

# Terms and Conditions of Sale

of David Brown Santasalo South Africa



David Brown Santasalo

## 1. INTERPRETATION

- 1.1 In these Conditions:
- (a) "the Company" means David Brown Santasalo South Africa (Pty) Ltd (Company number 2013/092642/07) or any subsidiary or associated company which accepts the Customer's order and their respective successors and assigns.
  - (b) "the Customer" means the person, firm or company to whom the Goods and/or Services are to be supplied; and "the Goods" and "the Services" means the goods and services respectively supplied or to be supplied by the Company (as may be described in the Company's quotation or acknowledgement of order).
  - (c) "the Equipment" means plant, machinery, tooling, parts or equipment in respect of which Services are to be performed other than the Goods.
  - (d) "Delivery" means delivery as defined by Clause 7.2.
  - (e) "Claims" means all and any loss, cost, expense, harm, damages, penalty, injury, death, liability, claim or the like, irrespective of whether direct, indirect, consequential or otherwise and irrespective of whether monetary or in respect of person, property or value.

## 2. GENERAL

- 2.1 All quotations and offers are made and orders are accepted subject to and will be deemed to incorporate these Conditions and they will apply to all contracts to the exclusion of any other terms and conditions including without limitation those which the Customer purports to apply under any order. Variations to the terms of any contract for the sale of Goods and/or Services will only be effective if agreed in writing and signed by a duly authorised representative of the Company.
- 2.2 These Conditions and the matters set out or expressly incorporated in the Company's order acknowledgement, represent the entire terms of agreement between the Customer and the Company relating to the sale of the Goods and/or provision of the Services ("the Contract") and the Customer agrees that it places no reliance whatsoever on any representations, agreements, statements or understandings other than those expressly incorporated in these Conditions and such acknowledgement.

## 3. TENDER OR QUOTATION

- 3.1 The Company's tender or quotation is an invitation to treat within the period stated therein or, if no period is stated, within 30 days from the date of the tender or quotation, but the Company reserves the right to withdraw any tender or quotation at any time.

## 4. ORDER AND ACCEPTANCE

- 4.1 All orders placed by the Customer ("Orders") will be deemed to be an offer and will only be deemed accepted by the Company upon the earlier of the issue of a written acknowledgement of order by the Company or Delivery of the Goods and/or the Services.
- 4.2 All Orders must be in writing and must be accompanied by sufficient information to enable the Company to proceed immediately if the Order is accepted.
- 4.3 Any Orders accepted by the Company may not be varied or cancelled without the written consent of the Company which, if given, will be on terms that the Customer will indemnify the Company in full against all losses (including loss of profit), costs, damages, charges and expenses incurred (directly or indirectly) by the Company as a result of any such cancellation or variation.

## 5. DESCRIPTION OF GOODS

- 5.1 All information supplied to the Customer by the Company in relation to the Goods or Services before a Contract is made (including but not limited to the Company's tender or quotation) and the descriptions and the illustrations contained in the Company's catalogues, pamphlets, price lists, web-site and other advertising matter are approximate, being a general description by way of identification only and such information and descriptions will not in any circumstances constitute a sale by description, nor will any statement made in any such document, or any other statement made, whether orally or in writing, by or on behalf of the

Company be deemed to be a representation by which the Customer has been induced to enter into the Contract.

- 5.2 Unless otherwise expressly agreed in writing, any specimen of Goods which may be submitted by the Company to the Customer is intended for the purpose of identification and illustration only and the Contract will not be deemed to be a contract for the sale of the Goods by sample.
- 5.3 Certified outline drawings will be supplied if necessary, after the receipt by the Company of the Customer's written Order, but the Company does not undertake to supply copies of detailed drawings.

