



**STANDARD PURCHASE ORDER TERMS  
AND CONDITIONS FOR THE PROVISION  
OF GOODS AND/OR SERVICES**

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## 1. Definitions

1.1. In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings:

- 1.1.1. "**AFSA**" means the Arbitration Foundation of Southern Africa;
- 1.1.2. "**Agreement**" means these Standard Terms and Conditions and any annexures and schedules hereto; read with any Purchase Order issued in terms hereof;
- 1.1.3. "**Confidential Information**" means all proprietary and confidential information, in whatsoever form, relating to one Party including but not limited to Intellectual Property, technical information, recipes, business information, marketing and advertising strategies and methodologies, client or supplier lists, any 'personal information' or 'record' (as defined in the Protection of Personal Information Act, 2013), pricing and financial information which is made available in connection with this Agreement to the other Party and which is not already in the public domain.
- 1.1.4. "**Contaminant**" means any biological or chemical agent, foreign matter, or other substance not intentionally added to food, which may compromise food safety or quality.
- 1.1.5. "**Goods**" means all products, ingredients, equipment, packaging machinery or mechanical spares, tools, materials or anything of this nature to be supplied by the Supplier in terms of this Agreement.
- 1.1.6. "**Intellectual Property**" means all patents, registered and unregistered trademarks, service marks, copyright, designs and applications for any of the foregoing in any part of the world, any know-how and trade secrets (including recipes) and data associated with any of the foregoing owned by the Parties respectively.
- 1.1.7. "**the Purchaser**" means the company within the Pioneer Foods Group (being Pioneer Food Group Limited and all of its 'related' and 'subsidiary' companies, as defined in sections 2(1)(c) and 3(1)(a) respectively of the Companies Act, 71 of 2008) that issues a Purchase Order in respect of the Goods and/or Services to be delivered by the Supplier;
- 1.1.8. "**Purchase Order**" means a duly issued, written and pre-numbered SAP purchase order form dispatched by the Purchaser to the Supplier setting out the details of the goods and/or services to be supplied and any other relevant information;
- 1.1.9. "**Specifications**" means the specifications to which any Goods, and/or services must comply, as defined by any Law and/or as stipulated by the Purchaser in a Purchase

Order and any associated contract or technical documentation and/or as stipulated from time to time in writing by the Purchaser;

1.1.10. **"the Supplier"** means the recipient of a Purchase Order who undertakes to deliver the Goods and/or Services specified therein in accordance with this Agreement and in compliance with the Specifications and the provisions of the Purchase Order.

1.1.11. Service(s) means the services as may be required to be provided by the Supplier in accordance with the Purchase Order and/or Agreement and agreed specifications as stipulated by the Purchaser.

1.2. In this Agreement -

1.2.1. clause headings and the heading of the Agreement are for convenience only and are not to be used in its interpretation;

1.2.2. an expression which denotes -

1.2.2.1. any gender includes the other genders;

1.2.2.2. a natural person includes a juristic person and vice versa;

1.2.2.3. the singular includes the plural and vice versa; and

1.2.2.4. a party includes a reference to that party's successors in title and assigns allowed at law.

1.3. Any reference in this Agreement to –

1.3.1. "business hours" shall be construed as being the hours between 08h30 and 17h00 on any business day. Any reference to time shall be based upon South African Standard Time;

1.3.2. "days" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;

1.3.3. "Law" means any South African law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law;

1.3.4. "writing" shall mean legible writing and in English and includes any form of electronic communication contemplated in the Electronic Communications and Transactions Act, No 25 of 2002.

