



ANNEXURE X

STANDARD TERMS AND CONDITIONS OF BUSINESS

Be advised that when submitting a Credit Application to and/or accepting any Quotation from the Company, you become bound hereto. Each term is important, for ease of reference some terms have been bolded, however all terms are important and binding.

1 DEFINITIONS AND INTERPRETATION

- 1.1 In these conditions, save where the context otherwise requires, the following words and expressions shall have the following meanings:
- 1.1.1 “**Agreement**” means the Terms and Conditions contained herein together with the Credit Application, if applicable and/or a Quotation referring to these Terms and Conditions;
- 1.1.2 “**Applicant**” means the natural or juristic person as indicated in Part A of a completed Credit Application;
- 1.1.3 “**Background IP**” means any intellectual property and Intellectual Property Rights existing before the date of the acceptance of the Order, and any Intellectual Property Rights generated after the date of acceptance of the Order but outside the scope of these Terms and Conditions;
- 1.1.4 “**Company**” means EXB Electric (Proprietary) Limited, registration number: 19990/004203/07, as incorporated in terms of the Company Laws of South Africa as amended or succeeded from time to time, its subsidiaries, associated companies, successors-in-title and assigns from time to time, if any, and each member or future member of the EXB Electric Group from time to time, who need not notify the Customer of its acceptance of the benefits of these conditions, and in respect of which the benefits imparted by these conditions may not be withdrawn prior to its acceptance thereof;
- 1.1.5 “**Confidential Information**” means all information (whether communicated in writing, verbally, electronically or by any other means and whether communicated directly or indirectly), including information in connection with these Terms and Conditions and the transactions contemplated therein, or any related agreement, which by its nature is intended to be for the knowledge of the receiving Party alone, which is marked as “confidential” or “proprietary” or which is otherwise confidential, and all information concerning the business transactions and the financial arrangements of any Party with any person with whom that Party is in a confidential relationship with regard to the matter in question;
- 1.1.6 “**Consumer Protection Act**” means the Consumer Protection Act 68 of 2008 as amended from time to time;
- 1.1.7 “**Credit Application**” means the form/application previously completed or to be completed by an Applicant;
- 1.1.8 “**Customer**” means natural or juristic persons, including any of their associated businesses, subsidiaries, holding companies, successors or lawful assigns, as the case may be, who requests and/or makes use of any of the Company’s Products and includes any Applicant who applies for credit facilities with the Company;
- 1.1.9 “**Ex works**” means that the Company delivers when it places the Products at the disposal of the Customer at the Company’s premises or at another named place (i.e. works, factory, warehouse, etc.) The Company does not need to load the Products on any collecting vehicle, nor does it need to clear the Products for export, with such clearance as applicable. The Company has no obligation to the Customer to load the Products and if the Company does load the Products, it does so at the Customer’s risk and expense. The Company has no obligation to the Customer to insure the Products. The term “ex works” is used as defined in the Incoterms® of 2020 as published by the International Chamber of Commerce;

- 1.1.10 “**Force Majeure Event**” means an event beyond the reasonable control of the Company which is due to external circumstances including, without limitation, general labour disturbances such as, but not limited to strikes, lockouts, boycotts and labour disputes, (but excluding strikes, lockouts, boycotts and labour disputes involving employees of the Company), supply difficulties and delays, any delays at borders and/or as a result of customs controls, breach of contract or disputes with the sub-contractors of the Company, acts of God, war, riot, civil commotion, malicious damage (but excluding malicious damage involving the employees of the Company), acts of Government or any governmental authority or representative thereof (whether or not legally valid) such as, but not limited to, a rule, regulation, law, governmental order or direction, embargoes and trade limitations, accident, breakdown of plant or machinery fire, flood, storm and difficulty or increased cost in obtaining workers, goods or transport.
- 1.1.11 “**Foreground IP**” means all intellectual property and Intellectual Property Rights generated under these Terms and Conditions;
- 1.1.12 “**Intellectual Property Rights**” means any intellectual and industrial property rights including, but not limited to, copyright, moral rights and neighbouring rights, all rights in relation to: inventions (including patent rights and utility models), trademarks, Confidential Information (including trade secrets and know how), drawings, prototypes, algorithms, software, mask works and semiconductor topographies and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic field, afforded by law anywhere in the world whether registered or unregistered or capable of registration and all applications therefore;
- 1.1.13 “**National Credit Act**” means the National Credit Act 34 of 2005 as amended from time to time;
- 1.1.14 “**Non-Standard Products**” means products procured, assembled and/or manufactured in accordance with the Customer’s specifications and/or approved drawings;
- 1.1.15 “**Order**” means an order for Products and/or Services placed on the Company by the Customer;
- 1.1.16 “**Parties**” means the Company and the Customer jointly;
- 1.1.17 “**Personal Information**” has the meaning as ascribed to it in the POPI Act;
- 1.1.18 “**POPI Act:**” means the Protection of Personal Information Act 4 of 2013, as amended from time to time;
- 1.1.19 “**Price**” means the aggregate of the charges and fees set out in the Company’s invoice or statement;
- 1.1.20 “**Prime Rate**” means the publicly quoted nominal rate of interest per annum charged by Standard Bank (“**the Bank**”) from time to time on unsecured overdraft facilities to its most favoured corporate clients, as certified by any general manager of the Bank, whose authority or appointment shall not be necessary to prove, calculated on a nominal annual compounded monthly basis in arrears (“**nacm**”);
- 1.1.21 “**Products**” means any products supplied by the Company from time to time and specifically includes:
- 1.1.21.1 Standard Products; and
- 1.1.21.2 Non-Standard Products;
- 1.1.22 “**Quotation**” means the quotation by the Company for the supply of Products and/or Services to the Customer which inter alia sets out the price for the supply of the Products and/or Services, which may change from time to time without the prior notice to the Customer;
- 1.1.23 “**Services**” means any services rendered by the Company to the Customer from time to time;
- 1.1.24 “**Signatory**” means the person who appends his signature to a Credit Application on behalf of an Applicant and/or accepts the Quotation on behalf of the Customer;
- 1.1.25 “**Standard Products**” means any products that are available from the Company’s product price list, catalogues or brochures;
- 1.1.26 “**Terms and Conditions**” means the Terms and Conditions incorporated in this Agreement;
- 1.1.27 “**VAT**” means Value Added Tax in terms of the Value Added Tax Act 89 of 1991 as amended from time to time.

