

# Terms and Conditions

## General Conditions of Supply

THE COMPANY AND THE CLIENT AGREE THAT THE COMPANY WILL SUPPLY THE GOODS AND/OR RENDER THE SERVICES TO THE CLIENT AT THE CUSTOMARY PRICES DETERMINED FROM TIME TO TIME BY THE COMPANY AND / OR ANY OF ITS SUBSIDIARIES AND / OR ANY NOMINEE AND / OR SAID SUPPLIERS, ON THE FOLLOWING TERMS AND CONDITIONS.

PLEASE READ THE FOLLOWING PROVISIONS, TERMS AND CONDITIONS CAREFULLY AS THE SALE OF GOODS AND / OR RENDERING OF SERVICES WILL BE SUBJECT TO THESE PROVISIONS, TERMS AND CONDITIONS.

### PLEASE DO NOT CONCLUDE THIS AGREEMENT IF:

1. YOU DO NOT AGREE OR DO NOT UNDERSTAND THE MEANING OF ANY OF THESE PROVISIONS, TERMS AND CONDITIONS;
2. ANY OF THESE PROVISIONS, TERMS AND CONDITIONS ARE UNTRUE; AND / OR;
3. YOU HAVE NOT BEEN GIVEN ENOUGH TIME TO READ AND COMPREHEND THE MEANING OF BOLDED TERMS OR ANY OTHER PROVISIONS, TERMS AND CONDITIONS THAT MAY BE CONTAINED IN THIS AGREEMENT.

## 1. DEFINITIONS

### 1.1. In this Agreement:

- 1.1.1. "Agreement" shall mean these terms and conditions and all annexures if applicable;
- 1.1.2. "the Company" shall mean Afrique Pet Food Proprietary Limited, registration number 2003/018164/07, a private company duly registered in accordance with the laws of the Republic of South Africa with its registered address at 9 Quality Road, Isando, Kempton Park, 1601, or any subsidiary or any division or branch thereof and its successors or assigns intended to be governed by the provisions contained in this Agreement;
- 1.1.3. "the Client" shall mean the party placing the Order and includes the Client's successors and permitted assignees;
- 1.1.4. "the CPA" shall mean the Consumer Protection Act 68 of 2008, as amended from time to time, read with the Consumer Protection Regulations 2011, promulgated thereunder;
- 1.1.5. "the Companies Act" shall mean the Companies Act 71 of 2008, as amended from time to time, read with the Companies Regulations 2011, promulgated thereunder;
- 1.1.6. "the Goods" shall mean the Pet Food and related products provided by any division or branch of the Company and / or any of its subsidiaries and / or any nominee and /or approved suppliers, indicated on any company forms, price lists, quotations, delivery notes, orders and invoices;
- 1.1.7. "the NCA" shall mean the National Credit Act, 34 of 2005;
- 1.1.8. "Order" shall mean an order for Goods and / or Services placed on the Company by the Client;
- 1.1.9. "Party" shall mean any one of the Parties to this Agreement. The term "Parties" shall have a corresponding meaning;

- 1.1.10. "Prime Rate" shall mean the publicly quoted nominal rate of interest per annum charged by ABSA Bank Limited ("the Bank") from time to time on unsecured overdraft facilities to its most favoured corporate clients, as certified by any general manager of the Bank, whose authority or appointment it shall not be necessary to prove, calculated on a nominal annual compounded monthly basis in arrears ("nacm"); and
- 1.1.11. "the Services" shall mean any services rendered by any division or branch of the Company and / or any of its subsidiaries and / or any nominee and / or approved suppliers, indicated on any company forms, price lists, quotations, delivery notes, orders and invoices.
- 1.2. In this Agreement, 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 this Agreement;
- 1.2.2. in this Agreement a Party includes a reference to that Party's successors in title and assigns allowed at law;
- 1.2.3. any reference in this Agreement 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 within the explicitly mentioned country;
- 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 this Agreement;
- 1.2.7. unless otherwise provided, defined terms appearing in this Agreement 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 commencement date of this Agreement 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 this Agreement 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 this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply;
- 1.2.13. the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement 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 this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (stipulatio alteri) who is not a party to this Agreement;
- 1.2.15. any reference in this Agreement to “this agreement” or any other agreement or document shall be construed as a reference to this Agreement 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 this Agreement the words “clause” or “clauses” and “annexure” or “annexures” and “schedule” or “schedules” refer to clauses and annexures or schedules to this Agreement.

## 2. AGREEMENT

- 2.1. The terms and conditions set out in this Agreement, together with any other standard terms and conditions of the Company, shall govern the purchase of the Goods and / or rendering of the Services to the Client from the Company to the entire exclusion of all other terms and conditions. No terms and conditions endorsed on, delivered with or contained in the Client’s documentation provided to the Company (“other terms”) will form part of this Agreement. THIS AGREEMENT 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 THIS AGREEMENT FROM THE CLIENT WITH PROPOSED AMENDMENTS, CAN BE TAKEN TO IMPLY ANY ACCEPTANCE BY THE COMPANY OF THOSE PROPOSED AMENDMENTS. THIS AGREEMENT IS AVAILABLE FROM THE COMPANY ON REQUEST AND IS POSTED ON THE COMPANY’S WEBSITE.
- 2.2. The Client, by placing any Order with the Company, acknowledges that all Goods sold and/or Services rendered by the Company to the Client shall be subject to and governed by the terms and conditions contained in this Agreement, together with any other standard terms and conditions of the Company.
- 2.3. In the event of a conflict between the terms and conditions of this Agreement and any other terms, the terms and conditions of this Agreement shall prevail. Any conflict between the

provisions of the various sections of this Agreement and any other standard terms and conditions of the Company will be resolved in accordance with the following order of precedence (in descending order of priority) as follows:

- 2.3.1. in relation to conflicts pertaining to technical and / or financial issues and / or services and / or delivery issues specific to the Goods and / or Services being provided, the order of precedence shall be: (a) the applicable standard terms and conditions of the Company (including the schedules attached thereto, if any), and (b) this Agreement; and
- 2.3.2. in relation to all other conflicts, the order of precedence shall be (a) this Agreement, (b) the applicable standard terms and conditions of the Company, and (c) the annexures/schedules to the foregoing documents in the same order of precedence attaching to the documents to which they are annexed.