- 1.4. A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.
- 1.5. Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 1.6. If the due date for performance of any obligation in terms of this Agreement is a day which is not a business day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding business day.
- 1.7. Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 1.8. The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.
- 1.9. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

## **2. The Scope of this Agreement**

- 2.1. This Agreement constitutes the whole of the agreement between the parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this agreement not incorporated in this Agreement and any Purchase Order issued in terms hereof shall be binding on either of the parties. This Agreement supersede and replace all terms and conditions previously proposed by the Supplier, as well as any and all previous agreements between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the parties (and other persons, as may be applicable) in relation to the subject matter hereof. For the avoidance of any doubt (and without limiting the generality of the foregoing), no standard terms and conditions, trading terms or similar conditions applied by the Supplier generally in its business shall be enforceable against the Purchaser, notwithstanding the issuing of any Purchase Order, invoice or other document in terms hereof.
- 2.2. Purchase Orders shall constitute offers to purchase the Goods and/or Services from the Supplier and unless the Supplier notifies the Purchaser otherwise in writing within 24 (twenty four) hours of receipt of any Purchase Order, it shall be deemed to have been accepted by the Supplier.

- 2.3. Should there appear to be any discrepancy or ambiguity in description or quantities in a Purchase Order, the Supplier shall immediately submit the matter to the Purchaser for its decision before proceeding to execute the Purchase Order.
- 2.4. Amendment to the Purchase Order shall be subject to the Purchaser's prior written approval and the Supplier's acceptance. No amendment to a Purchase Order will be valid unless agreed to in writing by both parties and incorporated in a revised and duly issued Purchase Order.
- 2.5. In the absence of a principal contract or tender document, the terms and conditions as specified herein shall take precedence over all other terms and/or conditions submitted by, or included with any quotations from the Supplier. Where however the parties have concluded and signed a principal contract or tender document ("document"), the terms as contained in such document shall take precedence over these standard terms and conditions to the extent of such conflict.

### **3. Price**

- 3.1. The purchase price payable for the Goods and/or Services is the price quoted by the Supplier and accepted in writing by the Purchaser on a Purchase Order. The price(s) specified is (are) firm, all-inclusive and not subject to change for any reason whatsoever and all pricing includes labour cost, material, transport and Rate Of Exchange ("ROE") changes.
- 3.2. Price amendment shall be subject to agreement and acceptance by the Purchaser in writing. Should the Purchase Order be issued on a basis of "price to be advised or agreed" or "estimate price"; "subject to change" or any other similar description, the Purchase Order shall stipulate the agreed terms applicable in this respect. The Purchaser may demand, before payment is made, that the price computation be substantiated by documentary evidence.
- 3.3. Where applicable, the Supplier shall clearly state on the quotation document the current ROE on which its quotation is based.
- 3.4. Unless stipulated to the contrary in the Purchase Order, no additional charges of whatever nature shall be recoverable from the Purchaser unless the Supplier has, prior to the execution of the Purchase Order, obtained the Purchaser's agreement in writing on such additional charges. Any Sales Taxes (such as VAT) payable in respect of the Purchase Order shall be deemed to be included in the purchase price unless it is separately specified.
- 3.5. If the relevant tax legislation requires that the Purchaser deducts PAYE from all payments made under the provisions of this agreement, then the Purchaser shall deduct PAYE from all payments made under the provisions of this agreement and pay the tax directly to the SARS, and the Purchaser shall calculate the PAYE amount and provide a pay sheet to the Supplier reflecting such PAYE calculation.

- 3.6. While it is acknowledged that this obligation might be regarded as a factor suggesting an employment relationship, it is recorded that the purpose hereof is to comply with the relevant tax legislation and is not intended to change the independent status of the Supplier. However, if the Purchaser is not required by law to deduct PAYE, then the Supplier warrants to the Purchaser that it will comply with all relevant tax legislation and that all moneys due to the SARS will be paid over in time as prescribed by law.

#### **4. Terms of Payment**

- 4.1. Payment will be made against a tax invoice 30 (thirty) days from date of month-end statement and will be made on the first day of the new month. The receipt of a month-end statement is a prerequisite for payment. Invoices will not be accepted at the point of delivery and will not serve as delivery documentation. Invoices must be addressed for Attention: Pioneer Foods: Accounts Payable Shared Services, Paarl Office, 32 Market Street, Paarl, 7646.
- 4.2. Acceptance conditional to inspection or testing may cause a delay in payment. Payment will be held back until the purchaser is in receipt of the certificates of conformance /code data books and technical data sheets specified in the order for the Goods and/or Services supplied.

