



Sales Agreement:

Bosch reserves the right to add special conditions in addition to this Sales Agreement if the nature of the contractual relationship so requires.

1. Definitions

- 1.1. "Agreement" or "Sales Agreement" means this agreement, its annexures, addendums, appendices and amendments as stipulated in this document.
- 1.2. "Bosch" means Robert Bosch Kenya, Registration number: CPR/2013/123713 situated in Nairobi, Kenya..
- 1.3. "Bosch Order Confirmation" means a document prepared by Bosch and sent to the Purchaser to confirm an Order setting out the nature, quantity, prices and anticipated delivery dates of Products ordered by a Purchaser;
- 1.4. "Complete" means ready for delivery from the Bosch's warehouse and "Completion" must be construed accordingly.
- 1.5. "Order" means Products ordered by the Purchaser from Bosch in the prescribed manner and form.
- 1.6. "Parties" means Bosch and the Purchaser and "Party" means either one of them.
- 1.7. "Price List" means the document published by Bosch as amended from time to time containing the prices for products.
- 1.8. "Products" means the Bosch Power Tools, Accessories, Spare Parts, Measuring Tools and Dremel Power Tools within the Bosch Power Tools product portfolio.
- 1.9. "Purchase Order" means a document sent to Bosch by the Purchaser setting out details of an Order. Bosch shall not be liable for incorrect orders received by Bosch on behalf of the Purchaser.
- 1.10. "Purchaser" means the individual or entity that orders and/or purchases Products from Bosch as specified in a Purchase Order. A Purchaser may also be a Distributor of Bosch as set out herein.
- 1.11. "Trademarks" means the Bosch's logos, insignia, product and/or corporate branding and includes any other similar intellectual property owned by Bosch;
- 1.12. any reference to "days" shall be construed as being a reference to calendar days unless qualified by the word "business" in which instance a "business day" shall be any day of the week other than a Saturday, Sunday and/or a public holiday as gazetted by the government of the Kenya from time to time;
- 1.13. any reference to "business hours" shall be construed as being the hours between 08h30 and 17h00 on any business day. Any reference to time shall be based upon GMT +3; unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a Saturday, Sunday or public holiday, the next succeeding business day; and
- 1.15. where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.

2. Purpose of Agreement

- 2.1. Bosch is involved with the sales, marketing, supply and support of certain Products sold on a non-exclusive basis to Purchasers such as Distributors and resellers.
- 2.2. This Sales Agreement set out the terms and conditions on which Bosch supplies Products to Purchasers and are binding on the Purchaser.
- 2.3. Bosch may replace this Sales Agreement with new terms and conditions or may amend any particular term and/or condition in this Sales Agreement on notice to the Purchaser whereafter it will become binding.

3. Compliance, Gifts and Favours

- 3.1. The Purchaser undertakes and warrants that it will comply with applicable laws and the Bosch Rules of Conduct for Giving and Accepting Gratuities, a copy of which is attached herewith, relevant to its business operations at all times. Despite any provision to the contrary contained herein, Bosch may terminate the agreement immediately if it is found that the Purchaser has acted in violation of any law it was obliged to comply with.
- 3.2. Bosch shall be entitled to terminate the Agreement forthwith if it is found that gifts and favours were given by the Purchaser, or any employee, agent or representative of the Purchaser to any officer or employee of Bosch (or family of such an officer or employee of Bosch) with a view toward securing the Agreement or securing the favourable treatment or trading terms by or from Bosch.
- 3.3. Each Party shall comply with and not contravene any anti-corruption legislation that applies to the business activities of the Parties and Bosch's Code of Business Conduct, a copy of which is attached herewith, in all business dealings. Either Party shall be entitled, notwithstanding its other legal remedies, to terminate the Agreement with immediate effect in the event that the other Party is not complying with this clause and claim damages from the other Party. No claim shall be made or damages claimed against Bosch for such termination.

