

TERMS AND CONDITIONS

1. PRELIMINARY

- 1.1. All goods are sold, and all services are rendered in accordance with these Conditions. No variation from these conditions and no contrary stipulation by the Supplier shall be valid unless specifically negotiated and accepted by the Company in writing on Company stationery.
- 1.2. These Conditions apply to all sales of goods and supplies of services whether or not such sales are pursuant to Purchase Orders by e-mail or Purchase Orders placed with representatives or agents of the Supplier.
- 1.3. These Conditions replace, supersede and take precedence over any other terms and conditions which may be contained in any Supplier forms, price lists, quotations, tenders credit applications, delivery notes, orders or invoices including (without limitation) the documentation of any of the Supplier's transport agents, whether or not signed by the Company.
- 1.4. To the extent applicable and unless the Parties have agreed otherwise in writing, all services will be rendered, and/or all goods will be supplied on a wet rate basis. The price on the Purchase Order will include all cost related to and/or including Hydrocarbons required for the rendering of services and / or the supply of goods, unless otherwise stipulated herein.
- 1.5. In the event of the Company supplying Hydrocarbons to the Supplier, the following will apply:
 - 1.5.1 Services will be rendered and / or goods will be supplied on a dry rate basis meaning all costs related to the rendering of such services and / or supply of goods will exclude the costs relating to Hydrocarbons;
 - 1.5.2 Hydrocarbons supplied by the Company will not be warranted in any manner;
 - 1.5.3 The Supplier shall use the Hydrocarbons only for the rendering of services and/or the supply of goods; and
 - 1.5.4 The use of the Hydrocarbons shall at all times be at the Supplier's sole risk.For the avoidance of doubt "Hydrocarbons" shall mean fuel and / or lubricants and /or any similar substances.

2. PRICE

- 2.1 The price of the goods and/or services shall be the amount reflected on the Purchase Order.
- 2.2 Supplier price lists shall be considered merely as a guide.
- 2.3 Unless otherwise stated on the Purchase Order, the prices for goods/services shall include all related cost for the delivery thereof to the Company's store situated at the Company's physical address specified in the Purchase Order, which will include but not be limited to all cost for transport and packaging.

Tharisa Minerals Proprietary Limited

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Directors P Pouroulis MG Jones ML Taylor RA Murley ES Asaram V Makuni JD Salter

Company Secretary S Findlay

3 PAYMENT AND INVOICING

- 3.1 Payment is to be made 30 (thirty) days from date of Supplier's statement; provided the Company is in receipt of an approved valid tax invoice as well as all documentation which the Company may require to verify the Supplier's status of good standing with all regulatory requirements.
- 3.2 The Company will have 7 (seven) days from receipt of a valid tax invoice to inform the Supplier of any discrepancy and shall only be required to pay each undisputed and approved valid tax invoice within the above-mentioned 30-day period. The disputed part of a valid tax invoice will only become due and payable once the dispute has been resolved and the Parties are in agreement on the amount so disputed.
- 3.3 Any rebates or discounts agreed as well as any monies due to the Company by the Supplier will be set-off against the price and shall be specified in the Supplier Statement.
- 3.4 In all cases where the Supplier uses a postal banking, electronic or similar such service to communicate banking details or to receive payment, such services shall be deemed to be the agent of the Supplier. The Supplier shall ensure that the Company has the correct banking information of the Supplier to make an electronic bank transfer. The Supplier assumes the entire risk of incorrect bank transfers arising from incorrect or changes in the Supplier's banking information.
- 3.5 The Company may appropriate all payments made to the Supplier to such accounts as it will in its sole and absolute discretion decide.

4 ORDERS

- 4.1 Purchase Orders by the Company for goods or services, shall be made in writing and issued to the Supplier's e-mail address as may be nominated by the Company from time to time. The company terms and conditions would have deemed to have been accepted by the Supplier by providing the Company with an order acknowledgement, in the form of, confirmation of the date and time, upliftment of goods for repairs or delivery of such goods/services to the company.
- 4.2 Notwithstanding any provision to the contrary, no goods shall be supplied / no services shall be rendered and no amounts shall be or become due or payable by the Company in respect thereof unless a Purchase Order in respect of such goods/services, duly signed by authorised representative of the Company, has been issued by the Company and accepted by the Supplier in the manner contemplated in clause 4.1. "Purchase Order" means an order for goods/services that is printed on Company stationery bearing the words "Purchase Order" or "Order" or "Emergency Order" or "Breakdown Order" and which has been signed by an authorised signatory on behalf of the Company.
- 4.3 Purchase Orders once placed by the Company shall not be varied or cancelled by the Supplier, except with the written consent of the Company.
- 4.4 All offers, quotations, proposals, credit application, or correspondence of a similar nature received by the Company from the Supplier shall be subject to these Conditions.

