

**STANDARD TERMS AND CONDITIONS  
OF PURCHASE AND SERVICE  
(ACT/2022)**

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## STANDARD TERMS AND CONDITIONS OF PURCHASE AND SERVICE (ACT/2022)

### 1. Definitions

For the purpose of these Conditions, unless the context indicates otherwise, the words and expressions set out below shall have the meanings assigned to them and cognate expressions shall have a corresponding meaning, namely:

- 1.1 **"ACTOM"** means ACTOM (Pty) Ltd, Reg No. 2008/001863/07, a private company with limited liability incorporated under the laws of the RSA;
- 1.2 **"ACTOM Group"** means all the divisions of ACTOM and all its subsidiaries (within the meaning of section 3 of the Companies Act, 2008) from time to time;
- 1.3 **"Affiliate"** means, means, in relation to any company, any other company that is its subsidiary, holding company or subsidiary of its holding company; and/or any person (including a company), any other person over which, or over the management of which, Control can be or is exercised directly or indirectly by persons who can or do also exercise Control directly or indirectly over that person or its management;
- 1.4 **"Applicable Laws"** means in relation to a particular person or matter, all and any present or future law (including statutory, common or customary law), subordinate legislation, tax law, statute, legislation, constitution, code, authorisation, decree, decision, judgment, treaty, regulation, ruling, practice, concession, request, notice, announcement, guidance, by-law, order, ordinance and rule, directive, requirement or other legislative measure of any government or intergovernmental body (whether supranational, national, provincial or local), agency, department, central bank, statutory, fiscal, regulatory or self-regulatory or similar body or authority or court, as amended, replaced, re-enacted, restated or reinterpreted from time to time (whether or not having the force of law), compliance with which is mandatory for that person or in relation to that matter, and **"Applicable Law"** shall have a corresponding meaning;
- 1.5 **"Authorised Employees"** means employees of either Party who have a need to know or otherwise access Personal Information to perform obligations under these Conditions;
- 1.6 **"Authorised Persons"** means:
- 1.6.1 Authorised Employees; and
- 1.6.2 in respect of each Party, a Party's sub-contractors, agents, or professional advisors who have a need to know or otherwise access Personal Information to enable a Party to perform its obligations under these Conditions, and who are bound in writing by confidentiality obligations sufficient to protect Personal Information in accordance with the terms and conditions of these Conditions;
- 1.7 **"Business Day"** means any day other than a Saturday, Sunday or official public holiday within the meaning of the Public Holidays Act, 1994;
- 1.8 **"Company"** means the ACTOM Group entity submitting an Order for Goods and/or Services to the Supplier;
- 1.9 **"Company Data"** means Personal Information relating to the Company, and/or the Company's Affiliates, and/or the Company's employees, and/or the shareholders or directors of the Company, and/or the Company's customers and/or the operations, business or activities of the Company;
- 1.10 **"Conditions"** means these standard terms and conditions of purchase and service and all the schedules hereto;
- 1.11 **"Confidential Information"** means any information or data, including any Personal Information of a party's employees, agents, customers and vendors, shared by the Disclosing Party which by its nature or content is identifiable as confidential and/or proprietary to the Disclosing Party and/or any third party, or which is provided or disclosed in confidence and which the Disclosing Party or any person acting on its behalf may disclose or provide to the Receiving Party or which may come to the knowledge of the Receiving Party by whatsoever means, including all information relating to the Disclosing Party's current and existing strategic objectives, its business activities, business relationships, technical, scientific, commercial, financial and market information and trade secrets, data concerning its architectural information, demonstrations, processes and machinery, all agreements to which it or its customers is/are a party, information relating to these Conditions and information relating to its customers and facilities, but specifically excluding information or data which:
- 1.11.1 is lawfully in the public domain at the time of disclosure thereof;
- 1.11.2 subsequently becomes lawfully part of the public domain by publication or otherwise;
- 1.11.3 becomes available from a source other than one of the Parties which is lawfully entitled without any restriction on disclosure to disclose such Confidential Information; and
- 1.11.4 is disclosed pursuant to a requirement or request by operation of law, regulation or court order;

