

CBRE GWS Facilities Management (Pty) Ltd. Terms and Conditions of Supply

1. Definitions

“Agreement” means the Order, including the Terms, which has been accepted by the Seller in terms of the clause 2.4 of the Terms, thus constituting a binding agreement between the Parties;

“Applicable Law” means the common law; all applicable statutes, all statutory instruments, proclamations, by-laws, regulations, orders, rules, statutory guidelines and other subsidiary legislation, and all treaties, directives, codes of practice, rulings, determinations, decisions and notifications having the force of law in the Republic of South Africa; with which the Buyer and/or the Seller are bound to comply with;

“Business Day” means any day except a Saturday, Sunday or official public holiday in the Republic of South Africa;

“Buyer” means the CBRE Facilities Management (Pty) Ltd. identified in the Order as the “Buyer”, such entity being a company duly incorporated according to the laws of the Republic of South Africa;

“Buyer’s Customer(s)” means customer(s) to which the Buyer provides the Supplies (as incorporated into products supplied to such customer(s)) or the ultimate recipient or end-user of the Supplies, where such entity is not the Buyer;

“Consequential Loss” means any consequential, indirect or economic loss or damage, including but not limited to: (i) increased costs or expenses, (ii) loss of production, loss of profit, loss of business, loss of contracts or loss of revenues, or (iii) exemplary and/or punitive damages arising out of or in connection with provision of the Supplies;

“Confidential Information” means any Proprietary Information and Intellectual Property;

“Control” means in relation to any entity, the ability directly or indirectly to direct or cause the direction of the votes attaching to the majority of its issued shares or interests carrying voting rights, or to appoint or remove or cause the appointment or removal of the majority of directors (or equivalent officials) or those of its directors (or equivalent officials) holding the majority of the voting rights on its board of directors (or equivalent body);

“Good Industry Practice” means in relation to the manner in which the Supplies are rendered, the standards, practices, methods and procedures conforming to Applicable Laws, and the exercise of that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under similar circumstances in South Africa;;

“Intellectual Property” means any and all patents (whether registered or pending), designs (whether registered or pending), copyright, trademarks (whether registered or pending) designs, drawings, schematics, specifications, know-how, trade secrets, trade names, brands, logos, licences, all agreements and other pertinent documents, and all related information, all of which relate directly or indirectly to the business activities, of the Buyer and which vest in or have been acquired directly or indirectly, by or on behalf of the Buyer or for its benefit whether as proprietor or as authorised or lawfully permitted user of same, together with all future inventions, and all changes, developments or

improvements, modifications and enhancements to the Intellectual Property described above which are discovered, developed or made during the term of the Agreement by the Buyer or by any third party employed or contracted by or on behalf of the Buyer including but not limited to the Seller;

“**Order**” means the written document duly completed and issued by Buyer to the Seller in the form to which these Terms are attached and comprising an offer by the Buyer to the Seller to purchase the Supplies, subject always to the Terms;

“**OHSA**” means the Occupational Health and Safety Act No. 85 of 1993;

“**Parties**” means the Buyer and the Seller and “**Party**” shall mean any one of them, as the context may require;

“**Price**” means the price the Buyer shall pay for the Supplies as stated in the Order which price shall be inclusive of VAT (to the extent that VAT is recoverable);

“**Proprietary Information**” means any and all information developed, compiled or otherwise acquired directly or indirectly by or on behalf of the Buyer for purposes of giving effect to and promoting the business activities and statutory obligations of the Buyer including but not limited to all reports, surveys, opinions, advice, proposals, strategies, plans, photographs and the like prepared or compiled for by or on behalf of the Buyer;

“**Seller**” means the Party who shall provide the Supplies identified in and pursuant to the Order to the Buyer;

“**Seller’s Property**” means any and all machinery, equipment, tools, jigs, dies, gauges, fixtures, moulds, patterns and other items that are necessary for the production of Supplies;

“**Supplies**” means the goods and/or services to be provided by the Seller and specified in the Order;

“**Terms**” means these Terms and Conditions of Supply; and

“**VAT**” means Value Added Tax in terms of the Value Added Tax Act, No. 89 of 1991 of the Republic of South Africa, as amended.

2. Offer and Acceptance

- 2.1 Each Order incorporates and is governed by the Terms which, subject to sections 13.3 and 18.6, which shall supersede any and all prior agreements, orders, quotations, proposals and other communications between the Parties relating to the Supplies specified in the Order.
- 2.2 Any variation or modification of the Terms must be by written agreement of both Parties and expressly stated in the Order.
- 2.3 The Order does not constitute an acceptance of any offer or proposal made by the Seller.
- 2.4 By doing any of the following, the Seller shall be deemed to accept the Order and the Terms, which acceptance shall give rise to a binding contract between the Parties:
 - (a) Commencing any work under the Order and/or providing any Supplies specified in the Order;
 - (b) By signing and returning the Order by hand or any means specified in clause 28; or
 - (c) Any other conduct that recognizes the existence of a contract with respect to the subject matter of the Order.
- 2.5 Any additional or different terms proposed by the Seller, whether in the Seller’s quotation, acknowledgement, invoice or otherwise shall not form become part of the Order nor the Agreement.

