



General Terms and Conditions of Sale

Johannesburg, South Africa, 01.07.2024

Trading Terms

Applicants applying for trading are required to provide the following documentation:

- a completed and signed credit application form;
- company/close corporation/trust registration documents, to the extent that applicant is a juristic person;
- value added tax registration documents;
- confirmation letter from applicant's registered bank (not older than three months);
- duly signed letter of authority, authorizing person/s specified therein to represent the applicant in a transaction with the Supplier, accompanied by certified identity document/s (certification not exceeding three months) of authorised person/s; and
- any other documentation which the Supplier may, in its sole discretion require.

1. Scope of Application

- 1.1. Unless expressly agreed otherwise by the Supplier in terms of an Agreement or Order:
- 1.1.1 these Terms and Conditions shall apply to all Goods sold by the Supplier to the Customer. These Terms and Conditions shall also apply to future business;
- 1.1.2 any Order submission documents governing the purchase of Goods shall in each instance by reference include these Terms and Conditions, it being recorded that any contrary terms and conditions, in particular any terms and conditions of purchase of the Customer, are not accepted and shall not apply. No objection is required on the part of the Supplier;

- 1.1.3 any amendment to these Terms and Conditions must be in writing. Submission of an Order or conclusion of an Agreement or acceptance of delivery shall constitute acceptance of these Terms and Conditions in every case. Should the terms and conditions contained in the Customer's order submission documents deviate in any manner from the Terms and Conditions, the transaction shall be governed solely and exclusively by the Terms and Conditions, it being recorded that the Supplier expressly objects to the inclusion of any such additional or different terms and conditions in the contractual relationship between the Customer and the Supplier, and acceptance of any Order by the Supplier is expressly conditioned on the Customer's agreement to be bound by the Terms and Conditions.

2. Definitions and Interpretations

- 2.1. In these Terms and Conditions, the following definitions will mean the following, unless the context requires otherwise:
- 2.2. "**Agreement**" means a written agreement concluded between the Supplier and the Customer, to which these Terms and Conditions are attached or are incorporated by reference, provided that a valid Agreement shall specify at a minimum, (i) a description of the Goods, (ii) the Price for the Goods, (iii) the premises at which the Goods are to be delivered, and (iv) the estimated delivery date by when the Goods are to be delivered;
- 2.3. "**CPA**" means the Consumer Protection Act, 68 of 2008, as amended from time to time;
- 2.4. "**Customer**" means the person/entity to which the Supplier is providing the Goods under the Agreement or Order;

- 2.5. **"Goods"** means the goods, materials, products, component, or other items or goods specified in the Order or Agreement (and includes any services associated with the Goods, such as installation or design);
- 2.6. **"Force Majeure"** means an event or circumstance which:
- 2.6.1. as at the date of signature of the Agreement or the date on which an Order is accepted (as the case may be) is either:
- 2.6.1.1. unforeseeable; or
- 2.6.1.2. foreseeable, but which the Supplier did not, expect the occurrence thereof would be likely to affect the Supplier's ability of a party to perform in terms of an Agreement or Order;
- 2.6.2. is beyond the reasonable control of the Supplier; and
- 2.6.3. having arisen, the Supplier has, at its own cost, taken all reasonable steps available to it to mitigate its effect upon that Supplier's ability to perform;
- 2.7. **"Intellectual Property"** means patents, utility models, rights in invention, copyright and neighbouring and related rights, database rights, moral rights, design rights, trademarks, trade names and get-up, goodwill, know-how, confidential information and other intellectual property rights, whether registered or unregistered and including all applications for the grant of the foregoing and all rights or forms of protection having similar or equivalent effect to any of the foregoing which may subsist anywhere in the world;
- 2.8. **"Losses"** means all claims, liabilities, costs, charges, liabilities, expenses, and damages of any kind irrespective of whether they were reasonably foreseeable or avoidable;
- 2.9. **"Order"** means the written order from the Customer to the Supplier for the supply of specified Goods, to which these Terms and Conditions are attached or are incorporated by reference, provided that a valid Order shall specify as a minimum, (i) a description of the Goods (ii) the Price for the Goods, (iii) the premises at which the Goods are to be delivered, and (iv) the delivery date by when the Goods are estimated to be delivered;
- 2.10. **"Price"** means the price for the Goods stated in the Agreement and/or any Order;
- 2.11. **"Supplier"** means ALPLA Packaging SA Proprietary Limited (Registration number: 2013/181159/07);
- 2.12. **"Tax Invoice"** means a document to be provided as required by Section 20 of the Value Added Tax Act, Act No 89 of 1991 as amended;
- 2.13. **"Terms and Conditions"** means this document containing the Supplier's general terms and conditions.
- Interpretation:
- 2.14. Words importing:
- 2.14.1.any one gender includes the other of masculine, feminine and neuter;
- 2.14.2.the singular includes the plural and *vice versa*; and
- 2.14.3.natural persons include created entities (corporate or unincorporate) and the state and *vice versa*;
- 2.15. any reference to an enactment is to that enactment as at the signature date of an Agreement or date of acceptance of an Order, and as amended or re-enacted from time to time and includes any subordinate legislation made from time to time under such enactment. Any reference to a particular section in an enactment is to that section as at the signature date of an Agreement or date of acceptance of an Order,