5 OWNERSHIP AND RISK

- 5.1 Ownership of, and risk in, the goods shall, subject to clause 5.2, pass to the Company upon formal acknowledgment of receipt thereof by the company as specified in clause 6.1. It being noted that such acknowledgement shall not necessarily constitute verification that the goods received are in good condition, fit for purpose or, in the case of repairs, that they have been properly repaired or that the goods so delivered complies with what has been agreed to in the Purchase Order.
- 5.2 Where the Purchase Order is for the supply, erection and commissioning of any plant, equipment or structure, the risk shall remain with the Supplier until such time as the goods have been commissioned, approved and signed off by the Company.
- 5.3 Any specifications, drawings or designs provided to the Supplier by the Company shall at all times remain the exclusive property of the Company and the Supplier hereby undertakes to protect the Company's rights therein by not disclosing same or allowing any other third parties to make copies thereof.
- 5.4 Any specifications, drawings or designs provided to the Supplier by the Company shall not be used for any other purpose by the Supplier than for the supply of goods / rendering of services as specified in the Purchase Order.

6 DELIVERY

- 6.1 In the event that the Supplier transports the goods to the Company, delivery shall be deemed to have taken place when the goods are off-loaded at the Company's stores on the Company's premises and the Company has formally acknowledged receipt thereof in the form of an official Company stamp, signed by a duly authorised Company representative.
- 6.2 In all cases where delivery to the Company occurs by carrier, the carrier shall be the Supplier's agent.
- 6.3 If the Supplier and the Company agree, as confirmed in the Purchase Order, that the Supplier shall not transport the goods to the Company, delivery shall be deemed to have been made to the Company when the goods are delivered free-carrier (Incoterms 2020) to the Company or the Company's authorized agent at the Supplier's place of business indicated on the Purchase Order.
- 6.4 Time shall be of the essence for the delivery of goods and the performance of services within the time agreed to between the parties and confirmed in the quotation or Purchase Order. The Company shall be entitled to, without incurring any penalties, cancel any Purchase Order by reason of any delay in delivery of the goods or failure to complete the services within the time specified.
- 6.5 In the event that the Supplier makes partial delivery of the goods or services ordered, non-delivery or delay in delivery of the remaining part of the Purchase Order from the time specified, shall constitute a breach of the whole Purchase Order and shall entitle the Company at its discretion to cancel the Purchase Order or impose a 10% penalty of the order value.
- 6.6 When goods are delivered in part, invoices relating to partial deliveries shall not be payable and payment shall be postponed until delivery of the entire Purchase Order.
- 6.7 The Supplier will be liable for payment of all fees, charges, expenses and the like including but not limited to freight charges, all shipping charges, storage and Goods in Transit, due to the carrier in respect of the transport of the goods to the Company.
- 6.8 Should the Supplier agree to engage a carrier to transport goods to the Company, such carrier shall be the Supplier's agent and the Supplier shall engage the carrier on such terms and conditions as it deems fit. The Supplier indemnifies the Company against all demands and claims which may be made against it by the carrier so engaged and all liability which the Company may incur to the carrier arising out of the transportation of the goods.
- 6.9 The Company shall not be barred from lodging any claim in respect of discrepancies between goods charged and goods delivered.

