

BODO MÖLLER CHEMIE SOUTH AFRICA PROPRIETARY LIMITED ("THE SUPPLIER") GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

1. THESE TERMS AND CONDITIONS TO PREVAIL

The customer acknowledges that the only basis upon which the Supplier is prepared to do business with the customer is on the basis that, notwithstanding anything in the customer's enquiry, specification, acceptance, order or other documentation or discussion to the contrary, the terms and conditions contained herein shall constitute the sole terms of the agreement between the Supplier and the customer.

2. NO VARIATIONS OR AMENDMENTS

- 2.1. These terms and conditions constitute the whole agreement between the customer and the Supplier relating to the subject matter hereof.
- 2.2. No amendment or consensual cancellation of these terms and conditions or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of these terms and conditions and no settlement of any disputes arising under these terms and conditions and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of these terms and conditions or of any agreement, bill of exchange or other document issued pursuant to or in terms of these terms and conditions shall be binding unless recorded in a written document signed by an authorised representative of the Supplier (or in the case of an extension of time, waiver or relaxation or suspension, signed by the party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 2.3. No extension of time or waiver or relaxation of any of the provisions or terms of these terms and conditions or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of these terms and conditions, shall operate as an estoppel against the Supplier in respect of its rights under these terms and conditions, nor shall it operate so as to preclude the Supplier thereafter from exercising its rights strictly in accordance with these terms and conditions.
- 2.4. The Supplier shall not be bound by any express, implied or tacit term, representation, warranty, promise or the like not recorded herein, whether it induced the contract between the Supplier and the customer or not.
- 2.5. No person other than a director of the Supplier has any authority to delete, amend or in any respect vary any of these terms and conditions, or accept any other terms and conditions, or agree to a consensual cancellation hereof.
- 2.6. In the event of the Supplier's authorised representative contemplated in clause 2.5 deleting, amending or in any respect varying any of these terms and conditions, the Supplier shall notify the customer, in writing, of such deletion, amendment or variation. Should the customer not object to such deletion, amendment or variation within 7 (seven) calendar days after receipt (or deemed receipt) of the Supplier's aforesaid notification, the customer shall be deemed to have accepted the deletion, amendment or variation of these terms and conditions.

3. QUOTATIONS

- 3.1. Any quotation given by the Supplier to the customer is not an offer by the Supplier to sell the goods, but constitutes an invitation by the Supplier to the customer to do business with the Supplier.
- 3.2. A quotation may be revoked at any time by the Supplier.
- 3.3. The Supplier may accept or reject in whole or in part any order placed upon it by the customer pursuant to the quotation. Accordingly, a contract shall only come into force between the Supplier and the customer if after receipt by the Supplier of the customer's order or acceptance of the quotation, the Supplier confirms, in writing, to the customer that such a contract has been concluded.

4. PLACING OF ORDERS

- 4.1. Orders must be placed by the customer in writing. The order constitutes an offer by the customer to purchase goods from the Supplier in accordance with these terms and conditions.
- 4.2. Orders are subject to written acceptance by the Supplier. Any such order shall upon written acceptance thereof by the Supplier be irrevocable.

5. PURCHASE PRICE AND PAYMENT

- 5.1. The purchase price of the goods shall be the Supplier's standard sale price thereof at the date of acceptance of order, subject to clause 5.4 below.
- 5.2. The purchase price of goods shall include the cost of delivery within South Africa and Kenya only.
- 5.3. Unless otherwise expressly stated, prices are exclusive of value-added tax, which shall be for the account of the customer, unless the customer has given acceptable proof to the Supplier that the supply is a zero rated or an exempt supply. The customer shall pay or reimburse to the Supplier the amount of any value-added tax simultaneously with the purchase price.
- 5.4. The purchase price of goods shall be adjusted to account for:
 - 5.4.1. the amount of any tax, duty or other charge of any nature whatsoever imposed by any law, regulation or enactment of whatsoever nature which comes into force on a date after the date on which any price charged is determined;
 - 5.4.2. the amount of any increase in the rate of any tax, duty or other charge of any nature whatsoever, which takes effect on a date after the date on which any price charged is determined;
 - 5.4.3. any other additional costs of any nature whatsoever arising due to factors beyond the control of the Supplier including, without limitation, an increase in the manufacturer's base cost for the goods;
 - 5.4.4. any increase in the exchange rate from that from that prevailing at the time of acceptance of the order as compared to the final exchange rate contract procured by the Supplier, where pricing is based on foreign purchases in a foreign currency.
- 5.5. In particular, but without limiting the generality of the foregoing, the Supplier shall be entitled to increase the price charged in order to make provision for any increases in cost arising as a result of or during the period of any delay caused by the customer.

