

Terms and Conditions

(Including Suretyship)

1 INTERPRETATION

In this Agreement –

- 1.1 Clause headings are for convenience and reference only and shall not be used in its interpretation;
- 1.2 Unless the context clearly indicates a contrary intention –
- 1.2.1 an expression which denotes-
- 1.2.1.1 any gender includes the other genders;
- 1.2.1.2 a natural person includes an artificial person and vice versa;
- 1.2.1.3 the singular includes the plural and vice versa;
- 1.2.2 the following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings-
- 1.2.2.1 "**Agreement**" – means the Application and these Terms and Conditions;
- 1.2.2.2 "**Application**" – means the application form prefixed to these Terms and Conditions containing, *inter alia*, the Customer's information;
- 1.2.2.3 "**CPA**" – means the Consumer Protection Act 68 of 2008 as amended;
- 1.2.2.4 "**Customer**" – shall mean the body corporate or person whose name appears on the Application, or who is otherwise identified as the customer;
- 1.2.2.5 "**Goods**" – means any items or services of whatsoever nature that are supplied by the Supplier to the Customer in terms of this Agreement;
- 1.2.2.6 "**Signatory**" – means the person or persons who signs this Agreement, including the Application on behalf of the Customer as well as any other agreement or document between the Supplier and the Customer;
- 1.2.2.7 "**Supplier**" – The Star Merchant Proprietary Limited, registration number 2015/186157/07; and
- 1.2.2.8 "**Terms and Conditions**" – means, subject to clause 16, the Supplier's standard terms and conditions as contained herein, including terms contained in any of the Supplier's policies and procedures as amended by the Supplier (from time to time), including but not limited to warranty policies, service procedures, repair and replacement policies and packaging policies.

2 NATURE OF THESE TERMS AND CONDITIONS AND TERMINATION

- 2.1 It is recorded that the only basis upon which the Supplier is prepared to do business with the Customer is that, notwithstanding anything in the Customer's enquiry, specification, acceptance, order or other documentation or any other documentation or discussion/s to the contrary, this Agreement shall constitute the sole terms of the agreement between the Supplier and the Customer and shall operate in respect of any and all business between the Customer and the Supplier.
- 2.2 All and any business undertaken, including any advice, information or service provided whether gratuitously or not by the Supplier to the Customer is and shall be subject to the Terms and Conditions, and each Term and Condition shall be deemed to be incorporated in and to be a term and condition of any agreement between the Supplier and the Customer.
- 2.3 This Agreement shall commence from the date of signature hereof, by the party signing last in time and shall be renewed automatically on an annual basis, subject to the provisions of this clause 2 and clause 18 below.
- 2.4 Notwithstanding anything to the contrary contained herein, the Customer acknowledges that:
- 2.4.1 The Supplier shall at all times be entitled to determine (in its sole discretion) the nature, extent and duration of any credit facilities (if any) granted to the Customer in terms of this Agreement;
- 2.4.2 The Supplier shall be entitled to terminate this Agreement on 48 (forty eight) hours' notice to the Customer; and
- 2.4.3 should the Customer not purchase any Goods for a period exceeding 2 (two) consecutive months, the Supplier shall be entitled (but not obliged) to terminate this Agreement, provided that should the Supplier terminate this Agreement for any reason whatsoever, such termination shall not affect any obligations of the Customer to the Supplier in terms hereof, which obligations arose prior to the date of termination and the Supplier shall furthermore be immediately entitled to claim all amounts owing by the Customer to the Supplier in terms hereof or in terms of any other agreement.

3 NO VARIATIONS OR AMENDMENTS

- 3.1 This Agreement constitutes the whole agreement between the Customer and the Supplier relating to the subject matter hereof.

- 3.2 No amendment or consensual cancellation of this Agreement or any provision or term thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement or of any agreement shall be binding unless recorded in a written document signed by a director or a duly authorised representative of the Supplier. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 3.3 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, bill or exchange or any agreement, bill or exchange or any other document issued or executed pursuant to or in terms of this Agreement, shall operate as a waiver of the Supplier's and/or the Customer's rights as entrenched in the CPA with regard to enforcement of this Agreement.
- 3.4 The Supplier shall not be bound by any express or implied term, representation, warranty (with the exception of the warranties as provided for in the CPA), promise or the like not recorded herein, whether it induced the contract between the Supplier and the Customer or not.
- 3.5 No person other than a director or a duly authorised representative of the Supplier has any authority to delete amend or any respect vary any of these conditions or accept any other conditions or agree to a consensual cancellation hereof.

4 QUOTATIONS

- 4.1 Any quotation given is not an offer by the Supplier to sell the Goods but constitutes an invitation by the Supplier to the Customer to do business with the Supplier.
- 4.2 A quotation may be revoked at any time by the Supplier.
- 4.3 The Supplier may accept or reject in whole or in part any order placed upon it by the Customer pursuant to the quotation. Accordingly, a contract shall only come into force between the Supplier and the Customer if after receipt by the Supplier of the Customer's order or acceptance of the quotation the Supplier supplies, or tenders to supply, the Goods in question to the Customer.
- 4.4 Any quotation is based on rates of exchange, freight charges, insurance, rail costs, costs of labour and materials and other charges ruling at the date of the quotation. In the event of any variation occurring subsequent to the date of the quotation in any of the aforesaid rates and/or charges, as the case may be, the Supplier shall prior to delivery furnish the Customer with an amended quotation which quotation is to be accepted or rejected, either verbally or in writing by and on behalf of the Customer.

