

## **GENERAL TERMS & CONDITIONS**

## 1. DEFINITIONS

1.1. The following definitions shall apply for these General Terms and Conditions of Sale:

- a) **"Agreement"** shall mean the sales agreement between the Company and Customer (whether consisting of a sales document, purchase order and order acceptance, or otherwise), these General Terms and Conditions of Sale and any other appendices, and agreed amendments or variations to said documents.
- b) **"Business Day"** shall mean any day which is not a Saturday, Sunday or public holiday in the Republic of South Africa.
- c) **"Company"** means Ace Fire Suppression Technologies (Pty) Ltd t/a Advanced Fire Suppression Technologies (Reg. No.: 2000/015830/07) being the counterparty of the Customer in the Agreement.
- d) **"Confidential Information"** shall mean any information regarding the business or affairs of a party (or, in the case of the Company, any member of the Group) that would be regarded as confidential by a reasonable business person, including but not limited to information relating to a party's operations, finances, processes, plans, product information, Intellectual Property Rights, trade secrets, software, market opportunities and customers.
- e) **"Control"** shall mean the ability to direct the affairs of another person, whether by virtue of the ownership of shares, contract or otherwise.
- f) **"Customer"** shall mean the entity identified as the purchaser of the Deliverables and the counterparty of the Company in the Agreement.
- g) **"Deliverables"** shall mean all goods, services, labour, works, documents, certificates and packaging, as appropriate, to be delivered by the Company pursuant to the Agreement.
- h) **"Force Majeure Event"** shall mean the events listed in condition 22.1.
- i) **"Group"** means the Company and all other entities which it directly and indirectly Controls.
- j) **"Intellectual Property Rights"** shall mean, without limitation, patent rights, registered and unregistered designs, copyright, trademarks, trade names, technical know-how and advice and all other intellectual property rights of any kind wherever and however in the world enforceable.
- k) **"Losses"** shall mean all direct losses, liabilities, claims, charges, costs, penalties and expenses (including, without limitation, damages, legal and other professional fees and costs).
- l) **"Personal Information"** shall mean information and/or data from which an individual can, directly or indirectly, be identified, or as otherwise defined in applicable legislation.
- m) **"Representatives"** shall mean employees, officers, agents, consultants or sub-contractors of a party.

## 2. APPLICABILITY

2.1. These General Terms and Conditions of Sale shall apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, unless acceptance is explicitly confirmed in writing by the Company. By placing an order

with the Company the Customer is agreeing to be unconditionally bound by these General Terms and Conditions of Sale.

2.2. No amendment or modification of these General Terms and Conditions of Sale shall be valid unless expressly agreed to in writing in the Agreement by authorized Representatives of the parties.

2.3. In the event of any conflict between the provisions of the Agreement, the various contract documents shall be given priority in the following order: (i) the sales document/order confirmation; (ii) these General Terms and Conditions of Sale; and (iii) all other appendices to the Agreement.

## 3. CONCLUSION OF AGREEMENT

3.1. Any quotation or similar document provided by the Company does not constitute an offer to enter into an agreement and are not capable of acceptance, but are rather invitations to the Customer to submit a binding offer to purchase in the form of a purchase order document (or similar). The Company may issue an order acknowledgement, which is merely for information purposes, and does not constitute an order confirmation or acceptance. Any amendments proposed to the order by the Company shall be deemed as a new quotation, which the Customer shall respond to by submitting a new offer to purchase in the form of a purchase order document (or similar).

3.2. The Agreement between the Company and the Customer shall be formed and come into force only upon (i) receipt by the Company of a purchase order document (or similar) from the Customer; and (ii) the consequent dispatch by the Company to the Customer of an order confirmation document (or similar).

3.3. Once confirmed, no orders may be cancelled or amended by the Customer, except with the prior approval in writing from the Company.

## 4. GENERAL

4.1. The Agreement constitutes the entire agreement between the parties and supersedes and replaces all previous agreements, understandings, discussions, correspondence and negotiations between them, whether oral or in writing, relating to the Deliverables. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Agreement.

4.2. Any samples, drawings, descriptive matter, or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Deliverables described in them, and they shall not form part of the Agreement or have any contractual force.

4.3. The Deliverables are being delivered strictly on the condition that the Customer has satisfied itself of their suitability for the Customer's particular purposes. Any advice provided by the Company or its Representatives are given to the best of their knowledge, and shall not relieve the Customer from undertaking its own investigations and tests, or subject the Company and/or its Representatives to any liability.

