



Jasco Enterprise Standard Terms for the Supply of Goods and Services

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Approval Sheet

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1 Introduction

1.1 Document Overview

The document provides Jasco Enterprise’s standard terms for the supply of goods and/or services.

1.2 Version information

Version	Changes
1.0	First approved document
2.0	Updating document after structural changes
2.1	Reviewed the whole document

2 Definitions and interpretation

2.1 In this contract:

- 2.1.1 “Acceptance” means written notification from the Customer to the Company stating that Goods have met their Acceptance Criteria.
- 2.1.2 “Acceptance Criteria” means the criteria agreed between the Parties against which Goods will be measured.
- 2.1.3 “Acceptance Testing” means the testing of Goods undertaken by the Customer with or without the assistance or participation of the Company in order to determine whether or not Goods meet their Acceptance Criteria.
- 2.1.4 “Business Day” means any day other than a Saturday, Sunday or official public holiday;
- 2.1.5 “Company” means Jasco Enterprise Proprietary Limited (registration number: 1983/003209/07), a company duly incorporated in accordance with the laws of South Africa.
- 2.1.6 “Confidential Information” means all information of or relating to the Company that is reasonably regarded as confidential , to the extent that it is not freely and publicly available, including but not limited to commercial, financial, technical, scientific and research information, trade secrets, passwords, or other secret codes, information disclosed with the permission of third parties in which the third parties have confidentiality rights, information legally protected from disclosure, any information the unauthorised disclosure of which could reasonably be expected to cause harm or risk to the Company and any other information designated by the Company as confidential or which is manifestly confidential.
- 2.1.7 “Contract” means a contract for the supply of Goods and/or Services, comprising these Standard Terms, a Quotation accepted by the Customer in writing and such other documentation as may be agreed between the Parties.
- 2.1.8 “Customer” means the purchaser of Goods and/or Services from the Company, as identified in a Quotation.
- 2.1.9 “Goods” means any tangible or intangible items purchased by the Customer as identified in a Quotation.

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- 2.1.10 "Losses" means all losses, damages, costs, claims, judgments and penalties.
- 2.1.11 "Parties" means the Company and the Customer and "Party" means, as the context requires, either one of them.
- 2.1.12 "Premises" means the Company's principal place of business in South Africa.
- 2.1.13 "Services" means the services to be rendered by the Company to the Customer as identified in a Quotation.
- 2.1.14 "Quotation" means a written quotation or proposal prepared by the Company and provided to the Customer for the supply of Goods and/or Services.
- 2.1.15 "Rejection" means written notification from the Customer to the Company that Goods have failed to meet their Acceptance Criteria, specifying the grounds of failure.
- 2.1.16 "Standard Terms" means these terms for the supply of Goods and/or Services.
- 2.2 Headings of clauses do not govern or affect the interpretation of this Contract.
- 2.3 If any provision in a definition confers rights, or imposes obligations on any Party, effect is given to it as a substantive provision of this Contract.
- 2.4 Unless the context indicates otherwise an expression which denotes any gender includes both the others; reference to a natural person includes a juristic person; the singular includes the plural, and the plural includes the singular.
- 2.5 Any number of days prescribed in this Contract excludes the first day and includes the last day and any relevant action or notice may be validly done or given on the last day.
- 2.6 Unless the context indicates otherwise if the day for payment of any amount or performance of any obligation falls on a day which is not a Business Day, that day will be the next Business Day.
- 2.7 The words "including" and "in particular" are without limitation.
- 2.8 Any reference to legislation is to that legislation as at conclusion of the Contract, as amended or replaced from time to time.
- 2.9 Any reference to a document or instrument includes the document or instrument as ceded, delegated, novated, altered, supplemented or replaced from time to time.
- 2.10 A reference to a Party includes that Party's successors-in-title and permitted assigns.
- 2.11 The rule of interpretation that, in the event of ambiguity, the contract must be interpreted against the party responsible for the drafting of the contract does not apply.
- 2.12 The termination of this Contract does not affect those of its provisions which expressly provide that they will operate after termination, or which must continue to have effect after termination, or which must by implication continue to have effect after termination.

3 Duration of the Contract

- 3.1 A Contract commences on written acceptance by the Customer of each Quotation, unless agreed otherwise in writing between the Parties, and endures until fulfilment of the Parties' obligations, unless terminated earlier in accordance with the Contract.
- 3.2 Quotations are open for acceptance by the Customer in writing within 30 days (or such longer time as may be specified therein) after the date of the Quotation.