### 3. **PRICE**

- 3.1. The price of any Goods sold and / or Services rendered shall be at the price as per the Company's written quotation in respect of a specific Order, or in the absence of a written quote, shall be the Company's usual current price at the time of dispatch of the Goods from the Company's premises and/or rendering of the Services, as the case may be.
- 3.2. Any price letters distributed, or advertisements placed by the Company are for guideline purposes only and shall not be binding on the Company. The Company has the right, from time to time, for any reason and without notice to the Client, to change the price of any Goods and/or Services.
- 3.3. Notwithstanding the placing of an Order by the Client and the acceptance thereof by the Company, the Company shall be at liberty to revise quotations or prices with or without notice to the Client, inter alia in the event of an increase in the cost of production of the Goods and/or rendering of the Services or currency fluctuations which occurs after the date of placing the Order.

### 4. **PAYMENT TERMS APPLICABLE FOR CLIENTS ORDERING THE GOODS ON CREDIT**

- 4.1. The Client shall pay the amount due to the Company in accordance with the agreed trading terms, into an account specified by the Company to the Client in writing from time to time, free of deduction, demand, sett-off, bank charges or commission.
- 4.2. All amounts due to by the Client to the Company shall be made directly to the Company. No payment made to the Company's sales representatives, employees, agents or third parties shall be regarded as proper payment to the Company until such time as the funds have been credited to the Client's account as cleared funds.
- 4.3. No discount or rebate granted to the Client shall be binding on the Company unless a manager or director of the Company has agreed to such discount or rebate in writing. **NO OTHER PERSON MAY GRANT A DISCOUNT OR REBATE ON BEHALF OF THE COMPANY.**
- 4.4. Should the Client fail to make any payment, or any portion thereof, timeously and in full, the Company shall be entitled at its sole discretion to withdraw or reverse any agreed discount or rebate; alternatively to set off the amount owing by the Client against any rebate, credit, allowance or payment (if any) due to the Client by the Company.
- 4.5. **SHOULD THE CLIENT'S FINANCIAL POSITION BECOME UNSATISFACTORY TO THE COMPANY, THE COMPANY SHALL BE ENTITLED TO DEMAND PAYMENT FOR ANY CONSIGNMENT IN ADVANCE AND/OR TO DEMAND SATISFACTORY SECURITY FROM THE CLIENT.**
- 4.6. The Company will allocate any payments received under this Agreement firstly to costs and fees incurred by the Company, thereafter to arrear or penalty interest (if any), thereafter to interest and thereafter the balance (if any) to the principal debt due and / or owing to the Company, provided that the longest outstanding principal debt due and/or owing shall be settled first.

- 4.7. IN ALL CASES WHERE THE CLIENT USES A POSTAL BANKING, ELECTRONIC OR SIMILAR METHOD OR SERVICE TO EFFECT PAYMENT, THE SUPPLIER OF SUCH SHALL BE DEEMED TO BE THE AGENT OF THE CLIENT.
- 4.8. Unless the Client objects to the correctness of any entry on any statement, delivery note and/or invoice within 7 (seven) days of the date of dispatch of such statement and/or invoice, the Client shall be deemed to have accepted that such entries are correct and that it does not dispute such entries.
- 4.9. Notwithstanding the timeous raising of a complaint or dispute of liability by the Client, the Client shall, under no circumstances whatsoever, be entitled to withhold payment in respect of the Goods delivered and / or Services rendered by the Company, pending the resolution of such dispute or complaint.
- 4.10. Where the due date for payment falls on a Sunday or South African public holiday, then the amount shall be paid by the Client on the following business day, except if such succeeding business day falls into a subsequent month in which event the due date for payment shall be the immediately preceding business day.

## **5. PAYMENT OPTIONS OTHER THAN CREDIT:**

5.1. We are committed to providing secure online payment facilities. All transactions are encrypted using appropriate encryption technology.

5.2. Payment can be made for Goods via –

5.2.1 Electronic Funds Transfer (EFT) method

5.2.2 Card payment options provided via Paygate (Pty) Ltd who are the approved payment gateway for all South African Acquiring Banks. PayGate uses the strictest form of encryption, namely Secure Socket Layer 3 (SSL3) and no Card details are stored on the website. Users may go to [www.paygate.co.za](http://www.paygate.co.za) to view their security certificate and security policy. Payment may be made via Visa, MasterCard, Diners or American Express Cards.

5.2.2.1 Customer details separate from card details

Customer details will be stored Afrique Pet Food separately from card details which are entered by the client on PayGate's secure site. For more detail on PayGate refer to [www.paygate.co.za](http://www.paygate.co.za).

5.2.2.2 Merchant Outlet country and transaction currency

The merchant outlet country at the time of presenting payment options to the cardholder is South Africa. Transaction currency is South African Rand (ZAR).

