

**TERMS AND CONDITIONS**

and replacement policies and packaging policies;

**1 INTERPRETATION**

In this agreement -

- 1.1 Clause headings are for convenience and shall not be used in its interpretation;
- 1.2 Unless the context clearly indicates a contrary intention –
  - 1.2.1 an expression which denotes-
    - 1.2.1.1 any gender includes the other genders;
    - 1.2.1.2 a natural person includes an artificial person and vice versa;
    - 1.2.1.3 the singular includes the plural and vice versa;
- 1.3 the following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings-
  - 1.3.1 **"agreement"** means the reseller application and the terms and conditions;
  - 1.3.2 **"CPA"** means the Consumer Protection Act 68 of 2008 as amended;
  - 1.3.3 **"consumer"** means "consumer as defined in terms of the CPA;
  - 1.3.4 **"customer"** means the person whose name appears on the reseller application which is annexed hereto next to the caption "Registered Name of customer", or if no such application is annexed hereto, or no name appears thereon, or in any other circumstances, any person or persons at whose request or on whose behalf the supplier undertakes to supply any goods, do any business, or provide any advice or service;
  - 1.3.5 **"goods"** any items or services of whatsoever nature that are supplied by the supplier to the customer in terms of this agreement;
  - 1.3.6 **"head office"** means the head office of the supplier, currently situate at 76 Cook Road, Claremont, Cape Town, 7708
  - 1.3.7 **"NCA"** means the National Credit Act of 2005, as amended from time to time;
  - 1.3.8 **"NCR"** means the National Credit Regulator;
  - 1.3.9 **"reseller application"** means the reseller application form containing, *inter alia*, the customer's information and forming part of the terms and conditions;
  - 1.3.10 **"signatory"** means the person who signs this agreement and the Reseller application on behalf of the customer as well as any other agreement or document between the Supplier and the customer;
  - 1.3.11 **"supplier"** means Emia Distribution cc, registration number 2007/034309/23, a close corporation duly incorporated in accordance with the company laws of South Africa or its successors in title or assigns;
  - 1.3.12 **"suppliers account"** means the following bank account of the supplier as set out at the foot of the statement of account and tax invoices addressed to the Tenant from time to time;
  - 1.3.13 **"terms and conditions"** means the Suppliers standard terms and conditions as contained herein, including terms contained in any of the supplier's policies and procedures as amended by the supplier (from time to time), including but not limited to warranty policies, service procedures, repair

**2 THESE TERMS AND CONDITIONS TO PREVAIL**

- 2.1 It is recorded that the terms and conditions shall constitute the sole terms of the agreement between the supplier and the customer and shall operate in respect of any and all business between the customer and the supplier.
- 2.2 All and any business undertaken, including any advice, information or service provided whether gratuitously or not by the supplier to the customer is and shall be subject to the terms and conditions, and each term and condition shall be deemed to be incorporated in and to be a term and condition of any agreement between the supplier and the customer.

**3 DURATION**

- 3.1 This agreement shall commence from the date of signature hereof, by the party signing last in time and shall be renewed automatically on an annual basis, subject to the provisions of 2 and 18 below.
- 3.2 Notwithstanding anything to the contrary contained herein, the customer acknowledges that:
  - 3.2.1 the supplier shall at all times be entitled to determine (in its sole discretion) the nature, extent and duration of any credit facilities (if any) granted to the customer in terms of this agreement;
  - 3.2.2 the supplier shall be entitled to terminate this agreement on 48 (forty-eight) hours' notice to the customer; or
  - 3.2.3 should the customer not purchase any goods for a period exceeding 2 (two) consecutive months, the supplier shall be entitled (but not obliged) to terminate this agreement;

Provided that should the supplier terminate this agreement for any reason whatsoever, such termination shall not affect any obligations of the customer to the supplier in terms hereof, which obligations arose prior to the date of termination and the supplier shall furthermore be immediately entitled to claim all amounts owing by the customer to the supplier in terms hereof or in terms of any other agreement.

**4 NO VARIATIONS OR AMENDMENTS**

- 4.1 This agreement constitutes the whole agreement between the customer and the supplier relating to the subject matter hereof.
- 4.2 No amendment or consensual cancellation of this agreement or other document issued or executed pursuant to or terms of this agreement shall be binding unless recorded in a written document signed by a Director of the supplier.
- 4.3 No extension of time, waiver or relaxation or suspension of any of the provisions or terms of this agreement or of any agreement shall be binding unless recorded in a written document signed by a Director of the supplier.
- 4.4 No extension of time or waiver or relaxation of any of the provisions or terms of this agreement or any other document issued or executed pursuant to or in terms of this agreement, shall operate as a waiver of the supplier's and/or the customer's rights as entrenched in the CPA with regard to enforcement of this agreement.
- 4.5 The supplier shall not be bound by any express or implied term, representation, warranty (with the exception of the warranties as provided for in the CPA), promise or the like not recorded herein, whether it induced the contract between the supplier and the customer or not.
- 4.6 No person other than a Director of the supplier has any authority to delete amend or any respect vary any of these conditions or accept any other conditions or agree to a consensual cancellation hereof.

