

1. INTRODUCTION

- 1.1. All capitalised terms used but not defined in this Contract (as that term is defined in clause 1.2 below) shall have the meaning ascribed to them in the Application to which this Contract is attached ("**Application**").
- 1.2. Once the Application has been approved in writing by the Supplier, the Application and the terms and conditions set out therein and in this Contract, including all notices sent to the Purchaser by the Supplier or its representatives from time to time and annexures attached hereto (collectively, "**Contract**"), shall apply to the sale of any Goods and/or the rendering of any Services by the Supplier to the Purchaser.
- 1.3. The Purchaser acknowledges and agrees that the Supplier will, subject to clause 2.3 below, only be required to commence with the delivery of any Goods and/or the rendering of any Services under this Contract once:
 - 1.3.1. the Supplier has, in its discretion, approved the Purchaser's Application in writing; and
 - 1.3.2. any statutory or regulatory approvals which may be required in respect of the conclusion of this Contract, any Order (as that term is defined in clause 2.1 below) and/or the provision of the Goods and/or Services have, to the extent required, been obtained.
- 1.4. Reference to any law or regulation is a reference to that law or regulation on the date on which the Purchaser signs the Application, as amended or substituted from time to time.
- 1.5. This Contract constitutes the entire agreement between the Parties and no representation by any person, or variations or consensual cancellations of or amendments to any of the terms and conditions of the Contract shall be valid or binding on the Supplier unless reduced to writing and signed by an authorized representative of the Supplier.

2. ORDERS

- 2.1. The Purchaser will from time to time during the subsistence of this Contract be entitled to place written orders ("**Orders**") with the Supplier for the delivery and supply to the Purchaser of the Goods and/or Services. Such order shall be delivered to the Supplier by email or facsimile at such email address or facsimile number as the Supplier may notify to the Purchaser for this purpose from time to time. For the avoidance of doubt, the Purchaser acknowledges that the execution of all Orders will be subject to the Purchaser complying with the conditions precedent recorded in clause 8.7 below.
- 2.2. Each Order shall as a minimum specify:
 - 2.2.1. the specific Goods and/or Services, including the quantity, to the extent applicable, required;
 - 2.2.2. the price payable in respect of the Goods and/or Services, with specific reference to the Prevailing Price List (as that term is defined in clause 5.3) at the time; and
 - 2.2.3. the product specification.
- 2.3. Notwithstanding anything to the contrary in this Contract, the Supplier shall, in its discretion, be entitled but not obliged to accept or reject any Order. Any Order will only become binding on the Supplier once it has accepted such Order in writing ("**Acceptance Notice**").
- 2.4. The Supplier undertakes to use its reasonable endeavours to meet the delivery date agreed to by the Parties in writing in respect of any Order ("**Agreed Delivery Date**"). Should the Supplier however for any reason be unable to meet any such Agreed Delivery Date, the Supplier shall, be afforded a further period of 7 (seven) days thereafter to effect delivery of the Goods, without penalty.
- 2.5. All Orders placed on the Supplier by the Purchaser during the term of this Contract shall be strictly subject to, mutatis mutandis, the terms and conditions contained in this Contract and any separate written agreement concluded between the Parties in respect of the Goods and/or Services from time to time.

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- 2.6. For the avoidance of doubt and notwithstanding anything to the contrary in this Contract or any separate written agreement concluded between the Parties in respect of the Goods and/or Services from time to time, as referred to in clause 2.5 immediately above, the Supplier shall, in its discretion, be entitled to refuse to supply the Purchaser with any Goods and/or Services for as long as the Credit Limit stipulated in clause **Error! Reference source not found.** of the Application is, or will as a result of such Order be, exceeded.
- 2.7. Without detracting from the generality of clause 2.3, if at any time the Purchaser is in material breach of any of the warranties or any of its obligations in terms of this Contract, the Supplier shall be entitled, for so long as such breach continues (but without prejudice to any of the Supplier's other rights under this Contract or in law) to elect not to accept any further Orders and/or suspend the delivery of any Goods and/or the provision of any Services in respect of which the Supplier has accepted an Order but not yet provided such Goods and/or Services.

