

Document No.:	ROS/MAP/03/001	<div><p>Safety • Quality • Speed</p></div>	Effective Date	2024/10/18
Subject:	GENERAL TERMS AND CONDITIONS OF CONTRACT -ROSOND(PTY) LTD		Revision Number	1.0
			Next Revision Date	2026/10/18

1. DEFINITIONS

In these General Conditions the following terms shall bear the meanings assigned thereto except where the context requires otherwise. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive provision of these General Conditions:

- 1.1. **"Business Day"** means any day other than a Saturday, Sunday, or public holiday in the country where the Work is being performed and **"Working Day"** have a corresponding meaning.
- 1.2. **"Commencement Date"** means the date specified as such in the Contract Agreement, Special Conditions, and/or Purchase Order.
- 1.3. **"Confidential Information"** means all information and materials disclosed, provided or otherwise made accessible to the Supplier in the course of quoting or tendering for and executing the Work, including, but not limited to, the policies, services, processes, procedures, methods, formulations, facilities, products, plans, affairs, transactions, organisations, business connections, clients of the Company and all information relating to the Company of a confidential nature but excludes information that the Supplier can prove:
 - 1.3.1. was in the public domain at the date of the Contract.
 - 1.3.2. subsequent to the date of the Contract, became part of the public domain otherwise than as a result of disclosure by the Supplier or Personnel directly or indirectly in breach of these General Conditions or the Contract; or
 - 1.3.3. was lawfully in its possession at the time of disclosure by the Company to the Supplier.
- 1.4. **"Consent"** means the signed consent form to be signed by the Supplier before providing any of its Personal Information to the Company.
- 1.5. **"Consequential Loss"** means:
 - 1.5.1. In the case of any liability resulting from a breach of contract – indirect, remote, consequential or unforeseeable loss including but not limited to loss of business and/or profits, loss of revenue, loss of production, loss of contracts, loss of markets or access to markets, loss or denial of opportunity, loss of goodwill, loss of business reputation or future reputation, publicity, damage to credit rating, loss of use or any similar loss occasioned by that breach, whether or not in the reasonable contemplation of the Parties at the time of execution of the Contract or the engagement of the Supplier as being a probable result of the relevant breach.
 - 1.5.2. In the case of any liability arising from any negligence – indirect, remote, or unforeseeable loss and, in the case of pure economic loss, loss not flowing directly from the commission of the negligence.
- 1.6. **"Supplier"** means the provider of the Work to the Company and named as the Supplier in the Contract and includes its sub-Suppliers, representatives, successors, and approved assignees.
- 1.7. **"Supplier's Equipment"** means machinery, vehicles, apparatus, materials, articles, facilities (including any storage facilities) and any other things of whatsoever nature required by the Supplier for the execution and completion of the Work and the remedying of any defects, which will not form part of the Work. However, Supplier's Equipment excludes any Company's Equipment, or any other things intended to form or forming part of the Work.
- 1.8. **"Supplier's Representative"** means the person legally appointed by the Supplier, whose responsibility, in general, shall be to facilitate the effective and efficient execution of the Contract and who shall have authority to act for and on behalf of the Supplier. The Supplier shall notify the Company of the delegated duties and authority of the Supplier's Representative.
- 1.9. **"Contract Price"** means the fixed amount which appears on the Contract payable to the Supplier for the successful delivery of the goods and services rendered, such amount shall exclude any applicable Value Added Tax (VAT).
- 1.10. **"Company"** means the Company/ies for whom Rosond is signing this contract as agent as set out in the Schedule attached to the Contract.
- 1.11. **"Purchase Order"** means a written official purchase order issued to the Supplier by the Company ordering the Goods and or services, on the terms and conditions of these General Conditions and any applicable special conditions to the Purchase Order, and includes any schedule and/or annexure/s.
- 1.12. **"Scope of Work"** means the scope of the work set out in and / or attached to the Contract.

- 1.13. **"Service"** shall mean the Service to be provided by the Supplier to the Company as set out in the Scope of Work, all incidental work and Services including plant and equipment to be provided and utilised by the Supplier in connection therewith.

- 1.14. **"Site/s"** means the Company's premises and operations or Client's premises as identified in the Contract, special conditions, and/or Purchase Order where the Work is to be executed by the Supplier.

- 1.15. **"Delivery Note"** means an electronic document printed from the Company's Enterprise resource planning system verifying the Goods have been received.

- 1.16. **"Goods"** means the items to be provided by the Supplier to the Company as set out in the Scope of Work.

- 1.17. **"Company's Representative"** means the person legally appointed by the Company whose responsibility, in general, shall be to facilitate the effective and efficient execution of the Contract and who shall have authority to act for and on behalf of the Company.

- 1.18. **"Contract"** means the Contract Agreement or Purchase order issued to the Supplier for the delivery of Goods or provision of Services, and includes any schedule and/or Annexure/s.

- 1.19. **"Client"** means the Company's respective Client to whom the Company provides Services.

2. INTERPRETATION

In these General Conditions and the Contract, unless the context clearly indicates a contrary intention:

- 2.1. The singular shall include the plural and vice versa.
- 2.2. Any reference to a person includes any individual, body corporate, unincorporated association, firm, company, corporation, government, state or agency of a state or any trust, association, or partnership (whether or not having separate legal personality) or two or more of the foregoing or other entity recognised under any law as having a separate legal existence or personality and vice versa.
- 2.3. Any one gender shall include the other genders.
- 2.4. Any word or expression defined in any clause in these General Conditions, or the Contract shall, unless the application of the word or expression is specifically limited to the clause in question, bear the meaning ascribed to the word or expression throughout these General Conditions.
- 2.5. If there is any conflict between any reference to figures in numerals and in words, the words shall prevail.
- 2.6. The language of the Contract is English. If there are versions of any part of the Contract which are written in more than one language, the version which is in English shall prevail.
- 2.7. The Supplier acknowledges and agrees that:
 - 2.7.1. It has been free to secure independent legal and other professional advice (including financial and taxation advice) as to the nature and effect of all of the provisions of the Contract and that it has either taken such independent advice or has dispensed with the necessity of doing so; and
 - 2.7.2. All of the provisions of the Contract and the restriction herein contained are fair and reasonable in all the circumstances and are in accordance with the Supplier's intentions.
 - 2.7.3. In the event of any conflict, contradiction, or ambiguity between the General terms and conditions and the Contract then the terms and conditions of the Contract shall take preference.