- 1.12 **"Control"** means the ability, by virtue of ownership, right of appointment, right to Control election or appointment, voting rights, the ability to Control the exercise of voting rights, management agreement, or agreement of any kind, to Control or direct, directly or indirectly, the board or executive body or decision making process or management of such entity and the terms **"Control"** and **"Controlled"** shall have corresponding meanings;
- 1.13 **"Data Protection Laws"** means any applicable data protection legislation applicable to the parties and shall include the Protection of Personal Information Act, 2013;
- 1.14 **"Disclosing Party"** means the party that has disclosed Confidential Information;
- 1.15 **"Delivery Date"** means the date by which:
- 1.15.1 the Goods are to be delivered by the Supplier to the Company, as specified in the Order in question; or
- 1.15.2 the Services are to be rendered by the Supplier to the Company, as specified in the Order in question;
- 1.16 **"Goods"** means the goods specified in the Order in question;
- 1.17 **"Good Industry Practice"** means, in relation to an obligation, undertaking, activity or a service, the exercise of the degree of skill, speed, care, diligence, judgment, prudence and foresight and the use of practices, controls, systems, technologies and processes, which would be expected from a skilled, experienced and market leading service provider that is an expert in performing the same or similar obligation, undertaking, activity or service and utilising and applying skilled resources with the requisite level of expertise;
- 1.18 **"Order"** means an order for Goods and/or Services placed by the Company with the Supplier in terms of these Conditions;
- 1.19 **"Order Appendix"** means the specific conditions relating to an Order, which shall accompany and be attached to the Order in question, when applicable;
- 1.20 **"Parties"** means the Company and the Supplier, and **"Party"** shall mean either one of them;
- 1.21 **"Personal Information"** has the meaning given to it in terms of Protection of Personal Information Act, 2013;
- 1.22 **"Personal Information Breach"** means any the unlawful and unauthorized access or acquisition of Personal Information by an unauthorized person;
- 1.23 **"Price"** means the price of the Goods or Services as specified in the Order in question;
- 1.24 **"Receiving Party"** means the party who has received the Confidential Information from the Disclosing Party;
- 1.25 **"RSA"** means the Republic of South Africa, including the nine provinces identified in section 103 of the Constitution of the Republic of South Africa Act, 1996;
- 1.26 **"Services"** means the services specified in the Order in question;
- 1.27 **"Supplier"** means the party to whom an Order is addressed;
- 1.28 **"Tax Invoice"** means to a tax invoice which complies with all the requirements on the VAT Act; and
- 1.29 **"VAT Act"** means the Value Added Tax Act, 1991.

## 2. Extent of Order

- 2.1 These Conditions govern all Orders placed by the Company and all contracts and sub-contracts entered into by the Company with the Supplier for the purchase of any goods from the Supplier and/or the supply of any Services by the Supplier, save where expressly varied or altered in writing and signed by or on behalf of both Parties.
- 2.2 Any Order Appendix shall form an integral part of any Order. Should there be any conflict between these Conditions, any Order and any Order Appendix, the following priority shall apply:
- 2.2.1 firstly, the Order Appendix;
- 2.2.2 secondly, the Order and
- 2.2.3 thirdly, these Conditions.
- 2.3 The Company shall not be liable for any Orders other than those issued or confirmed on its official printed order forms duly signed on its behalf by an authorised signatory, and any extensions or amendments thereto shall only be binding on the Company if issued on the like forms and duly signed by an authorised signatory on its behalf.

### 3. Acceptance

Unless withdrawn prior to acceptance, each Order shall be open for acceptance during the period stated therein, or where no period is stated, within a period of 30 (thirty) days calculated from the date of the Order in question, provided that no acceptance of any Order shall be binding on the Company unless issued in writing by the Supplier and received by the Company within the aforementioned periods, whichever is applicable.

### 4. Payment

4.1 The Price shall be paid by the Company to the Supplier within 60 (sixty) calendar days from the date of receipt by the Company of a statement in terms of which:

4.1.1 the Goods are despatched to the Company, unless otherwise agreed by both Parties in writing, provided that all Goods have been timeously received by the Company in good order and condition in accordance with the Order; or

4.1.2 the Services have been fully and finally rendered to the Company in accordance with the Order unless otherwise agreed by both Parties in writing.

4.2 Payment shall be made by electronic funds transfer into a bank account nominated in writing by the Supplier. Should the Supplier request to be paid by cheque, the Supplier bears the associated risk that the payment may be lost or stolen.

4.3 The Price shall, unless otherwise stated, include all value added tax, taxes, levies and duties of any kind payable by the Supplier in connection with the sale of the Goods to the Company or the provision of Services to the Company in terms of these Conditions. Without limiting the generality of the foregoing, the Price shall include any and all costs incurred by Supplier in executing the Order, and all minor parts or services not shown explicitly in the Order, but required for its final completion and the fulfilment of the Supplier's obligations shall accordingly be included in the Price.

4.4 The Price shall not be varied without the Company's prior written consent.

4.5 The Company shall be entitled to deduct or set-off any and all amounts due and payable to it by the Supplier in terms of any Order from any amounts then due and payable or which at any time thereafter may become due and payable by the Company to the Supplier in terms of this or any other Order.

4.6 Invoices submitted to the Company by the Supplier in respect of each Order shall contain the number of the Order in question. A separate delivery note shall accompany all Goods delivered to the Company.

4.7 The Company shall not forfeit any prompt payment discount due to the Supplier's failure:

4.7.1 to send on the day of despatch of each consignment such advice(s) of despatch and invoice(s) as may be indicated in the Order; or

4.7.2 to mark clearly the Company's Order number on the consignment package, delivery notes, packing notes, advice notes, invoices, monthly statements and all correspondence relating thereto; or

4.7.3 to issue to the Company with a Tax Invoice.

4.8 Payment shall not be made to the Supplier by the Company until a Tax Invoice is issued to the Company by the Supplier.

4.9 Should the Supplier manufacture or supply goods in accordance with a drawing, pattern, plan, design, sample or illustration supplied by the Company, no payment shall be made until such drawing, pattern, plan, design, sample or illustration has been returned to the Company by the Supplier.

4.10 The Company reserves the right to withhold payment in terms of this clause 4 in circumstances where the Company has not been paid by the ultimate customer where relevant and for reasons not attributable to the Company's default.