4. Order Procedure

- 4.1. To order Products from Bosch, a Purchaser must submit a Purchase Order to Bosch either telephonically or in writing (which includes email) setting out the order. Any error in the Order will be for the account of the Purchaser and Bosch shall not be held liable in respect thereof.
- 4.2. All Orders for Products are subject to acceptance by Bosch in whole or in part, upon fulfilment of the Order by Bosch. Where part of an Order is delivered to the Purchaser, Bosch's acceptance is only in relation to that part of the Order that is actually received by Bosch.
- 4.3. Bosch reserves the right to refuse, reduce or split any order, subject to prior notice to the Customer, which right if exercised, shall not give rise to any liability on the part of Bosch. This right shall be exercised in due consideration of the volume of the order and/or any impact it will have on the services of Bosch.

5. Delivery dates

- 5.1. Bosch will endeavor to meet requested delivery dates but does not guarantee that delivery will take place on any requested or anticipated date.
- 5.2. If the delivery date requested by a Purchaser is not in line with Bosch's standard production, supply and logistics lead times, Bosch will adjust the delivery date and communicate the anticipated delivery date to the Purchaser in writing in accordance with clause
- 5.3. Bosch shall endeavour to notify the Purchaser in writing of any delay to the anticipated delivery date.

6. Cancellation of Orders

- 6.1. Bosch reserves the right to cancel or suspend any Order/s placed by the Purchaser and accepted by Bosch or to refuse or delay delivery thereof, if the Purchaser fails:
 - 6.1.1. to make any payment of any amount as provided in this Agreement or in any invoice which is due and payable or a pre-payment which was agreed upon;
 - 6.1.2. to meet credit or financial requirements established by Bosch in its entirety; or
 - 6.1.3. otherwise fail to comply with this Sales Agreement in its entirety.

7. Pricing and Discounts

- 7.1. Pricing
 - 7.1.1. Price Lists issued by Bosch from time to time are for general information purposes only and do not constitute offers for sale.
 - 7.1.2. Bosch prices are not subject to any discounts unless expressly agreed in writing by Bosch.
 - 7.1.3. The Purchaser is free to determine its own resale prices for the Products.
 - 7.1.4. Bosch may, upon request, provide a quotation to a Purchaser. Quotations expressly designated as binding are binding for a period of 7 days from the date of issue of that Quotation, unless extended by the Bosch in writing. All other quotations are subject to change without notice.
 - 7.1.5. The prices listed in the Price List on the date that an Order is accepted or a binding quotation is issued will be the applicable prices for the relevant Products.
- 7.2. Prices in the Price List do not include taxes of any nature, including Value Added Tax ("VAT"). The Purchaser shall be liable and pay applicable taxes when invoiced by Bosch. VAT shall not be charged in cases where the conditions for exempting export Products from such tax are fulfilled. Liability for tax shall remain on the Purchaser and Bosch shall have a right to claim from the Purchaser if an exemption does not apply.
- 7.3. Bosch reserves the right to charge surcharges from time to time and shall notify the Purchaser in writing.
- 7.4. Discounts
 - 7.4.1. Pricing benefits in the form of any bonus scheme or agreement, discount structure, policy or offering may be operated or given by Bosch from time to time. Whether or not a Purchaser enjoys any pricing benefits in general or in relation to a particular Order is entirely at the discretion of Bosch and subject to internal policy and approval. Bosch reserves its rights in this regard and the Purchaser cannot compel or insist that Bosch provide any pricing benefits or discounts or gratuities.
 - 7.4.2. All pricing and associated discounts, if applicable, are subject to Bosch's official Pricing and Gratuity Policies.

8. Payment Terms

- 8.1. All Purchases shall be paid for in cash upfront with or prior to the placement of any Order.
- 8.2. Payments to Bosch shall be made in KES. If payments are made to Bosch in Euro (EUR), the exchange rate between EUR and KES which is communicated on a monthly basis by Bosch Kenya (Power Tools Division) must be used to calculate the amount due in respect of an invoice.
- 8.3. Products supplied to Purchasers in Kenya will be invoiced in the KES currency.

