

## 1. Definitions and interpretations

1.1. In this agreement the words hereunder will have the meaning assigned to them below:

1.1.1. "AERT" means Advance Environmental Recycling Technologies Inc, being the manufacturer of the product.

1.1.2. "Accredited installer" An Envirodeck Accredited Installer is an elite group of professional installers who have been exclusively certified to build, using Envirodeck products from residential applications through to commercial projects. These installers have undergone installation testing and are certified to install the product correctly.

1.1.3. "Agreement" means these terms and conditions and any application forms, orders, schedules, annexures and attachments hereto, which agreement extends to include credit applications that are approved.

1.1.4. "Capital Amount" refers to the initial value of indebtedness, to Envirodeck by the customer or client before interest has been levied onto it, in respect of credit transactions.

1.1.5. "Customer" means the customer or client on the credit application form to which these terms and conditions are attached, alternatively in the event of a cash sale, the customer or client to whom the relevant products are sold.

1.1.6. "CPA" means the Consumer Protection Act 68 of 2008.

1.1.7. "Effective date" means the date of signature of this agreement.

1.1.8. "Envirodeck" means Multidirect Investments 6 (Pty) Ltd trading as Envirodeck which is the supplier of the products as described herein.

1.1.9. "Product" refers to the range of products sold by Envirodeck including but not limited to decking boards and accessories which products are not manufactured by Envirodeck but merely supplied.

1.1.10. "VAT" means value added tax as defined in the Value Added Tax Act 89 of 1991.

1.1.11. "Warrantee" means the warrantee provided to the customer, subject to the conditions contained herein being complied with, which is provided by AERT and facilitated by Envirodeck, and is in addition to the implied warrantee provided for in the CPA.

1.2. The clause heading contained in this agreement are for ease of reference purposes only and shall not be used in the interpretation of this agreement. Words importing any one gender includes the other gender, the singular includes the plural and vice versa, and natural persons includes juristic entities and vice versa.

## 2. Commencement and duration

2.1. This agreement shall commence upon the effective date in respect

of the first order for products to be supplied, and will extend to any subsequent orders placed by the customer with Envirodeck.

2.2. In the event of credit transactions, the provisions contained herein, in addition to the provisions of a credit application/agreement, shall continue to apply until all indebtedness to Envirodeck has been settled.

2.3. All orders that are agreed variations to orders, whether oral or in writing, shall be binding and subject to these terms and conditions and may not be cancelled.

2.4. Insofar as credit transactions are concerned the agreement will continue until such time that all indebtedness to Envirodeck has been settled.

## 3. Charges and payments

3.1. All quotations provided by Envirodeck to the customer shall remain valid for the period stipulated on such quotation. Such quotations are subject to the availability of the products, and the prices quoted, are subject to any increase in the cost price, including currency fluctuations with or without prior notice.

3.2. The customer shall not be entitled to return any of the products for credit. The Directors of Envirodeck shall exercise a sole discretion in respect of any credit, or products returned and any credit passed may be subject to a handling fee of 10% (ten percent).

3.3. Ownership of the product shall not pass to the customer until payment has been received in full of all or any indebtedness to Envirodeck in respect of products sold to a customer, which products shall remain movable property severable from any other movable and/or immovable property to which the product may be attached.

3.4. Payment shall be made to Envirodeck immediately in respect of cash sales or within 30 (thirty) days of the date on the invoice in respect of the credit agreements.

3.5. Should the customer have concluded a credit agreement with Envirodeck, the terms of such credit agreement shall apply in respect of payments to be made, which credit agreement shall be read in conjunction with these terms and conditions which terms and conditions apply not only to cash sales but also extends to include credit agreements.

3.6. In the event of a credit agreement being concluded, the customer acknowledges that Envirodeck shall be entitled to take any steps necessary to investigate the credit worthiness of the customer, including obtaining a report from the customer's suppliers, bankers, accountants and credit bureaus.

3.7. Envirodeck shall be entitled to appropriate any payments received towards the reduction of any indebtedness to it, and any interest due in respect thereof before allocating it to the capital amount.

