

# GENERAL CONDITIONS OF PURCHASE

## 1. DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions (“these Terms”) the following have the meanings set out below:

1.1.1 “Charges” is defined in clause 8.1.

1.1.2 “Company” means **AFRIQUE PET FOOD (PTY) LTD**, registration number: 2003/018164/07 (including its divisions, subsidiaries, affiliates and trading partners and the divisions, subsidiaries, affiliates and trading partners of its holding company);

1.1.3 “Contract” is defined in clause 2.1;

1.1.4 “Deducted Amount” is defined in clause 11.1.1;

1.1.5 “Deliverables” means the Goods and/or Services identified in the Purchase Order;

1.1.6 “Delivery Location” means the place identified in the Purchase Order in relation to the provision of the Deliverables;

1.1.7 “Goods” means all the goods, materials, equipment and parts provided by the Supplier to the Company as detailed in the Purchase Order;

1.1.8 “Intellectual Property Rights” includes any copyright, design rights, patents, inventions, logos, business names, service marks and trademarks, internet domain names, rights in databases, data, source codes, reports, drawings, specifications, know how, business methods and trade secrets, applications for registration, and the right to apply for registration, for any of these rights and all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;

1.1.9 “Laws” means all applicable laws, ordinances, writs, orders, regulations, by-laws, permits, judgments and orders of any competent court, governmental agency or municipal authority in the Republic of South Africa or such other jurisdiction the Deliverables are being delivered in;

1.1.10 “Material” means any material brought into existence as part of, or for the purpose of producing the Order, and includes but is not limited to documents, equipment, information or data stored by any means;

1.1.11 “Order” means an order for the supply of Deliverables in accordance with the Purchase Order;

1.1.12 “Party” means a party to the Contract;

1.1.13 “Personnel” means:

1.1.13.1 in relation to the Supplier, any of its employees, Subcontractors (including Subcontractors’ Personnel), agents and representatives involved either directly or indirectly in the performance of the Order;

1.1.13.2 in relation to the Company, any of its past or present officers, employees, agents or representatives; and

1.1.13.3 in relation to a Subcontractor, any of its employees, agents or representatives involved either directly or indirectly in the performance of the Order.

1.1.14 “Purchase Order” means individual purchase orders as may be issued by the Company to the Supplier in respect of the Order which shall be subject to the Contract;

1.1.15 “Services” means the work identified in the Purchase Order to be performed by the Supplier in accordance with the Contract;

1.1.16 “Site” means the Company’s premises identified in the Purchase Order;

1.1.17 “Subcontractor” means any person engaged by the Supplier in accordance with clause 18 to perform all or any part of the Order on behalf of the Supplier;

1.1.18 “Supplier Default Notice” is defined in clause 16.2;

1.1.19 “Supplier” means the Party (as identified in the Purchase Order) responsible for providing the Order;

1.1.20 “Value Added Tax” means any value added tax calculated in accordance with the VAT Act; and

1.1.21 “Value Added Tax Act or VAT Act” means the Value Added Tax Act, No 89 of 1991 (as amended), including any similar tax which may be imposed in place thereof from time to time.

1.2 In these Terms, unless the context otherwise requires:

1.2.1 if any provision in a definition is a substantive provision conferring rights or imposing obligations on a Party, notwithstanding that it is only in the interpretation clause, effect shall be given to it as if it were a substantive provision in the body of these Terms;

1.2.2 in these Terms a Party includes a reference to that Party's successors in title and assigns allowed at law;

1.2.3 any reference in these Terms to:

1.2.3.1 "business hours" shall be construed as being the hours between 07h30 and 17h00 on any business day. Any reference to time shall be based upon South African Standard Time;

1.2.3.2 "days" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;

1.2.3.3 "law" means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law;

1.2.3.4 "person" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality; and

1.2.3.5 "writing" means legible writing and in English and excludes any form of electronic communication contemplated in the Electronic Communications and Transactions Act, No 25 of 2002.

