

may be more fully described in the Quotation and/or order form.

KTI South Africa (Pty) Ltd

General Terms and Conditions of Sales and Delivery (“Terms”)

[As revised in June 2020]

Applicable to:

Unless the Seller expressly states otherwise, these terms and conditions apply to all goods sold and delivered or services rendered by the Seller to the Buyer. These terms and conditions shall supercede any previous terms and conditions issued by KTI South Africa and shall take precedence over any terms and conditions contained in the Buyer's order. These terms and conditions may only be varied with the express written consent of the Seller.

Definitions

In these terms and conditions, the following definitions apply:

Acceptance: An Order shall be deemed to be accepted, when Seller issues a written confirmation and acceptance of such Order, at which point and on which date a Contract shall come into existence (Commencement Date). A Contract shall exist on the basis of these Terms, which the Buyer is deemed to have accepted upon issuing an Order.

Buyer: the person or entity (or client) who purchases the Goods and/or Services from the Seller and as reflected in the written order form.

Contract: means an order form based on a quotation given by the Seller and signed and accepted by the Buyer and to which these terms and conditions may be attached.

Day: means any calendar day, which is not a Saturday, Sunday or public holiday in the Republic of South Africa.

Goods: means the components, spare parts and/or goods supplied and described in the order form.

Quotation: a quotation provided by the Seller to the Buyer and in which the Seller sets out the cost of supplying the Buyer with Goods and/or providing the Buyer with Services.

Seller: KTI South Africa (Pty) Ltd, a subsidiary of KTI-Plersch GmbH (Germany) and is responsible for all aftersales business in Southern Africa, supplying spare parts, components and services (such as repairs and maintenance) in the refrigeration sector.

Services: means the services (or any part thereof) such as repairs and maintenance in refrigeration and which

Note further:

- Any reference to a party includes its personal representatives, successors or it's authorised agents.
- The headings of the paragraphs of these terms and conditions are purely for reference purposes and shall not affect the interpretation of any of the provisions to which they relate.

I. General

1. All Goods supplied and/or Services rendered by the Seller to the Buyer shall be supplied and/or rendered (as the case may be) subject to these Terms and Conditions of Sale and Delivery.
2. Any deviating Buyer's purchasing conditions and/or any conflicting statements and/or special terms contained in any acceptance order or other documentation issued by the Buyer shall be of NO force or effect, unless such conflicting statement or special term has been expressly agreed to by the Seller (in writing).
3. The Seller reserves the right of ownership and copyright to samples, cost estimates, drawings and similar information, both tangible and intangible – also in electronic form; they may not be made accessible to any third party. The Seller undertakes not to disclose any information to third parties, which the Buyer declared confidential, except with the Buyer's consent.

II. Conclusion of contract, quality, order confirmation

1. The Buyer shall request the Seller to issue the Buyer with a written Quotation in which the Seller sets out the cost of supplying the Buyer with Goods and/or providing the Buyer with required Services.
2. The amounts specified in the written Quotation shall be valid for a maximum period of 30 Days calculated from the date on which the written Quotation is issued.
3. Based on said Quotation sent by the Seller to the Buyer, the Buyer may issue an order form which shall constitute an offer by the Buyer for the purchase of Goods and/or the provision of Services (as the case may be) and which shall be subject to these terms and conditions.
4. No order for Goods and/or for the provision of Services shall be binding on the Seller, unless and until the Seller has accepted such order in writing. The intent and purpose being that a Contract shall come into being upon written Acceptance, by the Seller, of any such order.
5. A Contract constitutes the entire agreement between the parties in respect of the relevant Goods and/or Services supplied hereunder. **The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract.** Any verbal side agreements and/or assurances given by any of the Seller's staff and/or representatives shall only become legally binding if authorised and confirmed in writing. A Contract shall supersede any previous agreement or arrangement between the parties relating to the subject matter of that Contract and it is expressly agreed that no variations to the Terms shall be effective unless made in writing and signed by the duly authorised representatives of both the Buyer and Seller.

6. The Seller shall only give a guarantee for the quality of their products if expressly designated as such in a Quotation or an order confirmation.
7. The Seller's written order confirmation shall be relevant for the scope of delivery of Goods and /or Services rendered.
8. The Seller reserves the right to amend or modify the Goods and/or the Services applicable, from time to time, and shall notify the Buyer should this become necessary.
9. The Seller shall, in its sole and unfettered discretion, and without being obliged to provide any reasons whatsoever, be permitted to decline any order placed (whether for Goods and/or the provision of Services).