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- 3.3 No statement, recommendation, figure, advice, formula, specification, illustration, diagram, price list, dimension, weight, performance estimate, drawing or any other representation given by the Company to the Customer shall form part of the Contract or be construed as a representation inducing the contract unless contained in writing in the Quotation.
 - 3.4 No other terms, whether contained in the Customer's documentation or otherwise, shall be binding on the Company unless the Company specifically agrees to them in writing.

4 Order of precedence

- 4.1 Where any of the provisions of a Quotation shall be found to conflict with or differ from the provisions of these Standard Terms, the provisions of the Quotation shall prevail.
- 4.2 If Quotations in respect of the same Goods and/or Services conflict, the one agreed by the Parties later in time prevails.

5 Supply of Goods

- 5.1 The Company will supply the Goods described on, and in the quantities specified in, the Quotation to the Customer.
- 5.2 The Goods will be delivered and, where applicable installed, in accordance with clause 6.
- 5.3 Notwithstanding any other term of this Contract, where the Goods comprise software, unless otherwise stated:
 - 5.3.1 The Customer will be required to sign a license agreement before delivery of software can be effected;
 - 5.3.2 Installation of software in all cases remains the Customer's responsibility; and
 - 5.3.3 The Customer shall rely on the warranty of the supplier of the software and shall have no recourse to the Company in respect of defective or unsatisfactory software.

6 Delivery and Installation of Goods

- 6.1 Unless otherwise agreed in writing, the Customer must take delivery of all Goods at the Company's Premises. If the Company agrees to deliver Goods at any other location, the Customer will pay all delivery costs incurred by the Company on demand.
- 6.2 The Company may deliver Goods forming the subject matter of Quotations in whatever quantities and on however many separate occasions as it may, in its discretion, decide.
- 6.3 The Customer must take delivery of Goods when delivery is tendered by the Company. The Company does not guarantee delivery on any specific date, but will endeavour to give delivery on the dates stated on the Quotation. Notwithstanding any time or date for delivery stipulated by the Customer, the Company shall not be liable for any Losses arising from delays in delivery or failure to deliver for any reason whatsoever and neither shall such delay or failure entitle the Customer to cancel the Contract.
- 6.4 The Customer must acknowledge the receipt of Goods of which it has taken delivery by means of signature on the delivery note accompanying the Goods.

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- 6.5 Subject to the warranty in clause 14, any complaint from the Customer in connection with the Goods including in respect of the quality, packaging, failure on delivery, damage in transit or short delivery must be received by the Company in writing within 7 days of delivery of the Goods. The Company will replace incorrect or damaged Goods in respect of which notice is received within this 7 day period at no extra charge, unless the Company has to procure new stock from its suppliers in which case it will replace incorrect or damaged Goods within 7 days from receipt of said stock at the premises of the Company, but the Customer will reimburse the Company on demand for any expenses incurred and the cost of the replacement Goods if it transpires that replacement Goods were not in fact required.
- 6.6 Failing notification within 7 days, any Goods delivered by the Company to the Customer which are not subject to Acceptance in terms of clause 11 shall be deemed to conform to the description on the Quotation, and to have been delivered in the quantity specified on the Company's delivery note, without damage of any nature.
- 6.7 The Company shall, provided it deems it appropriate and at the Customer's request and expense (unless otherwise agreed in writing), deliver and install the goods at the Customer's premises.
- 6.8 The Customer shall, at its own expense, prepare its premises in accordance with the Company's installation instructions and procedures and such preparation shall be completed at least 72 hours prior to the delivery date.
- 6.9 The Customer shall bear all the costs in respect of any electrical, structural or non-structural alterations required at its premises and in respect of the purchase, installation and assembly of inter alia any emergency electrical power generating equipment or disaster recovery equipment, required.
- 6.10 The Customer shall render every assistance necessary and ensure access as may be reasonably required to enable the Company to effect a speedy installation. Installed Goods are subject to Acceptance in terms of clause 11.

7 Supply of Services

- 7.1 The Company will render the Services described in the Quotation to the Customer at the Premises. If the Company agrees to render the Services at any other location, the Customer will pay all costs incurred by the Company.
- 7.2 The Company will use reasonable care and skill to perform the services identified in the Quotation, offer or otherwise agreed under the Contract.
- 7.3 The Company shall use all reasonable endeavours to complete its obligations within the timelines defined in the Quotation.