## 5 QUOTATIONS

- 5.1 Any quotation given is not an offer by the supplier to sell the goods but constitutes an invitation by the supplier to the customer to do business with the supplier.
- 5.2 A quotation may be revoked at any time by the supplier.
- 5.3 The supplier may accept or reject in whole or in part any order placed upon it by the customer pursuant to the quotation. Accordingly, a contract shall only come into force between the supplier and the customer if after receipt by the supplier of the customer's order or acceptance of the quotation the supplier supplies, or tenders to supply, the goods in question to the customer.
- 5.4 Any quotation is based on rates of exchange, freight charges, insurance, rail costs, costs of labour and materials and other charges ruling at the date of the quotation. In the event of any variation occurring subsequent to the date of the quotation in any of the aforesaid rates and/or charges, as the case may be, the supplier shall prior to delivery furnish the customer with an amended quotation which quotation is to be accepted or rejected, either verbally or in writing by and on behalf of the customer.

## 6 PLACING OF ORDERS

- 6.1 If telephone orders are placed by the customer, the supplier may require such orders to be confirmed in writing by the customer, prior to acceptance by the supplier.
- 6.2 An order may not be withdrawn until accepted or rejected by the supplier. Any such order shall upon acceptance thereof by the supplier be irrevocable by the customer.
- 6.3 In the event of the agreement being subject to the provisions of the CPA, the customer can cancel or withdraw an order but in such event the supplier will be entitled to charge a reasonable cancellation fee.
- 6.4 Where the goods or any part thereof are to be imported, the acceptance of the order is subject to the condition that the supplier's order is accepted and confirmed by the supplier's own suppliers and that delivery is made there under in due course.
- 6.5 The supplier will not be responsible for any errors or misunderstandings occasioned by the customer's failure to record not only the details of the order correctly, but also the customer's failure to clearly notify the supplier at the time of placing the order of its specific requirements regarding each and every item included in the order.
- 6.6 Notwithstanding anything set out under these terms and conditions, where goods or any part thereof are ordered by a customer, and/or are to be imported, specifically for a particular customer, such orders are deemed to be Special Orders. Once a Special Order is accepted by the supplier, such Special Order becomes irrevocable and may not be cancelled. Furthermore, goods supplied in lieu of Special Orders may not be returned or exchanged.

## 7 PURCHASE PRICE & PAYMENT

- 7.1 Orders are accepted by the supplier only on the basis that the prices charged will be those ruling at the date of dispatch of the goods, unless otherwise expressly stated. A copy of the suppliers ruling prices from time to time may be obtained from the supplier by the customer on request.
- 7.2 Unless otherwise expressly stated, prices are exclusive of value added tax which shall be for the account of the customer unless the customer has given acceptable proof to the supplier that the supply is a zero rate or an exempt supply. The customer shall pay or reimburse to the supplier the amount of any value added tax simultaneously with the purchase price.
- 7.3 The customer shall be obliged to pay to the supplier in addition to the contract price herein-

- 7.3.1 the amount of any tax, duty or other charge of any nature whatsoever imposed by any law, regulation or enactment of whatsoever nature which comes into force on a date after the date on which any price charged is determined;
- 7.3.2 any other additional costs of any nature whatsoever arising due to factors beyond the control of the supplier. In particular, but without limiting the generality of the foregoing, the supplier shall be entitled to increase the purchase price in respect of any goods supplied in order to make provision for any increases in costs arising as a result of or during the period of any delay caused by the customer.
- 7.4 Any expense incurred by the supplier at the instance of the customer in modifying or otherwise altering or making additions to the design, quantities or specifications for standard goods, and any expenses arising as a result of suspension of work by the supplier due to instructions given, or a failure to give instruction by the customer, shall be added to the purchase price in respect of the relevant goods.
- 7.5 The purchase price in respect of any goods sold by the supplier to the customer in terms of this agreement shall be payable by the customer to the supplier in cash via electronic funds transfer:
  - 7.5.1 into the supplier's account,
  - 7.5.2 in South African currency; and
  - 7.5.3 without any deduction whether on grounds of set off or otherwise and free of any exchange,
    - during or before the expiry of the credit period indicated on the reseller application which is annexed hereto, which period shall commence upon the issuing of an invoice by the supplier, or if there is no credit period indicated, or no credit period has been approved in terms of 7.6 below, or no reseller application is annexed, cash on order.
- 7.6 After the completion of the reseller application by the customer and acceptance of these terms and conditions by the customer, the supplier shall at its own discretion be entitled to-
  - 7.6.1 make such enquiries as it may deem necessary to determine whether or not to grant the customer credit as applied for in the reseller application;
  - 7.6.2 determine whether or not to grant the customer credit as applied for in the reseller application, based on the supplier's credit assessment, approval criteria and conditions, and
  - 7.6.3 inform the customer of the determination made pursuant to 7.6.2 above.
- 7.7 Until a determination is made by the supplier as contemplated in terms of 7.6.2 above any goods supplied by the supplier to the customer shall be supplied on a cash on order basis only.
- 7.8 The supplier shall not be obliged to make a determination in terms of 7.6.2 above and to the extent that it does not, any goods supplied by the supplier to the customer shall be supplied on a cash on order basis.
- 7.9 The purchase price does not include charges for delivery of the goods to the customer's premises. The customer shall provide at its cost the necessary labour, equipment or facilities required for off-loading of the goods at its premises.
- 7.10 The customer has no right to withhold payment for any reason whatsoever. The customer is not entitled to set off any amount due to the customer by the supplier against any debt owed by the customer to the supplier nor shall any payment be withheld by virtue of any alleged counterclaim against the supplier by the customer.
- 7.11 The customer hereby agrees that any item handed in for repair may be sold by the supplier to defray the cost of such repairs and the supplier's usual storage cost, if the item remains uncollected within 30 days of the repair being completed.