7 RETURNED GOODS

- 7.1 Goods sold by the Supplier are returnable without any penalties if the goods so delivered are incorrect, defective or delivered late. Should the Company in its absolute discretion elect to return any goods, the following shall apply:-
 - 7.1.1 Notification of incorrect, defective or late delivered goods must be given to the Supplier within 60 (sixty) days of delivery.
 - 7.1.2 All goods returned must be reasonably complete, clean, saleable and undamaged.
 - 7.1.3 The value of credit for goods returned will be calculated at the invoice value when the goods were purchased.
- 7.2 Should payment have already been made to the Supplier for the goods, the Company will be entitled to offset the value of the returned against any monies due to the Supplier, whether or not reflected in the Supplier's statement.
- 7.3 All goods are to be returned at the Supplier's expense and risk in the goods shall revert to the Supplier when notification of incorrect, defective or late delivered goods is given to the Supplier.
- 7.4 Should the Supplier breach or default in the supply of the goods/rendering of services as per the Purchase Order and/or these Conditions and fail to remedy such default within 14 (fourteen) days, or within such longer period as may be reasonable in the circumstances as determined by the Company, after receipt of written notice by the Company requiring the Supplier to do so, then the Company shall be entitled, without prejudice to any other rights which it may have in law, forthwith to cancel the Purchase Order in whole or in part or claim specific performance of the Supplier's obligations, without limitation to its right to claim damages from the Supplier.
- 7.5 Supplier will be deemed to be in default and will entitle the Company to cancel the Purchase Order and/or to claim damages if any order is made or resolution is passed for the winding-up of the Supplier or it is placed in liquidation or under any form of receivership, whether provisionally or finally, or becomes insolvent or makes a general assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they become due or is otherwise shown to be unable to pay its debts as they become due.

8 INSPECTION AND TESTING

- 8.1 The Company shall be entitled to inspect, during normal business hours the Supplier's business premises, workshop or site where the goods that are the subject of a Purchase Order are stored or manufactured in order to satisfy itself:
- 8.1.1 of any statutory compliance issues; or
 - 8.1.2 of the quality of the manufacturing process or materials used to assemble, manufacture or repair the item.
- 8.2 The Company shall have the right to subject any item received from any Supplier to the appropriate testing procedures required to check whether the quality of the item or its components comply with the Company's specifications, or the specifications provided by the Supplier before the Purchase Order was placed by the Company.

9 WARRANTIES & INDEMNITY

- 9.1 The Supplier warrants that on delivery of the goods to the Company ownership therein will pass to the Company, the goods will be of good commercial quality, will comply with their respective specifications (as contained in the Supplier's brochures or official documentation or as agreed between the Supplier and the Company, as applicable) and will be fit for purpose.
- 9.2 The Supplier warrants that all services will be provided in a timely manner and performed by persons with all requisite skills, qualifications and training and will comply with Good Industry Practice. "**Good Industry Practice**" defined as the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced supplier complying with all its contractual obligations, and complying with all applicable legislation and laws whilst engaged in a similar type of undertaking and under the same or similar circumstances and conditions as those envisaged by the relevant Purchase Order.
- 9.3 Any advice or opinion given by the Company's employees is for the Company's benefit only, will not detract from the Suppliers obligations under clause 9.2 and the Company accepts no responsibility for any damages that the Supplier may incur as a result of the Supplier relying upon such advice.
- 9.4 The Supplier warrants that it has the expertise, experience and capability, including sufficient and competent employees to supply the goods/render the services efficiently and expeditiously and in accordance with these Conditions.
- 9.5 The Supplier warrants that it has the power to execute, deliver and perform its obligations under the relevant Purchase Order and all necessary corporate and other action has been taken to authorise that execution, delivery and performance.
- 9.6 The Supplier warrants that unless it has clearly indicated the contrary in writing to the Company, it qualifies as a Historically Disadvantaged Persons Owned and Controlled Company defined in the Broad-Based Socio-Economic Charter for the South African Mining and Minerals Industry as developed and amended from time to time under section 100 of the Mineral and Petroleum Resources Development Act, 28 of 2002 ("Mining Charter").
- 9.7 The Supplier shall, in connection with its obligations under clause 9.6, furnish the Company annually, with formal documentation issued by an independent third party verifying the Supplier's status as a Historically Disadvantaged Persons Owned and Controlled Company or as may be requested by the Company from time to time.
- 9.8 It is not involved in any form of torture, forced labour, human rights abuse, war crimes, or any form of criminal activity including but not limited to money laundering.
- 9.9 It is not involved in any direct or indirect support to criminal armed groups or their affiliates who illegally control or tax mines, or any point in the mining supply chain, and
- 9.10 It is not involved in any form of bribery or corruption and resists the solicitation of bribes to conceal the origin of metals or misrepresent taxes paid to the government.
- 9.11 All upstream supply chain activities were responsibly and ethically sourced.
- 9.12 It is not infringing on any copyright laws, intellectually property rights, or any laws in its due course of business to render goods and services to Tharisa Minerals.