1.2.4 the words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it;

1.2.5 the words "shall" and "will" and "must" used in the context of any obligation or restriction imposed on a party have the same meaning;

1.2.6 words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout these Terms;

1.2.7 unless otherwise provided, defined terms appearing in these Terms in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning;

1.2.8 a reference to any statutory enactment shall be construed as a reference to that enactment as at the effective date of these Terms and as amended or substituted from time to time;

1.2.9 unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day;

1.2.10 if the due date for performance of any obligation in terms of these Terms is a day which is not a business day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately succeeding business day;

1.2.11 where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention;

1.2.12 the rule of construction that these Terms shall be interpreted against the Party responsible for the drafting of these Terms, shall not apply;

1.2.13 the expiration or termination of these Terms shall not affect such of the provisions of these Terms as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;

1.2.14 no provision of these Terms shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (stipulatio alteri) who is not a party to these Terms;

1.2.15 any reference in these Terms to “this agreement” or any other agreement or document shall be construed as a reference to these Terms or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time; and

1.2.16 in these Terms the words “clause” or “clauses” and “annexure” or “annexures” and “schedule” or “schedules” refer to clauses and annexures or schedules to these Terms.

## **2. EVIDENCE OF CONTRACT AND PRECEDENCE OF DOCUMENTS**

2.1 The Contract consists of the following documents:

2.1.1 the Purchase Order;

2.1.2 these Terms; and

2.1.3 any express written agreement from the Company which is attached to, or incorporated by reference in, the Purchase Order or these Terms.

2.2 THE COMPANY IS NOT CONTRACTUALLY BOUND UNTIL A FORMAL PURCHASE ORDER IS PLACED BY THE COMPANY AND THEN ONLY TO THE EXTENT OF THE ISSUES SPECIFICALLY COVERED BY THAT PURCHASE ORDER.

2.3 If any of these Terms of the Contract conflict with or contradict each other, those terms will over-ride each other in the following order of priority:

2.3.1 any express written agreement from the Company;

2.3.2 the Purchase Order; and then

2.3.3 these Terms.

2.4 The Contract contains the entire agreement between the Company and the Supplier with respect to its subject matter and supersedes all prior communications and negotiations between the Company and the Supplier in this regard, unless those communications expressly form part of the Contract.

2.5 No terms or conditions submitted by either Party that are in addition to, different from or inconsistent with those contained herein or in the Purchase Order, including,

without limitation, the Supplier's printed terms and conditions, and any terms and conditions contained in any Supplier's quotation, invoice, purchase order acknowledgment, confirmation, acceptance, bill of lading or other instrument, shall be binding upon either Party unless specifically and expressly agreed to in a writing signed by duly authorised representatives of both Parties.

### **3. ACCEPTANCE**

3.1 THE COMPANY ONLY PURCHASES DELIVERABLES ON THESE TERMS.

3.2 IF THE SUPPLIER ACCEPTS THE COMPANY'S PURCHASE ORDER IT WILL BE ON THESE TERMS AND NO OTHER STANDARD TERMS.

3.3 The Purchase Order number stated in the Purchase Order shall be indicated clearly on all documentation and packaging.

3.4 All Purchase Orders placed on the Supplier for the Deliverables shall be on an official printed purchase order of the Company (to be sent by EDI or e-mail).

3.5 The performance of any part of the Contract will be deemed to be acceptance of the conditions stated herein, regardless of any inconsistency in the Supplier's own small print.

3.6 If the Supplier wishes to reject the Company's Purchase Order and make a counter-offer, the Supplier must reply to the Company's Purchase Order in words explicitly and clearly indicating rejection.

3.7 EQUALLY, IF THE SUPPLIER MAKES A COUNTER-OFFER WHICH IS NOT CLEARLY LABELLED AS SUCH OR AS A REJECTION OF THE COMPANY'S PURCHASE ORDER, NO SUBSEQUENT BEHAVIOUR OF THE COMPANY, IN ACCEPTING THE ORDER, CAN BE TAKEN TO IMPLY ANY ACCEPTANCE BY THE COMPANY OF THAT COUNTER-OFFER.