#### **5. Delivery in Accordance with Order**

- 5.1. The date and Point of Delivery are to be stated in the Purchase Order. Unless otherwise arranged, deliveries to the Purchaser's receiving points will be accepted only between 08:00 and 16:00 Monday to Thursday, and 08:00 to 13:00 on Fridays. The Purchaser shall not be obliged to make payment for Goods and/or Services not delivered to the Point of Delivery specified in a Purchase Order. Time is of the essence in relation to every delivery to be made by the Supplier in terms of this Agreement.
- 5.2. Acceptance of Goods and/or Services is conditional to verification by the Purchaser.
- 5.3. The Purchaser may adopt any means necessary to ensure that the Goods and/or Services have been supplied in correct quantities, according to the specified quality standards and in good condition or that the correct materials are being used in compliance with the Purchase Order. In certain cases this involves inspection or sample testing.
- 5.4. The risk and ownership in and to the Goods and/or Services shall vest in the Purchaser on delivery to, or collection by, the Purchaser, as evidenced by a signed Proof of Delivery ("POD") at the Point of Delivery as stated in the Purchase Order.
- 5.5. The Supplier warrants that upon delivery to the Purchaser, the Goods and/or Services will be fully paid for by the Supplier, unencumbered and not subject to any right in favour of, or any claim by, any third party, and ownership and undisturbed possession and enjoyment of the Goods and/or Services will pass to the Purchaser on delivery.

**6. Quality Assurance and Warranties**

- 6.1. The Supplier warrants that the Goods and/or Services to the extent applicable, will be of new materials, of agreed quality and description; manufactured, packaged and/ or supplied strictly in accordance with the Specifications and will, in every case, be free from defects and Contaminants and fit for the purpose for which they are intended to be used.
- 6.2. The Supplier warrants and undertakes that the practices, methods and procedures expected from a manufacturer and/or supplier acting in good faith and exercising the level of skill, diligence, prudence and foresight as would reasonably and ordinarily be expected from a skilled and experienced manufacturer and/or supplier engaged in the same type of Goods or Service provision under the same or similar circumstances and conditions as contemplated by this agreement will be employed at all times in the manufacturing, supply, distribution and/or packaging processes applied in respect of the Goods.
- 6.3. The Supplier warrants that its premises, its production and packaging systems, processes, machinery, facilities, Goods, Services, ingredients and materials comply with all relevant laws and industry standards, special dietary certification (where applicable), including, without limitation, all laws relating to foodstuffs, food safety, consumer protection, occupation health and safety, and environmental laws.
- 6.4. The Supplier shall furnish the Purchaser with copies of all relevant certification in respect of special dietary requirements e.g. vegetarian, Halaal, Kosher and shall comply with the requirements of the relevant authorities and bodies in respect of such certification. Where applicable the Supplier shall provide for such certification on the Goods.
- 6.5. The Purchaser may inspect and audit the facilities and premises used by the Supplier for any purposes associated with the manufacture, distribution and/or supply of the Goods and/or Services at any time during normal business hours on reasonable notice to the Supplier.
- 6.6. The Supplier warrants that no ingredient, material and/or constituent part of the Goods has in any jurisdiction in the world been prohibited and/or declared unsafe, and/or unfit for the purposes for which it has been used in the Goods and agrees to immediately notify the Purchaser in writing in the event that any such ingredient, material and/or constituent part of the Goods is in the future prohibited and/or declared unsafe and/or unfit in any jurisdiction in the world.
- 6.7. The Supplier's production processes will be operated within a well-structured and fully documented quality management system, which will be continuously applied, updated and kept current. Evidence of the quality management system shall be submitted to the Purchaser on request.
- 6.8. It is recorded that the Supplier will be responsible for proper quality assurance and that the Supplier will be liable for all damages suffered by the Purchaser arising out of any breach of this



Agreement, but in particular the warranties given above (including pure economic loss and the costs of any recall of the Goods or any product of which they form a part).