3. Duration

- 3.1 Subject to earlier termination by the Buyer, the Agreement is binding on the Parties for one year from the date of acceptance of the Order in terms of clause 2.4 or, if an expiration date is stated in the Order, until that date, provided that such termination or expiration shall not affect the continued operation of those provisions of the Agreement which expressly provide that they will operate after any such expiration or termination or which of necessity and due to the inherent nature of such provision must continue to have effect after such termination or expiration notwithstanding that the provisions themselves do not expressly provide for this.
- 3.2 Upon expiry of the Agreement in terms of clause 3.1 the Agreement shall automatically renew for successive one-year periods unless either Party provides written notice at least 60 days prior to the other that it wishes to terminate the Agreement.

4. Quantities and Delivery

- 4.1 The Supplier shall supply the Supplies in the quantity and according to the specification described in each Order.
- 4.2 Unless expressly stated on the face of the Order, the Buyer shall be under no obligation to purchase Supplies exclusively from the Seller.
- 4.3 Unless otherwise agreed in writing by the Buyer, all and risk and title in and to the Supplies shall pass from the Seller to the Buyer upon delivery and/or performance (as applicable) of the Supplies to the address as specified in the Order.
- 4.4 Time for delivery of the Supplies is of the essence. The Buyer shall not be obligated to accept early deliveries, late deliveries, partial deliveries or extra deliveries. Where multiple deliveries of Supplies are specified in the Order, the Buyer may change the rate of scheduled deliveries or temporarily suspend scheduled deliveries, neither of which actions entitles the Seller to modify the Price.
- 4.5 The Seller shall be responsible for effecting or procuring the delivery of the Supplies to the Buyer.
- 4.6 The Seller must comply with all Applicable Laws relating to the Supplies including but not limited to manufacture, labeling, operation, use and delivery of all goods comprising the whole or part of the Supplies, and performance of all services comprising the whole or part of the Supplies. The Seller shall indemnify and reimburse the Buyer for any claims, losses and/or expenses incurred by the Buyer as a result of any breach of this clause 4.6.
- 4.7 The Seller shall be responsible for effecting or procuring the delivery of the Supplies to the Buyer.

5. Price and Payments

- 5.1 Unless otherwise specified, the Price will be deemed inclusive of all shipping charges based on Supplies being shipped FCA (loaded) at Seller's final production location using Buyer's transportation. In the event that an alternative means of delivery is required by Buyer, including but not limited to ex works, CIF, FOB or DAP Airport, all as defined in the ICC Incoterms 2010, the Price shall be adjusted based on agreed criteria included in the Order.

- 5.2 The Seller shall provide the the Buyer with a VAT invoice on or at any time after delivery of the Supplies but in any event not later than [30] days after delivery and each invoice shall quote the Price or, where delivery of the Supplies will take place in instalments or against milestones, the relevant portion thereof, the Order number, amendment or release number, the Buyer's part number if applicable, the Seller's part number if applicable, the quantity of Supplies if applicable (specifying the items), the number of cartons or containers in the delivery if applicable, and any other information required by the Buyer and specified in the Order.
- 5.3 The Seller acknowledges and agrees that the Buyer shall not pay a VAT invoice without the correct Order number quoted on it.
- 5.4 VAT Invoices shall be submitted to the address of the Buyer as specified on the Order.
- 5.5 Unless otherwise agreed by the Parties and stated in the Order, the Buyer shall pay the Price within 60 days of the last day of the month during which the Buyer receives the Seller's VAT invoice in terms of clause 5.2 above.
- 5.6 The Buyer shall be entitled to set off against the Price (including any VAT payable) any sums owed by the Seller to the Buyer under the Order or in terms of any other agreement between the Buyer and the Seller.
- 5.7 Notwithstanding anything to the contrary contained herein, GWS/CBRE shall have no obligation to pay Supplier for Supplies until GWS/CBRE has received payment from its customer for such Supplies.

6. Delivery

- 6.1 The Seller shall: properly pack and transport the Supplies and provide papers with each delivery showing the Order number, amendment or release number, the Buyer's part number, the Seller's part number (where applicable), quantity of Supplies (specifying the items) in the particular delivery, number of cartons and containers in the delivery, the Seller's name and contact details.
- 6.2 The ICC Incoterms 2010 shall apply to all shipments.
- 6.3 Before the Supplies are delivered, the Seller shall give the Buyer sufficient warning in writing (including appropriate labels on all Supplies, containers, and packing, including without limitation disposal and recycling instructions, material safety data sheets and certificates of analysis) of any hazardous or restricted material that is part of the Supplies, together with any special handling instructions that are needed to advise carriers, the Buyer, Buyer's Customers and their employees how to take appropriate measures while handling, transporting, processing, using or disposing of the Supplies, containers, and packing. Seller agrees to comply with all Applicable Laws. and warning labels, including without limitation the European Union Directive 2002/96/EC and 2002/95/EC Link RoHS Directive: http://ec.europa.eu/environment/waste/weee/index_en.htm and Regulation 1907/2006/EC Link (REACH) Regulation: http://ec.europa.eu/environment/chemicals/reach/reach_intro.htm regarding restrictions of certain hazardous substances. The Seller shall reimburse the Buyer for any expenses incurred as a result of improper packing, packaging, marking or delivery. . Buyer may, at its option, request the Supplies be delivered pursuant to the rules of a different Incoterm to those specified above in Section 5.1
- 6.4 Unless otherwise agreed in writing by the Buyer, all and risk and title in and to the Supplies shall pass from the Seller to the Buyer upon delivery and/or performance (as applicable) of the Supplies to the Buyer's designated facility/address as specified in the Order.