### 8 INCIDENTAL CREDIT SALES

- 8.1 The provisions of this clause 8 and the protection afforded to consumers in terms of the NCA shall only apply to incidental credit sales by the supplier to the customer.
- 8.2 The Parties agree that credit afforded to the customer by the supplier in terms of this agreement constitutes an incidental credit agreement as defined in section 1 of the NCA.
- 8.3 The customer's application for credit is subject to the Supplier's determination as contemplated in clauses 7.6.2, 7.7 and 7.8. The supplier has the discretion, based on these criteria to decline or approve the customer's application.
- 8.4 an incidental credit agreement in respect of the credit offered by the supplier to the customer has been concluded between the customer and the supplier, the terms of which are contained in this agreement.
- 8.5 The customer understands that:
- 8.5.1 the credit grantor in terms of this agreement is the supplier; and
- 8.5.2 the customer is the consumer/credit receiver and its addresses are as furnished by it on the reseller application and in clause 13.1 of the terms and conditions of sale agreement.
- 8.6 The customer agrees that the supplier can market to and communicate with the customer and share the customer's personal information with its business partners for the purposes of marketing goods and services, unless the customer has chosen/chooses to opt out of receiving such communications at any time
- 8.7 The customer understands that the terms and conditions applicable to this agreement will at all times be subject to the provisions of the NCA, to the extent applicable.
- 8.8 The customer confirms that it fully understands and appreciates the risks and costs of the proposed credit and the rights and obligations it has under this agreement.

#### ACCOUNT FEES AND COSTS (only applicable to incidental credit sales)

- 8.9 the supplier reserves the right to charge the customer:
- 8.9.1 An initiation fee on opening the customer's account;
- 8.9.2 A default administration charge should the customer's account be in arrears or should the customer be in breach of the payment terms contained in this Agreement;
- 8.9.3 All costs associated with the handing over of the customer's account to a debt collection agency for recovery of arrear amounts; and
- 8.9.4 a transaction based service fee as determined by the supplier from time to time, which shall be debited to the customer's account for cheques issued by the customer and returned by the bank for whatever reason, or for debit orders that are not processed by the bank due to a lack of funds.

#### EARLY SETTLEMENT

- 8.10 The customer may at any time settle its account early by paying to the supplier the settlement amount owing at the date of settlement. The settlement amount consists of the unpaid principal debt (which amount is the balance owing excluding any other charges on the customer's statement) together with any other charges accrued up to the settlement date.

### ACCOUNT TERMINATION BY CUSTOMER

- 8.11 The customer may at any time terminate this Agreement by paying the supplier the settlement amount owing on the customer's account at the date of termination and notifying the supplier of the customer's intention to terminate the Agreement.

### THE NCA

- 8.12 The customer agrees that the protection afforded to consumers in terms of the NCA shall not be afforded to it in the event that:
- 8.12.1 the customer is a juristic person whose asset value or annual turnover, together with the combined asset value or annual turnover of the customer's related juristic persons, at the signature date, equals or exceeds the threshold value determined by the Minister in terms of section 7(1) of the NCA;
- 8.12.2 he customer is the state or an organ of state; or
- 8.12.3 this Agreement is classified as a large agreement in terms of section 9(4) of the NCA, in terms of which the customer is a juristic person whose asset value or annual turnover is, at the Effective Date, below the threshold value determined by the Minister as referred to in clause 8.12.1 above.