3.8 THESE TERMS CAN ONLY BE CHANGED, OR OTHER TERMS AGREED, IN WRITTEN CORRESPONDENCE SIGNED BY A DIRECTOR OR OTHER SENIOR OFFICER OF THE COMPANY. NO SUBSEQUENT BEHAVIOUR OF THE COMPANY, IN ACCEPTING THESE TERMS FROM THE CLIENT WITH PROPOSED AMENDMENTS, CAN BE TAKEN TO IMPLY ANY ACCEPTANCE BY THE COMPANY OF THOSE PROPOSED AMENDMENTS.

3.9 THESE TERMS ARE AVAILABLE FROM THE COMPANY ON REQUEST AND ARE POSTED ON THE COMPANY'S WEBSITE.

#### **4. PERFORMANCE BY SUPPLIER**

The Supplier must deliver the Order in accordance with these Terms of the Contract and in consideration of the payment of the Charges by the Company.

#### **5. SPECIFICATIONS**

5.1 If the Company orders Goods, then, unless otherwise stated, the Contract is deemed to include the supply of all relevant documentation and certification, and of any commissioning of those Goods, necessary to enable the Company to use them for their intended purposes.

5.2 If the Company orders Services then, unless otherwise stated, the Contract includes the complete performance of those Services including any employee instruction, manuals, explanations or certifications necessary to enable the Company to benefit from them for their intended purposes.

5.3 If the Company orders Goods and/or Services then, unless otherwise stated, the Contract includes any legal rights necessary to use those Goods and/or Services for their intended purposes.

5.4 The quantity, quality and description of Deliverables will be as specified in the Company's Purchase Order or as agreed to by the Company in writing.

5.5 THE SUPPLIER HAS SOLE RESPONSIBILITY FOR COMPLYING WITH ALL APPLICABLE REGULATIONS AND OTHER LEGAL AND REGULATORY REQUIREMENTS CONCERNING THE PERFORMANCE OF THE ORDER, AND FOR ENSURING THAT THE COMPANY CAN, IN COMPLIANCE LIKEWISE, FULLY UTILISE THE DELIVERABLES FOR THEIR INTENDED PURPOSES.

5.6 The Company will be allowed to inspect any ordered Goods during manufacture and storage so long as the inspection is requested with reasonable notice. If, as a result of the inspection, the Company is not satisfied that the quality of the Goods or the standards of their manufacture, storage or handling conforms with the Contract, the Supplier will take such steps as are necessary to ensure compliance. If, after

that, the Company is still not satisfied, it can cancel the Purchase Order without penalty.

5.7 If, before delivery has occurred, the Company notifies the Supplier in writing of any change in the desired specification (including as to quality and time frame) the Supplier will respond as follows:

5.7.1 if the change would reduce the Supplier's costs, the Charges will reduce to fairly reflect that saving;

5.7.2 if the change would increase the Supplier's costs, the Supplier may notify the Company promptly, in writing, of a proposed revision of the Charges fairly and proportionately reflecting any such unavoidable increased cost;

5.7.3 if the change would for any reason be unachievable the Supplier may notify the Company of that promptly and in writing. Both Parties will then use reasonable efforts to reach a mutually acceptable Contract variation;

5.7.4 failing notice by the Supplier the change proposed by the Company will be deemed to have been accepted, and the Contract will be deemed to have been varied with immediate effect to reflect the requested specification change with no increase of the Charges; and

5.7.5 IN NO EVENT, AGREED OR NOT, WILL THE COMPANY BE LIABLE TO THE SUPPLIER IN RESPECT OF ANY CONTRACT VARIATION FOR MORE THAN A REASONABLE AND PROPORTIONATE REFLECTION OF SUCH INCREASED COSTS AS THE SUPPLIER COULD NOT REASONABLY HAVE BEEN EXPECTED TO AVOID. THE CHARGES WILL NOT IN ANY CIRCUMSTANCE INCREASE EXCEPT WITH THE COMPANY'S EXPRESS WRITTEN AGREEMENT UNDER, OR REFERRING EXPLICITLY TO, THIS SUB-SECTION.