4.4. If any part of these General Terms and Conditions of Sale is deemed void, invalid,

alternatively, unenforceable, alternatively, contra bona mores, for any reason whatsoever, then the Parties agree that the remaining conditions shall not be affected and shall apply unimpaired, and the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

- 4.5. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 4.6. Notices, claims, etc. which the Agreement requires to be presented in writing, shall be sent by letter or e-mail to the other party's authorized Representatives without undue delay.

## 5. DELIVERY

- 5.1. Unless otherwise agreed in writing, delivery shall take place at the earlier of when the Deliverables are made available to (i) the Customer or; (ii) to a carrier, forwarder or any other person responsible for the transport of the Deliverables (regardless of who appointed such carrier).
- 5.2. Delivery and (where applicable installation) shall be scheduled according to a mutually agreed upon timetable which must be confirmed in writing.
- 5.3. Unless otherwise agreed in writing, the following will be separately charged to the Customer by the Company, at the Company's sole discretion: (i) any costs or penalties incurred in case of cancelled or changed orders by the Customer; and (ii) any handling charges, any special equipment charges and any other similar charges.
- 5.4. A cancellation fee equal to 12.5% of the value of the applicable order under the Agreement will be applicable in the event of a cancellation thereof on the part of the Customer. In the event of any design, preparation of drawings, procurement of equipment or deployment of labour having commenced prior to a cancellation of the Agreement by the Customer, the Company, in addition to its right to levy a cancellation fee, reserves the right to recover any and all additional costs that may have been incurred prior to cancellation.
- 5.5. If the Customer is responsible for transportation of the Deliverables, the Customer must ensure the suitability, safety and cleanliness of the chosen mode and vehicle of transportation, and shall be liable in all respects for such transportation and for any defects in the Deliverables caused by such transportation.
- 5.6. The Customer is responsible for (i) the strict compliance with all laws and regulations (including payment of applicable taxes) regarding the import, transportation, storage and use of the Deliverables in the country and place of delivery (whether imported or not); (ii) obtaining and maintaining in full force and effect, at its own cost, such licenses, authorizations, approvals, permits and other consents in relation to the import, transportation, storage, distribution, sale and

use of the Deliverables as are required from time to time (whether imported or not); and (iii), if required by the Company, making copies of such licenses and consents available to the Company prior to the relevant delivery for inspection.

## 6. TIME OF DELIVERY AND DELAYED DELIVERY

- 6.1. Unless otherwise agreed, the Deliverables are to be delivered within a reasonable time after the Agreement is entered into. Due to logistical and product availability constraints, any dates quoted for delivery are indicative and estimates only, and the time of delivery is not of the essence. The delivery period shall only commence upon the later of (i) the Agreement coming into force or (ii) the receipt of any written delivery instructions and/or any other documentation or information from the Customer.
- 6.2. If either party should have cause to believe that delivery or receipt of the Deliverables will be delayed, the relevant party shall without undue delay notify the other stating the reason for the delay and the effect on the indicated delivery date.
- 6.3. To the fullest extent permitted by applicable law, delays in the delivery shall not entitle the Customer to (i) refuse to take delivery; (ii) terminate the Agreement; (iii) claim damages for any Losses; or (iv) delay payment (of any delivery).
- 6.4. The Company shall have no liability for any failure or delay in delivering an order to the extent that such failure or delay is caused by (i) the Customer's failure to comply with its obligations under the Agreement including, but not limited to, the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Deliverables; or (ii) any circumstances outside of the Company's control that hinders a timely delivery.

## 7. TITLE, RISK AND FIXED CHARGE

- 7.1. Risk in the Deliverables shall pass to the Customer upon delivery.
- 7.2. Title in the Deliverables shall not pass to the Customer until the Company has received payment in full for (i) such Deliverables; and (ii) all other sums which are or become due to the Company from the Customer in respect of such Deliverables. Title will not pass for any prepaid Deliverables until delivery has taken place. The Customer shall at the request of the Company assist in taking any measures necessary to protect the Company's title as set out in this condition.

