

**MEMORANDUM OF AGREEMENT OF THE SALE
OF VECHILE PARTS AND ACCESSORIES**

Entered into by

PARTS PAVILLION (PTY) LTD

(Reg nr 2017/502154/07)

Herein represented by **TANYA NEL (ID 850501 0030 08 8)**

being duly authorized thereto

hereinafter referred to as the "Seller"

and

(Reg nr _____)

Herein represented by _____

(ID _____)

being duly authorized thereto

herein referred to as the "Purchaser"

1. INTERPRETATION

1.1 In this memorandum of agreement except in a context indicating that none other meaning is intended:

1.1.1 "Seller" means Parts Pavillion (Pty) Ltd (Reg nr 2017/502154/07) t/a "Parts Pavilion";

1.1.2 "Purchaser" means _____;

1.1.3 "Supplier" means the entity/entities supplying the goods to the Seller;

1.1.4 "goods" mean the vehicle parts and accessories the Seller sells to the Purchaser;

1.1.5 "the website" means the website owned and operated by the Seller that can be accessed by the Purchaser to be enabled to purchase the goods known as www.Partspavilion.co.za;

1.1.6 "the e-mail" means info@partspavilion.co.za or "admin@partspavilion.co.za

1.1.7 "the working of the website" means the working procedures as described in Annexure A hereto;

1.1.8 "the website terms and conditions" means the terms and conditions governing the ordering, sale and delivery of the goods

1.1.9 "interest" means the interest calculated from the date due at 3% of the outstanding amount above prime lending rate per annum until the amount due is repaid in full.

1.2 Any annexure to this agreement forms part of the agreement.

2. INTRODUCTION

2.1 The purchaser purchases the goods on the terms and conditions of this agreement either by the website or by the e-mail. .

3. PLACING OF AN ORDER

3.1 The Purchaser shall place an order for the purchase of the goods

3.1.1 on the website ;or

3.1.2 via the e-mail

4 MANNER OF PLACING OF ORDERS

4.1 All orders shall be placed in terms of clause 3 above;

4.2 No verbal orders shall be accepted by the Seller, and the Seller shall not be responsible for any errors or misunderstandings occasioned by the Purchaser's failure to submit orders in writing;

4.3 Orders shall constitute irrevocable offers to purchase the goods in question and shall be capable of acceptance by the Seller by the written acceptance or confirmation of the order;

4.5 In the event of a quotation for the price and volume of goods, the period for acceptance of the quotation shall be the period as stated on the quotation;

5 PRICE

5.1 The price of the goods shall be the price at the time of dispatch, collection or delivery of the goods;

5.2 The Purchaser acknowledges that the price may differ from the price on the quotation in the event of the Supplier increasing the price of the goods before dispatch, collection or delivery;

5.3 VAT shall be added to all prices.

6 PAYMENT

6.1 The manner of payment is by way of electronic funds transfer (EFT). Any goods paid or for and not collected within 30(thirty) days may be advertised and sold to defray any expenses the Seller may have incurred;

6.1.1 Payment shall always be made before dispatch, collection or delivery of the goods;

6.2 Should the Purchaser fail to make payment timeously or withhold payment or any portion thereof for any reason whatsoever, the Seller shall be entitled to withdraw or reverse any agreed discount on the purchase price;

7 WARRANTIES AND INDEMNITY

7.1 The Seller shall be exempt from and shall not be liable under any circumstances for:

7.1.1 any direct, indirect or consequential damages of any nature or any loss of profits or other damages of any nature which the Purchaser may suffer as a result of the use or sale of any of the goods;

7.2 In the event of the Purchaser purchasing the goods from the Seller, it is expressly agreed that the Seller provides no warranty that the goods supplied shall be fit for the purpose for which it may be intended by the Purchaser;

7.3 The Seller shall not be liable for any loss caused by failure where the goods are sold to the Purchaser and are thereafter fitted to any vehicle or equipment by the Purchaser. It is hereby agreed that the exclusion shall cover the Seller and exempt it from loss for all and any damages suffered by any purchaser, whether such loss relates to loss of profit or damages, whether direct or indirect, consequential or otherwise, foreseen or otherwise.