5.8 The Supplier will comply with any reasonable requirements the Company may have as regards the packaging and packing of any ordered Goods, and as to information to be displayed on packaging or included on dispatch documentation and bills of lading. Subject to that, the Supplier will ensure that all packaging, packing, labelling and documentation is such as to ensure full compliance with legal requirements throughout the delivery process.

## **6. WARRANTIES AND LIABILITY**



6.1 The Supplier warrants, represents and undertakes on an ongoing basis that:

6.1.1 the quantity and quality for the Deliverables will be those set out in the Purchase Order and in accordance with the Company's specifications. The Deliverables will be of the highest standard reasonably to be expected in the market for that kind of Deliverables;

6.1.2 any Goods will be new and free from defects in materials and workmanship;

6.1.3 any Deliverables will comply with all statutory requirements and regulations, and with all normally applicable quality standards, relating to their sale or supply;

6.1.4 all claims made by the Supplier about any Deliverables, and all apparently serious claims in the Supplier's advertising and promotional material, are correct and can be relied upon;

6.1.5 any Services will be performed by appropriately qualified and trained Personnel; and

6.1.6 neither the sale and supply of any Deliverable, nor its proper use by the Company for an intended purpose, will breach any property rights in or about that Deliverable, including intellectual property rights, of any other person.

6.2 All warranties, conditions and other terms implied by statute or common law in the Company's favour will apply to any Deliverables purchased from the Supplier.

6.3 THE SUPPLIER WILL INDEMNIFY AND KEEP INDEMNIFIED THE COMPANY IMMEDIATELY UPON THE COMPANY'S WRITTEN DEMAND AGAINST ANY COST, CLAIM, EXPENSE OR LIABILITY ARISING FROM ANY RISK FOR WHICH THE SUPPLIER IS RESPONSIBLE UNDER THE CONTRACT.

6.4 If the Supplier fails to comply with any obligation under the Contract, the Company will be entitled, at its discretion, to reject any Deliverable and the Supplier will not be entitled to receive payment for that Deliverable.

6.5 If any Deliverables were bought or obtained by the Supplier from a third party then any benefits or indemnities that the Supplier holds from that other party, in respect of those items, will be held on trust for the Company.

6.6 To the extent permitted by Laws and for the benefit of the Company, the Supplier consents, and must use its best endeavours to procure that each author of Material consents in writing, to the use by the Company of Material, even if the use may otherwise be an infringement of their Intellectual Property Rights.

6.7 The Supplier will insure itself, and keep insured until the Order is delivered, against all normal insurance risks relevant to the Order, on terms and for amounts consistent with normal business prudence.

6.8 The Supplier will maintain relevant industry qualifications, permits and licences.

6.9 The Supplier will provide copies of such qualifications, permits and licences to the Company upon request.

6.10 NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE CONTRACT, THE TOTAL AGGREGATE LIABILITY OF THE COMPANY, IN RESPECT OF A CLAIM OR CLAIMS ARISING IN TERMS OF THE CONTRACT (WHETHER ARISING FROM NEGLIGENCE, BREACH OF CONTRACT OR OTHERWISE HOWSOEVER) WILL BE LIMITED TO THE TOTAL CHARGES ALREADY PAID TO THE SUPPLIER IN TERMS OF THE PURCHASE ORDER OR PURCHASE ORDERS IN QUESTION THAT GAVE RISE TO THE CLAIM OR CLAIMS.

## **7. DELIVERY, TITLE AND RISK**

7.1 The Supplier agrees to provide the Deliverables nominated on the Purchase Order within the time(s) quoted, any failure of which will entitle the Company, in addition to other rights and remedies, to cancel the Purchase Order and be relieved of all liabilities for any undelivered portion. A waiver of the Company's right to cancel the acceptance of any items after the nominated delivery date shall not constitute a waiver of such rights as to future deliveries.