III. Price and payment

1. The amount(s) payable by the Buyer to the Seller for Goods and/or Services shall be the price set out in the relevant Quotation forming part of a Contract and as confirmed in invoices issued by the Seller. If no price is stated, the price shall be that provided by the Seller in writing.
2. Unless otherwise stated in a Contract, any prices quoted are **exclusive of any value added tax (VAT)**, which the Buyer shall additionally be liable to pay to the Seller at the prevailing rate.
3. Subject to applicable local laws and regulations, the Seller reserves the right to increase the price of the Goods and/or Services, by giving notice to the Buyer at any time before delivery, to reflect any increase in the cost to the Seller that may be due the following:
 - 3.1. any factor beyond the control of the Seller (including foreign exchange fluctuations, increases in taxes and duties, and any other increases);
 - 3.2. any request by the Buyer to change the delivery date(s), quantities or types of Goods and/or Services ordered, or the specification; or
 - 3.3. any delay caused by any instructions of the Buyer in respect of the Goods and/or the Services or failure of the Buyer to give the Seller adequate or accurate information or instructions in respect of the Goods and/or the Services.
4. The Seller shall issue an invoice with respect to each Contract which shall be governed by these Terms. Unless specified otherwise (in writing), the Buyer shall pay the Seller's invoice in the following manner: a payment of 30% of the full Contract value immediately upon receipt of order confirmation; 60% of the full contract value upon notification by the Seller to the Buyer that the Order is ready for shipment, and the balance of 10% owing to the Seller shall be due within 30 Days after the passing of the risk.
5. The Buyer shall pay the cost of shipping of the Goods. These costs may also include all/any applicable taxes, duties and the like originating from or relating to the shipment.
6. Without limiting any other right or remedy of the Seller, if the Buyer fails to make any payment due to the Seller by the due date for such payment, then the **Seller shall have the right to charge interest on the said amount (or the balance thereof) at the rate of 2%(two percent) above the prevailing overdraft rate of Investec Bank Ltd**, reckoned from the due date until the date of payment in full.
7. Any/all payments made by the Buyer to the Seller, in terms of these terms and conditions, shall be made free from exchange, deduction or set-off and in such bank account as the Seller may nominate (in writing) from time to time.
8. The Seller will never change or adapt their banking details via email or any other electronic forum. The Buyer is to contact the Seller for formal verification should the Buyer receive any correspondence of such a nature.
9. The Buyer shall not accept or give any commission or gift or any other financial benefit or inducement from or to any person or party in connection with its obligations under these terms

and /or Contract and will ensure that its employees, officers, directors, professional advisers, agents and subcontractors will not, directly or indirectly, accept or give any such commission, gift, benefit or inducement and will immediately give the Seller details of any such commission, gift, benefit or inducement which may have been offered, accepted or given.