### 9 DELIVERY

- 9.1 Subject to the provisions of the CPA (if applicable), any delivery date indicated by the supplier shall merely be regarded as the estimated date of delivery and shall not bind the supplier to effect delivery on or near such date.
- 9.2 The customer shall accept delivery whenever it is tendered and shall not be entitled to resile from the agreement not to withhold or defer any payment nor to a reduction in price nor to any other right or remedy against the supplier, its servants, agents or any other persons for whom it is liable in law (in whose favour this constitutes a stipulation *alteri*) whether for losses, costs, damages, expenses, interest or otherwise (not limited *eiusdem generis*) on account of delays in effecting delivery, partial delivery or non-delivery, whether occasioned by any negligent (including grossly negligent) act or omission on the part of the supplier, its servants, agents or any other persons for whom it is liable in law, or not.
- 9.3 If delivery of any particular order is to be effected in packs, the supplier shall not be obliged to deliver any parts of the order unless any part of the order which has already been delivered has been paid. The supplier is not obliged to accept the return of any goods and this clause shall not be used to imply that the supplier shall be obliged to accept the return of any goods.
- 9.4 The supplier shall have the right to deliver any portion of the goods sold without delivery, or making provision for delivery of all the goods sold and to invoice the customer therefore and the customer shall accept such goods when tendered.
- 9.5 If goods are to be delivered by road, the customer shall be obliged to ensure that the delivery destination shall be easily accessible to road transport vehicles. The customer shall be responsible for off-loading the goods at the delivery destination. If goods are to be delivered by rail, the customer shall be responsible for collection of goods at the railhead.
- 9.6 The customer shall be obliged to inspect all goods upon delivery and shall endorse the delivery note as to any missing or damaged goods. No claims for missing or damaged goods shall be valid unless the delivery note has been endorsed as aforesaid and unless, in addition the customer notifies the supplier in writing within 3 business days of the delivery of the goods of the claim in question and the goods relating to such claim furnishing full details in regard thereto.

- 9.7 The customer shall bear the onus of proving that upon delivery, any goods are missing or damaged or that the customer's order was in any way not complied with.
- 9.8 If the supplier is unable to deliver the goods to the customer due to any act or omission on the part of the customer, the supplier shall be entitled to charge the customer for the storage of the goods.
- 9.9 The customer shall be obliged to furnish information necessary to enable delivery of the relevant goods to be effected and if the customer fails or refuses to do so, or if it fails or refuses to take delivery, the goods shall without prejudice to the provisions of clause 9.8, be deemed to have been delivered to the customer upon notification by the supplier to the customer to that effect.
- 9.10 If the supplier agrees to engage a third party to transport the goods, the supplier is hereby authorised to engage a third party on the customer's behalf and on the terms deemed fit by the supplier. The customer hereby indemnifies the supplier against any claims that may arise from such agreement against the supplier. The customer shall reimburse the supplier for any costs incurred in arranging special delivery, including but not restricted to, the costs of necessary disbursements and insurance. Any documentation purporting to evidence the said extra costs will be deemed to be prima facie proof thereof.

### 10 RISK

The risk of damage to or destruction of any relevant goods passes to the customer on delivery thereof by the supplier to the customer. If delivery is frustrated by customer in any manner whatsoever risk of damage and destruction shall pass when the supplies tenders delivery.

### 11 OWNERSHIP

- 11.1 Ownership of the goods shall not pass to the customer until the purchase price (including interest if any) in respect of the goods in question has been paid. The provisions hereof shall apply notwithstanding the installation of such goods on the customer's premises or accession thereof to any of the customer's goods or that the goods may be incorporated into or form part of other goods or change their essential character. All goods, whether fixed to immovable property or not, shall be deemed to be severable without injury to either property.
- 11.2 The supplier reserves the right to inform the owner/landlord of the premises in which the goods are or at any time may be, of the provisions of this clause. The customer shall be obliged to advise the supplier of the name and address of the landlord of any such premises and shall promptly advise the supplier of any change in the name and/or address of any landlord or of any new landlord.
- 11.3 The customer shall take all such steps as may be necessary to notify interested third parties that ownership of the relevant goods has not passed from the supplier to the customer. In particular the customer shall inform the owner/landlord of the premises in which the goods are or at any time may be, of the provisions of this clause. The customer shall produce written proof of such notices to the supplier on demand.

### 12 REPAIRS

- 12.1 The supplier will prepare and issue a quotation for the repair of goods, which quotation will be furnished to the customer and on acceptance of the quotation by the customer, the supplier will undertake the repairs in accordance with the quotation.
- 12.2 The customer is entitled to waive the necessity of a quotation for the repairs, alternatively is able to furnish the supplier with a pre-authorization for the repairs up to a specific maximum amount.
- 12.3 In the event of a quotation having been prepared by the supplier and the

customer not accepting such quotation, the supplier will be entitled to charge a reasonable fee for the cost of preparing the estimate, including the cost of performing any diagnostic work, disassembly or reassembly required to prepare the quotation including any damage or loss of material or parts in the cause of preparing the estimate.

- 12.4 The supplier shall have the right of retention and lawful lien over the goods submitted for repairs until such time as the customer effects payment for the repairs and/or quotation fee in full.