7.2 Time is of the essence when Goods are supplied to the Company.

7.3 A packing note quoting the number of the Purchase Order must accompany each delivery of Goods.

7.4 IF THE GOODS ARE NOT SUPPLIED ON OR BY THE AGREED DATE THEN, IN ADDITION TO ANY OTHER REMEDIES AVAILABLE TO THE COMPANY, THE

COMPANY WILL BE ENTITLED TO DEDUCT 5% (FIVE PERCENT) OF THE OVERALL CHARGES FOR THOSE GOODS, FOR EVERY WEEK'S DELAY.

7.5 Where Goods are supplied in instalments, the Purchase Order is to be treated as a single order. If the Supplier fails to deliver or perform any instalment the Company may treat the whole Purchase Order as repudiated.

7.6 The Company may accept or reject any Deliverables which are not fully delivered in accordance with the Contract within 14 (fourteen) days after the Order date and, in the case of latent defect, within a reasonable time after the defect becomes apparent.

7.7 IF ANY OF THE GOODS DO NOT COMPLY WITH ALL ORDER REQUIREMENTS THE COMPANY CAN DEMAND THAT THE SUPPLIER REPAIR THEM OR SUPPLY REPLACEMENT GOODS WITHIN 7 (SEVEN) DAYS OR, AT THE COMPANY'S SOLE DISCRETION, THE COMPANY CAN REJECT THE GOODS AND DEMAND THE REPAYMENT OF ANY SUM ALREADY PAID FOR THEM.

7.8 The Company will not be bound to return to the Supplier any packaging or packing material, but if any relevant requirement for packaging recycling applies, the Supplier will take materials back free of charge on request.

7.9 Full unencumbered title to the Goods will pass to the Company upon the earlier of:

7.9.1 the Company making payment in full to the Supplier for the Goods; or

7.9.2 the Good being delivered to the Delivery Location and accepted by the Company.

7.10 RISK IN THE GOODS WILL REMAIN WITH THE SUPPLIER UNTIL ITS DELIVERY AND ACCEPTANCE BY THE COMPANY.

## **8. CHARGES**

8.1 The fees and charges ("Charges") means the aggregate amount payable by the Company to the Supplier in relation to the Order.

8.2 The Charges will be as specified in the Company's Purchase Order and, unless otherwise stated, will be:

8.2.1 fixed and invariable and not subject to adjustment unless otherwise stated in the Purchase Order;

8.2.2 exclusive of any applicable Value Added Tax in accordance with the VAT Act (which will be payable by the Company subject to the receipt of a valid tax invoice);

8.2.3 inclusive of all expenses incurred by the Supplier in relation to the provision of the Order, including, without limitation, travel expenses and subsistence expenses, and of any duties or levies other than Value Added Tax; and

8.2.4 payable in South African Rand.

8.3 The Company will be entitled to any discount for prompt payment, bulk purchase or the like normally granted by the Supplier in comparable circumstances.

8.4 If the Company is reliant on the Supplier for any supplies of maintenance, training, spare parts, consumables or other goods, rights or services, to benefit fully from the Goods ("Follow-on Deliverables"), then the Supplier will provide those Follow-on Deliverables or procure them to be provided, for at least 12 (twelve) months following supply, at fair and reasonable prices.

## **9. VALUE ADDED TAX**

9.1 The Parties agree that:

9.1.1 Value Added Tax is payable on certain supplies of Goods and/or Services;

9.1.2 all charges and amounts payable by one Party to another under the Contract are stated exclusive of Value Added Tax; and

9.1.3 for each taxable supply under or in connection with the Contract:

9.1.3.1 the Supplier will be entitled to charge the Company for any Value Added Tax payable by the Supplier in respect of the taxable Order;

9.1.3.2 the Company must pay to the Supplier the amount of the Value Added Tax at the same time as the relevant charge applicable to the Order becomes payable under the Contract; and

9.1.3.3 the Supplier must provide a valid tax invoice to the Company in respect of the taxable Order.

## **10. PAYMENT**

10.1 The Company shall pay to the Supplier the Charges in accordance with the invoicing and payment provisions set out below.

10.2 Notwithstanding any other provisions contained herein, the Supplier shall not supply any Deliverables to the Company and the Company shall not incur any liability to the Supplier, including the obligation to make any payment, until the Supplier has been provided with a valid Purchase Order by the Company in respect of the Deliverables to be provided.

