

# TERMS AND CONDITIONS OF SUPPLY OF GOODS TO RESELLERS

## 1 INTERPRETATION AND DEFINITIONS

In this Contract:

- 1.1 clause headings are for reference purposes only and shall not influence the interpretation;
- 1.2 reference to one gender shall include the other genders;
- 1.3 reference to natural persons include juristic persons and vice versa;
- 1.4 reference to the singular shall include the plural and vice versa;
- 1.5 if any provision in a definition is a substantive provision conferring rights or imposing obligations on a Party, effect shall be given to it as if it were a substantive provision in the body of the Contract;
- 1.6 where figures are referred to in numerals and in words, if there is any conflict, the words shall prevail;
- 1.7 all annexures hereto shall be deemed to be incorporated herein and shall form an integral part hereof;
- 1.8 expressions defined in this Contract shall bear the same meanings in annexures hereto;
- 1.9 reference to days, months or years shall be construed as Gregorian calendar days, months or years;
- 1.10 durations shall be reckoned exclusively of the first and inclusively of the last day.
- 1.11 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings:
  - 1.11.1 **"Affiliate"** means with respect to any entity, any other entity Controlling, Controlled by or under common Control with such entity. The term "Affiliate" shall also include a "subsidiary" of an entity.
  - 1.11.2 **"Business Day"** means a day other than a Saturday, Sunday, bank or public holiday in South Africa;
  - 1.11.3 **"Buyer"** means the purchaser of the Goods from the Supplier as described in an Order;
  - 1.11.4 **"CPA"** means the Consumer Protection Act, 68 of 2008, as amended;
  - 1.11.5 **"Contract"** means the contract between the Supplier and the Buyer for the sale and purchase of the Goods in accordance with these Conditions, which shall comprise these Conditions, the relevant Order and any other documents incorporated into these Conditions by reference;
  - 1.11.6 **"Control"** means with regard to any entity the right or power to dictate the management of and otherwise control such entity by any of:
    - 1.11.6.1 holding directly or indirectly the majority of the issued share capital or stock (or other ownership interest if not a corporation) of such entity ordinarily having voting rights;
    - 1.11.6.2 controlling the majority of the voting rights in such entity; or
    - 1.11.6.3 having the right to appoint or remove directors holding a majority of the voting rights at meetings of the board of directors of such entity,and **"Controlled"** shall be construed accordingly;
  - 1.11.7 **"Customer"** means the party (whether a legal person or natural person) to whom the Supplier sells the Goods;
  - 1.11.8 **"Delivery Point"** means the location set out in the Order or such other location as is agreed in writing between the Supplier and the Buyer. In the absence of any location specified in the Order or otherwise agreed, the Delivery Point shall be the Buyer's principal place of business.
  - 1.11.9 **"Force Majeure Event"** means as defined in clause 16;
  - 1.11.10 **"Goods"** means the equipment, parts, components, and materials sold by the Supplier to the Buyer (or any part of them) as set out in the Order;
  - 1.11.11 **"Parties"** means the Buyer and the Supplier and **"Party"** means either of them;
  - 1.11.12 **"POD"** means written proof of delivery acknowledgement by the Buyer that the Goods have been duly delivered, as provided in clause 7.
  - 1.11.13 **"Manufacturer"** means the manufacturer of the relevant Goods;
  - 1.11.14 **"Manufacturer's Specifications"** means any description or specification for the Goods included in any catalogues, brochures or other materials published by or on behalf of the Manufacturer;
  - 1.11.15 **"Order"** means the Buyer's order for the Goods, as set out in the online order form submitted by the Buyer; the Buyer's purchase order form; the Buyer's written acceptance of the Supplier's quotation; overleaf, or as otherwise submitted by the Buyer to the Supplier, as the case may be;
  - 1.11.16 **"Returned Goods"** means all Goods returned to the Supplier in accordance with clause 10;
  - 1.11.17 **"Supplier"** means SegenSolar (Pty) Ltd whose registered office is at 245 Masjien Street, Strijdom Park, Gauteng, 2194, Republic of South Africa;
  - 1.11.18 **"Supplier's Premises"** means either 245 Masjien Street, Strijdom Park, Gauteng, 2194, Republic of South Africa or 1 Gulfstream Avenue Matroosfontein Cape Town Western Cape, 7490; and
  - 1.11.19 **"VAT"** means Value Added Tax as levied in terms of the Value Added Tax Act 89 of 1991.