3. **CONFLICT PROVISIONS**

- 3.1. To the extent that there is any conflict between –
- 3.1.1. the terms of any Order and the provisions of the Application or this Contract, the terms of the Order will prevail to the extent of such conflict; or
- 3.1.2. the provisions of the Application and this Contract, the provisions of this Contract will prevail to the extent of any such conflict.
- 3.2. In the event of any conflict between the provisions of this Contract, the Application or any Order and any separate written agreement concluded between the Parties as contemplated in clause 2.6, the provisions of the separate written agreement will prevail to the extent of any such conflict. The Parties furthermore agree that the Supplier shall not be bound by any other general terms and conditions (including any policies and procedures) which the Purchaser may from time to time apply in the ordinary course and conduct of its business.

4. **PAYMENT**

- 4.1. Unless otherwise agreed in writing, the Purchaser must pay any amounts due to the Supplier without any deduction, withholding or set-off in accordance with the payment terms as contemplated in clause **Error! Reference source not found.** of the Application ("**Due Date**").
- 4.2. If the Supplier is required to make more than one delivery of Goods and/or render any Services on more than one occasion to the Purchaser, then each delivery will be invoiced and paid for separately but otherwise in accordance with this clause 4.
- 4.3. The Supplier shall be entitled to charge interest at the prime rate of interest charged by First National Bank from time to time plus 3% on all amounts which are not paid at the Due Date thereof until such amounts are discharged in full.
- 4.4. Without detracting from the provisions of clause 15, should the Purchaser default in paying any invoices submitted to it from time to time on the applicable Due Date in respect thereof, then the Supplier shall be entitled, but not compelled, to forthwith demand that all amounts outstanding by the Purchaser to the Supplier, from whatsoever cause arising, will immediately become due and payable notwithstanding the fact that a portion of the amount may not yet be owing in accordance with the agreed terms of payment.
- 4.5. The Purchaser agrees that in the event of any portion of an invoiced indebtedness being disputed, the Purchaser will nevertheless forthwith pay the undisputed amount of such indebtedness according to the agreed terms of credit allowed to the Purchaser in terms of this Contract and in particular the approved Application, failing which any discount which the Supplier may, in its discretion, have permitted in respect of the invoiced indebtedness will be forfeited.
- 4.6. Until the full purchase price of any Goods has been paid, the Purchaser shall ensure that the Goods are comprehensively insured against all risks which are usual in respect of such Goods and acceptable to the Supplier. The Purchaser shall produce written proof of such insurance to the Supplier whenever called on to do so by the Supplier.

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4.7. Payments must be made by way of electronic transfer, free of any set-off, withholding or deduction, into the bank account nominated by the Supplier in writing for this purpose or any other means acceptable to the Supplier, as notified to the Purchaser in writing from time to time.

5. PRICE OF GOODS AND PRICE VARIATIONS

5.1. The applicable price which will be payable in respect of the Goods and/or Services supplied to the Purchaser in terms of any particular Order shall be agreed to by the Parties in writing from time to time in accordance with clause 5.3 ("**Agreed Price**"). For the avoidance of doubt, the price stated in an Order shall be regarded as the Agreed Price once the Supplier accepts such Order in writing (as contemplated in clause 2.3).

5.2. In the event that the Supplier agrees to an Agreed Price which does not reflect the price set out in its latest official price list ("**Prevailing Price List**") at the time, the Supplier shall be entitled, within 7 (days) of accepting such Order in writing (as contemplated in clause 2.3), to inform the Purchaser of such discrepancy and the correct price payable in respect of the Goods and/or Services in terms of the then Prevailing Price List ("**Revised Price**") ("**Amended Price Notice**"). Should the Purchaser object to the Revised Price, it shall be required to provide the Supplier with a written notice to this effect within 7 (seven) days of the date of the applicable Amended Price Notice. In such circumstances, the Agreed Price set out in the Order will no longer be binding on the Parties and the Parties shall instead be required to reach agreement regarding a new Agreed Price (as contemplated in clause 5.1) in respect of the applicable Goods and/or Services. If the Purchaser fails to object to the Revised Price (in writing) within the aforementioned 7 (seven) day period, the Revised Price shall thereafter, for all purposes under this Contract, be regarded as the Agreed Price.