**7. Defects, Deficiency, Returns and Recall applicable to Goods**

- 7.1. The Purchaser will in writing, report any incident related to the quantity or quality of the Goods to the Supplier within a reasonable period of delivery of the product.
- 7.2. The Purchaser agrees to provide the Supplier with all reasonable information to enable the Supplier to conduct a proper investigation in respect of a complaint.
- 7.3. In the event of any claim by a third party against The Purchaser in respect of the Goods or any products or materials manufactured or produced by the Purchaser using or incorporating the Goods, feedback on a proposed resolution of the matter to which the complaint relates shall be provided in writing to the Purchaser within 24 (twenty four) hours of notification of the claim and all costs and expenses incurred by the Purchaser in respect of the complaint shall be for the account of the Supplier.
- 7.4. The Supplier shall conduct a full investigation into a complaint and shall provide a written report to the Purchaser within 5 (five) business days after receipt of the complaint, unless otherwise agreed between the parties. This report shall include a description of the cause(s) of the incident and the corrective action to be implemented.
- 7.5. In the event of a dispute as to findings of the report either party may deliver samples of the Goods to an independent third party laboratory, mutually acceptable to both parties, for analytical testing. Such third party laboratory shall in making its findings act as expert and not as arbitrator.
- 7.6. Where the Supplier accepts responsibility for or has been determined to be liable for any defect or deficiency, the Purchaser will, without prejudice to any of its rights or remedies available at law or in terms of this Agreement be entitled to recover damages suffered as a result of the supply of the defective Goods from the Supplier. The Purchaser shall, at its election, return to the Supplier or destroy all and any Goods which is agreed or determined to be defective.
- 7.7. The Purchaser shall at any time be entitled on written notice to the Supplier to require the Supplier to halt the supply of the Goods in the event that the Purchaser is obliged to or elects to recall any of its goods or materials which used or incorporated the Goods.

**8. Documentation and Marking**

- 8.1. The Purchase Order number must be clearly stated on all correspondence, Supplier invoices and delivery notes. Items shall be identified by the item numbers listed on the Purchase Order. An invoice will only be settled if it meets all the requirements of a valid South African VAT invoice.
- 8.2. The Goods shall be clearly marked, with a material or part number and or a proper description for identification. The Goods shall be delivered on an official company POD.

8.3. This Purchase Order shall not be considered fulfilled until the certificates of conformance/analysis and technical data sheets have been satisfactorily supplied with each delivery.

8.4. Containers delivered shall be clearly marked with the Purchaser's order number and the Supplier's name and detail. Omission in the above respect will cause delay in payment.

**9. Materials provided by the Purchaser**

Ownership of, and all right and title in and to, any materials, equipment, components, ingredients, documentation, recipes, specifications, samples or any other items or assets provided to the Supplier by the Purchaser in order to facilitate the manufacture and/or supply of the Goods/Services and/or for any other purposes at all, shall remain vested in the Purchaser and the Supplier hereby waives irrevocably any and all liens and/or rights of retention it may have, or acquire, in respect thereof.

**10. Indemnity**

10.1. The Supplier indemnifies and absolves the Purchaser and all of its group, holding and/or subsidiary companies, their managers, agents, operators, and staff ("the Pioneer Foods Group") from any claims, damages, losses (including pure economic loss), expenses, fines, costs (including legal costs on an attorney-and-own-client scale), penalties, statutory sanctions and/or liability (whether jointly or individually) arising from any cause whatsoever or based on any ground of liability whatsoever (including liability without fault) to the extent that such liability is attributable whether wholly or in part to any defect or deficiency in any of the Goods/Services supplied by the Supplier or is due to the Supplier's failure to comply strictly with the provisions of this Agreement.

10.2. Without limiting the generality of clause 10.1, the Supplier indemnifies and holds the Purchaser harmless against any claims arising from unsafe, defective, contaminated, hazardous or deficient Goods/Services brought against the Purchaser in terms of the Consumer Protection Act 68 of 2008.

10.3. The Supplier undertakes to procure and maintain sufficient third party liability insurance cover, including product liability insurance cover, and shall provide the Purchaser with evidence of such cover if and when requested to do so.