8 Price

- 8.1 The Customer will pay the price for the Goods and/Services stated in the Quotation, subject to any adjustments under clauses 8.2, 8.3 and 8.4. The Company will give written notice of any increase in price of the Goods and/or Services prior to delivery of the Goods or the provision of the Services.

8.2 Taxes

The price given in the Quotation shall not, unless otherwise specified, include any taxes, surcharges, duties or levies or any charges for the Customer's special packaging requirements. If any of these are specified in the Quotation and increased before delivery, the increase shall be for the Customer's account.

8.3 Quotation changes

Prices quoted are valid for the Goods and/or Services as indicated in the Quotation only. Any changes by the Customer in the Goods and/or Services requested may lead to price adjustments. A new Quotation or variation quotation, reflecting the changes to the request, must be accepted by the Customer in writing prior to delivery of the Goods.

8.4 Exchange rate variations

- 8.4.1 Where the price given in the Quotation is subject to exchange rate variations, the Company will as soon as possible after receipt of the Customer's accepted Quotation, obtain, at its own expense, forward cover for any change in the rate of exchange. The rate at which such cover is obtained will be used to calculate the final price of the goods and the Customer will be advised of the final price promptly thereafter.
- 8.4.2 In making adjustments to the price in terms of this clause 8.4, the Company shall be obliged to disclose to the Customer only the amount subject to the variation and the rate at which forward cover was obtained. The Customer shall not be entitled to receive other information relating to the cost or price analysis of the Goods sold.

8.5 Disputes as to price adjustments

- 8.5.1 If the Customer disputes the Company's right to increase the price of the goods and/services or the amount of any increase, the Customer shall give written notice to that effect to the Company within 7 days after the Company's notice of the increased price, failing which the increased price shall be deemed accepted.
- 8.5.2 The Parties will negotiate in good faith to resolve the dispute. If the dispute cannot be resolved between the parties within 7 days of the Company's receipt of the Customer's notice 8.5.1, it shall be referred for a decision to the Company's auditors for the time being.
- 8.5.3 A certificate signed by the Company's Auditors as to the amount of any increase shall be prima facie proof of the amount due to the Company and shall be binding upon both parties.

9 Payment

- 9.1 If the Company's credit control clearance procedure results in credit being granted to the Customer in respect of a particular Quotation, then in respect of each delivery, unless otherwise specified in the Quotation, payment is due within 30 days from the date of the Company's statement.
- 9.2 If the Company does not extend credit to or withdraws credit from the Customer, Goods and/or Services must be paid for in cash in full, prior to or on the date of delivery.

- 9.3 If any amount due to the Company is not paid on the due date, the Customer will be liable to pay interest on the overdue amount at the rate of two percent (2%) above the fluctuating prime bank overdraft lending rate, published by Standard Bank of Southern Africa, from time to time, calculated with effect from the due date of payment to final date of payment, both days inclusive.
- 9.4 All payments shall be made to the Company by way of electronic funds transfer in South African currency (unless payment in another currency is specified) and free of exchange, deduction or set-off into the Company's bank account as follows:
- | | |
|-----------------|----------------------------|
| Name of bank: | Standard Bank |
| Branch name: | Midrand |
| Branch Code: | 00 11 55 |
| Account holder: | Jasco Enterprise (Pty) Ltd |
| Account number: | 06 111 347 6 |
- or in another method specified by the Company in writing.
- 9.5 A certificate signed by the Company's Financial Director, Financial Manager or Credit Manager as the case may be, specifying the amount owing by the Customer to the Company and also stating that the said amount is due and owing, shall be *prima facie* proof of the amount of such indebtedness.

10 Risk and Ownership

- 10.1 Where delivery occurs at the Company's Premises, all risk of loss or damage to the Goods passes to the Customer on delivery. Where the Customer has requested delivery at another location, all risk of loss or damage to the Goods passes to the Customer when the Goods leave the Company's Premises.
- 10.2 Notwithstanding clause 10.1, if delivery or installation of any of the Goods is delayed due to the fault, negligence or breach by the Customer of any of its obligations in terms of clause 11, all risk of loss or damage to the Goods passes to the Customer on the date on which delivery is tendered by the Company. The Customer shall be liable to the Company for any resulting Losses and will reimburse the Company for its reasonable expenses, including storage charges, on demand.
- 10.3 Notwithstanding anything to the contrary in this Contract, ownership of Goods was only pass to the Customer on the Company's receipt of the full purchase price.