## 2 THE CONTRACT

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, or, if earlier, when the Supplier dispatches the relevant Goods for delivery, at which point the Contract shall come into existence.
- 2.4 Any quotation for the Goods provided by the Supplier shall not constitute an offer. Unless otherwise expressly set out therein, a quotation shall only be valid for a period of 30 days from the date of issue. Any acceptance by the Buyer of a quotation from the Supplier shall constitute an Order (which is subject to acceptance by the Supplier in accordance with these Conditions).
- 2.5 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, order confirmation, POD, specification or other document shall form part of the Contract.
- 2.6 No variation to these Conditions shall have effect unless expressly agreed in writing by the Supplier and the Buyer.

## 3 ORDER PROCESS

- 3.1 The Contract (as defined below):
  - 3.1.1 shall govern all transactions between the Buyer and the Supplier;
  - 3.1.2 will only be amended or varied or cancelled or replaced or waived to the extent expressly agreed to in writing and signed by the authorised representatives of each Party;
  - 3.1.3 shall overrule any terms and conditions of contract of the Buyer; and
  - 3.1.4 If there are any discrepancies or conflict between the provisions of these Conditions including annexures and any accepted Order, the provisions of the accepted Order shall prevail in respect of that specific Order only.

## 4 DESCRIPTION

- 4.1.1 The quantity and description of the Goods shall be as set out in the Order.

## 5 PRICES

- 5.1 The price payable for the Goods shall, unless otherwise expressly agreed in writing between the Supplier and the Buyer, be the price as set out in the Order, or, if no price is set out in the Order, the price set out in any quotation provided by the Supplier to the Buyer which has been accepted by the Buyer in accordance with clause 2.4 (where such a quotation exists) or where no such quotation exists, the price set out in the Supplier's then published price list as at the date when the Order was submitted to the Buyer.
- 5.2 The price of the Goods is exclusive of all taxes (including without limitation VAT), import duties and levies (or local equivalents), which shall be payable by the Buyer, subject to receipt of an invoice, at the applicable rates.
- 5.3 The price of the Goods is exclusive of the costs of carriage and insurance to the Delivery Point, which shall be payable by the Buyer and the Buyer shall be responsible for off-loading the Goods at the Delivery Point.
- 5.4 The Supplier may, by giving notice to the Buyer at any time before delivery increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
  - 5.4.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, increases in labour, materials and any other manufacturing costs);
  - 5.4.2 any request by the Buyer to change delivery date(s), the Delivery Point, quantities or types of Goods ordered; or
  - 5.4.3 any delay caused by any instructions of the Buyer or failure of the Buyer to give the Supplier adequate or accurate information or instructions.

## 6 PAYMENT TERMS

- 6.1 The Supplier may invoice the Buyer for the Goods and any costs in respect of carriage and / or insurance payable by the Buyer on or at any time following acceptance of the Buyer's Order for the Goods.
- 6.2 Unless the Supplier has agreed to an alternate credit period in accordance with clause 6.4 below, the Buyer shall pay the invoice in full without any deduction or set off immediately upon confirmation of the Order, via electronic funds transfer, directly into the Supplier's nominated bank account, as per the Supplier's invoice.
- 6.3 If it is agreed that the Delivery Point is to be outside of the Republic of South Africa, the Buyer shall pay to the Supplier the taxes, duties and levies referred to in clause 5 within 14 days of the date of the relevant invoice in respect of the same, unless, the Supplier has agreed to an alternate credit period in accordance with clause 6.4 below.
- 6.4 The Supplier may grant an alternate credit period for payment of invoices by the Buyer at its sole discretion. This may be a longer or shorter period than the period set out at clause 6.2 and 6.3 above. The Supplier's agreement to an alternate period shall be order specific and shall not bind it in respect of any other Orders or future Orders placed by the Buyer. The Supplier may determine a different