3. DELIVERY OF NOTICES

- 3.1. Any written communication, including, but without limiting the generality of the word "communication", any letter, notice, drawing, order, instruction, account, claim, determination, certification, or meeting minutes, to be delivered by the Company to the Supplier, or by the Supplier to the Company, shall be in writing and shall be deemed to have been duly delivered if:
 - 3.1.1. hand delivered: on the working day of delivery.
 - 3.1.2. sent by registered post: five (5) working days after posting; and/or
 - 3.1.3. sent by electronic mail: on the working day of delivery.

4. CESSION AND ASSIGNMENT

- 4.1. The Supplier shall not cede, assign, transfer or sublet any of its rights and obligations without the consent in writing of the Company first being obtained. The Company shall not be bound to give such consent and may withhold same without assigning any reason therefore or may grant such

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consent subject to such terms and conditions as the Company may, in its absolute discretion, deem fit.

- 4.2.** The Company may assign any rights under the Contract to any legal entity that assumes all of the Company's obligations and accepts all of the Company's rights by giving 14 (fourteen) days' notice thereof to the Supplier.

5. LAWS TO APPLY

Unless otherwise specified in the Contract, these General Conditions shall be read, construed, and performed in accordance with the laws of the country where the Work is performed.

Each party confirms that it has obtained legal advice confirming that the provisions of this agreement comply with all applicable laws within the countries in which it will operate.

6. NO INDULGENCE

No indulgence which any of the Parties ("the Grantor") may grant to the others ("the Grantee") shall constitute a waiver of any of the rights of the Grantor, who shall not thereby be precluded from exercising any rights against the Grantee which might have arisen in the past or which might arise in the future.

7. SEVERABILITY

In the event that any of the terms of the Contract are found to be invalid, unlawful, or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.

8. VALIDITY

If any provision of the Contract is found or held to be invalid or unenforceable, the validity of all the other provisions hereof will not be affected thereby and the Parties agree to meet and review the matter and if any valid and enforceable means is reasonably available to achieve the same objective as the invalid or unenforceable provision, to adopt such means by way of variation of the Contract.

9. AGREEMENT AND PERFORMANCE

9.1 General

- 9.1.1** The General Conditions shall apply to the purchase of Goods and/or Services offered or provided by Suppliers.

- 9.1.2** The General Conditions shall also apply to all requests made by the Company for quotations or offers and are an integral part of any Purchase Order placed or Contract awarded by the Company to a Supplier.

- 9.1.3** The General Conditions shall not apply other than in the circumstances described above.

9.2 Execution of the Services/Deliver the Goods

- 9.2.1** The Supplier undertakes to render the Service/ Deliver the Goods in accordance with the Contract and on the terms and conditions of the General Conditions.

- 9.2.2** The Supplier assumes full responsibility to render the Service/ Deliver the Goods in terms of the Contract and undertakes at all times to execute its' obligations in a proper and workmanlike manner.

9.3 Warranties

- 9.3.1** The Supplier warrants that it is fully experienced and properly organised, financed, equipped, staffed, qualified, licensed, and able to fulfil its obligations in terms of the Contract and in terms of any generally accepted good practices and standards, legislation and specifications that may govern it in fulfilling its contractual obligations.

- 9.3.2** All Personnel shall be fully trained and competent with the necessary experience to deal with Safety, Health, Environmental and Quality (SHEQ) risks associated with the Work.

10 NATURE OF RELATIONSHIP

10.1 Independent Supplier

- 10.1.1** The Supplier is engaged by the Company as an independent Supplier. The Supplier acknowledges that the Contract and the relationship between the Supplier and the Company shall not in any way whatsoever be construed or interpreted so as to create a company and employee relationship between the Supplier's employees and the Company.

- 10.1.2** The Supplier has no authority to incur and must not incur any obligation on behalf of the Company except with the express prior written instruction of the Company.

11 PURCHASE ORDERS

- 11.1** Purchase Order in Respect of the Work

The Supplier shall render the service/deliver the goods in accordance with the Scope of Work and Specifications, each of which is summarised in a Purchase Order generated as and when the Supplier is required by the Company to deliver the goods/render the service. The Company will not accept any liability for Goods and/or Services for which no Purchase Order exists or where the value of the Purchase Order has been exhausted and the acceptance of any such Goods and/or Services by the Company shall not create any such liability.

11.2 Receipt of Purchase Order

- 11.2.1** The Supplier shall confirm in writing, within 24 (twenty-four) hours of receipt of a Purchase Order, whether it accepts or rejects such Purchase Order failing which acceptance is deemed to be given and the Company shall be entitled to enforce the Purchase Order on the terms and conditions contained therein.

- 11.2.2** The Supplier may not reject any Purchase Order where a Contract Agreement was signed between the Parties unless the Work required in terms of the Purchase Order varies from the Contract Agreement. Where a Purchase Order is issued against an official offer from the Supplier to perform Work to the Company the receipt of such Purchase Order by the Supplier represents the Company's acceptance of the Suppliers offer.

12 INVOICES AND PAYMENT

Except as indicated otherwise in the Contract:

12.1 Invoices

- 12.1.1** The Supplier shall, by no later than the 3rd of the month following the month during which Services were rendered or Goods received during which the particular Service(s) or Good(s) are received, furnish to the Company an invoice in respect of the services rendered or goods supplied. All invoices shall be addressed to the relevant entity for which the Service(s) rendered and/or Good(s) were supplied and submitted to the following email address: accounts@rosond.com and must indicate the following:

- 12.1.1.1** the Contract and/or Purchase Order number.