## **6. DIRECT MARKETING**

THE CLIENT HEREBY STATES THAT THE CLIENT HAS NOT ENTERED INTO THIS AGREEMENT AS A RESULT OF ANY CONTACT MADE EITHER IN PERSON OR BY MAIL OR ELECTRONIC COMMUNICATION BY THE COMPANY OR ITS REPRESENTATIVES FOR THE DIRECT OR INDIRECT PURPOSE OF PROVIDING OR OFFERING TO SUPPLY ANY GOODS OR SERVICES.

## **7. ORDERS**

- 7.1. Orders for the Company's Goods and / or Services shall be made in writing and directed to the address as may be nominated by the Company from time to time, and by placing orders via the JOCK web online ordering system.
- 7.2. SHOULD THE COMPANY SUBMIT A QUOTATION TO THE CLIENT FOR THE SALE OF GOODS AND/OR RENDERING OF THE SERVICES, SUCH QUOTATION AND THE AVAILABILITY OF QUOTED ITEMS AND PRICES ARE ONLY VALID FOR A PERIOD OF 5 (FIVE) DAYS AFTER THE DATE OF EACH FORMAL

LETTER OF CONTRACT ISSUED BY THE COMPANY TO THE CLIENT AND ARE SUBJECT TO CHANGE AFTER THE AFOREMENTIONED 5 (FIVE) DAY PERIOD.

- 7.3. Any acceptance by the Client after the aforementioned 5 (five) day period shall constitute a counter offer by the Client to the Company.
- 7.4. Any price quoted by the Company shall be subject to minimum purchases as stated in the quotation.
- 7.5. The Company may require a deposit to be paid when an Order is placed, in such instance should the Client not take delivery and/or not make payment of the balance of the Order in accordance with the term and conditions of this Agreement, the Company has the right to retain such deposit.

#### **8. DELIVERY**

- 8.1. Should the Company transport the Goods to the nominated delivery address of the Client, delivery and passing of risk in the Goods shall occur when the Goods are offloaded at the nominated delivery address of the Client.
- 8.2. SHOULD DELIVERY OF THE GOODS OCCUR BY CARRIER, SUCH CARRIER SHALL BE DEEMED TO BE THE CLIENT'S AGENT AND DELIVERY TO SUCH CARRIER (AT THE COST OF THE CLIENT) BY THE COMPANY SHALL BE DELIVERY TO THE CLIENT. IN SUCH EVENT SIGNATURE BY THE CARRIER, OR ANY EMPLOYEE OF THE CARRIER, NOTWITHSTANDING THAT IT MIGHT BE INCORRECT, ON THE DELIVERY NOTE OR INVOICE SHALL BE PRIMA FACIE PROOF OF PROPER DELIVERY OF THE GOODS TO THE CLIENT.
- 8.3. SIGNATURE BY THE CLIENT, OR ANY EMPLOYEE OF THE CLIENT, OR PERSON AT ANY ADDRESS NOMINATED BY THE CLIENT, NOTWITHSTANDING THAT IT MIGHT BE INCORRECT, ON THE DELIVERY NOTE OR INVOICE SHALL BE PRIMA FACIE PROOF OF PROPER DELIVERY OF THE GOODS TO THE CLIENT.
- 8.4. Should the Client in checking the Goods note a discrepancy between the delivered quantity and that of the delivery note he/she must note such difference on the delivery note and draw such note to the attention of the person delivering the Goods. In the event of the Client failing for any reason whatsoever to sign the delivery note or to make note of any discrepancies as aforesaid, the Company shall not be liable in respect of claims arising out of any discrepancies between the quantity invoiced and the quantity delivered.
- 8.5. Should the Client instruct the Company to engage a carrier to transport the Goods, such carrier shall be deemed to be the Client's agent. The Company shall engage such carrier on any terms and conditions as it deems fit. THE CLIENT SHALL AT ALL TIMES WHETHER DURING OR AFTER TERMINATION OR EXPIRY OF THIS AGREEMENT INDEMNIFY AND KEEP THE COMPANY INDEMNIFIED AGAINST ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES AND EXPENSES (INCLUDING ALL REASONABLE LEGAL FEES) INCURRED IN CONNECTION WITH ANY LITIGATION CONCERNING OR COMPROMISE ARISING OUT OF OR IN RELATION TO ANY CLAIMS MADE AGAINST THE COMPANY BY SUCH CARRIER SO ENGAGED.
- 8.6. Any delivery times quoted for delivery by the Company are estimates only and shall not entitle the Client to cancel any Order (or this Agreement) and / or to claim any damages for failure by the Company to deliver within such delivery times unless such non-compliance by the Company falls outside the tolerance. It is hereby recorded that any delivery times quoted by the Company to the Client shall be subject to a tolerance period of 1 (one) business day before or after the quoted delivery date. The aforementioned may be explained by means of an example: if the Company has quoted delivery of the Goods to occur on Friday, 17 August 2012 the Company will be within the tolerance if the Company delivers the Goods to the Client on Thursday, 16 August 2012 or Monday 20 August 2012 before 16h00.