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- alternate period for each Order and it is subject to review in accordance with clause 6.5 below.
- 6.5 The Supplier may review and terminate the alternate credit period granted to the Buyer from time to time at its sole discretion. The Supplier shall be entitled to revise the same as it may in its absolute discretion decide (including removal altogether forthwith). If the credit period assigned to the Buyer:
- 6.5.1 is removed at any such review, the Supplier shall notify the Buyer accordingly and such removal shall apply: (a) with effect from deemed receipt of such notice in accordance with clause 13 and (b) to any and all invoices issued to the Buyer by the Supplier which are outstanding as at the date of deemed receipt of such notice (provided that interest for late payment may only be charged with effect from the date of deemed receipt of the Supplier's notice to the Buyer that the credit period is removed); and (c) to any invoices issued by the Supplier to the Buyer from and including the date of deemed receipt of such notice;
- 6.5.2 is decreased (but is not removed entirely pursuant to clause 6.5.1) at any such review, any such decreased credit period shall apply to any and all invoices issued to the Buyer by the Supplier with effect from the date of the relevant review; or
- 6.5.3 is increased at any such review, any such revised credit period shall apply to any invoices issued by the Supplier to the Buyer from and including the date of such review or such later date as the Supplier may decide and notify the Buyer.
- 6.6 For the avoidance doubt, time of payment shall be of the essence.
- 6.7 All payments received, if not supported by a remittance advice, will be allocated to the oldest invoices on the account.
- 6.8 No payment by the Buyer shall be deemed to have been received until the Supplier has received cleared funds.
- 6.9 If the Buyer fails to pay the Supplier any sum due, the Buyer shall be liable to pay interest to the Supplier on such sum from the due date for payment at the maximum permissible rate as allowed for in terms of the National Credit Act 34 of 2005, accruing on a daily basis until payment is made, both before or after any judgment.
- 6.10 The Buyer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set-off an amount owing by it to the Buyer against any amount payable by the Supplier to the Buyer.
- 6.11 The Supplier may at its sole discretion and without liability to the Buyer refuse to fulfil an Order, including any order that it has accepted, whilst any invoice issued by the Supplier to the Buyer remains overdue and payable.
- 6.12 It is agreed that payments may be made via Visa, Mastercard, Diners or American Express credit cards via PayGate (Pty) Ltd [www.paygate.co.za](http://www.paygate.co.za), or by bank transfer into the Supplier's bank account, as per clause 6.2 above.
- 6.13 Where payment is made by PayGate, the Buyer's details shall be stored by the Supplier separately from card details which are entered by the Supplier on PayGate's secure site.
- 6.14 The merchant outlet country at the time of presenting payment options to the cardholder is South Africa.
- 6.15 The Supplier shall, in relation to PayGate transactions, take responsibility for all aspects relating to the transaction, including sale of Goods and services sold on the website, customer service and support, dispute resolution and delivery of Goods.
- 6.16 The Buyer hereby acknowledges and agrees that information regarding its payment behaviour may be disclosed to any registered credit bureau and/or any other suppliers, subject to applicable laws.
- 7 DELIVERY**
- 7.1 The Supplier shall deliver the Goods to the Delivery Point or the Buyer shall collect from the Supplier's Premises.
- 7.2 Delivery of the Goods shall be completed when the Goods arrive at the Delivery Point (subject to the Buyer's right to refuse delivery in accordance with clause 7.5) or upon collection from the Supplier's Premises.
- 7.3 Any dates quoted or accepted by the Supplier for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by factors outside of its control, including a Force Majeure Event or due to the Buyer's failure to provide the Supplier with adequate delivery instructions or any other instructions which are relevant to the supply of the Goods.
- 7.4 If the Goods have not been delivered by the date or, if relevant, by the end of the time period given by the Supplier as the approximate date/period for delivery from time to time then, unless the delay is caused by a Force Majeure Event or the Buyer's failure to provide the Supplier with adequate delivery instructions or any other instructions which are relevant to the supply of the Goods or the Goods have not been delivered to the Buyer for the reasons stated in clause 7.5 then the Buyer shall be entitled to give written notice to the Supplier requiring the Supplier to deliver the Goods within not less than 30 days following receipt of such notice, whereupon, if the