11 Acceptance of Goods and/or Services

- 11.1 Where Goods and/ or Services are subject to Acceptance by the Customer, the Company and the Customer may agree Acceptance Criteria and Acceptance Tests applicable to the Goods in writing prior to the date of their submission to the Customer. Acceptance Tests and Acceptance Criteria form part of the Quotation to which they correspond. If no Acceptance Criteria or Acceptance Tests are agreed then signature by the Customer for the products and/or services will constitute Acceptance in terms of this Agreement.
- 11.2 Acceptance Tests will be performed by the Customer or an independent third party appointed by it, in order to ascertain whether Goods and/or Services meet their Acceptance Criteria. The

Company will give reasonable assistance required by the Customer to properly undertake Acceptance Testing of all Goods.

- 11.3 Where no time period for Acceptance Testing is agreed, the Customer will have 10 Business Days within which to Acceptance Test Goods and/or Services. Goods and/or Services will be deemed Accepted if the Customer fails to give notice of its Acceptance or Rejection of Goods and/or Services within the time permitted or uses the Goods and/or Services in a commercial or production environment. The Customer bears the risk of any adverse consequences of use of Goods for which no notice of Acceptance has been given.
- 11.4 If the Customer Reject's any Goods and/or Services, it may:
 - 11.4.1 return the Goods to the Company for remediation together with the reasons for the Goods' failure to meet its Acceptance Criteria. The Company will remedy the faults within 10 Business Days or such longer period agreed to by the Parties and the Goods will be resubmitted to the Customer for Acceptance Testing. Clauses 11.1 to 11.4 apply to the re-submission and further Acceptance Testing of all Goods until they have met their Acceptance Criteria;
 - 11.4.2 accept the Goods and/or Services at a reduced charge by agreement with the Company.
- 11.5 The Customer may change the date of the submission of any Goods and/or Services with the written agreement of the Company, provided that agreement is not unreasonably withheld. The Customer will bear the cost of the change, if any.

12 Suspension of Deliveries and Repossession of Goods

- 12.1 Subject to clause 21, if any amount due and payable by the Customer to the Company is in arrears, the Company shall have the right, until such amount has been paid, to: suspend any deliveries of Goods and the provision of Services under the Contract or any other contract then in force between the Company and the Customer.
- 12.2 The Company, in addition to any other remedies which it may have, shall have the right, which the Customer shall permit, to repossess any Goods sold to the Customer and any written works produced as a result of rendering the Services in respect of which payment in full has not been received timeously.
- 12.3 If the Customer sells the Goods before it has paid for them in full it shall be obliged to incorporate in the terms of such sale, provisions reserving ownership of the goods to the Company until the Company has received the purchase price in full and provisions enabling the Company to exercise its rights in terms of Clause 12.2 against the purchaser of such Goods. Written notice of the Company's rights must also be given to the landlord of any premises on which the Goods are situated. Copies of the sale agreements or notices to landlords must also be provided to the Company on request.

13 Cancellation and Returned Goods

- 13.1 Accepted Quotations in respect of standard Goods (all of the components of which are manufactured by the Jasco Enterprise) may be cancelled by mutual written agreement, upon return of the Goods by the Customer within 30 days of delivery, in new condition, and upon payment of a cancellation charge of 15% of the net invoice price. The Company, may in its discretion, accept the return of Goods which are not in new condition in which event there

shall be added to the cancellation charge the Company's standard costs and charges for restoring the same to new condition.

- 13.2 Accepted Quotations in respect of goods not covered by Clause 13.1 may not be cancelled by the Customer.

14 Warranties

- 14.1 From the date of delivery of the Goods for a period of twelve (12) months or for the period described in the Quotation, the Company warrants the Goods to be free from any defect in the materials supplied by the Company or in workmanship.
- 14.2 The warranty given in Clauses 14.1 shall not apply to defects caused by abnormal usage of or incorrect application of or incorrect installation for normal usage of the Goods or by any neglect on the part of any person other than the Company. The warranty given in these conditions shall lapse and be of no force and effect if repairs to any allegedly defective Goods are attempted or effected by any person not authorised thereto in writing by the Company.
- 14.3 If the Customer believes that the Goods are subject to a defect covered by this warranty it shall if possible, return the Goods at its own expense to the Company.
- 14.4 The Company warrants that it has the necessary skill and knowledge to perform the Services in accordance with the Contract.
- 14.5 If there is any defect in materials or workmanship covered by the warranties in this clause 14, the Company may either remedy such defect or reimburse the Customer the nett invoice price of the Goods and/or Services against delivery of the goods and/or rendering of services by the Company and shall in any event refund to the Customer the charges reasonably incurred by the Customer in returning the defective Goods to the Company.
- 14.6 Should it transpire that the Goods and/or Services are not defective or that the defects are not covered by this warranty, the Customer shall pay the Company for its services rendered according to its then current tariff of charges.
- 14.7 Save as set out in the Contract, no warranty or guarantee (including those imposed by law) applies in respect of the goods and/or services supplied by the Company and the Company's sole liability shall be in terms of the Contract. However, nothing in this Contract prevents the Customer from exercising any rights it may have in terms of the Consumer Protection Act, 2008.
- 14.8 The Parties warrant that they have the necessary power and authority to conclude the Contract.