3.8. In the event of the amount falling due for payment by the customer

to Envirodeck in terms of, or pursuant to this agreement, which amount is not paid on its due date, it shall bear interest calculated from the due date for payment thereof until date of payment at the rate equal to the prime overdraft rate plus 2% (two percent).

3.9. If any amount owed by the customer is not paid on the due date, without prejudice to any other rights that Envirodeck may have in law, it may then immediately suspend the carrying out of any of its then uncompleted obligations until payment is made in addition to interest that will accrue to the outstanding amount.

3.10. The customer shall be liable to the seller for all legal expenses, including any collection fees incurred in the event of collection of payment by any agency appointed by Envirodeck, and for any litigation with regard to collection of payment.

3.11. The customer agrees that the amount due and payable to Envirodeck is the amount reflecting on the invoice and when in dispute, may be determined and proven by a certified certificate issued and signed by any director or manager or member or partner or independent auditor. Such certificate shall be binding and shall be prima facie proof of the indebtedness of the customer.

3.12. Any claim the customer may at any time have, arising wholly or partially out of, or in connection with the products, shall be deemed to be ceded to Envirodeck as security for the customer's obligations in the event of a credit sale.

## 4. Liabilities

4.1. It is the sole responsibility of the customer to determine whether the products ordered are suitable for the purposes of intended use and Envirodeck shall not be held liable towards the customer in this regard.

4.2. Under no circumstances shall Envirodeck be held liable for any material calculation errors made by the customer in respect of the product.

4.3. The customer agrees that neither Envirodeck nor any of its employees will be liable for any negligence or innocent misrepresentation made to the customer.

4.4. The customer indemnifies Envirodeck against and holds Envirodeck harmless from any claim by any third party arising directly or indirectly out of access to or use of the product supplied by Envirodeck or in respect of any matter for which liability of Envirodeck is excluded in terms of the above.

4.5. Subject to Envirodeck being in wilful default of its obligations or in a manner which is grossly negligent, Envirodeck shall not be liable to the customer or any third party for any loss or damage of whatsoever nature and/or howsoever arising (including consequential or incidental loss or damage which shall include but shall not be limited to loss of property or of profit, business, goodwill, revenue or anticipated savings) or for any costs, claims or demands of any nature whether asserted against Envirodeck or against the customer by any party, arising directly or

indirectly out of the products, the use or misuse of the products, or out of any information or materials provided or not provided, as the case may be.

4.6. In addition to 4.5, the customer indemnifies Envirodeck against any claims, costs and expenses arising out of the infringement of copyright, patents, trademark or design supplied by Envirodeck.

4.7. No claim under this agreement shall arise unless the customer has within 7 (seven) days of the alleged breach or defect occurring, given Envirodeck 30 (thirty) days written notice by pre-paid registered post, alternatively by fax or e-mail to rectify any defect of breach of agreement which claims have to be supported by the original tax invoices and a proper breakdown of the alleged breach.

4.8. Under no circumstances will Envirodeck accept liability for:

4.8.1 the improper use of the product,

4.8.2 improper installation and failure to adhere to Envirodeck installation guidelines;

4.8.3 improper gapping;

4.8.4 use of Envirodeck products beyond residential applications or in an application not recommended by Envirodeck guidelines and local building codes;

4.8.5 improper or unauthorised maintenance, adjustments, accessories, modification or repairs without Envirodeck's prior approval; and

4.8.6 improper handling, storage, abuse or neglect by the Purchaser, transferees or third parties.

4.9. Envirodeck will not be held responsible for force majeure (acts of God and nature, beyond human control) and environmental conditions, including but are not limited to:

4.9.1 an act of God, act of public enemy, act of governmental body or agency (foreign or domestic), sabotage, riot, explosion or other catastrophe or epidemic;

4.9.2 movement, distortion, collapse or settling of the ground or the support structure on which Envirodeck product is installed;

4.9.3 flooding, hurricanes, earthquakes, lightening; and

4.9.4. other environmental conditions such as air pollution, stains, mold, and mildew.