- Supplier fails to comply, the Buyer may terminate the Contract on written notice to the Supplier.
- 7.5 The Supplier shall use its reasonable endeavours to keep the Buyer reasonably informed of the anticipated time and date of delivery and the Buyer shall accept delivery of the Goods at the Delivery Point or the Supplier's Premises, provided that it has received not less than 24 hours' notice of such delivery. If it has received less than 24 hours' notice then, unless the delivery is being made on the delivery date or within the delivery period specified in the Order or otherwise agreed between the Parties, then the Buyer may refuse to accept delivery if unreasonable to expect the Buyer to accept delivery on that date taking into account the Buyer's ability to gain access to the Delivery Point or the Supplier's Premises on that date and any material inconvenience to the Buyer in complying.
- 7.6 If the Buyer either fails to take delivery of the Goods delivered in accordance with clause 7.4 or if the Buyer fails to accept delivery of any of the Goods at the Delivery Point or the Supplier's Premises (except in circumstances where it is reasonable for the Buyer to refuse to accept delivery as set out in clause 7.5), then the Supplier may store the Goods until delivery is effected and the Buyer shall be liable for all reasonable costs, expenses and loss incurred by the Buyer in connection with such failure including, without limitation, additional transport costs, storage costs and insurance costs.
- 7.7 The Supplier may deliver the Goods by instalments. Each instalment shall be invoiced and paid for in accordance with the provisions of the Contract and shall be a separate Contract. No cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.
- 7.8 The Buyer shall immediately upon receipt check the content of the Goods. On signature of the POD, the Buyer is deemed to have received the Goods referred to in the Order or any other delivery notice, without shortage or defect and the Buyer shall have no claim against the Supplier for non-delivery of, or shortages in the Goods. Should the Buyer fail to sign the POD or the Buyer vehicle leaving the point of delivery, the signature of a representative of the Supplier shall be *prima facie* proof that the Goods were delivered without defect or shortage.
- 7.9 Should delivery of any Goods not be accepted by the Buyer, consignee or party nominated by the Buyer to accept delivery, then the Supplier shall, in its sole discretion:
- 7.9.1 be entitled to store the Goods and any part thereof at no risk to the Supplier and at the expense of the Buyer; or
- 7.9.2 after obtaining a competent court order, sell the Goods in execution and retain the proceeds thereof as *rouwkoop* or as liquidated damages for the settlement or part settlement of the return and storage of the Goods.
- 8 NON-DELIVERY**
- 8.1 The quantity of Goods as recorded by the Supplier on the proof of delivery signed by the Buyer shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 8.2 Any liability of the Supplier for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata rate against any invoice raised for such Goods. The Supplier shall have sole discretion in deciding whether to replace Goods or issue a credit note in accordance with this clause 8.2.
- 9 RISK AND TITLE**
- 9.1 The Goods are at the risk of the Buyer from the time of delivery. Title in the Goods shall not pass to the Buyer until the Supplier has received in full (in cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or which become due to the Supplier from the Buyer on any account.
- 9.2 Until title in the Goods has passed to the Buyer, the Buyer shall:
- 9.2.1 hold the Goods on a fiduciary basis;
- 9.2.2 store the Goods (at no cost to the Supplier) separately from all other goods of the Buyer or any third party in such a way that it remain readily identifiable as the Supplier's property;
- 9.2.3 not destroy, deface or obscure any identifying mark on or relating to the Goods;
- 9.2.4 maintain the Goods in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks to the reasonable satisfaction of the Supplier. On request the Buyer shall produce the policy of insurance to the Supplier;
- 9.2.5 notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.3; and
- 9.2.6 give the Supplier such information relating to the Goods as the Supplier may require from time to time;
- 9.2.7 the Supplier shall have the right, immediately upon the Supplier being of the belief that the Buyer has not complied with the provisions of this clause 8, or has not or will not affect payment in terms of clause 6, to immediately, without any further notice, reclaim possession of the Goods without any prejudice to any of its rights in terms of this Contract, provided that the Buyer may resell the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Buyer resells the Goods before that time:

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- 9.2.8 it does so as principal and not as the Supplier's agent; and
- 9.2.9 title to the relevant Goods shall pass from the Supplier to the Buyer immediately before the time at which resale by the Buyer occurs.
- 9.3 If title to the Goods has not passed to the Buyer, the Buyer's right to possession of the Goods shall terminate immediately if:
- 9.3.1 the Buyer is placed under a provisional or final winding-up, or is subject to business rescue proceedings; or
- 9.3.2 the Buyer makes an offer of compromise with its creditors; or
- 9.3.3 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or is unable to pay its debts; or
- 9.3.4 generally commits any act of insolvency as defined in the Insolvency Act No. 24 of 1936; or
- 9.3.5 any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.3.1 to 9.3.4; or
- 9.3.6 the Buyer encumbers or in any way charges the Goods; or
- 9.3.7 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
- 9.3.8 the financial position of the Buyer deteriorates to such an extent that in the opinion of the Supplier the capability of the Buyer adequately to fulfil its obligations under the Contract has been placed in jeopardy.
- 9.4 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 9.3, or the Supplier reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Buyer to deliver the Goods or may enter (subject to clause 9.5) any premises of the Buyer or of any third party where the Goods are stored in order to recover it.
- 9.5 The Buyer grants the Supplier, its agents and employees an irrevocable licence at any time to enter the Delivery Point and any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to remove and recover it.
- 9.6 On termination of the Contract, howsoever caused the Supplier's rights contained in this clause 9 shall remain in effect.
- 10 RETURNS AND REFUNDS**
- 10.1 All claims of damage to the Goods on delivery or claims that the warranty in clause 11 has been breached must be addressed in accordance with the provisions of this clause 10, subject to the Supplier's Return Policy in force from time to time (a copy of which can be obtained from the Supplier's order management team, or on the Supplier's website.)
- 10.1.1 The Buyer must notify the Supplier in writing within 10 Business Days of the alleged damage or breach of warranty. Such notice must include full details of the Order and POD to which the Goods relate and details supporting such claim.
- 10.1.2 On receipt of notice in accordance with clause 10.1.1 above, the Supplier's technical support team will contact the Buyer and request that tests are performed by the Buyer in accordance with the instructions of the Supplier's technical support team ("Phase One Testing").
- 10.2 If the Phase One Testing does not provide a conclusive result then a returns order will be generated by the Supplier and the Goods must be returned to the Supplier in accordance with the Supplier's instructions for further testing ("Phase Two Testing").
- 10.3 If either Phase One Testing or Phase Two Testing reveals that the Goods are damaged or in breach of the warranty in clause 11, the Supplier may at its sole discretion provide the Buyer with a credit note for the full price of the Return Goods, excluding any delivery charges, duties, taxes or other charges or provide the Buyer with replacement Goods (whereupon it shall have no further liability for a breach of the warranty in clause 10.6 in respect of such Goods).
- 10.4 If the results of Phase One Testing and/or Phase Two Testing reveal that there is no damage or breach of the warranty in clause 11, the Supplier will not accept return of the Goods and will not issue any credit note in respect of such Goods. If the Goods are in the possession of the Supplier then the Buyer shall collect the Goods, at its own cost and risk within but no later than 30 days of notification that there is no damage or breach of warranty. If the Buyer fails to collect the Goods, the Supplier will be entitled to sell the Goods without liability to the Buyer. No refund will be issued to the Buyer.
- 10.4.1 The Supplier shall have no liability in respect of damage or breach of warranty in the Goods arising or caused on or after delivery has occurred.
- 10.5 Where the Buyer wishes to return Goods delivered for reasons other than damaged or breach of the warranty, the Buyer may do so no later than 10 Business Days from date of delivery, subject to the following process:
- 10.5.1 the Buyer must notify the Supplier in writing within 10 Business Days by submitting a return order form on the Buyer's portal accessible on the Supplier's website: [www.segensolar.co.za](http://www.segensolar.co.za);
- 10.5.2 The Return Goods to be returned in accordance with clause 10.5.1 must be returned to the Supplier's Premises within 15 Business Days from date of delivery. Such return is to take place between the hours of 9.00am and 5.00pm on a Business Day and at the cost and risk of the Buyer;
- 10.5.3 all Return Goods must be correctly packaged and labelled with the unique order return number generated following submission of the return order form in accordance with clause 10.5.1 above; and