## 6. TESTS INSPECTION AND PERFORMANCE

- 6.1 If the Contract so provides, the Company will give reasonable notice to the Customer of the date on which and the time at which any inspections of or tests on the Goods, Equipment and/or Services are to be made so as to enable the Customer to attend if it so desires. Any inspections or tests which the Company may agree, at the request of the Customer, to make in addition to those which it normally undertakes will be paid for by the Customer and their cost will be added to the price of the Goods and/or Services.
- 6.2 Any performance figures given by the Company are based upon experience and are those that the Company expects to obtain on test but the Company will not be liable for any failure to obtain the figures given unless the failure constitutes a failure to meet a specification expressly set out in the Company's order acknowledgement.
- 6.3 The Customer should form its own judgment as to the suitability of the Goods and Services, the sufficiency of their rated performance and capacity for its requirements and the sufficiency of the scope of work of the Services. Except to the extent expressly set out in the Company's order acknowledgement; the Company does not assume any responsibility or give any undertaking with regard to the suitability or sufficiency of the Goods or Services for the Customer's requirements and in entering into any contract with the Customer does so on the assumption that the Customer exercises its own skill and judgment in the selection of items and Services to meet its requirements.
- 6.4 It is the Customer's responsibility to ensure that any site, other than the Company's site, at which Goods are to be delivered or Services performed, is suitable, safe and readily accessible to the Company and its agents and all necessary and appropriate equipment and personnel are provided free of charge to the Company and its agents to facilitate performance of the Company's obligations under the Contract.

## 7. DELIVERY AND RISK

- 7.1 The time for Delivery of the Goods and/or provision of the Services is not of the essence of the Contract. Any date or period quoted for delivery and/or provision is an estimate only and the Company will not be liable for any loss or damage whether direct or indirect and whether suffered by the Customer or by a third party, resulting from any delay in delivery or failure to deliver the Goods or provide the Services, howsoever caused.
- 7.2 Delivery will be deemed to have been made on the earlier of:
- (a) the despatch of the Goods from the Company's works or (where they are to be collected by the Customer) on the receipt by the Customer of notice from the Company that the Goods are ready for collection or, in the case of Services, the performance of the Services; or
  - (b) the expiration of 7 days from the despatch by the Company to the Customer of written notice stating that the manufacture or despatch or collection of the Goods or the performance of the Services cannot be completed or carried out due to the failure of the Customer to supply parts material or information required or by the failure of the Customer to inspect the Goods or any other act or omission by the Customer which results in the Company being unable to complete the Contract and that the Company therefore requires the Customer to accept the Goods or performance of the Services as they stand.
- 7.3 The Company may deliver the Goods in instalments and perform the Services in sections in any sequence. Deliveries of further instalments and further sections may be withheld until the Goods and/or Services comprised in earlier instalments and/or sections have been paid for in full. Default by the Company, howsoever caused, in respect of one or more

instalments will not entitle the Customer to terminate the relevant Contract as a whole, unless otherwise expressly provided in the Company's order acknowledgement.

- 7.4 The risk in the Goods, and the responsibility for insuring the Goods, will pass to the Customer on Delivery.

#### **8. PACKAGING AND SHIPPING**

- 8.1 The Customer will give the Company despatch instructions (including any special marking of packing cases) and identify the packaging standard required at the time of placing its Order.
- 8.2 If the Company agrees at the request of the Customer to arrange for the shipment of the Goods (whether overseas or otherwise) it will do so at the sole expense and risk of the Customer and as the agent of the Customer, which hereby authorises the Company to enter into any contracts with third parties for or relating to the shipment carriage and insurance of the Goods as such agent and undertakes forthwith on demand to pay and to indemnify the Company against any imposts, duties, taxes, fees or other charges involved in the export of the Goods from any country or their importation into any country.

#### **9. STORAGE**

- 9.1 If by reason of any default by the Customer the Goods are not despatched or collected from the Company's works within 14 days from Delivery or Equipment is not collected by the Customer at the Company's request, the Company will be entitled in addition and without prejudice to any other rights and remedies which it may have against the Customer in respect of such default:
- (a) to store the Goods and/or Equipment at the sole risk of the Customer making an appropriate charge to the Customer for storage; and/or
  - (b) to give written notice to the Customer requiring it to remove the Goods and/or Equipment from the Company's premises or from any other premises at which they may be stored.
- 9.2 If the Customer fails to comply with the notice referred to in Clause 9.1(b) within 30 days from the date of such notice the Company will be entitled to sell or otherwise dispose of the Goods and/or Equipment and will be under no obligation to account to the Customer for the proceeds of such sale or other disposition except to the extent that such proceeds and the value of any payments already made by the Customer (other than any deposit paid, or advance payments expressed to be non-returnable) may exceed the amounts owing to the Company in connection with the Contract. The Company will be entitled in addition to its other rights and remedies to be credited or paid by the Customer for its charges and all expenses incurred in storage of the Goods and/or Equipment, and for any costs and expenses incurred in connection with the sale or other disposition of the Goods and/or Equipment by the Company.