7. Inspection and Defective Supplies

- 7.1 The Buyer may enter the Seller's facility to inspect Supplies, plant and materials related to the Order. The Buyer's inspection of Supplies whether during manufacture, prior to delivery, or within a reasonable time after delivery does not constitute acceptance of any work-in-progress or finished supplies nor does it relieve the Seller or diminish any of its responsibilities or warranties in relation to the Supplies.

- 7.2 If the whole or any part of Supplies are defective and consequently rejected by the Buyer, the quantities of Supplies under the Order will be reduced by the number of defective items unless the Buyer notifies the Seller otherwise.
- 7.3 In addition to any other remedies available to the Buyer, the Seller agrees to:
- (a) accept return of any defective Supplies, at the Seller's risk and expense including but not limited to all reasonable packaging, transportation and delivery expenses incurred by the Buyer, if any;
 - (b) promptly replace all such defective Supplies as the Buyer requires within a period of 7 days from the date of written notification by the Buyer to the Seller that the whole or any portion or aspect of the Supplies being defective; and
 - (c) indemnify the Buyer against any losses, third party claims, damages, liabilities and expenses incurred by the Buyer as a result of the whole or any portion or aspect of the Supplies being defective.

8. Changes

- 8.1 The Buyer reserves the right to direct changes, or to cause the Seller to make changes, to drawings, specifications, samples or descriptions of Supplies. The Buyer also reserves the right to otherwise change the scope of the work covered by the Order, including work with respect to such matters as inspection, testing or quality control. The Buyer may also direct the supply of raw materials from itself or from third parties.
- 8.2 In the event that any change made to the Order by the Buyer should impact on the Price or time for delivery or performance as a result of such a change, the Seller must notify the Buyer in writing within ten days after receiving notice of any impact on the Price. The Buyer can request additional documentation from the Seller relating to any change detailing and demonstrating the reason of the above quoted impact on the Price or time for delivery or performance. The Seller shall not make any change in the Supplies' design, specifications, processing, packing, marking, Price or date or place of delivery except at the Buyer's written instruction or with the Buyer's written approval.

9. Warranties

- 9.1 The Seller expressly warrants that the Supplies shall:
- a) Conform to the specifications, standards, drawings, samples, descriptions and any revisions all as specified by the Buyer in the Order;
 - b) Conform to all Applicable Laws;
 - c) Be of good quality and free of defects (both latent and patent) including but not limited to any defects as to design, manufacture, operation, materials and workmanship;
 - d) Be fit for the Buyer's stated use and requirements and be fit and sufficient for the purposes for which the Buyer has procured them from the Seller; and
 - e) Any work or services comprising the whole or part of the Supplies shall be performed in a professional and workmanlike manner, consistent with all professional standards and specifications and otherwise consistent with industry standards and Good Industry Practice.
- 9.2 The warranties given by the Seller in clause 9.1 in respect of the Supplies shall endure for a period of three years from the date of delivery of the Supplies
- 9.3 The Seller shall immediately notify the Buyer in writing when it becomes aware of any ingredient, component, design or defect in the Supplies that is or may become harmful to persons or property.

- 9.4 The Buyer's payment of the Price and/or its approval of any design, drawing, material, process or specifications relating to the Supplies shall not relieve the Seller of any liability in relation to the warranties contained in clause 9.1 above.

10. Quality

- 10.1 The Seller shall conform to the reasonable quality control standards and inspection system of the Buyer and shall also participate in supplier quality and development programs of the Buyer as directed by the Buyer.
- 10.2 At the Buyer's request, the Seller shall make all service literature and any other materials relating to the Supplies which are considered necessary by the Buyer available to the Buyer free of charge.

