

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF BIZERBA SOUTHERN AFRICA (PTY) LTD

IN THIS AGREEMENT THERE ARE CERTAIN CLAUSES OF SIMILAR FONT AND COLOUR TO THIS TEXT WHICH CONTAINS PROVISIONS THAT MAY HAVE THE EFFECT OF (I) LIMITING THE RISK OR LIABILITY OF THE COMPANY OR OF ANY OTHER PERSON AND/OR (II) MAY CONSTITUTE AN ASSUMPTION OF RISK OR LIABILITY BY YOU AND/OR (III) MAY IMPOSE AN OBLIGATION ON YOU TO INDEMNIFY THE COMPANY OR ANY OTHER PERSON FOR ANY CAUSE AND/OR (IV) MAY BE AN ACKNOWLEDGEMENT OF ANY FACT BY YOU. THESE PROVISIONS ARE VERY IMPORTANT AND YOU MUST ENSURE THAT YOU READ THEM CAREFULLY AND THAT YOU UNDERSTAND THEM CLEARLY.

1. GENERAL

- 1.1 All contracts are exclusively subject to the **Company's** terms and conditions of delivery and sale, **and the Company rejects any terms and conditions of the Customer to the contrary or deviating from the Company's terms and conditions unless it has expressly consented thereto in writing.**
- 1.2 The terms and conditions set out herein cancel all previous issues, terms and conditions.
- 1.3 These terms and conditions, as re-issued or revised by the **Company** from time to time, apply to all orders placed with the **Company** and such orders are subject to acceptance by the **Company** and shall be deemed to be made subject to these terms and conditions.
- 1.4 No qualification or condition contained in any order form, acknowledgement of order or otherwise, shall from part of the contract of sale or override these terms unless expressly agreed to in writing by the Managing Director or any other duly authorised Director of the **Company**. No employee or agent of the **Company** shall have the authority or the ability to change these terms in any manner whatsoever, save the Managing Director or any other duly authorised Director of the **Company**.
- 1.5 Price lists issued by the **Company** from time to time are for information purposes only and do not constitute offers of sale.
- 1.6 The **Company** reserves the right to refuse an order and acceptance on the part of the **Company** will only be deemed to have occurred on delivery of the **Goods**.
- 1.7 Save insofar as may be otherwise specifically agreed in writing to the contrary by the **Company**, orders are accepted only at prices and transport tariffs rulings on the date of dispatch.
- 1.8 Due to variables such as quantity, size, packaging, marketing etc., invoiced prices may differ from advertised prices.

2. DEFINITIONS

Unless such meaning is inconsistent with the context, the following terms shall, throughout this **Agreement**, have the meanings respectively ascribed to them, namely:

- 2.1 "**Agreement**" shall mean this **Agreement** between the Parties with the terms and conditions contained herein and annexures, if any, attached hereto;
- 2.2 "**Customer**" shall mean the person or legal entity with whom an agreement is entered into by the **Company** for the sale of the **Goods**;
- 2.3 "**Company**" shall mean Bizerba Southern Africa (Pty) Ltd (Registration Number 2014/086793/07);
- 2.4 "**Contract Price**" shall mean the price of the **Goods** as set out in the invoice;
- 2.5 "**Contract Specification**" shall mean the specification or other description of the **Goods** on the invoice;
- 2.6 "**Goods**" shall mean the **Goods** and/or services as described more specifically in the invoice;
- 2.7 "**Invoice**" shall mean the invoice document of the **Company** whereon and invoice number, full particulars of the **Customer**, **Contract Price**, **Contract Specification** and the date of order of the **Goods** by the **Customer** shall appear;
- 2.8 "**Delivery Note**" shall mean a note on which is reflected at least the invoice number, delivery instruction note number, net and gross weights and numbers of bags/packages/cartons or other containers in which the **Goods** are supplied.

3. INTERPRETATION

In this **Agreement** unless the context otherwise requires -

- 3.1 The singular shall import and include the plural and vice versa;
- 3.2 Words indicating one gender shall import and include other genders;
- 3.3 Words indicating natural persons shall import and include juristic and artificial persons;
- 3.4 The headnotes to this **Agreement** are used for the sake of convenience only and shall not govern the interpretation of the clauses to which they relate;
- 3.5 Where any numbers of days are prescribed in this **Agreement**, they shall be calculated exclusive of the first day and inclusive of the last day unless the last day falls on a Saturday, Sunday or promulgated public holiday in South Africa, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or said public holiday;
- 3.6 If any doubt or conflict arises where figures are referred to in numerals and in words, the figure in words shall prevail;

- 3.7 Should there be any conflict or inconsistency between this **Agreement** and other agreement/s concluded between the Parties, then the terms and conditions of this **Agreement** shall prevail, unless otherwise specifically provided for in writing in any such agreement;
- 3.8 The rights and obligations of any Party arising from this **Agreement** shall devolve upon and bind its successors-in-title;
- 3.9 If any provision in a definition contained in this **Agreement** is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it only appears in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the **Agreement**;
- 3.10 This **Agreement** shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.
- 3.11 The rule of construction that this **Agreement** shall be interpreted against the Party responsible for the drafting or preparation of this **Agreement** shall not apply. The same applies to the schedules or annexures.