- 5.6. Any expenses incurred by the Supplier at the instance of the customer in modifying or otherwise altering or making additions to the design, quantities or specifications for standard goods, and any expenses arising as a result of suspension of work by the Supplier due to instructions given, or a failure to give instructions by the customer, shall be added to the price charged.
- 5.7. If work is carried out by the Supplier other than during normal working hours (i.e. 08.00hrs to 16.30hrs from Monday to Friday (excluding public holidays recognised in South Africa)), the Supplier shall be entitled to charge its usual overtime rates therefor and the contract price shall be adjusted accordingly.
- 5.8. The price shall be payable by the customer to the Supplier by way of electronic funds transfer into the bank account designated for such payment by the Supplier in writing from time to time, in cash in South African currency, without deduction or set-off and free of any exchange.
- 5.9. The Supplier shall invoice the customer in respect of each delivery of goods.
- 5.10. For deliveries:
 - 5.10.1. in South Africa and in Kenya, all invoiced amounts shall be payable by the customer to the Supplier, as contemplated above, within 30 (thirty) calendar days after the date of invoice, unless otherwise agreed by the Supplier in writing;
 - 5.10.2. outside of South Africa and Kenya, all invoiced amounts shall be payable by the customer to the Supplier, as contemplated above, prior to delivery of the goods.
- 5.11. The customer shall not be entitled to suspend any payment obligation to the Supplier for any reason whatsoever.

6. INTEREST

The customer shall pay interest at 8% (eight percent) above the prime interest rate quoted by The Standard Bank of South Africa Limited from time to time, compounded monthly in arrears, on all amounts owing by the customer to the Supplier which have not been paid on the due date thereof, reckoned from the due date thereof until the date of payment. Such interest shall be payable by the customer on demand from the Supplier.

7. IMPORTED GOODS

Where the goods or any part thereof are to be imported, this agreement is subject to the condition that the Supplier's order is accepted and confirmed by the Supplier's own suppliers and that delivery is made thereunder in due course. The Supplier shall not be in breach of this agreement, nor shall it be liable for any losses, costs, damages, expenses or interest incurred or sustained by the customer, pursuant to unavailability, or delays in delivery of, goods from the Supplier's own suppliers.