5.3. For purposes of this clause 5, the Agreed Price of any Goods and/or Services shall be agreed by the Parties with particular reference to the Supplier's then Prevailing Price List, which the Purchaser acknowledges may be subject to change from time to time based on, inter alia, the fluctuating price of raw materials as determined in accordance with prevailing market conditions. The Supplier undertakes to make its Prevailing Price List available to the Purchaser upon its written request, however, the Purchaser acknowledges that, due to the variable nature of input costs, the Supplier is under no obligation to circulate its Prevailing Price List to the Purchaser in the absence of any written request by the Purchaser, nor is the Supplier required to inform the Purchaser of any change in respect of any Prevailing Price List. The Purchaser shall therefore be solely responsible for ensuring that it is familiar with the Supplier's prevailing prices generally and more specifically in respect of any Goods and/or Services that are ordered by it from time to time. The Purchaser acknowledges that it shall not be entitled to dispute any Agreed Price on the basis that it was not familiar with the Supplier's then Prevailing Price List.

5.4. All amounts payable by the Purchaser to the Supplier in terms of this Contract are expressed to be exclusive of Value-Added Tax ("**VAT**") and any other rates, taxes, duties, import and/or export duties which may be payable thereon. Should any amount attract VAT or any other rates, taxes, duties, import and/or export duties, then the Purchaser shall be obliged to pay the Supplier all such VAT, rates, taxes, duties, import and/or export duties at the then applicable rates.

6. DISCOUNTS

6.1. The price stipulated in the Supplier's Prevailing Price List from time to time (as contemplated in clause 5.2 above) is strictly net of any deductions and/or discounts and not subject to any discounts unless otherwise agreed to in writing by the Supplier.

6.2. Without derogating from the Supplier's discretion to reject any request for a discount, if any discount is agreed to in writing by the Supplier, it shall only be allowed if payment is received by the Supplier by the Due Date.

7. RISK, OWNERSHIP AND SET-OFF

7.1. Notwithstanding the delivery of, and/or any passing of risk in, any Goods to the Purchaser as contemplated in this Contract, ownership in and to the Goods shall not pass to the Purchaser until the Supplier has received payment in full of all and any indebtedness of the Purchaser to the Supplier in connection with such Goods.

7.2. In the event of the Supplier or any holding or subsidiary company (as that term is defined in the Companies Act No. 71 of 2008) of the Supplier becoming indebted to the Purchaser, the Supplier may

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set-off such indebtedness against any monies which may be or become owing by the Purchaser to the Supplier.