**11. Exclusion of and Limitation of Liability**

Save as otherwise provided for in this Agreement, the Purchaser shall not be liable to the Supplier for any damages (howsoever arising and of whatsoever nature) suffered by the Supplier, other than patrimonial and direct damages suffered by the Supplier as a direct and foreseeable consequence of the Purchaser's failure to remedy a breach of its obligations in terms of this Agreement, having received a written notice to do so in terms of clause 21 below. The Purchaser's aforesaid liability shall exclude any pure economic losses, or indirect, special, punitive or incidental damages, whether foreseeable or not, on whatsoever grounds and howsoever arising.

**12. Intellectual Property**

- 12.1. Any and all intellectual property owned, developed or acquired by a party prior to this Agreement coming into effect shall remain the sole and exclusive property of the party who is the lawful proprietor thereof and any and all rights of the parties in terms of this Agreement shall be subject to the other party's intellectual property rights.
- 12.2. Notwithstanding anything to the contrary, nothing herein contained shall be construed as granting to the other party any rights, whether express or implied, by licence or otherwise, of the intellectual property rights of the other.

**13. Ethical Business Practices**

- 13.1. The parties shall at all times adhere to ethical business practices. The Purchaser is committed to conducting its business ethically and to achieving and maintaining the highest standards of corporate governance, particularly in respect of compliance with local and global anti-corruption compliance requirements. The Purchaser requires all of its business partners, suppliers, vendors, contractors and service providers, who play an important and valued role in its continuing business success, to behave ethically and to avoid engaging in corrupt business activities.
- 13.2. In respect of its commitment to ethical business practises, the Supplier shall on request complete an anti-bribery compliance questionnaire. The Supplier agrees to undergo an anti-bribery due diligence check; the outcome thereof which shall determine, at the Purchaser's discretion, whether or not the Purchaser shall continue with the contractual agreement or other arrangements with the Supplier.
- 13.3. The Purchaser reserves the right to terminate this agreement based on the results and outcomes of its risk-based anti-bribery due diligence procedures and shall not furnish reasons for such decisions.
- 13.4. By agreeing to this Agreement and accepting any Purchase Order, the Supplier undertakes that, in carrying out its responsibilities on behalf of the Purchaser, neither it nor its owners, officers, directors, employees, or their agents or subcontractors shall pay, offer, or promise to pay, or authorize the payment directly or indirectly, of any money, gift, or anything of value to any government official or anyone else for the purpose of influencing any act or decision of such official or of the government to obtain or retain business, or to direct business to any person.

**14. General Warranties**

- 14.1. Each of the Parties hereby warrants to and in favour of the other that –
- 14.1.1. it has the legal capacity and has taken all necessary corporate action required to empower and authorise it to enter into this Agreement;

- 14.1.2. to the best of its knowledge and belief, it is not aware of the existence of any fact or circumstance that may impair its ability to comply with all of its obligations in terms of this Agreement;
- 14.1.3. it is entering into this Agreement as principal (and not as agent or in any other capacity);
- 14.1.4. it is not relying upon any statement or representation by or on behalf of any other Party, except those expressly set forth in this Agreement.

14.2. The Supplier warrants and undertakes that:

- 14.2.1. there are no circumstances, facts or reasons which are known, or ought to be known by the Supplier, which should have been disclosed to the Purchaser and which would have influenced the Supplier's decision in appointing the Supplier to supply the Goods/Services;
- 14.2.2. it has the appropriate governance, risk management, business continuity plans and internal controls in place to deliver the Goods/Services in accordance with this Agreement and that it shall comply with all Laws;
- 14.2.3. it shall at all times manufacturer, supply and deliver the Goods/Services with competence, integrity and diligence;
- 14.2.4. it has the operational capability and financial means and reserves to deliver the Goods/Services in accordance with this Agreement; and
- 14.2.5. it has in place the requisite licenses, qualifications and authority to provide the Goods/Services.