IV. Delivery time, delay in delivery

1. The time for delivery of Goods ordered and the mode of delivery shall be agreed between the Seller and the Buyer and shall be stipulated in writing in the parties' Contract.
2. The Seller shall endeavour, to the best of its ability and commercially reasonable efforts, to deliver the Goods timeously and at the place stipulated in the Contract or as otherwise agreed in writing; however, under no circumstances, shall the Seller be liable for any damage, penalties or loss arising from any late delivery or failure to deliver for whatsoever reason. Should delays become apparent, the Seller shall endeavour to give due notification to the Buyer as soon as possible and the delivery time shall be extended appropriately.
3. Unless otherwise agreed in writing, the Buyer is obliged (and at its own expense) to complete all necessary formalities, approvals and obtain all permits, licenses, authorisations and certificates (as required) whether from government, municipal or local authorities as may be necessary for the lawful delivery and installation, use and/or operation of any Goods supplied by the Seller to the Buyer.
4. The Seller makes no representations or warranties, of whatsoever nature, that any such consents, licenses and/or permits shall be granted to the Buyer and the failure of the Buyer to procure any one or more of same shall not invalidate any order which has been duly accepted by the Seller.
5. The delivery deadline is deemed to have been observed if the delivery item has left the Seller's premises by the expiry of the deadline or if the Buyer was duly advised of readiness for shipment. If an Acceptance needs to be made, the date on which such Acceptance was made shall be the relevant date – except if the Seller refused to accept on justified grounds.
6. If the Buyer fails to accept or take delivery of the Goods or Services and/or fails to give adequate delivery instruction or is in anyway responsible for the delay or failure to deliver the Goods or Services timeously, then any/all costs incurred by such delay (as from the notification of readiness for shipment or the notification of readiness for acceptance respectively) will be charged to the Buyer and shall be immediately payable on demand. In addition, and without prejudice to any other right or remedy available to the Seller, the Seller may:
 - 6.1. Store the goods until actual delivery and charge the Buyer for all such costs (including handling and insurance) of storage.
 - 6.2. Sell the Goods at the best price readily obtainable to cover their expenses and charge the Buyer for any shortfall and/or losses suffered by the Seller.
7. If failure to observe the delivery deadline is due to force majeure, labour disputes or other events which are beyond the Seller's control, the delivery time will be extended appropriately.
8. The Seller may withdraw from the Contract if the entire performance becomes impossible for the Seller to perform before the passing of the risk. Furthermore, the Buyer may withdraw from the Contract if, under a purchase order, a part of the delivery scope becomes impossible to perform and the Buyer has a legitimate interest and justified reason for rejecting the partial delivery. If this is not the case, the Buyer shall have to pay the amount of the contractual price applicable to the partial delivery. The same applies in the event of an inability of the Seller. If impossibility or inability occurs during a delay in

acceptance or if the Buyer is solely or largely responsible for these circumstances, the Buyer shall remain obliged to effect payment in full.

V. Passing of risk and Acceptance

1. All risk in and to the Goods shall pass to the Buyer on date of delivery. If an Acceptance must be made, such Acceptance shall be relevant for the passing of the risk. The Acceptance must be carried out immediately at the set date, or alternatively, after the Seller has advised readiness for Acceptance. The Buyer shall not refuse the Acceptance in the case of a minor non-compliance.
2. If the Goods are shipped to the Buyer, delivery shall be deemed to have been given to the Buyer on the date on which the risk in the Goods passes to the Buyer, in accordance with the trade terms to which the carriage of such Goods is subject (and which trade term shall be agreed by the Seller and the Buyer, in writing), as interpreted and construed in accordance with the INCOTERMS 2020 Rules, as issued by the International Chamber of Commerce.
3. If the shipment, service, performance of erection or installation is delayed for reasons for which the Buyer is responsible or if the Buyer is in delay of Acceptance for any other reason, the risk shall pass to the Buyer.

VI. Reservation of title

1. **Title to the Goods shall not pass to the Buyer until the Seller has received payment in full (and in cleared funds) for such Goods.** The Seller reserves title to the Goods until all claims that have arisen from or as a result of the Contract or any accessory claims in close connection with the delivered Goods (interest on use, damage due to delay etc.) have been paid in full.
2. Until title to the Goods has passed to the Buyer, the Buyer shall:
 - i. Store the Goods separately from all other goods (if any) held by the Buyer so that they remain readily identifiable as the Seller's property.
 - ii. Not remove, deface or obscure any identifying mark or packaging on or related to the Goods.
 - iii. Not install any of the Goods and maintain them in satisfactory condition and keep them insured against all risks for their full price on the Seller's behalf as from date of delivery.
 - iv. Notify the Seller immediately if the Buyer is unable to pay its debts or suffers any event which could be reasonably considered to indicate that it is insolvent or at risk of becoming so in the near future.
3. If before title to the Goods passes to the Buyer, the Buyer becomes subject to any of the events envisaged in para 2(iv) above or the Seller reasonably believes that any such event is about to occur and notifies the Buyer accordingly, then provided the Goods have not been damaged, and without limiting any other right or remedy the Seller may have, the Seller may at any time require the Buyer to deliver up the Goods and if the Buyer fails to do so, the Seller may enter any premises of the Buyer where the goods are stored in order to recover them. The Buyer agrees to grant access or procure that access is granted to such premises for this purpose.
4. The machining or processing, assembly or other utilization of Goods subject to reservation of title shall be deemed effected by an order. If Goods which are subject to reservation of title, are mixed, connected or combined with other objects or Goods ("third-party goods"), the Buyer assigns his ownership title or co-ownership title in the new object to the Seller and shall

store it (on behalf of Seller) free of charge. The Seller hereby accepts the assignment.

