



# AUTO SPRING CENTRE



Accounts  
P.O. Box 7231  
East London  
5200  
autospringcentre@gmail.com

Umtata Springs cc T/A  
Reg. No. CK 2000/023886/23  
VAT No. 4240225401

East London  
9 Dyer Street  
Arcadia  
Tel: 043 742 5055  
Fax: 043 742 2550

## Terms and Conditions of Sale

Except as otherwise agreed in writing, all transactions, quotations, tenders, offers to contract and contracts, whether written or oral, for the supply of the Products and/or services ("Products") by Umtata Springs cc, trading as AutoSpring Centre, shall be subject to these standard terms and conditions of sale. These terms and conditions are subject to the CPA and the Credit Act.

### 1. DEFINITIONS

- 1.1. "Affiliate" means any person, firm or corporation which is a subsidiary company, parent company or affiliate company of AutoSpring Centre or the successor to AutoSpring Centre by a merger or by a transfer of a substantial amount of AutoSpring Centre's assets;
- 1.2. "AutoSpring Centre" shall mean Umtata Springs cc, trading as AutoSpring Centre;
- 1.3. "CPA" shall mean the Consumer Protection Act 68 of 2008;
- 1.4. "Client" shall mean the ultimate end user of the Product;
- 1.5. "Credit Act" shall mean the National Credit Act 34 of 2005;
- 1.6. "Customer" shall mean the person, natural or otherwise, who purchases the Products from AutoSpring Centre under these terms and conditions;
- 1.7. "Customer documents" shall mean any documentation or previous discussions, whether in writing or otherwise, between AutoSpring Centre and the Customer relating to the sale of Products, with the exception of a franchise agreement as defined in the CPA;
- 1.8. "MCA" shall mean the Magistrate's Court Act 32 of 1944;
- 1.9. "Products" shall mean all items, including services, presently being sold or supplied by AutoSpring Centre, including, but not limited to: leaf springs, coiled springs, parabolic springs, shocks, pins, bushes, ubolts and centre bolts and such other items as may be sold by AutoSpring Centre from time to time;



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## 2. PURCHASE

2.1. The Customer shall be bound by these standard terms and conditions of sale in all transactions for the purchase of Products. Any franchise or similar agreement between the Customer and AutoSpring Centre, or any of its Affiliates, supersedes the clauses of these terms and conditions, to the extent of any conflict.

2.2. The Customer shall inform its Clients that the Products are sold subject to these standard terms and conditions of sale and the Customer shall be deemed to have so informed its Clients in respect of all sales of the Products by the Customer to its Clients. Customer shall retain proof of each instance of such disclosure, which will be presented to AutoSpring Centre on demand.

## 3. ORDERS

3.1. AutoSpring Centre reserves the right to reasonably decline any order and/or to suspend delivery and/or to decline to supply the Products to the Customer.

## 4. PAYMENT

4.1. The payment terms are as follows:

4.1.1. The terms of payment are strictly the last trading day of the month from the date of statement, unless otherwise agreed to by AutoSpring Centre in writing;

4.1.2. Payment should be reflected in AutoSpring Centre's bank account within the last trading day of the month, unless, otherwise agreed to by AutoSpring Centre in writing.

4.2. Subject to the Credit Act, all overdue accounts shall accrue interest at the rate of 2.5% (two per cent) per month, calculated from the due date for payment, to the date of final payment.

## 5. DELIVERY

5.1. Subject to the CPA, and although AutoSpring Centre will endeavour to deliver the Products according to the Customer's requirements, AutoSpring Centre will not be bound to such delivery requirements of the Customer and accordingly AutoSpring Centre shall not be liable in any manner whatsoever for failure or delay in delivery.

5.2. AutoSpring Centre shall at its discretion be entitled to effect and invoice for part deliveries.

5.3. When effecting delivery at the Customer's premises, or such other premises as nominated by the Customer, the Customer shall be responsible for receiving, unloading and checking the Products in the presence of the AutoSpring Centre representative making delivery.



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5.4. In the event of short delivery the Customer shall forthwith upon delivery endorse AutoSpring Centre's copy of the delivery note specifying details of the short delivery and thereafter within 3 (three) days of such delivery the Customer shall lodge a claim with AutoSpring Centre in respect of such short delivery.

5.5. In the event that the Products are delivered in a damaged or defective state, the Customer shall forthwith upon delivery endorse AutoSpring Centre's copy of the delivery note detailing the damage or defects to the Products and the Customer shall within 3 (three) days of such delivery notify AutoSpring Centre of such damage or defects in the Products delivered.

5.6. On compliance by the Customer with 5.4 and 5.5, and provided AutoSpring Centre agrees with the information supplied by the Customer, AutoSpring Centre will either make up the shortfall in the Products, or replace the damaged or defective Products as the case may be.

5.7. Subject to the CPA, and notwithstanding the provisions of 5.4, 5.5 and 5.6, AutoSpring Centre shall not be liable to the Customer for any loss or damage occasioned by reason of the circumstances in 5.4 and / or 5.5.