4. CONTRACT PRICE

- 4.1 Save insofar as may be otherwise specifically agreed in writing to the contrary by the **Company**, orders are accepted only at prices and transport tariff rulings on the date of dispatch.
- 4.2 Unless otherwise agreed in writing, the **Contract Price** shall, *inter alia*, be deemed to include charges for material, labour, bank exchange, customs, duties, surcharges, taxes, packing and storage.
- 4.3 If prior to delivery, any of the expenses are increased, the amount of such increase shall be added to the **Contract Price**.
- 4.4 The **Company** shall retain the title to and intellectual property in all offer documents and these may not be made available to third parties without the **Company's** express written consent.
- 4.5 The **Contract Price** shall specifically exclude Value Added Tax (VAT) and any other taxes that may be levied in respect of the **Goods**. The **Company** reserves its rights to effect price increases from time to time without prior notification to the **Customer**. The onus shall be on the **Customer** to remain informed of the prices of the **Company**. No **Company** employee, official, agent or nominee shall have the authority to effect or authorise any discounting of the **Contract Price** of the **Goods** save the Managing Director or any other duly authorised Director of the **Company**.
- 4.6 Notwithstanding the stated price on the **Invoice**, the **Contract Price** shall, at all material times, be subject to any increase of material, labour, bank exchange, costumes, duties, surcharges, taxes, packing and storage and the **Company** shall endeavour, where reasonably possible, to inform the **Customer** in advance of any anticipated increases.
- 4.7 The **Company** reserves the right to request the **Customer** to furnish a deposit or bank guarantee which is acceptable

to the **Company**. SHOULD SUCH DEPOSIT NOT BE PROVIDED AS REQUESTED THEN THE **COMPANY** SHALL HAVE THE RIGHT TO CANCEL THE ORDER WITHOUT INCURRING ANY LIABILITY ON THE PART OF THE **COMPANY**.

- 4.8 The **Company** reserves its right to add a reasonable charge for storage on any items which have not been collected or could not be delivered within 14 (fourteen) days of the date on which they were available for delivery or collection, as the case may be, and in the event that this is as a result of the **Customer's** conduct.
- 4.9 In the event of it being necessary for the **Company** to strip or dismantle any work in order to prepare a quotation herein:-
- 4.9.1 the **Company** shall be entitled to dismantle the work to such an extent as it may deem necessary in order to prepare the said quotation;
- 4.9.2 the **Customer** shall be liable for all costs incurred by the **Company** in dismantling the work;
- 4.9.3 in the event of the **Customer** not accepting the **Company's** quotation, the **Customer** shall remove the work in its dismantled condition subject to the **Company's** lien.

5. PAYMENT

- 5.1 Unless otherwise agreed, payment in full without deduction or set-off in respect of **Goods** sold shall be made on a cash delivery basis.
- 5.2 The **Company** reserves the right to extend credit facilities to the **Customer** from time to time without any obligation to do so, notwithstanding having extended such facilities in the past to any **Customer**.
- 5.3 Where the **Company** has agreed to supply **Goods** on credit, payment in full shall be due within 30 (thirty) days from date of the first monthly statement rendered by the **Company**.
- 5.4 The monthly accounts of the **Company** are closed on the 25th day of each month. Payment must be credited to the banking accounts of the **Company** by the 25th day of the following month.
- 5.5 Credit facilities shall only be afforded to **Customers** after completion of the necessary documents required by the **Company** and having provided the **Company** with the required guarantees/suretyships/consents.
- 5.6 THE **CUSTOMER** HEREBY AUTHORISES THE **COMPANY** TO PERFORM OR OBTAIN ANY INFORMATION FROM A REGISTERED CREDIT BUREAU. THE **CUSTOMER** FURTHER ACKNOWLEDGES THAT THE FAILURE TO PAY ANY AMOUNTS OWED IN TERMS OF THE **AGREEMENT** MAY CAUSE AN ADVERSE LISTING OF THE **CUSTOMER** BY THE **COMPANY** WITH REGISTERED CREDIT BUREAUS.
- 5.7 The **Company** reserves its right to, at any time and after having provided the **Customer** with reasonable notice, and reasonable notice to be deemed to be 30 (thirty) days, advise that credit facilities to a **Customer** by the

Company will be terminated, and the **Company** will be under no obligation whatsoever to provide any reasons for such termination.