8. DELIVERY

- 8.1. The Supplier shall deliver the goods to the customer's premises in South Africa or in Kenya. Customer's located outside of South Africa or Kenya will be required to take delivery ex works from the Supplier's warehouse in South Africa or in Kenya.
- 8.2. Any delivery date indicated by the Supplier, whether in the quotation or otherwise, shall merely be an estimated date of delivery and shall not bind the Supplier to effect delivery on or near such date.
- 8.3. The customer shall accept delivery whenever delivery is tendered and shall not be entitled to resile from the agreement nor to withhold or defer any payment nor to a reduction in price nor to any other right or remedy against the Supplier, its servants, agents or any other persons for whom it is liable in law (in whose favour this constitutes a stipulatio alteri) whether for losses, costs, damages, expenses, interest or otherwise (not limited eiusdem generis) on account of delays in effecting delivery, partial delivery or non-delivery, whether occasioned by any negligent act or omission on the part of the Supplier, its servants, agents or any other persons for whom it is liable in law, or not.
- 8.4. If delivery of any particular order is to be effected in consignments, the Supplier shall not be obliged to deliver any part of the order until the purchase price which is due in respect of the part of the order which has already been delivered has been paid.
- 8.5. The Supplier shall have the right to deliver any portion of the goods sold without delivery, or making provision for delivery of, all the goods sold, and to invoice the customer therefor and the customer shall accept such goods when tendered.
- 8.6. In the event of any force majeure event, as contemplated in clause 29, occurring, the Supplier being unable to obtain sufficient material, raw material or energy supply, there being a lack of suitable transportation, or any other similar event, such event automatically defers the Supplier's obligation to perform in terms of these terms and conditions.
- 8.7. The customer shall be obliged to inspect all goods upon delivery and to satisfy itself that the goods (i) are undamaged; (ii) are of the type and quantity ordered and (iii) have a reasonable remaining shelf life. The Supplier shall prepare a delivery note in duplicate in respect of each delivery of goods to the customer. The delivery note shall be signed on behalf of both parties and each party shall retain a copy thereof for its records.
- 8.8. Unqualified signature of the delivery note shall constitute acceptance by the customer that the delivered goods (i) are undamaged; (ii) are of the type and quantity ordered and (iii) have a reasonable remaining shelf life. The customer must endorse the delivery note as to any missing goods, damaged goods or goods with an unreasonable remaining shelf life. No claims of this nature shall be valid unless the delivery note has been endorsed as aforesaid. The customer shall bear the onus of proving that upon delivery, any goods are missing, damaged or that their remaining shelf life is unreasonable.
- 8.9. If the Supplier is unable to deliver the goods to the customer due to any act or omission on the part of the customer, it shall be entitled to charge the customer for reasonable storage costs and other expenses incurred in respect of the goods.
- 8.10. If the customer fails or refuses to furnish the information necessary to enable delivery to be effected, or if it fails or refuses to take delivery, the goods shall, without prejudice to the provisions of clause 8.10, be deemed to have been delivered to the customer upon notification by the Supplier to the customer to that effect.
- 8.11. The Supplier is under no obligation to deliver the goods to any third party at the customer's request.

9. WARRANTIES

- 9.1. The Supplier warrants that, at the time and place of delivery of the goods:

- 9.1.1. Each of the goods will conform to its specifications, as provided by the manufacturer of such goods ("the Specifications"); and
- 9.1.2. The goods shall be undamaged and shall have a reasonable remaining shelf life; and
- 9.1.3. The Supplier will deliver the goods with good title and free from any liens or encumbrances.
- 9.2. However, the customer is aware that the Supplier is a distributor (and not manufacturer) of the goods and is therefore not able to influence the production of the goods.
- 9.3. Subject as expressly provided in these terms and conditions, all warranties, terms, conditions and representations which might otherwise be implied by law in relation to the goods, are hereby excluded to the fullest extent permitted by law. Without derogating from the generality of the foregoing and unless otherwise provided in these terms and conditions, the Supplier does not warrant or represent that the goods are fit for any particular purpose or use by the customer or are free from any defects.
- 9.4. If any goods delivered to the customer (i) do not conform to their particular Specifications during the shelf life thereof or (ii) are damaged or (iii) have an unreasonable remaining shelf life, then the customer shall furnish the Supplier with written notice to this effect within forty-eight (48) hours after detection thereof, failing which the customer shall be deemed to have accepted the goods in such condition. The customer's notice shall include documentary evidence that the goods (i) have been quality tested by the customer and fail to meet the Specifications or (ii) are damaged or (iii) have an unreasonable remaining shelf life and the goods in question shall immediately be made available for inspection and testing by the Supplier. In the event that the Supplier determines the customer's findings to be correct, then the Supplier shall, at its sole discretion: (i) replace the goods in question or refund the purchase price thereof to the customer, or (ii) supply equivalent goods to the customer, or pay for the cost of supplying a product equivalent to the customer, provided that not more than ninety (90) calendar days has passed since the date of delivery thereof to the customer.
- 9.5. To the maximum extent permitted by applicable law, the customer shall have no other remedy for any goods which fail to meet the Specifications or have expired.
- 9.6. The customer shall return or dispose of the said goods in accordance with the Supplier's instructions, provided that any reasonable costs incurred by the customer in this regard shall be refunded to the customer by the Supplier.
- 9.7. Any dispute which may arise between the parties as to whether or not the goods (i) meet the Specifications or (ii) are damaged or (iii) have an unreasonable remaining shelf life shall be referred to an independent expert for determination. The independent expert shall be appointed by agreement between the parties (and failing agreement by the chairperson of AFSA) and shall determine the dispute in an informal manner as expeditiously as may be possible. The decision of the expert shall be final and binding on the parties and the charges of the expert shall be borne by the parties in equal proportions.
- 9.8. If the customer acquires the goods for the purpose of on-selling the goods, whether the customer is permitted to do so or not (and nothing herein contained shall be deemed to allow the customer to on-sell goods acquired from the Supplier whilst ownership vests in the Supplier), the customer shall not advertise or issue or in any other way give or make any warranties, guarantees or representations as to the goods in any form whatsoever or offer to do so, which could result in liability being imposed upon the Supplier.
- 10. HANDLING FEE ON RETURN OF GOODS**
- The Supplier reserves the right to levy, at 15% (fifteen percent) of the Rand value of the goods, a handling fee on goods returned to and accepted by the Supplier, save in relation to goods which are returned in accordance with clause 9 above. This clause shall not be used to imply that the Supplier shall be obliged to accept the return of any goods.
- 11. AVAILABILITY OF IMPORT PERMITS**
- The Supplier's obligations hereunder shall be subject, in those cases where the goods or part thereof are to be imported, to the availability of an import permit to the Supplier.
- 12. OWNERSHIP**
- 12.1. Ownership of the goods shall not pass to the customer until the contract price (including interest) in respect of the goods in question has been paid in full. The provisions hereof shall apply notwithstanding that the goods may be incorporated into or form part of other goods or change their essential character. Where goods have been processed, combined or mixed with other goods, the customer's title to the resulting new product shall immediately pass to the Supplier in the proportion that the value of the goods bears to the value of the resulting new product.
- 12.2. The Supplier reserves the right to inform the owner/landlord of the premises in which the goods are or at any time may be, of the provisions of this clause. The customer shall be obliged to advise the Supplier of the name and address of the owner/landlord of any such premises and shall promptly advise the Supplier of any change in the name and/or the address of any owner/landlord or of any new owner/landlord.
- 12.3. The customer shall take all such steps as may be necessary to notify interested third parties that ownership of the goods in question has not passed from the Supplier. In particular, the customer shall inform the owner/landlord of the premises in which the goods are or at any time may be, of the provisions of this clause. The customer shall produce written proof of such notices to the Supplier on demand.
- 13. RESALE AND ENCUMBRANCE OF GOODS**
- No provision contained in these terms and conditions shall be construed as to permit a customer to process and/or resell and/or encumber any goods purchased from the Supplier in any manner whatsoever, without the Supplier's prior written consent.
- 14. RISK**
- 14.1. Notwithstanding that the ownership in the goods shall not pass to the customer until payment of the entire contract price in respect of the goods in question has been effected, the goods shall be at the risk of the customer (it will be responsible for all loss or damage thereto howsoever arising), upon delivery (or deemed delivery) thereof.