- 12.1.1.2** the Supplier and the Company's VAT registration number

- 12.1.1.3** the Work rendered.

- 12.1.1.4** the total value claimed to date.

- 12.1.1.5** retention (if applicable).

- 12.1.1.6** the amount payable.

- 12.1.1.7** such taxes as may be payable.

- 12.1.1.8** the Supplier's as well as the Company's full address.

- 12.1.1.9** the Supplier's company registration number.

- 12.1.1.10** in the instance of a Service rendered, the Official Company's Representative has signed off the Invoice for satisfactory completion.

- 12.1.2** The Supplier shall be responsible for all applicable taxes payable, or which may become due and payable in accordance with the Goods delivered and/or Services provided. The Supplier shall be required to familiarise itself with such Taxes.

- 12.1.3** Invoices shall be accompanied by a delivery note signed by the Company's Representative and a valid system generated Receipt, including any other documentation as detailed in **clause 12** herein.

12.2 Payment

- 12.2.1** The Company shall pay to the Supplier the Contract Price, together with such additions or deductions as are provided for in the Contract.

- 12.2.2** Subject to the applicable rules and regulations of the country, where the Company's operations take place, payment in respect of the rendered service/ goods delivered in terms of the Contract shall be made by the Company to the Supplier in the currency as specified in the Contract, 60 (sixty) days from receipt of the Supplier's statement, provided the following conditions have been met:

- 12.2.2.1** A valid Purchase Order and/or Contract number is detailed on the invoice.

- 12.2.2.2** An invoice signed by the Company is received by no later than 3rd of the month following the month during which the particular Service(s) or Good(s) is received.

- 12.2.2.3** The delivery date will be deemed the invoice date if the invoice is not issued in the same month.

- 12.2.3** In the event that the day for payment of any amount due by the Company in terms of the Contract should fall on a Saturday, Sunday, or official public holiday in the country where the payments are processed, the relevant day for payment shall be the next ordinary business day.

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12.3 Set-off Against any Payment Due

Any costs, damages, or expenses for which the Supplier is liable to the Company, may be set off, or deducted, by the Company from any monies due or becoming due to the Supplier as a result of its business dealings with the Company, or may be recovered by action at law from the Supplier.

12.4 Dispute of Invoices

12.4.1 In the event that the Company disputes part of an amount invoiced to it by the Supplier, the Company shall pay the undisputed portion on receipt of a credit note for the disputed portion. The credit note is required for the purpose of processing payment to the Supplier of the undisputed portion and the Supplier shall be entitled to record, if required by it, that the credit note is issued without prejudice to its rights in respect of the disputed portion.

12.4.2 Save for the Company's statutory obligation for payment of any fees, charges, levies and taxes imposed by Government entities from time to time in relation to the Services rendered or Goods supplied, and without in any way detracting from the rights of the Company in terms of the Agreement, the Supplier shall not charge the Company interest or late payment fees on any disputed portion of the Supplier's invoice.

12.4.3 In the event of any dispute as to the amounts included in the statement, the value of the statement as determined by the Company shall be paid and the portion under dispute shall be resolved before the next statement is issued, failing which, such disputed amount shall be declared a dispute and referred to the disputes and arbitration measures as set out in **Clause 25 [Settlement of Disputes]** hereunder.

12.4.4 If at any time to which payment becomes due there shall be any defect in the Service rendered/Goods supplied, the Company may retain the whole of the said payment or such portion as the Company's Representative may deem fit to cover the cost of making good the said defect. Any sum so retained shall be paid (free of interest) upon the said defect being made good by the Supplier.

13 APPLICABLE LEGISLATION AND COMPLIANCE

13.1 Supplier to Observe Legislation

The Supplier shall at all times, and at its own expense, conform in all respects with the provisions of all applicable acts, laws, legislation, statutes, ordinances and other laws and regulations and by-laws and requirements of any legally constituted public authority which may be applicable to the performance of its obligations under the Contract and shall indemnify, and keep indemnified, the Company, against damages that the Company may suffer as a result of any breach by the Supplier, its agents or employees, including any hired labour, of any such national (or state) laws, legislation, statutes, ordinances and other laws and regulations and by-laws and requirements, including all legal costs which may be payable as a result of any claims or proceedings in respect of the Contract.

Notwithstanding the generality of the above, and unless otherwise expressly stated in the Contract, the Supplier shall give all notices, pay all taxes, duties and fees, and obtain all permits, licenses and approvals, as required by law in the execution and completion of the Work and the remedying of any defects.

13.2 Specific Health and Safety Requirements

13.2.1 All work executed shall be conducted in accordance with the Safety Standards and Procedures of the Company, copies of which shall be made available on request by the Supplier from the Company's Representative.

13.2.2 The Supplier shall: -

acquaint himself with all and any standards and requirements laid down by statutory requirements, a Local Authority, Provincial or Government Administration, or the Company's Client for the Work about to be executed and shall abide by such standards and requirements at all times.

13.2.2.1 report to the relevant supervisor who in turn must report such injury to the Company safety official before the end of the shift.

13.2.2.2 at all times, an attitude of zero harm is to be enforced by the Supplier in regard to safety, health, and environmental matters.

13.2.2.3 ensure that all necessary PPE is worn in, on, or around the Site/s where the Service is provided by all Personnel engaged in the Service.

14 ENVIRONMENTAL COMPLIANCE

14.1 Environmental Management

14.1.1 The Supplier shall at all times and at its cost comply with the Company's environmental standards and rules and regulations, both statutory and domestic, regarding environmental management.