and as amended or re-enacted from time to time and/or an equivalent measure in an enactment, provided that if as a result of such amendment or re-enactment, the specific requirements of a section referred to in these Terms and Conditions are changed, the relevant provision of these Terms and Conditions shall be read as if they had also been amended as necessary, without the necessity for a written amendment;

- 2.16. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of these Terms and Conditions;
- 2.17. when any number of days is prescribed in these Terms and Conditions, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday in South Africa in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday in South Africa;
- 2.18. if figures are referred to in numerals and in words in this agreement and if there is any conflict between the 2 (two), the words shall prevail;
- 2.19. any reference to a day, month or year shall be construed as a Gregorian calendar day, month, or year.
- 2.20. the use of any expression in these Terms and Conditions covering a process available under South African law, including winding up, shall, if any of the parties to this agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction; and
- 2.21. any reference in these Terms and Conditions to a Party shall include a reference to that Party's assigns expressly permitted under these Terms

and Conditions and, if such Party is liquidated, or is sequestrated or business rescue proceedings have commenced in respect of such Party, be applicable also to and binding upon that Party's liquidator, trustee, or business rescue practitioner, as the case may be.

3. Consumer Protection Act

- 3.1. To the extent that the provisions of the CPA apply to any transaction for order of Goods between the Supplier and the Customer, then the Supplier hereby agrees that if any provision contemplated in these Terms and Conditions is inconsistent with the provisions of the CPA, the provisions of the CPA shall prevail.
- 3.2. Furthermore, the Supplier acknowledges that the CPA requires "consumers" to be made aware of onerous terms of any transaction between the consumer and the supplier. Accordingly, to the extent that the order for Goods transaction between the Supplier and the Customer is subject to the CPA, the Supplier hereby draws the attention of the Customer to the provisions in bold herein, these being the terms that may, for purposes of the CPA, be regarded as onerous.

4. Quotation, Acceptance, Order Confirmation

- 4.1. The Supplier's quotations are subject to a time limit, the duration of which shall be stated on the Order or Agreement.
- 4.2. The quantity and type of Goods ordered shall be as set out in the Order or, if different, as confirmed in writing by the Supplier at its acceptance of the Order.
- 4.3. Each Order or Agreement shall be deemed to be an offer by the Customer to purchase the Goods specified in the Order or Agreement on the terms set out in such Order or Agreement and these Terms and Conditions.



- 4.4. An Order is not binding on the Supplier until it is accepted by the Supplier. The Supplier shall accept Orders by: (i) confirmation of the Order in writing, or (ii) countersigning the Agreement.
- 4.5. Once accepted, an Order or Agreement may only be cancelled, varied or suspended by the Customer with the express prior written consent of the Supplier.
- 4.6. All Orders (including Orders under an Agreement) or variations to Orders or Agreement shall be binding on the Customer and subject to these Terms and Conditions and the Customer shall be estopped from denying the validity of such Order notwithstanding that it may have been given or signed by a person not authorized by the Customer.
- 4.7. Should the Customer place a forecast with the Supplier, the forecast shall be deemed to an order and be binding for a period of 2 (two) months. The Customer shall call off as per forecast.

5. Price

- 5.1. The Price of the Goods shall be the price that is stated in writing by the Supplier (including by email) relating to any particular Order or specified by the Supplier in the Agreement.
- 5.2. In the absence of the Price of Goods being specified for any Order or Agreement, the Supplier reserves the right to charge the Supplier's usual price for the Goods from time to time, current at the time of the invoicing of the Goods.
- 5.3. In the event that a Price is confirmed by the Supplier, and subsequently, the costs on which the Price was based on change, the Supplier is entitled to adjust the Price in accordance with the change in costs as specified in the quote. The Supplier shall give the Customer written notice of any such Price changes.