14.3. Each of the representations and warranties given by the parties in terms of clause 14 shall –

- 14.3.1. be a separate warranty and will in no way be limited or restricted by inference from the terms of any other warranty or by any other words in this Agreement;
- 14.3.2. continue and remain in force notwithstanding the completion of any or all the transactions contemplated in this Agreement; and
- 14.3.3. prima facie be deemed to be material and to be a material representation inducing the other party to enter into this Agreement.

**15. Cession and Assignment**

- 15.1. It is expressly recorded and agreed that the rights afforded to the Supplier hereunder are personal to the Supplier.
- 15.2. The Supplier may not sell, cede, assign, delegate, sub-contract or in any other way alienate or dispose of any its rights or obligations under this Agreement without the prior written consent of

the Purchaser. The Purchaser shall be entitled to sell, cede, assign, delegate or in any other way alienate or dispose of any of its rights or obligations under this Agreement to any entity which is a subsidiary of the Purchaser, or the holding company of the Purchaser, or a subsidiary of the holding company of the Purchaser, and such action shall not require the consent of the Supplier. The terms “subsidiary” and “holding company” in this clause shall bear the meanings ascribed to them in section 3 of the Companies Act 71 of 2008.

## **16. Confidentiality**

16.1. In the interest of the protection of the Confidential Information and each party's associated proprietary interests, the parties undertake that they shall not, at any time whatsoever and notwithstanding the termination of the business relationship and/or negotiations between the parties for whatsoever reason, without the prior written consent of the other party:

16.1.1. use, disclose or divulge, whether directly or indirectly, the Confidential Information to any person (whether in the party's employ or not) or entity which is not a party to this agreement and who is not strictly required to receive such information for the purposes of fulfilling the party's obligations in terms of a Purchase Order;

16.1.2. use, exploit, disclose, copy, divulge or in any other manner whatsoever apply the Confidential Information disclosed to it for any purpose other than for the purpose for which it is disclosed and otherwise than in accordance with the provisions of this Agreement;

16.1.3. derive any benefit, whether directly or indirectly, from the Confidential Information and, without limiting the generality of the foregoing, be engaged, involved, concerned or interested, whether directly or indirectly, in the economic exploitation of the Confidential Information.

16.2. The parties shall take all possible steps to prevent the Confidential Information falling into the hands of unauthorised third parties and shall immediately notify the other party in the event of any unauthorised disclosure of the Confidential Information.

## **17. Data Protection**

17.1. The performance of the Supplier's obligations in terms of this Agreement and any Purchase Order shall be strictly in compliance with the Protection of Personal Information Act, 4 of 2013 (“POPI”), the Electronic Communications and Transaction Act 2002, and all other laws, policies, and procedures relating to the protection, storage, handling, privacy, processing and destruction of personal data. In particular, and without limiting the generality of the foregoing, all Goods and services provided by the Supplier shall:

17.1.1. comply with each of the Conditions 1 to 8 contained in Chapter 3 of POPI;

17.1.2. comply with section 18 of POPI, in that it shall secure the integrity of any personal information in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent loss of, damage to or unauthorised destruction of personal information and/or unlawful access to or processing of personal information; and

17.1.3. take all reasonable measures to—

17.1.3.1. identify all reasonably foreseeable internal and external risks to personal information in its possession or under its control;

17.1.3.2. establish and maintain appropriate safeguards against the risks identified;

17.1.3.3. regularly verify that the safeguards are effectively implemented; and

17.1.3.4. ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.

17.2. The Supplier shall at all times during the performance of its obligations in terms of these this Agreement:

17.2.1. ensure that no data collected from any person during the supply of the Goods/Service is sold, disclosed, commercially exploited, or used in any way other than as expressly authorised in this Agreement;

17.2.2. ensure that it is able to identify all data relating to this Agreement and persons making use of the Goods/Services separately from other data under its control;

17.2.3. ensure that it processes data for only the express purpose for which it was obtained;

17.2.4. ensure that, once processed for the purposes for which it was obtained, all data will be destroyed to an extent that it cannot be reconstructed to its original form;

17.2.5. ensure that all usernames and passwords affording access to the personal data remain secure, confidential and exclusively attributable to a specific employee;

17.2.6. notify the Purchaser of any actual or suspected breach of its security measures; and

17.2.7. have due regard to any applicable industry codes of practice relating to information security management.