8. DELIVERY

- 8.1. Unless otherwise agreed in writing by the Parties, all Goods will be sold to the Purchaser *ex works* the Supplier's nominated premises (Incoterms 2010), which shall be stipulated in the applicable Acceptance Notice ("**Supplier's Premises**"). As a result, all risk in and to the Goods shall pass to the Purchaser upon the Goods being made available for collection by the Purchaser at the Supplier's Premises. The Purchaser shall accordingly, unless otherwise agreed by the Parties in writing, be responsible for the collection of all Goods from the Supplier's Premises and the Supplier shall have no obligation whatsoever in respect of the delivery of the Goods, save to make the Goods available for collection by the Purchaser at the Supplier's Premises.
- 8.2. Should any Goods, with the Supplier's written consent, be transported by means of the Supplier's vehicles, all risk in and to the Goods shall pass to the Purchaser upon loading of the Goods on the Supplier's vehicle. In such circumstances, (i) the Purchaser hereby irrevocably and unconditionally indemnifies the Supplier against all costs, expenses, damages or liabilities or whatsoever nature which the Supplier may incur or suffer as a result of or in connection with the transport of the Goods by the Supplier to the Purchaser's Premises (as that term is defined in clause 8.8 below), and (ii) the Purchaser shall reimburse the Supplier for all actual costs and expenses incurred by the Supplier in transporting the Goods as aforesaid.
- 8.3. Should the Supplier, at the Purchaser's request, agree to engage a third party carrier of its choice to transport the Goods to the Purchaser's Premises, then (i) the Supplier is hereby authorised to engage a carrier on such terms and conditions as it deems fit, (ii) the Purchaser hereby irrevocably and unconditionally indemnifies the Supplier against all demands and claims which may be made against it by the carrier so engaged and all liability which the Supplier may incur to the carrier arising out of the transportation of the Goods, (iii) the risk in the Goods shall pass to the Purchaser upon loading of the Goods on the carrier's vehicle, and (iv) payment for such transport shall be paid directly to the appointed carrier by the Purchaser. Alternatively, the Supplier may to the extent that it agrees to do so, pay the transport and related charges to the carrier and invoice the Purchaser for such cost(s), including any administration costs charged by the Supplier and agreed to by the Parties prior to any such delivery taking place.
- 8.4. If the Purchaser fails to take delivery of the Goods on the Agreed Delivery Date or such later date as contemplated in clause 2.4 above, then the risk in and to the Goods shall immediately pass from the Supplier to the Purchaser. To the extent that the Goods represent Goods which (i) have not been customised according to the Purchaser's requirements; and (ii) can be sold by the Supplier to a third party purchaser, the Goods shall remain available for collection by the Purchaser for a period of 7 (seven) days after the Agreed Delivery Date or such later date as contemplated in clause 2.4 above. Upon the expiry of the aforementioned 7 (seven) day period, the Supplier shall, in its discretion, be entitled but not obliged to dispose of the Goods to a third party. Notwithstanding any sale of the Goods as aforesaid, the Purchaser shall, in the circumstances contemplated in this clause 8.4, refund to the Supplier on demand, to the extent applicable, (a) the reasonable costs (including storage and insurance) of keeping the Goods during the period commencing on the Agreed Delivery Date until the date on which the Supplier delivers the Goods to a third party purchaser or otherwise disposes of the Goods; and (b) the direct and indirect cost of manufacturing any Goods which do not comply with the requirements set out in (i) and (ii) immediately above.
- 8.5. The signature of any employee or agent of the Purchaser which appears on the Supplier's official delivery note or waybill, or the delivery note of any authorized independent carrier, will constitute sufficient evidence of delivery of the Goods purchased.
- 8.6. If more than one delivery of the Goods is to be made, then the provisions of this clause 8 shall apply to each such delivery.
- 8.7. Notwithstanding any other provision in this Contract to the contrary, the Supplier's obligation to make the Goods available to the Purchaser shall in all cases be subject to the following conditions precedent: (i) the availability to the Supplier of any materials and supplies required for the manufacturing of the Goods; and (ii) the timeous receipt by the Supplier of any instructions (including drawings and specification) required by the Supplier from the Purchaser for the manufacture of the Goods.

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8.8. In the circumstances contemplated in clauses 8.2 or 8.3 and subject to the remaining provisions of this clause 8, Goods will be delivered to the address identified by the Purchaser in the Application for purposes of delivery or such other premises as the Purchaser may notify the Supplier of in writing from time to time ("**Purchaser's Premises**"). If no such address has been specified, then the agreed place of delivery will be the Purchaser's place of business, as stipulated in the Application.

9. DECLARATIONS AND WARRANTIES BY THE PURCHASER

The Purchaser warrants and declares that:

- 9.1. the Purchaser has full power and authorization and has taken, and will take, all necessary corporate action to conclude this Contract, place any Orders and effect and carry out the obligations set out therein and, if the Purchaser is a corporate entity or partnership, that all necessary corporate and/or other actions were and will be taken to authorize the execution of this Contract and any Order prior to the Purchaser submitting the Application and entering into this Contract or placing any Order on the Supplier, as the case may be, and the Purchaser will upon request provide the Supplier with the originals or certified copies of all documents confirming each such authorisation;
- 9.2. all the Purchaser's Information is true, complete and accurate and the Purchaser is not aware of any material facts or circumstances not disclosed to the Supplier and which, if disclosed, may adversely affect the Supplier's decision to enter into this Contract or approve the Credit Limit;
- 9.3. the Purchaser has, and will during the existence of this Contract continue to, fully and truthfully answer(ed) all and any requests for information addressed to it by or on behalf of the Supplier leading up to the conclusion of, and during the existence of, this Contract, including in terms of or in connection with the Application;
- 9.4. the Purchaser has the necessary legal capacity to enter into this Contract and is not subject to any liquidation or business rescue proceedings;
- 9.5. the Supplier did not make an offer to the Purchaser which would have been deemed to be accepted and automatically have resulted in an agreement if the Purchaser had not specifically declined the offer; and
- 9.6. the Supplier has not induced, harassed or forced the Purchaser to enter into this Contract;.