5.8 It is specifically agreed and recorded that at all material times, it shall be the sole prerogative of the **Company** to decide to which **Customer** it would be willing to extend credit facilities, it being understood by the **Customer** that any differentiation shall not be deemed to be discriminatory, but shall be deemed to form part of the **Company's** internal credit risk limitation policy.

5.9 The **Company** shall be entitled to refuse sale of **Goods** to any **Customer** in the event of overdue accounts owing by the **Customer** to the **Company** or in the event that a **Customer** is not able to obtain/provide satisfactory guarantees/suretyships. It is specifically recorded and agreed that any late payments by a **Customer** shall constitute breach of any credit facility agreement entered into between the **Company** and the **Customer** and provided to the **Customer** by the **Company** and accordingly, the **Company** reserves the right at any time to refuse any further sale of **Goods** to the **Customer** on a cash on delivery basis until all outstanding accounts including any accrued interest on such outstanding accounts have been settled in full by such **Customer**.

5.10 The **Company**, at its sole discretion, shall appropriate the payments made in terms of this **Agreement**, firstly to any costs then to any interest outstanding and thereafter to the capital amount outstanding from time to time

5.11 IT IS SPECIFICALLY RECORDED AND AGREED THAT THE CUSTOMER WAIVES ALL CLAIMS AGAINST THE COMPANY FOR ANY DAMAGES OR LOSSES WHATSOEVER THAT IT MAY SUFFER AS A RESULT OF THE REFUSAL OF THE COMPANY TO SELL GOODS TO THE CUSTOMER IN THE EVENT OF AN OVERDUE ACCOUNT, OR IN CONNECTION WITH ANY OTHER DISPUTE WHATSOEVER ARISING OUT OF LATE PAYMENT FOR GOODS.

6. INTEREST

It is specifically agreed and recorded that interest on overdue accounts shall be levied at the prime interest rate prevailing at the time.

7. DELIVERY

7.1 Time of delivery shall not be of the essence in this **Agreement**. Delivery excludes off-loading.

7.2 Signature by the **Customer** or by any representative or employee of the **Customer** of the **Company's Delivery Note** and/or **Invoice**, shall be regarded as acceptance by the **Customer** that the **Goods** reflected in such **Delivery Note** and/or **Invoice** have been properly and completely delivered.

7.3 WHILST EVERY EFFORT WILL BE MADE TO DISPATCH AND DELIVER THE **GOODS** AS ADVISED, THE **COMPANY** DOES NOT

GUARANTEE DISPATCH AND/OR DELIVER ON ANY SPECIFIC DATE AND SHALL NOT BE LIABLE FOR ANY DAMAGES INCLUDING CONSEQUENTIAL DAMAGES THAT MAY BE SUFFERED BY THE **CUSTOMER** AS A RESULT OF ANY DELAYS IN THE DELIVERY OF THE **GOODS** THAT MAY OCCUR, SAVE TO THE EXTENT THAT THE **COMPANY** MAY BE LIABLE FOR ANY LOSSES IN TERMS OF SECTION 47 OF THE CONSUMER PROTECTION ACT 68 OF 2008 AS AMENDED.

7.4 The **Customer** shall not be entitled to cancel any order by reason of such delay. IF UPON DELIVERY OF THE **GOODS**, THE **CUSTOMER** FAILS, REFUSES OR NEGLECTS TO TAKE DELIVERY OF THE **GOODS**, THE **CUSTOMER** SHALL NEVERTHELESS BE LIABLE TO PAY THE **CONTRACT PRICE** AND THE RELEVANT MONTHLY STORAGE COSTS AND THE **CUSTOMER** SHALL FORFEIT ANY DEPOSITS PAID TO THE **COMPANY**.

7.5 Should the **Company** be prevented in performing any of its obligations as a result of Force Majeure, or any cause whatsoever beyond the control of the **Company**, the **Company** shall be entitled, at its option, to cancel the **Agreement** or to suspend performance of its obligations thereunder and SHALL NOT BE LIABLE TO THE **CUSTOMER** OR ANY OTHER PARTY WHATSOEVER FOR ANY LOSS OR DAMAGE, CONSEQUENTIAL OR OTHERWISE, RESULTING FROM SUCH INABILITY TO PERFORM ITS OBLIGATIONS, CANCELLATION OR SUSPENSION.