10 EQUIPMENT

10.1 SUPPLIER EQUIPMENT

- 10.1.1 All equipment used by the Supplier for the performance of its obligations in terms of the Purchase Order on the Company's premises shall at all relevant times:
- 10.1.1.1 be in good working order and maintained in accordance with relevant manufacturers specifications or guidelines and Good Industry Practice;
 - 10.1.1.2 comply with the Company's standards; and

- 10.1.1.3 be insured by the Supplier at its sole cost and expense.
- 10.1.2 When accessing the Company's premises, the Supplier is obligated to declare to security at access control all equipment, including but not limited to tools which the Supplier brings onto the Company's premises. Should the Supplier not be in possession of such declaration when exiting the Company's premises, the Supplier shall not be entitled to remove such equipment from the Company's premises without sufficient documentary evidence that the equipment is owned by the Supplier.
- 10.1.3 For the period which such equipment is on the Company's premises, the Supplier shall take full responsibility for the care and maintenance of such equipment and shall make available the necessary supervisors and mechanics to effect repairs to such equipment at all material times.
- 10.1.4 The Company shall not be liable for any loss, damage, theft or breakdown to such equipment which occurs:
 - 10.1.4.1 in the supply of goods/rendering of services; and/or
 - 10.1.4.2 during use or temporary storage of such equipment at the Company's premises, or
 - 10.1.4.3 for any other reason whatsoever and the Supplier indemnifies the Company in this regard.

10.2 COMPANY EQUIPMENT

- 10.2.1 A Company representative must at all times be present when the Supplier strips equipment owned by the Company for purpose of providing the Company with a quotation for the repair of such Company equipment as requested by the Company in writing.
- 10.2.2 The Company equipment may only leave the Company's premises when the Supplier can provide security at access control with the documentation specified by the Company from time to time which include a waybill and a strip and quote request approved by a duly authorised Company representative in writing.

11 SUB CONTRACTORS

- 11.1 The Supplier may enter into subcontracts for the vicarious execution of the Supplier's obligations in terms of a Purchase Order, provided that the Supplier obtained the Company's written approval (not to be unreasonably withheld).
- 11.2 The Supplier must manage the performance of each subcontractor to ensure the quality and timeliness of its performance to meet the requirements, and comply with the provisions, of the Purchase Order and these Conditions in all respects.
- 11.3 The Supplier's obligations under a Purchase Order are not lessened or otherwise affected by subcontracting the performance of any of its obligations, and the Supplier remains ultimately responsible to the Company under these Conditions.
- 11.4 The Supplier must ensure that each subcontract entered into by the Supplier contains:
 - 11.4.1 a covenant (in a form acceptable to the Company) which will entitle the Supplier to novate the subcontract to the Company, at no cost to the Company, if the Purchase Order is terminated; and
 - 11.4.2 a term which ensures the Company obtains the benefit of any warranties provided to the Supplier by the subcontractor.

12 LEGISLATIVE COMPLIANCE

- 12.1 The Supplier shall, in carrying out services and/or providing goods, comply with all legislation, regulations, directives from any statutory authority and promulgations applicable to the services and/or goods, including but not limited to the Mine Health and Safety Act, 1996 (as amended) and the Mineral and Petroleum Resources Development Act, 2002 (as amended) (collectively "the statutes").
- 12.2 To the extent that the Supplier provides any services at the Company's premises, the Supplier shall and shall procure that its employees adhere to the Company's environmental, health and safety policies and procedures as well as all health, safety and environmental legislation applicable to the Company's premises and/or the rendering of such services, and in this regard shall and shall procure that its employees i) follow all instructions and advice given by the Company's representatives and ii) comply with all health, safety and environmental legislation applicable to the Company's premises and/or rendering of such services.
- 12.3 The Supplier hereby indemnifies and holds the Company harmless against all loss or damage (including consequential damages) which the Company may suffer as a result of any breach by the Supplier of any of the statutes and/or any failure by the Supplier or the Supplier's employees/subcontractors to comply with the Company's environmental, health and safety policies and procedures including failure to comply with the health, safety and environmental legislation applicable to the Company's premises and/or rendering of such services.