9. Interest

- 9.1. Interest shall accrue on any overdue amounts owed by the Purchaser at the rate of 2% (two percent) above the ruling prime overdraft rate quoted by Bosch's Bankers in Kenya, or the maximum rate permitted by applicable law, whichever is the greater.

10. Risk of Loss

- 10.1. Bosch retains all right, title and interest in and to the Products supplied until payment for the Products supplied has been settled in full. The Purchaser warrants that the Products shall be kept free from any lien, notarial bond or other right or retention or charge.
- 10.2. Bosch bears the risk of loss or damage in and to the Products until delivery and while in transit from Bosch's warehouse or shipping point to the place designated by the Purchaser for delivery. The Purchaser assumes the risk of loss and damage to and in the Products upon delivery of the Products.
- 10.3. Delivery - General
 - 10.3.1. Claims for incomplete or incorrect delivery must be made by the Purchaser to Bosch in writing, within 2 (two) working days after the date on which the Products are delivered and the delivery confirmation signed by the Purchaser or any third party designated by the Purchaser.
 - 10.3.2. Claims for incomplete or incorrect delivery will not be accepted by Bosch if they are not submitted within 2 (two) working days of the date on which the delivery confirmation is signed by the Purchaser. The submission of a claim for incomplete or incorrect delivery does not mean that Bosch accepts liability under the claim but means only that Bosch will investigate the claim.
 - 10.3.3. If Products are delivered to the Purchaser incorrectly and not in accordance with a Bosch Order Confirmation, the Products must be returned to Bosch in a saleable condition for the account of Bosch, must be properly marked and must be returned with any Documentation supplied in respect of those Products.
 - 10.3.4. One set of Documentation shall be sent to the Purchaser, free of charge, after delivery of the relevant Products.

11. Limited Warranty

- 11.1. Product Specific Limited Warranty (Blue Tools, with a few exemptions, have a 1 (one) year warranty, for further info on Dremel, measuring tools and accessories, please contact Robert Bosch Kenya Ltd, Power Tools Division.
 - 11.1.1. In addition to the warranty that is provided for in this clause 11.1 the Purchaser and/or End-User may have certain statutory warranties in terms of the laws of the country in which the Purchaser is located against Bosch. These statutory warranties may be different from the warranty that is given by Bosch in terms of this Agreement. Aside from any warranty that cannot by law be excluded or limited contractually, this warranty is the only warranty that is given by Bosch in relation to the Products and all other warranties, express or implied, including warranties against latent or patent defects, are excluded.
 - 11.1.2. For the applicable period after the date on which a Product is delivered to a Purchaser, Bosch will at its sole and absolute discretion, replace, repair or give credit for any Product that, in Bosch's judgment, has a defect in material or workmanship
 - 11.1.3. If Bosch's examination of a returned Product does not disclose a defect in material or workmanship on a Product claimed to be defective, the Purchaser or End-User must pay Bosch's established charges for unpacking, testing, and repackaging the Product for reshipment to the Purchaser or End-User.



- 11.1.4. Where a Product is repaired or replaced by Bosch, the original warranty period provided for in clause 11.1.1 is not extended. Repairs are warranted for 90 days on receipt of the repaired Product by the End-User or the Purchaser, or for the balance of the original warranty period, whichever is longer.
- 11.1.5. Any Products that are supplied to a Purchaser where Bosch has expressly indicated that the Products are "end-of-life" are specifically not subject to the warranty provided for in this clause 11.1. All such products are sold "as is", except insofar as statutory warranties that cannot be limited or excluded by contract are applicable.
- 11.1.6. Where the Purchaser or End-User returns a defective Product in terms of this warranty, the Purchaser is not entitled to cancel the Order or claim a price reduction in respect of the Product unless Bosch is unable to supply a replacement Product or to correct the defect, even by modifying the Product in question, or unless the repair or replacement is ineffective.
- 11.1.7. This warranty does not apply in respect of a Product that has been modified or repaired by an unauthorized party or misused, or not used in accordance with operating instructions or if the installation and handling instructions were not complied with.
- 11.1.8. This warranty does not apply to ordinary wear and tear to a Product or damage due to mishandling or abuse. In particular, Bosch assumes no liability for excessive stressing, unsuitable operating material and for any alteration of the state or the operating mode of a Product due to improper storage, climatic, chemical, and electrical or other influences not provided for in this Agreement or the operating/handling instructions.