4.10. Envirodeck will not be held responsible for normal wear and tear including, but not limited to:

4.10.1 Staining of the products caused by foreign substances such as dirt, greases and oil;

4.10.2 normal weathering (defined as exposure to sunlight, weather and atmosphere which will cause any coloured surface to gradually fade, flake, chalk or accumulate dirt and stains);

4.10.3 variations or changes in the colour of products;

4.10.4 other ordinary wear and tear expected in the normal life of the product.

## 5. Delivery

5.1. Delivery of the products to the customer shall take place at the place of business of Envirodeck or at a specified delivery address as agreed to in writing by Envirodeck.

5.2. Delivery and performance times quoted are merely estimates and are not binding on Envirodeck.

5.3. The customer confirms that where delivery of products have already taken place, that such products were inspected and that the customer is satisfied that these conform in all respects to the quality and quantity ordered and are free from any defects.

5.4. In the event of any order from the customer providing for the delivery of product at various stages, then each delivery shall be deemed to be a separate and divisible agreement and the terms and conditions herein contained shall apply to each such delivery as if same were the subject of an independent agreement.

5.5. No dispute arising from any such one delivery shall affect the balance of the agreement between Envirodeck and the customer or the rights and the obligations of either Envirodeck or the customer. Envirodeck shall have the right to claim pro-rata payment in respect of each consignment of product delivered to the customer.

## 6. Warranties

6.1. AERT's Limited International Warranties

6.1.1 The customer is referred to the Envirodeck website for more information with regard to warranties:  
<http://www.envirodeck.co.za/eco-decking-warranties> ("the website link").

6.1.2 Products are guaranteed according to AERT's Limited international warranties only, which warranties are contained at the abovementioned website link.

6.1.3 Customers' attention are drawn to the distinguishing warranty policies relating to Residential (Legacy and Urban) and Commercial warranties which extends to cover checking, splitting, decay, rot and insect damage to the product.

6.1.4 Customers' attention is drawn to the conditions imposed by AERT insofar as their warranties are concerned (certain conditions which have been set out hereafter AND all such conditions on the website link).

6.1.5 Customers should be aware that should AERT's conditions not be complied with, the warranty shall not be effective. For ease of reference the conditions imposed by AERT are as follows and that the warranty will only apply if:

6.1.5.1 The product was properly installed, by an accredited installer;

6.1.5.2 The product was used for the purpose it was originally sold for under typical and normal commercial conditions;

6.1.5.3 The serial number and product type is clearly visible on the product and not defaced, modified, cut or removed;

6.1.5.4 The customer presents the original sales invoice or receipt showing the invoice number and date of purchase;

6.1.5.5 The customer activates the warranty by completing and mailing the Customer Information Card to Envirodeck's mailing address: [www.envirodeck.co.za](http://www.envirodeck.co.za) or registering online at [www.moistureshield.com/warranty](http://www.moistureshield.com/warranty) within 90 days of the purchase.

6.2. Envirodeck as the supplier of the products accepts no liability towards enforcing the warranties supplied by AERT.

6.3. Envirodeck will endeavour to assist customers with any queries they may have regarding the warranties or the claim procedure.

6.4. Envirodeck is not the provider of the guarantee and cannot assist the customer if the customer has not complied with the conditions imposed by AERT for the warranty to be valid.

6.5. To the extent that the customer requires Envirodeck's assistance, the customer shall return any defective movable products to the premises of Envirodeck at the customer's own cost and packed in the original or suitable packaging, and all risks for the duration of the repair remain with the customer. Transport is excluded and is for the Purchaser's account.

6.6. Notwithstanding Envirodeck's willingness to assist the customer with regard to the warranties, Envirodeck does not itself extend the warranty and is subjected to the same conditions the imposed by AERT as the customer.

6.7. Envirodeck cannot make any undertakings or commitments regarding the warranties and AERT has the sole discretion to exercise its discretion insofar as the warranties and claims in respect of such warranties are concerned.