- 10.5.4 once Return Goods are received by the Supplier it will be checked by a member of the Supplier's return team. Provided that the Return Goods have been returned in accordance with the provisions of this clause 10.5 and the Return Goods are in re-saleable condition, a credit note of 75% of the value of the Goods (including VAT) will be issued.
- 10.6 If any Goods are delivered to the Buyer in error, the Buyer agrees that it shall notify the Supplier within 10 days of delivery. The Supplier will arrange for the incorrect Goods to be collected. Until such time as the incorrect Goods are collected the Buyer shall store the Goods in accordance with clause 8.
- 10.7 Any cash refund to be made under this clause 10 will be made by electronic transfer to the account from which payment was originally made. The Supplier will aim to process any refund so that it reaches the Buyer's account within 28 Business Days of the Supplier confirming that a refund will be made.
- 10.8 Notwithstanding the provisions of condition 10.8 above, in the event that the Supplier has delivered the Goods as a result of direct marketing and the Buyer is entitled in terms of the CPA to cancel the Order during the cooling off period, or if the Buyer did not have an opportunity to examine the Goods before delivery and has rejected same on delivery, the Supplier shall refund the Buyer with 10 Business Days of confirmation of such cancellation or rejection. The provisions of this clause 10.8 shall not apply where the Goods have been used, damaged, disassembled, altered, permanently installed or combined with other Goods or where there is a public regulation prohibiting the return of the Goods. In the event that the Goods have been used or need to be repackaged, the Supplier may charge the Buyer a reasonable amount for such inconvenience.
- 10.9 Any replacement Goods to be sent to the Buyer will be delivered in accordance with the delivery procedure contained in clause 7.
- 10.10 The Supplier shall have no liability in respect of any costs incurred in respect of the de-installation and / or re-installation of replacement Goods, including but not limited to the cost of any equipment and/or labour required.
- 10.11 The Buyer shall not be entitled to return any Goods which are not suitable for its purpose, if for reasons of public health or public regulation such returns are prohibited, or, after having been supplied to the Buyer, the Goods have been partially or entirely disassembled, altered or combined with other goods or property.
- 11 NO WARRANTY**
- 11.1 Each of the sub-conditions in this clause 11 shall be treated as separate and independent.
- 11.2 The Supplier shall have no liability in respect of and does not provide any warranty in relation to the Manufacturer's Specifications, whether the same have been supplied by the Supplier to the Buyer or not.
- 11.3 The Buyer acknowledges and accepts that the Supplier is not the manufacturer of the Goods and acts merely as a distributor of the Goods. Accordingly, the Supplier hereby excludes to the fullest extent permitted by law all warranties, conditions and other terms implied by statute, common law or otherwise.
- 11.4 The Supplier warrants that on delivery the Goods shall be free from material defects in design, material and workmanship.
- 11.5 Subject to the provisions of clause 11.6 and 11.7, in the event that the Buyer claims that the warranty in clause 11.4 was breached, it agrees that it shall follow the process as set out in clause 10.5.
- 11.6 The Supplier shall not be liable for any failure to comply with the warranty set out in clause 11.4 if:
- 11.6.1 the Buyer makes any further use of such Goods after giving notice in accordance with clause 11.5; or
- 11.6.2 the defect arises because the Buyer failed to follow the Supplier's or the Manufacturer's Specifications, oral or written instructions as to the storage, commissioning, installation, use and/or maintenance of the Goods or (if there are none) good trade practice; or
- 11.6.3 the Buyer alters or repairs such Goods without the written consent of the Supplier; or
- 11.6.4 the defect arises as a result of fair wear and tear, wilful damage, negligence by the Buyer or any third party, or abnormal storage or working conditions.
- 11.7 The warranties contained in clause 11.4 do not include:
- 11.7.1 any equipment, materials or supplies not supplied by the Supplier;
- 11.7.2 damage or loss of function sustained during periods with wind speeds exceeding 60 metres/second or submersion in water unless the Goods are designed to operate in such conditions;
- 11.7.3 any accidental loss or damage not caused by the Supplier or any loss or damage caused by any acts of God or any loss or damage to the extent contributed by any acts of God.
- 11.8 The conditions set out in this clause 11 shall apply to any repaired or replacement Goods supplied to the Buyer.
- 11.9 Except as provided for in this clause 11, the Supplier shall have no liability to the extent permissible in law, to the Buyer in respect of the