- 1.2 Expressions which denote a natural person shall include a reference to bodies corporate and juristic persona;
- 1.3 Expressions which denote the masculine shall include a reference to the other two genders and vice versa;
- 1.4 Expressions which denote the singular shall include a reference to the plural and vice versa;
- 1.5 Headings are for reference purposes only and shall not be considered in the interpretation of the conditions which they relate;
- 1.6 The rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply.

2 **OVERRIDING EFFECTS OF TERMS AND CONDITIONS**

- 2.1 Unless otherwise specifically agreed in writing, all existing and future business conducted by the Company shall be on the Terms and Conditions set out herein, and no other terms or conditions, whether contained in the Customer's documentation or otherwise, shall be binding on the Company unless reduced to writing and signed by both parties.

3 **CREDIT FACILITIES, OWNERSHIP AND RISK**

- 3.1 The Customer understands that the Company's decision to grant credit facilities to the Customer is at the sole discretion of the Company.
- 3.2 The nature and extent of such facilities shall at all times be in the Company's sole discretion and the Company reserves the right to amend, vary, suspend or withdraw such facilities at any time without prior notice, subject to the provisions of the National Credit Act. In such circumstances the provisions of these Terms and Conditions will still apply to those amounts that are owed by the Customer under the credit facilities before the date on which the Company suspended or withdrew the credit facilities.
- 3.3 The Company reserves the right, by written notice to the Customer, to reduce the credit limit under the credit facilities granted to the Customer, which reduction will take effect on delivery of a written notice to the Customer.
- 3.4 The Company may increase the credit limit under the credit facilities with the written consent of the Customer, provided that the Company is satisfied that the Customer will be able to meet its obligations under the increased credit limit.
- 3.5 The credit limit granted by the Company to the Customer shall not be deemed to be a limit of the Customer's indebtedness to the Company.
- 3.6 It is a condition of sale that notwithstanding delivery/collection of the Products and the transfer of possession to the Customer, ownership of the Products shall remain vested in the Company until the whole of the price shall have been paid by the Customer. The risk in such Products shall, however, pass to the Customer immediately upon delivery/collection.

4 **PRICE**

- 4.1 All Quotations shall remain valid for a period of 7 (seven) business days from the date of quotation, unless amended by the Company prior to acceptance thereof.
- 4.2 Notwithstanding that the Company provides the Customer with a written quotation based on a disclosed exchange rate in the quotation ("the Disclosed Exchange Rate"), which the Customer accepted within the period for which the quotation is valid, the price of the Company's Products and/or Services will be the price ruling (including exchange rate) at the date of payment for the supply of the Products and/or Services. In the event that the Disclosed Exchange Rate fluctuated more than 5% (five percent) between the date of the written Quotation and the date of payment, the Parties agree that the Company will have the right to adjust the price accordingly. Any increase or decrease in customs duty by reason of the variation in the rate of exchange in terms of this Agreement will be for the account of the Customer.
- 4.3 The price shall exclude VAT which the Customer shall be liable to pay to the Company in addition to the price.
- 4.4 The Company will not, under any circumstances, be precluded from raising or correcting any debit (and from obtaining payment

thereof) in relation to any amount due to it.

- 4.5 Unless agreed thereto in writing the Company shall not grant any discount, including settlement discounts. In the event that the Company grants a discount, the discount shall be forfeited should payment not be made on or before the required time in full.

5 **PAYMENT**

- 5.1 Unless the Customer has been granted credit facilities, invoices are payable prior to delivery/collection of the Products.
- 5.2 The Company reserves its right to require full pre-payment of any Products as part of the acceptance of the relevant Order.
- 5.3 Where a credit facility has been granted by the Company, payment shall be made within 30 (thirty) days from the date of the Company's month-end statement, save for otherwise agreed to between the parties in writing.
- 5.4 The Customer shall not be entitled to withhold, deduct from or defer any amount due by it to the Company and shall pay such amounts free of any deductions, charges and set-off.
- 5.5 The Company, in its sole discretion, shall be entitled, but not obliged to set-off against any amounts owed by the Customer to it any amounts that it owes to the Customer.
- 5.6 The Company can appropriate payments from the Customer to any such outstanding amounts as it deems fit.

5.7 The Customer carries any risk associated with or arising from the method elected to effect payment to the Company. The Customer is to ensure that it verifies that the account into which payment will be made is a legitimate bank account of the Company. The Company accepts no responsibility for funds paid into the incorrect account.

- 5.8 Should any account not be paid on due date, all other monies owing by the Customer to the Company shall immediately become due and payable.
- 5.9 The Company shall be entitled, without prejudice to its rights, and without prior notice, to immediately cancel any sale or other contract in circumstances where the price has not been paid in full on due date.

6 **ORDERS**

- 6.1 All Orders must be placed with the Company in writing, the Company does not accept oral orders.
- 6.2 The Company shall not be responsible for any errors or misunderstandings occasioned by the Customer's failure to effect orders in writing.
- 6.3 All Orders are subject to these Terms and Conditions and Products may be subject to minimum order quantities and not any provisions that the Customer may attempt to impose by way of its documents.
- 6.4 The Company's acceptance of the Order is subject to, *inter alia*, the availability of the Product(s) and manpower.
- 6.5 The Company reserves the right, in its sole discretion, to decline the Customer's application for any Order without providing any reasons.
- 6.6 No binding contract shall arise between the Customer and the Company until the Customer's Order has been accepted and confirmed by the Company in writing.
- 6.7 It shall be the sole responsibility of the Customer to provide the Company with all the necessary requirements and specifications in relation to the Products ordered, including but not limited to packaging, delivery documentation, drawings and/or circuit diagrams and/or product certification requirements. It remains the Customer's responsibility to ensure that the Company has the correct revision and, if any changes are made to Product specifications after acceptance of an Order, the Customer is subject to any cost increase and/or deviation in the delivery date.
- 6.8 It is the sole responsibility of the Customer to establish that the Products requested by it are suitable for its purposes.
- 6.9 Written Orders that have been accepted by the Company may not be cancelled, varied or withdrawn by the Customer, unless

the Company, in its sole discretion, agrees thereto in writing, failing which the Customer will be liable for the full Order value.