## 8. INSPECTIONS

- 8.1. As soon as the Customer has received the Deliverables and before starting to use them, the Customer is obliged to carefully examine whether the received Deliverables are in compliance with the Agreement and whether the Deliverables suffer from any safety defects.
- 8.2. Subject to the terms of the Agreement, the Customer may reject wholly or partly any Deliverables delivered to it that do not comply with the Agreement and seek remedies pursuant to condition 11, by way of and provided that a written notice of claim is submitted to the Company: (i) in the case of a defect that is apparent on normal visual inspection, within five (5) Business Days of the

Deliverables being made available to the Customer; and (ii) in the case of a latent defect, within five (5) Business Days of the latent defect having become apparent. For the avoidance of doubt, and unless otherwise agreed, the right to reject Deliverables does not entail a right to reject physical delivery of Deliverables, but merely to submit notices of claim. If the Customer fails to give such notice of claim within the relevant deadline, it shall be deemed to have accepted such Deliverables and as an unconditional waiver of any claims.

- 8.3. Notices of claim must include the following information: (i) any invoice and order numbers; (ii) product descriptions; (iii) a detailed description of the nature and extent of the defect; (iv) documentation that the defect and/or shortfall was present at the time of delivery; (v) presumed circumstances leading to the defect; and (vi) place and conditions of storage of the Deliverables from the time of delivery.
- 8.4. The Company may demand to examine the Deliverables at the Customer's facilities or to be sent a sample of the Deliverables for examination before agreeing to any complaint. Subject to condition 11.1, defective Deliverables shall be the Company's property and placed at the Company's disposal. Deliverables must only be returned pursuant to an agreement with the Company, and any costs relating to returning Deliverables without prior agreement are to be paid by the Customer. It is Customer's responsibility to ensure that any returned Deliverables have adequate protective packaging.

## 9. QUALITY WARRANTY AND QUANTITY

- 9.1. The Deliverables supplied to the Customer by the Company under the Agreement shall at the time of delivery (i) conform to the agreed specifications; and (ii) comply with all applicable statutory and regulatory requirements. The Company does not provide any warranty regarding quality, usability or characteristics after delivery, due to the Deliverables' dependence on appropriate storage, maintenance and handling conditions.
- 9.2. The Company shall perform any services and works with a reasonable skill and care and in accordance with generally recognized commercial practices and standards in the industry for similar services.
- 9.3. All Deliverables supplied and installed by the Company shall, when operated in accordance with the Company's specific maintenance and operating instructions, be guaranteed for a period of 12 (twelve) months from the date upon which each item of the equipment is set in operation, or is ready to be set in operation, whichever occurs first.
- 9.4. The warranties in this condition set out the exclusive liability of the Company and are in *lieu* of all other warranties, conditions, representations and terms whether express or implied by statute, law or otherwise, including, without limitation, any implied warranty of merchantability or fitness for a particular purpose and/or any other warranty as to the quantity, quality, kind, character or condition of any deliverables or the adequacy of any warnings concerning the possession, handling, storage, transportation, use or other disposition of the Deliverables, whether used singly or in combination with other equipment and/or

materials. Any other warranty, condition, representation or term which might otherwise be implied into or incorporated into the Agreement is hereby expressly excluded.

- 9.5. Furthermore, the warranties in this condition, do not include the replacement of extinguishant in the event of accidental system discharges due to any reason whatsoever.
  - 9.6. It is specifically recorded that electrical equipment may from time to time be damaged by induced voltage and therefore the necessary suppression equipment, to prevent damage to voltage sensitive electronic equipment (i.e. Micro-processor based control panels), will at all times remain the responsibility of the Customer and the Company will not, under any circumstances whatsoever, be responsible for the replacement or repair of any damaged equipment in the event of induced voltage.
- ## 10. PRICES, PAYMENT, COSTS AND CREDIT
- 10.1. Monthly invoices will be submitted for all Deliverables supplied by the Company and, unless otherwise agreed in writing, all invoices will become due and payable within 30 (thirty) days from the date of the relevant invoice.
  - 10.2. The Company reserves the right to request a payment guarantee from the Customer equal to the total value of the Deliverables. Such guarantee is to be provided on request and at no additional cost to the Company.
  - 10.3. All prices quoted or otherwise provided by the Company for the Deliverables are specified excluding value added tax (VAT), excise duties and any other tax or duty which shall be for the account of the Customer. The Customer shall pay VAT to the Company in addition to the price of the Deliverables.
  - 10.4. The Company reserves the right to amend its price lists from time to time.
  - 10.5. The Company may, by giving notice to the Customer at any time during the term of the Agreement, increase the price of the Deliverables to reflect any increase in the cost of the Deliverables that is due to (i) any changes in taxes, duties or other charges; (ii) exchange rate fluctuations; and (ii) any request by the Customer to change the quantities or types of Deliverables ordered, or their specification.
  - 10.6. All outstanding payments payable under the Agreement shall become due immediately on its termination. No obvious clerical error in the payment documents shall allow the Customer to delay payment. The Customer shall notify the Company within five (5) Business Days in case of complaints concerning an invoice, failing which, it shall be deemed to have accepted such invoice and as an unconditional waiver of any claims.
  - 10.7. If the Customer fails to make any payment due to the Company under the Agreement by the agreed due date, the Customer shall pay all costs of collection and interest on the overdue amount at the rate of two (2) % per month. Such interest shall accrue and compound on a daily basis from the due date until the date of actual payment of the overdue amount and the interest, whether before or after judgment. For the avoidance of doubt, the Company may add any such accrued amounts on any invoice(s) after the due date and/or offset against any refunds, discounts or rebates due to the