7.6 Unless otherwise agreed in writing, delivery and passing of the risk in the **Goods** shall be deemed to have taken place when the **Company** advises in writing that the **Goods** are ready for collection or when the **Goods** are delivered to the **Customer's** premises.

8. RESERVATION OF OWNERSHIP

8.1 Notwithstanding delivery of the **Goods** sold to the **Customer**, the ownership in the **Goods** sold in terms of this **Agreement** shall remain vested in the **Company**, or any cessionary to whom the **Company** may cede its rights, until the full purchase price and any other amounts due by the **Customer** have been paid together with any interest or other costs due to the **Company** arising out of this **Agreement**.

8.2 Furthermore, the **Company** reserves ownership of retained **Goods** until the **Customer** has paid any further payments due in terms of this **Agreement** of whatever nature.

8.3 In the event that the **Customer** defaults in payment, it shall deliver the **Goods** to the **Company** upon receipt of written notice by the **Customer** from the **Company**, without undue delay.

8.4 The **Company** may elect, without detracting from other remedies which may be available to it, to continue with the **Agreement** or to cancel it and cancel the sale of any

further **Goods** to the **Customer** and to rely on the provisions of this clause to repossess those **Goods** sold and delivered by the **Company** to the **Customer** or to claim specific performance for all the **Customer's** obligations, whether or not such obligations would otherwise have fallen due for performance, in either event, without prejudice to the **Company's** rights to claim damages.

- 8.5 The **Company's** written request for repossession and repossession itself shall not be construed as withdrawal from the **Agreement**. After repossession of the delivered items the **Company** shall be authorised to realise the same. The realisation proceeds shall be set-off against the **Customer's** liabilities, less appropriate realisation costs, for which realisation costs the **Customer** will be liable. The **Company** may also realise the repossessed **Goods** by selling them by private contract, is so allowed in law.
- 8.6 The **Customer** undertakes to handle the delivery items with care. In particular, it is obliged to insure them adequately at the reinstatement value against damage caused by fire, water and theft at the sole expense of the **Customer**.
- 8.7 In case of attachments or other interventions by third parties, the **Customer** shall inform the **Company** thereof in writing immediately. The **Customer** shall be liable to the **Company** for the judicial and extra-judicial costs of any necessary action taken by the **Company** pursuant to third party legal actions as aforementioned.
- 8.8 In processing or transforming the **Goods**, the **Customer** shall invariably be acting for the **Company** and on its behalf. If the **Goods** are processed with other items not belonging to the **Company**, the **Company** shall acquire joint title to the new thing in the same proportion as the value of the delivered item bears to the other processed items at the time of the processing. In all other cases, the new thing having resulted from the processing shall be governed by the same provisions as the **Goods**. The reservation of title shall at all times remain effective in this regard.

9. RETURN OF GOODS

- 9.1 A PRE-CONDITION OF THE WARRANTY RIGHTS (CLAIMS BASED ON DEFECTS) OF THE **CUSTOMER** IN TERMS OF THE **AGREEMENT** IS THAT A **CUSTOMER** WHO IS A MERCHANT INSPECTS THE **GOODS** UPON RECEIPT WITHOUT UNDUE DELAY AND GIVES WRITTEN NOTICE OF ANY VISIBLE DEFECTS WITHOUT UNDUE DELAY AFTER THE INSPECTION OR OF HIDDEN DEFECTS AFTER THEIR DISCOVERY, SPECIFYING THE DEFECT. THIS SHALL ALSO APPLY TO INCORRECT DELIVERIES OR ITEMS IN INSUFFICIENT QUANTITIES BEING DELIVERED. NOTIFICATION MUST BE GIVEN WITHIN A PERIOD OF 10 (TEN) DAYS. OTHER **CUSTOMERS**, WHO ARE NOT MERCHANTS, SHALL ALSO EXAMINE ITEMS AT THEIR OWN EXPENSE AND

THEN NOTIFY THE **COMPANY** OF APPARENT DEFECTS INCLUDING INCORRECT DELIVERIES OR INSUFFICIENT QUANTITIES IN WRITING AND WITHOUT UNDUE DELAY. FOR NON-MERCHANTS, NOTIFICATION MUST BE GIVEN WITHIN A PERIOD OF 14 (FOURTEEN) DAYS