- 6.10 The Customer acknowledges the Company may from time to time import and/or procure certain base products to be utilised in the manufacturing and/or assembly of a Customer's Order and the Company is dependent on third parties including but not limited to international shipping limitations and accordingly, the Company reserves the right, in its sole and absolute discretion, to cancel, withhold or suspend or vary the delivery dates of any of a Customer's Order or any Order that may be in production, notwithstanding that such Order has previously been accepted by the Company as a result of delays occasioned by third parties, outside the control of the Company or the occurrence of a Force Majeure Event.
- 6.11 The Company reserves the right, in its sole and absolute discretion, to cancel, withhold or suspend the Customer's Order or any Order that may be in production, notwithstanding that such Order has previously been accepted by the Company until such time that the Customer's overdue account has been settled in full.
- 6.12 Without limiting the generality of the foregoing, the Company reserves the right to cancel and withhold the Customer's Order where the Customer is placed under business rescue, liquidated, sequestrated, makes any attempt of compromise with its creditors, has judgment recorded against its name and/or breaches any of the Terms and Conditions contained herein.

7 **DELIVERY**

- 7.1 Unless otherwise stated the prices quoted are ex works.
- 7.2 Should the Company be required to:
- 7.2.1 transport the Products to the nominated delivery address of the Customer, delivery and passing of risk in the Products shall occur when the Products are offloaded at the nominated delivery address of the Customer; or
- 7.2.2 travel to render the Services for and on behalf of the Company, such prevailing traveling costs will be disclosed in the Quotation.
- 7.3 Should delivery of the Products occur by carrier, such carrier shall be deemed to be the Customer's agent and delivery to such carrier shall (at the costs of the Customer) by the Company shall be delivery to the Customer. In such event signature by the carrier, or any employee of the carrier, notwithstanding that it may be incorrect, on the delivery note or invoice shall be prima facie proof of proper delivery of the Products to the Customer.
- 7.4 Signature by the Customer or any employee of the Customer, or any person at any address nominated by the Customer, notwithstanding that it might be incorrect, on the delivery note or invoice shall be prima facie proof of proper delivery of the Products to the Customer.
- 7.5 Should the Customer in checking the Products note a discrepancy between the delivered quantity and that of the delivery note he/she must note such difference on the delivery note and draw such note to the attention of the person delivering the Products. In the event of the Customer failing for any reason whatsoever to sign the delivery note or to make note of any discrepancies as aforesaid, the Company shall not be liable in respect of claims arising out of any discrepancies between the quantity invoiced and the quantity delivered.
- 7.6 Should the Customer instruct the Company to engage a carrier to transport the Products, such carrier shall be deemed to be the Customer's agent. The Company shall engage such carrier on any terms and conditions as it deems fit. The Customer shall at all times whether during or after termination or expiry of this Agreement indemnify and keep the Company indemnified against all losses, claims damages, liabilities and expenses (including all reasonable legal expenses) incurred in connection with any litigation concerning or compromise arising out of our in relation to any claims made against the Company by such carrier so engaged.
- 7.7 Subject to 6.10, any delivery times quoted for delivery by the Company are estimates only and shall not entitle the Customer to cancel any Order (or this Agreement) and/or to claim any damages for failure by the Company to deliver within such delivery times unless such non-compliance by the Company falls outside the tolerance. It is hereby recorded that any delivery times

quoted by the Company to the Customer shall be subject to a tolerance period of **3 (three) business days before** or **after** the quoted delivery date. The aforementioned may be explained by means of an example: if the Company has quoted delivery of the Products to occur on Friday, 5 May 2023, the Company will be within the tolerance if the Company delivers the Products to the Customer on Tuesday, 2 May 2023 or Wednesday, 8 May 2023 before 16h00.

- 7.8 In addition to clause 7.7 and 6.10, in the instance that the Company is unable to deliver within the tolerance as a result of an act of God, pandemics, strikes, fire, riot, war, (whether declared or not), embargoes, export control, fuel shortage, any power failure and/or shortage, including but not limited to load shedding or any other reason whatsoever not within the reasonable control of the Company, the obligations of the Company shall be deemed to be suspended. The Company shall give the Customer notice of such fact as soon as reasonably possible and the parties shall negotiate in good faith as to when delivery is to occur. The Company shall not be liable for any damages incurred as a result of events contemplated in this clause 7.8. In the instance where the parties fail to agree as to when delivery is to occur the Company shall be entitled to delivery within a reasonable period of time.
- 7.9 The Parties hereby agree that the Company may, make delivery of the Products to the Customer in instalments or in such other manner as may be agreed to by the parties. The Customer shall be obliged to accept delivery of each such instalment.
- 7.10 Where Products are delivered in instalments, the invoices relating to such separate deliveries shall be paid as if the Products were the subject of a separate Order. No payment shall be postponed or withheld by virtue of delay or non-delivery of any instalment, nor shall such non-delivery or delay of any instalment affect the balance of the Order or entitle the Customer to cancel the Order.
- 7.11 The Company shall be entitled to withhold delivery of any undelivered instalments until all payments for any delivered instalment have been made in full.
- 7.12 Should the Customer fail to take delivery of the Products promptly, or in any way delay the delivery of the Products the risks in such Products shall immediately pass to the Customer and the Customer shall be liable to pay the Company the reasonable costs for storing, insuring and handling of the Products, in addition to the purchase price, until delivery takes place.