11. Liability and Remedies

- 11.1 The Seller hereby undertakes to indemnify the Buyer against personal injury to or the death of any person insofar as such injury or death arises in the course of or by reason of the Seller, carrying out, or failing to comply with, its obligations under the Agreement provided always and only to the extent that the same is due to negligence or breach of these Terms on the part of the Seller or negligence of the Seller's employees, agents, suppliers, contractors and/or sub-contractors.
- 11.2 The Seller hereby undertakes to indemnify the Buyer and the Buyer's Customers and all of their respective agents, successors and assigns, against all damages, losses (including consequential, indirect and economic forms of loss), claims, liabilities and expenses (including reasonable legal and other professional fees, settlements and judgments) arising out of or resulting from any defective Supplies, or from any negligent or wrongful act or omission of the Seller or the Seller's agents, employees, contractors or sub-contractors, or any breach or failure by the Seller to comply with any of its obligations under this Agreement.
- 11.3 The rights and remedies reserved to the Buyer in terms of the Agreement shall be cumulative with and in addition to all other or legal or equitable remedies available to the Buyer.
- 11.4 In any action brought by the Buyer to enforce the Seller's obligation to produce and deliver Supplies in terms of the Agreement, the Parties agree that the Buyer shall not always have an adequate remedy at law and as such, the Buyer is entitled to specific performance of the Seller's obligations under the Agreement.
- 11.5 GWS/CBRE SHALL NOT BE LIABLE TO SUPPLIER FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS ORDER. GWS/CBRE's total liability for damages, or otherwise, resulting from its performance or nonperformance under this Order or with regards to any other obligations/responsibilities herein shall not exceed the price for the Supplies.

12. Applicable Laws and Ethics

- 12.1 The Seller, and the Supplies shall comply with all Applicable Laws, and standards, relating to the manufacture, labelling, transport, import, export, licensing, approval or certification of the Supplies, including laws relating to anti-corruption, environmental matters, employment, discrimination, occupational health or safety and motor vehicle safety. The Agreement incorporates by reference all obligations and conditions thereby required.
- 12.2 The Seller shall use only legitimate and ethical business practices in the activities contemplated by the Agreement and shall not submit inflated or otherwise false VAT invoices to the Buyer. No part of the payments received by the Seller shall be used for any purpose that could constitute a violation of any Applicable Laws or any anti corruption law including the U.S. Foreign Corrupt Practices Act to the extent that it is enforceable against either or both Parties.
- 12.3 The Buyer has established an Ethics Policy (available at www.cbre.com/codeofconduct) and expects the Seller, and the Seller's employees agents, representatives and contractors, to abide by this policy or an equivalent ethics policy of its own.

13. Buyer's Customer Requirements

- 13.1 As directed by the Buyer in writing, the Seller agrees to comply with the applicable terms of any agreements between the Buyer and Buyer's Customers.
- 13.2 The Buyer shall supply the Seller with information regarding purchase orders from the Buyer's Customer(s) insofar as this information relates to the Supplies.
- 13.3 The Seller shall be responsible for ascertaining how such information affects the Seller's obligations under the Agreement, and the Seller shall meet all such disclosed Buyer's Customer terms to the extent within the Seller's control. By written notice to the Seller, the Buyer may elect to have the provisions of this clause 13 prevail over any conflicting term between the Buyer and Seller.

14. Insurance

- 14.1 The Seller shall maintain the insurance coverage listed below or such other insurance coverage as may be agreed between the Parties.

Type of Insurance	Minimum Limits
Commercial General Liability* insurance for bodily injury arising from premises, operations, personal injury, products/completed operations and contractual liability covering the indemnities required pursuant to the Liability and Remedies (Clause 11)	R 50,000,000 Per Occurrence, General Aggregate, Product and Completed Operations Aggregate, Personal & Advertising Injury
Automobile Liability covering all autos used in connection with the work performed	R20,000,000 combined single limit covering property damage and bodily injury per occurrence or the limit mandated in terms of the Applicable Laws
Workers' Compensation/Employee Injury	As required by Applicable Law
Employer's Liability	R10,000,000 each accident, each employee, each disease – policy limit or as required by the Applicable Laws
Professional Liability (if applicable)	R10,000,000 each claim
Blanket Fidelity Bond (Crime Insurance)	Where and as applicable

** Commercial General Liability limits may be met with a combination of General Liability and Umbrella/Excess Liability policy limits.*

- 14.2 The Seller shall furnish to the Buyer proper evidence of such insurance within 10 days of the Buyer's written request.
- 14.3 The existence of insurance does not release the Seller from any or all of its obligations or liabilities under the Agreement.
- 14.4 Where insurance coverage and/or limits are mandated by the Applicable Law, the same shall apply subject to the minimum limits stated above.