5.8. Delivery of the Products at the place of delivery nominated by the Customer shall constitute good delivery. Any acknowledgement of receipt by the Customer or any authorised representative or employee, whether direct or indirect, in writing or otherwise shall serve to also confirm delivery.

5.9. If, on the instructions of the Customer, the Products are delivered to a carrier for delivery to the Customer, delivery to the Customer shall be deemed to have been duly effected on delivery to the carrier, who shall at all times be and remain the Customer's agent for purposes of these terms and conditions.

5.10. For purposes of this clause, "AutoSpring Centre" shall include any Affiliate, agent or independent contractor who may effect delivery on behalf of AutoSpring Centre.

5.11. AutoSpring Centre hereby reserves the right to charge a reasonable handling fee for the return of any Product due to any reason other than the fact that the Product failed, is defective, hazardous or unsafe as defined in the CPA.



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## 6. OWNERSHIP

6.1. Irrespective of the type of transaction, AutoSpring Centre hereby reserves its rights to ownership of the Products until fully paid for by the Customer.

6.2. In order to give effect to 6.1, the Customer shall ensure the Products remain movable property, severable from any other movable or immovable property to which the Products may be attached.

6.3. In the event of non-payment by the Customer for any reason whatever, AutoSpring Centre shall, in keeping with its rights of ownership in the Products, be entitled to repossess the Products without prejudice to any other rights of AutoSpring Centre.

6.4. For so long as ownership in the Products remain vested in AutoSpring Centre, the Customer shall:

6.4.1. keep the Products free from attachment, landlord's hypothec, lien or any other legal charge or process;

6.4.2. not without the prior written consent of AutoSpring Centre sell, let, loan, pledge, transfer, otherwise make over or encumber the Products;

6.4.3. forthwith notify its landlord of AutoSpring Centre's reservation of ownership in the Products;

6.4.4. subject to the Credit Act if applicable, keep the Products insured for loss or damage through fire, theft or any other incident, with an insurer acceptable to AutoSpring Centre for the replacement value thereof and the Customer shall pay the insurance premium arising from such insurance promptly and on due date and upon request shall forthwith display such insurance policy and proof of payment to AutoSpring Centre.

## 7. RISK

7.1. On delivery of the Products to the Customer, the risk in and to the Products shall pass to the Customer, notwithstanding that ownership in the Products remain vested in AutoSpring Centre.

## 8. WARRANTY

8.1. Subject to the CPA, AutoSpring Centre makes no representations whatsoever and gives no guarantees against latent or patent defects in respect of the Products and all conditions and warranties whatsoever whether implied or otherwise are hereby expressly excluded.



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8.2. Subject to the CPA, AutoSpring Centre shall not incur any liability of whatever nature arising in contract or delict from any injury, loss or damage to any person or property arising from the use of the Products.

8.3. The Customer shall not convey to its Client a greater obligation or benefit than that given to the Customer by AutoSpring Centre.

8.4. The Products supplied by AutoSpring Centre shall be suitable only for the purpose designed and the Customer shall ensure the Products are handled, stored, installed, used, operated or otherwise dealt with in a normal and proper manner and where applicable, in a manner consistent with the instructions given by AutoSpring Centre.

8.5. Subject to the CPA, no claim shall lie against AutoSpring Centre arising out of or in connection with any defects in, or unsuitability of, the Products.

8.6 Further provisions of the Warranty Statment are available on our website at [www.autospringcentre.co.za](http://www.autospringcentre.co.za)

## 9. INDEMNITY

9.1. Without derogating from the generality of any of the provisions herein, and subject to the CPA, AutoSpring Centre shall not at any time be liable for any claims of whatsoever nature and howsoever arising for direct or consequential loss or damage which may be sustained by the Customer or any of the Customer's Clients in connection with the use of the Products and the Customer hereby indemnifies AutoSpring Centre against all such claims.

9.2. The Products are sold subject to AutoSpring Centre's specifications and recommendations. Failure to adhere to these may result in damage, injury or harm.

## 10. BRANDING, MARKING, REHEATING

10.1. The Customer shall not deface, brand, remould, reheat, recut or tamper in any way whatsoever with the Products other than part worn tyres.

10.2. The Customer shall not sell, offer for sale, advertise or supply the Products which have been so defaced, branded, or tampered with in any way.

10.5. AutoSpring Centre accepts no liability of any nature for any Reconditioned Springs.

10.6. The Customer shall not reheat any spring supplied by AutoSpring Centre.



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## 11. PROHIBITION OF SET-OFF

11.1. The Customer, to the extent allowable in terms of the CPA, waives any right of set-off the Customer might have against AutoSpring Centre in respect of any amount which may now or in the future be or become owing by AutoSpring Centre to the Customer. The Customer agrees and acknowledges that it shall not be entitled to advance the defence of set-off or mutual extension of debts or counter-claim in any proceedings which AutoSpring Centre may bring against the Customer for the enforcement of its rights, whether in respect of credit facilities extended by AutoSpring Centre to the Customer, or otherwise.