#### **10. PRICE**

- 10.1 Unless otherwise agreed by the Company in writing the price of the Goods and/or Services is quoted delivery ex-works and is exclusive of Value Added Tax.
- 10.2 Should the Company incur extra cost owing to suspension of the work by reason of the Customer's instructions or lack of instructions, or for any other cause for which the Customer is responsible, such extra cost will be added to the price of the Goods and/or Services and paid for accordingly.
- 10.3 A certificate of the Company's auditors as to the correctness of any increase made pursuant to this Clause 10 will be forwarded to the Customer if required and will be accepted as final.

IN RESPECT OF CONTRACTS FOR SERVICES ONLY THE FOLLOWING SUB-CLAUSES ALSO APPLY:

- 10.4 The provision of any spare parts or material supplied by the Company as an integral part of the Services will be charged in addition to the quoted price at the Company's standard rates or dealt with by separate purchase order.
- 10.5 The Company's charges are applicable from the engineer's departure point to return destination. Travel time is charged at the site day rate/overtime rate as applicable.
- 10.6 Subsistence charges may include un-receipted items subject to current tax authority regulations.
- 10.7 Any waiting time incurred by the Company's engineer, including weekend or local holiday layovers will be charged at the appropriate day rate.
- 10.8 Charges quoted are based on stated time estimates. If additional hours are required to complete performance, which are not attributable to default on the part of the Company, the additional time will be charged at the Company's rates quoted in the Company's quotation or set out in the Company's order acknowledgement (the acknowledgement taking

precedence in case of conflict), or if none are quoted, the Company's prevailing rates at the date of the Contract.

- 10.9 Any dispute as to the definition and scope of the Services will be decided by the Company in its absolute discretion and the Company's decision in this respect will be final and binding on the Customer.

#### **11. PAYMENT**

- 11.1 Unless otherwise agreed in writing, payment will be due on the 21st of the month following the month in which Delivery is made or performance is effected. (Without prejudice to the Company's other remedies; any extended payment terms agreed by the Company will be immediately cancelled if any payment on any account due from the Customer to the Company is late).
- 11.2 The Company will be entitled to treat any failure by the Customer to pay the price of the Goods and/or Services or any part thereof on the due date for payment as a repudiatory breach of contract whereby the Company is discharged from the further performance of its obligations (including its obligation to make deliveries or further deliveries) under the Contract.
- 11.3 Time for payment of the contract price will be of the essence. The Customer will indemnify the Company against all expenses and legal costs incurred by the Company in recovering overdue amounts. Interest will be payable by the Customer on overdue amounts (before as well as after judgement) at the maximum permissible annual rate (compounded on a daily basis) from time to time on the outstanding amount until the total price for the Goods and Services, and such costs and charges, are paid in full.
- 11.4 In addition and without prejudice to any other rights of set off to which the Company may be entitled whether by statute, at common law, by custom or otherwise, the Company will be entitled (if it elects to do so) to set off all or any debts and liabilities (whether present or future, certain or contingent and whether ascertained or not) which the Company or any subsidiary or associated company of the Company may owe to the Customer on any account whatsoever.
- 11.5 The Company and the Customer agree, notwithstanding the amount in dispute, to submit to the jurisdiction of the Magistrate's Court and shall be entitled to institute action out of such Court. A certificate issued and signed by any Director or Manager of the Company, whose authority need not be proved, in respect of any indebtedness of the Customer to the Company or in respect of any other fact, including the fact that such goods were sold and delivered, shall be prima facie evidence of the Customer's indebtedness to the Company and prima facie evidence of such other fact and prima facie evidence of the delivery of the goods.
- 11.6 The Customer shall pay all legal costs, including attorney/own client costs, tracing agent's fees and collection charges which the Company may incur in taking any steps pursuant to any breach or enforcement of these terms and conditions by the Customer.

#### **12. CUSTOMER'S PATTERNS OR OTHER PROPERTY**

- 12.1 The Company will not be responsible for loss of or damage to the Customer's patterns or other property whilst in the Company's possession or in the course of being returned to the Customer, howsoever such loss or damage may be occasioned. Such materials are placed with the Company entirely at the risk of the Customer and should be insured by the Customer as appropriate.