10.3 The Company shall pay to the Supplier the Charges 30 (thirty) days in arrears after receipt of a statement of account from the Supplier. The Charges shall be paid to a bank account nominated by the Supplier in writing to the Company.

10.4 If at any time the Company acting in good faith disputes all or any of the Charges before payment of an invoice raised in accordance with clause 10.3:

10.4.1 the Company shall notify the Supplier within 30 (thirty) days after the date of receipt of a proper invoice for the Charges, specifying in reasonable detail the Company's reasons for disputing the invoice;

10.4.2 the Company shall pay to the Supplier within 30 (thirty) days after the date of receipt of the relevant invoice all amounts not disputed by the Company; and

10.4.3 if the Parties are unable to resolve the dispute within 30 (thirty) business days of notice given in accordance with clause 10.4.1, either Party may escalate the matter for resolution in accordance with clause 23 (Dispute Resolution).

10.5 Upon resolution of a dispute, (i) any sum which the Company is ordered to pay (whether such agreed sum is in the amount originally invoiced, or a reduced amount) shall be payable in the same manner as set out in clause 10.3, within 30 (thirty) business days of the resolution of the dispute and (ii) any sum which the Supplier is ordered to pay or refund to the Company shall be payable to an account within 30 (thirty) business days of the resolution of the dispute or, at the Company's option, shall be set off against amounts payable by the Company to the Supplier.

10.6 Payment of an invoice shall not prevent the Company from subsequently disputing all or any of the Charges in good faith whether during or after the term of the Contract.

10.7 The Supplier shall be required to print the Company's Value Added Tax registration number on every tax invoice presented to the Company for payment. No payment will be made should the Value Added Tax number be omitted.

10.8 Invoices that do not match the Purchase Order (price difference) shall be credited in full and invoiced at the accepted Purchase Order price. If unable to execute the Purchase Order at the price stipulated the Supplier is obliged to contact the Company for confirmation prior to the Supplier supplying the Deliverables.

10.9 All claims for payment shall be submitted in the prescribed manner within 90 (ninety) days after the supply of any Deliverables, failing which the Company may, in its sole discretion, refuse to accept any claim.

## **11. DEDUCTIONS**

11.1 The Company may:

11.1.1 deduct from any moneys due or becoming due to the Supplier pursuant to clause 10 the following amounts ("Deducted Amount"):

11.1.1.1 all debts and moneys due from the Supplier to the Company;

11.1.1.2 all liabilities which the Company may have paid, suffered or incurred and which the Supplier is liable to bear, pay or reimburse to the Company; and

11.1.1.3 the cost of remedying any defective or damaged Goods; or

11.1.2 without prejudice to the Company's rights pursuant to any other provision of the Contract, if the Supplier fails to perform any of its obligations under the Contract, without notice withhold payment of all or part of any amounts payable to the Supplier under the Contract, until the matter has been remedied.

11.2 The Company must notify the Supplier of the details of any amounts withheld or deducted pursuant to clause 11.1.

## **12. NO MINIMUM PURCHASE OR EXCLUSIVITY**

12.1 Nothing in the Contract obliges the Company to request or acquire any minimum level of orders/supply from the Supplier.

12.2 The Contract is not evidence of, nor does it create, an exclusive relationship between the Company and the Supplier in respect of any orders/supply.

### 13 HEALTH, SAFETY AND ENVIRONMENT

13.1 This clause 13 applies to the extent the Supplier or any of its Personnel are required to be on, or near the vicinity of, the Site for the purposes of the Order.

13.2 The Supplier agrees to comply, and to ensure that its Personnel comply, with:

13.2.1 the Company's health and safety policies and procedures in place from time to time (copies of which will be provided to the Supplier upon written request); and

13.2.2 all relevant health, safety and environmental legislation and Laws in force from time to time.

13.3 Without limiting any other provision of the Contract, the Supplier must familiarise itself with the work area and any potential hazards prior to commencing work.