5 PLACING OF ORDERS

- 5.1 If telephone orders are placed by the Customer, the Supplier may require such orders to be confirmed in writing by the Customer, prior to acceptance by the Supplier.
- 5.2 An order may not be withdrawn until accepted or rejected by the Supplier. Any such order shall upon acceptance thereof by the Supplier be irrevocable by the Customer.
- 5.3 In the event of the Agreement being subject to the provisions of the CPA, the Customer can cancel or withdraw an order but in such event the Supplier will be entitled to charge a reasonable cancellation fee at the Supplier's discretion.
- 5.4 The Supplier will not be responsible for any errors or misunderstandings occasioned by the Customer's failure to record not only the details of the order correctly, but also the Customer's failure to clearly notify the Supplier at the time of placing the order of its specific requirements regarding each and every item included in the order.
- 5.5 The Customer accepts that any order that requires the specific manufacture of a Good by the Supplier or which manufacture is outsourced by the Supplier is subject to a maximum 10% variation against the actual specification.
- 5.6 The Customer accepts that where a product requires specific artwork and specific colours, an initial sample of the product must be signed off by the Customer as proof of acceptance before the order is fulfilled at the required quantity.
- 5.7 The Customer accepts that when an order is placed for branded Goods, such that the Goods can only be used by the Customer due to its logo, the Customer will inevitably be liable for the entire quantity ordered whether the Customer chose to no longer use these products or not. The Customer accepts that if there is no movement in the stock holding for a period of two months for branded Goods that have been ordered, the Customer will be liable for storage fees at a market prevailing rate. Any period exceeding two months that is granted to the Customer will be at the Supplier's discretion.
- 5.8 Where the Customer allows the Supplier, to maintain stock levels at the Supplier's discretion for its branded Goods, the Customer hereby irrevocably accepts that it will be liable for the entire stock holding of its branded Goods. The responsibility of informing the Supplier in writing of

an expected change in the customer demand pattern rests solely with the Customer.

6 PURCHASE PRICE AND PAYMENT

6.1 Orders are accepted by the Supplier only on the basis that the prices charged will be those ruling at the date of dispatch of the Goods, unless otherwise expressly stated. A copy of the Supplier's ruling prices (for products that have a ruling price) from time to time may be obtained from the Supplier by the Customer on request.

6.2 The Customer accepts that it has the option for a weighted average pricing or fixed pricing option. The Customer acknowledges that it understands that fixed price option must be accepted within 5 working days of the quotation and that the weighted average price option is subject to daily fluctuations.

6.3 Unless otherwise expressly stated, prices are exclusive of value added tax which shall be for the account of the Customer unless the Customer has given acceptable proof to the Supplier that the supply is a zero rate or an exempt supply. The Customer shall pay or reimburse to the Supplier the amount of any value added tax simultaneously with the purchase price.

6.4 The Customer shall be obliged to pay to the Supplier in addition to the contract price herein-

6.4.1 the amount of any tax, duty or other charge of any nature whatsoever imposed by any law, regulation or enactment of whatsoever nature which comes into force on a date after the date on which any price charged is determined; and

6.4.2 any other additional costs of any nature whatsoever arising due to factors beyond the control of the Supplier. In particular, but without limiting the generality of the foregoing, the Supplier shall be entitled to increase the purchase price in respect of any Goods supplied in order to make provision for any increases in costs arising as a result of or during the period of any delay caused by the Customer.

6.5 Any expense incurred by the Supplier at the instance of the Customer in modifying or otherwise altering or making additions to the design, quantities or specifications for standard Goods, and any expenses arising as a result of suspension of work by the Supplier due to instructions given, or a failure to give instructions by the Customer, shall be added to the purchase price in respect of the relevant Goods.

6.6 The purchase price in respect of any Goods sold by the Supplier to the Customer in terms of this Agreement shall be payable-

6.6.1 by the Customer to the Supplier, at the Supplier's head office or at such other places as the Supplier may direct from time to time;

6.6.2 in cash or by electronic funds transfer only;

6.6.3 in South African currency without deduction or set-off and free of any exchange, and

6.6.4 during or before the expiry of the credit period indicated on the Application which is annexed hereto, which period shall commence upon the issuing of an invoice by the Supplier, or if there is no credit period indicated, or no credit period has been approved in terms of 6.6 below, or no Application is annexed, cash on order.

6.7 After the completion of the Application by the Customer and acceptance of these Terms and Conditions by the Customer, the Supplier shall at its own discretion be entitled to-

6.7.1 make such enquiries as it may deem necessary to determine whether or not to grant the Customer credit as applied for in the Application;

6.7.2 determine whether or not to grant the Customer credit as applied for in the Application, and

6.7.3 inform the Customer of the determination made pursuant to 6.7.2 above.