- 5.4. If delivery is carried out at a later date due to circumstances within the Customer's control, the Supplier shall be entitled to offset the resulting higher costs with correspondingly higher prices. This shall not affect the Supplier's right to compensation for Loss due to other causes for which the Customer is in control of.
- 5.5. The Customer shall bear all taxes, customs duties and other charges which it has to pay upon receipt of the delivery, unless the Supplier has undertaken in writing to assume these charges.

6. Payment and Credit Terms

- 6.1. The Customer agrees that the amount reflected in a Tax Invoice as issued by the Supplier shall be due and payable unconditionally either: (a) by way of a prepayment; (b) if the Customer is a credit approved Customer, within 30 (thirty) days from the end of the month in which a Tax Invoice has been issued by the Supplier. Settlement is effected only on receipt of funds via direct deposit or electronic transfer into the Supplier's bank account and shall be made to the Supplier free of exchange and without deductions of any nature. The Supplier does not accept cash as a form of payment. Any credit granted to the Customer by the Supplier is entirely at the discretion of the Supplier and may be withdrawn at any time.
- 6.2. Interest is not payable by the Customer provided the Customer pays for each invoice on the due date and in the manner determined for each respective invoice as prescribed by this clause.
- 6.3. In the event that the Customer fails to pay each respective invoice on due date:
 - 6.3.1. the Customer shall pay interest at a rate of 2% (two percent) per month on the full outstanding balance of that particular invoice, and

- 6.3.2. all rebates and discounts shall be forfeited if payment is not made in full on due date; and
- 6.3.3. any and all other invoices which are not due for payment, shall by virtue of the default on the Customer in respect of any one invoice, all immediately become due and payable, and if not paid forthwith in full, shall attract interest at a rate of 2% (two percent) per on the full outstanding balance.
- 6.4. The Supplier may appropriate all payments made by the customer to such accounts as it will in its sole and absolute discretion decide and shall be entitled to set off amounts owed to the Supplier from such accounts.
- 6.5. The Customer shall not be entitled to claim set off or deduction in respect of any payment due by the Customer to the Supplier for Goods (or services) supplied.
- 6.6. The Supplier shall have the right to suspend deliveries and to exercise the full extent of its rights if any amount due by the Customer is unpaid.
- 6.7. The Customer agrees that the amount due and payable to the Supplier, including interest may be determined and proven by a certificate issued and signed by a director of the Supplier, which certificate shall be prima facie proof of the Customer's indebtedness to the Supplier.
- 6.8. Where the Customer has not used any credit facility (for purposes of purchasing Goods) for 12 (twelve) months the Customer will be required to re-apply for such facility.
- 6.9. In the event of payments being transferred to the incorrect banking account the Customer shall still be liable to the Supplier for payment. Should the Supplier at any time advise the Customer of any change to the Supplier's 's banking account details the Customer shall confirm such change

with the Supplier before effecting any further payments, provided however that nothing contained herein shall be interpreted as obliging the Supplier to afford the Customer any such indulgence to effect payment after the due date. The Customer shall reimburse the Supplier for any cash deposit fees which are charged by its bankers as a result of the Customer depositing cash into the Supplier's bank account.

- 6.10. The Customer agrees to accept the receipt of electronic format statements, tax invoices, shipment documents (proof of delivery), credit and debit notes from the Supplier, which will be transmitted via email, and the following conditions thereto as required by South African Revenue Services and in terms of the provisions of the Value-Added Tax Act for the issuing of tax invoices, credit and debit notes:

6.10.1. Electronic documents (tax invoices, credit and debit notes) will be transmitted and issued to the Customer in 128bit encrypted PDF file format.

6.10.2. Both the Customer and the Supplier shall retain the electronic documents in its original encrypted format for a period of five years from the date of the delivery to which it relates.

6.10.3. The transmitted electronic document will constitute the original statement, tax invoice, credit or debit note. No other tax invoice, credit or debit note will be issued in respect of any specific delivery, unless as a copy of the original document.

7. Delivery

- 7.1. In the case of export of Goods to customers outside the country of origin, delivery and risk shall, take place at the place of business of the Supplier, unless otherwise agreed to by the Customer and the Supplier in writing.

7.2. In all other instances, unless otherwise agreed to in writing by the Supplier:

7.2.1. delivery to the Customer takes place at the place of business of the Supplier, and *prima facie* proof of delivery to the Customer can be by means of an original/copy of:

7.2.1.1. the Suppliers' delivery note signed by the Customer; or

7.2.1.2. proof of delivery to a transporter if the Goods are transported or shipped to the Customer by a third party.