- 14.2. Should the Supplier be unable to obtain access to the premises of the customer in order to deliver the goods, or should the customer fail to take delivery of the goods or fail to furnish the information necessary to enable delivery thereof to be effected, the risk in such goods shall pass to the customer upon notification by the Supplier (in accordance with clause 8.11 above that the goods are deemed delivered).
- 15. DESIGN AND MANUFACTURE**
- 15.1. The weight, volume and/or quantity of the goods ordered by the customer may, due to technical reasons, vary from the weight, volume and/or quantity of the goods delivered to the customer in accordance with a specific order, by no more than 5% (five percent), and the customer waives any right it may have to rely on such deviation in the weight, volume and/or quantity of goods.
- 15.2. If no detailed specifications are provided by the customer, the Supplier shall be entitled in its sole discretion to interpret the requirements of the customer and its decision shall be final and binding on the customer.
- 15.3. The Supplier reserves the right to make any reasonable change to the design or form of any goods, provided that the state of performance and quality and specifications remain materially unaffected.
- 15.4. The properties of any samples of goods provided by the Supplier to the customer shall not be considered binding until such time as the Supplier has agreed thereto in writing.
- 15.5. In the event that a certificate of authenticity is available for any goods, the information contained therein shall be the agreed quality of the goods. The customer may request a certificate of authenticity from the Supplier at no charge.
- 16. SUBSTITUTE GOODS**
- 16.1. The Supplier shall be entitled to substitute for any goods specified in this agreement such other goods which the Supplier in its sole discretion may regard as suitable substitutes therefor.
- 16.2. The Supplier reserves the right to alter specifications as conditions warrant without notice. Should conditions render unavailable any materials or goods specified herein or otherwise required in order to fulfil this agreement, a substitution deemed by the Supplier to be suitable for the performance of its obligations will be supplied.
- 17. DOCUMENTATION**
- 17.1. All specifications, descriptive matter, drawings and other documents furnished by the Supplier do not form part of these terms and conditions and may not be relied upon, unless they are incorporated herein in the manner permitted.
- 17.2. All drawings, plans, specifications and other documents furnished by the Supplier are confidential and shall remain the property of the Supplier and shall be deemed to have been imparted by it in trust to the customer for the sole use of the customer. The copyright in such documents vests in the Supplier. Such documents shall be returned to the Supplier on demand.
- 18. INTELLECTUAL PROPERTY**
- The customer hereby indemnifies and holds the Supplier harmless against any costs, claims or expenses (including legal costs as between attorney and own client) arising out of any patent, trademark, registered design, copyright or any other claim resulting from compliance by the Supplier with the customer's instructions and/or specifications, express or implied.
- 19. INSURANCE**
- The customer shall at its own expense and prior to taking delivery of the goods, insure the goods and thereafter keep the goods insured until such time as the goods have been paid for in full. Such insurance shall be taken with such insurers as may be approved by the Supplier in writing, for such amount and on such terms as may be approved by the Supplier in writing. The insurance policy shall record the interest of both the Supplier and the customer. The customer shall, if so required by the Supplier, cede to the Supplier all its rights in terms of such insurance policy.
- 20. COMPLIANCE**
- 20.1. The customer shall be obliged to observe all applicable laws and statutory obligations it may have in respect of the goods, including, but not limited to any obligations under the Hazardous Substances Act, 15 of 1973 (as amended), and any further export and trade regulations.
- 20.2. In addition, the customer shall be obliged to observe and comply with the manufacturer's instructions, recommendations and warnings in relation to the use, application, transportation, handling and storage of the goods (as amended from time to time), which will be made available to the customer on request.
- 21. BREACH**
- 21.1. Subject to clause 21.2, if the customer breaches any of the terms or conditions hereof or any other agreement with the Supplier or fails to pay any amount payable by it on due date or commits any act of insolvency or endeavours to compromise generally with its creditors or does or causes to be done anything which may prejudice the Supplier's rights hereunder or at all, or allows any judgment against it to remain unsatisfied for 7 (seven) calendar days or is placed into provisional or final liquidation or business rescue or under provisional or final sequestration or if its estate is voluntarily surrendered, the Supplier shall have the right, without prejudice to any other right which it may have against the customer, to elect to:
- 21.1.1. Treat as immediately due and payable all outstanding amounts which would otherwise not yet be due for payment and to claim such amounts as well as any other amounts in arrear, including interest, and to cease performance of its obligations hereunder as well as under any other contract with the customer until the customer has remedied the breach; and
- 21.1.2. Cancel this agreement and retake possession of any of the goods sold. In addition, the Supplier shall be entitled to insist that the customer takes delivery of all goods ordered, but not yet delivered, in which case the customer shall accept delivery thereof.
- 21.2. The Supplier shall not be obliged to comply with its obligations hereunder in any respect whatsoever for so long as the customer is indebted to the Supplier in any amount whatsoever in respect of any cause whatsoever or fails to comply with any other obligations to the Supplier, whether or not arising out of these terms and conditions. In particular, without limiting the generality of the foregoing, if delivery of any particular order is to take place in stages, the Supplier shall not be obliged to deliver any part of the order until the purchase price which is due in respect of the part of the order which has already been delivered, has been paid.