- 8.7. IN ADDITION TO CLAUSE 7.7, IN THE INSTANCE THAT THE COMPANY IS UNABLE TO DELIVER WITHIN THE TOLERANCE AS A RESULT OF AN ACT OF GOD, STRIKES, FIRE, RIOT, WAR (WHETHER DECLARED OR NOT), EMBARGOES, EXPORT CONTROL, FUEL SHORTAGES, ANY POWER FAILURE AND / OR SHORTAGES, INCLUDING BUT NOT LIMITED TO LOAD SHEDDING OR ANY OTHER REASON WHATSOEVER NOT WITHIN THE REASONABLE CONTROL OF THE COMPANY, THE OBLIGATIONS OF THE COMPANY SHALL BE DEEMED TO BE SUSPENDED. THE COMPANY SHALL GIVE THE CLIENT NOTICE OF SUCH FACT AS SOON AS REASONABLY POSSIBLE AND THE PARTIES SHALL NEGOTIATE IN GOOD FAITH AS TO WHEN DELIVERY IS TO OCCUR. THE COMPANY SHALL NOT BE LIABLE FOR ANY DAMAGES INCURRED AS A RESULT OF EVENTS CONTEMPLATED IN THIS CLAUSE 8.7. IN THE INSTANCE THAT THE PARTIES SHOULD FAIL TO AGREE AS TO WHEN DELIVERY IS TO OCCUR THE COMPANY SHALL BE ENTITLED TO DELIVER WITHIN A REASONABLE PERIOD OF TIME.
- 8.8. The Parties hereby agree that the Company may, make delivery of the Goods to the Client in instalments or in such other manner as may be agreed to by the Parties. The Client shall be obliged to accept delivery of each such instalment.
- 8.9. No payment shall be postponed or withheld by virtue of delay or non-delivery of any instalment, nor shall such non-delivery or delay of any instalment affect the balance of the Order or entitle the Client to cancel the Order.
- 8.10. The Company shall be entitled to withhold delivery of any undelivered instalments until all payments for any delivered instalment have been made in full.
- 8.11. SHOULD THE CLIENT FAIL TO TAKE DELIVERY OF THE GOODS PROMPTLY, OR IN ANY WAY DELAY DELIVERY OF THE GOODS, THE RISK IN SUCH GOODS SHALL IMMEDIATELY PASS TO THE CLIENT AND THE CLIENT SHALL BECOME LIABLE TO PAY THE COMPANY THE REASONABLE COSTS OF STORING, INSURING AND HANDLING THE GOODS, IN ADDITION TO THE PURCHASE PRICE, UNTIL DELIVERY TAKES PLACE.
9. **OWNERSHIP AND RISK**
- 9.1. OWNERSHIP IN ANY GOODS DELIVERED BY THE COMPANY TO THE CLIENT SHALL REMAIN VESTED IN THE COMPANY UNTIL PAID FOR IN FULL, HOWEVER RISK IN AND TO THE GOODS WILL TRANSFER TO THE CLIENT UPON DELIVERY TO THE CLIENT.
- 9.2. GOODS IN THE POSSESSION OF THE CLIENT WHICH BEAR THE COMPANY'S NAME AND/OR TRADEMARKS AND LABELS SHALL BE DEEMED TO BE GOODS FOR WHICH PAYMENT HAS NOT BEEN MADE IN FULL, OR AT ALL.
- 9.3. THE CLIENT SHALL FULLY INSURE THE GOODS PURCHASED AGAINST LOSS OR DAMAGE UNTIL THE FULL PURCHASE PRICE HAS BEEN PAID. PENDING PAYMENT FOR THE GOODS, ALL BENEFITS IN TERMS OF THE INSURANCE POLICY RELATING TO SUCH GOODS SHALL BE CEDED TO THE COMPANY; THE CLIENT HEREBY IRREVOCABLY AND UNCONDITIONALLY CEDING SUCH BENEFITS AND THE COMPANY HEREBY ACCEPTING SUCH CESSION.
- 9.4. In compliance with Section 97 of the CPA, the Client is required to disclose to the Company the location of the Goods delivered to it by the Company of any change concerning the Client's residential address and/or the address of the premises in which any Goods that are the subject of this Agreement are ordinarily kept and the name and the address of any other person to whom possession of the Goods has been transferred. Should Client cause the Goods to be delivered to rented premises, the Client shall immediately inform the landlord of such rented premises or any persons laying claim thereto of the reservation of ownership by the Company in respect of such Goods.
- 9.5. Should the Company, at its sole discretion, pack and deliver the Goods in returnable containers; such containers shall remain the property of the Company and shall be returned to the Company as soon as possible.

9.6. All costs related to the recovery of the Goods, shall be for the account of the Client. THE CLIENT SHALL AT ALL TIMES WHETHER DURING OR AFTER TERMINATION OR EXPIRY OF THIS AGREEMENT INDEMNIFY AND KEEP THE COMPANY INDEMNIFIED AGAINST ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES AND EXPENSES (INCLUDING ALL REASONABLE LEGAL FEES) INCURRED IN CONNECTION WITH THE REMOVAL OF ANY REPOSSESSED GOODS.

**10. WARRANTIES, REPRESENTATIONS AND INDEMNITIES BY THE COMPANY**

10.1. THE COMPANY, ITS EMPLOYEES AND/OR AGENTS GIVE NO WARRANTIES OR GUARANTEES, WHETHER EXPRESS, IMPLIED OR TACIT, TO THE CLIENT OTHER THAN THOSE WHICH THE COMPANY IS OBLIGED TO GIVE IN LAW, SUCH AS:

10.1.1. THAT THE GOODS ARE REASONABLY SUITABLE FOR THE PURPOSE FOR WHICH THEY ARE GENERALLY INTENDED;

10.1.2. THAT THE GOODS ARE OF GOOD QUALITY AND IN GOOD WORKING ORDER;

10.1.3. THAT THE GOODS WILL BE USABLE AND DURABLE FOR A REASONABLE PERIOD OF TIME, HAVING REGARD TO THE USE TO WHICH THEY WOULD NORMALLY BE PUT AND TO ALL THE SURROUNDING CIRCUMSTANCES OF THEIR SUPPLY; AND

10.1.4. COMPLY WITH ANY APPLICABLE STANDARDS SET UNDER THE STANDARDS ACT NO. 29 OF 1993 OR ANY OTHER APPLICABLE PUBLIC REGULATION.