6.8 Until a determination is made by the Supplier as contemplated in terms of 6.7.2 above, any Goods supplied by the Supplier to the Customer shall be supplied on a cash on order basis only.

6.9 The Supplier shall not be obliged to make a determination in terms of 6.7.2 above and to the extent that it does not, any Goods supplied by the Supplier to the Customer shall be supplied on a cash on order basis.

6.10 The purchase price does not include charges for delivery of the Goods to the Customer's premises unless specifically stated. The Customer shall provide at its cost the necessary labour, equipment or facilities required for off loading of the Goods at its premises.

6.11 The Customer has no right to withhold payment for any reason whatsoever. The Customer is not entitled to set off any amount due to the Customer by the Supplier against any debt owed by the Customer to the Supplier nor shall any payment be withheld by virtue of any alleged counterclaim against the Supplier by the Customer.

6.12 The Customer hereby agrees that any item handed in for repair may be sold by the Supplier to defray the cost of such repairs and the Supplier's usual storage cost, if the item remains uncollected within 30 days of the repair being completed.

6.13 The Customer is not entitled to set off or deduct any amount due to the Customer by the Supplier against this debt.

6.14 All discounts, if any, shall be forfeited if payment in full is not made on the due date.

7 RISK

The risk of damage to or destruction of any relevant Goods passes to the Customer on delivery thereof by the Supplier (or the Supplier's appointed transporter) to the Customer, provided that if such delivery is frustrated by Customer in any manner whatsoever, risk of damage and destruction shall pass when the Supplier tenders delivery.

8 REPAIRS

8.1 In respect of those Goods that have a repair option, the Supplier will prepare and issue a quotation for the repair of Goods if so requested by the Customer, which quotation will be furnished to the Customer and on acceptance of the quotation by the Customer, the Supplier will undertake the repairs in accordance with the quotation.

8.2 The Customer is entitled to waive the necessity of a quotation for the repairs, alternatively is able to furnish the Supplier with a pre-authorisation for the repairs up to a specific maximum amount.

8.3 In the event of a quotation having been prepared by the Supplier and the Customer not accepting such quotation, the Supplier will be entitled to charge a reasonable fee for the cost of preparing the estimate, including the cost of performing any diagnostic work, disassembly or reassembly required to prepare the quotation including any damage or loss of material or parts reasonably incurred in the course of preparing the estimate.

8.4 The Supplier shall have the right of retention and lawful lien over the Goods submitted for repairs until such time as the Customer effects payment for the repairs and/or quotation fee in full.

9 IMPORTED GOODS

Where the Goods or any part thereof are to be imported, this Agreement is subject to the condition that the Supplier's order is accepted and confirmed by the Supplier's own suppliers and that delivery is made there under in due course.

10 DELIVERY

10.1 Subject to the provisions of the CPA (if applicable), any delivery date indicated by the Supplier shall merely be regarded as the estimated date of delivery and shall not bind the Supplier to effect delivery on or near such date.

10.2 The Customer shall accept delivery whenever it is tendered and shall not be entitled to resile from the Agreement nor to withhold or defer any payment nor to a reduction in price nor to any other right or remedy against the Supplier, its servants, agents or any other persons for whom it is liable in law (in whose favour this constitutes a stipulation alteri) whether for losses, costs, damages, expenses, interest or otherwise (not limited ejusdem generis) on account of delays in effecting delivery, partial delivery or non delivery, whether occasioned by any negligent (including grossly negligent) act or omission on the part of the Supplier, its servants, agents or any other persons for whom it is liable in law, or not.

10.3 If delivery of any particular order is to be effected in packs, the Supplier shall not be obliged to deliver any parts of the order unless any part of the order which has already been delivered has been paid. The Supplier is not obliged to accept the return of any Goods and this clause shall not be used to imply that the Supplier shall be obliged to accept the return of any Goods.

10.4 The Supplier shall have the right to deliver any portion of the Goods sold, or making provision for delivery of all the Goods sold and to invoice the Customer therefore\ and the Customer shall accept such Goods when tendered.

10.5 If Goods are to be delivered by road, the Customer shall be obliged to ensure that the delivery destination shall be easily accessible to road transport vehicles. The Customer shall be responsible for off-loading the Goods at the delivery destination. If Goods are to be delivered by rail, the Customer shall be responsible for collection of Goods at the railhead.

10.6 The Customer shall be obliged to inspect all Goods upon delivery and shall endorse the delivery note as to any missing or damaged Goods. No claims for missing or damaged Goods shall be valid unless the delivery note has been endorsed as aforesaid and unless, in addition the Customer notifies the Supplier in writing within 3 business days of the delivery of the Goods of the claim in question and the Goods relating to such claim furnishing full details in regard thereto. The Customer shall bear the onus of proving that upon delivery, any Goods are missing or damaged or that the Customer's order was in any way not complied with.

