

**TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS FROM  
THE AVI LIMITED GROUP OF COMPANIES**

**1. INTERPRETATION**

1.1. In this Agreement:

1.1.1. Clause headings are for convenience and will not be used in its interpretation;

1.1.2. Unless the context clearly indicates a contrary intention, any expression which denotes:

1.1.2.1. any gender includes the other genders;

1.1.2.2. a natural person includes an artificial person and vice versa; and

1.1.2.3. the singular includes the plural and vice versa;

1.2. Any reference to the Company or the Customer will include their employees, agents, contractors, or any other persons for whose acts or omissions they may respectively be liable in law and, insofar as necessary or appropriate this Agreement also constitutes a *stipulatio alteri* in favour of such persons, the benefits of which may be accepted by them at any time.

1.2.1. The following words and expressions will bear the meanings assigned to them below and cognate words and expressions bear corresponding meanings –

1.2.1.1. "**Agreement**" means the entirety of this agreement, including annexures currently or in future attached hereto, and the Credit Application;

1.2.1.2. "**Business Days**" means any day except weekends and official public holidays within the Republic of South Africa;

1.2.1.3. "**Company**" means AVI Limited and all or any of its subsidiaries and related companies (as defined in the Companies Act, 2008, as amended), details of which appear on the invoice;

1.2.1.4. "**Consumer**" means a person to whom Goods are marketed and sold in the normal course of a Customer's business;

1.2.1.5. "**Credit Application**" means the new Customer credit application form, incorporating standard terms and conditions of sale;

1.2.1.6. "**Customer**" means the person, firm, close corporation, company or any other association of persons, whether incorporated or not, with whom the Company contracts and/or to whom the Company sells Goods;

1.2.1.7. "**Due Date**" means the due date for payment in terms of clause;

1.2.1.8. "**FICA**" means the Financial Intelligence Centre Act, 38 of 2001 (as amended);

1.2.1.9. "**Force Majeure Events**" means, without limitation, any cause beyond the Company's reasonable control, strike, lock-outs, shortage of labour or materials, delays in transport, accidents of any kind, any default or delay by any subcontractor of the Company, riots, political or civil disturbances, the elements, any act of state or government or provincial or local authority, including but not limited to the declaration of a state of emergency or a state of national disaster, or any other government acts or restrictions arising from any cause whatsoever, flood, fire, earthquake, war, tempest, hurricane, acts of God, or any delay in securing any raw materials, permit, consent or approval required by the Company for the supply of the Goods;

1.2.1.10. "**Goods**" means any goods of whatsoever nature that are sold and supplied by the Company to the Customer in terms of this Agreement;

1.2.1.11. "**Orders**" means the request by the Customer to the Company for the purchase and supply of Goods;

1.2.1.12. "**Party**" means either the Company or the Customer, as the context requires, and "**Parties**" means jointly the Company and the Customer;

1.2.1.13. "**POPI Act**" means the Protection of Personal Information Act, 4 of 2013 (as amended), including any regulations and/or code of conduct made under the Act;

1.2.1.14. "**Prices**" means the purchase price of the Goods;

1.2.1.15. **"Trademarks"** means all trademarks owned or lawfully used by the Company, whether at date of this Agreement or in future, whether registered or unregistered, whether words, logos or devices, and whether in the Republic of South Africa or any other country; and

1.2.1.16. **"VAT"** means Valued-Added Tax in terms of the Value-Added Tax Act, 89 of 1991 (as amended).