## **18. Support**

The Parties undertake at all times to do all such things, perform all such actions and take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such

steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and/or import of this Agreement.

**19. Force Majeure**

19.1. Neither Party shall be liable for any loss suffered by the other party arising out of delay in or prevention of performance of that party's obligations due to any cause, the adverse effects of which that party could not and cannot reasonably avoid in the ordinary conduct of that party's business.

19.2. Notwithstanding clause 19.1 the parties agree that the following shall constitute events of force majeure: storms, floods, fires, earthquakes, other natural disasters, power failures, unavailability of equipment not due to the action or inaction of the party whose performance is delayed or prevented, industry wide strikes, lockouts, boycotts, and actions of civil and military authorities, changes in laws, rules, regulations or orders which relate to the control or export or re-export of raw materials.

19.3. If a party's performance is delayed by force majeure the party shall be entitled to a reasonable extension not exceeding 20 (twenty) business days or such other period as may be agreed to between the parties for performance. If performance is or shall be delayed for longer than this period the performance shall be regarded as having been prevented and either party shall have the right to terminate the Agreement.

**20. Dispute Resolution**

20.1. Any dispute arising out of or in connection with this Agreement shall be resolved by means of discussions between the individuals directly involved with the execution of this Agreement within three (3) days after a dispute arises, or such extended period of time as the parties may allow in writing, failing which such dispute shall be submitted to the most senior executives of the parties who shall endeavour to resolve the dispute within five (5) days after it has been referred to them.

20.2. Should the dispute not be resolved through negotiation in good faith as contemplated in clause 20.1, then the dispute shall be referred to mediation by a mediator reasonably acceptable to the parties and if the dispute is not resolved through mediation within 10 (ten) days from such referral then the said dispute shall on written demand by either party be submitted to arbitration in Cape Town in accordance with the AFSA rules, which arbitration shall be administered by AFSA.

20.3. Should AFSA, as an institution, not be operating at that time or not be accepting requests for arbitration for any reason, then the arbitration shall be conducted in accordance with the AFSA rules for commercial arbitration (as last applied by AFSA) before an arbitrator appointed by agreement between the parties to the dispute or failing agreement within 5 (five) business days of the demand for arbitration, then any party to the dispute shall be entitled to forthwith call upon the chairperson of the Cape Town Bar Council to nominate the arbitrator, provided that the person

so nominated shall be a senior (silk) advocate of not less than 10 (ten) years standing as such. The person so nominated shall be the duly appointed arbitrator in respect of the dispute. In the event of the attorneys of the parties to the dispute failing to agree on any matter relating to the administration of the arbitration, such matter shall be referred to and decided by the arbitrator whose decision shall be final and binding on the parties to the dispute.

- 20.4. Nothing herein contained shall be deemed to prevent or prohibit a party to the arbitration from applying to the appropriate court for urgent or interim relief or for judgment in relation to a liquidated claim.
- 20.5. Any arbitration in terms of this clause 20 (including any appeal proceedings) shall be conducted in camera and the Parties shall treat as confidential details of the dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.
- 20.6. This clause 20 will continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.
- 20.7. The Parties agree that the written demand by a party to the dispute in terms of clause 20.1 that the dispute or difference be submitted to arbitration, is to be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act, 1969.

21. **Breach**

- 21.1. If any party (“the breaching party”) commits a breach of this Agreement, the other party or parties (“the innocent party”) shall be entitled to give the breaching party written notice to remedy such breach within seven calendar days after the date of receipt of the notice.
- 21.2. An event of default shall occur if any party:
  - 21.2.1. breaches any term of this Agreement, whether such breach goes to the root of this agreement or not, and fails to remedy the breach within seven calendar days of receipt of a notice to remedy the breach; or
  - 21.2.2. is or becomes insolvent and/or commits an act which (if the party was a natural person) would be an act of insolvency in terms of the Insolvency Act, No. 24 of 1936; or
  - 21.2.3. applies for deregistration or is deregistered in terms of sections 81 to 83 of the Companies Act, No. 71 of 2008 or section 26 of the Close Corporations Act 69 of 1984; or
  - 21.2.4. passes any resolution for its voluntary winding-up or authorising the commencement of business rescue proceedings in terms of Chapter 6 of the Companies Act, 2008, or becomes subject to any such business rescue proceedings in terms of section 131 of the Companies Act, 2008; or