15 Support and Maintenance

- 15.1 The Company shall not, subject to the warranty in Clause 14, be liable to carry out any service, maintenance or repair work on any of the Goods supplied and/or the Services rendered save as may be provided for in, and in terms of, a separate maintenance or service level agreement between the parties.

16 Confidentiality

16.1 Rights in Confidential Information

The Parties will not acquire any rights in respect of Confidential Information save as stated in the Contract.

16.2 Documents relating to the Goods and/or Services

16.2.1 All drawings, manuals and other documents submitted to the Customer before conclusion of the Contract shall remain the property of the Company and shall be returned to the Company on demand. The Customer shall not make any form of copy of any of these documents without the Company's prior written approval or disclose their contents to any third party.

16.2.2 If the Company supplies any drawings, manuals or other documents to the Customer with any Goods sold and/or Services rendered, the Customer may not disclose the contents of these documents or provide any copies to any third party without the Company's prior written consent, except to persons purchasing the Goods from the Customer and provided that the Customer imposes a similar obligation upon such purchaser

16.3 Disclosure of Confidential Information

16.3.1 The Customer may disclose Confidential Information to its employees, directors, officers, professional advisors, agents, financiers and consultants, provided that it takes such steps as are necessary to ensure that they adhere to the terms of this Contract. Any disclosure by such parties of the Confidential Information will be an unauthorised disclosure by the Customer.

16.3.2 The Company may authorise the Customer to disclose Confidential Information to a third party other those stated in clause 16.3 at any time provided that such permission will be valid only if given in writing, for disclosure only to the third party identified in the written authorisation and for that specific instance of disclosure only. Clause 16.3 applies to all disclosures in terms of this clause 16.3.2.

16.3.3 The Company may disclose the Confidential Information in order to comply with law or the requirements of any stock exchange on which the shares of the Company are listed. In these circumstances, the receiving Party will:

16.3.3.1 limit the disclosure only to that which is necessary to comply with the law or stock exchange requirements;

16.3.3.2 advise the disclosing Party in writing as soon as reasonably possible of the disclosure or intended disclosure specifying:(i) the Confidential Information subject to disclosure; (ii) the reasons for the disclosure; (iii) the law or stock exchange requirements under the direction of which the disclosure is made; and (iv) where applicable, the identity of any third party requiring disclosure; and

16.3.3.3 provide the disclosing Party with all reasonable cooperation at the cost of the disclosing Party in any steps taken by it to limit or prevent the disclosure.

16.4 Use of Confidential Information

16.4.1 The Customer will not use the Confidential Information for any purpose other than that for which it is disclosed in connection with the Goods and/or Services, as otherwise permitted by the disclosing Party in writing in accordance with the Contract.

16.5 Standard of Care

- 16.5.1 The Parties will receive and use Confidential Information in such a way as to prevent any unauthorised access to it.
- 16.5.2 If a Party becomes aware that Confidential Information has been disclosed contrary to the terms of the Contract, that Party must immediately:
- 16.5.2.1 Inform the other Party in writing specifying what Confidential Information has been disclosed, how and to whom it has or may have been disclosed, when the unauthorised disclosure took place and what steps will be taken to retrieve the Confidential Information and prevent future unauthorised disclosures;
- 16.5.2.2 Take such steps as are necessary or as the other Party directs to retrieve the Confidential Information from unauthorised persons and to prevent further unauthorised disclosure of the Confidential Information;
- 16.5.2.3 Co-operate with the other Party in taking any steps taken by it to retrieve the Confidential Information from unauthorised persons and to prevent further disclosure of the Confidential Information.
- 16.5.3 Clause 16.3.2 is without prejudice to any rights of the disclosing Party arising from the unauthorised disclosure of its Confidential Information.