10.2. THE COMPANY, ITS EMPLOYEES AND/OR AGENTS SHALL NOT BE LIABLE (TO THE FULLEST EXTENT PERMISSIBLE BY LAW), WHETHER IN CONTRACT OR DELICT OR OTHERWISE, FOR ANY DEFECT IN THE GOODS DELIVERED OR SERVICES RENDERED, FOR ANY INJURY (UNLESS AS A RESULT OF GROSS NEGLIGENCE, WILFUL DEFAULT OR FRAUD BY THE COMPANY OR FOR ANY DAMAGE OR LOSS RESULTING FROM SUCH DEFECT OR ANY WORK DONE IN CONNECTION THEREWITH, WHETHER THROUGH THE NEGLIGENCE (EXCLUDING GROSS NEGLIGENCE) OR OTHERWISE OF THE COMPANY.

10.3. THE COMPANY, ITS EMPLOYEES AND/OR AGENTS SHALL NOT BE LIABLE (TO THE FULLEST EXTENT PERMISSIBLE IN LAW) FOR ANY LOSS OR DAMAGE OF WHATSOEVER NATURE SUSTAINED BY THE CLIENT OR ANY OTHER PERSON, NOR SHALL THE COMPANY BE LIABLE FOR DELICTUAL, SPECIAL, DIRECT, INDIRECT, GENERAL AND/OR CONSEQUENTIAL DAMAGES, INCLUDING (BUT NOT LIMITED TO) LOSS OF PROFITS, BUSINESS, REVENUE, GOODWILL OR ANTICIPATED SAVINGS.

10.4. IN THE EVENT THE COMPANY, ITS EMPLOYEES AND/OR AGENTS IS FOUND TO BE LIABLE FOR DAMAGES IN TERMS OF THIS AGREEMENT, THE EXTENT OF THE COMPANY'S LIABILITY SHALL NOT EXCEED (TO THE EXTENT PERMISSIBLE IN LAW) THE VALUE OF THE GOODS SOLD AND DELIVERED AND/OR SERVICES RENDERED OR AN AMOUNT OF R 50 000.00 (FIFTY THOUSAND RAND) WHICHEVER IS THE LOWEST.

10.5. The Company does not accept any responsibility whatsoever for the correctness of instructions which appear on the Goods not manufactured by the Company.

**11. WARRANTIES, REPRESENTATIONS AND INDEMNITIES BY THE CLIENT**

11.1. The Client makes the representations and warranties set out in this clause as at the acceptance date of this Agreement and for the duration of this Agreement and acknowledges that the Company has entered into this Agreement in reliance on these representations and warranties, each of which is material and a material representation inducing the Company to enter into this Agreement.

11.2. The Client has the power to execute and deliver this Agreement and to perform all its obligations thereunder (including, without limitation, the payment of all amounts) and all corporate and other action required to authorise its execution and its performance of such obligations, have been duly taken.

11.3. The Client is not prohibited in terms of its constitutional documents, or otherwise, from entering into this Agreement or transactions contemplated by it to which it is a party.



- 11.4. All information (as supplemented from time to time) that has been or will hereafter be made available to the Company by the Client or any of its representatives in connection with the transactions contemplated herein is and will at all times be complete and correct in all material respects and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not misleading in light of the circumstances under which such statements were or are made.
- 11.5. The Client agrees to supplement such information from time to time so that the same remains correct and acknowledges that the Company is acting in reliance on the accuracy of information supplied to it without independent verification.
- 11.6. No legal suit, action, proceeding or process or any other steps have been taken or, to the best of the Client's knowledge and belief, after having made all reasonable enquiries in this regard, threatened for the winding-up or liquidation (whether voluntary or involuntary, provisional or final) or de-registration of the Client or for the appointment of a liquidator or similar officer over the Client or over any assets of the Client.
- 11.7. The Client hereby warrants, represents and undertakes that:
  - 11.7.1. the Client is not carrying on business recklessly, with gross negligence, with intent to defraud or fraudulent purposes;
  - 11.7.2. the Client it is not carrying on business or trading under insolvent circumstances;
  - 11.7.3. that no application to court for an administration order has been made in respect of the Client;
  - 11.7.4. the Client will advise the Company immediately of any facts or circumstances which cause or which are reasonably likely to cause any representation or warranty to be false or misleading in any material respect; and
  - 11.7.5. the Client is in full compliance with all applicable laws, regulations and standard industry practices, which includes but is not limited to the protection of the environment and is not aware of any circumstances which may prevent full compliance in future.
- 11.8. THE CLIENT SHALL AT ALL TIMES WHETHER DURING OR AFTER TERMINATION OR EXPIRY OF THIS AGREEMENT INDEMNIFY AND KEEP THE COMPANY INDEMNIFIED AGAINST ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES AND EXPENSES (INCLUDING ALL REASONABLE LEGAL FEES) WHICH MAY ARISE (BECAUSE OF THIS AGREEMENT OR ANY OTHER FACILITY AND/OR THE COMPANY HAVING AN INTEREST IN THE CLIENT'S ASSETS) IN RESPECT OF A BREACH OF, OR A FAILURE TO MEET ANY OF THE AFORESAID REPRESENTATIONS, WARRANTIES AND/OR UNDERTAKINGS IN THIS CLAUSE 11.
- 11.9. The Client undertakes to notify the Company immediately of:
  - 11.9.1. any change of address;
  - 11.9.2. cessation of business; and / or
  - 11.9.3. change in ownership or shareholding of the Client.
- 11.10. The Client acknowledges and accepts that, notwithstanding any sale of business interest, he/she/they shall remain liable in full for the settlement of the debt to the Company and he/she/they undertake to inform the Company within 7 (seven) days and by registered mail, of any such change.
- 11.11. The Client hereby declares that the Client has not specifically informed the Company of any particular purpose for which the Client wishes to buy/acquire/use the Goods.
- 11.12. The Client hereby authorises the Company, the Client's other creditors, the Clients bank and auditors and / or credit bureaus to make credit information available to each other, and also authorises and consents to the Company drawing such credit information from any sources

whatsoever regarding the Client as it deems necessary, including information of the directors, members, partners and/or trustees.