#### **13. WARRANTY**

- 13.1 The Company warrants to the Customer that:
- (a) the Goods will be free from defects in materials and workmanship appearing to the Customer within twelve months from Delivery of the Goods;
  - (b) the Goods will be free from defects resulting from errors in the Company's design which appear to the Customer within twelve months from Delivery of the Goods;
  - (c) the Services will be performed with reasonable skill and care; and
  - (d) the Goods and the Services will at Delivery and for the period of 12 months following Delivery (in the case of Goods) and commencement of performance (in the case of Services) meet the specification expressly agreed by the Company in writing in the Company's order acknowledgement.
- 13.2 The Company will repair defective Goods or re-perform defective Services covered by the foregoing warranty or if in the Company's judgement they cannot be satisfactorily repaired or re-performed, will provide either a refund of the price of the defective Goods and/or Services or, at the Company's option in the case of Goods, replacement Goods. Goods and services supplied pursuant to a claim under this warranty will be subject to the same warranty as the original Goods and Services supplied, for the balance of the original warranty period only and not further or otherwise.

13.3 The Customer accepts that the express benefits of this warranty represent the entire responsibility of the Company to the Customer in respect of all representations, conditions and warranties express or implied, statutory or otherwise and any other obligations and liabilities whatsoever of the Company relating to the Goods and/or Services and are subject to the exclusions and limitations of liability and the maximum aggregate liability limitation set out below.

#### **14. LIMITATION AND EXCLUSION OF LIABILITY**

- 14.1 The term of the Company's warranty shall not be extended by the fact that a defect was latent or that it was not or could not have been discovered by the Customer within the said 12 month period.
- 14.2 The Company shall have no obligation under its warranty unless:
- the Company is notified of the defect in the Goods and/or Services in writing within 14 days of it becoming apparent;
  - the Company or its agent is given a reasonable opportunity to safely inspect the Goods or Services which are alleged to be defective;
  - the Goods which are alleged to be defective or Equipment on which defective Services are alleged to have been performed are returned to the Company's works with transportation charges prepaid unless the Company advises otherwise; and;
  - the Customer furnishes satisfactory evidence that the Goods or Equipment in respect of which a claim is notified have been properly installed and maintained, correctly lubricated, operated only under normal conditions with competent supervision and within the load limits for which they are designed, and otherwise used in accordance with the Company's applicable manual (if any) as provided to the Customer.
- 14.3 The Company's warranty shall not apply to Goods, or in respect of Equipment, which have been subjected to misuse, abuse, neglect or improper storage, handling or maintenance or which have been damaged after leaving the Company. The Company will not be responsible for any claims for work done by anyone other than the Company to correct any defects unless the work is authorised in writing by the Company prior to being undertaken. Any unauthorised work will invalidate this warranty.
- 14.4 If the Customer has notified the Company of a defect and no defect is found for which the Company is liable, the Company will be entitled to reimbursement of the costs it has incurred as a result of the notice.
- 14.5 The Customer will at its own expense arrange for any dismantling and reassembly of any goods and equipment and the provision of all equipment (including without limitation lifting equipment and crane-age) to the extent that this is necessary to remedy the defect or facilitate re-performance of Services.
- 14.6 Unless otherwise agreed, necessary transport of the Goods and/or parts thereof (and, if relevant, Equipment) to and from the Company in connection with the remedying of defects will be at the risk and expense of the Customer. The Customer will follow the Company's instructions regarding such transport.
- 14.7 Unless otherwise agreed, the Customer will bear any additional costs which the Company incurs as a result of the Goods or Equipment being located in a place other than the place of delivery.
- 14.8 Defective parts which have been replaced will be made available to the Company and will be its property.
- 14.9 The Company is not liable for defects arising out of goods provided, or a design stipulated or specified, by the Customer, or for defects caused by any default or negligence on the part of the Customer or for any failure to perform which is caused by the Customer's failure to prepare its or a third party's site or provide appropriate equipment or personnel.
- 14.10 The Company's warranty given in respect of repair, maintenance, upgrade or other aftermarket services is not an 'as new' warranty unless expressly warranted as such in the Contract. Except to the extent otherwise expressly agreed in the Contract, only the services actually performed and the work actually done by the Company are warranted.
- 14.11 The Company shall not be liable to the Customer in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof), (i) for any economic loss of any kind whatsoever, including without limit loss of profit, business contracts, revenues or anticipated savings, or (ii) for damage to the Customer's reputation or goodwill, or (iii) for any loss resulting from any claim made by any third party, or (iv) for any special indirect or consequential loss or damage of any nature whatsoever.