- 9.2 If the **Customer** notifies the **Company** of such defects, the **Customer** shall arrange for a fact-finding investigation as soon as possible. The results shall be forwarded to the **Company** directly.
- 9.3 SHOULD THERE BE AN ALLEGATION THAT ANY **GOODS** ARE UNSAFE OR DEFECTIVE, THE **COMPANY** SHALL NOT BE LIABLE FOR ANY HARM CAUSED WHERE SUCH ALLEGED UNSAFE **GOODS'** CHARACTERISTIC, FAILURE, DEFECT OR HAZARD DID NOT EXIST IN THE **GOODS** AT THE TIME AT WHICH THEY WERE SUPPLIED TO THE **CUSTOMER** BY THE **COMPANY**. THEREFORE, IF NO SUCH NOTIFICATION IS RECEIVED IN TERMS OF CLAUSE 9.1 ABOVE, IT WILL BE REGARDED AS SUFFICIENT (*PRIMA FACIE*) PROOF THAT NO DEFECTS WERE PRESENT AT THE TIME OF DELIVERY AND THAT THE **GOODS** WERE DELIVERED IN ACCORDANCE WITH THE **AGREEMENT**.
- 9.4 In the event that the **Company** receives notification in terms of clause 9.1 above and it is satisfied that the **Goods** are defective or do not conform to specifications, then the **Company** will, at the **Customer's** election in writing, replace such quantity of **Goods** with an equal quantity of **Goods** or refund the applicable portion of the purchase price to the **Customer** against return of the defective portion of the **Goods** (the return to be made at the **Company's** risk and expense).
- 9.5 The **Customer** may not, however, return to the **Company** any **Goods** for any reason whatsoever unless:-
- 9.5.1 the parties have agreed in writing to such return and to the conditions of such return;
- 9.5.2 the **Goods** are being returned in accordance with the provisions of clauses 9.1 and 9.4 above;
- 9.5.3 the **Goods** were intended to satisfy a particular purpose communicated to the **Company** prior to the purchase thereof and have been found not to satisfy the said communicated purpose for which they were intended, within 14 (fourteen) days of delivery and the **Company** has been notified of this within that time period.
- 9.5.4 the **Customer** was not permitted to inspect the **Goods** upon delivery thereof;
- 9.5.5 the **Customer** is exercising its right to cool-off in terms of section 16 of the Consumer Protection Act 68 of 2008 as amended.
- 9.6 Should the **Company** accept the return of the **Goods** or to pass a credit in respect thereof, a handling fee equal to 10% (ten percent) of the **Contract Price** shall be payable by the **Customer**.

10. REPRESENTATION AND WARRANTIES

- 10.1 For a period of 6 (six) months from the date of the **Customer's** receipt of the **Goods** sold hereunder, the **Company** warrants that such **Goods** shall be of the **Company's** standard quality and are reasonably suitable for the purposes for which they are generally intended. The **Company** makes no other warranty of any kind, express or implied, including without limitation, any warranty of merchantability, or non-infringement. The **Company** specifically makes no warranties as to any services or as to compliance with laws, regulations, standards and/or conventions including any related to the environment or to the packaging, labelling and/or transport of hazardous **Goods**. No warranty shall apply to shipping damage, damage caused by improper installation or improper wiring, including incorrect electrical voltage, **Goods** that have been modified or altered in any way, damage caused by corrosion, abrasion, or severe temperatures, or **Goods** that have been subjected to improper maintenance, abuse, misuse, abnormal usage, or accident.
- 10.2 THE **CUSTOMER** WARRANTS THAT IT SHALL FULLY COMPLY WITH ALL LABEL DIRECTIONS FOR THE HANDLING, STORAGE, POSSESSION OR USE OF THE **GOODS** SOLD HEREUNDER AND THE **CUSTOMER** AGREES THAT IT SHALL INDEMNIFY AND HOLD THE **COMPANY** HARMLESS FROM ALL CLAIMS WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS AND INCIDENTAL' FEES) OF PERSONAL INJURY OR PROPERTY DAMAGE RESULTING FROM ANY NEGLIGENCE, RECKLESSNESS OR WILLFUL MISCONDUCT ON THE PART OF THE **CUSTOMER** OR FROM ANY FAILURE OF THE **CUSTOMER** TO COMPLY WITH THE TERMS OF THIS WARRANTY.
- 10.3 Specifications, illustrations and the like remain the property of the **Company** and may only be used for the purpose specified in the **Agreement** and must be returned upon the request of the **Company**.
- 10.4 WHILST THE **COMPANY** SHALL TAKE ALL REASONABLE STEPS TO ENSURE THAT THE **GOODS** SOLD AND DELIVERED TO THE **CUSTOMER** IN TERMS HEREOF ARE MANUFACTURED IN ACCORDANCE WITH THE **CUSTOMER'S** SPECIFICATIONS, THE **COMPANY** DOES NOT WARRANT THAT THE SAID **GOODS** WILL BE FIT FOR THE SPECIFIC PURPOSE FOR WHICH THE **CUSTOMER** INTENDS TO USE THE SAID **GOODS**, AND THE **CUSTOMER** ACCORDINGLY ABSOLVES THE **COMPANY** FROM ANY LIABILITY WHATSOEVER AS A RESULT OF THE SAID **GOODS** NOT BEING FIT FOR THE PURPOSE FOR WHICH THE **CUSTOMER** INTENDS TO USE THE SAID **GOODS**, UNLESS THE **CUSTOMER** HAS SPECIFICALLY INFORMED THE **COMPANY** IN WRITING OF THE PARTICULAR