## 2. RELATIONSHIP AND AGREEMENT

- 2.1. The relationship between the Parties is a non-exclusive one for the sale and purchase of the Goods in accordance with the provisions of this Agreement.
- 2.2. The Company is not obliged to sell and the Customer is not obliged to purchase the Goods and either Party may elect at any time to stop selling or purchasing (as the case may be) without either Party incurring any liability or obligations arising from such termination save and except for any liability or obligations that may already have arisen prior to termination and which still need to be completed, as at the date of termination.
- 2.3. This Agreement constitutes the terms and conditions of sale which apply to every contract for sale of Goods by the Company to any Customer and form an integral part of any sale of Goods or Credit Application, notwithstanding that the Agreement may not have been signed by either the Company or the Customer. The Agreement will be deemed to be incorporated into the Credit Application by reference.
- 2.4. In the event that this Agreement appears on the reverse side of an invoice or any other documentation of the Company and there is no relevant Credit Application, the Customer will be deemed to be the person to whom the invoice or other document is addressed.
- 2.5. This Agreement supersedes and replaces all other terms and conditions of sale between the Parties in respect of the Goods, including without limitation any standard terms and conditions of the Customer. If there is a conflict between this Agreement and any Customer agreements, the terms of this Agreement will prevail unless otherwise agreed by the Company in writing.
- 2.6. This Agreement constitutes the entire contract between the Parties for the sale and purchase of the Goods and no representation by any person, or variation or consensual cancellations of or amendments to any of the terms and conditions hereof will be valid and binding on the Company unless reduced to writing and signed by an authorised representative of the Company. The terms of this Agreement are the only terms on which the Company is prepared to do business with the Customer, notwithstanding anything in the Customer's enquiry, acceptance, Order or other documentation or discussions to the contrary.
- 2.7. This Agreement may be amended by the Company from time to time without notice to the Customer.
- 2.8. The Customer warrants that any signatory to any Credit Application, invoice, delivery note, or other documentation of the Customer, made out to or in the name of the Customer, is duly authorised to bind the Customer in respect of the relevant transaction.

## 3. CREDIT TERMS AND FICA

- 3.1. The Company will:
  - 3.1.1. be entitled to make such enquiries as it may deem necessary to determine whether or not to grant the Customer credit terms as applied for by the Customer, or on any other terms, or at all;
  - 3.1.2. be entitled to make such enquiries as are required to enable it to meet its compliance and reporting obligations in terms of FICA;
  - 3.1.3. be entitled to determine in its sole discretion whether or not to grant the Customer credit terms; and
  - 3.1.4. inform the Customer of the determination made.
- 3.2. Until such time as the Company has determined that there are no FICA compliance issues and made a determination on credit terms to be granted to the Customer, if any, all Orders accepted and all Goods supplied will be done on a cash on order basis only.
- 3.3. The Company will not be obliged to make a determination in terms of credit terms and, to the extent that it does not, all Orders accepted and all Goods supplied will be done on a cash on order basis only.
- 3.4. The Company will be entitled to:

- 3.4.1. conduct on going FICA due diligence on the Customer and all related and authorised persons and transactions between the Company and the Customer;
- 3.4.2. monitor the Customer's payment behaviour by researching the Customer's credit record at any credit bureau or similar service provider; and
- 3.4.3. disclose any information regarding the Customer's creditworthiness, defaults in payment, and details of how the Customer has conducted its account with the Company, to any credit bureau and/or any other creditor of the Customer.
- 3.5. Notwithstanding any other rights that the Company may have in terms of this Agreement, in the event of the Customer failing to make timeous payment in terms of the credit terms on more than 3 occasions in any consecutive 6 month period, the Company reserves the right to unilaterally change or cancel the credit terms on 5 Business Days written notice to the Customer.
- 3.6. Notwithstanding any other provisions of this Agreement, in the event that the Company identifies any FICA infringements on the part of the Customer and any related or authorised persons, the Company will be entitled, without prior notice to the Customer or such related or authorised persons, to report such infringement in accordance with FICA.
- 3.7. Any changes to the Customer's information as provided to the Company at the time of first applying for credit facilities or entering into a business relationship, will be subject to a FICA due diligence.
- 3.8. The Customer hereby specifically grants its consent to the Company to conduct the enquiries set out in this clause 3.