### 5. Delivery / Rendering of Services

5.1 Unless otherwise specified in the Order, the Supplier shall:

5.1.1 deliver the Goods to the Company at its business address indicated on the Order on or before the Delivery Date or such later date as may be agreed upon in writing by the Parties prior to such Delivery Date,

5.1.2 render the Services at its business address indicated on the Order on or before the Delivery Date or such later date as may be agreed upon in writing by the Parties prior to such Delivery Date.

5.2 Deliveries shall only be accepted by the Company at the address specified in clause 5.1 during the hours displayed at each of the Company's sites, unless the Company advises the Supplier in writing to the contrary.

- 5.3 The Supplier acknowledges that time is of the essence of each Order, and all deliveries of any Goods or rendering of any Services by the Supplier shall be strictly in accordance with the provisions of clause 5.1 and clause 5.2.
- 5.4 Should the Supplier fail to deliver the Goods or render the Services timeously, the Company may, without prejudice to any of its other rights which it may have in law or in terms of the Order in question:
- 5.4.1 cancel the Order and recover all damages, including without being limited to consequential loss or damages or loss of profit, which may directly or indirectly be sustained by the Company as a result of such failure; or
- 5.4.2 cancel the Order and claim any penalty stated in the Order Appendix.
- 5.5 Should the Company, in its sole and absolute discretion, elect not to cancel the Order in question, it shall nevertheless be entitled, without prejudice to any of its other rights which it may have in law or in terms of the Order in question, to recover all damages, including consequential loss or damages or loss of profit which may directly or indirectly be sustained by the Company as a result of such failure or claim any penalty stated in the Order Appendix.
- 5.6 Unless otherwise agreed in writing by the Parties, the Supplier shall make all arrangements for and procure the transportation of the Goods from the Supplier's premises to the point of delivery referred to in clause 5.1.
- 5.7 All Goods delivered by the Supplier to the Company in terms of these Conditions shall be suitably packed or otherwise prepared for transportation by the Supplier so as to secure the lowest transportation and insurance rates. Unless otherwise agreed by the Parties in writing all costs in respect of wrapping, packing, cartons, boxing, crating of the Goods or any other costs of any nature incurred by the Supplier in fulfilling its obligations in terms of clause 5.6 shall be for the account of the Supplier.
- 5.8 Ownership in the Goods and all risk in the Goods shall pass to the Company upon delivery of the Goods at the point of delivery referred to in clause 5.1.
- 5.9 If for any reason beyond the reasonable control of the Company, the Company is unable to accept delivery of the Goods on or after the Delivery Date, the Supplier shall procure the storage and safeguarding of the Goods, either at its own premises or elsewhere on the Company's behalf and the Supplier shall take all reasonable steps to prevent any loss, destruction, damage to or deterioration of the Goods until the Company is able to accept delivery of the Goods in terms of these Conditions. The Company shall within 10 (ten) Business Days after receipt of written notice from the Supplier reimburse and pay to the Supplier all reasonable costs incurred by the Supplier in respect of the storage and safeguarding of the Goods in terms of this clause 5.9 provided that such notice is accompanied by proof to the satisfaction of the Company of any reasonable costs (including without being limited to insurance costs) incurred by the Supplier in fulfilling its obligations in terms of this clause 5.9.
- 5.10 The Supplier shall exercise all reasonable skill, care and diligence in the provision of the Services to the Company pursuant to any Order, and shall act in accordance with a high degree of expertise and standards of ethics and practices ordinarily expected of its profession. Unless otherwise specified in the Order, the Supplier shall, at its own expense, sufficiently furnish all tools, equipment, machines, appliances, parts, material and supplies necessary for the efficient and continuous performance of its obligations hereunder.
- 5.11 The Company shall be entitled to select or decline any personnel rendering the Services, which discretion shall not be unreasonably exercised, and the Supplier shall forthwith replace such personnel at Supplier's cost.
- 6. Representations and Warranties**
- 6.1 The Supplier represents and warrants to the Company that the Goods shall:
- 6.1.1 be free from any defects;
- 6.1.2 be manufactured in accordance with sound principles and techniques, and be of the highest quality materials and workmanship;
- 6.1.3 be fit for the purpose for which they are required;
- 6.1.4 at all times comply with the general and/or specific requirements, stipulations, plans, patterns, designs, specifications, drawings, samples, illustrations, models and other data submitted by the Company to the Supplier with any Order;
- 6.1.5 in all respects comply with all relevant requirements of any regulatory authority, statute, statutory rule or order, or other instrument having the force of law which may be in force at the date of delivery of the Goods in terms of clause 5.
- 6.2 The Supplier further represents and warrants to the Company that:
- 6.2.1 the Services shall be properly performed in compliance with all applicable regulations by well-qualified, trained and experienced personnel, with the due care, dedication and diligence and to such high standard of quality as may be reasonable for the Company to expect under the circumstances;