PURPOSE FOR WHICH THE **CUSTOMER** WISHES TO ACQUIRE THE **GOODS** OR THE USE TO WHICH THE **CUSTOMER** INTENDS TO APPLY THOSE **GOODS** AND THE **COMPANY** AGREES TO SUPPLY SUCH **GOODS**.

- 10.5 THE **COMPANY** SHALL NOT BE LIABLE FOR DAMAGES RESULTING FROM UNSUITABLE OR IMPROPER USE, IMPROPER ASSEMBLY AND IMPROPER COMMISSIONING OR HANDLING BY THE **CUSTOMER** OR BY THIRD PARTIES, ANY OTHER DISREGARD OF INSTALLATION AND OPERATING INSTRUCTIONS OR OF GENERALLY ACCEPTED TECHNICAL RULES AND NORMAL OPERATIONAL WEAR AND TEAR.

11. LIMITATION OF LIABILITY

- 11.1 IN NO EVENT SHALL THE **COMPANY**, ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO PUNITIVE DAMAGES OR ATTORNEYS' FEES, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CLAIMS OF THE **CUSTOMER** OR ITS CLIENTS (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF BUSINESS, GOODWILL, PROFITS, LOSS OF INCOME OR USE OF **GOODS** OR IMPAIRMENT OF OTHER ASSETS), ARISING OUT OF BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE OR OTHERWISE IN CONNECTION WITH OR ARISING OUT OF THE **AGREEMENT**, EXCEPT IN THE CASE OF PERSONAL INJURY OR PROPERTY DAMAGE WHERE AND ONLY TO THE EXTENT THAT APPLICABLE LAW REQUIRES SUCH LIABILITY. TO THE EXTENT THE **CUSTOMER** INCORPORATES OR CAUSES OTHERS TO INCORPORATE THE **GOODS** IN ITS OWN **GOODS** OR THE **GOODS** OF ANY THIRD PARTY, THE **COMPANY** SHALL NOT BE LIABLE FOR THIRD PARTY CLAIMS FOR INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RESULTING FROM SUCH INCORPORATION AND BASED UPON THE USE OF THE **GOODS** OR THE MANUFACTURE, USE, SALE OR OFFER FOR SALE OF ANY **GOODS** CONTAINING SUCH **GOODS**, EXCEPT AS SUCH LIABILITY FOR THIRD PARTY CLAIMS FOR INFRINGEMENT IS EXPRESSLY REQUIRED BY APPLICABLE LAW AND NOT WAIVEABLE BY THE **CUSTOMER**. THE **CUSTOMER** ASSUMES SOLE RESPONSIBILITY FOR ALL PERSONAL INJURY AND PROPERTY DAMAGE RESULTING FROM HANDLING, POSSESSION, USE, RE-SALE OR DISPOSAL OF THE **GOODS**.
- 11.2 IT IS SPECIFICALLY RECORDED AND AGREED THAT ANY ACTION BY THE **CUSTOMER** OR

BREACH OF THE **AGREEMENT** BY THE **CUSTOMER** OR ANY OTHER CAUSES OF ACTION OF THE **CUSTOMER** EXPRESSLY ALLOWED UNDER THE **AGREEMENT** MUST BE COMMENCED WITHIN 1 (ONE) YEAR AFTER THE CAUSE OF ACTION HAS ARISEN.

12. BREACH

12.1 In the event that the **Customer**:

12.1.1 breaches any condition contained in these terms and conditions and failing to pay any amount due and payable on the due date, and having failed to rectify such breach or outstanding payments within 10 (ten) days of having been requested to do so in writing by the **Company**;

12.1.2 the **Customer** dying or ceasing to exist for any reason;

12.1.3 the **Customer's** estate being placed under provisional or final liquidation or sequestration, or provisional or final judicial management as the case may be,

then, and in that event, the **Company** shall, without retracting from other remedies which may be available to it, be entitled to cancel this **Agreement** and cancel the sale of any **Goods** to the **Customer** on written notice to the **Customer** and to rely on the provisions of this clause to repossess those **Goods** sold and delivered by the **Company** to the **Customer** or to claim specific performance of all the **Customer's** obligations whether or not such obligations would otherwise have fallen due for performance, in either event, without prejudice to the **Company's** rights to claim damages.