10.7 If the Supplier is unable to deliver the Goods to the Customer due to any act or omission on the part of the Customer, the Supplier shall be entitled to charge the Customer for the storage of the Goods.

10.8 The Customer shall be obliged to furnish information necessary to enable delivery of the relevant Goods to be effected and if the Customer fails or refuses to do so, or if it fails or refuses to take delivery, the Goods shall without prejudice to the provisions of clause 10.7, be deemed to have been delivered to the Customer upon notification by the Supplier to the Customer to that effect.

10.9 If the Supplier agrees to engage a third party to transport the Goods, the Supplier is hereby authorised to engage a third party on the Customer's behalf and on the terms deemed fit by the Supplier. The Customer hereby indemnifies the Supplier against any claims that may arise from such Agreement against the Supplier. The Customer shall reimburse the Supplier for any costs incurred in arranging special delivery, including but not restricted to, the costs of necessary disbursements and insurance. Any documentation purporting to evidence the said extra costs will be deemed to be prima facie proof thereof.

10.10 The Customer accepts that if it receives branded Goods of another Customer of the Supplier, it will reject these Goods and notify the Supplier immediately upon receipt.

11 WARRANTIES AND GUARANTEES

11.1 Subject to the provisions of the CPA, no warranties, guarantees or representations, express or implied or tacit whether by law, contract or otherwise and whether they induced the contract or not, which are not set forth in this Agreement shall be binding on the Supplier and the Customer irrevocably waives any right (common law or otherwise) it may have to rely thereon. Goods may be guaranteed under the manufacturer's product specific warranties only, and all other guarantees and warranties including common law guarantees and warranties in relation to Goods and services are hereby specifically excluded by the Supplier, with the exception of any implied warranties described in the CPA.

11.2 Notwithstanding anything to the contrary in this Agreement, to the extent that Goods supplied by the Supplier are in any way defective, the Customer shall be entitled, within the warranty period (if any) applicable to such Goods to claim the replacement or repair of Goods to eliminate any defect in workmanship or materials found to be due exclusively to any acts or omissions on the part of the Supplier, provided that the Customer notifies the Supplier, in writing, of such defect within 7 days after the defect arises (which notice shall specify the alleged defect), provided that the Supplier shall have been given a reasonable opportunity of inspecting any alleged defect.

11.3 In order to be a valid claim, the terms of the guarantee as set out in clause 11.2, must be in writing, specifying the alleged defect, and supported by the original tax Invoice and a signed delivery note. In addition the Goods must be returned by the Customer to the Supplier at the Supplier's expense, packaged in their original undamaged packing material.

11.4 The parties agree that the Supplier shall have no liability in respect of any injury, loss or damage (direct, indirect or consequential) arising out of the use of, or inability to use, the Goods and whether or not occasioned by the Supplier's negligence (gross or otherwise) or any act or omission on its part. Without limiting the foregoing the Supplier does not warrant that the Goods will be fit for the purposes for which they are to be used by the Customer (notwithstanding that the use to which the Customer intends to put the Goods is known to the Supplier). For the purposes hereof, any reference to the Supplier shall include its servants, agents or contractors or any person for whose acts or omissions the Supplier may be liable in law. This also constitutes a stipulation alteri in favour of such persons the benefits of which may be accepted by them at any time.

11.5 The Supplier shall be relieved of all obligations in terms of this clause, if-

11.5.1 repairs or modifications have been made by persons other than the Supplier, unless such repairs or modifications are made with the prior written consent of the Supplier;

11.5.2 any Goods are operated with any accessory, equipment or part not specifically supplied or approved in writing by the Supplier;

11.5.3 the Goods shall not have been operated or maintained in accordance with the Supplier's instruction, or under normal use; the Goods shall not have been properly installed.

11.6 If repairs or replacements are effected by the Supplier, only the parts actually worked on and not the complete Goods shall be subject to a new guarantee, if any, hereunder.

11.7 Customers who acquire Goods for the purpose of on-selling these Goods, whether that Customer is permitted to do so or not (and noting herein contained shall be deemed to allow that the Customer to on-sell Goods acquired from the Supplier whilst ownership vests in the Supplier), shall not advertise or issue or in any other way give or make any warranties guarantees or representations as to the Goods in any form whatsoever or offer to do so, which could result in liability being imposed upon the Supplier.

11.8 Notwithstanding the contents of this clause 11, insofar as any transactions in terms hereof fall with the ambit of the CPA, the following provisions shall apply in respect of warranties and guarantees in respect of the Goods.

11.8.1 Within 6 months after delivery of the Goods to the Customer, the

Customer may return the Goods to the Supplier, without penalty, if the Goods do not satisfy the requirements and standards contemplated in Section 55 of the CPA in which event the Supplier may either:

11.8.1.1 repair or replace the failed, unsafe or defective Goods; or

11.8.1.2 refund the Customer for the price paid by the Customer for the Goods.