- 6.2.2 that any equipment used in rendering the Services shall be fully certified, shall meet all relevant government standards, shall have been tested and shall be in full working order without any damage or defect.
- 6.3 In addition to any other rights which the Company may have in law or in terms of any Order, any defects in the Goods or defects appearing in the Goods or relating to the Services within a period of 12 (twelve) months from the date of delivery of the Goods to the Company or the date of the rendering of the Services in terms of clause 5 shall be made good by the Supplier free of charge:
- 6.3.1 either by repair, or at the option of the Company, by the supply of replacement Goods to the Company at such places as the Company may elect; or
- 6.3.2 by re-performing or repairing the relevant Services so as to comply with the relevant Order. Any costs incurred by the Company in returning any defective Goods to the Supplier in terms of this clause 6.3 or in repairing or re-performing defecting Services shall be borne by the Supplier.
- 6.4 Acceptance by the Company of any delivery in terms of clause 5 shall not release the Supplier from any of its obligations, representations, warranties or undertakings in terms of these Conditions or otherwise. The signature of the Company, given on any delivery note or other documentation presented for signature in connection with the delivery of the Goods, shall constitute evidence only of the number of packages received by the Company. In particular, such signature shall not constitute evidence that the correct quantity or number of Goods have been delivered to the Company or that the Goods delivered are in good condition or of the correct quality required in terms of these Conditions.
- 6.5 Should the Supplier deliver any Goods to the Company which do not comply with any general and/or specific requirements, stipulations, plans, patterns, designs, specifications, drawings, samples, illustrations, models and other data submitted by the Company to the Supplier with any Order, the Company shall be entitled to refuse to accept delivery of, or within a reasonable time after having taken delivery, to reject such Goods ("**the Defective Goods**"). Any Defective Goods shall be held by the Company at the sole risk of the Supplier and the Company shall by notice in writing to the Supplier be entitled, in its sole and absolute discretion:
- 6.5.1 to require the Supplier to immediately remove such defective Goods from the Company's premises, works, warehouses or other place where such Goods are being held by the Company. All costs of and incidental to such removal of the defective Goods shall be for the account of the Supplier; or
- 6.5.2 to require the Supplier, within a reasonable time after receipt of the notice referred to in clause 6.5 to replace, at the Supplier's cost, such defective Goods with Goods complying with clause 6.1.4; or
- 6.5.3 without prejudice to any of its other rights which it may have in law or in terms of the Order in question, cancel the Order in question and recover all damages, including without being limited to consequential loss or damages or loss of profit, which may directly or indirectly be sustained by the Company as a result of the delivery by the Supplier of any defective Goods in terms of this clause 6.5.
- 6.6 Without prejudice to any rights or remedies available to the Company arising from any provisions of these Conditions, the Supplier indemnifies the Company and holds it harmless against all:
- 6.6.1 loss or damage (including without being limited to consequential loss or loss of profit) which may directly or indirectly be sustained by the Company;
- 6.6.2 loss, actions, costs, claims, demands, expenses, liabilities or any amounts whatsoever which may become payable by the Company to any other person as a result of a claim made against the Company;
- resulting from any defect in the Goods or Services or any other breach of the Supplier's warranties and/or obligations or undertakings as set out in these Conditions.
- 6.7 Should any claim be made against the Company by any person as a result of any or all of the Goods or any part thereof being defective or the Services being defective or any other breach of the Supplier's warranties and/or obligations and/or undertakings in terms of these Conditions, then the Company shall give the Supplier written notice thereof within a reasonable time after the Company first becomes aware of such claim to enable the Supplier to take steps to contest it.
- 6.8 The Supplier shall be entitled within 5 (five) Business Days after receipt of written notice in terms of clause 6.7 to elect in writing to contest (which shall include any appeal) an indemnified claim in the name of the Company and shall be entitled to control the proceedings in regard thereto, provided that the Supplier indemnifies the Company and holds it harmless against all and any costs (including without being limited to attorney and own client costs and any other costs not recoverable on taxation) which may be incurred by or awarded against the Company as a consequence of the defence of an indemnified claim.
- 6.9 The Supplier shall pay to the Company the amount of an indemnified claim forthwith after receipt of the notification referred to in clause 6.7, unless the Supplier contests the indemnified claim in terms of clause 6.8, in which case the Supplier shall pay to the Company the amount of the indemnified claim forthwith after any final judgment or order is granted against the Company, provided

that in those circumstances where a claim is contested and despite such contest, the claim is payable in law, the Supplier shall pay to the Company the amount of the claim as soon as it is payable.

## **7. Intellectual Property Rights**

7.1 The Supplier hereby indemnifies the Company and holds it harmless against any actions, claims, costs, demands, expenses and liabilities of whatsoever nature which may be made against the Company or incurred by it and resulting from the infringement or unauthorised use of any patent, registered design, copyright, trade mark or other intellectual property right which may occur:

7.1.1 in the manufacture, supply, acceptance or use of the Goods ordered in terms of these Conditions; or

7.1.2 as a result of the provision of the Services to the Company.

7.2 The Supplier shall defend and pay all costs, damages, awards, fees (including legal fees on an attorney and own client scale), and all amounts in respect of any judgments awarded against the Company arising from the claims referred to in clause 7.1, and shall furthermore provide the Company with due notice of such claims, full authority to defend, compromise or settle such claims and all reasonable assistance necessary to defend such claims.

7.3 All royalties and expenses of whatsoever nature arising out of the use of any patent, registered design, copyright, trade mark or other intellectual property right in connection with the manufacture, supply, acceptance or use of the Goods or the rendering of the Services shall be paid by the Supplier.