### 13 WARRANTIES AND GUARANTEES

- 13.1 Subject to the provisions of the CPA, no warranties, guarantees or representations, express or implied or tacit whether by law, contract or otherwise and whether they induced the contract or not, which are not set forth in this agreement shall be binding on the supplier, the customer irrevocably waives any right (common law or otherwise) it may have to rely thereon.
- 13.2 To the extent that goods supplied by the supplier are in any way defective, the customer shall be entitled, within the warranty period applicable to such goods to claim the replacement or repair of goods to eliminate any defect in workmanship or materials found to be due exclusively to any acts or omissions on the part of the supplier, in the supplier's sole opinion (which shall be binding on the customer), provided that the customer notifies the supplier, in writing, of such defect within 7 days after the defect arises (which notice shall specify the alleged defect), provided that the supplier shall have been given a reasonable opportunity of inspecting any alleged defect.
- 13.3 In order to be a valid claim, terms of the guarantee as set out in clause 9.2, must be in writing, specifying the alleged defect, and supported by the original tax Invoice. In addition the goods must be returned by the customer to the supplier at the customer's expense, packaged in their original undamaged packing material.
- 13.4 The parties agree that the supplier shall have no ability in respect of any injury, loss or damage (direct, indirect or consequential) arising out of the use of, or inability to use, the goods and whether or not occasioned by the supplier's negligence (gross or otherwise) or any act or omission on its part. Without limiting the foregoing the supplier does not warrant that the goods will be fit for the purposes for which they are to be used by the customer (notwithstanding that the use to which the customer intends to put the goods is known to the supplier). For the purposes hereof, any reference to the supplier shall include its servants, agents or contractors or any person for whose acts or omissions the supplier may be liable in law. This also constitutes a stipulation *alteri* in favour of such persons the benefits of which may be accepted by them at any time.
- 13.5 The supplier shall be relieved of all obligations in terms of this clause, if-
- 13.5.1 repairs or modifications have been made by persons other than the supplier, unless such repairs or modifications are made with the prior written consent of the supplier;
- 13.5.2 any goods are operated with any accessory, equipment or part not specifically supplied or approved in writing by the supplier;
- 13.5.3 the goods shall not have been operated or maintained in accordance with the supplier's instruction, or under normal use; the goods shall not have been properly installed.
- 13.6 If repairs or replacements are effected by the supplier, only the parts actually worked on and not the complete goods shall be subject to a new guarantee, if any, hereunder.
- 13.7 customers who acquire goods for the purpose of on-selling these goods, whether that customer is permitted to do so or not (and noting herein contained shall be deemed to allow that the customer to on-sell goods acquired from the supplier whilst ownership vests in the supplier), shall

not advertise or issue or in any other way give or make any warranties guarantees or representations as to the goods in any form whatsoever or offer to do so, which could result in liability being imposed upon the supplier.

13.8 Notwithstanding the contents of this clause 13, insofar as any transactions in terms hereof fall with the ambit of the CPA, the following provisions shall apply in respect of warranties and guarantees in respect of the goods:

13.8.1 Within 6 months after delivery of the goods to the customer, the customer may return the goods to the supplier, without penalty, if the goods do not satisfy the requirements and standards contemplated in Section 55 of the CPA in which event the supplier may either:

13.8.1.1 repair or replace the failed, unsafe or defective goods; or

13.8.1.2 refund the customer for the price paid by the customer for the goods.

13.8.2 In the event of the supplier repairing any particular goods or component of such goods and within 3 months of that repair, the failure or defect or unsafe features not being remedied, or a further failure, defect or unsafe feature is discovered, The supplier may:

13.8.2.1 replace the goods; or

13.8.2.2 refund the customer the price paid by the customer for the goods.

13.8.3 The aforesaid warranty exists in addition to an express warranty or condition stipulated by the producer or importer as the case may be.

13.8.4 In the event of the supplier providing any new or reconditioned parts installed during any repair or maintenance work and the labour required to install it, such work and parts will be warranted for a period of 3 months after date of installation or such longer period as the supplier may specify in writing.

13.8.5 This warranty is at all times subject to the supplier's policies containing circumstances where the warranties and/or guarantees are excluded due to, inter alia, goods being misused or abused and does not apply to any ordinary wear and tear in respect of the goods, having regard to the circumstances in which the goods were intended to be ordinarily used. Furthermore, the terms and conditions as contained in any of the suppliers policies and procedures [as amended by the supplier (from time to time)], including but not limited to warranty policies, service procedures, repair and replacement policy and packaging policies shall apply in respect of such warranty and are deemed specifically incorporated herein.

#### 14 RETURN OF GOODS AND HANDLING FEE

Subject to the provisions of clause 15 of these terms and conditions and the CPA:

14.1 the supplier is not obliged to accept the return of any goods and this clause shall not be used to imply that the supplier shall be obliged to accept the return of any goods;

14.2 the supplier reserves the right to levy a handling fee of 20% of the purchase price of the relevant goods on such goods returned to and accepted by the supplier, if the return of goods takes place within 14 days from the date of invoice; and

14.3 the supplier reserves the right to levy a handling fee of 30% of the purchase price of the relevant goods on such goods returned to and accepted by the supplier, if the return of goods takes place after 14 days from the date of invoice (maximum 30 days).