13.4 The Supplier will observe the principles of ecologically sustainable development where its activities and operations affect the environment.

13.5 The Supplier will ensure that it does not pollute, contaminate or damage the environment and keep the Company's premises clean and tidy and free of refuse during the performance of the Services.

13.6 Nothing in this clause 13 limits or removes any obligation or duty imposed on the Supplier or any of its Personnel, whether under the Contract or otherwise, to secure or have regard to the health and safety of any of its Personnel.

13.7 Notwithstanding any other term of the Contract, in the event of any breach of this clause 13, the Company may:

13.7.1 require the Supplier, Supplier's Personnel and/or any other person to leave the Site immediately; and

13.7.2 require the Supplier and/or any of its Personnel to remove any material or substance from the Site, and the Supplier must, at its own cost, ensure such request is immediately complied with and take all possible action to ensure the protection and safety of all works, personnel and the environment.

## **14. TERMINATION**

14.1 The Company may suspend performance of, or cancel, or suspend and then at any subsequent time cancel, the Contract without any liability to the Supplier, if:

14.1.1 the Supplier passes a resolution for its winding-up or a court of competent jurisdiction makes an order for the Supplier to be wound up or dissolved or the Supplier is otherwise dissolved;

14.1.2 an administrator is appointed or an administration order is made in relation to the Supplier or a receiver or an administrative receiver is appointed over, or an encumbrancer takes possession of or sells the whole or part of the Supplier's undertaking, assets, rights or revenue;

14.1.3 the Supplier is unable to pay its debts or is deemed unable to pay its debts within the meaning of the Insolvency Act (24 of 1936);

14.1.4 the Supplier enters into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or takes steps to obtain a moratorium or makes an application to a court of competent jurisdiction for protection from its creditors; or

14.1.5 adopts a resolution to voluntarily begin with business rescue proceedings or is placed under business rescue proceedings by a competent court.

14.1.6 Any right of cancellation or suspension under this section is additional to any rights available to the Company under the law of any relevant jurisdiction.

## **15. TERMINATION FOR CONVENIENCE**

15.1 If Goods have been offered to the Company by the Supplier as is, or if they are, standard or stock items, the Company can, by notice to the Supplier, at any time up to delivery cancel the commitment to buy the Goods.



15.2 Any other commitment to receive and pay for the Goods may be cancelled by the Company as follows:

15.2.1 the Company will be bound to reimburse the Supplier for all irrecoverable costs incurred, or unavoidably committed, by the Supplier up to the point of cancellation. By “costs” is meant for this purpose the direct costs to the Supplier, to an aggregate amount not exceeding 50% (fifty percent) of the purchase price for the cancelled commitment.

15.3 The Company will be entitled to the benefit of the part-finished Goods in question.

15.4 In addition to any other rights it has under the Contract, the Company, acting in good faith, may at any time terminate the Contract or reduce the scope or quantity of the Services by notifying the Supplier in writing. If the Company issues such a notice, the Supplier must stop or reduce work in accordance with the notice, comply with any directions given by the Company and mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination or reduction in scope.

15.5 The Company shall only pay to the Supplier the proportion of the Charges payable in respect of the work done and /or Services performed by the Supplier up to the date of termination, to a maximum of 50% (fifty percent) of the Charges less any payments already made, and any reasonable costs incurred by the Supplier that are directly attributable to the termination, if the Supplier substantiates these amounts to the satisfaction of the Company.

## **16. SUPPLIER DEFAULT**

16.1 If the Supplier breaches any term of the Contract, the Company may serve a notice of default (“Supplier Default Notice”) on the Supplier containing the information specified in clause 16.2 below.

16.2 A Supplier Default Notice must:

16.2.1 either require that the breach be remedied within a specified period of not less than 14 (fourteen) days after service of the Supplier Default Notice on the Supplier or state that the breach is incapable of remedy; and

16.2.2 state that if the breach is not remedied within the period specified in the Supplier Default Notice or is incapable of remedy, then the Company may by further notice to the Supplier do one or more of the following:

16.2.2.1 elect wholly or partly to suspend payment under the Contract until the breach has been remedied by the Supplier;

16.2.2.2 take such action as the Company deems necessary to cure the breach (the cost of such action so taken by the Company being recoverable from the Supplier as a debt due to the Company by the Supplier); or

16.2.2.3 terminate the Contract or any part of it with effect from a specified date.