7.2.2. In the case of clause 7.2.1.2 above, the transporter is deemed to be the Customer's agent and the Customer authorizes the Supplier to engage such third party to transport the goods to the Customer on such terms as the Supplier deems fit. The Customer indemnifies the Supplier against any claims that may arise from such agreement with the third-party transporter.

7.2.3. Any date indicated by the Supplier for delivery of the goods shall be regarded as an estimated date of delivery and does not constitute a contractual obligation. The Supplier shall not be liable for any Loss of whatsoever nature incurred or in connection with any late, incorrect, partial, or non-delivery. The Supplier will make every endeavour to deliver timeously but the Customer shall not be entitled to cancel or repudiate an Order or Agreement or have any liability for any loss as a result thereof, or otherwise or refuse to accept delivery or part delivery on the grounds of delay in the delivery of the Order, or any part thereof, for any cause whatsoever.

7.2.4. In the event shipments are to be made over a period of time, the Customer shall allow

for adequate lead time and shall specify by Order or otherwise in writing to the Supplier the quality, packing and delivery date desired for deliveries of the Goods during such period.

7.2.5. Should the Supplier be unable to deliver the Goods on the agreed date due to a Force Majeure, including, but not limited to, inability to secure labour, power, materials or supplies, or by an act of God, or civil disturbance, riot, disease or virus outbreaks, state of emergency, strike, lockout, black-outs labour disputes, fire, flood, drought war, sanctions, trade embargo, legislation or other cause, then performance by the Supplier in terms of an Agreement or Order shall be suspended from the date on which notice is given of the Force Majeure until the date on which notice is given of termination of the Force Majeure and the Supplier shall be entitled to deliver as soon as reasonable practicable following termination of the Force Majeure. The Customer shall be required to reasonably cooperate with the Supplier with respect to such delivery. Additionally, the Supplier shall have the right to cancel a Customer's Order or Agreement where the Supplier is unable to supply and deliver the Goods due to Force Majeure after a period of 90 (ninety) days from the initial anticipated date of delivery. The Supplier shall not be liable for any delay or failure in the performance of any obligation due to or resulting from a Force Majeure.

7.2.6. The Supplier shall be liable for delivery delays only in the event of its own gross negligence or wilful misconduct.

8. Ownership and Risk:

- 8.1. Risk in the Goods shall pass to the Customer on delivery of the Goods to the Customer as defined in clause 7, but ownership shall remain vested in the Supplier until the purchase Price has been paid in full. The Supplier reserves the right to inform the end user or the owner of the premises in which the goods are located of its claim to ownership. The Customer undertakes to insure the Goods until fully paid for.

9. Returnable Packaging and Pallets

- 9.1. Cages, pallets, containers, or similar articles of transport supplied by the Supplier shall be returned to the Supplier in the same order and condition as handed over to the Customer.
- 9.2. The Customer shall be liable for any Loss of, damage to, or delay, of such articles, incurred during the period between delivery (as defined) and the return to the Supplier.
- 9.3. Acceptance of such articles by the Supplier from the Customer shall not imply that they are in good order and condition. The Supplier shall have the right to notify the Customer in writing within 5 (five) working days from return in respect of any damages/claims.

10. (Moulding) Tools

- 10.1. Unless otherwise agreed, the Supplier shall remain the owner of the tools it has produced, or which have been commissioned from a third party for the Customer. Where it is agreed that the Customer will become the owner of the tools, ownership shall be transferred to the Customer only on full payment of the purchase price.
- 10.2. By express agreement and as long as the Customer discharges its payment and acceptance obligations, moulds shall be used only for the Customer's orders.

- 10.3. The price for production moulds includes the costs of 2 (two) sampling days, but not the costs of testing and tooling fixtures or the costs of modifications initiated by the Customer.
- 10.4. The Supplier is obligated to replace moulds only if their initial design does not date back more than 3 (three) years, the forms are required to fulfil a delivery volume warranted to the Customer, and the Customer discharges its payment and acceptance obligations.
- 10.5. The Supplier shall keep moulds that are owned by the Supplier for 2 (two) years beyond the last delivery, which is produced with such moulds. The Supplier shall inform the customer prior to disposal of a mould.
- 10.6. Should the Customer discontinue ordering products produced by a mould, all obligations of the Supplier in respect of such moulds shall automatically terminate except for the obligation as set out in clause 10.5 above. In case the moulds have been repaid at such time, the Customer can request handover of such moulds at his own expenses.
- 10.7. Should an Agreement end before the moulds are repaid, the Customer shall pay all amounts still outstanding for such moulds, including all development, modification, and financing costs as well as all other costs that have arisen in respect of the development and usage of such moulds.
- 10.8. For damage to moulds owned by the Customer, the Supplier shall be liable only in the event of wilful misconduct or gross negligence, nor shall the Supplier be liable for these moulds accidentally perishing. The Supplier shall insure these moulds at the Customer's request. The costs of doing so shall be borne by the Customer, as are the costs of maintaining and servicing these moulds.