#### 15 ROTATION OF STOCK

Notwithstanding clause 14 of these terms and conditions, but subject to the

provisions of the CPA:

15.1 90 (ninety) calendar days after receiving its first invoice, and every 90 (ninety) calendar days thereafter, the customer may return for credit an amount of the goods with an original purchase price not in excess of **10% (ten percent)** of the aggregate price of all the customer's purchases during the preceding 90 (ninety) days.

15.2 When the customer desires to make a stock rotation, it will submit to the supplier a list, indicating the quantity and serial number of the items requested to be returned ("**stock rotation request**").

15.3 All stock rotation requests must be accompanied by an order for goods with an aggregate purchase price equal to or greater than the credit the customer is to receive for such return.

15.4 Upon receiving such list and related order, the supplier will issue to the customer a return goods authorization for the return of the goods on the list ("**return goods**") and will process the related order.

15.5 The supplier shall only accept (and credit the customer for) return goods:

15.5.1 in their original packaging (including any package inserts) and neither the good nor the packaging is damaged in any way; and

15.5.2 free of all stickers (including price, sale, reduced and special offer) applied by the customer (or any third party) to the packaging.

15.5.3 are not older than 12 months from invoice date.

15.5.4 are not deemed EOL (End of Life).

15.6 The provisions of clauses 6, 7, 8 and 9 of these terms and conditions shall apply to orders for goods placed pursuant to this clause 15, *mutatis mutandis*.

#### 16 DELIVERY / COLLECTION OF RETURN GOODS

16.1 The customer shall deliver the return goods either to the head office of the supplier or the relevant area sales representative of the supplier. Provided that, if the customer returns the goods to an area sales representative:

16.1.1 delivery of the goods to the head office of the supplier shall take place at the end of the calendar month in which the customer delivered the goods to the sales representative; and

16.1.2 The supplier shall only process the return goods in accordance with clause 15.5 once the goods are delivered to its head office.

16.2 If the customer requests the supplier collect the return goods then the supplier is hereby authorized to engage a third party on the customer's behalf and on the terms deemed fit by the supplier to deliver the goods to its head office. The customer hereby indemnifies the supplier against any claims that may arise from such agreement against the supplier. The customer shall reimburse the supplier for any costs incurred in arranging special delivery, including but not restricted to, the costs of necessary disbursements and insurance. Any documentation purporting to evidence the said extra costs will be deemed to be prima facie proof thereof.

#### 17 AVAILABILITY OF IMPORTED PERMITS

The supplier's obligations hereunder shall be subject, in those cases where the goods or part thereof are to be imported, to the availability of an import permit to the supplier.

#### 18 SUBSTITUTE GOODS OR PARTS

18.1 The supplier shall be entitled to substitute for any goods specified in this agreement with such other goods which the supplier in its sole discretion may regard as suitable substitutes therefore on reaching an agreement with the customer.

18.2 The supplier reserves the right to alter specifications without notice. Should conditions render unavailable any materials or goods specified herein or otherwise required in order to fulfill this agreement, a substitution deemed by the supplier to be suitable for the performance of its obligations will be supplied on acceptance by the customer.

### 19 DOCUMENTATION

Subject to the provisions of the CPA (if applicable), all specifications, descriptive matter, drawings and other documents furnished by the supplier do not form part hereof and may not be relied upon, unless they are agreed in writing by the supplier to form part hereof. All descriptive matter, specifications, drawings and particulars given by the supplier are approximate only and the supplier cannot be held responsible for loss including consequential loss due to discrepancies therein.

### 20 APPLICATION OF THE CPA

20.1 The parties agree that the provisions of the CPA as contained in these terms and conditions shall not apply to the customer if the customer qualifies as an exempt enterprise, which is defined in section 2 (b) of the CPA as a juristic person whose asset value or annual turnover, equals or exceeds the current threshold value determined by the Minister, being R 2 000 000.00 (two million rand)

20.2 The customer specifically undertakes that it shall notify the supplier in writing at the effective date whether its asset value or annual turnover is more or less than the threshold value determined by the minister and that should its asset value or annual turnover fall above or below the aforesaid threshold during the course of the agreement that it shall immediately notify the supplier of this fact.

### 21 BREACH

21.1 Subject to clause 21.2, if the customer breaches any of the terms or conditions hereof or any other agreement with the supplier or fails to pay any amount payable by it on due date or commits any act of insolvency or endeavours to compromise generally with its creditors or does or cause to be done anything which may prejudice the supplier's rights hereunder or at all, or allows any judgement against it to remain unsatisfied for 7 days or is placed into provisional or final sequestration or if his estate is voluntarily surrendered, the supplier shall have the right, without prejudice to any other right which it may have against the customer, to elect to-

21.1.1 treat as immediately due and payable all outstanding amounts which would otherwise become due and payable over the unexpired period of this agreement and to claim such amounts as well as any other amounts in arrears including interest and to cease performance of its obligations hereunder as well as under any other contract with the customer until the customer has remedied the breach;

21.1.2 cancel this agreement and retake possession of any of the goods sold without prejudice to its rights to claim damages.