## **8. Plans, Specifications and Drawings**

8.1 All Goods delivered by the Supplier to the Company in terms of clause 5 shall conform with the exact requirements and stipulations of the Company and any plans, patterns, designs, specifications, drawings, samples, illustrations, models and other data supplied by the Company to the Supplier in respect of any Order.

8.2 All requirements, stipulations, plans, patterns, designs, specifications, drawings, samples, illustrations, models, other data, jigs, tools, dies, components, materials or other items or information of whatsoever nature supplied or to be supplied by the Company in respect of any Order, or in connection with the Goods, shall at all times:

8.2.1 remain the sole and absolute property of the Company;

8.2.2 be maintained in good condition by the Supplier;

8.2.3 be at the sole risk of the Supplier from the date of their delivery to the Supplier until the date of their return to the Company;

8.2.4 be returned to the Company by the Supplier as and when demanded by the Company by notice in writing to the Supplier;

8.2.5 be kept confidential by the Supplier and shall not be copied, reproduced, sold, disposed of, disclosed or handed to any third party without the prior written consent of the Company;

8.2.6 be used by the Supplier only, who shall only use such requirements, stipulations, plans, patterns, designs, specifications, drawings, samples, illustrations, models, other data, jigs, tools, dies, components, materials or any other items or information of whatsoever nature for the purpose of this Order and for no other purpose whatsoever.

8.3 Any designs, patents, copyrights, trademarks, registered designs or other proprietary rights which may arise out of the Services performed and/or provided by Supplier shall be the sole property of the Company and the Price shall be deemed to include all amounts that might otherwise be payable in respect thereof by the Company to the Supplier.

8.4 Should the Supplier discover any errors or deficiencies in the documentation provided by the Company, the Supplier shall forthwith give written notice to the Company, so that the Company may take any appropriate action.

## **9. Inspection**

9.1 The Company or its representative or any inspector nominated by the Company shall at all reasonable times have free access to the premises, site, work, workshop or place where the Goods or any portion, spare parts or components thereof are being manufactured or any such place as the Services are being rendered, and shall have the right to inspect and/or test any portion of such premises, site, work, workshop or place or the Goods and/or give such directions in writing as may, in the sole and absolute discretion of the Company, be deemed desirable to ensure that the Goods, the manufacture, design or testing thereof and any materials or components used in the manufacture thereof or the Services being rendered by the Supplier conform in all respects with any requirements, stipulations, plans, patterns, designs, specifications, drawings, samples, illustrations, models or other data supplied by the Company to the Supplier in connection with any Order.

9.2 The Supplier shall accept and implement, as soon as is reasonably possible, all the Company's reasonable instructions given in terms of clause 9.1.

9.3 Should the Supplier be of the opinion that any of the Company's instructions referred to in clause 9.1 are incorrect or unreasonable, an objection shall be lodged with the Company in writing within a reasonable time after receipt of such instructions by the Supplier. Failure to lodge such an objection timeously shall absolve the Company from liability in respect of any damages and/or loss which the Supplier may suffer, whether directly or indirectly, as a result of the implementation of such incorrect or unreasonable instructions. The Supplier shall install at its own expense any plant, machinery, apparatus or equipment of any nature whatsoever as is necessary to ensure that the Goods, the manufacture, design or testing thereof or any materials or components used in the manufacture thereof conform in all respects with any requirements, stipulations, plans, patterns, designs, specifications, drawings, samples, illustrations, models or other data supplied by the Company to the Supplier in connection with any Order.

## 10. Change Orders

10.1 Upon the written request of the Company, the Supplier shall be obliged at all times to carry out any changes in the contractually agreed Goods or Services in terms of their design, quantity or quality that are reasonable and technically possible. When a change order involves any decrease or increase and/or change of the Price and/or the Delivery Date, the Price and/or time for performance shall be adjusted equitably.

10.2 Any increase in price or time shall be of effect only if it has been approved in writing by the Company, and the Supplier may not implement any changes which are not urgent and indispensable without having received written instructions of the Company to that effect. The Supplier shall not be entitled to make changes unilaterally.

## 11. Materials Provided to the Supplier

11.1 Any means of production including any designs, drawings, plans, instructions, samples, tools, moulds, models, equipment, materials, and the like made available by the Company to the Supplier or by a third party on behalf of the Company, for the execution of an Order or for incorporation into the Goods, as well as those made from the same or made for the better performance of the Order at the expense of the Company, shall under all circumstances remain owned exclusively by the Company or the relevant third party, and may be used solely and temporarily for the specific purpose for which they are made available; and shall be returned by the Supplier free of charge upon termination or fulfilment of the Order, and, in any case, within 3 (three) Business Days from the Company's request, provided however, that with the Company shall be entitled to recover them from the Supplier's premises upon giving a prior written notice to that effect.

11.2 Any use of such property by the Supplier in its own interest or that of third parties, as well as any copying or disclosure by the Supplier thereof to any third parties and/or use thereof by any third party without the Company's express and prior written permission is expressly prohibited and may result in criminal and or civil liability.