11.13. THE CLIENT SHALL AT ALL TIMES WHETHER DURING OR AFTER TERMINATION OR EXPIRY OF THIS AGREEMENT INDEMNIFY AND KEEP THE COMPANY INDEMNIFIED AGAINST ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES AND EXPENSES (INCLUDING ALL REASONABLE LEGAL FEES) RESULTING FROM ANY ADVICE GIVEN, RECOMMENDATIONS MADE, PRODUCTS SOLD OR USED OR ARISING FROM ANY CAUSE WHATSOEVER AS ENVISAGED IN THE PRECEDING PARAGRAPHS AND HEREBY WAIVES ANY SUCH CLAIM.

11.14. THE COMPANY, ITS EMPLOYEES AND/OR AGENTS SHALL FURTHER NOT BE LIABLE **(TO THE FULLEST EXTENT PERMISSIBLE IN LAW)** TO THE CONSUMER FOR ANY LOSS OR DAMAGE SUSTAINED BY THE CONSUMER AS A CONSEQUENCE OF THE PRESENCE OF ANY POISONS OR TOXINS IN THE GOODS, INCLUDING (BUT NOT LIMITED TO) THE PRESENCE OF MYCOTOXIN OR AFLATOXIN.

## 12. THE PROTECTION OF PERSONAL INFORMATION

12.1. The Protection of Personal Information Act, 4 of 2013, (POPI) regulates and controls the collection, use, transfer and processing of an individual or legal entity's personal information and in terms thereof a "responsible party" (in this case being the Company) has a legal duty to process a data subject's personal information (in this case the client's "Personal Information") in a lawful, legitimate and responsible manner.

12.2. The Company and its employees will from time to time process the Client's Personal Information and undertakes to manage, process, transfer, store and / or retain such Personal Information, whether held under a document, record or in any other format in accordance with the provisions housed under POPI.

12.3. The purpose for the collection of the Client's Personal Information is to enable the Company to:

12.3.1. Comply with lawful obligations, including all applicable labour, tax and financial legislation such as the Financial Advisory And Intermediary Services Act, 37 of 2002 (FAIS), the Financial Intelligence Centre Act 38 of 2001 (FICA), the National Credit Act, 34 of 2005 (NCA) and B-BBEE laws;

12.3.2. give effect to a contractual relationship as between you and the Company and in order to ensure the correct administration of the relationship and for operational reasons; and

12.3.3. protect the legitimate interests of the Company, yourself or a third party.

12.4. All Personal Information which the Client provides to the Company will only be used for the purposes for which it is collected. Should the Client refuse to provide the Company with the required consent and / or Personal Information, then the Company will be unable to assist the Client with its requirements or provide the Client with the requested services.

12.5. All Personal Information which the Client provide to the Company will be held and / or stored securely and held for the purpose for which it was collected, as reflected above. The Client's Personal Information will be stored electronically in a centralised data base, which, for operational reasons, will be accessible to all within the Company. Where appropriate, some information may be retained in hard copy. In either event, storage will be secure and audited regularly regarding the safety and the security of the information.

12.6. Where Personal Information and related data is transferred to a country which is situated outside the borders of the Republic of South Africa, said storage shall only be done in countries which have similar privacy laws to our own or where such facilities are bound contractually to no lesser regulations than those imposed by POPI.

12.7. Once the Client's Personal Information is no longer required due to the fact that the purpose for which the information was held has expired, such Personal Information will be safely and securely

archived for a period of 7 (seven) years, as per the requirements of the Companies Act, 71 of 2008 or longer should this be required by any other law applicable in the Republic of South Africa. Thereafter, all the Client's Personal Information will be permanently destroyed.

- 12.8. In terms of section 11(3) of POPI, the Client has the right to object in the prescribed manner to the Company processing its Personal Information. On receipt of the Client's objection the Company will place a hold on any further processing until the cause of the objection has been resolved.
- 12.9. POPI requires that all the Client's Personal Information and related details, as supplied, be complete, accurate and up-to-date. Whilst the Company will always use its best endeavours to ensure that the Client's Personal Information is reliable, it will be the Client's responsibility to advise the Company of any changes to the Client's Personal Information, as and when these may occur.
- 12.10. The Client has the right at any time to ask the Company to provide the Client with:
- 12.10.1. the details of any of the Client's Personal Information which the Company holds on its behalf; and
  - 12.10.2. the details as to what the Company has done with that Personal Information,  
**provided that such request is made using the standard section 51 PAIA process**, which procedure can be accessed by downloading and completing the standard request for information form, housed under section 51 of our PAIA Manuals – obtained under the Company's website.
- 12.11. The Client has the right to address any complaints to the Company's Information Officer or to the Information Regulator.
- 12.12. The Company may check its own records for information, search credit bureau for information and check trade references for information on:  
If the Client is a director, member, shareholder or partner in a business and check the business accounts;
- 12.12.1. the Client's personal accounts; and
  - 12.12.2. if relevant, the Client's spouse or partner's accounts or the accounts of any other person with whom the Client shares income and mutually bears obligations with.
- 12.13. The Company may send information provided by the Client as part of the application to the credit bureaus and may also obtain the following information from the credit bureaus for the following purposes:
- 12.13.1. to assess the Client's application for credit, and the Client's level of indebtedness and debt repayment history as required by the NCA; and/or;
  - 12.13.2. assess risk; and/or
  - 12.13.3. validate and verify the information which the Client provides to it including the Client's identity and the identity of the Client's spouse, partner or other directors/partners and/or;
  - 12.13.4. undertake checks for the prevention and detection of fraud and/or money laundering; and/or
  - 12.13.5. use scoring methods to assess this application and to verify the Client's identity; and/or  
any or all of these processes may be automated.
- 12.14. Management of the Client's Account
- 12.14.1. Once the Client has an account with the Company, the Company will supply information to credit bureaus about how the Client conducts that account;