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- Goods' failure to comply with the warranty set out in clause 11.4. Subject to clause 10.1, the Buyer's sole remedy in respect of a breach of the warranty in clause 11.4 shall be as set out in clause 11.5 and subject to the requirements imposed upon the Buyer in terms of clause 11.5.
- 11.10 The Buyer warrants that it has read and familiarised itself with the provisions of Sections 60 and 61 of the CPA, and that it agrees that the procedures set out in clause 10 and 11 of this Contract are in accordance with such provisions.
- 12 LIMITATION OF LIABILITY**
- 12.1 Nothing in these Conditions excludes or limits the liability of the Supplier or any of its Affiliates:
- 12.1.1 for death or personal injury caused by the Supplier's negligence; or
- 12.1.2 any matter which it would be illegal for the Supplier to exclude or attempt to exclude its liability; or
- 12.1.3 for fraud or fraudulent misrepresentation.
- 12.2 Subject to clause 12.1, neither the Supplier nor Affiliates shall be liable to the Buyer, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising out of and / or in connection with this Contract including any losses that result from the Supplier's and/or its Affiliates deliberate personal repudiatory breach of the Contract.
- 12.3 Subject to clause 12.1, neither the Supplier nor its Affiliate shall be liable to the Buyer, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, for:
- 12.3.1 any loss of profit;
- 12.3.2 any loss of business or opportunity;
- 12.3.3 any loss of anticipated savings;
- 12.3.4 any loss of energy supply; or
- 12.3.5 any costs of and / or associated with de-installation and / or re-installation of Goods.
- 12.4 Subject to clauses 12.1, 12.2 and 12.3 the maximum aggregate liability of the Supplier and its Affiliates, together, to the Buyer in respect of all losses arising under and / or in connection with the Contract, whether in contract, delict (including negligence), breach of statutory duty, or otherwise shall not exceed 125% of the price paid or payable by the Buyer for the relevant Goods.
- 12.5 The Buyer expressly acknowledges that by entering into the Contract with the Supplier it acknowledges and agrees to the exclusions and limitations of liability set out in clause 12.4 and (ii) that the price which has been agreed for the Goods reflects the level of liability accepted by the Supplier.
- 12.6 The Buyer further acknowledges that it is its own responsibility to seek legal advice on the meaning and effect of these exclusions and limitation of liability and that it is able to and should seek to protect itself against any potential loss or damage which is not recoverable from the Supplier by means of obtaining insurance from third party providers.
- 13 INDEMNITY**
- 13.1 The Buyer acknowledge that once the Goods are delivered to it, the Supplier is not in control of the installation of the Goods at a Customer's premises. The Buyer further acknowledges that its supply and dealings with a Customer may be subject to the provisions of the CPA. Accordingly, the Buyer indemnifies and holds the Supplier harmless against all or any claims (including legal fees) instituted against the Supplier or any of its Affiliates by any Customer or third party arising from the supply of the Goods or the Buyer's failure to comply with the provisions of the CPA.
- 13.2 The Buyer expressly acknowledges that by entering into the Contract with the Supplier it acknowledges and agrees to the indemnity set out in this clause 13.1 and will obtain the necessary advise from its own insurers to protect its interests.
- 14 BREACH AND INSOLVENCY**
- 14.1 Should either Party fail to remedy any breach of contract within 14 (fourteen) days of a written request by the other Party to do so, then in such event the innocent Party may, without prejudice to any of its rights in terms of the Contract or in law, cancel the Contract by written notice with immediate effect, with or without claiming damages.
- 14.2 In the event that a Party: -
- 14.2.1 In case of the Buyer, fails to pay any amount due to the Supplier;
- 14.2.2 commits an act of insolvency;
- 14.2.3 is placed under a provisional or final winding-up, or is subject to business rescue proceedings;
- 14.2.4 suffers that its credit rating is downgraded or its credit facilities withdrawn or rejected by any financial institution or credit bureau, or
- 14.2.5 fails to satisfy or take steps to have set aside any judgment taken against it within 20 (twenty) days after such judgment has come to its notice;
- then the other Party may terminate the Contract on written notice with immediate effect.
- 14.3 Nothing in this clause 14 shall prevent a Party from claiming specific performance or damages for any breach, or from terminating the Contract by written notice with immediate effect for any material breach of contract.