11.3 The Supplier shall bear the risk of loss or damage to any such property, shall warehouse it and keep it safeguarded and in good condition, as delivered, at its own expense, in a separate manner and marked as property of the Company. The Supplier shall be liable for any damage to such items and any associated losses, fair wear and tear excepted. The Supplier shall furthermore confirm the exclusive property rights of the Company in any relations with employees, agents and third parties, and under no circumstances shall be entitled to retain such items in its possession after execution of the relevant Order.

## 12. Anti-Corruption

12.1 Should the Supplier or any person employed by or acting on behalf of the Supplier offer and/or give, directly or indirectly, any kind of gift or contribution to any employee or agent of the Company as an inducement or reward in connection with their behaviour in relation to an Order, the Company shall be entitled to cancel or terminate such Order without any liability or obligation, and to recover from Supplier any additional costs incurred by the Company as a result of such early termination.

12.2 The Supplier shall comply with all anti-corruption laws as may be applicable, including those of the jurisdiction in which it is registered and those of the jurisdiction where the relevant Order is to be fulfilled. Failure by the Supplier to comply with the applicable anti-corruption laws shall be entitle the Company to summarily terminate it. In such case, the Supplier irrevocably waives any claim for payment due to it pursuant to any Order, including payments for Good or Services already delivered or performed.

12.3 The Company shall not be liable for any claim, loss or damage arising from or associated with the failure by the Supplier to comply with any anti-corruption laws or associated with the termination of agreement between the Parties pursuant to this clause 12, and the Supplier shall keep the Company harmless and indemnified for any claim, loss or damage of such nature.

## 13. Confidentiality

13.1 The Supplier shall keep all Confidential Information supplied to, or acquired by it in connection with any order in terms of these Conditions strictly confidential, shall not use such information or any part thereof for any purpose other than permitted under these Conditions and shall not disclose or publish to any third party (except the Authorised Persons) the fact of or any information concerning any Order without the Company's prior written consent.

13.2 The Supplier shall procure that its employees, agents and duly authorised sub-contractors comply with the provisions of clause 13.1.

## 14. Processing of Personal Information

- 14.1 It is recorded that, pursuant to its obligations under these Conditions, the Supplier may receive process the Personal Information of the Company and other data subjects in connection with and for the purposes of the provision of the Services.
- 14.2 Accordingly, he Supplier shall:
- 14.2.1 only process the Company Data for the purpose(s) connected with the provision of the Services and to the extent strictly necessary to provide the Services, except to the extent specifically requested to do otherwise by the Company in writing or required by Applicable Laws;
  - 14.2.2 comply with all directions and instructions which may be given by the Company regarding the processing of Company Data;
  - 14.2.3 only process the Company Data strictly in compliance with Data Protection Laws.
- 14.3 The Parties record that all the Company Data shall constitute the Confidential Information of the Company. The Supplier shall treat the Company Data that comes to its knowledge or into its possession as confidential and the Supplier shall comply with all the provisions of this clause **14**, and shall not disclose any it to any third party (except Authorized Persons) without the prior written consent of the Company.
- 14.4 The Supplier represents and warrants that it shall secure the integrity of the Company Data in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent loss of, or damage to, or unauthorised destruction of the Company Data and unlawful access to or unlawful processing of the Company Data.
- 14.5 In order to give effect to clause **14.4**, the Supplier shall take all reasonable measures to:
- 14.5.1 identify all reasonably foreseeable internal and external risks to the Company Data in its possession or under its control;
  - 14.5.2 establish and maintain appropriate safeguards against the risk identified;
  - 14.5.3 regularly verify that the safeguards are effectively implemented; and
  - 14.5.4 ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards and shall notify the Company, in writing, of the risks identified and the safeguards established and implemented from time to time.
- 14.6 The Supplier shall additionally:
- 14.6.1 have due regard to Good Industry Practice and generally accepted information security practices and processes which may apply to it;
  - 14.6.2 comply with the Company's information security practices and procedures and any applicable industry or professional rules and regulations, of which the Company undertakes to keep the Supplier informed from time to time;
  - 14.6.3 within 5 (five) Business Days of a request from the Company, provide to the Company a written explanation and full details of the appropriate technical and organisational measures taken by or on behalf of the Supplier to demonstrate and ensure compliance with this clauses **14.6.1** and **14.6.2**.
- 14.7 The Supplier shall not transfer or authorise a transfer of the Company Data outside the RSA without the prior written consent of the Company. If Company Data processed under these Conditions is transferred outside the RSA, the Supplier shall ensure that:
- 14.7.1 the Company Data is adequately protected both during the transfer and in the location where the Company Data will ultimately be processed;
  - 14.7.2 the Company has enforceable rights and effective legal remedies in the country where the Company Data is transferred; and
  - 14.7.3 the recipient of the Company Data has appropriate safeguards in place similar to or better than the safeguards as between the Parties.
- 14.8 In addition to any other obligations in these Conditions, the Supplier shall:
- 14.8.1 take reasonable steps to ensure the reliability of any of its employees who have access to the Company Data, and strictly limit access to those employees who 'need to know' it to enable the Supplier to perform the Services. The Supplier shall ensure that its employees have undergone training in the care and handling of Personal Information and are obliged, in terms of a written contract with the Supplier, to keep the Company Data confidential;
  - 14.8.2 promptly inform the Company of its inability to comply with the Company's instructions and this clause **14**, in which case the Company is entitled to suspend the processing of Company Data and/or terminate these Conditions;