8. OWNERSHIP AND RISK

8.1 The ownership of the goods sold by the Seller to the Purchaser shall not pass to the Purchaser until payment of the full purchase price thereof has been made.

8.2 The risk in and to the goods sold hereunder shall pass to the Purchaser on dispatch, collection or delivery of the goods notwithstanding the reservation of ownership therein as set out in 8.1 above:

8.3 If third parties try to assert or substantiate rights of any goods in which the Seller still has proprietary rights, the purchaser shall be obligated to inform the Seller of any such action immediately. The Seller shall be entitled to take whatever action it may see fit to protect its rights, including cancellation of the sale, repossession or re-sale of the goods. In the event of any such cancellation of the sale, the Purchaser undertakes to look after and keep the goods safe until possession or it is resold by the Seller and, upon request from the Seller, the Purchaser undertakes to hand over and return the goods to the Seller.

9. AVAILIBILITY OF GOODS

9.1 The purchaser acknowledge that the Seller can only sell goods made available by the Supplier;

9.2 In the event of the unavailability of the goods after the Purchaser has placed the order, the Seller shall inform the Purchaser thereof whom shall be entitled to a refund of any amount paid for the unavailable goods.

10. DELIVERY OF GOODS

10.1 The Seller may choose to deliver the goods to the Purchaser either by courier of its choice or collection by the Purchaser;

10.2 In the event of delivery by way of courier, the Purchaser shall pay such expenses prior to delivery to the Purchaser or directly to the courier but strictly before delivery.

11. RETURN AND COMPENSATION FOR THE GOODS

11.1 The goods are sold voetstoots;

11.2 The Purchaser shall only receive a credit in the event of the Supplier refunds or credit the Seller on any claim lodged;

11.3 The Purchaser shall only be refunded the value the Supplier deems fit;

11.4 In the event of the Supplier repudiating any claims there will be no refunds to the Purchaser;

11.5 Only in the event of the goods returned to the Seller shall any claim be considered.

12. **JURISDICTION**

This agreement and any documents which may be signed by the Purchaser for the purpose of purchasing the goods shall be governed in accordance with the laws of the Republic of South Africa. Any proceedings that the Purchaser may take against the Seller in terms hereof may, at the election of the Seller, be taken either in the High Court of South Africa (Gauteng Local Division) or in the Magistrate's Court having jurisdiction, over the person of the Seller notwithstanding the actual amount in dispute. By his signature hereto, the Purchaser consents to proceedings being taken in the Magistrate's Court in accordance with the provisions of this clause.

13 **BREACH**

13.1 The Purchaser failing to pay any amount due to the Seller on the due date of such payment or breaching any of the terms of this agreement and failing to remedy such failure or breach within seven days after the delivery to the Purchaser of a written notice requiring the failure or breach to be remedied; or

13.2 The Purchaser being placed under provisional or final sequestration;

13.3 The Purchaser effecting or attempting to effect a compromise or composition with its creditors; or

13.4 A judgement being granted against the Purchaser in respect of any debt which remains unsatisfied for a period of seven days after the granting of such judgement;

13.5 Any property of the Purchaser being attached in execution of any debt; or

13.6 The Purchaser having made any materially incorrect or untrue statement or representation in connection with this agreement or his financial affairs or any particulars thereof and such statement or representation has not been

remedied within seven days after delivery to the Purchaser of a written notice requiring such remedy; or

13.7 The Purchaser committing any act or allowing any omission which may prejudice the Sellers rights under this agreement;

13.7.1 then and in any such event, the Seller shall, without prejudice to any other rights which it may have in law, be entitled to claim immediate repayment of the balance of the amount due and accrued interest pursuant to clause above then owing by the Purchaser to the Seller, notwithstanding that the due date for payment of such amount has not yet arrived.