10. TRANSFERRING RIGHTS OR OBLIGATIONS

- 10.1. The Purchaser may not transfer any of the Purchaser's rights or obligations under this Contract to any third party without the Supplier's prior written consent.
- 10.2. The Supplier may, in its discretion, transfer all or some of the Supplier's rights and obligations under this Contract to any other person without first requiring the Purchaser's consent.

11. EXCLUSIONS

- 11.1. All specifications, illustrations, drawings, diagrams, price lists, dimensions, performance figures, advertisements, brochures and other technical data furnished by the Supplier to the Purchaser in respect of the Goods and/or Services, and whether in writing or not, are furnished only on the basis that –
 - 11.1.1. the Supplier will retain all rights in and to such data and no rights will be afforded to the Purchaser in respect thereof by virtue of this Contract; and
 - 11.1.2. the Purchaser shall not be entitled to place any reliance on such data for any purpose, unless the Parties agree otherwise in writing.

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- 11.2. If any Goods and/or Services or any part of them are to be supplied in accordance with specifications, measurements, or other instructions furnished by the Purchaser, the Purchaser shall not have any claim of any nature whatever against the Supplier (i) for any loss or any error, discrepancy or defect in those specifications, measurements or other instructions or any Order, nor (ii) if the Goods in question are not suitable for the purpose for which they are required, whether those purposes are known to the Supplier or not.
- 11.3. Subject to clause 11.2 -
 - 11.3.1. and the remaining provisions of this clause 11 and clause 12 below, the Supplier's liability to the Purchaser for any damages sustained by the Purchaser from any cause whatsoever, including any damages arising out of the Supplier's negligence or that of its representatives, servants, agents or sub-contractors, shall be limited to the replacement of the Goods which, at the date of delivery thereof, were subject to a patent defect arising from defective materials or workmanship used or applied at the Supplier's Premises; and
 - 11.3.2. the Supplier shall not be liable for any loss of profit or any damage, direct or indirect, consequential or otherwise, sustained by the Purchaser whether or not caused by the negligence of the Supplier, its agents or employees.
- 11.4. Insofar as any of the Supplier's obligations under this Contract are carried out by any of its representative, servants, agents, sub-contractors, associates or subsidiaries, the provisions of clause 11.3 are stipulated for their benefit as well as the Supplier's and each of them shall be exempted accordingly.
- 11.5. The Purchaser shall not have any claim of any nature whatsoever against the Supplier for any failure by the Supplier to carry out any of its obligations under this Contract as a result of causes beyond the Supplier's control, including but without being limited to any power outages, any strike, lock-out, shortage of labour or materials, delays in transport, motor accidents of any kind which may occur during the delivery of the Goods and/or in connection with the supply of the Services, as the case may be, any default or delay by any sub-contractor or supplier appointed by the Supplier, riot, political or civil disturbances, any force of nature, any act of any State or Government, any delay in securing any permit, consent or approval required by the Supplier for the supply of Goods and/or Services under the Contract, or any other authority, or any other cause whatever beyond the Supplier's absolute and direct control.

12. WARRANTY

- 12.1. The Supplier warrants to the Purchaser that the Goods will be free from defects in material and workmanship for the applicable period stated in clause 12.2 below from the date on which risk in and to the Goods pass to the Purchaser, as contemplated in clauses 7 and 8 above. The warranties provided to the Purchaser in terms of this Contract and in particular this clause 12 shall be for the sole and exclusive benefit of the Purchaser and the Purchaser shall not be entitled to cede or assign its rights under or in connection with any such warranties to any third party without the prior written consent of the Supplier.
- 12.2. The following "Warranty Periods" will apply in respect of the specified Goods listed below:
 - Spring Steel Clips (2 (two) years)
 - Pressed Steel Shoulders & Cover Plates (2 (two) years)
 - Glass Reinforced Nylon and Gate Plate Insulators (2 (two) years)
 - High Density Polyethylene Pads (2 (two) years)
- 12.3. If, during the relevant Warranty Period stipulated in clause 12.2 above, the Purchaser discovers or believes there was a patent defect in any of the Goods upon the risk therein passing to the Purchaser as contemplated in clause 7, the Purchaser must report this to the Supplier in writing as soon as possible but in any event within the applicable Warranty Period stipulated in clause 12.2, and the Supplier will as soon as reasonably possible after receiving such written notice from the Purchaser initiate an investigation to confirm the problem.
- 12.4. In the circumstances contemplated in clause 12.3, the Supplier shall correct such patent defect and/or replace the relevant materials at its sole cost and risk. The Supplier reserves the right to require the Purchaser to continue using the defective components to keep operational continuity of its equipment or facilities until such time as the defective components are repaired or replaced, provided such use will not, in the Supplier's reasonable opinion, have a material adverse impact on the Purchaser's operations.