## 7. Cancellation

7.1. In the event of cancellation the customer shall be liable to pay:

7.1.1. The difference between the selling price and the value of the product at the time of repossession; and/or

7.1.2. All other costs incurred in the repossession of the product; and/or

7.1.3. The value of repossessed or retained pledged products shall be deemed to be the value placed on them by any sworn valuator after such repossession, and such valuation shall be conclusive proof of the value. If the products are not recovered for any reason whatsoever, the value shall be deemed to be nil.

7.1.4. The customer hereby irrevocably authorises Envirodeck to enter its premises to repossess any products delivered and indemnifies Envirodeck against any damage whatsoever relating to the removal of the repossessed product.

7.1.5. The customer shall be liable to Envirodeck for all legal expenses on the attorney and own client scale incurred by Envirodeck in the event of any default by the customer, any litigation in regard to the validity and enforceability of this agreement, or any other issues raised by the customer or Envirodeck.

7.1.6. The customer agrees that Envirodeck will not be required to furnish security in terms of the uniform Rules of the Magistrate's Court or the High Court and that this agreement is governed by the laws of the Republic of South Africa.

7.2. Envirodeck may in addition to the abovementioned cancel the agreement if the customer fails to comply with the obligations imposed on it as in terms of this agreement.

### 8. General

8.1. Subject to clause 2.3 and only in respect of oral orders, no variation, amendment or consensual cancellation of this agreement or any provisional terms thereof shall be binding unless recorded in a written document signed by the customer.

8.2. The parties acknowledge having read and understood this agreement and are not entering into this agreement on the basis of any representations not expressly set forth in it.

8.3. No extension of time or waiver or relaxation of any of the provisions or terms of this agreement, shall operate as an estoppel against either party hereto in respect of its rights under this agreement, nor shall it operate so as to preclude either of the parties thereafter from exercising its rights strictly in accordance with this agreement.

8.4. In the event that any provision of this agreement conflicts with any statute, ruling or order of any government or regulatory body from time to time, such provision of this agreement shall be controlled by the statute, ruling or order.

8.5. Should any of the terms and conditions of this agreement be held to be invalid, unlawful or unenforceable, such terms and conditions shall be severable from the remaining terms and conditions which will continue to be valid and enforceable.

8.6. In the event of any expiration, termination or cancellation of this agreement, provisions hereof which are intended to continue and survive shall so continue and survive. In particular, termination or cancellation of

this agreement shall not affect any rights or duties arising under it with respect to proprietary information.

8.7. The terms and conditions appearing in any schedules hereto, alternatively other documentation from Envirodeck are hereby incorporated into the agreement.

8.8. In the event of any conflict between the standard terms and conditions of this agreement and those appearing in any other documents of Envirodeck, these standard terms and conditions shall prevail.

8.9. The customer acknowledges that it has received a copy of Envirodeck's terms as set out herein and further that the customer has read and understands these terms and conditions and the conditions and confirms what is noted herein, by signature hereunder or present on tax invoices/ delivery notes/ credit notes, that they shall govern all sale of transactions between Envirodeck and the customer.

8.10. The customer acknowledges that credit facilities granted by Envirodeck shall be at the sole discretion of Envirodeck as to the nature, duration and extent and that by its signature hereto, the customer consents to Envirodeck procuring the customer's information from Credit Bureaus and conducting credit checks in respect of the customer.

### 9. Domicilium citandi et executandi

9.1. The customer hereby elects as its domicilium citandi et executandi, which is the chosen address at which it will accept service of any process or notice in terms hereof, the customer's physical address supplied to Envirodeck.

9.2. Envirodeck hereby elects as its domicilium citandi et executandi, at which it will accept service of any process or notice, its normal trading premises.

Signed at \_\_\_\_\_

on the \_\_\_\_\_ day of \_\_\_\_\_ 2013.

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Designation: \_\_\_\_\_ Designation: \_\_\_\_\_

Signature: \_\_\_\_\_ Signature: \_\_\_\_\_