- 21.3. The parties agree that the Apportionment of Damages Act, 34 of 1956 (as amended), shall apply to these terms and conditions.
- 21.4. A certificate issued by any manager of the Supplier, whose authority need not be proved, shall be prima facie proof of the amount due by the customer and such certificate shall be sufficient for the purposes of obtaining summary judgement or provisional sentence.
- 22. NO CESSION**
- The customer shall not be entitled to cede or assign any rights and/or obligations which it may have in terms of these terms and conditions to any third party.
- 23. SECURITY FOR OBLIGATIONS**
- The Supplier reserves the right to require satisfactory security from the customer for the due performance of any of the customer's obligations hereunder, including, but not limited to, the payment of the purchase price. If the Supplier so requires, the customer shall deliver to the Supplier prior to the Supplier complying with any of its obligations hereunder, confirmed irrevocable letters of credit by financial institutions acceptable to the Supplier. If such security or guarantees or letters of credit are not furnished within 7 (seven) calendar days after any such demand, the Supplier shall be entitled to withdraw from the contract in whole or in part.
- 24. COSTS**
- The customer shall be liable for all costs incurred by the Supplier in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and own client scale, whether incurred prior to or during the institution of legal proceedings or if judgment has been granted, in connection with the satisfaction or enforcement of such judgment.
- 25. LIABILITIES OF PARTNERS/SIGNATORIES**
- 25.1. If the customer is a partnership, then the individual partners of the customer shall be bound as a partnership as well as in their individual capacities, jointly and severally, for all the customer's obligations, notwithstanding that only one partner may have signed on behalf of the customer.
- 25.2. The person signing on behalf of the customer warrants that he is duly authorised to represent and bind the customer to this agreement.
- 26. EXEMPTION, INDEMNITY AND LIABILITY**
- 26.1. To the maximum extent permitted by law, the customer shall have no claim of any nature whatsoever, whether for damages, a remission of the purchase price, cancellation or otherwise, against the Supplier, its servants, agents or others on whose behalf the Supplier would be liable, in respect of any loss, damage or injury sustained by the customer (its personnel, contractors or invitees) of any nature whatsoever or any damage caused to the assets of the customer or assets kept on its premises by any third parties or in regard to the customer's business or sustained by any of its customers (their personnel, contractors or invitees), howsoever caused, including the negligent acts or omissions of the Supplier, its servants, agents or others for whom it may be liable in law. This constitutes a stipulatio alteri in favour of such persons, the benefits of which may be accepted by them at any time.
- 26.2. In all cases where the goods are supplied to a specification, design or description of the customer, the customer indemnifies the Supplier, its servants, agents or person for whom it may be liable in law against any loss, damage or expense, including legal costs, which may be demanded from or sustained by one or more of the Supplier, its servants, agents or persons for whom it is liable in law, by reason of any claim brought by any third party (not restricted to claims contemplated in this clause), arising out of the implementation of these terms and conditions or any act or omission on the part of the customer, its servants, agents or person for whom it is liable in law.
- 26.3. In no event shall the Supplier's liability, whether under contract or delict, exceed the greater of the actual purchase price of the goods in question, or the replacement cost thereof.
- 26.4. To the maximum extent permitted by law, under no circumstances whatsoever, including as a result of its negligent acts or omissions or those of its servants, agents or contractors or other persons for whom in law it may be liable, shall the Supplier be liable for any consequential loss (including, without limitation, lost profits, loss of goodwill, losses arising out of a business interruption and frustrated expenses) sustained by the customer. This also constitutes a stipulatio alteri in favour of such persons the benefits of which may be accepted by them at any time. The provisions of this clause shall survive termination of these terms and conditions.
- 27. FURNISHING OF INFORMATION BY CUSTOMER**
- The customer shall forthwith after the conclusion of the contract, furnish the Supplier with all information reasonably required by the Supplier to enable it to comply with its obligations.
- 28. DOMICILIUM**
- The parties hereby choose their respective domicilium citandi et executandi for all purposes at the address of their principal place of business in the Republic of South Africa.
- 29. FORCE MAJEURE**
- 29.1. A party shall not be liable for a failure to perform any of its obligations in terms of these terms and conditions insofar as it is able to prove that such failure was due to an impediment beyond its reasonable control, and, for purposes of this clause 29, the following events (which enumeration shall not be exhaustive) shall be deemed to be impediments beyond the control of each of the parties, namely:
- 29.1.1. war, whether declared or not, civil war, civil violence, riots and revolutions, acts of piracy, acts of sabotage;