5. If the Buyer sells any Goods which are subject to the Seller's retention of title (on its own or together with any third-party goods & which have been assigned to Seller as per para 4 above) any claims resulting from such sale, together with any ancillary rights, in the amount of the value of the Goods subject to retention of title, shall be assigned to the Seller. The value of the Goods subject to retention of title shall be **the invoice amount plus a collateral fee of 10% (ten percent)**. Any and all claims by the Buyer are also assigned in the same manner, which accrue to the Buyer under agreements in connection with the processing or installation of Goods subject to retention of title, as well as any claims that accrue to the Buyer through the connection of Goods subject to retention of title with the land of a third party. The advance assignment also extends to any current account balance claims.
6. If the Buyer installs any Goods which are subject to retention of title into its own premises, the Buyer hereby assigns to the Seller any claims resulting from a sale of the premises or of the real estate rights in the amount of the value of the goods subject to retention of title (**including a collateral fee of 10%**), together with any ancillary rights. The advance assignment also extends to any current account balance claims. The Seller hereby accepts the assignment.
7. The Buyer is only allowed to sell, use or install the Goods subject to retention of title in the usual orderly run of business and provided only that claims in the sense of the above paragraphs are in fact transferred to the Seller. The Buyer shall not, absent the prior written consent of the Seller, be entitled to any other kind of disposition of the Goods subject to retention of title; they may not assign the Goods and/or the Contract to any third party; pledge or cede any/all of its rights, in terms hereof to any third party, and/or delegate any rights or obligations in terms hereof to any third party. The Buyer shall not be allowed to agree to a non-assignment clause with its customers.
8. Subject to revocation, the Seller entitles the Buyer to collect the claims assigned under the above paragraphs. The Seller shall not exercise its right to collect as long as the Buyer meets its payment obligations in terms of the Contract, also towards third parties. If requested by the Seller, the Buyer must name the debtor of an assigned claim and furnish the Seller with full particulars including providing access to the account and business documents – and to notify the debtor of such assignment. The Seller is entitled to notify the debtor of the assignment.
9. In the event that the Buyer ceases payments or the Buyer receives an application for insolvency proceedings or any other proceedings for the execution of a extrajudicial settlement with any creditors regarding the clearance of debts against the Buyer, the rights of the Buyer to sell, use or install the Goods (which are subject to retention of title) and the authorisation to collect the assigned claims shall immediately cease. The Buyer shall inform the Seller immediately of any third-party execution proceedings referring to any Goods (which are subject to retention of title) or any claims assigned (in advance), while handing over to the Seller any documents required for an objection.
10. If the Buyer is in default of payment, the Seller shall be entitled to take back the Goods which are subject to retention of title after written demand, and the Buyer shall be obliged to surrender such Goods within 5(five) Days of such demand. The Buyer grants the Seller the right to enter its premises, to mark or remove the Goods supplied. The Buyer shall bear the costs of the return.

VII. Claims for Defect and Warranty

For material defects and defects of title of the Goods supplied, the Seller shall provide the following warranties, subject to section VIII below, and excluding any further claims:

1. The warranty terms applicable to the Goods shall be set out in the Contract or as otherwise specified by the Seller in writing. For Goods provided by a third-party provider, the warranty terms shall remain as offered by the said third-party provider with respect to said Goods.
2. The Buyer's claims for breach of warranty shall, subject to the provisions of the Consumer Protection Act (where applicable) be limited to such warranties as may be furnished by the Seller to the Buyer, in writing; and such warranties shall be deemed to be given in lieu of any warranties allowed at common law.
3. The Buyer shall inspect all the Goods promptly upon receipt thereof and where there is a shortage of any Goods delivered to the Buyer or where the Goods delivered are found to be visibly damaged or defective, the Buyer shall give written notice to the Seller of any such **shortage or damage within 5 (five) Days of date of delivery** and in which notice, the Buyer shall provide the serial number of the Goods, the nature of the defect and the breach of contract (if applicable).
4. Notwithstanding above, in the event of latent defects which were not capable of being discovered by the Buyer upon physical examination, the Buyer shall inform the Seller **in writing** within 2 (two) Days after discovering such defects and furnish the Seller with sufficient detail and information as the Seller may require.
5. **Subject to the provisions of section 20(2) of the Consumer Protection Act No.68 of 2008, should the Buyer fail to give written notice as contemplated in para 3 and 4 above, the Goods shall be deemed delivered in a complete and undamaged state and the Buyer shall have no claim of whatsoever nature, whether in Contract or in delict against the Seller for any alleged shortages or damages; neither shall the Buyer be entitled to withhold any payment to the Seller or deduct any amount(s) from the invoice. The Seller shall not be obliged to replace or refund any Goods that, in the opinion of the Seller, have been damaged by the Buyer subsequent to delivery as a result of the Buyer's failure to properly store or use the Goods.**
6. The Seller shall, in its sole discretion and subject to the terms of the Contract (and/or applicable laws and regulations) either replace and deliver such Goods at no additional cost to the Buyer or alternatively issue a refund/credit note to the Buyer in respect of such defective Goods. However, the Seller shall not be obliged to replace or refund any Goods where, in the opinion of the Seller, such latent or patent defect has resulted due to the Buyer's failure to store the Goods in accordance with their storage conditions during the transportation or storage undertaken by the Buyer or the Buyer's subsequent use of the Goods.
7. The Buyer shall return the defective parts or Goods to the Seller in accordance with the terms of the Contract (which shall include the terms of delivery) and the Buyer shall allow a reasonable period for delivery purposes. In the event that the Contract so specifies or the Seller agrees thereto, the Seller shall bear the cost of de-installation and re-installation (where applicable) **subject to a limitation of cost which does not disproportionately burden the Seller**. In cases of minor defects, the Buyer shall only be entitled to a price reduction.
8. The returned part shall be checked with reference to the warranty. If a claim cannot be made under the warranty, the Buyer shall be liable for the repair/replacement costs as well as the transport expenses. Failure to give notice of defect or delay in giving notice, omission of the serial number of the Goods, and failure to return the Goods within the specified time limit, shall be inexcusable and may render the warranty null and void.
9. Payments by the Buyer **may** in the event of immediate notice of defect to the Seller, be withheld to the extent appropriate in relation to the defect/non-compliance that may have occurred but which may not exceed the amount of 5%(five percent) of the cost of the defective item. The Buyer may only suspend payments if a defect is found to be justified. The Buyer does not have a right to withhold payments if its claims for defects have become statute barred or if the notice of defect was not justified; in which case, the Seller shall be entitled to demand compensation from the Buyer for all/any other expenses incurred by the Seller.
10. The Buyer shall grant the indulgence of a reasonable period of time required by the Seller to carry out all or any repairs or the replacement of the defective Goods and/or delivery thereof which the Seller deems necessary; otherwise the Seller shall be exempt from any liability for the consequences thereof.
11. The Buyer shall not have the right to remedy any defect(s) itself or have them remedied by third parties and demand compensation for the expenses thereof from the Seller, unless **specifically agreed (in writing)** by the Seller. Any unauthorised repairs undertaken by the Buyer or any third party shall be the sole responsibility of the Buyer and the Buyer shall bear all/other expenses related thereto. The Seller shall not be liable for any consequences resulting from such unauthorised repair and the warranties given under section VII shall be void. Similarly, the above shall be applicable to cases where any modifications are made to the Goods supplied and which are carried out without the Seller's prior written consent.
12. Subject further to the provisions of the Consumer Protection Act No.68 of 2008 (where applicable) any warranty given herein shall be *ipso facto* void if the Buyer fails to use the Goods in the manner recommended by the Seller or in the following cases:
 - 12.1. Unsuitable or improper storage or use,
 - 12.2. faulty installation and/or commissioning by the Buyer or a third party,
 - 12.3. natural wear and tear,
 - 12.4. faulty or negligent handling, improper maintenance by Buyer or third party
 - 12.5. unsuitable operating supplies,
 - 12.6. defective construction work,
 - 12.7. unsuitable building ground,
 - 12.8. chemical, electro-chemical or electrical influence
 Provided that any of the above events are not caused by the gross negligence of the Seller.
13. If the use by the Buyer of the Goods delivered leads to an infringement of any industrial property rights or copyrights, the Seller shall, at its own expense, use commercially reasonable efforts to provide the Buyer with the basic right to use the Goods delivered or modify the Goods in a way acceptable to the Buyer so that the property rights infringement no longer exists. If the above is not possible for the Seller to undertake within economically reasonable conditions (as per the Contract), or within an appropriate period, the Buyer may be entitled to withdraw from the relevant Contract as agreed between the parties. Furthermore, the Seller shall exempt the Buyer from any undisputed or legally binding claims asserted by the owners of such property rights. However, the Seller's obligations herein shall only apply if:
 - 13.1. the Buyer notifies the Seller immediately if there is any asserted industrial property right or copyright infringements;
 - 13.2. the Buyer supports the Seller in defending against such claims and/or enable the Seller to carry out modification steps as described in para 12 above;
 - 13.3. the Seller may reserve all defensive measures, including extrajudicial regulations;
 - 13.4. the defect in title is not based on an instruction given by the Buyer; and
 - 13.5. the infringement has not been caused by an unauthorised alteration of the Goods by the Buyer or by a non-contractual use of the Goods on the part of the Buyer.