16.3 Notwithstanding these Terms of any Supplier Default Notice, no action taken by the Company under this clause 16 will prejudice the existence of any of its rights and remedies under the Contract which the Company may have as a result of the relevant breach.

## **17. ASSIGNMENT**

The Supplier may not assign any of its rights or obligations under the Contract without the prior written consent of the Company, which consent the Company may grant or withhold in its absolute discretion.

## **18. SUBCONTRACTING**

18.1 The Supplier must not subcontract the whole or part of any work in relation to the Order without consent in writing by the Company, which consent the Company may grant or withhold in its absolute discretion.

18.2 The Supplier will be liable to the Company for the acts and omissions of any Subcontractors as if those were the acts or omissions of the Supplier. The Supplier remains fully responsible for the performance of these Terms of the Contract, notwithstanding any subcontract or consent on the Company's part to a subcontract.

## **19. SEVERABILITY**

If any provision of the Contract is held unenforceable, then such provision will be modified to reflect the Parties' intention. All remaining provisions of the Contract shall

remain in full force and effect.

## **20. WAIVER**

Any waiver by the Company of any rights under the Contract will not constitute a general waiver of those or other rights.

## **21. NOTICES**

Any written notice under these Terms will be deemed to have been sufficiently served if such notice was hand delivered to the relevant address stated on the Purchase Order, or if sent by fax then on receipt by the sender of a transmission control report from the despatching machine indicating that the transmission has been made without error, or if sent by e-mail (but in this case only on evidence of successful transmission and only if the parties have regularly communicated on contract matters by that e-mail route).

## **22. ANTI-CORRUPTION AND BRIBERY**

Both Parties represent and affirm that (i) they will comply with all applicable Laws relating to anti-bribery and anti-corruption and (ii) they will not promise, offer, give or receive bribes or corrupt actions in relation to the procurement or performance of the Contract. For the purposes of this clause, 'bribes or corrupt actions' mean any payment, gift or gratuity, whether in cash or kind, intended to obtain or retain an advantage, or any other action deemed to be corrupt under the applicable Laws.

## **23 DISPUTE RESOLUTION**

23.1 All disputes between the Parties shall, when all efforts to resolve such dispute by negotiation have failed, be referred to the Courts of the Republic of South Africa, save if the Parties agree to refer the dispute to arbitration as envisaged in clause 23.3 below.

23.2 The Party declaring the dispute shall be obliged, prior to referring the matter to the Courts or to arbitration, deliver written notice to the other Party giving full details in respect of the alleged disputes to enable the other Party to fully appreciate the nature and extent of the alleged dispute.

23.3 In the event that the Parties agree to refer a dispute to arbitration, such arbitration shall be held in accordance with the Rules of the Arbitration Foundation of

Southern Africa by an arbitrator or arbitrators appointed by the Foundation. The Parties shall choose Pretoria as the place of arbitration.

23.4 This clause shall not preclude either Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

23.5 The Parties irrevocably agree that the decision in arbitration proceedings:

23.5.1 shall be final and binding upon the Parties subject to review if the arbitrator made a manifest error or appeal in terms of the Rules of the Arbitration Foundation of Southern Africa;

23.5.2 shall be carried into effect; and

23.5.3 may be made an order of any court of competent jurisdiction.

## **24 COMPLIANCE WITH LAWS**

The Supplier must ensure that it and all Subcontractors comply with all relevant Laws in connection with the Order and all its obligations under the laws of the Republic of South Africa.

## **25 GOVERNING LAW**

This Agreement will in all respects be governed by and construed under the laws of the Republic of South Africa. The Parties hereby consent and submit to the exclusive jurisdiction of the Courts of the Republic of South Africa in any dispute arising from or in connection with this Agreement.