- 12.4 The Supplier shall, at its own cost, ensure the medical fitness of its employees and anyone else involved in the supply of goods/rendering of services, to the extent legally required. The Supplier shall further ensure, at its own cost, that such employees undergo medical examinations prior to, annually thereafter, and as soon as possible after completion of the supply of goods/rendering of services (exit medical), to the extent legally required. All cost owned to the Company for performing such medicals, will be offset against all monies to be paid to the Supplier for the supply of goods/rendering of services, whether included in the Supplier's statement or not.
- 12.5 The Company shall have the right to, notwithstanding any other provision provided for in these Conditions, withhold payment to the Supplier in the event that the required exit medicals have not been completed as set out above.
- 12.6 The Supplier shall ensure that it obtains all insurance agreed to with the Company in writing prior to accessing the Company's premises which will include but not be limited to:
- 12.6.1 public liability insurance with an overall limit of not less than R10 million for any one occurrence;
 - 12.6.2 workers compensation insurance in accordance with the requirements of the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993.

13 CHANGES TO THE SUPPLY

- 13.1 The Company may at any time request the Supplier in writing to change the good/services specified in the Purchase Order ("Change Request").
- 13.2 In the event that the Change Request have any impact on the price of the goods / services or the delivery thereof and / or any other condition which is material to the goods/services, the Supplier shall provide the Company within 48 hours of receipt of the Change Request with information in writing advising the Company of the impact of such Change Request on the price, timeline and other any other conditions material to the goods/services as well as any other information so requested by the Company.
- 13.3 A Change Request shall not be binding on the parties until such Change Request is signed by both the Company and the Supplier and confirmed by the issuing of another Purchase Order signed by a duly authorised representative e of the Company.

14 COMPLETION

- 14.1 The Supplier shall commence, continue and complete the supply of goods/rendering of services as agreed to between the parties and confirmed in the Purchase Order.
- 14.2 The Supplier accepts the risk of all increased cost incurred by the Company as a result of a delay in the supply of goods/rendering of services except to the extent that such delay is a direct result of the Company's breach of any of the Company's obligations in terms of this Purchase Order.

15 INDEMNITIES AND INTELLECTUAL PROPERTY RIGHTS

- 15.1 The Supplier warrants that neither the goods/services nor the use thereof infringe any intellectual property rights, including but not limited to the infringement or unauthorised use of any patent rights, trademarks or protected rights of any third party and hereby indemnifies and holds the Company, its Affiliates, and their respective officers, directors, personnel, agents, successors in title and assigns, harmless against any losses, costs, direct and/or indirect damages, penalties or claims suffered, incurred or made against the Company which arise as a result of such infringement
- 15.2 All royalties and expenses of whatsoever nature arising out of the use of such patent rights, trademarks or protected rights shall be payable by the Supplier.
- 15.3 Without prejudice to any of the rights of the Company at law or arising from any of these Conditions, the Supplier hereby indemnifies and holds the Company, its Affiliates, and their respective officers, directors, personnel, agents, successors in title and assigns, harmless against any losses, costs, direct and/or indirect damages, penalties or claims suffered, incurred or made against the Company which arise due to the negligence, reckless or wilful misconduct or any omission of the Supplier or its employees, or any failure or breach by the Supplier to comply with its obligations as set out in these Conditions.

16 CONFIDENTIALITY AND INTELLECTUAL PROPERTY

- 16.1 The Supplier shall treat as confidential all information which is of a confidential nature to the Company which includes but is not limited to: i) scientific, commercial, legal, financial or market information, know-how or trade secrets; ii) information concerning business relationships, third party agreements, architecture, demonstrations, processes, plant or machinery; iii) technical information such as plans, designs, drawings, experience reports, process descriptions and analysis of material, functional and technical requirements and specifications; iv) any

information relating to any intellectual property, including but not limited to any copyright, patent, trademarks, registered or unregistered, or otherwise ("Confidential Information") disclosed, made available or supplied by the Company to the Supplier and shall ensure that all Confidential Information so disclosed, made available or supplied is used solely by the Supplier in relation to supply the goods/render the services in terms of the Purchase Order and the Supplier shall not disclose any Confidential Information so disclosed, made available or supplied, to any third party either directly or indirectly without the prior written approval of the Company. The following is specifically excluded and not regarded as Confidential Information:

- 16.1.1 information which is generally available to the public or in the public domain;
- 16.1.2 information which becomes generally available to the public otherwise than through a breach of this undertaking;
- 16.1.3 information which the Supplier can prove was already in its possession at the time of the disclosure by the Company and which was not acquired directly or indirectly from the Company; and
- 16.1.4 information which was independently developed by the Supplier.