21.2 The supplier shall not be obliged to comply with its obligations hereunder in any respect whatsoever for so long as the customer is indebted to the supplier in any amount whatsoever in respect of any cause whatsoever or fails to comply with any other obligations to the supplier, whether arising out of this contract or otherwise. In particular, without limiting the generality of the foregoing, if delivery of any particular order is to take place in packs, the supplier shall not be obliged to deliver any part of the order until the purchase price in respect of the goods which already has been delivered, has been paid.

21.3 No claim under this contract will arise against the supplier unless the customer has given the supplier 30 days' written notice delivered by hand

or by email to rectify any defect or breach of contract.

21.4 The customer agrees that the customer indebtedness to the supplier shall be determined and proven by a certificate issued by the supplier, which authority need not be proven. Such certification shall be prima facie proof of the indebtedness of the customer.

21.5 The customer hereby indemnifies the supplier against any and all damage of whatsoever nature, howsoever and by whomsoever caused in relation to the removal of goods, excluding any gross negligence by the supplier, and without derogating from the generality of the foregoing, the removal of repossessed goods from the premises of the customer or any other premises where the goods may be found.

21.6 The customer hereby agrees that the supplier shall not be required to furnish security in terms of rule 62 of the rules of Court of the Magistrate's Court.

21.7 The supplier shall have the right to institute any legal action in either the relevant Magistrate's Court or the Supreme Court at its sole discretion and the customer consents to jurisdiction of the Magistrates court.

### 22 DOMICILIUM AND NOTICES

22.1 The parties choose as their domicilia citandi et executandi ("domicilium") for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, those addresses reflected in the reseller application annexed hereto.

22.2 Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing, but it shall be competent to give electronic notice by way of email.

22.3 Any of the parties hereto may by notice to the other parties change the physical address chosen as its domicilium to another physical address or its or its email address, provided that the change shall become effective on the 7th (seventh) business day from the deemed receipt of the notice by the other party.

22.4 Any notice to a party:

22.4.1 delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its domicilium shall be deemed to have been received on the day of delivery; or

22.4.2 sent by email to its chosen email address stipulated in the reseller application annexed hereto shall be deemed to have been received on the date of transmission (unless the contrary is proved).

22.4.3 transmitted by telefacsimile from an address to the addressee at the addressee's telefacsimile address for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the first business day after the date of transmission.

22.5 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen domicilium.

### 23 SECURITY FOR OBLIGATIONS

23.1 The supplier reserves the right to require satisfactory security from the customer for the due performance of any of the customer's obligation hereunder including but not limited to the payment of the purchase price. If the supplier so requires, the customer shall deliver to supplier prior to the supplier complying with any of its obligations hereunder, confirmed irrevocable letters of credit by financial institutions acceptable to the supplier.

23.2 If such security or guarantees or letters of credit are not furnished within

7 days after any such demand, the supplier shall be entitled to withdraw without prejudice to its rights of whatsoever nature to withdraw any credit provided to the customer in terms thereof.

### 24 WARRANTY OF AUTHORITY (PLEASE TAKE NOTE)

- 24.1 The signatory warrants, as a material warranty which the signatory relies on in entering into the agreement that he is duly authorised to represent and bind the customer to this agreement, and that he has read and understood each term and condition of this agreement and accepts them as binding on him and the customer. The customer hereby warrants that it regards the terms and conditions of this as binding upon it.
- 24.2 The signatory and the customer hereby warrant that the signatory to any tax invoice, delivery note or other documentation of the supplier made out in the name of, or to the customer is duly authorised to bind the customer in respect of the relevant transaction.
- 24.3 The signatory shall be bound by the provisions of this agreement as if he were the customer, mutatis mutandis particularly, but without limitation thereto, insofar as the agreement provides for proof of facts, costs of proceedings, service of process, limitations of defenses and jurisdiction.

### 25 EXEMPTION AND INDEMNITY

- 25.1 The customer shall have no claim of any nature whatsoever for damages, a remission of the purchase price, cancellation or otherwise, against the supplier, its servants, agents or others on whose behalf the supplier would be liable, in respect of any loss or damage sustained by the customer of any nature whatsoever or any damage caused to the assets of the customer or assets kept on its premises by any third parties or in regard to the customer's business or sustained by any of its customers, howsoever caused including the negligent (excluding grossly negligent) acts or omissions of the supplier, its servants, agents or others for whom it may be liable in law. This constitutes also a stipulation *alteri* in favour of such person the benefits of which may be accepted by them at any time.
- 25.2 In the event that the customer who acts as supplier to the customer and as such becomes a supplier as defined in the CPA, and such customer does not comply with the provisions of the CPA in any manner whatsoever and the customer proceeds with a claim against the supplier, then the customer indemnifies the supplier to the fullest extent permitted in law against any claims made against the supplier by the customer.