14.1.2 The Supplier hereby indemnifies and protects the Company and its directors, managers, agents, and employees, against all actions, claims, demands, losses, liabilities, costs, damages, and expenses arising from or in connection with:

14.1.2.1 pollution of the environment as a result of the Supplier performing its obligations in terms of the Contract; and/or

14.1.2.2 a directive or order from any lawful authority to take measures in order to evaluate the impacts or risks associated with an incident or to prevent, mitigate or remedy any actual or potential environmental impact that has arisen or may arise in connection with the Supplier performing its obligations in terms of the Contract.

15 SECURITY REQUIREMENTS

15.1 Access Control

15.1.1 Access to the Site/s shall be restricted to approved Personnel and Supplier's Equipment, and only with permission of the Company's Representative.

15.1.2 The Company shall have the right at all times without prior notice or warning to search, inspect or examine any of the Suppliers property, agents, Supplier's Representative(s), Personnel or Supplier's Equipment whilst such is on the Site/s.

15.2 Personnel Sleeping on Site/s.

Personnel are prohibited from sleeping or lodging on the Site/s.

16 INSURANCE

16.1 Without in any way detracting from any requirements contained elsewhere in the Contract, the Supplier and its sub-contractors shall arrange and maintain at its own cost until completion of all its obligations in accordance with the Contract, all insurances required by law.

16.2 The Supplier hereby waives subrogation against and releases the Company and its directors, officers, employees, and representatives from all liability covered by the Supplier's insurances for losses or claims arising out of the Supplier's performance of the Contract.

17 INDEMNIFICATION

17.1 Injury to Persons and Damage to Property

17.1.1 The Supplier agrees to indemnify, and hold harmless the Company and its directors, employees, agents and representatives against and from all claims, proceedings, damages, claims for compensation, penalties, losses, costs and expenses (including attorney fees as between attorney and client), demands and liability arising directly or indirectly from or in connection with the Contract and from acts or omissions of the Supplier and its directors, employees, agents or representatives arising from the Contract or anything done by it or him or any of them incidental to the Contract including, without derogating from the generality of the a foregoing:

17.1.1.1 the death of or injury to any of the Personnel howsoever arising.

17.1.1.2 the death of or injury to any third party due to or in connection with the undertaking by the Supplier of its obligations in terms of the Contract; and/or

17.1.1.3 any damage to property arising out of, due to or in connection with the undertaking by the Supplier of its obligations in terms of the Contract. Unless any negligence, wilful act or breach of the Contract is proved to be attributable to the Company, the Company's employees or its respective agents, the Company shall not be liable for any damages or compensation payable in respect or in consequence of any accident or injury to any workman or other person in the employment of the Supplier or any sub-contractors and the Supplier shall indemnify and keep indemnified the Company against all such damages and compensation and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or incidental thereto. In addition, the Supplier shall indemnify the Company against any claim brought against the Company by an employee of the Supplier save in the event that the claim arises due to the proven negligence, wilful act or breach of the Contract by the Company or the Company's employees.

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17.1.2 Notwithstanding anything else contained herein, neither Party shall be liable to the other Party for any loss of contracts, loss of business, loss of interest, for lost profits or business interruption or any consequential, exemplary, extrinsic, indirect, incidental, punitive, pure economic or special loss, or damage of any kind whatsoever or howsoever caused (whether arising under contract, delict or otherwise and whether the loss was actually foreseen or reasonably foreseeable).

18 FORCE MAJEURE

18.1 Definition of Force Majeure

A Party shall not be liable for any loss suffered by the other Party arising out of delay or prevention of performance of the Party's obligations due to any cause, the adverse effects of which the Party could not and cannot reasonably and practicably avoid in the ordinary conduct of the Party's business, provided that bad weather not amounting to natural disaster will not be taken into account for the purposes of this clause **[Definition of Force Majeure]**.

The term "Force Majeure" shall, without in any way restricting its ordinary meaning, include acts of God, war, political riots, civil commotions, insurrection, power shortages, sabotage, embargoes, changes in legislation by any applicable governmental authority, labour unrest, strikes, lockouts and work stoppages or any other reasons beyond the control of the prevented Party.

18.2 Notice of Force Majeure

The Party whose performance is delayed or prevented shall give notice in writing to the other Party at the first reasonable opportunity after the occurrence of the cause referred to in 18.1 **[Definition of Force Majeure]** of such inability to perform.

18.3 Reasonable extension for Performance

If a Party's performance is delayed by a cause referred to in 18.1 **[Definition of Force Majeure]** the Party shall be entitled to an extension of time for performance. The Company shall be entitled in its sole discretion to determine the period of extension to apply. If performance is or will be delayed for longer than this period, the performance shall be regarded as having been prevented.

18.4 Consequence of Force Majeure

If a Party's performance is prevented by such a cause the Parties shall:

18.4.1 If the obligation or obligations of which performance is prevented are not material, make such financial adjustment between them as may be agreed as equitable.

18.4.2 If the obligation or obligations of which performance is prevented are material, the Party whose performance is not prevented shall be entitled by written notice to the Party whose performance is so prevented, to terminate the Contract and the provision of the Goods or Service.

19 SUSPENSION

19.1 Suspension of Work

19.1.1 If the Company considers that suspension of the whole or part of the Goods Supplied/Services rendered is necessary for any reason, the Company shall direct the Supplier to suspend the progress of the whole or part of the Work for such time as the Company decides.

19.1.2 When the reason for the suspension no longer exists, which decision shall be entirely within the discretion of the Company, the Company shall direct the Supplier to recommence the whole or the relevant part of the Work. The Supplier shall do so promptly or, if any delay is expected to arise, shall notify the Company of when it expects to be able to recommence the supply of goods/rendering of the service.

19.2 Consequences of Suspension

19.2.1 Should the suspension arise directly or indirectly as a result of an act or omission of the Supplier, the Company reserves the right to claim from the Supplier any damages arising from such suspension. In the event that the Company directs suspension for any other reason, the Company shall determine and reimburse the Supplier for reasonable cost incurred directly thereby.

19.2.2 In the event of any suspension, the Company and the Supplier shall meet at regular intervals to determine an acceptable course of action.