8 CUSTOMER'S OBLIGATIONS

- 8.1 Whilst the Customer is indebted to the Company in respect of the price of the Products, the Customer shall:
- 8.1.1 at its own expense keep the Products properly insured for their full value against loss or damage through fire, accident, theft and other risks designated by the Company;
- 8.1.2 in compliance with Section 97 of the Consumer Protection Act, disclose to the Company the location of the Products delivered to it by the Company of any change concerning the Customer's residential address and/or the address of the premises in which any Products that are the subject of this Agreement are ordinarily kept and the name and the address of any other person to whom possession of the Products has been transferred;
- 8.1.3 be responsible for all losses of or damage to the Products and the Company shall not be liable or in any way be responsible for any loss or damage thereto arising from any cause whatsoever including the Company's negligence and the Customer shall give the Company immediate notice in writing of any loss of or damage to the Products;
- 8.1.4 not do anything which renders the Products liable to attachment, encumbrance, hypothec or any lien; and
- 8.1.5 be obliged to timeously notify the Company in writing prior to there being any change to the Customer's physical address(es), delivery address(es), postal address(es), e-mail address(es), address where the Products are kept, bank account(s) and the like or prior to there being any change in the shareholding, membership or ownership of the Customer, and before all or any part of its business or its major assets are disposed of to a third party.
- 8.2 In the event of the sale of its business or a change occurring in its directors or members, the Customer undertakes to notify the Company immediately in writing of such changes, failing which the Customer and the Signatory and ex

director/member/trustee/sole proprietor hereto shall remain personally liable for payment of all Products ordered after the date but prior to written notification of such changes to the Company.

- 8.3 All costs related to the recovery of the Products, shall be for the account of the Customer. The Customer shall at all times during or after the termination of this Agreement indemnify and keep the Company indemnified against all losses, claims, damages, liabilities and expenses (including reasonable legal fees) incurred in connection with the removal of any repossessed Products.

9 **PRODUCT INSTALLATIONS**

The Customer acknowledges that it is aware of the nature of the Products and in particular the explosion protected equipment and the Customer is accordingly reminded that during installation it shall *inter alia* ensure that:

- 9.1 Products are installed to conform with the planning and/or design documentation, installation standards and within the limits specified by the equipment certification and manufacturer's instructions;
- 9.2 Products are installed in a manner that maintains the integrity of protection afforded by the equipment type;
- 9.3 Cables and conduits are installed to conform with installation standards, planning and/or design documentation;
- 9.4 Cables and conduits are terminated to conform with installation standards and equipment certification and manufacturer's instructions
- 9.5 Circuits are tested before connecting them to devices to ensure protective earth resistance is sufficiently low, insulation resistance is safe, polarity and connections are correct and each circuit complies with installation standards;
- 9.6 Conductors are terminated and connected complying with planning and/or design documentation, installation standards, equipment certification and manufacturer's instructions; and
- 9.7 Product covers and internal components are removed to enable installation and are replaced ensuring the integrity of the equipment type is not compromised.

10 **WARRANTIES, REPRESENTATIONS AND INDEMNITIES BY THE COMPANY**

- 10.1 The Company, its employees and/or agents give no warranties or guarantees whether express or implied or tacit, the Customer other than those which the Company is obligated in law, such as:
- 10.1.1 the Products shall be free from defects in design, material, and workmanship ("Defects"), under normal use;
- 10.1.2 that the Products are reasonably suitable for the purpose for which they are generally intended;
- 10.1.3 that the Products are of good quality;
- 10.1.4 that the Products will, subject to the conformance with Product installation requirements as highlighted in 9 above, be useable and durable ("warranty") for a reasonable period of time limited to 12 (twelve) months ("warranty period"), having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply;
- 10.1.5 comply with any applicable standards set by the applicable public regulation.
- 10.2 The Company shall, subject to the provisions of these Terms and Conditions and for the duration of the warranty period, remedy any material Defect in the Products resulting from faulty design, material or workmanship which impairs the functioning of the relevant Products. There shall be no claims based on Defects in cases of insignificant deviations, of only minor impairment of usability or from non-reproducible software errors.
- 10.3 The Company shall render the Services to the best of its ability and with reasonable care, diligence, skill and in a professional manner. Should the Services fail to comply with such standards, the Company agrees to remedy any deficient Services at no additional cost to the Customer provided that the Company has received written notification within 14 (fourteen) days following

the completion of the specific Services giving rise to the claim.

- 10.4 Furthermore, the Customer agrees to hold the Company harmless from any liability arising from rendering Services in accordance with the Customer's specifications or instructions. The Company shall not be required to remedy or provide any Services for defects not falling under the provisions of 10.3. Any request for additional work (labour and spare parts) including additional remedial services outside of 10.3 shall be quoted separately by the Company.
- 10.5 This limited warranty shall not apply to any Products or component(s) thereof which:
- 10.6 has been repaired or altered outside of the Company's factory in any manner so as, in the Company sole judgment, to affect its serviceability;
- 10.7 has been subject to alteration, accident, misuse, abuse, neglect or abnormal wear;
- 10.8 has been installed, operated, stored or used in a manner contrary to the Company's instructions, or due to failure to follow the Company's instructions for operation and maintenance; or
- 10.9 has been subjected to abnormal or unusual physical or electrical stress or environmental conditions misused or negligently handled or operated.
- 10.10 The Company shall not be liable for damage due to third party acts, atmospheric discharges, excess voltage, chemical influences and for loss and damage in transit. The warranty does not cover the replacement of parts subject to normal wear and tear. The Company gives no warranty for the sale of used Products. If the Products are manufactured by the Company on the basis of design data, design drawings, models or other specifications supplied by the Customer, the Company's warranty shall be restricted to non-compliance with the Customer's specifications as approved by the Company under these Terms and Conditions.
- 10.11 The Company's sole obligation and the Customer's sole remedy under the warranty shall be, at the Company's option and discretion, to either repair or replace at no additional charge, the defective Products (or the defective part of the Products) thereof, which is proved to breach such warranty.
- 10.12 Except for the express warranty set forth above, the Company makes no other representations or warranties, express or implied, statutory or otherwise, regarding the Products and/or Services, their fitness for any particular purpose, their merchantability, their quality, their non-infringement, or otherwise.
- 10.13 The Customer shall expressly not have any claim with regard to expenses incurred in the course of supplementary performance, including costs for travel, transport, labour, and material, to the extent that expenses are increased because the subject-matter of the Products and/or Services has subsequently been brought to another location than the place of delivery. The Company shall not be held liable for any software, firmware, information or memory data of the Customer or its end customers contained in, stored on, or integrated with any equipment returned to the Company for repair, whether or not under warranty.
- 10.14 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate