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- 12.5. Corrective action could, in the Supplier's sole discretion, include replacing the components or repairing the Goods on the Supplier or the Purchaser's Premises or at an agreed other location.
- 12.6. The Warranty Period applicable in respect of any particular Goods (or part thereof) will not be extended as a result of any repairs or replacements effected during the Warranty Period which originally applied in respect of such Goods.

13. **GENERAL WARRANTY EXCLUSIONS**

The Supplier shall not be liable to repair or replace any Goods, or any part thereof, during any Warranty Period, in the following circumstances:

- 13.1. the Goods have been subjected to negligence, misuse, ignorance, accidents, alteration or modifications on the part of the Purchaser or any of its representatives, servants, agents, sub-contractors, associates or subsidiaries or their respective employees;
- 13.2. any problems that may arise due to the use of parts and components other than Supplier approved parts and components by the Purchaser;
- 13.3. any consequential costs resulting from a failure of any component forming part of any Goods;
- 13.4. natural wear and tear of the Goods or any component thereof;
- 13.5. improper installation, operation or maintenance of the Goods by the Purchaser, its contractors, representatives, servants, agents, sub-contractors, associates or subsidiaries or their respective employees; and/or
- 13.6. any defects or omissions in the technical specifications or other data and specifications provided to the Supplier by the Purchaser in respect of the Goods, e.g. as regards to corrosion protection.

14. **SUSPENSION OF SUPPLIER'S OBLIGATIONS**

If any amount owed by the Purchaser is not paid on the Due Date thereof, then without prejudice to or any other right it may have in terms of this Contract or in law and without derogating from the provisions of clause 15), the Supplier may immediately suspend the carrying out of any of its then uncompleted obligations until the payment is made. The Supplier will in such circumstances furthermore not be required to provide the Purchaser with any further Goods and/or Services in terms of this Contract until such time as the Purchaser has complied with all payment obligations then due and payable by it in terms of this Contract. The Supplier's obligation to repair or replace any Goods (or any components thereof) in terms of this Contract (and in particular clause 12) will similarly be suspended until such time as the Purchaser has complied with all payment obligations then due and payable in terms of this Contract.

15. **BREACH AND TERMINATION**

- 15.1. Without derogating from the provisions of clause 15.3 below), should the Purchaser breach any provision of this Contract and fail to remedy such breach within 7 (seven) days of receiving written notice from the Supplier requiring the Purchaser to do so, then the Supplier shall be entitled, without prejudice to its other rights in terms of this Contract or in law –
 - 15.1.1. to cancel this Contract and/or any Order; or
 - 15.1.2. to claim immediate specific performance of all the Purchaser's obligations in terms of this Contract and any Orders, whether or not then due for performance.
- 15.2. Should the Supplier breach any of its obligations under this Contract and/or any Order and fail to remedy such breach within 14 (fourteen) days of receiving written notice from the Purchaser requiring the Supplier to do so, then the Purchaser shall be entitled, without prejudice to its other rights in law, to claim specific performance of the Supplier's obligations in terms of this Contract and/or the relevant Order.
- 15.3. Notwithstanding the provisions of clause 15.1, the Supplier may terminate the Contract with immediate effect if the Purchaser:

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- 15.3.1. being a partnership, the partnership is terminated; or
 - 15.3.2. being a company, the Purchaser is placed under a provisional or final order of liquidation (whether compulsory or voluntary), is subject to judicial management or business rescue proceedings or has any application or other proceeding brought against or in respect of it in terms of which it is sought to be deregistered, wound-up, liquidated or placed under judicial management or business rescue, in any such event whether provisionally or finally; or
 - 15.3.3. has a judgement recorded against it which remains unsatisfied for 7 (seven) days; or
 - 15.3.4. compromises or attempt to compromise generally with any of the Purchaser's creditors; or
 - 15.3.5. commits any act of insolvency, as contemplated in the Insolvency Act No. 24 of 1936; or
 - 15.3.6. intentionally does anything which is calculated to injure the reputation of or goodwill attaching to the Supplier.
- 15.4. The Supplier's rights in terms of this clause 15 shall not be exhaustive and shall be in addition to any other rights afforded to it in terms of this Contract or in law.
- 15.5. Upon the cancellation of the Contract for any reason whatsoever (i) all amounts then owed by the Purchaser to the Supplier in terms of the Contract shall become due and payable forthwith, and (ii) the Supplier will be entitled to retain or take possession, as the case may be, of Goods in respect of which ownership has not yet passed.