- 16.2 Supplier retains all intellectual property rights contained or comprised in the goods supplied hereunder ("Technology") as well as to any developments thereof. For these purposes intellectual property rights includes all intellectual property rights in whatever form, tangible or intangible media, whether or not registered, including (without limitation) copyright, database rights, patent trademarks, registered designs, unregistered design right, domain names, confidential information, business processes, trade secrets as well as any application for the protection or registration of those rights and all renewals and extensions thereof throughout the world. The Supplier grants to the Company a non-exclusive, non-transferable licence to use the Technology in connection with goods/services and any rectification, maintenance or servicing of the goods as necessary for the purposes of the Purchase Order.

17 PROTECTION OF PERSONAL INFORMATION

- 17.1 The Company takes the Supplier's privacy and the protection of the Supplier's personal information, as defined in the Protection of Personal Information Act (POPIA) very seriously and has taken reasonable technical and operational measure to keep the Supplier's personal information secure.
- 17.2 The Company's External Privacy Notice is published on the Company's website, which indicates how the Supplier's personal information (including special personal information as defined in POPIA) will be processed by the Company.
- 17.3 By rendering services or supplying goods to the Company, the Supplier agrees that the Supplier has read and consented to the Company's External Privacy Notice.

18 OPERATOR WARRANTY

- 18.1 The Supplier warrants if, and to the extent that the Supplier may, process any personal information of a data subject (as defined in POPIA) for and on behalf of the Company it shall:
 - 18.1.1 Not transfer such personal information out of South Africa, unless the Company has given its written permission to do so, and such transfer occurs in a POPIA compliant manner;
 - 18.1.2 Treat all personal information as confidential and only process such personal information with knowledge and authorisation of the Company as agreed to herein;
 - 18.1.3 Not disclose such personal information to any third parties without the written consent of the Company unless required by law or in the course of the proper performance of the Supplier's duties in terms of these conditions;
 - 18.1.4 Have due regard to generally accepted information security practices and procedures which may apply to the Supplier generally or be required in terms of specific industry or professional rules and regulations;
 - 18.1.5 Notify the Company immediately where there are reasonable grounds to believe that such personal information has been accessed or acquired by any unauthorised person;
 - 18.1.6 Establish and maintain appropriate security measures to secure the integrity and confidentiality of personal information in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent loss of, damage to, or unauthorised destruction of personal information and unlawful access to, or processing of, personal information and shall take reasonable measures to:
 - 18.1.6.1 identify all reasonably foreseeable internal and external risks to personal information in its possession or under its control;
 - 18.1.6.2 establish and maintain appropriate safeguards against the risks identified;
 - 18.1.6.3 regularly verify that the safeguards are effectively implemented; and