15. Termination

- 15.1 The Buyer may terminate the Agreement, without liability to the Seller if any of the following or comparable events occur, and the Seller shall reimburse the Buyer for all costs incurred by the Buyer in connection with any of the following, including without limitation legal and other professional fees:
- (a) the Seller is provisionally or finally liquidated or is removed from the register of companies or placed under judicial management; (b) the Seller takes steps to procure or initiate voluntary liquidation proceedings ; (c) steps are taken to procure or initiate involuntary liquidation proceedings against the Seller; (d) any procedure is commenced with a view to the appointment of an administrator, liquidator or judicial manager for the Seller; or (e) the Seller compromises or attempts to compromise or defer payment of any debt owing by the Seller to any of its creditors other than relating to or arising from extensions requested, variations granted and settlements reached in the ordinary course of business and which are not due to an inability on the part of the Seller to pay debts owing to its creditors as and when they fall due.
- 15.2 The Buyer may terminate the Agreement, without liability to the Seller, if the Seller: (a) repudiates, breaches or threatens to breach any of the Terms; (b) fails to or threatens not to deliver Supplies; (c) fails to make progress or to meet reasonable quality requirements so as to endanger timely and proper completion or delivery of Supplies and does not correct the failure or breach within 10 days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from the Buyer specifying the failure or breach; or (d) enters or offers to enter into a transaction that includes a sale of a substantial portion of its assets used for the production of Supplies for the Buyer or a merger, sale or exchange of stock or other equity interests that would result in a change in Control of the Seller. The Seller shall notify the Buyer within ten days after entering into any negotiations that could lead to the situation specified in 15.1 (d) above, provided that upon the Seller's request, the Buyer shall enter into an appropriate nondisclosure agreement related to information disclosed to Buyer in relation to such transaction.
- 15.3 In the event that either Party is unable, delayed or prevented in performing its obligations under the Agreement by reason or circumstances beyond its reasonable control and which it has not brought about at its insistence for a period of more than 60 days, the Agreement shall terminate forthwith.
- 15.4 In addition to any other rights of the Buyer to cancel or terminate the Agreement, the Buyer may at its option immediately terminate all or any part of the Agreement at any time and for any reason by giving the Seller 14 days written notice to that effect.
- 15.5 Upon receipt of notice of termination, and unless otherwise directed by the Buyer, the Seller shall: (a) promptly terminate all work under the Order; (b) transfer title and deliver to the Buyer the finished Supplies, the work in progress, and the parts and materials that the Seller reasonably produced or acquired according to quantities ordered by the Buyer and that the Seller cannot use in producing goods for itself or for others; (c) verify and settle any claims by subcontractors for actual costs incurred directly as a result of the termination and ensure the recovery of materials in subcontractors' possession; (d) take actions reasonably necessary to protect property in the Seller's possession in which the Buyer has an interest until disposal instruction from the Buyer has been received; and (e) upon the Buyer's reasonable request, cooperate with the Buyer in transferring the production of Supplies to a different supplier.
- 15.6 Upon termination by the Buyer under section 15.4, the Buyer shall be obligated to pay only the following: (i) the Price for all finished Supplies in the quantities ordered by the Buyer that conform to the Order; (ii) the Seller's reasonable actual cost of work-in-progress and the parts and materials transferred to the Buyer under part (b) of clause 15.5 above which shall apply equally to this clause 15.6; (iii) the Seller's reasonable actual costs of settling claims regarding its obligations to its subcontractors to the extent directly caused by the termination; and (iv) the Seller's reasonable actual cost of carrying out its obligation under clause (d) of clause 15.5 above which shall apply equally to this clause 15.6. The Seller shall furnish to the Buyer, within one month after the date of termination (or such other period as may be required by Buyer's Customer), its termination claim, which shall consist exclusively of the items of the Buyer's obligation to the Seller permitted by this section, in the form of a VAT invoice.

- 15.7 Notwithstanding any other provision contained in this clause 15 and without detracting from the provisions of clause 11.2, the Buyer shall have no obligation for and shall not be required to pay the Seller, directly or on account of claims by the Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, tooling, facilities and equipment rearrangement costs or rental, unamortized capital or depreciation costs, finished goods, work-in-progress or raw materials that the Seller fabricates or procures in amounts exceeding those authorized in the Order, or general administrative burden charges from termination of the Agreement, except as otherwise expressly agreed.
- 15.8 Notwithstanding any other provision contained in this clause 15 and without detracting from the provisions of clause 11.2, the Buyer's obligation upon termination under this section 15 shall not exceed the obligation the Buyer would have had to the Seller in the absence of termination.
- 15.9 The Buyer may audit the Seller's records before or after payment to verify amounts requested in the Seller's termination claim. The Buyer shall have no obligation for payment to the Seller under this section 15 if the Buyer terminates the Agreement or portion thereof because of a default or breach by the Seller.

16. Force Majeure

- 16.1 The Buyer shall not be responsible for any loss or damage of any kind occurring as a result of a failure of, or delay in, the performance of any of its obligations under the Agreement in the event such performance is delayed or prevented by circumstances beyond its reasonable control and which have not been brought about at its insistence.
- 16.2 The Parties shall use reasonable diligence to seek to overcome any circumstance or event falling within clause 16.1.
- 16.3 No charges shall be payable by the Buyer to the Seller during any period and to the extent to which this clause 16 applies.
- 16.4 In the event that either Party is unable to or is delayed in or prevented from performing its obligations under the Agreement by reason or circumstances beyond its reasonable control and which it has not brought about at its insistence, for a period of more than 60 days, the Agreement shall terminate forthwith.