13. SURETY

THE SURETY WHO SIGNS THIS **AGREEMENT** ("THE SIGNATORY") DOES HEREBY INTERPOSE AND BIND HIMSELF IN FAVOUR OF THE **COMPANY**, AS SURETY FOR AND CO-PRINCIPAL DEBTOR *IN SOLIDUM* WITH THE **CUSTOMER**, FOR THE DUE PAYMENT OF EVERY SUM OF MONEY WHICH THE **CUSTOMER** OWES TO THE **COMPANY** IN RESPECT OF THIS **AGREEMENT**. THE SIGNATORY HEREBY RENOUNCES THE BENEFITS OF THE LEGAL EXCEPTIONS OF EXCUSSION, DIVISION, CESSION OF ACCOUNT, NO VALUE RECEIVED, AND REVISION OF ACCOUNTS, THE MEANING WHEREOF THE SIGNATORY DECLARES HIMSELF TO BE FULLY ACQUAINTED.

14. REMEDIES

14.1 The **Customer's** exclusive remedy for shortage of the **Goods**, damage or defective **Goods** (whether or not occurring as a result of the **Company's** alleged negligence) or any other cause of action arising out of the

Agreement, including breach of warranty, is expressly limited only to replacement of non-conforming **Goods** or payment of an amount not exceeding the purchase price of the **Goods** for which damages are claimed, at the **Company's** option.

14.2 The **Customer** shall have no right to set-off, to withhold payment or to make a reduction in price.

14.3 The **Customer's** remedy of replacement or refund is available only if non-conformance was not caused by the **Customer** or by accident, fire or other hazard.

15. INDEMNITY

The **Customer** agrees to indemnify, hold harmless and defend the **Company** and the **Company's** directors, officers, employee's and agents, and the directors, officers, employees and agents of any of the **Company's** parent, holding company, subsidiary or related company from and against any and all claims, suits, losses, damages, costs, fees and expenses arising out of the death or injury to person or damage to property resulting from the sale, marketing or use of the **Goods** by the **Customer**, except that such claims, suits, losses, damages, costs, fees or expenses must have arisen or resulted from any grossly negligent or wrongful act or omission of the **Company**.

16. INSURANCE

The **Company** shall obtain coverage as required by law and such other insurance coverage as the **Company** deems necessary, in its sole discretion, to fulfil its obligations under this **Agreement**.

17. LEGAL ACTION

In the event of the **Company** instructing attorneys in regard to any breach by the **Customer** of any of the terms and conditions of this **Agreement**, then the **Customer** shall pay all such legal costs on the scale between Attorney and own client, including any costs incidental to such action instituted against the **Customer**.

18. JURISDICTION

18.1 The Parties consent to the jurisdiction of the Magistrate's Court to determine any action or proceedings which may arise under or in connection with this **Agreement**.

18.2 In the event that a dispute of a purely technical/engineering nature arises, then the **Company** may elect to refer the matter to arbitration, which arbitration shall be conducted in accordance with the Arbitration Act 42 of 1965 as amended. The arbitrator's decision will be final. Notwithstanding any other provision contained in this **Agreement**, the **Company** may at its sole election, pursuant to any dispute of whatsoever nature which may arisen between the **Company** and the **Customer** in terms of this **Agreement** and/or in respect of any contract entered into between the

Company and the **Customer**, refer such dispute for adjudication under the auspices of the Arbitration Foundation of Southern Africa in terms of its expedited rules for arbitration, which arbitration shall be held in Sandton, Johannesburg.

- 18.3 This **Agreement**, as well as the relationship between the **Company** and the **Customer** is governed by the laws of the Republic of South Africa.

19. CERTIFICATE OF INDEBTEDNESS

- 19.1 A certificate under the hand of the Managing Director or any other duly authorised director of the **Company** as to the existence and the amount of the **Customer's** indebtedness to the **Company**, as well as the amount of any interest accrued thereon, and as to any other fact, matter or thing relating to the **Customer's** indebtedness to the **Company**, shall be accepted as sufficient (*prima facie*) proof of the contents and accuracy thereof and of the amount of the **Customer's** indebtedness for the purpose of provisional sentence or summary judgment or any other proceedings against the **Customer** in any competent Court and shall be valid and constitute a liquid document for such purposes.

- 19.2 Furthermore, it shall not be necessary to prove the appointment and/ or qualification of the person signing such a certificate and it shall be deemed to be sufficient, particularly for the purpose of any action or any other proceeding instituted by the **Company** against the **Customer**.