16. **CONFIDENTIALITY**

- 16.1. The Purchaser hereby undertakes to keep confidential and not to disclose to any third party any and all information given to the Purchaser by the Supplier in terms of or pursuant to the Contract, including but not limited to all specifications, illustrations, drawings, diagrams, price lists, dimensions, performance figures, advertisements, brochures and other technical data furnished by the Supplier to the Purchaser in respect of the Goods and/or Services in whatever format, whether written, oral or graphic, recorded or not (and if recorded, whether recorded in writing, on any electronic medium or otherwise howsoever) ("**Confidential Information**"), save:.
- 16.1.1. to the extent required by law or agreed to in writing by the Supplier; and
 - 16.1.2. to, and permit the use thereof by, its employees, representatives and professional advisers to the extent strictly necessary for the purpose of implementing or enforcing the Contract or obtaining professional advice or conducting its business, it being specifically agreed that any disclosure or use by any such employee, representative or professional adviser of such Confidential Information for any other purpose shall constitute a breach of this clause 16 by the Purchaser.
- 16.2. Without derogating from the provisions of clause 16.1, the Purchaser hereby irrevocably and unconditionally agrees and undertakes that it shall not make use of, and shall procure that none of its employees, representatives, professional advisors or other stakeholders makes use of, the Confidential Information in order to manufacture, modify or enhance the Goods and/or provide the Services to the Purchaser or any third party.
- 16.3. The Supplier may, at any time, request the Purchaser to:
- 16.3.1. return any material containing, pertaining to or relating to any Confidential Information and may, in addition, request the Purchaser to furnish to it a written statement sworn under oath to the effect that, upon such return, the Purchaser has not retained in its possession, or under its control, either directly or indirectly, any such material or any copies thereof or extracts therefrom; or

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16.3.2. destroy any material containing, pertaining to or relating to any Confidential Information and furnish the Supplier with a written statement sworn under oath to the effect that all such material has been destroyed.

16.4. The Purchaser shall comply with any request in terms of clause 16.3 within five "Business Days" (being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa) of the date thereof.

17. **DISPUTE RESOLUTION**

17.1. In the event of any dispute or difference arising between the Parties relating to or arising out of this Contract, including the implementation, execution, interpretation, rectification or cancellation of this Contract, the dispute shall be referred for arbitration to the Arbitration Foundation of Southern Africa ("**AFSA**") in terms of AFSA's Arbitration Rules for the time being in force.

17.2. This clause shall constitute each Party's irrevocable consent to the arbitration proceedings, and neither Party shall be entitled to withdraw from such arbitration proceedings or to claim that it is not bound by this clause.

17.3. Each of the Parties hereby irrevocably agrees that the decision of the arbitrator in the arbitration proceedings:

17.3.1. shall, save for any manifest error, be final and binding` on each of them;

17.3.2. will be carried into effect; and

17.3.3. be made an order of any court to whose jurisdiction the Parties are subject.

17.4. Notwithstanding the foregoing, nothing in this clause shall be construed as precluding either Party from applying to court for a temporary interdict or other relief of an urgent nature, pending the award of the arbitrator in terms of this clause.

18. **JURISDICTION**

18.1. Subject to clause 17, the Supplier shall be entitled but not obliged to institute any proceedings against the Purchaser, arising out of the Contract for the full balance outstanding by the Purchaser to the Supplier in any Magistrate's Court having jurisdiction over the Purchaser notwithstanding that the claim or the value of the matter in dispute may exceed the jurisdiction of the Magistrate's Court. Without prejudice to any other rights or remedies of the Supplier in terms of this Contract or in law, the Purchaser furthermore agrees to be liable for, and upon demand by the Supplier reimburse the Supplier for, all legal costs in respect of any such claim, including costs on the attorney and client scale, and other costs incurred by the Supplier arising out of any breach by the Purchaser of this Contract, as may be permissible in law.