17. Information Rights

- 17.1 The Seller shall not to assert any claim against the Buyer, the Buyer's Customers, or their respective suppliers, with respect to any technical information that the Seller has disclosed or may disclose to the Buyer in connection with the Supplies, except to the extent expressly covered by a separate written confidentiality and/or license agreement signed by the Buyer or by a valid patent expressly disclosed to the Buyer prior to or at the time of the acceptance of the Order by the Seller.
- 17.2 The Seller shall indemnify and hold harmless the Buyer, its successors and the Buyer's Customers against claims of infringement of any intellectual property right (including any patent, trademark, copyright, [moral], industrial design right) and against any resulting damages or expenses, including legal and other professional fees arising in any way in relation to the Supplies (including without limitation their manufacture, purchase, use and/or sale), except to the extent such infringement is actually embodied in designs created by the Buyer and provided in writing to the Seller.
- 17.3 All intellectual property rights in all drawings, documents and other information which are compiled, developed and/or produced for or on behalf of the Buyer as part of or in the course of producing, rendering and supplying the Supplies in terms of this Agreement shall vest solely and entirely in the Buyer without the need for any further compensation by the Buyer.

17.4 The Seller shall grant the Buyer a non-exclusive, irrevocable, royalty-free license to use any intellectual property owned by the Seller that is necessary or incident to the reasonably intended use or application of the Supplies.

18. Confidentiality

18.1 The Seller acknowledges that Confidential Information shall be received from the Buyer or developed for the Buyer in terms of the Agreement, regardless of whether such information is marked or identified as Confidential Information.

18.2 The Seller agrees and undertakes to keep all Confidential Information of the Buyer in the strictest confidence, and further agrees not to disclose or permit disclosure to others of Confidential Information save as required by any Applicable Laws, and not to use Confidential Information other than the purpose of fulfilling its obligations under this Agreement.

18.3 Following the expiration or termination of the Agreement, upon the Buyer's request, the Seller shall promptly deliver to the Buyer any and all documents and other media, including all copies thereof and in whatever form that contain or relate to the Buyer's Confidential Information.

18.4 The Seller's obligations under this section shall continue for a period of six years from the date of disclosure of Confidential Information covered by this section, unless a longer period is specified in writing by the Buyer.

18.5 The restrictions and obligations of this section shall not apply to information that: (a) is already publicly known at the time of its disclosure by Buyer; (b) after disclosure by Buyer becomes publicly known through no fault of the Seller; or (c) the Seller can establish by written documentation was properly in its possession prior to disclosure by the Buyer or was independently developed by the Seller without use of or reference to the Buyer's Confidential Information.

18.6 Notwithstanding anything to the contrary in these Terms, any confidentiality or non-disclosure agreement between the Parties that predates the Agreement shall remain in effect except as expressly agreed to by the Parties and recorded in the Terms, and to the extent of a conflict between the express terms of such an existing agreement and this section, the terms of that agreement shall prevail.

19. Section 37(2) Principles

19.1 The Seller acknowledges that it and any person employed by it or contracted by it shall enter the address referred to in clause 4.3 above entirely at its/their own risk.

19.2 The provision of the Supplies shall be conducted by the Seller in a safe and responsible manner and strictly on the terms agreed upon between the Parties and in accordance with all safety regulations applicable to the business of the Buyer and/or the Buyer's Customers and the Applicable Legislation, including but not limited to the OHS Act and its regulations, ("Safety Regulations"), all of which the Seller warrants that it is fully conversant with.

19.3 The Seller agrees that it shall fulfill all the relevant obligations as an employer in terms of the OHS Act and its regulations.

19.4 The Seller undertakes to ensure that the Supplies are provided in accordance with the provisions of the Safety Regulations and, in particular, the OHS Act and its regulations.

19.5 The Seller further undertakes that it will take all reasonable steps to ensure that its employees and any person contracted by it will at all times adhere to and comply with the Safety Regulations.

- 19.6 The Seller shall bear full responsibility for ensuring that the Safety Regulations are properly implemented in the areas designated for the provision of the Supplies and in respect of all aspects of the provision of the Supplies.
- 19.7 The Seller undertakes, in accordance with the Safety Regulations, to do all that is necessary to safeguard the health and safety of all its employees and any persons contracted by it working at the sites.
- 19.8 The Seller and/or its employees and any person contracted by it undertake to report to the Buyer any unsafe acts and conditions that may arise on the premises during the provision of the Supplies over which the Seller has no control, immediately upon such unsafe acts or conditions being observed by the Seller and/or its employees or persons contracted by it. The Buyer undertakes to take such steps necessary to rectify these conditions.
- 19.9 The Seller shall ensure that, where appropriate, its employees are insured against injury at work and are fully covered under the Compensation for Occupational Injuries and Diseases Act 180 of 1993, or any amendments thereto or replacements thereof, and shall produce documentary evidence to the Buyer of this including furnishing the Buyer with a "certificate of goodstanding".
- 19.10 Should the Seller or any one of its employees or any person contracted by it fail to adhere to the Safety Regulations, the Buyer may order that the provision of the Supplies be stopped pending compliance with the Safety Regulations. Any additional costs incurred due to such stoppage shall be for the Seller's account.
- 19.11 The Seller shall furnish the Buyer with the full particulars of any sub-contractor appointed by the Seller in respect of the Supplies and shall ensure that any such sub-contractor and all the employees or persons contracted by such sub-contractor abide the terms of this Agreement.
- 19.12 Where any permits are required to carry out the provision of the Supplies, the Seller shall obtain such permits and shall not commence the provision of the Supplies until such permits have been obtained and shall ensure that all the requirements of these permits are strictly complied with.