19.2.2.1 If the period of suspension not arising as a result of default on the part of the Supplier exceeds a period of 90 (ninety) days, the Supplier may serve to the Company a 30 (thirty) day notice to terminate the Contract.

19.2.3 Upon any such suspension the Company will pay to the Supplier all amounts due and not previously paid to the Supplier for the Work completed in accordance with any Contract issued prior to such suspension, and for Work thereafter completed in accordance with the Contract as more specifically specified in such suspension.

20 SUB-CONTRACTORS

20.1 Application to Subcontract

The Supplier may not appoint a sub-contractor without having been granted written approval of such appointment by the Company. The Company may approve or reject any such requested appointment at its sole discretion.

Any such approval given by the Company shall not affect the Supplier's obligations under the General Conditions and the Contract.

21 DEFAULT AND TERMINATION

21.1 Work Delayed

21.1.1 Should the Work be delayed beyond the Commencement Date or delivery date stated in the Contract, and the Supplier remain in default for a period of 7 (seven) days after receipt of a notice from the Company to remedy the breach, the Company shall be entitled, without further notice to the Supplier, to purchase it's requirements from sources other than the Supplier and provided that the failure to deliver is not attributable to any of the circumstances set out in **clause 18 [Force Majeure]**, to recover from the Supplier any amount by which the price so paid exceeds the Contract Price and any costs and expenses associated with acquiring the Work from such third party plus any other direct damages and the Supplier shall have no claim against the Company for the balance of the Work not performed by the Supplier. The Company may deduct moneys from any liquidated amount due to the Supplier under this agreement in order to meet all debts and amounts due from the Supplier to the Company.

21.1.2 Any action by the Company in terms of this **clause 21.1 [Work Delayed]** shall be without prejudice to any claims for damages which the Company might have against the Supplier.

The provisions of this **clause 21.1 [Work Delayed]** shall not derogate from or diminish the rights of the Company to implement the provisions of **clause 21.4 [Optional Termination by the Company]**.

21.2 Breach and Termination

21.2.1 If the Supplier breaches any material provision or term of the Contract and fails to remedy such breach within 14 (fourteen) days of receipt of written notice from the Company requiring it to do so then the Company shall be entitled without further notice, in addition to any other remedy available to it at law or under the Contract to:

21.2.1.1 claim immediate specific performance of all of the defaulting party's obligations; or

21.2.1.2 acquire the Work from a third party, in which event the Company shall be entitled to recover from the Supplier any amount by which the price so paid exceeds the Contract Price and any costs and expenses associated with acquiring the Work from such third party; or execute the Work itself and, provided that the default is not attributable to any of the circumstances set out in **clause 18 [Force Majeure]**, to recover from the Supplier any amount by which the price so paid exceeds the Contract Price plus any other direct damages; or

21.2.1.3 terminate the Contract without prejudice to its right to claim damages arising from such breach.

21.2.2 If the Company breaches any material provision or term of the Contract and fails to remedy such breach within 28 (twenty eight) days of receipt of written notice from the Supplier requiring it to do so then the Supplier shall be entitled without notice, in addition to any other remedy available to it at law or under the Contract to terminate the Contract without prejudice to the Supplier's right to claim damages arising from such breach.

21.3 Termination Without Notice

21.3.1.1 If either Party:

21.3.1.2 commits a material breach.

21.3.1.3 commits an act of which corruption or fraud is a material element; or

21.3.1.4 commits or permits an action which brings the other Party into public disrepute.

21.3.1.5 becomes commercially insolvent or commits an act of insolvency; or

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21.3.1.5.1 is placed under provisional or final liquidation (otherwise then for the voluntary subsequent amalgamation or reconstruction); or

21.3.1.5.2 is placed under business rescue or has made a compromise with creditors as envisaged by the Companies Act 71 of 2008, is placed under provisional or final judicial management or any similar management or proceedings aimed at a company in financial distress.

Then the other Party shall be entitled without notice, in addition to any other remedy available to it at law or under the Contract, to terminate the Contract with immediate effect, without prejudice to the other Party's right to claim damages arising from such breach.

21.4 Optional Termination by the Company

21.4.1 The Company may, at its option, terminate the Contract in whole or from time to time in part, at any time by giving 30 (thirty) days' written notice thereof to the Supplier, whether or not the Supplier is in default, without incurring any liabilities arising from the early termination of the Contract. The Company may itself complete the remaining portion of the Work or have this completed by others.

21.4.2 Upon any such termination the Company will pay to the Supplier all amounts due and not previously paid to the Supplier for the Work completed in accordance with any Contract issued prior to such notice, and for Work thereafter completed in accordance with the Contract as more specifically specified in such notice.

21.5 Effect of Termination

The expiration or termination of the Contract for any cause shall not release a Party from any liability which at the time of termination has already accrued to such Party or which thereafter may accrue in respect of any act or omission prior to such expiration or termination. Similarly, the expiration or termination of the Contract shall not affect those provisions of the Contract that 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 the fact that the clauses themselves do not expressly provide for this.

22 CESSATION OR CURTAILMENT OF OPERATIONS

If during the tenure of the engagement of the Supplier in terms of any Contract or otherwise, operations at the Company cease or are curtailed, or the contract with the Company's client is curtailed, the Company shall have the right to reduce or cancel the Contract without payment of any compensation to the Supplier for any damages whatsoever including any Consequential Loss resulting from such cancellation, cessation, or curtailment.

Any cancellation in terms of this **clause 22 [Cessation or Curtailment of Operations]** shall be in writing and shall be signed by the Company's Representative.

23 CONFIDENTIAL INFORMATION AND COPYRIGHT

23.1 Publish, Transmit, Disclose Confidential Information

The Supplier must not, and must ensure that the Personnel do not, unless the Company has first agreed in writing, publish, transmit, disclose to anyone else, or use for a purpose other than the execution of the Work to the Company, any of the Confidential Information.