VIII. Liability

1. The Seller shall, subject to the provisions of the warranties set out in paragraph VII above and section 61(1) of the Consumer Protection Act No. 68 of 2008, not be liable to the Buyer for any damages whether in contract, delict (including negligence), breach of statutory duty or otherwise, for any loss including, but not limited to, consequential loss or loss of profits, arising from the performance or non-performance by the Seller of any of its obligations, in terms of these terms or arising under or in connection with a Contract.
2. Subject further to the provisions of section 61(1) of the Consumer Protection Act No.68 of 2008, the Buyer indemnifies the Seller and holds the Seller entirely harmless against any claims that may be made against the Seller by any third party for damages, including but not limited to any claims for consequential loss or loss of profits, arising from the performance or non-performance by the Seller of any of its obligations in terms of these terms or in connection with the use of any Goods, whether such claim be for damage to property, consequential loss, personal injury or death.
3. The Buyer specifically agrees that the Seller shall not incur any liability, in terms of the provisions (in particular section 10 thereof) of the Occupational Health and Safety Act No. 85 of 1993.
4. The Seller shall not be liable for any damage to and/or subsequent malfunctioning of any Goods, as a result of work done on or any services rendered, in respect of such Goods, by any unauthorised person or third party.
5. Any claims for damages on the part of the Buyer due to material defects are excluded as a matter of principle. This shall not apply in the event of a fraudulent concealment of a defect, failure to comply with a warranty as stated in these terms, physical injury or death, and in the event of any intentional or gross negligent breach of contract on the part of the Seller. Any further claims or claims other than stipulated herein asserted by the Buyer on the grounds of a material defect, or any other ground, shall be excluded.
6. Except as otherwise provided in these terms, any other claims for damages on the part of the Buyer shall be excluded, this shall not apply if liability is assumed for wilful misconduct or gross negligence of the Seller.

IX. Termination and Breach of Contract

1. Without limiting its other rights or remedies, the Seller may terminate a Contract with immediate effect, and without the need for a court order, by giving written notice to the Buyer if:
 - 1.1 The Buyer commits a material or persistent breach of Contract and fails to remedy that breach within 7(seven) Days of receipt of written notification of such breach.
 - 1.2 The Buyer is unable to pay its debts or suffers any event which could reasonably be considered to indicate that it is insolvent or at serious risk of becoming so in the relative near future.
2. Without limiting its other rights or remedies, the Seller shall have the right to terminate a Contract or suspend all further deliveries of Goods and/or performance of Services under a Contract or any other agreement between the Buyer and the Seller if:
 - 2.1 The Buyer fails to pay any amount due under a Contract on any due date for such payment; or
 - 2.2 The Buyer becomes subject to any event as mentioned in para 1.2 above.
3. The Buyer shall indemnify (and pay where called upon to do so) the Seller against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (on attorney/client scale)

and/or all other professional costs and expenses suffered or incurred by the Seller arising out of or in connection with:

- 3.1 the Buyer's breach of contract.
- 3.2 enforcement of a Contract or the terms thereof
- 3.3 any claim made against the Seller by a third party arising out of or in connection with the supply of the Goods and/or provision of Services to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of a Contract by the Buyer, its employees, officer, directors, professional advisers, agents or subcontractors.
4. On termination of a Contract for any reason whatsoever, the Buyer shall immediately pay to the Seller all and any outstanding amounts due plus interest due in accordance with these terms.