10.9. Should the Customer not collect tools belonging to him/it within a reasonable period of time after the Agreement or Order ends, the Supplier shall be entitled to store or dispose of the moulds at the Customer's expense. The Supplier shall be entitled irrespective of this to keep moulds owned by the Customer until the Customer discharges in full all obligations arising from the Agreement or Order and incumbent upon it.

11. ERP Fee

11.1. In accordance with applicable legislation, the Customer is responsible for paying the Extended Producer Responsibility ("EPR") levy to the designated EPR agency upon receiving goods from the Supplier. The Supplier is affiliated with the relevant EPR agencies and can facilitate this payment on behalf of the Customer. In such cases, the Supplier will charge an administrative fee of 10% of the EPR levy amount.

12. Breach of Contract

12.1. Should the Customer fail to make payment on the due date in terms of clause 6 hereof, or should the Customer commit any other breach of its obligations under the Order, Agreement or as set out hereunder, then the Supplier shall, in addition to other remedies the Supplier may have in law, have the option to either:

12.1.1. claim from the Customer all sums owing to the Supplier, whether then due and payable or not, which sums will then immediately become due and payable, the Customer forfeiting all discounts on the Goods sold; or

12.1.2. without prejudice to any other remedy the Supplier may have in terms of these Terms and Conditions, or by law, to cancel the Agreement or Order with the Customer,

retake possession of the Goods supplied and not paid for and recover all amounts already due by the Customer as well as damages it may have suffered by reason of the Customer's breach.

12.2. If execution is levied upon the Customer's assets or should the Customer make any offer of compromise with its creditors or commit any act of insolvency, or if it is a limited liability Supplier or Close Corporation, an application for the Customer's liquidation is made, the Supplier shall have the right to forthwith terminate the Agreement or Order with the Customer without prejudice to any claim and remedies the Supplier might have against the Customer for payment of the amounts already due prior to cancellation and damages suffered by the Supplier by virtue of the Customer's breach.

13. Legal Proceedings and Consent to Jurisdiction

13.1. Should the Customer be domiciled outside the republic of South Africa, these Terms and Conditions and the Agreement or Orders between the Customer and the Supplier shall be governed and interpreted in accordance with the laws of the Republic of South Africa and the South African Courts shall have sole jurisdiction in respect thereof.

13.2. The Customer hereby consents and submits to the jurisdiction of the South African Courts as set out in clause 16.9 below in connection with any and all disputes that may arise from these Terms and Conditions or from the relationship between the parties.

13.3. In the event of the Customer breaching any of its obligations and/or failing to timeously make payment of any amount to the Supplier, the Customer agrees to pay, and shall be liable to pay, all legal costs incurred by the Supplier in enforcing its rights in terms of these Terms and

Conditions on the attorney and own client scale, including collection charges and tracing agent's fees.

14. Returned Goods

14.1. Whilst the Supplier is under no obligation to accept the return of Goods, the Customer may apply in writing to the Supplier, within 7 (seven) days from the date of delivery of the Goods, for permission to return goods and if written permission is given by the Supplier's sales department for such return, the following will apply.

14.1.1. Goods returned for credit will only be accepted from those Customers who initially purchased the stock from the Supplier or who have an account with the Supplier. All goods returned must be clean, saleable, and undamaged and in their original packaging;

14.1.2. The value of credit for excess stocks returned will be calculated at the invoice value when the Goods were purchased, less 10% (ten percent) handling charge.

14.1.3. The Credit Control Department must be notified of any relevant Invoice, packing slip and batch numbers before any claim will be considered.

15. Manufacturer's Guarantee, Damaged Goods and Incorrect Deliveries

15.1. To be valid, any claims under the Manufacturer's guarantee or for damaged Goods or incorrect deliveries shall be supported by the original Tax/Commercial Invoice or export documents (where applicable).

15.2. Claims in respect of incorrect deliveries will only be considered if made in writing within 7 (seven) days of delivery of the Goods, after which time the

Customer shall be deemed to have received the Goods.

15.3. The Supplier guarantees that the Goods conform to the agreed specifications. The customary tolerances shall apply.

15.4. The Customer shall inspect the Goods carefully on receipt and shall notify the Supplier of any defects in writing within 10 (ten) days of handover by submitting a sample of the faulty Goods; otherwise, any claims shall be excluded. If a defect is notified in due time, the Supplier shall, at its discretion, provide a remedy by improving, replacing, or taking back the faulty Goods and crediting the purchase price or reducing the price. The Customer shall have no other rights.