#### **15. HEAT TREATING OR MACHINING CUSTOMER'S MATERIAL AND CUTTING TEETH IN CUSTOMER'S BLANKS**

15.1 The Company's prices for heat treating or machining Customer's material or cutting teeth do not include transport, handling, packaging or

insurance. All metal removed will be the property of the Company and has been allowed for in the Company's price. Should any material or blanks sent for machining, cutting teeth, grinding, hardening, flame cutting, welding, assembly or any other operation be spoiled, the Company will not be responsible for the value of such material or blanks or the cost of any prior operations performed thereon. This applies likewise to finished parts sent for fitting or other purposes. The Company further disclaims any responsibility for the failure of all or any such materials, blanks or parts due to any defects in or inadequacy of them whatsoever.

- 15.2 The Customer warrants that any material, blanks or parts supplied by it will be free from defects, of suitable quality and fit for the purpose required for the Company's performance of the Contract. The Company will charge for work carried out to any material which is spoiled due to the unsuitability of such material and for any consequential damage to its cutters or other tools and the Company will not be responsible for replacements. The Company does not undertake to check or to rectify Customer's material, blanks or parts, neither does the Company accept responsibility for loss or damage to them after delivery.
- 15.3 The Company reserves the right to charge the Customer for any expenses incurred by the Company in rectifying the Customer's material, if the Company elects to do so, when such material has not been supplied to the correct dimensions.

#### **16. INSTALLATION**

- 16.1 Where the Contract provides for the supervision of installation of the Goods by the Company the following provisions will apply:
- the Company will provide the services of an engineer to advise upon: the installation of the Goods; and, if specified in the tender, the checking for accuracy, testing and commissioning of the Goods.
  - the Customer will at its own expense provide all equipment, labour and other facilities required for the installation of the Goods. The employees provided by the Customer will remain the Customer's servants and under the Customer's control and the Company will not be liable for any act or omission of such employees. The Customer warrants that all such employees are English-speaking and suitably qualified, skilled and experienced for the tasks allocated to them.

#### **17. TESTS AFTER INSTALLATION**

- 17.1 Where the Contract provides for the testing of Goods on completion of their installation, or of Equipment on completion of the Services, the tests will be carried out by the Company in the presence of the Customer and the Company will agree with the Customer on reasonable notice the date on which and the time at which the tests are to be made. Where the Customer has given the Company reasonable notice of the date on and time at which the tests are to be made and the Customer fails to attend such tests then the tests will proceed in its absence and will be deemed to have been made in its presence.

#### **18. TITLE TO THE GOODS**

- 18.1 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these conditions, title to the Goods will not pass to the Customer until their full price and any other sums owing by the Customer to the Company, whether under the same or under any other contract have been paid.
- 18.2 The Customer will if so required by the Company assign to the Company the Customer's right to recover the price of the Goods from any sub-purchaser or take steps to recover the same for the benefit of the Company and account to the Company therefor. If the proceeds of such sub-sales exceed the amount payable by the Customer to the Company under condition 18.1 the Company will refund or credit the difference to the Customer.
- 18.3 The Company will be entitled to exercise all and any of its rights under this condition notwithstanding that any period of credit provided for by the Contract has not expired at the time when it elects to do so.
- 18.4 Subject to this Clause 18, the Company will pass good unencumbered title to the Goods to the Customer.

#### **19. FORCE MAJEURE**

- 19.1 Should the performance by the Company of any of its obligations under the Contract be prevented, hindered or delayed by or in consequence of any cause or event whatsoever beyond the reasonable control of the Company including (but not limited to) any outbreak of hostilities (whether or not involving the Company's country of registration or principal residence and whether war is declared or not), terrorist acts, pandemic or epidemic disease, strikes, lock-outs, trade disputes or other labour difficulties, breakdowns, delays in transport, accidents, fire, flood, inadequate performance of, failure of or incorrect processing by computer systems, default of suppliers or sub-contractors, delivery to the Company

of defective materials or components or delay in delivery to the Company of materials or components, or in the event of national emergency, or if the Company's works should become either directly or indirectly so engaged on Government contracts under priority directions as to prevent, hinder or delay work on other contracts, the Company will be entitled at any time, on notice to the Customer, to make partial deliveries only or to determine the Contract without liability and without prejudice in any case to rights which have already accrued to the Company in respect of deliveries already made, or work already done.