Customer. The Company is authorized to apply all payments received first to reasonable costs and expenses required to be paid under the terms of the Agreement, then to accrued interest on overdue amounts, and then to the principal amounts due under any invoices.

- 10.8. If (i) the Customer defaults in the payment of any amount due under the Agreement, or under any other agreements in force between the parties, or (ii) an adverse change occurs in the financial or other condition of the Customer, and in the opinion of the Company, such circumstances make it unlikely that the Customer will be able to perform all or any of its obligations under the Agreement and/or give rise to doubts about the solvency or creditworthiness of the Customer, then the Company may, at its sole discretion and without prejudice to any other rights, (i) stop any Deliverables in transit and defer any further deliveries under the Agreement, (ii) require security and/or cash in advance of any delivery, until the Company has been satisfied of the Customer's ability to pay or creditworthiness, as the case may be, or (iii) recover any and all Deliverables in which title has not yet passed to the Customer.
- 10.9. The Customer shall pay all amounts due under the Agreement in full without any deduction or withholding, and the Customer shall not be entitled to assert any credit, set-off, abatement or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.
- 10.10. Any and all expenses, costs and charges incurred by the Customer in the performance of its obligations under the Agreement shall be paid by the Customer. All taxes, charges and other fees of any kind imposed on the purchase, loading and unloading, related services or import of the Deliverables shall be the responsibility of, and for the account of, the Customer.
- 10.11. All prices are quoted on the assumption that all Deliverables can be supplied and/or installed on a continuous basis during normal working hours. Should the supply and/or installation of the Deliverables be delayed and/or the Agreement prolonged or accelerated due to circumstances beyond the Company's control, which results in a lack of continuity of site work or necessitates that the Company vacate or re-establish an applicable site, any additional costs, including overtime costs that may be incurred shall be for the account of the Customer.

#### **11. COMPANY'S LIABILITY FOR ERRORS AND DEFECTS**

- 11.1. Subject to the terms of the Agreement, the Company undertakes to remedy all defects which arise as a result of its non-conformance with the Agreement by, in its sole discretion, either (i) replacing the rejected Deliverables at the original place of delivery; or (ii) repaying the

purchase price in respect of the rejected Deliverables in full. Once the Company has performed such redelivery and/or repayment, it shall have no further liability to the Customer in respect of the rejected Deliverables.

- 11.2. The Company shall not be liable for any failure in the Deliverables to the extent caused by any of the following events: (i) failure by the Customer to follow the Company's oral or written instructions as to the storage, handling, maintenance and use of the Deliverables or (if there are none) good trade practice regarding the same; (ii) the Customer altering or repairing such Deliverables without the prior written consent of the Company; (iii) normal wear and tear or wilful or negligent damage. Further, the Company shall not be liable for any defects in the Deliverables if the Customer has not paid the total amount for the Deliverables to the Company by the agreed due date.

