received by Radtrax for its inspection within 6 months from the date of delivery to the Purchaser. The onus is on the Purchaser to inspect the goods immediately on delivery and inform Radtrax of any alleged or potential defects.

h) Any goods purchased from Radtrax that contain any moving parts and are of mechanical nature, shall be free of defect for a period of not less than 6 months from the date of delivery to the Purchaser thereof. Should any such product fail to function properly, the Purchaser shall have the right to choose between a refund (less an appropriate usage fee) or for such product to be replaced or repaired. The onus shall lie with the Purchaser to prove that the unit was not misused, mistreated or used in an environment it was not designed for. The Purchaser confirms to be aware that certain environments will require specific quality standards and accordingly the Purchaser will not be able claim a refund or remedy should Radtrax be able to show that the purchaser has misused, abused or been negligent in his use of product. The Purchaser accepts full responsibility that in such instance the consequence would be a void

warranty claim. The onus shall at all times be on the Purchaser to correctly match the product with his requirements and or usage expectation, prior to any purchase made.

i) Radtrax and its agents shall, if in fact any defects are proved as envisaged in paragraph 6(f) and 6(g) herein, be deemed to have had no knowledge of any such latent or other defects in the goods and Radtrax' s liability may in any event never exceed the value of the defective goods in question.

j) The Purchaser confirms that he is fully acquainted with the purchased product and its purpose and will do all to ensure that the product is used and stored in a safe environment. The Purchaser herewith indemnifies Radtrax against any liability of misuse, unsafe storage and incorrect handling of said purchased goods.

7. Samples

Any samples required by any prospective Purchaser are to be purchased at their normal selling price and are due for payment at the time of Sale unless otherwise indicated by Radtrax in writing.

8. Accounts

a) In order to receive any goods on credit or place any forward orders, any prospective Purchaser is required to apply to open an account with Radtrax for which the prospective Purchaser has to submit a duly completed credit application form, signed by a duly authorized representative of the Purchaser and hand it to Radtrax for approval thereof.

b) Such duly completed and signed credit application forms will be used by Radtrax in order to ascertain in its sole discretion whether an account under the conditions contained herein will in fact be opened for the Prospective purchaser. Radtrax's decision in this regard shall be final and binding and no reasons for its decision shall be required.

c) In the event that Radtrax should decide in its sole discretion to open an account for a prospective Purchaser, any payment term arrangement shall only come into effect once a Credit Approval has been issued to the Purchaser, duly signed by a Director, General Manager, Financial Manager or Accountant of Radtrax and all terms contained therein shall be material, whereby any breach of any terms or any misinformation contained in the applications or any change of owners, partners, directors or members in the purchaser's entity, shall be considered as material breach or change to the arrangement, giving rise to Radtrax cancelling such agreement after having given due notice thereof.

9. Jurisdiction

a) The Purchaser consents to Radtrax taking any legal proceedings arising out of this sale at Radtrax' s option either in the High Court or in the Magistrate's Court having jurisdiction. The Purchaser consents to the latter court having jurisdiction in relation to the matter of the claim hereunder, notwithstanding that the amount of such claim may otherwise be beyond the jurisdiction of such latter court.

b) The purchaser agrees that this contract shall be deemed to have been entered into in the Magisterial District of Radtrax' s address as specified on the face of the Invoice hereof and as such the local Magistrate's Court jurisdiction shall at all times and irrevocably be accepted by the Purchaser, should Radtrax elect to institute proceedings in the Magistrate's Court.

c) Radtrax shall be entitled at its sole discretion to refer any dispute arising out of this sale to informal and expeditious arbitration, at any time, notwithstanding that legal proceeding may have already been instituted by either party, in accordance with the Laws of South Africa or any other country having jurisdiction.

d) This contract shall be deemed to have been made in the Republic of South Africa unless the goods were sold outside South Africa in which case it shall be the country from which the physical goods were delivered and the construction, validity and performance of these Conditions of Sale shall be governed in all respects by the Law of the Republic of South Africa or any other country having jurisdiction.

10. Validity

Should any clauses or terms of these Conditions of Sale found to not be legally binding or applicable, it shall in no way affect the remainder of the terms of this agreement which shall remain of full force and effect. The onus of proof that any terms contained herein are unlawful shall at all times lie with the purchaser.

11. Costs

In the event of the Purchaser breaching any of the provisions and terms of these conditions of sale, it shall be liable to pay all legal costs incurred by Radtrax in connection therewith as between attorney and own client, including collection commission, calculated in accordance with the non-litigious tariff recommended by the Law Society of the Cape of Good Hope, irrespective of whether legal action is instituted by Radtrax.