11.8.2 In the event of the Supplier repairing any particular Goods or component of such Goods and within 3 months of that repair, the failure or defect or unsafe features not being remedied or a further failure, defect or unsafe feature is discovered, The Supplier may:

11.8.2.1 replace the Goods; or

11.8.2.2 refund the Customer the price paid by the Customer for the Goods.

11.8.3 In the event of the Supplier providing any new or reconditioned parts installed during any repair or maintenance work and the labour required to install it, such work and parts will be warranted for a period of 3 months after date of installation or such longer period as the Supplier may specify in writing.

11.8.4 The warranty set out in section 55 of the CPA is at all times subject to the Supplier's policies containing circumstances where the warranties and/or guarantees are excluded due to, inter alia, Goods being misused or abused and does not apply to any ordinary wear and tear in respect of the Goods, having regard to the circumstances in which the Goods were intended to be ordinarily used. Furthermore, the Terms and Conditions as contained in any of the Suppliers policies and procedures [as amended by the Supplier (from time to time)], including but not limited to warranty policies, service procedures, repair and replacement policy and packaging policies shall apply in respect of such warranty and are deemed specifically incorporated herein.

12 HANDLING FEE ON RETURN OF GOODS

Subject to the provisions of the CPA:

12.1 the Supplier is not obliged to accept the return of any Goods and this clause shall not be used to imply that the Supplier shall be obliged to accept the return of any Goods; and

12.2 the Supplier reserves the right to levy a handling fee of 20% of the purchase price of the relevant Goods on such Goods returned to and accepted by the Supplier, if the return of Goods takes place after 14 days from the date of invoice. No returns shall be accepted after 30 days have lapsed since the Goods were delivered to the Customer.

13 AVAILABILITY OF IMPORT PERMITS

The Supplier's obligations hereunder shall be subject, in those cases where the Goods or part thereof are to be imported, to the availability of an import permit to the Supplier.

14 OWNERSHIP

14.1 Ownership of the Goods shall not pass to the Customer until the purchase price in full (including interest if any) in respect of the Goods in question has been paid. The provisions hereof shall apply notwithstanding the installation of such Goods on the Customer's premises or accession thereof to any of the Customer's property or that the Goods may be incorporated into or form part of other goods or change their essential character. All Goods, whether fixed to immovable property or not, shall be deemed to be severable without injury or damage to any property.

14.2 The Supplier reserves the right to inform the owner/landlord of the premises in which the Goods are or at any time may be, of the provisions of this clause. The Customer shall be obliged to advise the Supplier of the name and address of the landlord of any such premises and shall promptly advise the Supplier of any change in the name and/or address of any landlord or of any new landlord.

14.3 The Customer shall take all such steps as may be necessary to notify interested third parties that ownership of the relevant Goods has not passed from the Supplier to the Customer. In particular the Customer shall inform the owner/landlord of the premises in which the Goods are or at any time may be, of the provisions of this clause. The Customer shall produce written proof of such notices to the Supplier on demand.

15 SUBSTITUTE GOODS OR PARTS

15.1 The Supplier shall be entitled to substitute for any Goods specified in this Agreement with such other Goods which the Supplier in its sole discretion may regard as suitable substitutes therefore on reaching an Agreement with the Customer.

15.2 The Supplier reserves the right to alter specifications without notice. Should conditions render unavailable any materials or Goods specified herein or otherwise required in order to fulfill this Agreement, a substitution deemed by the Supplier to be suitable for the performance of its obligations will be supplied on acceptance by the Customer.

15.3 The Supplier reserves the right at its sole discretion to provide alternative Goods at the prevailing prices to those ordered by the Customer should such Goods be unavailable, superseded, replaced or their manufacture terminated.

16 DOCUMENTATION

Subject to the provisions of the CPA (if applicable), all specifications, descriptive matter, drawings and other documents furnished by the Supplier do not form part hereof and may not be relied upon by the Customer unless they are agreed in writing by the Supplier to form part hereof. All descriptive matter, specifications, drawings and particulars given by the Supplier are approximate only and the Supplier cannot be held responsible for loss including consequential loss due to discrepancies therein.

17 INSURANCE

The Supplier shall have the option to require the Customer, at its own expense, and prior to taking delivery of the Goods, to insure the Goods and thereafter keep the Goods insured until such time as Goods have been paid for in full. Such insurance shall be taken with such insurers as may be approved by the Supplier in writing, for such amount and on such terms as may be approved by the Supplier in writing. The insurance policy shall record the interest of both the Supplier and the Customer. The Customer shall, if so required by the Supplier, cede to the Supplier all rights in terms of such insurance policy. The Supplier shall exercise the said option by giving the Customer written notice that it is doing so at any time prior to the delivery of the Goods by the Supplier to the Customer.