14. **DOMICILIUM**

14.1 For all purposes of this agreement or with regard to any matter arising hereout or in connection herewith, the parties hereby choose the following addresses as their respective *domicilia citandi et executandi* (“**domicilium**”) –

14.1.1 Seller:

14.1.2 Purchaser:

14.2 Any party shall be entitled by notice in writing to the other party to change its *domicilium* as set out above.

14.3 Any notice which may be required to be given to a party to this agreement shall be sent to such party’s address as set out above, or duly altered from time to time, and shall-

14.3.1 be delivered by hand, in which event it shall be deemed to have been received on the date of delivery; or

14.3.2 sent by prepaid registered post, in which event it shall be deemed to have been received on the fifth business day after posting.

15. **GENERAL**

This agreement-

15.1 constitutes the entire sale agreement between the parties;

15.1.1 shall not be amended or changed except by an instrument in writing of subsequent date signed by duly authorised representatives of each of the parties.

15.1.2 No indulgence, extension of time, relaxation or latitude shown, granted or allowed by either party to the other shall be construed as a waiver of any of its rights under this agreement.

15.1.3. Each of the parties hereby undertakes to do and procure the doing by other persons, to refrain and procure that other persons will refrain from doing all such acts and to pass and procure the passing of all such resolutions of directors or shareholders of any company, to the extent that same may lie within such party's power and may be required to give effect to the import or intent of this agreement.

15.1.4 A certificate signed by any director of the Seller (whose appointment need not be proved) shall constitute *prima facie* evidence of the total amount then due by the Purchaser to the Seller in terms hereof and shall be sufficient for the purpose of enable the SELLER to proceed to a competent Court for provisional sentence or default judgement.

15.1.5 The non-enforcement of any provisions of this agreement or any indulgence which the SELLER may grant to the PURCHASER shall be without prejudice to the rights of the SELLER to insist upon strict compliance by the PURCHASER of all the provisions of this agreement.

15.1.6 No indulgence, forbearance or latitude granted by the SELLER in favour of the PURCHASER in respect of the fulfilment of any of its obligations

to the SELLER, irrespective of the source of such obligation, shall affect the rights and obligations of the SELLER in terms of this agreement.

15.1.7 The Purchaser may not cede any of its rights or delegate or assign any of its obligations in terms of this agreement without the prior written consent of the Seller.

16. **SURETY**

The party signing this document on behalf of the Purchaser as authorised signatory for a company, close corporation, or trust together with all directors, members or trustees as the case may be, are to sign the Deed of Suretyship when called upon to do so by the Purchaser.

SIGNED BY THE PURCHER WHO BY ITS SIGNATURE ACKNOWLEDGES THAT IT IS DULY AUTHORISED THERETO ON _____ AT _____

PURCHASER.....

WITNESS.....

WITNESS.....

SIGNED BY THE SELLER ON _____ AT _____

SELLER.....

WITNESS.....

WITNESS.....

ANNEXURE “A”

1. The website can be accessed at www.Partspavilion.co.za
2. By clicking on the “register now” button on the website, the Purchaser acknowledges that he has read and agrees to be bound by the website terms and conditions and understands it;
3. The Seller undertakes to instruct / inform the Purchaser in the event of the Purchaser not understanding the working of the website on request;
4. The Purchaser shall register in the prescribed manner.
5. Only the designated person of the Purchaser whom shall be disclosed to the Seller shall have access to the website and place orders for goods on the Website .
6. The designated person/s in 5 above is/are.....
7. To register as a user, the Purchaser shall provide a username and password and provide certain information details to the Seller as per the form atched hereto. The Purchaser shall use its unique username and password to access the website in order to purchase goods.
8. The Purchaser agrees and warrants that its username and password shall :
 - 8.1 be used for personal use only; and
 - 8.2 not be disclosed by the Purchaser to any third party.
9. FORM