#### **12. BREACH OF CONTRACT BY THE CUSTOMER**

- 12.1. Should the Customer fail to take or accept delivery of the Deliverables at the agreed place of delivery or meet any other related obligations, the Customer shall nonetheless pay for (i) the Deliverables and (ii) any costs incurred by the Company due to the breach. In such cases, the Company will take care of the Deliverables for the Customer's account and risk for a reasonable additional period.
- 12.2. Should the Customer fail to take delivery of the Deliverables after an additional deadline which has been communicated to the Customer, the Company may (i) terminate parts or all of the Agreement; (ii) resell the Deliverables at the price readily obtainable or otherwise dispose of part or all of the Deliverables; and (iii) claim compensation for any Losses that the Company has suffered as a result of the Customer's breach of contract.
- 12.3. The Deliverables shall not be used for any illegal purposes. If the Deliverables are to be resold, the Customer shall use its reasonable efforts to ensure that its customers do not use the Deliverables in any way as prohibited by this condition.
- 12.4. The Customer shall indemnify and keep indemnified the Company and all members of the Group against all Losses incurred by the Company and/or the Group on a full indemnity basis arising out of, directly or indirectly: (i) a breach of or failure to comply with any of its obligations under the Agreement; (ii) a defect in the Deliverables due to an act or omission on the part of the Customer or its Representatives; (iii) the Company following any specifications supplied by the Customer; (iv) any damage to property, whether personal or real, movable or immovable, tangible or intangible, or injury or death of persons (including Customer's Representatives) arising out of Customer's loading, unloading, transportation, storage, handling, use or disposal of the Deliverables; and/or (v) in connection with any negligent act or wilful misconduct of or by the Customer or its Representatives.

#### **13. LIMITATIONS OF LIABILITY**

- 13.1. To the fullest extent permitted by applicable law, the Company shall not under any circumstances whatsoever and howsoever caused, whether arising under statute or arising in or for breach of contract, delict (including negligence), breach of statutory duty,

or otherwise, be liable to the Customer for any trading losses, loss of income, loss of actual or anticipated profits, loss of goodwill, loss of production, business or business opportunity, loss of reputation, loss of anticipated savings, loss or corruption of data or information, or for any special, indirect or consequential loss or damage of any kind.

- 13.2. It is specifically recorded that the Company accepts no liability for consequential loss of profits whether arising from defective Deliverables or workmanship prior to, during, or after installation including that arising from latent defects only ascertainable during and after commissioning whether such loss or damage was foreseeable or in the contemplation of the parties.
- 13.3. The maximum liability of the Company to the Customer under or in connection with the Agreement (including without limitation for any defect and/or delay and/or any breach of Agreement) whether arising under statute, or arising in or for breach of contract, delict (including negligence) breach of statutory duty, indemnity or otherwise, shall in no circumstances exceed the total price paid or payable by the Customer for the relevant deliverables under the agreement.
- 13.4. To the extent required by applicable law, nothing in the Agreement shall limit or exclude liability for (i) gross negligence; (ii) wilful misconduct; (iii) fraud or fraudulent misrepresentation; (iv) death or personal injury; or (v) any other liability to the extent the same may not be excluded or limited as a matter of law.
- 14. TERMINATION**
- 14.1. Either party may without liability give notice in writing to the other party to terminate the Agreement immediately if: (i) the other party commits a material breach of the Agreement and (if such breach is remediable) fails to remedy that breach within a period of twenty (20) Business Days of being notified in writing to do so; or (ii) the other party repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement; or (iii) a resolution is passed, or an order is made, for or in connection with the winding up or insolvency of that other party; (iv) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or (v) takes or suffers any similar or analogous procedure, action or event in consequence of debt in any jurisdiction.
- 14.2. A breach of any of conditions 5.6, 12.3 and 17 to 21 (inclusive) shall be deemed to be a material breach of obligations for the purposes of the Agreement.
- 14.3. Termination of the Agreement shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 14.4. On termination of the Agreement (i) each party shall promptly return to the other party all equipment, materials, documentation and property belonging to the other party that the other party had supplied to it in connection with the supply and purchase of the Deliverables under the Agreement; and (ii) on request, certify in writing to the other party that it has complied with the requirements above.

14.5. If any parts of the Deliverables or Agreement remain unfulfilled at the date of termination of the Agreement, the Company may, as the terminating party, at its option, extend the time of delivery, cancel the delivery, or sell the Deliverables in the open market, charging any Losses to the Customer.