- 29.1.2. natural disasters such as violent storms, cyclones, earthquakes, floods and destruction by lightning;
- 29.1.3. explosions, fires and destruction of plant, equipment, machinery and machines and of any kind of installations;
- 29.1.4. acts of authority, whether lawful or unlawful, apart from acts for which the party seeking relief has assumed the risk;
- 29.1.5. government acts or orders;
- 29.1.6. epidemics, pandemics or outbreak of communicable disease, quarantines or national or regional emergencies;
- 29.1.7. mandatory load-shedding imposed by Eskom;
- 29.1.8. inability to source, import, transport or obtain goods from the Supplier's own suppliers;
- 29.1.9. any statutory or political export or import restrictions; and
- 29.1.10. any strike action, whether lawful or unlawful, and whether at the warehouse(s) of the Supplier and/or the customer, or otherwise.
- 29.2. Relief from liability for non-performance by reason of the provisions of this clause 29 shall commence on the date upon which the party seeking relief gives notice of the impediment relied upon and shall terminate on the date upon which such impediment ceases to exist, provided that if such impediment continues for a period of more than 90 (ninety) consecutive calendar days, either party shall be entitled to terminate this Agreement by written notice to the other.
- 30. DISPUTE RESOLUTION**
- 30.1. Should any dispute, disagreement or claim arise between the Supplier and the customer concerning these terms and conditions, the interpretation or breach hereof, the Supplier and the customer shall endeavour to resolve the dispute by negotiation.
- 30.2. This entails one of the parties inviting the other in writing to meet and to attempt to resolve the dispute within fourteen (14) calendar days from date of written invitation.
- 30.3. If the dispute has not been resolved by such negotiation within fourteen (14) calendar days of the commencement thereof by agreement between the parties, then the parties shall submit the dispute to arbitration for final resolution in accordance with the rules of the Arbitration Foundation of Southern Africa ("AFSA"), by an arbitrator appointed by AFSA.
- 30.4. The award to be rendered shall state its reason in writing and the award of the arbitrator shall be final and binding upon both the parties.
- 30.5. Unless otherwise agreed in writing by all the parties, any such negotiation or arbitration shall be held in Cape Town, South Africa.
- 30.6. Notwithstanding anything to the contrary contained herein, any party shall be entitled to apply for, and if successful, be granted, an interdict or other interim and/or urgent relief from any competent court having jurisdiction.
- 31. GOVERNING LAW**
- 31.1. Notwithstanding the conflict of law principles which might otherwise have governed this agreement, this agreement shall be governed by and interpreted in accordance with the substantive laws of the Republic of South Africa.
- 31.2. The parties exclude the United Nations Convention on Contracts for the International Sale of Goods, 1990 (CSIG) from this agreement and any transaction implemented pursuant to this agreement.
- 31.3. The Supplier and the customer hereby agree to the exclusive jurisdiction of the courts of the Republic of South Africa for these purposes.
- 32. REDUCTION OF PURCHASE PRICE**
- 32.1. If the amount of the price payable by the customer or interest thereon receivable by the Supplier is reduced in the hands of the Supplier, as a result of:
- 32.1.1. the enactment, introduction or change in or in the interpretation of, any law or regulation of any applicable jurisdiction; or
- 32.1.2. a request from any central bank or other fiscal, monetary or other authority of applicable jurisdiction (whether or not having the force of law), which imposes, modifies or deems applicable any reserve requirement or similar requirement including, without limitation, a requirement on the Supplier to make any payment on or in relation to a sum received by it from the customer on account of tax (other than tax on the overall income of the Supplier), or if any law or regulation of any applicable jurisdiction or any request from any such authority requires that the customer suspend or otherwise defer payment of the price or interest thereon, the customer shall, in any event, pay to the Supplier on demand an amount sufficient to indemnify and hold the Supplier harmless against the effects of any such requirement, including without limitation, the effects of any increased costs or tax as aforesaid. If the enactment of or any change in, or in the interpretation of, any applicable law makes it unlawful for the customer to perform its other obligations hereunder, the customer on demand by the Supplier, shall prepay without payment of any bonus or penalty of interest, an amount equal to the principal amount of the price then outstanding together with all interest accrued thereon to the date of such prepayment and all other sums payable under these terms and conditions, and the customer shall thereupon be discharged from its obligations hereunder.
- 33. SEVERABILITY**
- If any provisions of these terms and conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted, which shall not affect the validity and enforceability of the rest of these terms and conditions.
- 34. HEADINGS**
- The clause headings in these terms and conditions are for reference purposes only and shall not be used in the interpretation of these terms and conditions.