- 14.8.3 deal promptly and properly with all reasonable inquiries from the Company relating to its processing of the Company Data and provide to the Company with copies of the records of Company Data which it processes in the format reasonably specified by the Company;
- 14.8.4 provide the Company with full co-operation and assistance in relation to any requests for access or correction or complaints made by data subjects; and
- 14.8.5 at the request of the Company or any regulatory body, submit its personal information processing facilities for audit of the processing activities covered by these Conditions.
- 14.9 The Supplier shall, within 48 (forty eight) hours after having become aware or otherwise as soon as reasonably possible, notify the Company in writing in if the Company Data has been or may reasonably believe to have been accessed or acquired by an unauthorised person or if a Personal Information Breach has occurred with reference to the use of Company Data. Such notification shall at least:
- 14.9.1 describe the nature of the Personal Information Breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of Company Data records concerned;
- 14.9.2 communicate the name and contact details of the information officer of the Supplier or other contact point where more information can be obtained;
- 14.9.3 describe the possible consequences of the Personal Information Breach;
- 14.9.4 describe the measures taken or proposed to be taken by the Supplier to address the Personal Information Breach;
- 14.9.5 recommendations with regards to the measures to be taken by affected data subject to mitigate the possible adverse effects of the Personal Information Breach; and
- 14.9.6 if known, the identity of the unauthorized person who may have access or acquired the Company Data.
- 14.10 Any breach by the Supplier of its obligations set out in this clause **14** shall be deemed to be a material breach of these Conditions and shall entitle, but not oblige, the Company to cancel this Agreement on written notice to the Supplier.
- 14.11 The Supplier shall delete or return the records of Company Data and copies thereof to the Company on termination of these Conditions or on request of a data subject, unless required by Applicable Law to retain the Company Data.
- 14.12 The Supplier shall be liable to the Company for its failure to comply with any of its obligations under this clause **14**, and shall indemnify the Company against all claims, damages, costs or administrative fines arising out thereof, except to the extent caused by the Company's breach of its obligations. The indemnification provisions in this clause **14.12** are in addition to, and do not in any way derogate from, any statutory or common law remedy the Company may have for breach of these Conditions, including breach of any representation or warranty.
- 14.13 The Supplier shall not possess or assert any lien or other right against the Company Data and such Company Data shall not be sold, assigned, leased or otherwise disposed of or made available to third parties by the Supplier or commercially exploited by or on behalf of the Supplier or its staff.
- 14.14 The obligations in this clause **14** shall also apply to and extend to the Company Data disclosed or received by the Supplier prior to the Signature Date.
- 14.15 The provisions and obligations on each of the Parties under this clause **14** shall survive termination of these Conditions for whatever reason.
- 15. Cancellation / Termination**
- 15.1 Notwithstanding anything to the contrary herein, the Company shall be entitled to cancel any Order at any point in time prior to delivery of the relevant Goods or performance of the relevant Services pursuant to **5** for any reason whatsoever by providing 10 (ten) Business Days written notice thereof to the Supplier. Upon such cancellation, the Supplier shall be compensated by the Company for any reasonable proven costs incurred by the Supplier in carrying out that Order until the date of cancellation of that Order, provided that such compensation shall in no circumstances whatsoever exceed the Price.
- 15.2 Should the Supplier default in the performance of any term or condition of any Order, and fail to remedy such default within 20 (twenty) Business Days after receipt of written notice by the Company requiring the Supplier so to do, then the Company shall be entitled, without prejudice to any other rights which it may have in law, immediately to terminate the Order in question in whole or in part, and/or to claim damages from the Supplier.
- 15.3 Notwithstanding the generality of the foregoing, the Supplier shall be deemed to be in default if the Supplier:
- 15.3.1 is an individual who dies or is sequestered or surrenders his estate; or

15.3.2 is a partnership which is dissolved; or

15.3.3 is a company, which becomes subject to business rescue proceedings or is placed under a provisional or final order of liquidation; or

15.3.4 compromises or attempts to compromise generally with any of the Supplier's creditors.

## 16. Force Majeure

16.1 If either Party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under these Conditions ("**the Affected Party**") due to any cause beyond the reasonable control of the Affected Party, including without limiting the generality of the foregoing any strike, lock-out, labour dispute or other industrial action, insurrection, sabotage, terrorism, civil commotion, political or civil disturbance, riot, invasion, war, threat of or preparation of war, sanctions, fire, explosion, storm, flood, subsidence, epidemic or other natural or physical disaster or act of God, impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport, any act of any state or government or any other authority having jurisdiction over either Party, then the Affected Party shall be relieved of its obligations during the period that such event and its consequences continue but only to the extent so prevented and shall not be liable for any delay or failure in the performance of any of its obligations in terms of these Conditions or for any loss or damage (general, special or consequential) which the other Party may suffer due to or resulting from such delay or failure, provided that written notice shall within 48 (forty eight) hours of the occurrence constituting force majeure be given by the Affected Party to the other Party, and provided further that the obligations to give such notice shall be suspended to the extent necessitated by such force majeure.