**15. THIRD PARTY LIABILITY**

- 15.1. Where the Customer acts as an intermediary for the sale of Deliverables from the Company, the Customer shall ensure that the limitations of liability, exclusions and other applicable provisions as set out in the Agreement shall be passed on to its customers, who shall in turn be obliged to do likewise, thus ensuring that the limitations of liability are maintained until the Deliverables reach the end-users.
- 15.2. To the extent that the Company is made liable to a third party in respect of the Deliverables and/or the Agreement, the Customer undertakes to indemnify and keep indemnified the Company to the same extent as the Company's liability is limited according to the Agreement, so that the Company's maximum exposure in respect of such third party claim is limited to the amounts set out in condition 13.3.

**16. ASSIGNMENT AND SUB-CONTRACTING**

- 16.1. Neither party may assign, novate, transfer, sub-license or sub-contract any of its rights, benefits or obligations under the Agreement without the prior written consent of the other party, provided that the Company may assign, transfer or sub-contract its rights and obligations under the Agreement to another member of the Group.
- 16.2. The Customer shall notify the Company without undue delay when a change of Control of the Customer has taken place.

**17. CONFIDENTIALITY**

- 17.1. Both the Company and the Customer undertake that they shall not at any time during the term of the Agreement and for a period of five (5) years after termination of the Agreement disclose to any person any Confidential Information disclosed to it by the other party, except as permitted in terms of this condition.
- 17.2. Each party may disclose the other party's Confidential Information: (i) to its Representatives who need to know such information for the purposes of carrying out the party's obligations under the Agreement, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this condition as though they were a party to the Agreement. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this condition; and (ii) as may be required by law, court order or any governmental or regulatory authority.
- 17.3. No party shall use any other party's Confidential Information for any purpose other than to perform its obligations under the Agreement.

**18. INTELLECTUAL PROPERTY RIGHTS**

- 18.1. The Company reserves all rights in its Intellectual Property Rights. No rights or obligations in respect of the Company's

Intellectual Property Rights, other than those expressly stated in the Agreement, are granted to the Customer or to be implied from the Agreement. In particular, no license is hereby granted directly or indirectly under any Intellectual Property Rights held, made, obtained or licensable by the Company now or in the future. Unless otherwise agreed, the Company shall retain the exclusive ownership of any (i) amendments or improvements to its existing Intellectual Property Rights and (ii) new Intellectual Property Rights created by the making or delivery of the Deliverables (or otherwise) by the Company to the Customer.

- 18.2. The Customer shall not, without the prior written consent of the Company: (i) sublicense, transfer or otherwise deal with the rights of use of any Intellectual Property Rights granted under the Agreement; (ii) establish, register and/or adopt visual identities that are using elements from the Intellectual Property Rights; (iii) use the Intellectual Property Rights, alone or in combination or in connection with any company name, trade name or trademark owned or used by the Customer or any third party; (iv) alter, deface, make any addition or remove any reference to the Intellectual Property Rights, any reference to the Company or any other name displayed on the Deliverables or their packaging or labelling; or (v) do, or omit to do, anything in its use of the Intellectual Property Rights that could adversely affect their validity.
- 18.3. The Company makes no representation nor gives any warranty, either express or implied, (i) as to the validity or enforceability of its Intellectual Property Rights or (ii) to the effect that its Intellectual Property Rights do not infringe any intellectual property rights of any third parties.
- 18.4. If the Customer should notice any infringements of the Company's Intellectual Property Rights by a third party or any unlawful act prejudicial to the Company's interests, the Customer shall promptly report the same to the Company. The Customer shall, to the best of its ability and in accordance with any directions given by the Company, assist the Company in its protection against any such infringements.
- 18.5. All accessory data that is submitted pursuant to the Agreement including, but not limited to, drawings, illustrations, weights and dimensions are approximate only unless otherwise stated. All drawing cost estimates and other particulars remain the exclusive property of the Company and must not be made available to third parties under any circumstances. All drawings issued are generated on CAD and are provided on the basis that any equipment layouts; architectural and/or structural drawings that may be required by the Customer from time to time will be provided on an electronic media for integration on the Company's system.

## 19. PERSONAL INFORMATION & DATA PRIVACY

- 19.1. The Company and Customer shall, during the term of the Agreement (i) comply with, and procure that all Representatives comply with, all applicable data privacy laws and regulations in connection with any disclosed data and their performances under the Agreement; and (ii) not do, or cause or permit to be done, anything which may cause or otherwise result in a breach by the other party of applicable data privacy laws and regulations.

- 19.2. The Company may as far as is permitted by applicable law, process Personal Information for the following business purposes: (i) development and improvement of products and/or services; (ii) performance of customer services; (iii) conclusion and execution of agreements; (iv) relationship management and marketing; (v) business process execution, internal management and management reporting; and (vi) compliance with legal obligations.