- 21.2.5. allows a judgment against it to remain unsatisfied for more than five business days; or
- 21.2.6. allows the person(s) who controls the party (within the meaning defining in section 2(2) of the Companies Act, 71 of 2008) to change without the other Party's prior written consent; or
- 21.2.7. is provisionally or finally liquidated, is placed under judicial management, becomes financially distressed (as defined in section 128(1)(F) of the Companies Act, 2008), has lost the whole or part of its paid up capital, or becomes the subject of business rescue proceedings; or
- 21.2.8. is guilty of any act of fraud, bribery, corruption or intentional misrepresentation;
- 21.3. If an event of default occurs, the innocent party shall be entitled, without prejudice to its other legal rights or remedies (including the right to claim damages):-
  - 21.3.1. to cancel this agreement with immediate effect by the delivery of a written cancellation notice; or
  - 21.3.2. to claim specific performance of the breaching party's obligations in terms of the agreement; and
  - 21.3.3. in either event, to claim any legal costs incurred on an attorney-and-own-client scale.
- 21.4. On termination of this agreement for any reason whatsoever, the Supplier shall immediately cease to use and promptly return, to the Purchaser, any documentation, materials, electronic media, Confidential Information and Intellectual Property proprietary to or owned by the Purchaser.

**22. New laws and inability to perform**

- 22.1. If any law comes into operation subsequent to the signature of this Agreement which law affects any aspect or matter or issue contained in this Agreement, the parties undertake to enter into negotiations in good faith regarding a variation of this Agreement in order to ensure that neither this Agreement nor its implementation constitutes a contravention of such law.
- 22.2. If either party is prevented from performing any of its obligations in terms of this Agreement as a result of any existing or new law or as a result of any event beyond its reasonable control , it shall not be liable for any failure to perform its obligations under this Agreement or a particular Purchase Order while such event persists and shall have the right (unless such event has or is likely to persist for a period not exceeding 30 (thirty) days) to terminate this Agreement at any time after the intervention of or becoming aware of such event.

22.3. If this Agreement is terminated by either party in accordance with the provisions of this clause 22 neither party shall have any claim or obligation in respect of any loss suffered or damages incurred as a result of such cancellation.

**23. Broad-Based Black Economic Empowerment**

23.1 The Supplier undertakes to provide the Purchaser with its BEE ratings certificate in relation to broad-based black economic empowerment, upon request.

23.2 In the event that the Supplier is not a BEE rated company, the Purchaser reserves the right to, upon written notice, demand that the Supplier becomes a BEE rated company within a period of 12 (twelve) calendar months. Should the Supplier fail to comply with such demand, the Purchaser shall be entitled to terminate this Agreement in accordance with the provisions of clause 21.

**24. General**

24.1. No party shall be bound by any representations, warranties, undertakings or the like not recorded in writing.

24.2. No addition to or variation, consensual termination or novation of this agreement, and no waiver of any right arising from this agreement or its breach or termination shall be valid or enforceable unless it is in writing and signed by all the parties or their duly authorised representatives.

24.3. No failure to enforce, or delayed or partial enforcement of, a right by any party shall prejudice or derogate from the rights of such party under this agreement, nor shall it constitute a waiver or novation of that party's rights under this agreement and it shall not estop or otherwise prevent such party from enforcing at any time all its rights arising out of this agreement.

24.4. This Agreement shall in all respects be governed by and construed in accordance with the laws of the Republic of South Africa.

24.5. All provisions in this Agreement are, notwithstanding the manner in which they have been put together or linked grammatically, severable from each other.

24.6. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they shall operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.