X. Force Majeure

The Seller shall not be liable for the non-execution or non or late performance of any one of its contractual obligations due to a *Force Majeure event*. A Force Majeure event means, without in any way limiting the generality of the foregoing, any event normally deemed as such by applicable laws and jurisprudence and which shall include *inter alia* an act of God or nature, political events occurring within or affecting the delivery, such as war, invasion, blockage, embargo, revolution, protesting or rioting, civil commotion or unrest, sabotage or act of terrorism and/or an Act of State such as a pandemic.

A Force Majeure event shall suspend the obligations of the Seller throughout its duration. In all cases, the Seller shall use commercially reasonable efforts to prevent, eliminate or reduce the causes of delay and shall be obliged to recommence the performance of its obligations upon the Force Majeure event ceasing.

XI. Use of Software

If the scope of delivery includes software, the Buyer is granted a non-exclusive right to use the software supplied, including its documentation. The software is provided for use with the delivered Goods for which it is intended. It is forbidden to use the software on more than one system. The Buyer may not duplicate, revise, translate the software or convert the object code to the source code **without the Seller's express written consent** and if such consent has been granted then only to the extent legally permitted. Any unauthorised alteration shall result in the warranty being invalid and void. The Buyer undertakes not to remove any manufacturer's data – in particular any copyright information – or alter them in any way without the Seller's prior consent. Any other rights in the software and the documentation including any copies remain with the Seller or the software supplier respectively. It is forbidden to grant sub-licenses.

XII. Applicable law and jurisdiction, place of performance, Notices and Severability

1. These terms and conditions shall be governed by and construed in accordance with the laws of the Republic of South Africa.
2. Any dispute arising out of or in connection with these terms or a relevant Contract, including any question regarding its existence, validity or termination shall be subject to the exclusive jurisdiction of the courts of South Africa.
3. For the purposes of any legal proceedings, and in terms of these terms and conditions, the Buyer hereby consents, in terms of section 45 of the Magistrate's Court Act No.32 of

1944, to the jurisdiction of the Magistrate's Court, with the necessary jurisdiction over the person or in the area of the main office of the Buyer as set out in terms of section 28(1) of the Magistrate's Court Act No. 32 of 1944.. However, the Seller shall be entitled to take legal action at the Buyer's head office.

4. Nothing in para 3 above shall be construed as derogating from the rights of the Seller to institute proceedings (should it elect to do so) against the Buyer, out of any division of the High Court of South Africa which possesses the required jurisdiction.
5. Any side agreements, reservations, modifications and supplements shall not be valid except if confirmed by the Seller in writing.
6. Any relaxation, extension or indulgence the Seller may extend or grant to the Buyer shall not constitute a waiver of any of the Seller's rights, in terms hereof, nor estop the Seller from exercising any of its rights, in strict accordance with the terms hereof.

Notices

7. Any notice or other communication required to be given to a party under or in connection with these terms or Contract shall be in writing and shall be delivered to the other party personally or in the case of a company, transmitted by registered mail or courier to its registered office or to its principal place of business or in any other case, to be sent by registered mail or courier to such other party's residential or business address or transmitted by e-mail to the other party's confirmed e-mail address.
8. Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such address or if delivered by courier, on the date and time stipulated on the courier's signed delivery receipt or in the case of registered mail, on the fourth day following the date of posting or if sent by e-mail, on the next business Day after transmission.

Severability

9. If a court or any other competent authority finds that any provision of a Contract or agreement or any one of the clauses (or any part thereof) of these Terms is invalid, illegal or unenforceable (for whatever reason) then that provision or clause (or part thereof) shall, to the extent required, be deemed to be fully severable from the remainder of the Contract/agreement or terms and such invalidity shall not affect the validity and/or enforceability of the remainder of any Contract, agreement or these Terms.
10. If any invalid, unenforceable or illegal provisions of a Contract would be valid, enforceable and legal if some part of it were deleted or amended, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

Assignment

11. The Seller may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under a Contract and may subcontract or delegate in any manner any or all of its obligations under a Contract to any third party.