18 BREACH

18.1 Subject to clause 18.2, if the Customer breaches any of the terms or conditions hereof or any other agreement with the Supplier or fails to pay any amount payable by it on due date or commits any act of insolvency or is placed in business rescue or endeavours to compromise generally with its creditors or does or cause to be done anything which may prejudice the Supplier's rights hereunder or at all, or allows any judgement against it to remain unsatisfied for 7 days or is placed into provisional or final sequestration or if his estate is voluntarily surrendered, the Supplier shall have the right, without prejudice to any other right which it may have against the Customer, to elect to-
18.1.1 treat as immediately due and payable all outstanding amounts which would otherwise become due and payable over the unexpired period of the Agreement and to claim such amounts as well as any other amounts in arrears including interest and to cease performance of its obligations hereunder as well as under any other contract with the Customer until the Customer has remedied the breach; or
18.1.2 cancel this Agreement and retake possession of any of the Goods sold,

without prejudice to its rights to claim damages.

18.2 The Supplier shall not be obliged to comply with its obligations hereunder in any respect whatsoever for so long as the Customer is indebted to the Supplier in any amount whatsoever in respect of any cause whatsoever or fails to comply with any other obligations to the Supplier, whether arising out of this contract or otherwise. In particular, without limiting the generality of the foregoing, if delivery of any particular order is to take place in packs, the Supplier shall not be obliged to deliver any part of the order until the purchase price in respect of the Goods which already has been delivered, has been paid.

18.3 No claim under this contract will arise against the Supplier unless the Customer has given the Supplier 30 days' written notice sent by prepaid registered post to rectify any defect or breach of contract.

18.4 The Customer agrees that the Customer indebtedness to the Supplier shall be determined and proven by a certificate issued by the Supplier, which authority need not be proven. Such certification shall be prima facie proof of the indebtedness of the Customer.

18.5 The Customer hereby indemnifies the Supplier against any and all damage of whatsoever nature, howsoever and by whomsoever caused in relation to the removal of Goods, excluding any gross negligence by the Supplier, and without derogating from the generality of the foregoing, the removal of repossessed Goods from the premises of the Customer or any other premises where the Goods may be found.

18.6 The Customer hereby agrees that the Supplier shall not be required to furnish security in terms of rule 62 of the rules of Court of the Magistrate's Court.

18.7 The Supplier shall have the right to institute any legal action in either the relevant Magistrate's Court or the Supreme Court at its sole discretion and the Customer consents to jurisdiction of the Magistrates court.

19 DOMICILIUM AND NOTICES

19.1 The parties choose as their *domicilium citandi et executandi* ("**domicilium**") for the purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purpose arising from this Agreement their addresses and telefacsimile numbers as set out in the Application annexed hereto.

19.2 Each of the parties shall be entitled from time to time, by written notice to the other, to vary its *domicilium* to any other address which is not a post office box or poste restante.

19.3 Any notice given and any payment made by any party to any other ("**the addressee**") shall be in writing and if-

19.3.1 delivered by hand during the normal business hours of the addressee at the addressee's *domicilium* for the time being shall be presumed, until the contrary is proved by addressee, to have been received by the time of delivery;

19.3.2 posted by prepaid registered post from an address to the addressee at the addressee's *domicilium* for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the fourteenth day after the date of posting;

19.3.3 transmitted by telefacsimile from an address to the addressee at the addressee's telefacsimile address for the time being shall be presumed, until the contrary is proved by the addressee, to have received by the addressee on the first business day after the date of transmission.

20 NO CESSION

The Customer shall not be entitled to cede or assign any rights and/or obligations which it may have in terms of this Agreement to any third party. The Supplier on notice to Customer shall be entitled to cede, or assign any rights and/or obligations which it may have in terms of this Agreement.

21 SECURITY FOR OBLIGATIONS

The Supplier reserves the right to require satisfactory security from the Customer for the due performance of any of the Customer's obligation hereunder including but not limited to the payment of the purchase price. If the Supplier so requires, the Customer shall deliver to Supplier prior to the Supplier complying with any of its obligations hereunder, confirmed irrevocable letters of credit by financial institutions acceptable to the Supplier. If such security or guarantees or letters of credit are not furnished within 7 days after any such demand, the Supplier shall be entitled to withdraw without prejudice to its rights of whatsoever nature to any credit provided to the Customer in terms thereof.

22 COSTS AND GOVERNING LAW

22.1 The Customer shall be liable for all costs incurred by the Supplier in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and own client scale and costs of counsel as on brief whether incurred prior to or during the institution of legal proceedings or if judgement has been granted, in connection with the satisfaction or enforcement of such judgement.

22.2 The Customer undertakes to pay the cost of the suretyship and cession contained herein, including any stamp duty payable thereon and agrees that such costs can be debited to the Customer's account upon acceptance.

22.3 This Agreement shall be governed and construed under and in accordance with the laws of the Republic of South Africa.

22.4 The Supplier shall, at its option and notwithstanding that the amount of its claim or the nature of the relief sought exceeds the jurisdiction of the Magistrate's Court be entitled to institute action out of such court.

22.5 A certificate issued and signed by any director or duly authorised representative of the Supplier, whose authority need not be proved, in respect of any indebtedness of the Customer to the Supplier or in respect of any other fact, including but without limiting the generality of the foregoing, the fact that such Goods were sold and delivered, shall be prima facie proof of the Customer's indebtedness to the Supplier and prima facie proof of delivery of the Goods in terms of this contract.

22.6 Any print out of computer evidence tendered by the Supplier shall be admissible evidence and the Customer shall not be entitled to object to the admissibility of such evidence purely on the grounds that such evidence is computer evidence.

23 SURETYSHIP AND WARRANTY OF AUTHORITY (PLEASE TAKE NOTE)

23.1 with the exception of the Supplier, each Signatory by his signature hereto, binds himself in favour of the Supplier, its successors-in-title and assign as surety for and co-principal debtor in solidum with the Customer for the due and punctual performance by the Customer of all its obligations to the Supplier in terms of this Agreement.

23.2 The suretyship in 23.1 shall remain of full force and effect notwithstanding –

23.2.1 any amendment/s to this Agreement and/or any agreement for the time being subsisting between the parties;

23.2.2 any indulgence, concession, leniency or extension of time which may be shown or given by the Supplier to the Customer.

23.3 Each Signatory and the Customer hereby renounces the benefits of the legal exceptions "non causa debiti", "errore calculi", "excussio de duobus vel pluribus reis debendi", "no value received" and "revision of accounts", with the meaning and effect of all of which he declares himself to be fully acquainted.

23.4 Each Signatory warrants, as a material warranty which the Supplier relies on in entering into the Agreement that he is duly authorised to represent and bind the Customer to this Agreement, and that he has read and understood each term and condition of this Agreement and accepts them as binding on him and the Customer. The Customer hereby warrants that it regards the Agreement as binding upon it.

23.5 Each Signatory and the Customer hereby warrant that the signatory to any tax invoice, delivery note or other documentation of the Supplier made out in the name of, or to the Customer is duly authorised to bind the Customer in respect of the relevant transaction.

23.6 The Signatory shall be bound by the provisions of this Agreement as if he were the Customer, mutatis mutandis particularly, but without limitation thereto, insofar as the Agreement provides for proof of facts, costs of proceedings, service of process, limitations of defences and jurisdiction.

24 EXEMPTION AND INDEMNITY

The Customer shall have no claim of any nature whatsoever for damages, a remission of the purchase price, cancellation or otherwise, against the Supplier, its servants, agents or others on whose behalf the Supplier would be liable, in respect of any loss or damage sustained by the Customer of any nature whatsoever or any damage caused to the assets of the Customer or assets kept on its premises by any third parties or in regard to the Customer's business or sustained by any of its Customers, howsoever caused including the negligent (excluding grossly negligent) acts or omissions of the Supplier, its servants, agents or others for whom it may be liable in law. This constitutes also a stipulatio alteri in favour of such person the benefits of which may be accepted by them at any time.

25 CONSEQUENTIAL LOSS

Under no circumstances whatsoever including as a result of its negligent (including grossly negligent) acts or omissions or those of its servants, agents or contractors or other persons for whom in law may be liable, shall the Supplier be liable for any consequential loss sustained by the Customer. This also constitutes a stipulatio alteri in favour of such persons the benefits of which may be accepted by them at any time.

26 SEVERABILITY

Each paragraph or clause in this Agreement is severable, the one from the other and if any paragraph or clause is found by any competent Court to be defective or unenforceable for any reason whatsoever, the remaining paragraphs or clauses shall be of full force and effect and continue to be of full force and effect.

27 FORCE MAJEURE

Any transaction is subject to cancellation by the Supplier due to force majeure from any cause beyond the control of the Supplier, including without restricting the generality of the foregoing, inability to secure labour, power, materials or supplies, or by reason of an act of God, war civil disturbances, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation.

28 CESSION

28.1 The Customer hereby irrevocably cedes, assigns and transfers, makes over unto and in favour of the Supplier, all the Customer's right title and interest in and to its claims against its debtors, both present and future and from whatsoever cause arising, as security for all or any of the amounts which the Customer may now or at any time in the future owe to the Supplier.

28.2 The Customer irrevocably and in rem suam authorises the Supplier in its absolute discretion to claim from all or any of the Customer's debtors the whole or any portion of the indebtedness, to take any action in its name in any court of competent jurisdiction and to proceed in execution there under against all or any of the said debtors, to exchange promissory notes, cheques, agreements, documents of title or any other security held by the Customer.

28.3 The security created by the cession shall be a continuing one notwithstanding any fluctuation in the amount of indebtedness of the Customer to the Supplier.

28.4 The Customer hereby undertakes on demand to furnish the Supplier with such information concerning its debtors as may be reasonably required, to enable the Supplier to give effect to the provisions of this clause.

28.5 Any item delivered to the Customer shall serve as a pledge in favour of the Supplier for present and past debts and the Supplier shall be entitled to retain or realize such pledges as it deems expedient at the value as determined. The sworn or realized value of pledged Goods will be offset against the Customers debts and any remaining balance will be paid to the Customer.

29 FURNISHING OF INFORMATION BY CUSTOMER

The Customer shall forthwith after the conclusion of the contract, furnish the Supplier with all information reasonably required by the Supplier to enable it to comply with its obligations.

30 RECEIPT OF DOCUMENTS ETC

No notices, cash or other documents sent to the Supplier through the post shall be deemed to have been received unless and until actually received by the Supplier.

31 INTEREST

The Customer shall pay interest at the publicly quoted basic rate per annum ruling from time to time at which The Standard Bank of South Africa Limited lends on overdraft, which rate shall be proven by way of a certificate signed by any employee of such Bank, compounded monthly in arrear, on all amounts owing by the Customer to the Supplier which have not been paid on the due date thereof, reckoned from the due date thereof until date of payment. Such interest shall be payable on demand.

32 CREDIT BUREAU REPORTS

32.1 The Customer consents and agrees that the Supplier may:

32.1.1 perform a credit search on the Customer's record with a registered credit bureau;

32.1.2 monitor the Customer's behaviour by researching its record at a registered credit bureau;

32.1.3 use new information and data obtained from other registered credit bureaus in respect of the Customer's business relationship with the Supplier;

32.1.4 record and transmit details in respect of:

32.1.4.1 the conduct of the Customer's account in meeting its obligations on the account;

32.1.4.2 how the Customer has performed in meeting its obligations in terms of any Agreement concluded between the Customer and the Supplier, with a registered credit bureau.

32.1.5 convey the information provided herein by the Customer to a registered credit bureau which information may be used by the registered credit bureau in the normal course of its business as a registered credit bureau accessed by the other Credit Providers (as defined in the National Credit Act 34 of 2005) and Customers of the registered credit bureau;

32.1.6 evaluate the criminal history or record, previous convictions and any other relevant information of the Customer with the Criminal Record Centre.

32.2 The Supplier undertakes to give the Customer 20 (twenty) business days written notice prior to the forwarding of the details as mentioned in clause 32.1.4.1 and 32.1.4.2, above to any registered credit bureau.

33 WARRANTY BY CUSTOMER – NATIONAL CREDIT ACT 34 OF 2005

33.1 The Customer by his signature hereto warrants that at the date of signature hereof and each date which the Customer purchases Goods from the Supplier that:

33.1.1 The aggregate annual sales of the Customer exceeds R1 000 000 (one million rand); and/or

33.1.2 The net asset value of the Customer exceeds R1 000 000 (one million rand). The Customer hereby irrevocably unconditionally agrees to indemnify and keep indemnified, the Supplier, on demand, for any and all, liabilities, damages, penalties, actions, judgments, costs, expenses or disbursement of any kind whatsoever which may be imposed on, incurred by or asserted against the Supplier in any way resulting from or arising of a breach of any warranty contained in clause 33.1 above.

34 PERSONAL INFORMATION

The Parties acknowledge their respective obligations to comply with the substantive provisions of the Protection of Personal Information Act, 4 of 2013 (hereinafter referred to as 'POPI').

34.1. The Customer and any Surety for the Customer understands and agrees on the following:

34.1.1 Personal information requested by the Supplier is necessary for processing the terms and conditions of sale, assessing the credit worthiness of the Customer and any Surety for the Customer as well as maintaining from time to time, the Customer's account with the Supplier

34.1.2 Should any of the information which is requested not be provided the Supplier may not approve the Customers application for an account with the Supplier.

34.3 It is the Customer's responsibility to ensure that the Supplier has all the required information as required by Page 1 of this Application and further, that such information is complete, valid, accurate and current (including but not limited to all Personal Information in terms of this Application. The Customer agrees to update the information supplied, as and when necessary, in order to ensure the completeness, validity and accuracy of the information, failing which the Supplier will not be liable for any inaccuracies and the Customer and any Surety for the Customer fully indemnifies the Supplier in this regard.

34.4 The Customer and any Surety for the Customer provides its express consent and authority to the Supplier, at all times to : i) process the personal information of the Customer and any Surety for the Customer, for the purpose of concluding the terms and conditions of sale, for maintaining the Customer's account and for providing goods or services to the Customer, including benefits attached to the Customer's account; ii) make enquires to confirm and verify any information provided by the Customer and any Surety; iii) contact and request information from any third party, credit bureaux and business so as to obtain any information relevant to the Customer's and any Surety's current and future credit assessment including, but not limited to, information regarding the amounts purchased from suppliers per month, length of time Customer has dealt with such suppliers, types of goods or services purchased and manner and timing of payment; iv) obtain credit reports from credit bureaux, banks and agencies from time to time; v) furnish personal and credit information concerning the Customer's dealings with the Supplier to any credit bureaux, credit insurer and to any third party seeking a trade reference regarding the Customer and any Surety; vi) process the personal information of the Customer and any Surety for the Customer for the purpose of the prevention and detection of fraud and criminal activities, the identification of the proceeds of unlawful activities and the combating of money laundering activities.

34.5 All personal information obtained and processed by the Supplier for the purposes as set out above, shall be treated by the Supplier as confidential and in accordance with the Supplier's privacy policy which is available on request and at www.starmerchant.co.za.

34.6 The Customer has the right to access its personal information held by the Supplier and the Supplier will grant the Customer with access during office hours within a reasonable time after receiving a written request for such access.