16.6 Return of Confidential Information

- 16.6.1 Upon the request of the disclosing Party, the receiving Party will return, destroy or expunge from any storage device all Confidential Information (other than documents prepared by the Customer) provided that if required by law or for purposes of using the Goods, the receiving Party may retain one copy of the Confidential Information for the period so required.
- 16.6.2 Where the Company has required destruction of the media containing Confidential Information the Customer must, on request, confirm in writing that it has destroyed all Confidential Information and made reasonable efforts to expunge Confidential Information stored electronically from any storage device on which it was held.
- 16.6.3 All requests in terms of clause 16.6.2 must be complied with within five Business Days.

17 End-Users

The Company shall be entitled at any time to deal directly with any person to whom the Customer has sold or ordinarily sells or hopes to sell any Goods, if in the Company's absolute discretion it considers that it is necessary to do so to protect any of its rights (whether in terms of any Contract or not), including its reputation.

18 Intellectual Property Rights

- 18.1 All rights and interest in intellectual property in the Goods and/or Services, any adaptation, development or modification thereof, and any discoveries connected therewith, whether by the Company or the Customer shall vest in the Company or its licensors.
- 18.2 The Customer will not acquire any rights or interest in intellectual property in the Goods and/or Services save as stated in the Contract.

- 18.3 The Company grants to the Customer a perpetual, irrevocable royalty-free, non-transferable licence to use, and to permit its contractors to use, any intellectual property embedded or incorporated in the Goods and/or written works developed, created or designed as a result of rendering Services (other than software for which a separate licence agreement is required). This licence extends to other Company intellectual property made available to the Customer under a Contract where the Company does not ordinarily require a specific licence agreement to be concluded in respect thereof or a fee to be paid for such licence. The Customer may use, and permit its contractors to use, the Company's intellectual solely for its internal business purposes. This clause will survive termination of any other terms of a Contract.
- 18.4 If any intellectual property rights in the Goods and/or Services are found to be registerable or patentable, the Company will be entitled to file applications for such registrations in its name in whichever country it chooses and the Customer shall, if and when so required by the Company, and at the expense of the Company, apply for or join in applying for a patent or such other registered protection as may be appropriate, on behalf of the Company and will execute all documents and do all things necessary for vesting the protection and all rights, title and interest in respect of the intellectual property rights to the Company or in such other person as the Company may specify, absolutely and as sole beneficial owner.

19 Indemnity

- 19.1 The Customer indemnifies the Company against all Losses suffered (including costs on the attorney and own client scale) arising out of any:
- 19.2 breach of clauses 16 or 18;
- 19.3 infringement of intellectual property which takes place as a result of the Company following any instructions given to it by the Customer; or
- 19.4 any Losses arising from use of the Goods and/or the Services rendered by the Company to the Customer, suffered by the Customer or a third party, after delivery of the Goods or rendering of the services to the Customer.

20 Force Majeure

- 20.1 The Company shall not be responsible for its failure to perform any obligation under the Contract in the event that such failure is caused by force majeure.
- 20.2 For the purposes of the Contract "force majeure" shall mean any circumstance which:
- 20.2.1 is beyond the reasonable control of the Company and for which it is not responsible; and
- 20.2.2 is not a circumstance which the Company could, by the exercise of a standard of care and skill which could reasonably be expected of the Company, have avoided.
- 20.3 Subject to the above, force majeure includes but is not limited to war (whether declared or not), revolution, invasion, insurrection, riot, civil commotion, mob violence, sabotage, blockade, embargo, boycott, the exercise of military or usurped power, fire, explosion, theft, storm, flood, drought, wind, lightning or other adverse weather condition, epidemic, quarantine accident, breakdown of machinery or facilities, strike, lockout or labour dispute, acts or restraints of government imposition, or restrictions of or embargos on imports or exports.