15.5. The warranty period is 6 (six) months and begins as soon as the Goods are tendered for delivery to the Customer at the place of performance. The Supplier disclaims all warranties (including the implied warranties of merchantability and fitness for a particular purpose). The warranty period only applies to the Supplier's warranty that the Goods will comply with the agreed upon specifications.

15.6. The Customer is not entitled to withhold payment against warranty or other claims, of whatever kind.

15.7. Returning Goods not meeting specifications requires the prior express consent of the Supplier. If Goods are returned without prior consent, the Supplier is entitled to refuse acceptance of the Goods returned and to return them to the Customer at the latter's expense.

15.8. Samples may differ in quality, properties, shape, design, and functionality from the delivery. Any sample provided will be for the convenience of the Customer only and shall not be deemed to be a warranty with respect to the actual Goods to be delivered to the customer.

15.9. Notwithstanding anything to the contrary, the Supplier will only be liable for damages as

contemplated in this clause 14 or elsewhere in these Terms and Conditions.

16. Copyright

16.1. The Customer acknowledges the Supplier's Intellectual Property rights in the Goods and shall not infringe such Intellectual Property rights.

16.2. To the extent that the Goods are to be manufactured or produced in accordance with a specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and Losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property rights arising out of or in connection with the Supplier's use of such specification. This clause 15.2 shall survive termination an Order or Agreement to which these Terms and Conditions are attached.

17. General

17.1. Change of address

The Customer undertakes to notify the Supplier in writing within 7 (seven) days of any change of address.

17.2. Change of ownership

To the extent that the Customer has been granted credit/ payment terms, it undertakes to notify the Supplier, in writing, within 7(seven) days of any change in ownership of its business, or should the Customer be a company, of its share transactions whereby the majority shareholding is affected. The Customer acknowledges that immediately upon any change of ownership in the Customer, any outstanding amount, whether due or not shall be

deemed to be payable forthwith by the Customer to the Supplier.

17.3. Domicilium

The Customer and the signatory hereto choose domicilium citandi et executandi (in other words, the address at which the Customer and the signatory will accept all notices, legal documents and the like, whether or not the Customer and/or the signatory is still at the address chosen) for all purposes arising out of this application at the physical address stipulated in the Order or Agreement.

17.4. Non-Variation Clause

No amendment, alteration, variation, deletion, addition or cancellation of these Terms and 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 Supplier.

17.5. Representations and Indulgences

No warranties, representations or guarantees have been made by the Supplier or on its behalf which may have induced the Customer to sign this document. No relaxation or indulgence which the Supplier may give at any time in regard to the carrying out of the Customer's obligations in terms of any contract, Order or Agreement shall prejudice or be deemed to be a waiver of any of the Supplier's rights in terms of any Order or Agreement. The Supplier shall not be bound by any promises that may be made by its employees or agents that are not recorded in these Terms and Conditions.

17.6. Cession

The Customer shall not be entitled to cede Its rights nor assign its/his obligations. The Supplier shall at any time in its sole discretion be entitled to cede all or any of Its rights in terms of an Order, Agreement or an application for credit facilities including these Terms and Conditions (including any suretyship, guarantee or other form of

security)) to any third party without prior notice to the Customer.

Furthermore, nothing contemplated herein constitutes a stipulation for the benefit of a third party.

17.7. Credit Bureau and Searches

The Customer hereby consents to the Supplier:

17.7.1. performing a credit search on the Customer's record, as well as the record of its directors and/or its owners, with one or more of the registered Credit Bureaux when assessing the Customer's Application for Credit (any at any other time in the Supplier's discretion);

17.7.2. recording the existence of the Customer's account with any Credit Bureau; and/or

17.7.3. recording and transmit details of how the Customer has performed, and how the account is conducted by the Customer in meeting its obligations on the account.

17.7.4. The Customer acknowledges and agrees that any information regarding its credit worthiness, defaults in payment to the Supplier, and details of the way its account with the Supplier is conducted, may be disclosed to any other creditor of the Customer or any registered Credit Bureaux, after 20 (twenty) business days' notice having been given to the Customer.