## 15 COMMUNICATION

- 15.1 The Buyer chooses as its domicilium citandi et executandi ("domicilium") the physical addresses and email addresses inserted in the online application form.
- 15.2 A Party may by written notice to the other Party change its domicilium to another address in South Africa which is not exclusively a post office box or poste restante. The change will become effective on the 5<sup>th</sup> (fifth) day following deemed receipt of the notice.
- 15.3 A notice delivered to the Buyer in terms of clause 7 shall be deemed to be delivered:
- 15.3.1 Upon hand delivery to the physical address; or
- 15.3.2 Upon receipt of a read receipt of transmission to the elected email address.
- 15.4 No provision of this clause 13 shall be taken as affecting the validity of any notice which is actually received by a Party, whether at its domicilium or not and whether delivered in terms of the express provisions of this clause or not and any notice which is actually received by a Party shall be deemed to be notice validly given.

## 16 FORCE MAJEURE

- 16.1 Failure to comply with any of the terms and conditions of the Contract if occasioned by or resulting from an act of nature or public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil strife, riot, strikes, blockade, embargo, sanctions, epidemics, pandemics, act of any government or other authority, compliance with government orders, demands or regulations as well as shortages, interruptions, fluctuations or the unavailability of electrical power, water supply or means of communication or any circumstances of like or different nature beyond the reasonable control of the Party so failing ("Force Majeure"), will not be deemed to be a breach of the Contract, nor will it subject either Party to any liability to the other.
- 16.2 Should a Party's performance of an obligation become temporarily impossible owing to Force Majeure, that Party shall:
- 16.2.1 as soon as reasonably possible after the Force Majeure sets in notify the other Party in writing of the incidence of Force Majeure;
- 16.2.2 be released from performance of the affected obligation for so long as the Force Majeure prevails;
- 16.2.3 use its best endeavours to recommence performance of the affected obligation, to whatever extent reasonably possible, without delay; and
- 16.2.4 co-operate with the other Party in implementing such contingency measures as the other Party may reasonably require.
- 16.3 Should the circumstances of Force Majeure continue for longer than 90 (ninety) days, either Party shall be entitled to terminate the relevant Order, or if appropriate the Contract, with immediate effect by written notice.

## 17 ENTIRE AGREEMENT

- 17.1 The Contract constitutes the entire agreement between the Parties and supersedes all previous agreements between the Parties relating to its subject matter.
- 17.2 Although the Parties may correspond via electronic mail for operational purposes, no valid notice under, or amendment to the terms of, this Contract may be given or concluded by way of a data message as defined in the Electronic Communications Act, 25 of 2002 of South Africa.
- 17.3 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.
- 17.4 Nothing in this condition shall limit or exclude any liability for fraud.

## 18 ASSIGNMENT AND SUBCONTRACTING

- 18.1 The Supplier may at any time assign or transfer all or any of its rights under the Contract.
- 18.2 The Buyer may not assign or transfer or purport to assign or transfer all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.
- 18.3 The Supplier may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent provided that the Supplier shall remain liable for such performance.

## 19 GENERAL

- 19.1 Failure or delay by the Supplier in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract. Any waiver by the Supplier of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 19.2 If any provision or part-provision of this Contract 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-

**TERMS AND CONDITIONS OF SUPPLY OF GOODS TO RESELLERS**

provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 19.2 shall not affect the validity and enforceability of the rest of this Contract.  
19.3 The Supplier shall take all reasonable steps imposed on it in terms of the Protection of Personal Information Act 4 of 2013 ("POPIA") to protect the personal information of the Buyer. For the purposes of this clause, "personal information" shall be defined as detailed in POPIA.

**20 CERTIFICATE OF BALANCE**

The Buyer agrees that the amount due and payable to the Supplier may be determined and proven by a certificate issued and signed by any director of the Supplier whose authority need not be proven. Such certificate shall be binding unless the Buyer can prove that the amount is not due and payable.

**21 DISPUTE RESOLUTION**

21.1 The Parties shall negotiate in good faith to settle any dispute that arises out of this Contract.  
21.2 In the event of the Parties not being able to settle any dispute, either party may approach a court of competent jurisdiction.  
21.3 In addition, the Parties may agree to arbitration, and shall conclude a written agreement to arbitrate within 7 (seven) days of the dispute arising, which shall contain all the details of the arbitration process.

**22 CONTRA PROFERENTEM**

The rule of construction that in the event of any uncertainty in any provision in any agreement, such agreement shall, in construing/interpreting the uncertainty, be construed or interpreted against the drafter of such agreement, shall not be applicable to this Contract.

**23 LANGUAGE**

The ruling language of this Contract and for communications and notices shall be English. All documents, manuals, certificates, notices, materials and training, if any, to be supplied by a Party under this Contract shall be in English.

**24 LEGAL COSTS**

24.1 Each party shall bear its own costs incurred in connection with the negotiation, drafting and execution of this Contract.  
24.2 The legal costs incurred by either party in enforcing their rights in terms of this Contract, shall be claimable against the other party on the scale as between the agreement between the successful party and its particular attorneys.

**25 SIGNATURE**

Signed by the authorised signatories of the Parties, each signatory warranting his/her authority hereto.

For and on behalf of the Buyer at \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature and full name, surname

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