- 12.14.2. If the Client borrows or makes use of the Company' payment terms and does not repay in full and on time, this information will be provided to credit bureau, after the Company has given the Client 20 business days' notice of intention to send this information to the credit bureau;
- 12.14.3. The Company may make periodic searches of credit bureaus' information to manage the Client's account with it, and to take decisions regarding affordability and/or the risks involved in offering the Client's payment terms;
- 12.14.4. If the Client has borrowed from the Company or made use of its payment terms and does not make payments that the Client owes to it, the Company may trace the Client's whereabouts using credit bureaus' information and recover payment; and/or supply trade references to credit bureaus.
- 12.14.5. The Client therefore warrants that all Personal Information provided to the Company is accurate, true and correct, up-to-date, is not misleading and that it is complete in all respects and the Client further undertakes to immediately advise the Company of any changes to its Personal Information.

### **13. EVENTS OF DEFAULT**

- 13.1. Without derogating from the rights of the Company in law or otherwise, an event of default shall occur should:
  - 13.1.1. the Client fails to pay any amount to the Company on the due date thereof;
  - 13.1.2. the Client fails to comply with any term or condition of this Agreement and fail to remedy that breach, if capable of remedy, within 7 (seven) days after being called to do so;
  - 13.1.3. the Client or any person or entity that provides security for the Client ("Obligor") performs any act analogous to an act of insolvency specified in the Insolvency Act, 1936 or an act as defined in Section 344 of the Companies Act, 1973, read with Schedule 5 of the Companies Act, both as amended or substituted from time to time;
  - 13.1.4. any asset deemed by the Company to be a material asset of the Client or Obligor, be attached by any third party with a writ of execution and should the Client fail within 14 (fourteen) business days of such attachment to take the necessary steps to have such attachment set aside and thereafter to pursue such steps with due diligence to a successful conclusion;
  - 13.1.5. any judgment be granted against the Client or Obligor and remain unsatisfied for a period of 7 (seven) business days after date of judgment or should the Client fail within 7 (seven) business days of such judgment to take the necessary steps to appeal against or rescind such judgment and thereafter to pursue such appeal or rescission with due diligence to a successful conclusion;
  - 13.1.6. any order of Court, whether provisional or final, and whether voluntarily or compulsorily, be granted for the winding up of the Client or Obligor;
  - 13.1.7. the Client or Obligor gives notice to take steps to convene a meeting of its shareholders/directors to adopt a resolution placing it in liquidation or under business rescue in either case, whether provisionally or finally;
  - 13.1.8. the Client or Obligor enters into a compromise, composition or arrangement with its creditors generally, or any class thereof;
  - 13.1.9. any warranty or representation made by the Client or Obligor, which was taken into consideration, and was materially relied upon by the Company in accepting an Order from the Client as set out hereunder or accepting the relevant security, guarantee or suretyship as collateral, be found to be untrue or incorrect in any material respect;

- 13.1.10. the Client or Obligor becomes unable to conduct its normal course of business for whatsoever reason;
- 13.1.11. the Client repudiates this Agreement; or
- 13.1.12. If any of the following occurs in relation to the Client:
  - 13.1.12.1. the Client carries on business either recklessly, with gross negligence, with the intent to defraud or for fraudulent purposes;
  - 13.1.12.2. the Client carries on business or trades under insolvent circumstances; or
  - 13.1.12.3. an application to court has been made for an administration order in respect of the Client.
- 13.2. If the Client fails to remedy such event of default (where capable of remedy) within the applicable grace period calling upon the Client to do so, or if the event is not capable of remedy and the Company gives notice that such event has occurred and the Company is exercising its rights pursuant hereto, then:
  - 13.2.1. all the Client's indebtedness to the Company (actual or contingent) will be due and payable immediately irrespective of any terms or conditions otherwise applicable to such indebtedness;
  - 13.2.2. the Company may demand and recover payment of all amounts so declared due or deemed to be due;
  - 13.2.3. the Client must pay interest calculated at the then prevailing Prime Rate plus 3 (three) percentage points, calculated on the amount so due and payable (including any unpaid interest which will be capitalized) calculated from the date of demand to date of receipt of payment;
  - 13.2.4. the Company may exercise any or all of its rights under any security provided by the Client or Obligor;
  - 13.2.5. the Company may appropriate any amounts standing to the credit of any of the Client's accounts in the Company's books in reduction or liquidation of the amounts owing to the Company;
  - 13.2.6. the Company may refuse to supply further Goods and/or Services to the Client, including any Goods and /or Services subject to an Order accepted by the Company but not delivered prior to the date of exercising such discretion and further that the Company shall not be held liable to the Client for any loss or damage which the Client may sustain as a result of the Company cancelling this Agreement or refusing to supply Goods and / or Services; and
  - 13.2.7. the Company may demand return of any Goods not paid in which event the Client shall return the Goods forthwith to the Company at the Client's own cost and expense.