17.8. Business Rescue

The Customer agrees that in the event that the Customer is placed under business rescue in terms of Chapter 6 of the Companies Act 2008, the conclusion of any compromise of the debt under such approved business rescue plan will not reduce the liability of any person or entity that has signed a guarantee for the debts due by the Customer to the Supplier and such guarantor

shall remain liable for the full amount of the debt that was due before such compromise, notwithstanding that it is acknowledged, agreed and understood by the Customer that the guarantor may be entitled to have recourse against the Customer for amounts paid by the guarantor to the Supplier pursuant to such guarantee.

17.9. Magistrates Court

It shall be within the discretion of the Supplier as to whether to proceed against the Customer in the Magistrates Court or the High Court, having regard to the following in terms of Section 45 of the Magistrate's Court Act 1944, as amended, the Customer hereby consents to the jurisdiction of the Magistrate's Court having jurisdiction in terms of Section 28 of the said Act in respect of any action to be instituted against it by the Supplier in terms hereof.

17.10. Limitation of liability of the Supplier

17.10.1. References to "liability" in this clause 17.10 include every kind of liability arising under or in connection with the Order or Agreement and these Terms and Conditions (including claims arising in terms of clause 13) including liability arising out of negligence, misrepresentation, restitution or otherwise.

17.10.2. Notwithstanding anything to the contrary contained in these Terms and Conditions, the Supplier will only be liable for damages to the extent of its wilful misconduct or gross negligence.

17.10.3. The Supplier's total liability to the Customer shall not exceed the aggregate amount equal to 50% (fifty percent) of the Price actually received by the Supplier under an Order or Agreement.

17.10.4. Notwithstanding anything to the contrary, the following types of Loss are wholly excluded howsoever arising:

17.10.4.1.indirect Loss,

17.10.4.2.special damages,

17.10.4.3.exemplary damages,

17.10.4.4.non-patrimonial damages,

17.10.4.5.consequential loss, or

17.10.4.6.loss of profit.

17.11. Indemnity

17.11.1. Without prejudice to the Supplier's other rights and remedies, the Customer shall indemnify and keep indemnified the Supplier, its group of companies, and their employees and agents/representatives on demand in full against any Losses which may be incurred or suffered as a result of:

17.11.2. cancellation, variation or suspension of an Order or Agreement by the Customer; or

17.11.3. any claim brought by any third party in respect of Losses, injury or damage caused directly or indirectly by the Goods or Customer's use of the Goods which, following delivery, have been subjected to any use other than the authorised use for such Goods.

17.12. National Credit Act

17.12.1. To the extent that the Customer is a juristic person with an asset value or turnover together with that of any associated person above the threshold (currently R1 million) the provisions of clauses 6.3.1, and 6.3.3 of these Terms and Conditions will not apply to such Customer.

17.13. Copies

17.13.1. The Customer and the Supplier agree that a scanned or electronically reproduced copy or image of the

Agreement or Order which incorporates these Terms and Conditions will be deemed to be an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence hereof notwithstanding the failure or inability to produce or tender an original, and without the requirement that the unavailability of such original, executed counterpart of the Agreement or Order which incorporates these Terms and Conditions first be proven.

17.13.2. The headings in this document are included for convenience and are not to be taken into account for the purpose of interpreting these Terms and Conditions.

17.13.3. 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.



I, the undersigned:

Name:

ID Number:

(as "Guarantor")

GUARANTEE:

1. by my signature hereto (which appears below) do hereby irrevocably and unconditionally:
 - a. bind myself in my private and individual capacity as guarantor and co-principal debtor with the Customer in favour of the Supplier for the due performance of any obligation of the Customer owed to the Supplier and for the payment to the Supplier by the Customer of any amounts which may now or at any time be or become owing to the Supplier by the Customer, from whatsoever cause arising (whether actual or contingent) and including, but without limiting the generality of the foregoing, any claims and actions against the Customer acquired by way of cession (the "**Guaranteed Obligations**"), and I shall, upon first written demand by the Supplier following a breach or default by the Customer of the Agreement, or Order, perform such Guaranteed Obligation; and
 - b. indemnify the Supplier and hold it harmless on demand against any loss, liability or cost suffered by the Supplier if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid, or illegal (and the amount of that loss, liability or cost shall be equal to the amount which the Supplier would otherwise have been entitled to recover hereunder), ("**Guarantee**").

2. This Guarantee is intended to create principal obligations to the Supplier and is not a suretyship or in any way accessory to the Guaranteed Obligations.
3. The Guarantor acknowledges that this Guarantee is given on the basis that it constitutes a separate obligation enforceable against the Guarantor even though the Supplier has not proceeded against or claimed payment from the Customer.
4. The Guarantor agrees that this Guarantee is to be in addition and without prejudice to any other guarantee, suretyship and/or security now or hereafter to be held by Supplier.