- 18.1.6.4 ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards;
- 18.2 The Supplier hereby indemnifies and holds the Company, Affiliates, and their respective officers, directors, personnel, agents, successors in title and assigns harmless from any liability whatsoever arising from the Supplier's failure to comply with the warranties contained in these Conditions.
- 19 CLERICAL ERRORS**
- 19.1 The Company reserves the right to correct arithmetic or typographical errors or omissions in orders, acknowledgements or any other documents and shall not be bound by the acceptance of any quotation given by the Supplier which contains any such error or omission or any other document whatsoever containing such error or omission.
- 20 FORCE MAJEURE**
- 20.1 Neither Party shall be liable for non-performance to the extent that such non-performance has been caused by events or conditions resulting from any acts or omissions of any government department or agency, provincial, local, or similar authority, any laws or regulations having the force of law, acts of God, civil strife, riots, insurrections, sabotage, acts of war, illegal strikes, interruption of public transport services or roadways, lockouts, floods, storms, epidemic, pandemic or fire ("Event of Force Majeure").
- 20.2 The obligations of the party affected by the Force Majeure Event are suspended, to the extent that they are affected by the Force Majeure Event, from the date the affected party gives written notice of such event to the other party until cessation of the Force Majeure Event, provided that if the Force Majeure Event results in the suspension of such party's obligations for more than 30 (thirty) days, either party shall be entitled to terminate this Agreement on 7 (seven) days written notice to the other party.
- 20.3 Should an Event of Force Majeure occur which affects the progress of the supply of goods/rendering of services or which results in the suspension of the supply of goods/rendering of services, each of the Parties notwithstanding any other provision, will bear their own costs and losses arising from such suspension.
- 21 LIQUIDATED DAMAGES**
- 21.1 The Supplier acknowledges that its failure to meet any thresholds determining the levels of supply it is required to meet will have an adverse impact on the Company's business operations and shall warrant the levying of penalties.
- 21.2 Therefore, in the event that the Supplier fails to supply the goods/render the services as required in terms of the Purchase Order, then in addition to all other remedies available to the Company in law, the Company may recover with immediate effect 10% of the Purchase Order value as liquidated damage and to set-off such amount from any payments due from time to time to the Supplier.
- 22 DISPUTE RESOLUTION**
- 22.1 All disputes in relation to these Conditions and the Purchase Order must be resolved in accordance with this clause
- 22.2 Written notice of any dispute must be given to the other Party, setting out:
- 22.2.1 the legal basis of the claim;
- 22.2.2 the facts upon which the claim is based; and
- 22.2.3 detailed particulars of the quantification of claim and/or copies of correspondence relevant to the claim.
- 22.3 If the Company's representative and the Supplier's representative are unable to resolve the dispute within 10 (ten) days after the giving of the notice referred to in clause 22.2, either Party may refer the dispute to the managing directors, or appropriate employees nominated by the managing directors, of the Parties for resolution.
- 22.4 If the managing directors of the Parties are unable to resolve the dispute or difference within 10 (ten) days of its referral to them, the dispute will be referred to arbitration in accordance with the provisions of clause 23.
- 23 ARBITRATION**
- 23.1 Any dispute submitted to arbitration, shall be dealt with in accordance with this clause 23 and the arbitration laws for the time being in force in the Republic of South Africa, provided that the provisions of this clause 23 shall not preclude either Party from applying to a court of competent jurisdiction for urgent interim relief pending the outcome of the arbitration.
- 23.2 The arbitrator shall, if the dispute is agreed in writing by the Parties to be:
- 23.2.1 primarily an accounting matter, be an independent practicing chartered accountant of not less than 10 (ten) years' standing;
- 23.2.2 primarily a legal matter, be an independent attorney or advocate of not less than 10 (ten) years' standing;