20. Publicity

The Seller shall not advertise, publish or disclose to third parties (other than to the Seller's professional advisors on a need-to-know basis) in any manner the fact that the Seller has contracted with the Buyer to provide the Supplies or the terms of the Agreement, or use any Intellectual Property of the Buyer in any press release, advertising or promotional materials, without first obtaining the Buyer's written consent.

21. Relationship of Parties

- 21.1 The Seller and Buyer are independent contracting parties and nothing in the Agreement shall be construed as constituting either Party as the employee, agent or legal representative of the other Party for any purpose. The Agreement does not grant either Party any authority to assume or to create any obligation on behalf of or in the name of the other Party.
- 21.2 The Seller shall be solely responsible for all employment and income taxes, insurance premiums, charges and other expenses it incurs in connection with its performance in terms of the Agreement, except as expressly provided in a written agreement signed by the Buyer. All employees and agents of the Seller or its respective contractors are employees or agents solely of the Seller or such contractors, and not of the Buyer, and are not entitled to employee benefits or other rights accorded to the Buyer's employees. The Buyer is not responsible for any obligation with respect to employees or agents of the Seller or its contractors.
- 21.3 Nothing herein contained shall be construed or deemed to constitute a partnership or joint venture between the Parties hereto and neither Party shall be bound by any representation, act or omission of the other.

22. Assignment

The Seller shall not cede any of its rights or delegate any of its obligations under the Agreement without the Buyer's prior written consent.

23. Governing Law

23.1 The Agreement shall be construed and governed in all respects in accordance with the laws of the Republic of South Africa and any disputes or differences shall be subject to the exclusive jurisdiction of the South African courts.

24. Severability

If any term of the Agreement is invalid or unenforceable under any of the Applicable Laws the Parties shall negotiate in good faith to replace such term to the extent necessary to comply with the relevant Applicable Laws, provided that if the Parties fail to reach agreement on such replacement term, then the term in question shall be deemed to be severable from the Agreement which shall remain in full force and effect.

25. Waiver

The failure of either Party at any time to require performance by the other Party of any term of the Agreement shall not affect the right to require performance at any later time, nor shall the waiver of either Party of a breach of any term of the Agreement constitute a waiver of any later breach of the same or other term of the Agreement.

26. Survival

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

27. Third Party Rights

The provisions of the Agreement shall not constitute a *stipulatio alteri* in favour of any third parties.

28. Notices and Legal Service

28.1 All notices and any other communications whatsoever (including, without limitation, any approval, consent, demand, query or request) by any Party in terms of the Agreement or relating to it shall be given in writing and sent by registered post, or delivered by hand, or transmitted by facsimile to the recipient Party at its relevant address set out below -

- a) if to the Seller, at – the address of the Seller which is ascertained by the Buyer from the Seller and inserted in the Order by the Buyer, prior to such Order being issued by the Buyer to the Seller in terms of this Agreement.
- b) if to the Buyer, at –

Street address:	60B Electron Avenue Isando
Postal address:	P O Box 469 Isando 1600 South Africa
Facsimile number:	[•]

28.2 Any Party may, by written notice to the other Party, change any of the addresses at which or the

designated person for whose attention those notices or other communications are to be given.

- 28.3 Any notice or other communication given by any Party to the other Party which –
- (a) is delivered by hand to the addressee during the normal business hours of the addressee at its specified address shall be rebuttably presumed to have been received by the addressee at the time of delivery; or
 - (b) is transmitted by facsimile to the addressee during the normal business hours of the addressee at its specified facsimile number shall be rebuttably presumed to have been received by the addressee on the date of transmission as indicated on the sender's facsimile transmission report.
- 28.4 The previous provisions of this clause 28 shall not invalidate any notice or other communication actually given and received otherwise than as described in those provisions.
- 28.5 The Parties choose their respective physical addresses in clause 28.1 as their respective *domicilia citandi et executandi* at which all documents relating to any legal proceedings to which they are a party may be served. If that address is changed to another address which is not a physical address in South Africa, then the original address shall remain the *domicilium citandi et executandi* of the relevant Party until it nominates a new physical address within South Africa in writing to be its new *domicilium citandi et executandi*.
- 28.6 The Parties record that whilst they may correspond via email during the currency of the Agreement, no formal notice required in terms of the Agreement, nor any amendment or variation hereto may be given or concluded via email unless specifically provided for otherwise.

29. Sub-Contracts

- 29.1 Save as may be provided for in the Agreement, the Seller shall not be entitled to sub-contract the whole or any part of the Supplies, to any person whomsoever, in any manner and/or to any extent, without the prior written consent of the Buyer, which consent may be withheld in the Buyer's sole and absolute discretion.
- 29.2 In the event that the Seller sub-contracts the whole or any part of the Supplies to any person with the consent of the Buyer, the Seller shall use its best endeavours to ensure that the relevant sub-contractor is competent to carry out its obligations and that it shall do so in a professional and workmanlike manner as would otherwise have been expected of the Seller in terms of the Agreement, and that it poses no risk to the rights or assets of the Buyer pursuant to the Agreement including but not limited to all Confidential Information of the Buyer.
- 29.3 The Seller shall at the reasonable request of the Buyer submit a list of all and any persons to which it has sub-contracted the whole or any part of its obligations in terms of this clause 28.
- 29.4 It shall be a condition of any sub-contracting agreement which may be concluded by the Seller, that upon the termination of this Agreement for any reason, the sub-contractor shall, if so required by notice in writing given by the Buyer, do all acts and execute all documents at its own cost as may be necessary to effect the cession and assignment to the Buyer or to a person nominated by the Buyer of the Seller's entire benefit, rights and interest in and under the sub-contract.
- 29.5 The Seller shall remain wholly responsible for supplying the Supplies in all respects in accordance with the Agreement and for all of its liabilities and obligations in terms of the Agreement notwithstanding the sub-contracting of all or any part of its obligations under the Agreement to any person. Should any sub-contractor commit any act (which shall include, for all purposes, any omission) which is a breach or

would, if committed by the Seller, constitute a breach by the Seller of the provisions of the Agreement, the Seller shall procure that the breach is remedied within 7 days or such other period that the Seller deems reasonable, failing which the Seller shall terminate the sub- contract concluded by the Seller with the sub-contractor in question and shall, either itself or through a sub-contractor permitted by the Buyer in terms of this clause, other than the sub-contractor in question, fulfil the obligations which were sub-contracted by the Seller to the defaulting sub- contractor in question. Without in any way limiting or derogating from the provisions of this clause, the Seller shall be responsible to the Buyer for any and all acts, defaults and omissions of any sub- contractor and such sub-contractor's agents, employees and any other persons whomsoever for which the such sub-contractor may be liable in law.

30. Dispute Resolution

- 30.1 Save in respect of those provisions of the Terms which provide for their own remedies which would be incompatible with this clause 30, in the event of any dispute between the Parties in relation to any aspect of the Agreement (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction) the Parties shall seek to resolve the dispute by negotiation.
- 30.2 The Parties shall meet and to attempt to resolve the dispute within 10 Business Days from date on which either Party notifies the other of the dispute.
- 30.3 If the Parties are unable to resolve the dispute within the said period of 10 Business Days either Party shall be entitled to refer the dispute to arbitration in terms of the remaining provisions of this clause 30.
- 30.4 The arbitration shall be held subject to the provisions of this clause 30:
- (a) at Johannesburg;
 - (b) informally with only the Parties and their legal representatives present thereat;
 - (c) otherwise in accordance with the Rules of the Arbitration Foundation of Southern Africa;
 - (d) it being the intention that if possible the arbitration shall be held and concluded within 21 Business Days after it has been demanded.
- 30.5 The arbitrator shall be, if the matter in dispute is principally:
- (a) a legal matter, an impartial practicing advocate of not less than 10 years standing, or an impartial admitted attorney of not less than 10 years standing;
 - (b) an accounting matter, an impartial practicing chartered accountant of not less than 10 years standing; and
 - (c) any other matter, a suitably experienced independent person agreed upon between the Parties.
- 30.6 If the Parties fail to agree on an arbitrator within 3 days after the arbitration has been demanded, the arbitrator shall be nominated and appointed, at the request of either of the Parties, by the Secretariat of the Arbitration Foundation of Southern Africa (or the successor body thereto). If the Secretariat (or its successor) fails or refuses to make the nomination, either Party may approach the High Court of South Africa to make such an appointment. To the extent necessary, the court is expressly empowered to do so.
- 30.7 If the Parties fail to agree whether the dispute is of a legal, accounting or technical nature within 3 days

after the arbitration has been demanded, it shall be a matter referred to in clause 30.5(c).

- 30.8 The Parties irrevocably agree that the decision in these arbitration proceedings:
- (a) shall be final and binding on them,
 - (b) shall be carried into effect
 - (c) may be enforced by making the arbitration order an order of any court of competent jurisdiction.
- 30.9 Any dispute shall be deemed to have been referred or subjected to arbitration hereunder when any Party gives written notice to the other of the dispute and demands an arbitration.
- 30.10 The arbitrator shall be entitled to make an award even where a Party fails to participate fully or at all in the dispute.
- 30.11 The arbitrator shall determine the liability of the Parties for the arbitrator's costs.
- 30.12 The provisions of this clause 30 are severable from the rest of the Terms and shall remain in full force and effect even if the Agreement is terminated for any reason.