20. SEVERABILITY

If any of the provisions of this **Agreement** are held to be invalid, the validity of the remainder of the provisions of this **Agreement** shall not be affected and the rights and obligations of the Parties shall be construed and enforced as if this **Agreement** did not contain the invalid provision(s) and to this end the provisions of this **Agreement** and the application thereof are hereby declared to be severable.

21. NOTICE AND DOMICILIA

- 21.1 Any notice to be given to the Parties in terms of this **Agreement** shall be in writing and delivered by hand during ordinary business hours or e-mailed to the addresses mentioned hereunder, which physical address the Parties choose as their domicilium citandi et executandi for legal process purposes arising out of this **Agreement**.
- 21.2 The **Company**: 24 Falcon Lane, Lanseria Cooperate Estate, 1739 Lanseria, or the e-mail address of the managing director of the **Company**.
- 21.3 The **Customer**: The delivery address as reflected on the face of the latest **Delivery Note** issued to the **Customer**, or its registered physical address as appears on the records of the Companies and Intellectual Property

Commission ("CIPC"), or the physical address as appears hereinbelow at the signature part of the **Customer** at the time of delivery of any notice or legal process, or the e-mail address of any director of the **Customer**, who is a director reflected on the records of the CIPC at the time of delivery of the notice or legal process, or such other address within the Republic of South Africa as either Party may choose by written notice to the other.

- 21.4 Any notice to be delivered by a Party in terms of this **Agreement**, shall be delivered before 16h00 on a day which is not a Saturday, Sunday or promulgated public holiday in South Africa. If any notice to be delivered after 16h00 or any day which is a Saturday, Sunday or said public holiday, delivery of the notice shall be deemed to have been effected on the first following day which is not a Saturday, Sunday or public holiday.

22. CESSION

- 22.1 The **Customer** hereby irrevocably and in its own interest (*in rem suam*) cedes, pledges, assigns, transfers and makes over unto and in favour of the **Company**, all of its rights, title, interest, claim and demand in and to all claims/debts/book debts of whatsoever nature and description and howsoever arising which the **Customer** may now or at any time hereafter have against all its debtors without exception as a continuing covering security for the due payment of every sum of money which may now or at any time hereafter be or become owing by the **Customer** to the **Company** from whatsoever cause or obligation howsoever arising which the **Customer** may be or become bound to perform in favour of the **Company**.
- 22.2 In the event of prior deeds of cession, this cession shall operate as a cession of all the **Customer's** reversionary rights.
- 22.3 The **Company** is hereby irrevocably empowered by the **Customer** to do all things necessary to give effect to the terms of this cession.

23. GENERAL

- 23.1 This **Agreement** constitutes the entire agreement between the Parties and no representation by either of the Parties or their agents, whether made prior or subsequent to the signing of this **Agreement**, shall be binding on either of the Parties unless done in writing and signed by the Parties hereto.
- 23.2 No variation, alteration or consensual cancellation of this **Agreement** or any of the terms thereof, including in respect of this clause 23.2, shall be of any force or effect, unless done in writing and signed by the Parties hereto.
- 23.3 No waiver or abandonment by either Party of any of its rights in terms of this **Agreement** shall be binding on that Party, unless such waiver or abandonment is in writing and signed by the waiving Party.

- 23.4 No indulgence, extension of time, relaxation or latitude which any Party may show, grant or allow to another shall constitute a waiver by a Party of any such Party's rights and such Party shall not be prejudiced or stopped from exercising any of its rights against any Party which may have arisen in the past or which might arise in the future. Unless the context indicates otherwise, the rights and obligations of any Party arising from this **Agreement** shall devolve upon and bind its successors-in-title.
- 23.5 The Parties agree that they will do all things and sign all documents necessary to give effect to the terms of this **Agreement** and to all transactions deriving therefrom.

24. WARNING

- 24.1 **Certain of the Goods sold may, by its very nature, cause serious injury or death if not correctly used. It is therefore imperative that the operating manual and/or directions of use as provided by the manufacturer and/or the Company be strictly followed and adhered to.**
- 24.2 **It is the duty of the Customer to ensure that it is in possession of the applicable operating manual and/or directions of use.**

SIGNED AT _____

BY THE **CUSTOMER** ON THIS

THE _____ DAY OF _____ 20 _____

THE **CUSTOMER** CONFIRMS THAT HE/SHE/IT HAS READ AND UNDERSTOOD THE CONTENTS OF THIS DOCUMENT AND UNDERSTANDS THAT HE/SHE/IT IS BOUND BY THESE TERMS AND CONDITIONS.

Signature: _____

Name: _____

Designation: _____

Customer's Street Address:

