

GRINDROD SOUTH AFRICA (PROPRIETARY) LIMITED TERMS AND CONDITIONS OF PURCHASE

1. Definitions

In this Agreement the clause headings are for reference purposes only and shall not be used in the interpretation hereof. Unless the context clearly indicates a contrary intention;

- a) Expressions, which denote any one gender, shall include the other genders,
- b) A person, shall include a natural person, company, partnership, close corporation or any other legal person,
- c) The singular shall include the plural and vice versa,

The following expressions shall bear the meanings assigned to them hereunder;

“Buyer” shall mean Grindrod SA and/or its associated or subsidiary companies as may be framed in terms of the Order.

“Confidentiality Agreement” means the Grindrod SA Confidentiality Agreement, which the Seller is presumed to have accepted and agreed to before accepting an Order placed by the Buyer.

“Confidential Information” means all technical, commercial, business or personnel information disclosed or otherwise made available by the Buyer or becoming available, before, during and after the execution of this Order, including all information that makes itself known to the Seller or comes into being as a result of the rendering, production and/or Delivery of the Deliverables. Confidential Information excludes information which is already in the possession or under the control of the Seller otherwise than as a result of having been disclosed by the Buyer to the Seller or as a result of the execution of this Order or any other enterprise with the Buyer. Confidential Information also excludes information in the public domain for a reason other than a breach of this Order, or independently developed by the Seller without reference to information provided by, or Orders or enterprises executed or orders in the process of execution, with the Buyer.

“Delivery” shall mean the Delivery or hand over of Deliverables in a condition and situation acceptable to the Buyer, as detailed on the Order, at the address or site stated in the Order or stipulated by the Buyer, and shall be deemed to take place when a written receipt for such Deliverables has been issued by the Buyer's representative and Acceptance of the Deliverables is not considered to have taken place until payment has been effected.

“Deliverables” shall mean the goods, equipment, plant, machinery, spare parts, apparatus, accessories, materials and the like supplied, or to be supplied in terms of the Order and/or shall, where the context of the Order intends, mean any activity, work and/or services such as but not limited to, erection, construction, research, development, manufacture, installation, supervision, provision of labour, testing, commissioning and/or repairs called for by the Order.

“Delivery Note” means a document presented to the Purchaser or its agent on Delivery of the Deliverables ordered.

“Grindrod SA” means Grindrod (South Africa) Proprietary Limited (registration number: 1933/004726/07), a limited liability private company duly incorporated and registered in accordance with the laws of the Republic of South Africa herein represented the Head of Procurement Grindrod SA

“Invoice” means a document issued by the Seller wherein the amounts owing for goods and/or services delivered to the Buyer are set out.

“Order” shall mean the purchase order placed, raised by the Buyer's procurement department on the Seller for the rendering and production of the Deliverables according to these Terms and Conditions and/or others, specifically referred to in the purchase order which is to be read as integral and essential to the Order.

“Party” shall mean either the Buyer or the Seller as the context of the Order denotes.

“Price” means the agreed monetary remuneration to be paid by the Buyer to the Seller in return for the satisfactory (in the sole opinion of the Buyer) rendering of the Deliverables by the Seller.

“Seller” shall mean a legal or natural person, firm, close corporation, company, party or entity contracting with the Buyer, for the rendering of Deliverables in terms of the Order.

“VAT” means any value added tax payable, at the rate prescribed from time to time in terms of the Value Added Tax Act, 1991.

2. Order Constitutes Entire Contract

Including clause 3.1, the Order, additional instructions on the face thereof and these Terms and Conditions of Purchase, constitute the entire agreement relative to the subject matter of the Order and shall supersede all prior understandings, representations and/or communications of whatever type and format between the Parties, unless specifically provided for to the contrary and noted in writing on the face of the Order. In the event of a conflict between the provisions of these Terms and Conditions of Purchase and any Order issued by the Buyer, then the provisions of the issued Order shall prevail, become binding and taking precedence.

3. Tolerances

3.1. All specifications, illustrations, drawings, diagrams, prices, dimensions, advertisements, brochures and other technical data furnished by the Seller in respect of the Deliverables, and whether in writing or not, shall constitute the basis of this Order and shall be relied upon by the Buyer for purposes relevant to this Order.

3.2 If any Deliverables or any part of them are to be supplied in accordance with specifications, measurements, or other instructions furnished by the Buyer, the Buyer shall have a claim against the Seller;

3.2.1. for any loss or damage sustained by the Buyer as a result of any error, discrepancy or defect in those specifications, measurements or other instructions,

3.2.2. If the Deliverables Delivered, prove not to be suitable for the purpose for which they are advertised.

4. Acceptance

4.1. Unless the Order is varied by mutual consent in accordance with Clause 2, or the Seller rejects the Order by notice in writing, to be received by the Buyer within 2 working days from date of Order, these Terms and Conditions and /or others referred to on the Order or not, as per clause 2 of these Terms and Conditions of Purchase, shall be deemed to have been accepted by the Seller in their entirety to the exclusion of any other terms and conditions including the Seller's conditions of sale and credit.

4.2. Orders submitted by the Buyer to the Seller signify an acceptance by the Seller of these Terms and Conditions

5. Price

Unless otherwise agreed to in writing, Prices stated in the Order shall be fixed and shall not be subject to variation. The Price shall include all costs incurred up to the point of Delivery, unless otherwise stated in the Order. The Price will include VAT and any other statutory fiscal requirements and such amounts will be shown separately from the cost of the Deliverables. Where variation is permitted, the provisions of Clause 6 shall apply.

6. Price Variation

There shall be no adjustment of the Price of Deliverables as shown on the Order unless the Seller stipulates an escalation formula in writing at the time of quoting and the same is accepted by the Buyer and is incorporated in the Order. Any allowed claim for adjustment shall be submitted as soon as possible and in any event not later than 10 working days after Delivery and shall be supported by such documentary evidence as may be required by the Buyer. Any allowable adjustment shall be calculated strictly in accordance with the formula agreed to and specified in the Order.

7. Customs Duties, Excise Duties, Forwarding And Clearing Costs

In all applicable instances custom duties, excise duties, clearing costs, forwarding costs and all other import/export costs will be incorporated as part of the total Price. They will however be set out in their separate component parts apart from the cost of the Deliverables. All such costs will be for the account of the Seller unless agreed to and accepted by the Buyer in writing.

8. Exchange Rate (Applicable to Locally Placed Forex Linked Orders)

The rate of exchange stated in the Order shall be the rate at the Order date (date Order is printed). The Order will be placed and accepted in South African Rand at the exchange rate ruling at the date of the Order or on another date agreed to in writing between the Buyer and the Seller. Any variations in the rate of exchange at the time payment is made shall be for the account of the Seller unless otherwise agreed in writing between the Buyer and the Seller. Any costs incurred in taking out forward exchange cover will be for the account of the Seller unless otherwise agreed to by the Buyer in writing.

9. Risk

Regardless of when ownership of the Deliverables passes to the Buyer, the Seller shall in all instances assume risk and responsibility over the transportation of Deliverables from the Seller's premises to the destined point of Delivery. The Seller shall be responsible *inter alia* for off-loading operations or any damage to the Deliverables caused by the loading or off-loading thereof. If rendering of the deliverables (partial or otherwise) is performed by the Seller upon premises not owned or controlled by the Seller or the Buyer, the Seller shall keep such Deliverables free and clear of any lien or any other charge or risk.

10. Payment

Unless otherwise agreed in writing by the Parties, the Buyer shall endeavor to effect payment, less any applicable discount and less any retention in terms of the Order, within 30 days from the end of the month in which the Deliverables were rendered.

Invoices must show the Buyer's Order number and comply with all requirements governing and relating to current and applicable VAT law. Payment may be agreed to by a payment schedule, which will form part of the Order terms and conditions. Delivery notes must be stamped by GRINDROD SA Central Stores Goods Receiving function and show Order number, name and signature of recipient and Delivery point, failing which the Buyer will not process payment. Should documentation not conform to requirements detailed above, it will be returned to the Seller for correction and in this instance the Buyer reserves right to claim any previously applicable discounts and/or benefits, despite an apparent overdue payment. The Buyer shall not be liable to make any payment until it has received the relevant original, complete, fully-compliant and correct tax invoice reflecting the Order number, substantiated by documentary proof, as detailed above, of the Buyers acceptance, in all aspects, of the relevant Deliverable.

11. Variations in Order

No variation or amendment to the Order shall be of any force or effect unless reduced to writing and signed by the Parties. The Buyer shall be entitled to request minor variations in the Order and the Seller shall be obliged to give effect to such request.

12. Quality

The Seller expressly warrants that all Deliverables will be rendered strictly in compliance with instructions, plans, drawings, specifications and/or samples furnished or approved and requested by the Buyer (which are hereby made a part of the Order as if fully set out therein) and will conform thereto or in the absence thereof, will be the best of their respective kinds, merchantable, fit and sufficient for the ordinary purpose for which such Deliverables are deployed and in all cases will be free from defects in design, material and workmanship. Acceptance of the Delivery of the Deliverables by the Buyer shall not constitute a waiver of any warranty.

Should the Order requirements not be met, Deliverables may be returned and/or repudiated at the Seller's expense. Should any Deliverables or part thereof be found to be defective within 12 (twelve) months after use or 18 (eighteen) months from Delivery, such Deliverables shall be repaired, replaced and/or reworked by the Seller free of charge and as soon as reasonably possible upon the Buyers request.

The Seller hereby indemnifies and holds the Buyer harmless against all expenses incurred and damage sustained by the Buyer as a result of such defect or by reason of any accident, injury or damage to persons or property occasioned by the use of such Deliverables and contributed to either wholly or partly by the defective condition thereof. The Seller may also be held liable for any loss of profits and/or production of the Buyer or the Buyer's client arising out of or in connection with the defect, at the Buyers sole discretion.

13. Packaging

In the absence of any written agreement to the contrary, packing cases and materials shall be deemed to be included in the Price of the Deliverables and shall remain the property of the Buyer. The Seller shall be obliged to take all reasonable care to ensure that the Deliverables are packed in such manner and in such materials so as to prevent any loss or deterioration of such

Deliverables or any damage thereto whilst in transit, storage, during loading or unloading. For the purpose of this clause the term "Packing" shall include covering. The Buyer shall be entitled to recover from the Seller all loss and damage of whatsoever nature which the Buyer has suffered arising from the Seller's failure to comply with the provisions of this clause.

14. Inspection and Testing

The Buyer, its' insurers, its' third party inspectorate and/or, the Buyer's client for whom the Deliverables are intended, shall be entitled to examine, test and inspect the Deliverables at any stage of the rendering and/or production thereof, whether on the Seller's premises or on the premises of any Seller appointed sub-contractor or vendor, and the Seller shall provide the necessary labour, materials and facilities for such examination, testing and/or inspection. The Seller shall on the Buyer's request and expense provide the Buyer with samples, test pieces and/or documentation of or with regard to the Deliverables or any part thereof. No such examination, testing, inspection or results thereof shall release the Seller from any obligation in terms of the Order. No Deliverables rejected shall be replaced, other than upon the Buyer's written acceptance thereof.

15. Performance of Work

15.1 Whenever the Seller shall have in its possession any property belonging to the Buyer and/or the Buyer's client, the Seller shall be wholly responsible for the safety of, and safe operation of such property as well as liable if it is lost, stolen or damaged.

15.2 If the Buyer's machinery or equipment is used by the Seller in performance of the Order, it shall be under the Seller's sole custody and control for the period of such use by the Seller and should any person in the employ of the Buyer be used to operate such machinery or equipment, such person shall be deemed during such period of operation to be an employee of the Seller. The Seller shall comply with any operating instructions given by the Buyer and use competent and properly qualified personnel to operate such machinery or equipment. The Seller agrees to indemnify the Buyer from any and all liability as detailed in clause 28.3. The Seller will insure its' risk with regard to such machinery and/or equipment as per clause 29.3.

15.3 If so required by the Buyer, the Seller shall keep the Deliverables insured in the joint names of the Seller and the Buyer against such risks as the Buyer may reasonably require.

15.4 Where Deliverables are rendered by the Seller upon premises not owned or controlled by the Buyer and the Buyer makes progress payments to the Seller in respect of same, the Seller acknowledges that title but no risk in such Deliverables vests in the Buyer. The Seller will accept all risk of loss and/or damage to such Deliverables and will maintain a policy of insurance against loss or damage to same.

15.5 While rendering the Deliverables on a site for which the Buyer is responsible in terms of OHSA 85 of 1993 as amended, the Seller will comply with the said Act and will be taken to understand and will abide by the provisions of the said Act in every respect and in addition will abide by the following;

15.5.1. All the Seller's employees/assignees' shall wear the same colour and type of overall/uniform/kit

15.5.2. All such overalls/uniform/kit shall have the name of the Seller or the Seller's assignee clearly printed on the back of the overall/uniform/kit which shall be clearly visible

15.5.3. The Seller's employees/assignees' shall possess and/or utilise when required, all necessary personal protective equipment with due regard to the area of the site in which they will be rendering the Deliverable

15.5.4. Personal protective equipment shall at all times be fully functional and in a condition acceptable to the Buyer's safety personnel when on the Buyer's site

15.5.5. The Seller's employees and/or assignees shall, before rendering Deliverables on a site for which the Buyer is responsible in terms of OHSA, attend and be taken to have fully understood by virtue of signing an attendance register, a GRINDROD SA safety induction programme

15.5.6. Non-compliance with any of the above will result in access being denied to the Buyer's site or removal from the site coupled with a cancellation of the Purchase Order in which instance the Seller accepts that the Buyer will incur no liability whatsoever from such cancellation.

15.6. The Seller is fully responsible, at its' cost, for the safety of all personnel employed or engaged, directly or indirectly by it on/at the Buyer's plant, facility premises and/or other nominated Site, including personnel given access to the Site by the Buyer (whether such personnel were invited to the Site by the Vendor or not), by *inter alia* the supply and issue of the correct, adequate and functional personal protective equipment and site signage.

16. Delivery

16.1. The Seller shall use its best endeavours to effect Delivery of the Deliverables on the estimated date of Delivery indicated on the Order. Should it appear to the Seller that the rendering of the Deliverables will be delayed for any reason so that the Delivery requirements stipulated in the Order cannot or are unlikely to be fulfilled, the Seller shall immediately notify the Buyer and shall obtain written confirmation from the Buyer that the Deliverables are still required.

16.2. Delivery Notes shall show: Order number and such other information as may be required by the Buyer, as communicated to the Seller. Failure by the Seller to comply with requested administrative requirements will result in Delivery being refused at the Seller's cost.

16.3. Without prejudice to the remedies set out in Clause 22 or whatever remedies are available in the Terms and Conditions of the Order, should the Seller fail to render the Deliverables on or before the dates stipulated in the Order, the Seller shall be liable, at the Buyers sole discretion, to pay the Buyer by way of liquidated damages a sum equal to 1% (one percent) of the total Price for each overdue completed week or part thereof, from the date so stipulated until the date of Delivery of Deliverables. This claim pertains to late Delivery penalization only, and is in addition to any other claims the Buyer has at law and in terms of the Order.

16.4. If for any reason the Buyer is unable to take Delivery of the ordered Deliverables, the Seller will postpone the Delivery of the Deliverables until Delivery can be effected at the Buyers instruction. The Buyer shall be liable for reasonable postponement costs, provided such postponement was not as a result of the Seller's fault or negligence.

17. Confidentiality and Non-Disclosure

17.1. the Seller agrees not to disclose any Confidential Information pertaining to the Order and the Buyer's business including but not limited to the engineering or technical developments and requirements of the Buyer, to any employee not specifically requiring same for the proper execution of the Order, nor to any third party not authorised by the Buyer to receive same the Seller shall upon completion of the Order, return to the Buyer all drawings, descriptions, calculations, software, hardware and other documentation or media which may contain any Confidential Information.

17.2. The Seller shall sign the Buyer's sub-contractors' Confidentiality and Non-Disclosure Agreement and shall in any event by Acceptance of the Order be deemed to have knowledge of and be bound by the obligations contained in the Confidentiality and Non-Disclosure Agreement.

17.3. the Seller shall impose the obligations contained in Clause 17 on its successors in business, assignees, subcontractors, suppliers and employees and shall ensure strict compliance therewith.

18. Specifications and Drawings

18.1. The Buyers' specifications, drawings and any information and/or goods supplied by the Buyer are the exclusive property of the Buyer and shall be returned by the Seller to the Buyer upon demand or upon completion of the Order. The Seller shall treat such specifications, drawings and any information and/or goods as confidential and shall not use them for any purpose, other than for the proper completion of the Order, and shall not use them in any way which may be in the Buyers sole opinion, directly or indirectly detrimental to the Buyer's interests.

18.2. the Seller shall not itself or through any associated, subsidiary or other concern manufacture equipment or parts or carry out any work identical to or resembling the Deliverables or any part thereof for any party other than the Buyer, and shall not render such Deliverables to any party other than the Buyer.

18.3. Should the Seller be approached by any party with a request, compliance with which would constitute a breach of Clause 17, the Seller shall immediately advise the Buyer of such request and confirm such advice in writing within 48 (forty-eight) hours.

19. Patents

The Seller hereby indemnifies the Buyer and where applicable the Buyer's client against any claim by a third party for infringement of letters, patent, trademarks, registered design and/or copyright arising out of or as a consequence of the production, rendering, use or sale of the Deliverables and against all costs and expenses occasioned thereby except insofar as such infringement is due to the Seller having followed in its entirety a design furnished by the Buyer.

20. Sub-Contracting and Assignment

The Seller shall not cede, assign, transfer or sublet the Order, or any portion thereof, without the Buyer's written consent. Such permission granted shall in no way release the Seller from any of its obligations or duties at law or as set out in the Order in its entirety.

21. Force Majeure

21.1 Neither Party shall be held fully liable in respect of failure to fulfill their obligations to accept or Deliver when the reason for such failure is caused by, or arises from, any act of God or circumstances which could not be reasonably and practicably avoided in the ordinary conduct of that Party's business. Liability will be limited to obligations and/or liabilities accrued for purposes of performing duties and obligations in terms of the Agreement prior to the effective time of failure neither Party shall have any further liability thereafter.

21.2 The Party whose performance is delayed or prevented shall immediately give notice in writing to the other Party advising the other Party as to the results causes and remedies with regard to the failure whereon either Party may cancel the Order.

22. Buyer's Remedies

22.1. Should the Seller be made subject to any provisional or final order of sequestration, liquidation or judicial management, or not have settled a judgement for debt within 5 (five) days of such judgement, or should the Order not be executed by the due date, or should it become apparent that the Seller is unable to execute the Order on due date, or should the Seller commit any other breach of the provisions of the Order and fail to remedy such breach within 5 (five) days from receipt of a notice from the Buyer requiring it to do so, the Buyer at its own discretion and without prejudice to any other rights which it may have in terms of the Order or in law, shall be at liberty to cancel the Order wholly or to the extent of the default or until such claim has been settled by the Seller. The Buyer shall not be liable to make payments in respect of Deliverables already Delivered and may use such monies to set off costs arising from actions invoked under clause 22 and its subsections.

22.2. Should any Deliverables not conform to the provisions of the Order, or be defective in any way, and be rejected by the Buyer, the Buyer, without prejudice to any other rights, which it may have, shall be at liberty;

22.2.1. To demand that the rejected Deliverables be repaired or replaced and generally made good by the Seller at no additional cost to the Buyer. Should the Seller fail to comply with such demand within a reasonable period, and to the satisfaction of the Buyer, the Buyer may exercise the other remedies available to it in terms of Clauses 22.2.2 or 22.2.3,

22.2.2. To proceed to repair, replace, make good or complete or have repaired, replaced, made good or completed by a third party, the rejected Deliverables. Any costs occasioned thereby shall be for the account of the Seller,

22.2.3. To cancel the Order in terms of Clause 22 -1 hereof.

22.3. Where the Buyer believes a continued association with the Seller is contrary to its security or business interest, the Buyer reserves the right to cancel this Order and withdraw from it at its sole discretion with complete and total impunity to any claim or action. In this instance the Seller will be considered in default and subject to the consequences of default as laid down in clause 22 and its sub-sections.

23. Relevant Legislation

All Deliverables rendered, shall comply with the requirements of all laws, by-laws and, regulations applicable thereto and where installation is required, applicable to premises upon which such installation is to be effected. The Seller will make itself aware of all relevant laws, bylaws and regulations including but not limited to the Occupational Health and Safety Act (OHSA 85 of 1993 as amended) and it will be presumed by the Buyer that the Seller is up to date, fully conversant with and completely understands all relevant and associated information and the operation thereof. The Seller indemnifies the Buyer against any actions or costs arising due to ignorance or negligence with regard to such information. Such actions or costs will be for the Sellers cost entirely.

24. Waiver

No relaxation or indulgence, which the Buyer may grant to the Seller, shall debar the Buyer from insisting upon the Seller's strict compliance with the terms and conditions of the Order, nor shall they constitute a novation or waiver thereof. Any rights, which may accrue to the Buyer under any of the terms and conditions of the Order, shall be without prejudice to any other rights, which the Buyer may have in law.

25. Applicable Law

Regardless of the place of execution, performance or *domicile* of the Parties, this Order and all modifications, variations and amendments hereof shall be governed by and construed under and in accordance with the laws of the Republic of South Africa.

26. Jurisdiction

26.1 This Agreement and any dispute or claim arising out of or in connection with its subject matter of formation will in all respects be governed by and construed under the laws of the Republic of South Africa.

26.2 Parties hereby consent and submit to the non-exclusive jurisdiction of the Kwa Zulu Natal High Court, Durban, in any dispute arising from or in connection with this Agreement.

27. Principal Contract

Where the Buyer has entered into a contract with a client relating to the Deliverables ("the Principal Contract") and has notified the Seller accordingly;

27.1. The Seller shall acquaint itself with the provisions of the Principal Contract. Such provisions shall be deemed to be incorporated in the Order save to the extent that they are more favourable or less onerous to the Seller than these conditions and any special conditions of the Buyer. In so far as they are so more favourable or less onerous, these conditions and any special conditions of the Buyer shall prevail.

27.2. Without limiting the generality of the a foregoing;

27.2.1. The provisions of the Principal Contract therefore shall apply *mutatis mutandis* between Buyer and Seller.

27.3. The Seller is required to have full regard to the Buyers obligations in terms of the Principal Contract and shall adhere to the program of Delivery as laid down by the Buyer and varied from time to time so as to ensure that the Buyer is able to fulfill its obligations vis-à-vis the Principal Contract.

27.4. In the event of the Buyer ceasing for any reason to be the contractor in terms of the Principal Contract, the Buyer's client shall be entitled if the Buyer agrees to exercise against the Seller, all the rights which it is entitled to exercise against the Buyer in terms of the Principal Contract as if the Seller were the contractor therein.

28. Indemnity

28.1. The Seller shall assume liability for and hereby indemnifies the Buyer as follows;

28.1.1. Where Clause 27 applies, any breach by the Seller, its employees, agents or assignees, of the provisions of the Principal Contract applicable to the Deliverables,

28.1.2. Where Clause 27 applies, any act or omission on the Seller's part or on the part of its employees or agents, which involves the Buyer in any liability to its client under the Principal contract,

28.1.3. Any claim, damage, loss or expense of whatever nature, due to or resulting from any negligence or breach on the Seller's part or the part of its employees, agents or assignees, whether contractual, statutory or otherwise, including any wrongful use by the Seller or such employees, agents or assignees of any equipment or other property belonging to or provided by the Buyer,

28.1.4. Any liability, loss, claim or proceedings whatsoever, whether arising at common law, by statute or otherwise, in respect of or in consequence of personal injuries to or death of any person arising out of or in the course of the rendering of the Deliverables in terms of the Order,

28.1.5 Any liability and/or prosecution arising from a transgression of the Occupational Health and Safety Act (OHSA 85 of 1993 as amended) on the Delivery site and/or in the rendering of the Order Deliverables, by the Seller.

28.2. the Seller warrants that it will at all material times comply with the provisions of Occupational Health and Safety Act (OHSA 85 of 1993 as amended) and all other statutory or common law provisions and regulations applicable to activity conducted to Deliver the Deliverables in terms of the Order, and hereby indemnifies the Buyer against all loss caused by the default, action or inaction and/or negligence of the Seller and/or its employees, agents or assignees with regard to these instruments of law.

29. Insurance

29.1. the Seller shall effect and keep in force at all material times, policies of insurance against the Seller's legal liability at common law and in terms of statute and regulations in respect of death of or personal injuries to any person, or loss of or damage to or loss of property arising out of or in the course of rendering the Deliverables in terms of the Order.

29.2. In the instance where the Buyer is to effect an advance of any sort or magnitude the Seller will insure the Buyer's risk by way of a bank guarantee, appropriate bond or insurance raised in favour of the Buyer, which instrument will be handed to the Buyer's commercial manager prior to the advance being effected.

29.3. Where the Seller is in possession of the Buyer's or the Buyer's client's equipment, jigs, dies, templates, moulds, patterns, print positives, tools, instruments, proprietary information and the like, the Seller shall accept liability for loss and/or damage to the same and shall maintain policies of insurance to protect against such loss or damage.

30. Seller's Plant

Plant, tools, equipment and other property belonging to or provided by the Buyer to the Seller, its servants, agents or assignees shall be used at the Seller's sole risk and any loss or damage caused to or caused by the same shall be the Seller's sole responsibility and the Seller hereby indemnifies the Buyer against any loss, damage, claim or proceedings in respect thereof albeit that such loss, damage, claim or proceedings may have occasioned at the Buyer's nominated Delivery site or by the Buyer's breach, default, action, inaction and/or negligence or by the Buyer's plant, tools, equipment and other property used with or without the Buyer's permission, by the Seller.

31. Jigs, Dies, Templates, Moulds, Patterns, Print Positives, Tools, Instruments, Proprietary Information and The Like (Ownership of)

Where the cost of jigs, dies, templates, moulds, patterns, print positives, tools, instruments, information and the like are included in the Seller's Price, ownership thereof shall vest in the Buyer immediately on the availability and/or completion thereof and not on final payment of Price.

32. Jigs, Dies, Templates, Moulds, Patterns, Print Positives, Tools, Instruments, Proprietary Information and The Like (Care and Control of)

Where the Buyer supplies the Seller with any equipment or information the Seller shall acknowledge safe delivery of same and shall not use or remove same from its premises without the express prior written authorisation of the Buyer. The Seller shall, keep such equipment or information in good condition, fair wear and tear excepted. All risk and responsibility for any loss or damage to such equipment and/or information shall be with the Seller who shall effect and maintain a policy of insurance against loss, damage or theft of same.

33. Set Off

Should the Seller be liable to the Buyer in respect of any breach of Order terms and conditions or otherwise for the payment of any sum to the Buyer, the Buyer shall be entitled to deduct or set-off against any monies due to the Seller any sums so payable.

34. Cession of Guarantees

the Buyer shall be entitled to cede to its client (where applicable) any warranty and/or guarantees furnished by the Seller to the Buyer in relation to the quality of material, workmanship, design or any other factor having a bearing on the adequacy of the Deliverables, even where the operative period of such warranty or guarantee extends beyond the duration of the Principal Contract when and if such Principal Contract was a part of the Order.

35. Notices

The Parties select as their *domicillium citandi et executandi* their address as set out in the Order. All notices shall be in writing and shall be delivered by hand or sent by prepaid registered mail to the *domicillium* of the addressee.

36. Governmental Controls

For some Deliverables the Order may be subject to approval by relevant governmental authorities such as but not limited to the Exchange Control Authorities of South Africa, the South African Revenue Service, the South African Department of Trade and Industry and/ or any other State governmental control approval. If the Buyer fails to obtain relevant approval within 30 (thirty) days of the date of the Order, the Order shall be null and void and the Buyer shall incur no liability whatsoever.

37. Language

The English language (UK version) shall be the language of the Order. If any document Delivered in terms of the Order or for the administration of the Order is not in English language or is not in metric units, the Seller shall forthwith at the Buyer's request, provide the Buyer with translations into the English language and the document shall be changed to reflect metric units. Such translations and conversions will be at the Sellers cost.

38. Non-Applicability

The non-applicability of any clause will not affect the applicability of other clauses in the Terms and Conditions applied to this Order.

39. Intellectual Property

39.1. As a result of the Buyer placing this Order and the Seller rendering the Deliverables (whether the Deliverables are purchased for the Buyer or manufactured for the Buyer), intellectual property may be imparted by the Buyer to the Seller and/or intellectual property may come into existence. Any such intellectual property, including but not limited to copyright, patents, rights to inventions and discoveries, and trademarks, shall vest exclusively in the Buyer. The Buyer shall be entitled to license, assign or otherwise exploit such intellectual property, as it deems fit.

39.2. The Seller shall sign the Buyer's Deed of Assignment Agreement and shall in any event by acceptance of the Order be deemed to have knowledge of and be bound by the obligations contained therein.

40. Exclusion of Liability Relating To Loss Of Profit, Consequential, Special And Indirect Damages And Third Parties

40.1 Under no circumstances, shall the Buyer be liable to the Seller for consequential, special or indirect damages including, but not limited to, loss of profits, arising out of, but not limited to;

40.1.1. A breach and/or default of any provision of this Order,

40.1.2. Misrepresentation or negligence (except intentional misrepresentation),

40.1.3. Liability in delict, including but not limited to strict liability, or otherwise, whether or not based on this Order,

40.1.4. Excepting clause 21, any commitment undertaken or performed under or in connection with this Order.

41. Agency

The Buyer reserves the right to, at any time, and at its sole discretion, to utilise a lawfully appointed agent to procure Deliverables on its behalf. The Seller undertakes to deal with such agent and to extend, at the least, all courtesies, commercial conditions, pricing and cooperation to the appointed agent that would be extended to the Buyer directly.