## **20. TERMINATION**

20.1 If the Customer (or, where the Customer is a firm, any partner therein) makes default in or commits any breach of any of the Customer's obligations to the Company or, if any distress or execution is levied on the Customer, the Customer's property or assets, or if the Customer becomes insolvent or makes or offers to make any arrangement or composition with its creditors, or commits any act of bankruptcy, or if any petition or receiving order in bankruptcy is presented or made against the Customer, or if the Customer is a limited company and is struck off or any resolution or petition to wind up such company is passed or presented (otherwise than for bona fide reconstruction or amalgamation where the resultant entity is or agrees to be bound by the Contract), or if a receiver of such company's undertakings, property or assets or any part thereof is appointed, or if a nominee is appointed, the Company will be entitled forthwith to terminate any contract then subsisting between it and the Customer, and, upon written notice of such termination being posted by the Company to the Customer's last known address, any such contract then subsisting will be deemed to have been terminated, without prejudice to the Company's accrued rights and existing remedies against the Customer.

## **21. QUANTUM MERUIT**

21.1 Where from any cause, whether arising under the Contract or otherwise and whether due to the Company's breach of contract or otherwise work under the Contract is only partly completed, the Company will be entitled to payment on a quantum meruit basis in respect of all work done by the Company prior to termination (or, where the Company is in breach of the Contract, prior to the breach). This is without prejudice to the Company's other rights and remedies should non-completion be occasioned by default of the Customer.

## **22. NO WAIVER**

22.1 No time or other indulgence granted by the Company to the Customer will operate or be deemed to operate as a waiver or suspension of the Company's rights under these Conditions. The Company will be entitled at any time with or without prior notice, to hold the Customer to strict performance of any outstanding or recurring obligations under the Contract.

## **23. INDEMNITY**

23.1 The Customer warrants that the use by the Company of any information, materials, drawings, designs or other matter provided by the Customer will not infringe the intellectual property rights (including without limitation trademarks, service marks, design rights, registered designs, patents, copyright, utility models, know how) of or asserted by any third party and will indemnify the Company against all damages, penalties, losses, costs and expenses to which the Company may become liable in the event that any allegation of infringement of such intellectual property rights is made or any work done by the Company pursuant to the Contract constitutes an infringement of any such intellectual property rights.

23.2 The Customer will indemnify the Company against any loss, damage or expense which may be incurred or sustained by the Company in the handling, defence, compromise or satisfaction of any claims addressed to the Company by any third parties, including but not limited to claims brought by any of the Company's employees or agents, which arise from any negligence of the Customer or breach on the part of the Customer of any of its obligations under these Conditions.

23.3 The Customer will further indemnify the Company in respect of the handling, defence, compromise or satisfaction of any claims whatsoever by any third parties which may be brought against the Company to the extent that the Company thereby incurs any liability or expense arising out of the Contract (including liability resulting from the reasonable compromise of such claims) which arises otherwise than by reason of personal injury or death caused by the Company's negligence and in excess of the obligations assumed by the Company under the Contract as between the Company and the Customer, whether or not such claims arise or are founded upon any breach of contract or default, including negligence, upon the part of the Company.

## **24. COMPANY'S MAXIMUM AGGREGATE LIABILITY**

24.1 The Company's maximum aggregate liability pursuant to the Contract and/or in connection with the supply of the Goods and/or Services (whether such liability is to the Customer or the Customer's Group or to any third party entitled to claim under or in connection with the Contract) however such liability may arise and whether in contract, tort, statutory liability, common law or otherwise, is limited to the Contract price excluding VAT, of the defective Goods or Services or, where the Company's default is a failure to deliver the Goods or Services, the Contract price, excluding VAT, of the undelivered Goods or Services. Any such liability will be satisfied by the Company reducing or refunding the relevant part of such Contract price.