### 26 COSTS

- 26.1 The customer shall be liable for all costs incurred by the supplier in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and own client scale and costs of counsel as on brief whether incurred prior to or during the institution of legal proceedings or if judgement has been granted, in connection with the satisfaction or enforcement of such judgement.
- 26.2 The customer undertakes to pay the cost of the suretyship and cession contained herein, including any stamp duty payable thereon and agrees that such costs can be debited to the customer's account upon acceptance.

### 27 INSURANCE

- 27.1 The supplier shall have the option to require the customer, at its own expense, and prior to taking delivery of the goods, to insure the goods and thereafter keep the goods insured until such time as goods have been paid for in full. Such insurance shall be taken with such insurers as may be approved by the supplier in writing, for such amount and on such terms

as may be approved by the supplier in writing. The insurance policy shall record the interest of both the supplier and the customer. The customer shall, if so required by the supplier, cede to the supplier all rights in terms of such insurance policy.

- 27.2 The supplier shall exercise the said option by giving the customer written notice that it is doing so at any time prior to the delivery of the goods by the supplier to the customer.

### 28 CONSEQUENTIAL LOSS

Under no circumstances whatsoever including as a result of its negligent (including grossly negligent) acts or omissions or those of its servants, agents or contractors or other persons for whom in law may be liable, shall the supplier be liable for any consequential loss sustained by the customer. This also constitutes a stipulation *alteri* in favour of such persons the benefits of which may be accepted by them at any time.

### 29 SEVERABILITY

Each paragraph or clause in this agreement is severable, the one from the other and if any paragraph or clause is found by any competent Court to be defective or unenforceable for any reason whatsoever, the remaining paragraphs or clauses shall be of full force and effect and continue to be of full force and effect.

### 30 FORCE MAJEURE

Any transaction is subject to cancellation by the supplier due to force majeure from any cause beyond the control of the supplier, including without restricting the generality of the foregoing, inability to secure labour, power, materials or supplies, or by reason of an act of God, war civil disturbances, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation.

### 31 CESSION OF AGREEMENT

The customer shall not be entitled to cede or assign any rights and/or obligations which it may have in terms of this agreement to any third party. The supplier on notice to customer shall be entitled to cede, assign delegate.

### 32 CESSION IN SECURITATEM DEBITI

- 32.1 The customer hereby irrevocably cedes, assigns and transfers, makes over unto and in favour of the supplier, all the customer's right title and interest in and to its claims against its debtors, both present and future and from whatsoever cause arising, as security for all or any of the amounts which the customer may now or at any time in the future owe to the supplier
- 32.2 The customer irrevocably and *in rem suam* authorises the supplier in its absolute discretion to claim from all or any of the customer's debtors the whole or any portion of the indebtedness, to take any action in its name in any court of competent jurisdiction and to proceed in execution there under against all or any of the said debtors, to exchange promissory notes, cheques, agreements, documents of title or any other security held by the customer.
- 32.3 The security created by the cession shall be a continuing one notwithstanding any fluctuation in the amount of indebtedness of the customer to the supplier.
- 32.4 The customer hereby undertakes on demand to furnish the supplier with such information concerning its debtors as may be reasonably required, to enable the supplier to give effect to the provisions of this clause.

### 33 FURNISHING OF INFORMATION BY CUSTOMER

The customer shall forthwith after the conclusion of the contract, furnish the supplier with all information reasonably required by the supplier to enable it to comply with its obligations.

### 34 RECEIPT OF DOCUMENTS, CHEQUES ETC

No notices, cheques, cash or other documents sent to the supplier through the post shall be deemed to have been received unless and until actually received by the supplier.

### 35 INTEREST

The customer shall pay interest at the means the interest rate charged by [●] Bank to first class corporate borrowers on unsecured overdraft facilities, compounded monthly in arrear, on all amounts owing by the customer to the supplier which have not been paid on the due date thereof, reckoned from the due date thereof until date of payment. Such interest shall be payable on demand.

### 36 CREDIT BUREAU REPORTS

36.1 The customer consents and agrees that the supplier may:

- 36.1.1 perform a credit search on the customer's record with a registered credit bureau;
- 36.1.2 monitor the customer's behaviour by researching its record at a registered credit bureau;

36.1.3 use new information and data obtained from other registered credit bureaus in respect of the customer's business relationship with the supplier;

36.1.4 record and transmit details in respect of:

36.1.4.1 the conduct of the customer's account in meeting its obligations on the account;

36.1.4.2 how the customer has performed in meeting its obligations in terms of any agreement concluded between the customer and the supplier, with a registered credit bureau.

36.1.5 convey the information provided herein by the customer to a registered credit bureau which information may be used by the registered credit bureau in the normal course of its business as a registered credit bureau accessed by the other Credit Providers (as defined in the National Credit Act 34 of 2005) and customers of the registered credit bureau;

36.1.6 evaluate the criminal history or record, previous convictions and any other relevant information of the customer with the Criminal Record Centre.

36.2 The supplier undertakes to give the customer 20 (twenty) business days written notice prior to the forwarding of the details as mentioned in clause 36.1.4.1 and 36.1.4.2, above to any registered credit bureau.