23.2 Disclosure, Use or Copying of Confidential Information

23.2.1 The Supplier must notify the Company immediately if it becomes aware of, or suspects, any disclosure, use or copying of Confidential Information that is not authorised and must take all steps reasonably required by the Company to stop that unauthorised disclosure, use or copying.

23.2.2 The Supplier must restrict disclosure of the Confidential Information to Personnel who need to know it in order to execute the Work and will ensure those Personnel execute confidentiality agreements similar in effect to this **clause 23 [Disclosure, Use or Copying of Confidential Information]**.

23.2.3 This **clause 23 [Confidential Information and Copyright]** does not affect:

23.2.3.1 disclosure of information, documents, and material available publicly otherwise than because the persons disclosing them contravened this **clause 23 [Confidential Information and Copyright]**.

23.2.3.2 disclosures required by law or regulation; or

23.2.3.3 disclosures to the Supplier's legal, accounting, and financial advisers, provided that those advisers are bound by equivalent obligations of

confidentiality to those in this **clause 23 [Confidential Information and Copyright]**.

23.2.3.4 The Supplier hereby indemnifies the Company against any claims arising against it as a result of any such infringement by the Supplier, including all costs, damages and attorney fees, if any, finally awarded against the Company in any action which is attributable to such claim and will reimburse the Company with all costs including management time and legal costs incurred by it in connection with any such action (including providing guarantees for such costs satisfactory to the Company); provided that the Company gives written notice to the Supplier of such action.

24 PROTECTION OF PERSONAL INFORMATION

24.1 This clause 24 is only applicable to Contracts entered into by the Company.

24.2 The Company stores data on- and off Site and has also contracted with third parties to provide certain e-mail and other archiving and storage solutions to the Company in South Africa and elsewhere in the world. The implementation of the above solutions provides numerous benefits to the Company including business continuity and disaster recovery benefits. The implementation of the above solutions does, however, entail the flow of the data to service providers, including Personal Information held by the Company on the Supplier. Such information held by the Company is in line with information held by any similar organisations and includes Personal Information of the Supplier such as the name, address, contact numbers, information about contracts, products, services rendered by the Supplier and the like.

24.2.1 By providing Consent, the Supplier consents to the Company and third parties such as IT service providers located in various countries processing the Supplier's Personal Information. The Company respects the Supplier's right to privacy, and it has the right to control the dissemination and use of its Personal Information.

24.3 In addition, the Company provides the following assurances to the Supplier:

24.3.1 The Supplier's Personal Information will be treated in accordance with domestic and international laws and regulations that seek to protect the privacy rights and Personal Information of individuals and corporate entities.

24.3.2 The Supplier's Personal Information shall be stored safely, only be used lawfully and only be kept for as long as the purpose of collection, as set out in the Consent, exists or in terms of legal retention periods.

24.3.3 In exceptional circumstances, where the Personal Information is of a sensitive nature, but essential to safeguard the interests of the Supplier, the Supplier's permission to transfer such Personal Information will be sought separately.

24.3.4 The Company has ensured that its agents, service providers and third-party Suppliers that may process the Supplier's Personal Information, ascribe to, and comply with domestic and international laws and regulations that seek to protect the privacy rights and Personal Information of individuals and corporate entities.

25 SETTLEMENT OF DISPUTES

25.1 Amicable Settlement

Save as otherwise specifically provided in the General Conditions, any dispute between the Parties in regards to the interpretation of, the effect of, the Parties' respective rights and obligations under, or any matter arising out of the Contract or the General Conditions shall be referred in the first instance to the respective Chief Executive Officers (or their designated nominees) of the Supplier and the Company, who shall meet as soon as possible after referral of the dispute to them and shall use their bona fide best efforts to resolve the dispute in an amicable and expeditious manner.

In the event that the said Chief Executive Officers (or their respective nominees, as the case may be) shall fail, for whatever reason, to resolve the dispute by not later than 20 (twenty) business days after the dispute has been referred to them, either Party shall be entitled to refer the dispute to arbitration.

25.2 Arbitration

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- 25.2.1** Any dispute arising from or in connection with this Agreement will be finally resolved by arbitration.
- 25.2.2** The arbitrator will be such person as may be agreed upon between the Parties, or failing agreement such person as may be appointed at the request of either Party by the Arbitration Foundation of Southern Africa (or insert preferred body, for example the Association of Arbitrators).
- 25.2.3** The arbitration will be conducted in accordance with the Rules of the Arbitration Foundation of Southern Africa.
- 25.2.4** The place of the arbitration will be Sandton, Gauteng, South Africa, and the language to be used in the arbitration proceedings will be English.
- 26 SUPPLY OF GOODS**
- 26.1** All and any operations and maintenance manuals, as well as any drawings and other technical data pertaining to the Goods, where applicable, shall be delivered to the Company upon delivery of the Goods. These documents shall be in such detail as will enable the Company to commission, operate, maintain, adjust, and repair all items supplied in terms of the Contract and shall be the property of the Company upon delivery thereof to the Company.
- 26.2** The Goods supplied by the Supplier shall strictly comply in all respects with the Specification.
- 26.3** Where the Specification includes the brand name, such brand name shall be indelibly and legibly stamped or embossed on the Goods and/or the containers in which the Goods are packed by the manufacturer of the Goods.
- 26.4** The Company shall have the right to arrange for tests and/or analyses of the Goods delivered as the Company may deem necessary from time to time. Such tests and/or analyses shall be undertaken by a recognised public authority or independent laboratory.
- 26.5** The costs of such tests and/or analyses shall initially be borne by the Company but if the tests and/or analyses demonstrate that the Goods do not comply with the Specification the Company shall, without prejudice to any of its other rights and irrespective of any other remedy which might be available to the Company under any of the provisions the Contract or in law, be entitled to recover such costs from the Supplier.
- 26.6 Right to Refuse to take Delivery**
Should the Supplier deliver Goods which do not comply with the Specification, the Company shall have the right to refuse to take delivery of the said Goods, or after having taken delivery, to reject the said Goods. Any such rejection shall be in writing. In the event of such refusal by the Company to take delivery or rejection the Company shall be entitled to:
- 26.6.1** Require the Supplier to remove the defective Goods within 10 (ten) days. The Supplier shall be liable for and shall pay all costs and expenses of and incidental to such removal, including demurrage. In the event of the Supplier having failed to remove such Goods, the Company may do so at the Supplier's cost; and/or
- 26.6.2** Require the Supplier to replace the defective Goods with Goods complying with the Specification; the Supplier shall be liable for and shall pay all costs and expenses of and incidental to such replacement; and/or
- 26.6.3** Purchase from third party sources Goods complying with the Specification to replace the Goods so refused or rejected, in which event the Company shall be entitled to recover from the Supplier any amount by which the price so paid exceeds the Contract Price. Delivery costs shall be taken into account in assessing such excess. The Supplier shall in addition refund the Company the difference between the price paid, and the Contract Price and all other costs incurred by the Company, in respect of the Goods so refused or rejected.
- Acceptance by the Company of any Goods not complying with the Specification shall not prejudice or affect the Company's rights to refuse or reject any subsequent deliveries of Goods not complying with the Specification.
- 26.7 Replacement of Defective Goods**
- 26.7.1.** The Supplier warrants that all Goods supplied are fit for their intended purpose and are of merchantable quality. If there are any defects to the Goods, the Supplier shall repair or where the Goods are found by the Company to be irreparable, replace such defective Goods at its expense.
- 26.7.2.** In the event that the Goods are not manufactured by the Supplier, the Company shall have the same rights against the Supplier as the Supplier