idea of the Products and/or Services described in them. They will not form part under these Terms and Conditions in general or this warranty specifically. The Company may make any changes in the specifications, design or materials of the Products and Service offerings which are required to conform with any applicable safety or other statutory requirements, or where the Products and/or Services are to be supplied to the Company's specifications, which do not in the Company's reasonable opinion materially affect the quality or performance of the Products and/or Services.

- 10.15 The Company, its employees and/or agents shall not be liable (to the fullest extent permissible by law), whether in contract or delict or otherwise, for any loss or damage whatsoever, defect in the Products delivered, for any injury (unless as a result of gross negligence, wilful default or fraud by the Company) or for any damage or loss resulting from such defect therewith, whether through the negligence (excluding gross negligence) or otherwise of the Company.
- 10.16 In the event the Company, its employees, and/or agents is found to be liable for damages in terms of this agreement, the extent of the Company's liability shall not exceed (to the extent permissible in law) the value of the Products and/or Services sold and/or rendered.
- 10.17 The Company do not accept any responsibility whatsoever for the correctness of instructions which appear on the Products not manufactured by the Company.

11 **DEMONSTRATION MATERIALS**

- 11.1 Products made available to the Customer for demonstration purposes ("Promotional Products") shall, remain the property of the Company and shall be returned in good condition within the period agreed.
- 11.2 All advertising, promotional products and selling materials ("Promotional Products") supplied by the Company to the Customer shall:
 - 11.2.1 remain the property of the Company
 - 11.2.2 not permit the Customer to authorise any other person to make use thereof; and
 - 11.2.3 shall be returned in good condition within the period agreed.
- 11.3 Any damage and/or variation to the Promotional Products will render the Customer liable for all costs associated with the Promotional Products and the Company shall invoice the Customer, which invoice is due and payable on demand.
- 11.4 Promotional Products may not be offered for use, loaned or demonstrated to a third party, without the Company's prior written consent.

12 **SERVICES BY COMPANY**

- 12.1 The Customer's purchase orders for Services shall specify the type of Services, desired dates and times, the site location, site specific conditions that may impact the Services, the precise details of any equipment in respect of which Services are to be rendered and any further relevant information that may be required in order to enable the Company to render the Services on the basis contemplated in the relevant purchase order.
- 12.2 For the avoidance of doubt, the Company shall be under no obligation to render any services or to undertake any work in addition to the Services expressly stated in Quotation and accepted Order.
- 12.3 Any indication of the required duration for the completion of the Services specified by the Company in the Order is an estimate based on the Company's experience for the provision of similar services in practice. As such, no such estimate will be binding unless expressly agreed to the contrary in writing by the Company. The Company shall be entitled to suspend or delay completion of any Services if exceptional circumstances may, in the Company's reasonable discretion, necessitate this, although the Company shall endeavour to minimize such delays and the impact thereof on the Customer. The Company shall not be liable for any delay in completing the Services within any estimates or for any costs, losses or damages that may result

from such delay for the Customer or any third parties.

12.4 The Company shall:

12.4.1 render the Services to the Customer as agreed in the accepted Quotation and in accordance with these Terms and Conditions;

12.4.2 endeavour to ensure that its employees and contractors will comply with

12.4.2.1 health, safety and security guidelines of the site(s) where the Services are rendered; and

12.4.2.2 any legal requirements applicable in the jurisdiction where the Services are rendered;

12.4.3 supply its employees and contractors with such safety equipment as employees or contractors involved in rendering services similar to the Services would ordinarily require. Any additional requirements by the Customer, including, but not limited to health, safety policies and security guidelines, safety equipment and additional training shall be provided to the Company at the Customer's costs.

12.5 If the Company in its reasonable discretion, deems the site, or any premises where the Services are to be rendered, to be unsafe or in an unfit condition to enable the Company to render the Services on the terms and to the specifications as set out in Order, the Company shall be entitled (but not obliged) to refuse to render such Services until the Customer ensures that the relevant site or premises complies with the Company's reasonable demands in this regard. The Company shall be entitled to invoice the Customer for any costs incurred by the Company as a result of the Company refusing to render Services in terms of this clause 12.5.

12.6 The Customer shall:

12.6.1 provide the Company without delay and at the agreed times with such access as the Company may require to any site, premises, facilities, amenities, utilities and any areas falling within the scope of the Services so as to enable the Company to render the Services unhindered and, where specific entry or use requirements are applicable, shall provide the Company with such requirements as soon as possible, but no later than 14 (fourteen) days before the Company commences with the rendering of the Services;

12.7 provide the Company with the health, safety and security guidelines of the site(s) where the Services are to be rendered. The Company reserves the right to amend the date of rendering the Services to ensure compliance with these guidelines;

12.8 render all reasonable assistance and cooperation to the Company in connections with the Company's performance of its duties;

12.9 ensure that any equipment in respect of which the Services are to be rendered, shall not bear any electrical load;

12.10 notify the Company promptly of all problems relating to the Services and cooperate with the Company to solve these matters; and

12.11 the Company reserves the right to subcontract any agreed Services, or component thereof, without the consent of the Customer.