16.2 Either Party invoking force majeure shall use its reasonable endeavours to terminate the circumstances giving rise to force majeure and upon termination of the circumstances giving rise thereto, shall forthwith give written notice thereof to the other Party.

16.3 The Parties agree that should the circumstances giving rise to force majeure continue for more than 6 months, the Party who has not claimed force majeure may terminate the Order in question by notice in writing to the other Party.

## 17. Subcontracting

Unless otherwise agreed in writing by the Parties, the Supplier shall not subcontract any Order or any part thereof without the prior written consent of the Company which consent shall not be unreasonably withheld. Should consent be granted by the Company, the Supplier confirms that it has entered or will enter into a written agreement with an approved subcontractor which agreements contain obligations substantially similar to the terms of these Conditions, particularly regarding confidentiality and the processing of Personal Information. As between the Company and the Supplier, the Supplier shall remain fully liable for all acts or omissions of its subcontractors appointed by it.

## 18. Arbitration

18.1 Any dispute between the Parties in regard to any matter arising out of any Order or its interpretation or their respective rights and obligations under any Order or its cancellation or any matter arising out of its cancellation, shall be submitted to and determined by arbitration in accordance with the Commercial Arbitration Rules of the Arbitration Foundation of Southern Africa. Such arbitration shall be held in Johannesburg unless otherwise agreed to and shall be held in a summary manner with a view to it being completed as soon as possible.

18.2 There shall be one arbitrator whose appointment shall be agreed upon between the Parties, but failing agreement between them within a period of 5 (five) Business Days after the arbitration has been demanded, either of the Parties shall be entitled to request the chairperson for the time being of the Arbitration Foundation of Southern Africa to make the appointment who, in making his appointment, shall have regard to the nature of the dispute.

18.3 The decision of the arbitrator shall be final and binding on the Parties, and may be made an order of any court of competent jurisdiction. Each of the Parties hereby submits itself to the jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg should the other Party wish to make the arbitrator's decision an order of that Court.

## 19. Domicilium

19.1 The Parties choose the address set out below as the address at which all notices and other communications must be delivered for the purposes of these Conditions:

19.1.1 the Company at the address and electronic email address displayed on the Order;

19.1.2 the Supplier at the address and electronic email address displayed on the Order.

19.2 Any notice or communication required or permitted to be given in terms of these Conditions shall be valid and effective only if in writing but it shall be competent to give notice by electronic mail.

19.3 Any notice to a Party contained in a correctly addressed envelope and sent by prepaid registered post to it at its chosen address; or delivered by hand to a responsible person during ordinary business hours at its chosen address, shall be deemed to have been received, in the case of hand deliver, on the day of delivery. Any notice by electronic mail to a party at its electronic email address shall be deemed, unless the contrary is proved, to have been received within 4 (four) hours of transmission where it is transmitted during normal business hours or within 24 hours of the opening of business on the first Business Day after it is transmitted where it is transmitted outside those business hours.

## 20. Governing Law

The validity of these Conditions, their interpretation, the respective rights and obligations of the Parties and all other matters arising in any way out of these Conditions or their performance shall be determined in accordance with the laws of the RSA.

## 21. Jurisdiction

The Company shall be entitled at its option to institute legal proceedings which might arise out of or in connection with any Order in any Magistrate's Court in the RSA having jurisdiction in respect of the Supplier notwithstanding that the claim or the value of the matter in dispute might exceed the jurisdiction of such Magistrate's Court. The Supplier hereby consents to the jurisdiction of the Magistrate's Court for the purpose of any proceedings instituted by or against it in terms hereof.

## 22. Interpretation

22.1 In these Conditions, unless the context requires otherwise:

22.1.1 words importing any one gender shall include the other two genders;

22.1.2 the singular shall include the plural and vice versa;

22.1.3 a reference to natural persons shall include created entities (corporate or unincorporate) and *vice versa*;

22.1.4 any reference to any enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time; and

22.1.5 when any number of days is prescribed in these Conditions that number of days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or official public holiday within the meaning of the Public Holidays Act, 1994, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or official public holiday.

22.2 In these Conditions, the headings have been inserted for convenience only and shall not be used for nor assist or affect its interpretation.

## 23. General

23.1 These Conditions and the Schedules hereto read with each Order placed hereunder contain the entire agreement between the Parties in relation to the subject matter hereof.

23.2 Neither Party shall have any claim or right of action arising from any undertaking, representation or warranty not included in these Conditions, or the Schedules hereto read with each Order placed hereunder.

23.3 No agreement to vary, add to or cancel, these Conditions shall be of any force or effect unless reduced to writing and signed by or on behalf of the Parties to the Order in question.

23.4 Each Party warrants that it is acting as a principal and not as an agent for an undisclosed principal.

23.5 The Company may on written notice to the Supplier cede, assign, novate or delegate its rights and obligations under this Conditions to any of its subsidiaries or an unrelated third party.

23.6 No failure by either party to enforce any provision of these Conditions shall constitute a waiver of such provision or affect in any way that party's right to require performance of any such provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself.

23.7 Should one or more of the terms of these Conditions be held to be invalid or unenforceable for any reason whatsoever, the validity of any of the other terms of these Conditions shall not be affected thereby and such remaining terms as are applicable shall remain in force.