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- 20.4 Notwithstanding the provisions of Clause 20.2, a labour dispute, strike or lock-out which could be resolved by the Company acceding to the demands of it shall be deemed to be an event of force majeure.
- 20.5 The Company shall give notice to the Customer of an event of force majeure within 5 Business Days.
- 20.6 If the event of force majeure is of such a nature that it will result in impossibility of performance of the obligation in question the Customer shall be entitled within 30 days of receipt of notice of the force majeure event, to terminate this Contract upon notice to the Company.
- 20.7 If the event of force majeure is of such a nature that it will not result in impossibility of performance of the obligation in question but will merely delay the performance thereof, the Company giving notice of such event of force majeure shall be entitled to such extension of time in which to perform such obligation as may be reasonable in the circumstances, taking into account the interests of both Parties: provided that if the force majeure situation persists for a period in excess of ninety days, the Customer shall be entitled upon notice to the other to terminate this Contract.
- 20.8 The Customer is not entitled to recover any damages which it may suffer as a result of premature termination in terms of this clause 20.

21 Breach and Termination

- 21.1 The Company shall be entitled to terminate the Contract for any reason whatsoever by furnishing the Customer with 30 (thirty) days' written notice and all amounts due by the Customer to the Company from any cause arising, notwithstanding any earlier agreement for credit, shall immediately be due and payable.
- 21.2 Should any Party ("Defaulting Party") breach any of the provisions of this Agreement, then the other Party ("Aggrieved Party") may give the Defaulting Party 14 (fourteen) days' written notice or such longer period of time as the Aggrieved Party may specify in the notice, to remedy the breach. If the Defaulting Party fails to comply with the notice, the Aggrieved Party may:
- 21.2.1 claim immediate payment and/or performance by the Defaulting Party of all of the Defaulting Party's obligations that are due for performance; or
- 21.2.2 subject to clause 21.3, cancel the Contract upon written notice to the Defaulting Party where the breach constitutes a material breach,
- in either event without prejudice to the Aggrieved Party's right to claim damages or to exercise any other rights that the Aggrieved Party may have under the Contract or in law.
- 21.3 The Company shall be entitled to summarily cancel this Contract by written notice to the Customer and/or claim from the Customer immediate payment of any monies due by the Customer to the Company from any cause arising, notwithstanding any earlier agreement for credit, if:
- 21.3.1 the Customer fails to pay any amount due to the Company under this or any other Contract on the due date thereof; or

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- 21.3.2 the Customer breaches a material term of the Contract; or
 - 21.3.3 the Customer is sequestrated or placed in liquidation or under judicial management whether provisionally or finally; or
 - 21.3.4 the Customer commits any act of insolvency; or
 - 21.3.5 the Customer enters into any compromise with his creditors; or
 - 21.3.6 the Customer fails to satisfy, take on appeal or on review any judgment granted against him within 7 days after the date of judgment.
- 21.4 Any cancellation of this Contract by the Company is effective on receipt of a notice of cancellation by the Customer (in the case of a breach in terms of clause 21.3.1 or 21.3.2) or the date of the breach (in circumstances mentioned in clauses 21.3.3 to 21.3.6).
- 21.5 Any cancellation is without prejudice to any claim that the Company may have in respect of any breach of this Contract by the Customer arising prior to the date of cancellation.

22 Limitation of liability

- 22.1 The Company's liability for direct Losses arising from or in connection with the Contract is limited to the amounts paid by the Customer under the Quotation in respect of which the Losses arise.
- 22.2 Notwithstanding clause 22.1, neither Party is liable for any consequential or indirect Losses.
- 22.3 The limitations of liability in this clause 22 do not apply to Losses arising from fraud or wilful misconduct.
- 22.4 Notwithstanding clause 22.1, the Company shall not be liable for any Losses whatsoever suffered by the Customer for:
- 22.4.1 The improper use of Goods; and/or
 - 22.4.2 Services rendered as a result of inaccurate information, instructions or specifications by the Customers.

23 Legal Charges

In the event of the Company instructing its Attorneys to recover money or Goods from the Customer, the Customer shall be liable for and shall pay all legal costs incurred by the Company on an attorney and own client scale including collection commission and tracing agents charges.

24 No Relaxation

No relaxation which the Company may give at any time in regard to the carrying out of any of the Customer's obligations in terms of any contract shall prejudice or be a waiver of any of the Company's rights in terms of that or any other contract.