has against the manufacturer in regard to defects therein or unsuitability thereof, the intention being that the Supplier and the manufacturer be jointly, and severally liable to the Company. The Supplier agrees to work with the Company to protect the Company's interest when the Supplier does not manufacture the Goods.

- 26.7.3.** The Supplier shall be liable for and shall pay all costs and expenses of and incidental to such replacement.

27. QUALITY ASSURANCE, INSPECTION, TESTING AND REJECTION

27.1 Quality of Materials and Workmanship

- 27.1.1.** The Goods supplied in terms of the Contract shall be of the standard, quality and type set out in the Contract. Should no specification, patent, sample, or drawings be specified or provided, the Goods shall be of proper and sound quality, fit for the purpose for which they are intended by the Supplier. The workmanship is to be the best of its respective kind and conducted by tradesmen fully experienced in their particular trade or calling and shall at all times be subject to the approval and satisfaction of the Company's Representative.

- 27.1.2.** Notwithstanding anything else contained herein, the Supplier shall not be entitled to vary manufacturing or component Goods at its election without the prior written approval of the Company for any substitute part, item, or component, inclusive of specified brands.

27.2 Company's Quality Assurance Representative

The Company's Representative may appoint an independent quality assurance specialist/organisation (hereinafter referred to as "the Quality Assurance Representative") to act in a quality surveillance capacity on its behalf for all or any part of the Goods.

27.3 Company's Inspection and/or Testing

The Company shall be entitled at all reasonable times during and after manufacture and before delivery, to inspect, examine and test the materials and workmanship on the Supplier's premises. If any part of the Goods is being manufactured on other premises, the Supplier shall obtain permission for the Quality Assurance Representative to inspect, examine and test such Goods. Such inspection, examination or testing, if made, shall be in addition to any inspection, examination or testing to be carried out by the Supplier and shall not release the Supplier from any obligation under the Contract nor be construed as an admission that such Goods are free of any patent or latent defects.

27.4 Notice of Inspections or Testing

The Supplier shall provide the Company's Representative with at least five (5) days prior notice in writing of the time, date, and place at which such Goods will be ready for inspections and/or tests. Special arrangements shall be agreed in respect of Goods being manufactured overseas.

27.5 Inspections and/or Testing; no Reason for Delays

Inspections and testing shall be conducted so that progress of the Contract is not delayed and the witnessing of such inspections and/or tests shall not be reason for the Supplier to delay manufacture or delivery of any Goods.

Inspections and/or tests shall not be delayed by the absence of the Company's Representative. Provided that notice has been given by the Supplier in accordance with **Clause 27.4 [Notice of inspections or testing]**, the Supplier may proceed with the inspections and/or tests on the date and at the place indicated in the notice. The Supplier shall forward to the Company's Representative duly certified copies of the results of the inspections and/or tests conducted.

Should the Company's Representative not be present to witness inspections and/or tests on any Goods where he had indicated his intention to be present and provided notice had been given by the Supplier in accordance with **Clause 27.4 [Notice of inspections or testing]** above, the Supplier shall dismantle/disassemble, open or uncover such part of the Goods if the Company's Representative so directs and again perform the specified inspections and/or tests to the satisfaction of the Company's Representative. The cost of such dismantling/ disassembly, opening or uncovering and inspection and/or testing shall then be for the account of the Company.

27.6 Rectification of Defects Revealed by Re-Inspection

Should Goods inspected and/or tested in accordance with the provisions of this Clause, be defective or not in accordance with the Contract, the

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Supplier shall at its own expense and with all speed rectify or replace such defects and carry out further tests until such time as the Goods or any portion thereof has passed the tests.

27.7 Cost of Attendance at Inspection or Testing

The costs of attendance by the Company's Representative at any inspections and/or tests which fail to take place through the fault of the Supplier or repeated attendance subsequent to rejection of defective Goods shall be for the Supplier's account, such costs including but not being limited to inspection fees as determined by and obtainable from the Company, and transportation costs at the applicable Automobile Association (AA) rates.

27.8 Additional Testing Before Assembly or Closing-Up

The Company's Representative may direct the Supplier to perform additional or alternative inspections and/or tests prior to the assembly or closing-up of the Goods. Costs of such inspections and/or tests shall be for the Company's account.