DISCHARGE:

5. This Guarantee shall remain in force and be a continuing covering guarantee which may only be cancelled in writing by the Supplier in the event:
 - a. all of the Guaranteed Obligations have been fully performed, discharged and satisfied and provided that the Guarantor has discharged all of his/her obligations due to the Supplier under this Guarantee; and
 - b. the Customer and the Guarantor are entirely and finally released and discharged from their obligations under the agreement and this Guarantee (as applicable), (the "**Discharge Date**").
6. This Guarantee is a continuing covering guarantee and shall remain in force until the Discharge Date irrespective of:
 - a. any temporary extinction of indebtedness;
 - b. any amendment to any agreement;
 - c. the legality, validity or enforceability of any agreement and any amendments thereto;
 - d. the whole or any portion of the Guaranteed Obligations becoming unenforceable, invalid or illegal;
 - e. the absence of any action to enforce any agreement;
 - f. any compromise agreed upon between the

- Customer or the Guarantor and the Supplier;
- g. any release or alteration or variation or novation of any agreement or any other security which the Supplier may hold with respect to any agreement or this Guarantee;
 - h. any release by the Supplier of the Guarantor from his obligations under this Guarantee or the alteration or variation or novation of any obligations of the Guarantor under this Guarantee;
 - i. the recovery of any judgment against the Customer or any action to enforce the same;
 - j. the liquidation or sequestration of the Customer or the Guarantor (as applicable);
 - k. the amalgamation or reconstruction of the Customer or of the Guarantor (as applicable); or
 - l. any other occurrence or circumstance which might otherwise constitute a legal or equitable discharge or defence of the Guarantor.
7. If the Customer is placed under business rescue, is wound-up, deregistered, or is liquidated, this will constitute a default in terms of the Agreement, which justifies the Supplier enforcing the Guarantee for the full outstanding balance and I shall be liable to pay to the Supplier the full amount of all sums which may be payable or are scheduled to be paid in respect of such obligations of the Customer as if such amounts were not compromised, affected, diminished or reduced (in each case, and to the extent applicable, whether provisionally or finally, voluntarily or compulsorily), or otherwise becoming subject to any other legal liability or to any law for the benefit or assistance of debtors and/or creditors, or entering into or becoming subject to any scheme of arrangement or compromise, notwithstanding that the creditors in any business rescue or liquidation proceedings may agree to a reduced settlement of the overall debt.
8. I acknowledge and understand that as Guarantor and co-principal debtor, I waive and renounce the benefits of the legal exceptions:
- a. Excussion – the right to require the Supplier to first proceed against the Customer for payment of any debt owing to the Supplier before proceeding against the guarantor;
 - b. Cession of Action – the right to require the Supplier to give cession of the action for payment of debts to the guarantor before any action against the guarantor may be taken;
 - c. The benefit of simultaneous citation and division of debt – the right of a co-guarantor to be liable only for his/her pro-rata share of the principal debt;
 - d. Revision of Accounts Received.
9. I, as Guarantor furthermore bind myself irrevocably and unconditionally to all of the terms and conditions set out in this agreement, and I declare that I am acquainted with the meaning and effect of the aforementioned legal exceptions and the renunciation thereof.
10. I confirm that I understand the meaning of each of the defenses referred to in clause 8 above.
11. I agree that I will be precluded from challenging the existence or enforceability of the principal debt if a judgement has been obtained by the Supplier against the Customer, notwithstanding that I was not a party to any action in which the judgement was granted. I acknowledge that the Supplier shall be entitled to raise against myself, the defense of *res judicata*, notwithstanding that I was not a party to such action.
12. I undertake in respect of any claim arising out of this Guarantee, not to raise the defence that there is no cause or reasonable basis for the granting of this Guarantee.
13. I waive any right that I may have to first require the Supplier to make any demand of the Customer, to proceed against or claim payment from the Customer or any third party, to take action or obtain

judgment in any court against the Customer or to make, file or prove any claim in the sequestration or dissolution of the Customer before claiming under this Guarantee.

14. Until all sums of money, obligations and liabilities due, owing or incurred in respect of the Guaranteed Obligations have been paid or discharged in full, the Guarantor waives all rights of subrogation and indemnity against the Customer and agrees not to claim any set-off or counterclaim against the Customer or to claim or prove in competition with the Customer in the event of the bankruptcy or insolvency of the Customer or to have any benefit of or any share in any other guarantee or security now or hereafter held for the benefit of the Supplier.

As Witness (1):

As Witness (2):

Signature (Guarantor):

As Witness (1):

As Witness (2):

Signature (Supplier):