#### **14. JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa and shall be subject to the exclusive jurisdiction of the Courts of the Republic of South Africa. The Parties agree that this Agreement shall be deemed to be entered into in the Republic of South Africa.

#### **15. LEGAL PROCEEDINGS**

- 15.1. The Client agrees and accepts that the Company shall be entitled, in its sole discretion, but not compelled or obliged to institute any legal proceedings, which may arise from or in connection with this Agreement, all costs and disbursements incurred by the Company, including legal costs on an attorney and own client basis in collecting arrears accounts from the Client, shall be for the account of the Client.

- 15.2. A certificate issued and signed by any director or manager of the Company, whose authority need not be proved, in respect of any indebtedness of the Client to the Company; or in respect of any other fact including (but not limited to) the fact that the Goods and / or Services were sold and delivered/rendered, shall be prima facie evidence of the Client's indebtedness to the Company.
- 15.3. The Client's registered address or physical address stated in an Order (or other similar document) shall be recognised as the Client's domicilium citandi et executandi for the service of any court documents resulting from this Agreement. The Client's physical, email and / or postal addresses as per this Agreement will be deemed to be the Client's service addresses for all other documents resulting from or in terms of this Agreement.
- 15.4. It will not be necessary for the Company to prove that the documents referred to in clause 14.3 above were received by the Client. In the event of the Client not receiving any of the documents in clause 14.3 above, the Client must timeously acquire a duplicate from the Company, failing which it will be accepted that said documents were received by the Client.
- 15.5. All amounts due to the Company shall be deemed to be a liquid amount for the purposes of provisional sentence or summary judgment.

#### **16. NEGOTIABLE INSTRUMENTS**

Acceptance of a negotiable instrument by the Company shall not be construed as a waiver of the Company's rights.

#### **17. RETURNED GOODS**

- 17.1. THE COMPANY WILL PROVIDE THE CLIENT WITH A CREDIT OR A REFUND FOR GOODS PURCHASED FROM THE COMPANY IN INSTANCES CONTEMPLATED BY LAW WHICH INCLUDES, BUT IS NOT LIMITED TO, THE PROVISIONS OF SECTION 20 AND SECTION 56 OF THE CPA.
- 17.2. Should the Client not be familiar with the aforementioned sections the Company will provide the Client with extracts of same upon the Client's written request.
- 17.3. PLEASE TAKE NOTE THAT THE COMPANY MAY BE ENTITLED TO CHARGE THE CLIENT A REASONABLE AMOUNT IN TERMS OF THE CPA IN INSTANCES THAT THE CLIENT SHOULD RETURN ANY GOODS.
- 17.4. In addition to the aforementioned, when calculating any reasonable amount which the Company may be entitled to charge the Client upon any return of the Goods as contemplated in Section 20(6) of the CPA or otherwise the Company shall be entitled to, and the Client hereby agrees, to take into consideration amongst other things, the following:
  - 17.4.1. depreciation in value of the Goods once it is registered as second hand or may be reasonably deemed to be second hand; or
  - 17.4.2. value the Client may have received through the use of such Goods or the opportunity of the use of such Goods.

#### **18. AMENDMENT OR WAIVER**

- 18.1. No modification, amendment or consensual cancellation of this Agreement shall be valid, unless reduced to writing and signed by duly authorised representatives of both Parties.
- 18.2. In the event of the modification, amendment or variation of any agreement between the Parties, this Agreement shall apply to such modification, amendment or variation except as may otherwise be expressly provided.
- 18.3. Any forbearance or indulgence by the Company in enforcing any of this Agreement shall not prejudice or restrict the Company's rights or powers in terms hereof and no waiver of any breach shall operate as a waiver of any subsequent or continuing breach or a novation of the Company's right in terms hereof.

#### **19. GENERAL**

- 19.1. Whilst the Company retains the right to cede and/or assign all and any of its rights or obligations under this Agreement provided the same will not prejudice the Client, the Client shall, however, not be entitled to cede and/or assign any of its rights or obligations in terms hereof without the prior, written, approval of the Company.
- 19.2. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement as at the date of signature of the Party last signing one of the counterparts. The Parties undertake to take whatever steps may be necessary to ensure that each counterpart is duly signed by each of them without delay.
- 19.3. This Agreement constitutes the whole of the agreement between the Parties hereto relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement, shall be binding on any of the Parties.
- 19.4. THE CLIENT RENOUNCES THE BENEFITS OF THE LEGAL EXCEPTIONS: NON CAUSA DEBITI (AN EXCEPTION TAKEN TO THE EFFECT THAT THERE IS NO CAUSE FOR THE OBLIGATION AND RENUNCIATION PLACES THE ONUS ON THE CLIENT TO PROVE THAT A DEBT DOES NOT EXIST); NON NUMERATE PERCUNIA (AN EXCEPTION WHICH MAY BE TAKEN BY THE CLIENT ON THE GROUND THAT THE AMOUNT THEREOF WAS NOT PAID OVER) AND ERRORE CALCULI (A REVISION OF ACCOUNTS AND ERRORS OF CALCULATION AND NO VALUES RECEIVED).
- 19.5. The Parties agree that each individual provision of this Agreement shall be severable and that invalidity of any part of a term hereof shall not affect the validity of the remainder of this Agreement.