27.9 Test Facilities

Where the Contract provides for inspections and/or tests of the Goods or any portion thereof to be carried out on the premises of the Supplier or of any sub-Supplier, the Supplier or such sub-Supplier shall provide, free of charge, such assistance, materials, electricity, fuel, stores, apparatus and instruments as may be necessary to carry out such tests efficiently.

Where the Contract provides for inspections and/or tests of the Goods or any portion thereof to be carried out on the Company's property, the Company, except where otherwise stated, shall provide free of charge such raw materials, electricity and fuel as may be necessary to carry out such inspections and/or tests efficiently.

27.10 Supplier's Representation

Inspections and/or tests witnessed by the Company's Representative shall be performed in the presence of an authorised representative of the Supplier.

28 GUARANTEE AND WARRANTY

The Supplier guarantees the Goods and each part thereof against defective materials, poor workmanship, or faulty design for a period of 12 (twelve) months from the actual date of delivery. During this period, the Supplier will be required to replace and/or repair or make good at his own expense to the satisfaction of the Company any defects or damage due to such defective materials, poor workmanship and/or faulty design and/or any damage to any part of the Goods.

If the Supplier repairs or replaces any part of the Goods, the period of 12 (twelve) months as provided above shall apply to such repairs or replacements from the date of completion of such repairs and/or replacement.

If any defects are not remedied by the Supplier within such 12 (twelve) month period, the Company may proceed to do the work or cause the work to be done by others. The repairs and/or replacements shall be executed at the Supplier's risk and expense and without prejudice to any other rights which the Company may have against the Supplier in respect of the Supplier's failure to remedy such defects, poor workmanship and/or faulty design and/or damage. Nothing in this clause shall derogate from the Supplier's liability at common law for patent or latent defects.

29 DELIVERY - TRANSFER OF TITLE - PACKAGING – TRANSPORTATION

29.1 Transportation

Unless otherwise agreed, the Goods shall be sold pursuant to Incoterms (2010) specified in the Contract (in accordance with the ICC's most recent edition of Incoterms 2010®), unloaded at the final location indicated by the Company. The Parties agree that the delivery terms of the Goods supplied under this Contract shall be in accordance with the Incoterms (2010) stated on the Purchase Order and/or Contract.

29.2 Ownership and Risk

29.2.1 All Goods shall become the property of the Company at whichever is the earlier of the following times, free from liens and other encumbrances of whatsoever nature:

29.2.1.1 When the Goods are delivered to the Site/s; or

29.2.1.2 When the Supplier receives payment of the value of the Goods in question.

29.2.2

Except as provided for in **clause 16 [Insurance]** all risks in the Goods shall remain with the Supplier and the Supplier shall bear any and all costs whatsoever arising from or in respect of all losses, damages and/or destruction to the Goods until such time as the Goods have been received and a delivery note together with a valid system generated Receipt has been signed for by the Company. Goods so signed for shall signify only the number and outward condition of the packages, containers, bundles, bags, cartons, or articles and shall not be construed as acceptance of the Goods which shall remain liable to subsequent rejection by the Company. The Supplier will affect adequate insurance cover in respect of such loss, damage, and/or destruction, at its expense to the satisfaction of the Company.

29.2.3

In the event that the Company provides the Supplier with free issue equipment for incorporating in the Goods, then ownership of such equipment shall vest in the Company. The risk therein, however, shall remain with the Supplier and the Supplier shall bear any and all costs whatsoever arising from or in respect of all losses, damages, and/or destruction to such equipment until such time as the Goods have been received and signed for by the Company.

29.3

Packing and Covering

The Supplier shall ensure that all the packaging and coverings shall be adequate for safe loading, transportation, off-loading and storage of the Goods. All packaging cases and packaging materials shall become the property of the Company, and the costs thereof shall be deemed included in the Contract Price.

29.4

Making of Packages, Articles and Containers

29.4.1

The Supplier shall identify each and every package, bundle, bag, carton, container, or article, by means of either suitable labels securely attached thereto or indelible paint thereon, with the following information:

29.4.1.1

description of the Goods

29.4.1.2

name of the Supplier

29.4.2

The Supplier shall, at the Supplier's cost, replace any Goods lost or damaged in transit, however caused.

29.5

Delivery lead times and delays

29.5.1

The Supplier shall use its best endeavours to deliver within the lead-times as specified in the Contract. Lead-times shall be calculated from date of receipt of order. The Supplier shall promptly notify the Supply Chain Manager in writing if he anticipates difficulty in complying with the delivery date and shall use all commercially reasonable efforts to meet the required delivery date. In the event of the Supplier being unable to deliver within the required lead time and a price increase application comes into effect, the Supplier shall be required to supply the Goods at the Contract Price, prior to any such increase effective date.

29.5.2

Should the Supplier at any stage not be able to deliver the required volumes within the required lead time as detailed on the Contract, then the Company reserves the right to immediately cancel the order and obtain the required quantity from an alternative resource. The Supplier shall be responsible for the difference in price which the Company had to pay in terms of the breach of contract. Such costs shall be set-off from monies due to the Supplier.

29.6

Weighing and Sampling

Weighing will be done on full and empty load. Weighing shall take place at the Company's weigh bridge before proceeding to the off-loading point. Sampling shall be conducted at the off-loading point by the Company. Any irregularities discovered in either weight or specification may result in the Goods not being off-loaded or if already off-loaded, will be subject to a dispute resolution which may result (in the case of quality), in the Supplier removing the product at the Supplier's cost and replacing the Goods with suitable alternative Goods. In the event of any weight discrepancy invoices with a variance of up to and including 2% shall be processed, anything in addition will be subject to an equivalent price/invoice adjustment. The Company's weight shall be used as the deciding factor.

30.

STANDARDS AND MEASUREMENT

No volumes or frequencies are guaranteed. Quantities, distances, masses, and such other information furnished by the Company shall serve as a general guide only.