13 **INTELLECTUAL PROPERTY RIGHTS**

13.1 Each Party shall remain the owner of its Background IP and nothing contained in these Terms and Conditions shall imply any transfer of title of Background IP. The Company shall be the sole owner of all Foreground IP and shall have full title to such rights.

13.2 The Customer shall not do or authorise any third person to do any act which would or might damage or be inconsistent with the trademarks (which term for purposes of these Terms and Conditions shall include but not be limited to trademarks, trade names, service marks, logo marks, trade dress other trade names, whether registered or unregistered) used by the Company in relation to the Products or to the goodwill associated therewith and, in particular, will not do or authorise the alteration, obliteration, covering up or incorporation of other marks (in whole or in part) on to the Products. The Customer shall not use or authorise any third person to use the trademarks used by the Company in relation to the Products on any stationery,

advertising, promotion or selling material other than the Products or other such materials supplied by the Company to the Customer.

13.3 The Customer agrees to inform the Company promptly about any infringement of any of the Company's trademarks or other Intellectual Property Rights or of any act of unfair competition of which the Customer has knowledge. The Customer agrees to assist in every way possible in legal actions taken by the Company or its affiliated entities in this regard.

13.4 If any claim is made against the Customer that the Products infringe or that their use or resale infringes the rights of any third party, the Company may (at its option) either secure the Customer's right to continue to use the Products or replace or modify the Products to make them non-infringing, or if neither of these alternatives is reasonably available to the Company, refund the purchase price of the Products to the Customer.

14 **WARRANTIES, REPRESENTATIONS AND INDEMNITIES BY THE CUSTOMER**

14.1 The Customer makes the representations and warranties set out in this clause as at the acceptance date of this Agreement and for the duration of this Agreement and acknowledges that the Company has entered into this Agreement in reliance on these representations and warranties, each of which is material and a material representation inducing the Company to enter into this Agreement.

14.2 The Customer has the power to execute and deliver this Agreement and to perform all its obligations thereunder (including, without limitation, the payment of all amounts) and all corporate and other action required to authorise its execution and its performance of such obligations, have been duly taken.

14.3 The Customer is not prohibited in terms of its constitutional documents, or otherwise, from entering into this Agreement or transactions contemplated by it to which it is a party.

14.4 All information (as supplemented from time to time) that has been or will hereafter be made available to the Company by the Customer or any of its representatives in connection with the transactions contemplated herein is and will at all times be complete and correct in all material respects and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not misleading in light of the circumstances under which such statements were or are made.

14.5 The Customer agrees to supplement such information from time to time so that the same remains correct and acknowledges that the Company is acting in reliance on the accuracy of information supplied to it without independent verification.

14.6 The agent and/or representative hereby warrants that any Customer Personal Information which it discloses and transfers to the Company in terms of this Agreement, is done in a manner that complies with the applicable provisions of the POPI Act and to cooperate with the Company in good faith with regards to the transfer and process of such Personal Information.

14.7 No legal suit, action, proceeding or process or any other steps have been taken or, to the best of the Customer's knowledge and belief, after having made all reasonable enquiries in this regard, threatened for the winding-up or liquidation (whether voluntary or involuntary, provisional or final) or de-registration of the Customer or for the appointment of a liquidator or similar officer over the Customer or over any assets of the Customer.

14.8 The Customer hereby warrants, represents and undertakes that:

14.8.1 the Customer is not carrying on business recklessly, with gross negligence, with intent to defraud or fraudulent purposes;

14.8.2 the Customer it is not carrying on business or trading under insolvent circumstances;

14.8.3 that no application to court for an administration order has been made in respect of the Customer;

14.8.4 the Customer will advise the Company immediately of any facts or circumstances which cause or which are reasonably likely to cause any representation or warranty to be false or misleading in any material respect; and

14.8.5 the Customer is in full compliance with all applicable laws, regulations and standard industry practices, which includes but is not limited to the protection of the environment and is not aware of any circumstances which may prevent full compliance

in future.

- 14.9 The Customer shall at all times whether during or after the termination or expiry of this Agreement indemnify and keep the Company indemnified against all losses, claims, damages, liabilities and expenses (including all reasonable legal fees) which may arise (because of this Agreement or any other facility and/or the Company having an interest in this Customer's assets) in respect of a breach of, or failure to meet any of the representations, warranties and/or undertakings in this clause 14.
- 14.10 The Customer undertakes to notify the Company immediately of:
- 14.10.1 any change of address;
 - 14.10.2 cessation of business; and/or
 - 14.10.3 change in ownership or shareholding of the Customer.
- 14.11 The Customer acknowledges and accepts that, notwithstanding any sale of business interest, he/she/they shall remain liable in full for the settlement of the debt to the Company and he/she/they undertake to inform the Company within 7 (seven) days and by registered mail, of any such change.
- 14.12 The Customer hereby declares that the Customer has not specifically informed the Company of any particular purpose for which the Customer wishes to buy/acquire/use the Products or obtain the Services.
- 14.13 The Customer hereby authorises the Company, the Customer's other creditors, the Customers bank and auditors and / or credit bureaus to make credit information available to each other, and also authorises and consents to the Company drawing such credit information from any sources whatsoever regarding the Customer as it deems necessary, including information of the directors, members, partners and/or trustees.

15 **EXPORT REGULATIONS AND ANTI-CORRUPTION**

- 15.1 The performance of any obligations under these Terms and Conditions is conditional upon that no hindrances attributable to applicable local, United Nations (UN) or United States of America (US) or otherwise applicable national, European Union or international rules of foreign trade law or any sanctions or any embargoes exist.
- 15.2 The Customer shall comply with all laws as set forth in clause 15.1. The Customer shall not take any action which could place the Company or any other associated company in jeopardy of breaching or violating any such laws, regulations, provisions and/or acts or any interpretations thereof.
- 15.3 The Customer agrees to comply fully with all applicable anti-corruption laws and regulations, including (but not limited to) those in the jurisdiction in which the Company is registered, the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act.
- 15.4 The Customer agrees to indemnify, defend and hold Company harmless from any breach of the Customer's obligations under this clause 15.