- 19.3. Each party shall only provide, collect, use, store or process Personal Information:

19.3.1. in compliance with the South Africa Protection of Personal Information Act ("POPI");

19.3.2. as is necessary for the purposes of this Agreement and as set out herein; and

19.3.3. in accordance with the lawful and reasonable instructions of the party providing the Personal Information.

- 19.4. Both parties shall comply with the security and information protection obligations equivalent to those imposed on them in terms of POPI and other applicable data protection legislation, and failing such legislation, they shall take, implement and maintain all such technical and organisational security procedures and measures necessary or appropriate to preserve the security and confidentiality of the Personal Information in its possession and to protect such Personal Information against unauthorised or unlawful disclosure, access or processing, accidental loss, destruction or damage.

- 19.5. The Customer shall immediately notify the Company in writing and in any event within two (2) Business Days of (i) becoming aware of any actual or suspected accidental or unauthorised access, disclosure, loss or use of Personal Information; or (ii) in the event of any claim or complaint from any data subject of and disclosed data and/or where there has been an event of non-compliance with applicable data privacy laws or regulations by the Customer, whether discovered by Customer or forming the subject of an investigation and/or action by the relevant authorities. Such notification shall include reasonable details of any such actual or suspected accidental or unauthorised access, disclosure, loss or use of Personal Information.

- 19.6. The Customer shall not use any Personal Information received from the Company unless necessary for the purpose of this Agreement and shall at all times ensure that appropriate security measures are taken to protect the same from loss, misuse, modification, unauthorised or accidental access or disclosure, alteration or destruction.

## 20. WEBSITE AND ONLINE COMMERCE

- 20.1. The Company's website and all the materials available on the website are the property of the Company and/or the Group, its our affiliates or licensors, and are protected by copyright, trademark, and other intellectual property laws.

- 20.2. Unless explicitly authorized by the Company in writing, the Customer may not modify, copy, reproduce, republish, upload, post, transmit, translate, sell, create derivative works, exploit, or distribute in any manner or medium (including by email or other electronic means) any material from the Company's website.

- 20.3. In addition to its general marketing and related functions, the Company's website serves as a platform through which the Customer may submit quotation requests and/ or applicable purchase order documentation as the case may be.
- 20.4. To the fullest extent permissible pursuant to applicable law, the Company will not be liable for any damages of any kind arising from the Customer's use of its website, including without limitation, direct, indirect, incidental, and punitive and consequential damages that may be incurred as a result of the Customer downloading, or utilising in any manner or form, files from the Company's website which may contain viruses and/or contaminated or destructive features.

## 21. STANDARDS OF BUSINESS CONDUCT

- 21.1. The Customer shall comply with all applicable laws, regulations, codes and sanctions relating to the Agreement, and in particular relating to human rights, bribery, corruption, money-laundering, accounting and financial controls and anti-terrorism.
- 21.2. The Customer warrants, agrees and undertakes that in connection with the Agreement it has not and will not make, give, offer, promise or authorize any type of bribes or facilitation payments by way of improper or illegal payment, gift, advantage or other thing of value, whether directly or indirectly, to any third party.
- 21.3. The Customer shall ensure that all of its business partners who perform services or provide goods in connection with the Agreement do so only on the basis of a written contract, which imposes on and secures from such persons terms substantially equivalent to those imposed on the Customer in this condition. The Customer shall be responsible for reasonable and appropriate due diligence procedures prior to engaging its business partners in connection with the Agreement, and for monitoring the adherence and performance by such persons of its compliance obligations.
- 21.4. The Company and Customer shall without undue delay report any suspected infringements of this condition to the other party.