## 12. SECURITY

12.1. Any claim the Customer may at any time have arising wholly or partially out of, or in connection with, the disposal by it of the Products, or some of them, shall be deemed to have been ceded to AutoSpring Centre as security for the Customer's obligations hereunder.

## 13. CUSTOMER'S DOCUMENTS

13.1. Subject to the CPA, in all transactions with the Customer, any clauses or conditions contained in, or forming part of the Customer's documents, shall not amend or modify these terms and conditions of sale and AutoSpring Centre shall not be bound thereby.

13.2. These standard terms and conditions of sale shall supersede any conflicting clauses or conditions, whether verbal, contained in any of the Customer's documents, or otherwise.

## 14. PROPRIETARY RIGHTS

14.1. The Customer shall not do anything to infringe any rights owned or licensed by AutoSpring Centre, including but not limited to, any form of intellectual property right in respect of the Products.

## 15. CREDIT

15.1. Subject to the Credit Act, if applicable, AutoSpring Centre shall in its sole and absolute discretion be entitled to alter any credit terms granted to a Customer and AutoSpring Centre shall be entitled to ask the Customer, who shall be obligated, to provide guarantees to secure payment of the purchase price.



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## 16. EXCHANGE RATE

16.1. In respect of any transaction where AutoSpring Centre quotes in Rands and the exchange rate applies AutoSpring Centre will be paid the Rand equivalent of the quoted price irrespective of the exchange rate ruling at the date of payment.

16.2. In respect of import/export sales, the Customer shall be responsible for obtaining all the necessary government approvals and all the requisite permits and AutoSpring Centre will endeavour to assist the Customer in this regard insofar as this may be necessary.

16.3. If any authorisation or permit referred to in 16.2 is refused or revoked, the Customer shall make good to AutoSpring Centre all expenses or losses AutoSpring Centre may have incurred in assisting the Customer to secure such authorisation or permits; provided that loss of profit will be excluded unless the refusal or revocation is due to fault on the Customer's part.

## 17. INDULGENCE

17.1. No indulgence which AutoSpring Centre may grant to the Customer shall in any way be deemed to affect, prejudice or derogate from the rights of AutoSpring Centre, nor shall such indulgence constitute a waiver or novation of any of the rights of AutoSpring Centre who shall not thereby be precluded from exercising any rights against the Customer which may have arisen in the past, or which may arise in the future.

## 18. BREACH

18.1. Should the Customer fail to make any payment to AutoSpring Centre under any contract, or should the Customer be in breach of any of the provisions of these standard terms and conditions of sale and fail to remedy such breach within seven days after receiving a written demand that it be remedied, AutoSpring Centre shall be entitled, without prejudice to any alternative or additional right of action or remedy available to AutoSpring Centre to cancel any contract with the Customer with immediate effect.

18.2. AutoSpring Centre shall be entitled to immediately repossess all Products supplied to the Customer and not yet paid for.

## 19. LEGAL COSTS

19.1. In the event that any legal action is taken, or any amount remains outstanding and AutoSpring Centre instructs attorneys to recover such unpaid costs, the Customer shall be liable for all legal costs incurred by AutoSpring Centre.



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## 20. APPLICABLE LAW

20.1. All transactions shall be governed in all respects by, and shall be construed according to the laws of the Republic of South Africa.

20.2. Subject to the CPA, the Customer agrees and consents in terms of Section 45 of the MCA to the jurisdiction of a Magistrate's Court having jurisdiction in respect of the Customer or the claim in terms of Section 28 of the MCA in respect of any proceedings or claims or action being instituted against the Customer by AutoSpring Centre in terms hereof or otherwise, notwithstanding that the amount of such claim may exceed the jurisdiction of such Magistrate's Court, provided that AutoSpring Centre may in its discretion be entitled to bring such proceedings in any other court of competent jurisdiction, the Customer agreeing and submitting itself to the jurisdiction of the Eastern Cape High Court of South Africa or any other division of the High Court of South Africa chosen by AutoSpring Centre in the event of AutoSpring Centre exercising its rights in terms hereof.

## 21. DOMICILIUM

21.1. The Customer chooses its domicilium citandi et executandi as at the address as reflected in the "Application for Credit Facilities".

## 22. THE CREDIT ACT

22.1. Notwithstanding the preceding provisions of these terms and conditions, in the event that the Credit Act is applicable to this agreement, then:

22.1.1. Should the purchase price of any Products sold not be paid to AutoSpring Centre under its payment terms reflected in 4.1, then an incidental credit agreement shall be deemed to be concluded in respect of the sale in question, 20 (twenty) business days after AutoSpring Centre first charges interest on the amount due in terms of such sale; and

22.1.2. The Credit Act, in so far as it applies to an incidental credit agreement, shall apply to the sale of the Products by AutoSpring Centre to the Customer.

22.2. AutoSpring Centre shall be obligated to comply with the Credit Act before being entitled to proceed in terms of clauses 6.3 and 18 and before commencing any legal proceedings against the Customer to enforce this agreement; and

22.3. AutoSpring Centre shall be entitled to recover from the Customer all costs and charges permitted in terms of the Credit Act, including, in the event of a payment default, collection cost and default administration charges.