16 **EVENTS OF DEFAULT**

Without derogating from the rights of the Company in law or otherwise, an event of default shall occur should:

- 16.1 the Customer fails to pay any amount to the Company on the due date thereof;
- 16.2 the Customer fails to comply with any term or condition of this Agreement and fail to remedy that breach, if capable of remedy, within 7 (seven) days after being called to do so;
- 16.3 the Customer or any person or entity that provides security for the Customer ("**Obligor**") performs any act analogous to an act of insolvency specified in the Insolvency Act, 1936 or an act as defined in Section 344 of the Companies Act, 1973, read with Schedule 5 of the Companies Act, both as amended or substituted from time to time;
- 16.4 any asset deemed by the Company to be a material asset of the Customer or Obligor, be attached by any third party with a writ of execution and should the Customer fail within 14 (fourteen) business days of such attachment to take the necessary steps to have such attachment set aside and thereafter to pursue such steps with due diligence to a successful conclusion;

- 16.5 any judgment be granted against the Customer or Obligor and remain unsatisfied for a period of 7 (seven) business days after date of judgment or should the Customer fail within 7 (seven) business days of such judgment to take the necessary steps to appeal against or rescind such judgment and thereafter to pursue such appeal or rescission with due diligence to a successful conclusion;
- 16.6 any order of Court, whether provisional or final, and whether voluntarily or compulsorily, be granted for the winding up of the Customer or Obligor;
- 16.7 the Customer or Obligor gives notice to take steps to convene a meeting of its shareholders/directors to adopt a resolution placing it in liquidation or under business rescue in either case, whether provisionally or finally;
- 16.8 the Customer or Obligor enters into a compromise, composition or arrangement with its creditors generally, or any class thereof;
- 16.9 any warranty or representation made by the Customer or Obligor, which was taken into consideration, and was materially relied upon by the Company in accepting an Order from the Customer as set out hereunder or accepting the relevant security, guarantee or suretyship as collateral, be found to be untrue or incorrect in any material respect;
- 16.10 the Customer or Obligor becomes unable to conduct its normal course of business for whatsoever reason;
- 16.11 the Customer repudiates this Agreement; or
- 16.12 If any of the following occurs in relation to the Customer:
- 16.12.1 the Customer carries on business either recklessly, with gross negligence, with the intent to defraud or for fraudulent purposes;
- 16.12.2 the Customer carries on business or trades under insolvent circumstances; or
- 16.12.3 an application to court has been made for an administration order in respect of the Customer.
- 16.13 If the Customer fails to remedy such event of default (where capable of remedy) within the applicable grace period calling upon the Customer to do so, or if the event is not capable of remedy and the Company gives notice that such event has occurred and the Company is exercising its rights pursuant hereto, then:
- 16.13.1 all the Customer's indebtedness to the Company (actual or contingent) will be due and payable immediately irrespective of any terms or conditions otherwise applicable to such indebtedness;
- 16.13.2 the Company may demand and recover payment of all amounts so declared due or deemed to be due;
- 16.13.3 the Customer must pay interest calculated at the then prevailing Prime Rate plus 2 (two) percentage points, calculated on the amount so due and payable (including any unpaid interest which will be capitalized) calculated from the date of demand to date of receipt of payment;
- 16.13.4 the Company may exercise any or all of its rights under any security provided by the Customer or Obligor;
- 16.13.5 the Company may appropriate any amounts standing to the credit of any of the Customer's accounts in the Company's books in reduction or liquidation of the amounts owing to the Company;
- 16.13.6 the Company may refuse to supply further Products or render Services to the Customer, including any subject to an Order accepted by the Company but not delivered prior to the date of exercising such discretion and further that the Company shall not be held liable to the Customer for any loss or damage which the Customer may sustain as a result of the Company cancelling this Agreement or refusing to supply Products; and
- 16.13.7 the Company may demand return of any Products not paid in which event the Customer shall return the Products forthwith to the Company at the Customer's own cost and expense.

17 **FORCE MAJEURE**

- 17.1 If the Company is prevented, hindered or delayed from or in performing any of its obligations under these Terms and Conditions

(other than a payment obligation) by a Force Majeure Event the Company's obligations under these Terms and Conditions are suspended while the Force Majeure Event continues and to the extent that it is prevented, hindered or delayed.

- 17.2 Where a Force Majeure Event in the meaning of clause 17.2 arises, the Company shall have the right to rescind the Agreement. In any case no indemnity shall be claimed or exercised by either Party in case of a Force Majeure Event.

18 **CONFIDENTIALITY AND ANNOUNCEMENTS**

- 18.1 Neither Party, including but not limited to its affiliated entities, owners, managers and employees shall, without the prior written consent of the disclosing Party, for any purpose other than the proper performance of its obligations under these Terms make use of or disclose or permit the use or disclosure to any third party of any trade secrets or other Confidential Information, whether relating to the method of operation or business of the other Party or the Products and/or Services which it may receive or obtain either directly or indirectly, or make any public announcement, communication or circular concerning the transactions to which these Terms and Conditions shall apply. This obligation shall remain in force 5 (five) years after fulfilment of the Product and/or Services, but shall not apply to any information which (i) was publicly known at the time of disclosure to the receiving Party or becomes publicly known through no fault of the receiving Party subsequent to the time of communication thereof to the receiving Party; (ii) was in the receiving Party's possession free from any obligation of confidence at the time of communication thereof to the receiving Party; (iii) is developed independently by the receiving Party or its affiliated entities, and without reference to any of the disclosing Party's Confidential Information or other information that was disclosed in confidence to any third party, as evidenced by contemporaneous written records; (iv) required by law, by a rule of a listing authority or stock exchange to which either Party is subject or submits provided that only such Confidential Information as is strictly required is disclosed; or (v) is rightfully obtained by the receiving Party from third party authorised to make disclosure thereof without restrictions.