## 22. FORCE MAJEURE

- 22.1. A party shall not be in breach of the Agreement, nor liable for any loss or damage suffered or incurred by the other party arising from any failure or delay in performance of its obligations under the Agreement to the extent arising from or attributable to an impediment (i) beyond its reasonable control; (ii) that it could not reasonably have been expected to have taken into account at the time of the conclusion of the Agreement; and (iii) it has used all reasonable endeavours to mitigate the effect of the event to carry out its obligations under the Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible. A party that is subject to a Force Majeure Event shall promptly notify the other party in writing of the nature and extent of the Force Majeure Event causing the failure or delay in performance of its obligations under the Agreement.
- 22.2. A party invoking this condition shall be presumed to have established the conditions

described herein in case of the occurrence of one or more of the following impediments, including but not limited to: (i) Acts of God, including flood, earthquake, windstorm, plague, epidemic, cyclone, typhoon, hurricane, tornado, blizzard, volcanic activity, landslide, tidal wave, tsunami, damage or destruction by lightning, drought or other natural disasters; (ii) explosion, fire, destruction of machines, equipment, factories and of any kind of installation or building, prolonged break-down of transport, telecommunication or any utility service, including but not limited to electric power, gas or water; (iii) war (whether declared or not), armed conflict or the serious threat of same (including but not limited to hostile attack, blockade, military embargo), hostilities, invasion, act of a foreign enemy, extensive military mobilization, imposition of sanctions, breaking off of diplomatic relations or similar actions; (iv) civil war, riot rebellion and revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience; (v) acts of terrorism, sabotage or piracy; (vi) nuclear, chemical or biological contamination; (vii) compliance with any law or government order, rule, regulation or direction, or any action taken by a government or public authority (whether lawful or unlawful), curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, nationalization, imposing an embargo, export or import restriction, quota or other restriction or prohibition, or unlawfully failing to grant a necessary license or consent; (viii) consequences that the existence and spread of any virus and related disease(s) may have or cause, including without limitation, the actions or recommendations by governmental authorities irrespective of whether or not same has been categorised as a pandemic; and (ix) general labour disturbance such as but not limited to boycott, strike and lock-out, go-slow, occupation of factories and premises.

- 22.3. Where a party fails to perform one or more of its contractual duties because of default by a third party whom it has engaged to perform the whole or part of the Agreement, this condition will only apply to the party invoking it: (i) if and to the extent that the invoking party establishes the requirements set out herein; and (ii) if and to the extent that the invoking party proves that the same requirements apply to the third party.
- 22.4. If the Force Majeure Event continues for a continuous period of more than three (3) months, any party may thereafter terminate the Agreement by giving ten (10) Business Days written notice to the other party. Such termination shall be without prejudice to the rights of the parties in respect of any breach of the Agreement occurring prior to such termination.

## 23. APPLICABLE LAW AND DISPUTE SETTLEMENT

- 23.1. This arbitration clause including its sub-clauses (the clause) constitutes a distinct agreement with an existence independent of the contract in which it is contained (the contract). The clause shall not be affected by the invalidity, non-existence, ineffectiveness, cancellation or any other cause in any manner related to the contract.
- 23.2. Any dispute, controversy or claim under, in connection with, in relation to, in respect of, with regard to and/or arising out of the contract



and/or the clause, or the breach, termination, invalidity, enforceability and/or interpretation of the contract and/or the clause, either during the currency or after the completion, termination or cancellation thereof, shall be determined on arbitration by a single arbitrator.

- 23.3. An arbitrator shall be appointed by agreement between the parties or, failing such agreement within 14 calendar days of any party seeking such agreement, an arbitrator shall be appointed at the request of any party by the Chairperson of the Association of Arbitrators (Southern Africa) NPC or its successor in law.
- 23.4. The arbitration shall be conducted in English under the 2018 Edition (or any subsequent edition in operation at the time of appointment of the arbitrator) of the Standard Procedure Rules for the Conduct of Arbitrations published by the Association of Arbitrators (Southern Africa) NPC or its successor in law. The place of the arbitration shall be agreed by the parties and failing such agreement, it will be Sandton, South Africa. The law of the Republic of South Africa shall apply to the arbitration.
- 23.5. The arbitrator shall decide any issue submitted in the arbitration, including the arbitrator's own jurisdiction.
- 23.6. The proceedings shall be recorded and the arbitrator's award shall be final and binding upon the parties to the dispute.
- 23.7. Notwithstanding the aforementioned, either Party may be entitled to approach the appropriate High Court for urgent relief.

**24. LEGAL COSTS**

All legal costs as between attorney and client, disbursements, tracing and/or Advocate charges shall be costs of which a successful party shall be entitled to recover and of which they shall be entitled to request in the event of arbitration or the approaching of a Court for urgent relief.

**25. GOVERNING LAW**

These General Terms and Conditions together with the entire provisions of the Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa. The Parties hereto hereby irrevocably and unconditionally consent to the exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg) in regard to all matters arising from this Agreement.