18.2. A certificate signed by any director of the Supplier showing the amount due and owing by the Purchaser to the Supplier at any given time shall be sufficient proof of the facts therein stated for the purpose of all legal proceedings against the Purchaser for recovery of the said amount.

19. **ADDRESSES FOR NOTICES**

19.1. The Purchaser hereby chooses as the Purchaser's *domicillum citandi et executandi* ("**Domicile Address**") for all purposes the addresses as set out in the Application. The Purchaser accordingly authorises the Supplier to deliver notices, statements or invoices by hand, email, facsimile or post to the addresses provided in the Application.

19.2. For purposes of this Contract all notices shall be in writing. Any notice given by either Party to the other ("**the Addressee**"):

19.2.1. which is delivered by hand between the hours of 09:00 and 17:00 on Business Day shall be presumed to have been received at the time of delivery;

Initial Initial
(Purchaser) **(Supplier)**

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- 19.2.2. if sent by email between the hours of 09:00 and 17:00 on any Business Day, shall be presumed to have been delivered on the Business Day immediately following the date of sending, unless the Addressee proves that the email was not delivered to its email system or that the email was incapable of being retrieved, read or otherwise processed by its system;
- 19.2.3. if sent by facsimile between the hours of 09:00 and 17:00 on any Business Day, shall be presumed to have been delivered on the Business Day immediately succeeding the date of successful transmission thereof; or
- 19.2.4. if sent by ordinary or pre-paid registered post, shall be presumed to have been delivered 7 (seven) days after the date of posting.
- 19.3. A notice actually received by a Party shall be an adequate notice to notwithstanding that it was not delivered to that Party's Domicile Address.
- 19.4. The Parties may at any time by written notice vary their respective Domicile Addresses to any other physical address within the Republic of South Africa (not being *poste restante*), facsimile number or email address.

20. RETURN OF GOODS

If, in the exercise of its sole discretion, the Supplier shall agree at the written request of the Purchaser, to accept the return of any Goods for credit, which Goods were correctly supplied by the Supplier and are not faulty or subject to any claim by the Purchaser in terms of this Contract, then the Supplier shall be entitled without the necessity of any further agreement, to claim from the Purchaser a handling charge of 15% of the invoice price of the Goods so refunded.

21. WAIVER

No extension of time or any other relaxation or indulgence granted by the Supplier to the Purchaser shall operate as or be deemed to be a waiver by the Supplier of any of its rights under this Contract or a novation of any of the terms and conditions of this Contract.

22. INTERPRETATION

- 22.1. The headings in this Contract are for convenience only and are not to be taken into account for the purpose of interpreting the Contract. Words importing any one gender include the other two genders and words in the singular include the plural, and vice versa. An expression which denotes a natural person includes an artificial or juristic person and vice versa.
- 22.2. This Contract constitutes the whole and sole record of the agreement between the Parties relating to the subject matter hereof and the Supplier shall not be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. This Contract supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the Parties in respect of the subject matter hereof.
- 22.3. No addition to, variation, or agreed cancellation of this Contract shall be of any force or effect unless in writing and signed by or on behalf of the Parties.
- 22.4. If a provision of this Contract is found to be illegal, invalid or unenforceable, then, to the extent it is illegal, invalid or unenforceable, that provision will be given no effect and will be treated as though it were not included in this Contract but the validity or enforceability of the remaining provisions of this Contract will not be affected.
- 22.5. The signature by either Party of a counterpart of this Contract shall be as effective as if that Party had signed the same document as the other Party. All such counterparts shall, when read together, constitute an original of this Contract.
- 22.6. Each Party shall bear and pay its own costs of and incidental to the negotiation, drafting, preparation and execution of this Contract.

Initial Initial
(Purchaser) **(Supplier)**

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23. LAW APPLICABLE

This Contract shall all respects be governed by the laws of the Republic of South Africa.

Signed at _____ on _____
(Place) (date)

For The Supplier

who warrants that he/she is duly
authorised hereto

Signed at _____ on _____
(Place) (date)

For The Purchaser

who warrants that he/she is duly
authorised hereto

Initial
(Purchaser)

Initial
(Supplier)