12. Bosch Determination of Product Content

- 12.1.1. Bosch reserves the right at any time without liability or prior notice to:
 - 12.1.1.1. Determine the contents of each Product, including its specifications, features, and functions, as well as any documentation or related materials and to change or terminate any of the specifications, features or functions of any Product;
 - 12.1.1.2. Discontinue distribution of any or all Products in some or all markets or through some or all channels of distribution; or
 - 12.1.1.3. Change or terminate the level or type of support or service that Bosch makes available for each Product.
- 12.1.2. Any change or discontinuance of a Product shall be indicated by an addition to or deletion from Bosch's Price List.
 - 12.1.2.1. The Purchaser may cancel any Orders for discontinued Products without liability. In such cases, the Purchaser is not required to pay any cancellation penalties.

13. Product Liability

The Purchaser shall indemnify and hold harmless Bosch for damages or expenses resulting from any claim, suit or proceeding for product liability brought against Bosch in respect of a defective, hazardous or unsafe Product whether in terms of consumer protection law or otherwise, to the extent that the harm suffered by the claimant is caused by any act or omission on the part of the Purchaser or its employees or agents, including, but not limited to, any representation made by the Purchaser or its employees or agents as to the qualities or properties or usages of any Product or any failure to provide (contrary to any instructions or guidelines given by Bosch) proper instructions or a proper warning in relation to the manner in which a Product must be used or any hazards associated with the Product.

14. Additional Protection

- 14.1.1. If, within any 6 (six)-month period, 5% (five percent) or more of any Product supplied during that period, while within the warranty period specified in this Agreement, exhibits defects of the same kind and nature, and such defects are the result of faulty design or workmanship on the part of Bosch or defects in materials arising from any cause for which Bosch is responsible, Bosch will compensate, or render assistance to the Purchaser as follows:
 - 14.1.1.1. Delivery of replacement Products to the place designated by the Purchaser;
 - 14.1.2. This additional protection is subject to the following conditions:
 - 14.1.2.1. The particulars concerning the failure of the Products that are alleged or found to be defective must be furnished to Bosch in writing within 2 (two) weeks of the Purchaser's discovery of such defect;
 - 14.1.2.2. The defects identified by the Purchaser shall be subject to Bosch's verification;
 - 14.1.2.3. No Products that are alleged or found to be defective may be disposed of by the Purchaser for at least 12 (twelve) weeks after Bosch receives the written particulars concerning such defects;
 - 14.1.3. The defective products must be returned to Bosch by the Purchaser, freight payable at destination, if Bosch so requests.
- 14.2. Exclusive Remedy
 - 14.2.1. Except to the extent prohibited by law, the remedies provided for in this clause 14 are the only remedies of the Purchaser and, insofar as the Purchaser's agreement with any customer or End-User provides, any customer of a Purchaser, as well as their successors and assigns, for any defect or nonconformity in the Products.

15. Limitation of Liability

- 15.1. Except to the extent prohibited by law, Bosch shall not be liable to the Purchaser for damages based on any defect or hazard in a Product or harm caused by a Product. Except to the extent prohibited by law, in no event shall Bosch be liable for the cost of procuring substitute products or for any special, consequential or incidental damages or losses whatsoever. Bosch shall not be liable for any indirect, special or consequential damages including, without limitation, lost profits, costs of delay, any failure of delivery or liability to third Parties arising from any source even if those damages were foreseeable.