24.2 The Company's obligations and liabilities as provided for in the Contract will be exhaustive of its obligations and liabilities to the Customer and any third party arising out of, under or in connection with the Contract. This applies even if such obligations and liabilities arise in respect of or in consequence of a breach of contract or of statutory duty, or a tortious or negligent act or omission which gives rise to a remedy at common law. Accordingly, except as expressly provided for in the Contract, the Company will not be obligated or liable to the Customer or any third party in respect of any damages, losses, costs or expenses suffered by the Customer or any third party which arise out of, under or in connection with the Contract, and all such rights, obligations and liabilities (except for any liability Company may have for personal injury or death caused by its negligence, or for fraud or fraudulent misrepresentation, which in any such case is not limited) are subject to the maximum aggregate limit of liability set out above.

## **25. TIME LIMIT FOR CLAIMS**

25.1 All claims whatsoever by the Customer under or in connection with this Contract will be extinguished and absolutely barred unless suit is brought within three (3) years of the date of delivery of the Goods (as defined by Clause 7.2) or, in the case of Services, the date of commencement of performance provided nevertheless that nothing in these Conditions will preclude the Company from relying on any other period of limitation (whether statutory or otherwise) on which it would be entitled to rely apart from this Clause.

## **26. THIRD PARTY RIGHTS**

26.1 No third party will have any right of action pursuant to the Contract.

## **27. CONFIDENTIALITY**

27.1 Any drawings, and any documents conveying technical or confidential information with regard to the Company's products or its business, which may be supplied in connection with the Contract will remain the Company's property and will be returned immediately upon the Company's request and the Customer will ensure that copyright in all such drawings and documents is not abused. The Customer will also at all times treat all such drawings and documents and any other information regarding the Company's products or business which is of a confidential nature as matters confided to the Customer in strict confidence and will not itself use, or show or divulge such matters to any third parties without the Company's prior written consent, except so far as such use or such disclosure to employees or other persons is necessary for the business efficacy of the Contract, and in the event of such matters being disclosed to third parties, whether or not the disclosure be permitted, the Customer will ensure that such third parties observe similar confidence and will take all necessary steps to prevent any infringement. The provisions of this Clause 27 will not apply to information which is or becomes part of the public domain (other than through any breach of contract), or which comes lawfully into the possession of the Customer without any breach of confidentiality.

27.2 The Customer will not, under any circumstances, acquire any right in or to any intellectual property rights (as described in Clause 23.1) subsisting in, resulting from or relating to the Goods and/or Services, or any documents, drawings and/or specifications relating thereto either supplied by the Company to the Customer in connection with the Goods and/or Services, or resulting from the provision of the Goods and/or Services, unless otherwise expressly agreed by the Company in writing. If the Customer will in any way acquire any such rights then the Customer will immediately inform the Company and will forthwith take such steps as may be required by the Company to assign such rights or vest such title in the Company.

## **28. GOVERNING LAW**

28.1 The Contract will be construed in all respects under the law of the Republic of South Africa; and the relevant Courts of the Republic of South Africa will have exclusive jurisdiction to hear and determine any action in respect of it, save that the Company will be entitled to seek injunctive or

any other relief in the courts of any jurisdiction whatsoever. The subject headings of these Conditions are intended for reference only and not as an aid to construction.

## 29. GENERAL

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- 29.1 In the event that this Contract is found to be inconsistent with any legislation applicable to any transaction in question, this contract will not be void or invalid but will be amended and interpreted, to the extent possible, so that it is consistent with any such legislation.
- 29.2 The Contract represents the entire agreement between the Company and the Customer with respect to its subject matter.
- 29.3 These Conditions, if signed or initialled on each page by authorised representatives of the Company and the Customer, shall govern all future contractual relationships between them for the supply of goods and/or services by the Company to the Customer. Either Party may terminate such agreement by giving written notice to the other in writing, provided that such termination shall not affect any Contract already in force prior to the date of termination.
- 29.4 No amendment and/or alteration and/or deletion and/or addition and/or cancellation of any terms or conditions of the Contract shall be of any force and effect unless reduced to writing and made by authorised representatives of the Company and the Customer.
- 29.5 No relaxation or indulgence which the Company may give at any time in regard to the carrying out of the Customer's obligations in terms of any Contract shall prejudice, or be deemed to be a waiver of, any of the Company's rights in terms of any Contract.