- 23.2.3 any other matter, be an appropriately qualified independent person; agreed upon in writing by the Parties; provided that should the Parties fail to agree in writing within 3 (three) days after the date of the notice referred to in clause 22.4, on the nature of the dispute and/or the identity of the arbitrator, the arbitrator shall be appointed at the request of either Party by the chairman of the Association of Arbitrators or its successor-in-title upon written request by either Party.
- 23.3 The arbitration shall be held in English at a venue in Johannesburg and in accordance with formalities determined by the arbitrator and may be held in an informal and summary manner.
- 23.4 The arbitration shall be held as quickly as possible with a view to it being completed within 30 (thirty) days of the date of the notice referred to in clause 22.4
- 23.5 Immediately after the arbitrator has been appointed, either Party shall be entitled to call upon the arbitrator to fix a date and place when and where the arbitration proceedings shall be held and to settle the procedure and manner in which the arbitration proceedings will be held.
- 23.6 Any order or award that may be made by the arbitrator:
- 23.6.1 shall be final and binding;
- 23.6.2 shall be carried into effect; and
- 23.6.3 may be made an order of any competent court.
- 23.7 Save to the extent strictly necessary for the purposes of the arbitration, neither Party shall disclose to any third Party any information relating to the arbitration or the award.
- 23.8 This clause 23:
- 23.8.1 constitutes an irrevocable consent by the Parties to any proceedings in terms of these conditions;
- 23.8.2 is severable from the other provisions of these conditions and shall remain in effect notwithstanding the termination or invalidity for any reason of the Purchase Order.
- 24 GENERAL**
- 24.1 The Company reserves the right to, in its sole discretion, vary or amend these Conditions from time to time and any such amended or varied terms and conditions shall be binding on the Supplier from the time that the Supplier is notified thereof unless written objection is given by the Supplier within 7 (seven) days of receipt of such notification. Any subsequent dealings shall be on the Company's amended conditions.
- 24.2 These Conditions together with the Purchase Order represents the entire agreement between the Company and the Supplier and shall govern all future contractual relationships between the Company and Supplier.
- 24.3 No amendment and/or alteration, and/or variation, and/or deletion, and/or addition, and/or cancellation of these Conditions, whether consensual or unilateral or bilateral shall be of any force and effect unless reduced to writing and signed by a director of the Company. No agreement, whether consensual or unilateral or bilateral, purporting to obligate the Company to sign a written agreement to amend, alter, vary, delete, add to or cancel these Conditions shall be of any force and effect unless reduced to writing on Company stationery and signed by a director or authorised representative of the Company.
- 24.4. No warranties, representations or guarantees have been made by the Company or on its behalf which may have induced the Supplier to agree to these Conditions.
- 24.5. No relaxation or indulgence which the Company may give at any time in regard to the carrying out of the Supplier's obligations in terms of any agreement shall prejudice or be deemed to be a waiver of any of the Company's rights in terms of such agreement.
- 24.6. The Supplier shall not cede its rights nor assign its obligations.
- 24.7. The parties choose as their *domicilia citandi et executandi* their respective addresses reflected in the Purchase Order for all purposes arising out of in connection with these Conditions at which addresses all processes and notices arising out of or in connection with these Conditions, its breach or termination may validly be served upon or delivered to the parties. The Supplier undertakes to notify the Company within a period of 7 (seven) days of any change of address or any changes in the information as set out in these conditions.
- 24.8. The headings in this document are included for convenience and are not to be taken into account for the purpose of interpreting this agreement.
- 24.9. Each of the terms herein, shall be a separate and divisible term and if any such term becomes unenforceable for any reason whatsoever, then that term shall be severable and shall not affect the validity of the other terms.
- 24.10. Provided that they do not conflict with any of the terms and conditions contained herein, such general practices, terms and conditions applicable to the industry or profession in which the Company conducts business shall be applicable to all dealings between the Company and the Supplier.
- 24.11. Regardless of the place of execution or performance under these Conditions or domicile of the Supplier, these Conditions and all modifications and amendments hereof, shall be governed by and decided upon and constructed under and in accordance with the laws of the Republic of South Africa.

- 24.12 The Company shall, at its option and notwithstanding that the amount of its claim exceeds the jurisdiction of the Magistrate's Court, be entitled to institute action out of such court and the Supplier consents to the jurisdiction of such court.
- 24.13 A certificate issued and signed by any director or credit manager of the Company, whose authority need not be proved, in respect of any indebtedness of the Company to the Supplier or in respect of any other fact, including the fact that any goods were not delivered or the services were not performed, or that the goods or services were not to specification, shall be *prima facie* evidence of the Company's indebtedness to the Supplier and *prima facie* evidence of such other fact and *prima facie* evidence of the non-delivery of the goods.
- 24.14 The Supplier shall pay all legal costs, including attorney/own client costs, tracing agent's fees and collection charges which the Company may incur in taking any steps pursuant to any breach or enforcement of these conditions by the Supplier.

25 ANTI BRIBERY

- 25.1 Neither Party shall engage in any unlawful trade practices or any other practices that are in violation of any law that prohibits bribery, inducement or similar activities.
- 25.2 Each Party shall ensure that neither it nor its subcontractors and agents (i) make or accepts any facilitation payments, bribes, or gifts in violation of any such laws or related regulations or (ii) cause any adverse publicity, public criticism or damage to the reputation of the other Party as a result of such prohibited actions or the failure to establish appropriate safeguards to protect against such prohibited actions.
- 25.3 The Supplier shall immediately inform the Company of any such actions that comes to the Supplier's attention by using the Company's Whistle Blowing Procedure.

26 DISCLAIMER

- 26.1 The Company shall not be liable to the Supplier for any indirect, consequential or special damages or other losses, howsoever arising.