16. Return of Products

- 16.1. Other than as is specifically provided for in this Sales Agreement in relation to defective Products which is covered by Bosch warranties and the Bosch Returns Policy, or to the extent prohibited by law, Products may only be returned by a Purchaser to Bosch, with the prior written consent of Bosch. Where Bosch gives such consent, the Products must be returned, carriage paid, to Bosch undamaged in the original factory-sealed packing which packaging must also be undamaged.
- 16.2. Provided that inspection by Bosch reveals that the Products are in a saleable condition, which decision shall rest solely with Bosch, credit will be passed to the Purchaser for the Products returned.
- 16.3. The Purchaser remains liable for the Product until it has been returned and Bosch has performed the inspection referred to in clause 16.2. The Purchaser must supply proof of

return to Bosch.

- 16.4. Should a Product be returned to Bosch by the Purchaser without the prior written consent of Bosch, Bosch will store the Product at the Purchaser's sole risk and a reasonable charge for such storage shall be levied. The Purchaser will remain liable for the Product while it is being stored.

17. Force Majeure

- 17.1. Neither Party will be deemed to be in default of this Agreement to the extent that performance of its obligations, or attempts to cure any breach, are delayed or prevented by reason of circumstance beyond its reasonable control ("Force Majeure event"), including without limitation: fire, natural disaster, earthquake, accident or other acts of God or unforeseen plant breakdowns or stoppages, provided that the Party seeking to delay its performance gives the other written notice of any such Force Majeure event within 15 (fifteen) days after the discovery of the Force Majeure event, and provided further that such Party uses its best efforts to cure the Force Majeure event.
- 17.2. If there is a Force Majeure event, the time for performance or cure will be extended for a period equal to the duration of the Force Majeure event. This clause 17 is not applicable to any payment obligations of either Party.
- 17.3. Any Force Majeure event or events beyond Bosch's control which may affect the timely fulfillment of an Order, including delays by Bosch's, transportation problems and operational breakdowns (plant breakdowns or stoppages), labor disputes, shortage of materials and energy, acts of governments and import and export restrictions, shall entitle Bosch to postpone the delivery date or where such an event makes it impossible for Bosch to fulfill an Order, Bosch has the right to cancel all or a part of the Order without any liability to the Purchaser whatsoever.

18. Settlement of Disputes

- 18.1. Each Party acknowledges and agrees that, if there is any breach of this Agreement, including, without limitation, unauthorized use or disclosure of Confidential or proprietary information or other information of the other Party, the non-breaching Party will suffer irreparable injury that cannot be compensated by monetary damages and therefore will not have an adequate remedy at law. Accordingly, nothing in this clause 18 shall preclude either Party from seeking interim and/or urgent relief from a court of competent jurisdiction.
- 18.2. In the case of any non-payment by a Purchaser, Bosch may at its election follow the mediation and arbitration procedures that applies in Kenya or institute proceedings in a court of competent jurisdiction in Kenya. Bosch shall determine the proceedings to be followed and all costs associated with the settlement of disputes shall be for the account of the Purchaser, unless agreed otherwise.
- 18.3. Mediation
 - 18.3.1. The provisions of this clause shall survive termination or expiration of this Agreement for any reason.
 - 18.3.2. Judgment upon any award may be entered in any court of competent jurisdiction in Kenya.
- 18.4. All notices from one Party to the other relating to any dispute resolution under this Agreement shall be in writing and shall be effective if given according to clause 24 below.

19. Governing Law

- 19.1. This Agreement shall be governed by the laws of the Kenya. In the case of Agreements with Purchasers outside Kenya, if any of the foregoing provisions of this Agreement are rendered invalid by the law of a Purchaser's country, it is agreed that such invalid provisions shall be replaced by such valid provisions which come closest to the spirit and purpose of the invalid provisions. To the extent necessary, the Purchaser undertakes to take all measures required to accomplish this objective.