25 Dispute Resolution

- 25.1 Any dispute arising from or in connection with this Contract, its breach, termination or cancellation must be resolved in terms of this clause 25.
- 25.2 Disputes must be referred to senior executives of each Party with settlement authority as soon as possible for attempted resolution. The Parties' senior executives must attempt to resolve the dispute as speedily as possible and will meet as often as necessary to do so. Any settlement must be recorded in writing and signed by authorised persons on behalf of each Party. The senior executives will have failed to resolve the dispute when either Party declares this to be the case.
- 25.3 If the dispute is not resolved by the senior executives, the dispute will be resolved by way of arbitration at the instance of either Party.
- 25.4 The arbitration will be held, subject to the provisions of this Contract, with only the Parties, their legal representatives, arbitrator/s and any witnesses who may be called to give evidence present and otherwise in accordance with the Rules of the Arbitration Foundation of Southern Africa ("AFSA").
- 25.5 The arbitrator will be a senior counsel with no less than ten years standing agreed on between the Parties. If the Parties cannot agree upon an arbitrator within 10 Business Days after the arbitration has been demanded, the arbitrator will be appointed by the chairman of AFSA at the request of either Party. Such arbitration shall take place in English and at Sandton, South Africa.
- 25.6 The arbitrator will be obliged to give written reasons for the award, which will be subject to appeal in terms of the appeal rules of the Foundation. Either Party may have the award of an arbitrator, including an award on appeal made an order of court.
- 25.7 This clause 25 will remain valid and enforceable in perpetuity notwithstanding the expiry or termination of the balance of this Contract.
- 25.8 Nothing contained in this Contract will preclude either party from obtaining urgent or interim relief on an urgent basis from a court of competent jurisdiction.
- 25.9 This clause 25 constitutes each Party's irrevocable consent to arbitration proceedings, and no Party may withdraw from such proceedings or claim that it is not bound by this clause.
- 25.10 The Parties will continue to perform their respective obligations under the Contract pending the resolution of a dispute, it being agreed that neither Party may, without the agreement of the other, terminate this Contract based on the issues under dispute until the dispute is finally resolved.
- 25.11 A demand by a Party to submit a dispute to arbitration in terms of this clause 25 is adequate legal process to interrupt any time bar laws in respect of legal claims.
- 25.12 This clause 25 is a separate, divisible clause from the rest of this Contract and will remain in effect even if the balance of this Contract is nullified.

26 Applicable law and jurisdiction

- 26.1 This Contract is governed by South African law.

26.2 The Parties unconditionally consent and submit to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Division, **[Johannesburg]**) in regard to all matters arising from this Contract.

27 General

- 27.1 This Contract is the whole agreement between the Parties in regard to its subject matter.
- 27.2 No addition to or variation or consensual cancellation of this Contract, including this clause, has effect unless in writing and signed by the Parties.
- 27.3 The Parties undertake to do everything reasonable in their power necessary for or incidental to the effectiveness and performance of this Contract.
- 27.4 Save as is specifically provided in this Contract, no Party is entitled to cede any of its rights or delegate any of its obligations under this Contract without the prior written consent of the other Party affected by the transfer of rights or obligations.
- 27.5 Any illegal or unenforceable provision of this Contract may be severed and the remaining provisions of this Contract continue in force.
- 27.6 This Contract may be executed in counterparts, each of which will be an original and which together constitute the same agreement.

28 Notices and addresses

28.1 Notices

Any notice, consent, approval or other communication in connection with this Agreement ("Notice") will be in writing in English.

28.2 Addresses

- 28.2.1 Each Party chooses the physical address, fax number and/or email address corresponding to its name on the Quotation as the address to which any Notice must be sent.
- 28.2.2 Any Party may by Notice to the other Party change its address and/or the person, if any, for whose attention any Notice must be marked on the Quotation.

28.3 Effective on receipt

- 28.3.1 Any Notice takes effect when received by the recipient (or on any later date specified in the Notice) and, unless the contrary is proved, is deemed to be received:
- 28.3.1.1 on the day of delivery, if delivered by hand to a responsible person at the recipient's physical address. If delivery is not on a Business Day, or is after ordinary business hours on a Business Day, the Notice is deemed to be received on the Business Day after the date of delivery;
- 28.3.1.2 on the first Business Day after the date of transmission, if sent by fax to the recipient's fax number; and
- 28.3.1.3 on the first Business Day after the date of transmission, if sent by email to the recipient's email address.

28.3.2 Despite anything to the contrary in this Contract, a Notice actually received by a Party is effective even though it was not sent, or delivered, or sent and delivered to its address.

28.4 Service of legal process

28.4.1 Each Party chooses its physical address stated on the Quotation as its address at which legal process and other documents in legal proceedings in connection with this Contract may be served (*domicilium citandi et executandi*).

28.4.2 Any Party may by Notice to other Party change its address at which legal process and other documents in legal proceedings in connection with this Contract may be served to another physical address in South Africa.