- 18.2 A disclosing Party has no liability or responsibility for errors or omissions in, or any decisions made by the receiving Party in reliance on any Confidential Information disclosed under these Terms and Conditions. No warranties of any kind (whether express, implied or statutory) are made in connection with the Products and/or Services as to the accuracy or completeness of the Confidential Information disclosed.

19 **PERSONAL INFORMATION**

- 19.1 The Company undertakes to ensure, as is reasonably possible, that any Personal Information of the Customer will be held, used and disclosed in a manner consistent with the POPI Act.
- 19.2 It remains the responsibility of the agent and/or representative(s) of the Customer to ensure that all the necessary consents, requirements and procedures required in terms of the POPI Act have been followed before the agent and/or representative of the Customer may use, transfer and process the Customer's Personal Information for purposes of this Agreement to the Company.

20 **JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa and shall be subject to the exclusive jurisdiction of the Courts of the Republic of South Africa. The Parties agree that this Agreement shall be deemed to be entered into in the Republic of South Africa.

21 **LEGAL PROCEEDINGS**

- 21.1 The Customer agrees and accepts that the Company shall be entitled, in its sole discretion, but not compelled or obliged to institute any legal proceedings, which may arise from or in connection with this Agreement, all costs and disbursements incurred by the Company, including legal costs on an attorney and own client basis in collecting arrears accounts from the Customer, shall be for the account of the Customer.
- 21.2 A certificate issued and signed by any director or manager of the Company, whose authority need not be proved, in respect of any indebtedness of the Customer to the Company; or in respect of any other fact including (but not limited to) the fact that the Products and/or Services were sold and delivered/rendered, shall be prima facie evidence of the Customer's indebtedness to the Company.
- 21.3 The Customer's registered address or physical address stated in an Order (or other similar document) shall be recognised as the Customer's domicilium citandi et executandi for the service of any court documents resulting from this Agreement. The Customer's physical, email and / or postal addresses as per this Agreement will be deemed to be the Customer's service addresses for all other documents resulting from or in terms of this Agreement.
- 21.4 It will not be necessary for the Company to prove that the documents referred to in clause 21.3 above were received by the Customer. In the event of the Customer not receiving any of the documents in clause 21.3 above, the Customer must timeously acquire a duplicate from the Company, failing which it will be accepted that said documents were received by the Customer.
- 21.5 All amounts due to the Company shall be deemed to be a liquid amount for the purposes of provisional sentence or summary judgment.

22 **NEGOTIABLE INSTRUMENTS**

- 22.1 Acceptance of a negotiable instrument by the Company shall not be construed as a waiver of the Company's rights.

23 **RETURNED PRODUCTS**

- 23.1 The Company will provide the Customer with a credit or a refund for Standard Products purchased from the Company in instances contemplated by law which includes but is not limited to the provisions of section 20 and section 56 of the Consumer Protection Act.
- 23.2 Should the Customer not be familiar with the aforementioned sections the Company will provide the Customer with extracts of same upon the Customer's written request.
- 23.3 Please take note that the Company may be entitled to charge the Customer a reasonable amount in terms of the Consumer Protection Act in instances that the Customer return any Standard Products.
- 23.4 In addition to the aforementioned, when calculating any reasonable amount which the Company may be entitled to charge the Customer upon any return of the Standard Products as contemplated in Section 20(6) of the Consumer Protection Act or otherwise the Company shall be entitled to, and the Customer hereby agrees, to take into consideration amongst other things, the following:
- 23.4.1 depreciation in value of the Standard Products or may be reasonably deemed to be second hand; or
- 23.4.2 value the Customer may have received through the use of such Standard Products or the opportunity of the use of such Standard Products.

- 23.5 The Customer acknowledge that due to the nature of the Products and in particular Non Standard Products, the Company will not accept any returns of Non-Standard Products and the Customer will remain liable for any Non-Standard Products after the formal acceptance of an Order by the Company.

24 **AMENDMENT OR WAIVER**

- 24.1 No modification, amendment or consensual cancellation of this Agreement shall be valid, unless reduced to writing and signed by duly authorised representatives of both Parties.
- 24.2 In the event of the modification, amendment or variation of any agreement between the Parties, this Agreement shall apply to such modification, amendment or variation except as may otherwise be expressly provided.
- 24.3 Any forbearance or indulgence by the Company in enforcing any of this Agreement shall not prejudice or restrict the Company's rights or powers in terms hereof and no waiver of any breach shall operate as a waiver of any subsequent or continuing breach or a novation of the Company's right in terms hereof.

25 **GENERAL**

- 25.1 Whilst the Company retains the right to cede and/or assign all and any of its rights or obligations under this Agreement provided the same will not prejudice the Customer, the Customer shall, however, not be entitled to cede and/or assign any of its rights or obligations in terms hereof without the prior, written approval of the Company.
- 25.2 This Agreement constitutes the whole of the agreement between the Parties hereto relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement, shall be binding on any of the Parties.
- 25.3 It is not intended that any provision of this Agreement contravene any provision of the Consumer Protection Act or the POPI Act therefore all provisions of this Agreement must be treated as being qualified, to the extent necessary, to ensure that the provision of the Consumer Protection Act and the POPI Act are complied with.
- 25.4 The Customer renounces the benefits of the legal exceptions:
- 25.4.1 *Non causa debity* (an exception taken to the effect that there is no cause for the obligation and renunciations places the onus of the Customer to prove that the debt does not exist);
- 25.4.2 *Non numerate pecunia* (an exception which may be taken by the Customer on the ground that the amount thereof was not paid over); and
- 25.4.3 *Errore cacculi* (a revision of accounts and errors of calculation and no values received).
- 25.5 The Parties agree that each individual provision of this Agreement shall be severable and that invalidity of any part of a term hereof shall not affect the validity of the remainder of this Agreement.