20. Entire Agreement, Non-Waiver and Non-Variation

- 20.1. The Parties acknowledge that this Agreement expresses their entire understanding and Agreement, and that there have been no warranties, representations, covenants or understandings made by either Party to the other except such as are expressly set forth in this Agreement. The Parties further acknowledge that this Agreement supersedes, terminates and otherwise renders null and void any and all prior Agreements or contracts, whether written or oral, entered into between the Purchaser and Bosch with respect to the matters expressly set forth in this Agreement.
- 20.2. The failure by either of the Parties to enforce any provision of this Agreement shall not affect in any way that Party's right to require performance of the provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself.
- 20.3. No agreement to vary or add to this Agreement shall be of any force or effect unless reduced to writing and signed by the authorised Contractual Representatives of the Parties to this Agreement.

21. Severability

- 21.1. If any provision of this Agreement is found to be invalid or unenforceable, the remainder shall remain valid and enforceable according to its terms. Without limiting the proviso, it is expressly understood and agreed that each and every provision of this Agreement that provides for a limitation of liability, disclaimer of warranties, or exclusion of damages is intended by the Parties to be severable and independent of any other provision and to be enforced as such. Further, it is expressly understood and agreed that if any remedy under this Agreement is determined to have failed of its essential purpose, all other limitations of liability and exclusion of damages set forth in this section shall remain in full force and effect.

22. Cancellation and Suspension

- 22.1. Bosch may cancel the contract or any uncompleted part of it, if the Purchaser –
 - 22.1.1. commits a breach of any of the terms or conditions of the contract; or
 - 22.1.2. being an individual, is provisionally or finally sequestered, or surrenders his estate; or
 - 22.1.3. being a partnership, the partnership is terminated; or
 - 22.1.4. being a company is placed under a provisional or final order of liquidation or judicial management or similar process; or
 - 22.1.5. compromise or attempts to compromise generally with any of the Purchaser's creditors; or
 - 22.1.6. fails to satisfy or take steps to rescind any judgment granted against it as required by the rules of the court who granting judgement.



- 22.2. Bosch's remedies under 22.1. shall not be exhaustive and shall be without prejudice and in addition to any other remedies it might have.
- 22.3. Upon termination of the contract for any reason whatever –
- 22.3.1. all amounts then owed by the Purchaser to Bosch in terms of the contract shall become due and payable forthwith;
- 22.3.2. Bosch may retake possession of any goods in respect of which ownership has not passed;
- 22.3.3. Bosch shall be entitled to retain all moneys paid by the Purchaser to defray any damage claim it may have.
- 22.4. If any amount owed by the Purchaser is not paid on due date or if the Purchaser commits any other breach of the contract, then, without prejudice to any other right Bosch may have –
- 22.4.1. it may immediately suspend the carrying out of any of its then uncompleted obligations until payment is made;
- 22.4.2. it may terminate any credit facilities previously granted to the Purchaser;
- 22.4.3. all amounts then owed by the Purchaser to the seller in terms of the contract or from any other cause whatever shall become due and payable forthwith.

23. Notices

- 23.1. All notices, demands or consents required or permitted under this Agreement shall be in writing and shall be delivered by hand or sent by registered mail to the respective Parties at the addresses set forth above or at such other address as such Party shall specify to the other Party in writing. The aforementioned addresses shall be the domicilium of the Parties for receiving legal notices. Any notice required or permitted to be given by the provisions of this Agreement shall be deemed to have been received on the day it is delivered to that Party by registered mail with acknowledgment of receipt or by any commercial courier providing equivalent acknowledgment of receipt.
- 23.2. Notice given, or other documents sent (excluding invoices) in terms of the Agreement, must be in writing and will:
- 23.2.1. if delivered by hand, be deemed to have been duly delivered on the first business day after the date of delivery;
- 23.2.2. if posted by prepaid registered post be deemed to have been received by the addressee on the tenth business day following the date of such posting;

24. Notice and Domicilium

Irrespective of the actual signature dates, this Agreement / Sales Agreement and all of its Annexures shall be deemed to have become effective and binding between the Parties retrospectively from the date of the first invoice