#### **4. PRICES**

- 4.1. Unless otherwise stated, the Prices of the Goods will be the Company's official price list from time to time.
- 4.2. All Prices quoted are exclusive of VAT or any other tax, duty or charges 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 is determined, or any other additional amounts of any nature whatsoever that may become payable by the Customer in respect of the Goods, owing to circumstances beyond the reasonable control of the Company.
- 4.3. The Company reserves the right to change the Prices at any time prior to dispatch of the Goods. In particular, without limitation, the Company will be entitled to increase the Prices 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.
- 4.4. For any discounts agreed in writing by the Parties, such discounts will only be applied against the actual price of the Goods and not the VAT. Agreed discounts are subject to payment being received by the Company on or before the due date, as contemplated in clause 8.2.

#### **5. RESALE**

- 5.1. The Goods are sold to the Customer for retail resale only to Consumers in the Customer's brick-and-mortar stores and/or the Customer's own-branded online store through which it ordinarily sells goods sold in its brick-and-mortar stores to Consumers and may not be resold or distributed for any other purpose without the Company's prior written consent.
- 5.2. The Company may from time to time specify recommended resale prices for the Goods but nothing contained herein will be deemed to limit in any way the right of the Customer to determine the resale prices at which, or the terms on which, the Goods purchased by the Customer may be resold by the Customer as part of the Customer's products or services.

#### **6. QUOTATIONS**

- 6.1. If requested by the Customer, the Company will provide the Customer with a quotation indicating the Prices for the required Goods, the quantities and the expected dates of delivery.
- 6.2. Any quotation given by the Company is subject to the availability of the Goods and Prices are subject to change prior to acceptance of any Order by the Company.
- 6.3. Prices, quantities and expected dates of delivery in quotations are indicative only and not binding on the Company.
- 6.4. Requests for quotations will not constitute Orders for the Goods.
- 6.5. The Company can withdraw a quotation at any time.

## 7. ORDERS

- 7.1. The Customer will place Orders with the Company specifying the exact Goods and quantities that the Customer wishes to purchase.
- 7.2. If telephonic Orders are placed by the Customer, the Company may require such Orders to be confirmed in writing prior to acceptance by the Company.
- 7.3. The Company may accept or reject, in whole or in part, any Order placed upon it by the Customer. Once an Order has been accepted, the Customer will not be entitled to cancel or revoke the accepted Order.
- 7.4. Confirmation of an Order will constitute agreement between the Parties, subject to the terms and conditions contained in this Agreement.
- 7.5. The Company will use its best endeavours, subject to availability, to execute duly and timeously, all Orders placed with it for the Goods in a diligent, reliable and efficient manner.
- 7.6. The Company is entitled, in its discretion, to deliver the ordered Goods to the Customer in multiple deliveries if it is necessary owing to unforeseen circumstances.
- 7.7. Any variation to Orders must be agreed to and accepted by the Company in writing.
- 7.8. The Company may, in its sole discretion, stipulate minimum Order quantities.

## 8. PAYMENTS

- 8.1. The Company will invoice the Customer for all Orders on delivery
- 8.2. The Customer will pay all amounts due and owing to the Company in South African Rand into the Company's elected bank account by electronic funds transfer, either on a cash on order basis or in terms of the credit terms granted by the Company to the Customer ("**Due Date**"), without any deduction or set-off, save for allowed discounts.
- 8.3. Any cash payments by the Customer above the FICA threshold, as well as any suspicious or unusual transactions by the Customer, including without limitation split cash payments made by the Customer with the apparent intention of circumventing the FICA threshold, will be reported in accordance with FICA.
- 8.4. Should the last day for payment fall on a weekend or public holiday, payment must be made on the last working day prior to such weekend or public holiday, as the case may be.
- 8.5. Should the Company agree to extend the period of payment on the request of the Customer for any particular Order then the Company will be entitled to charge interest on the outstanding amount at the prime interest rate, as charged by the Company's bankers, from time to time, plus 2%, until such time as payment in full is received by the Company.
- 8.6. Should the Customer default in paying its account on or before the due date or any agreed extended due date, then:
  - 8.6.1. the Company will be entitled to immediately terminate this Agreement and cancel any outstanding Orders or part thereof;
  - 8.6.2. the entire amount owing by the Customer, as at the date of termination, will immediately become due, owing and payable, notwithstanding that a portion of the amount would not otherwise be due, owing and payable in accordance with the agreed terms of payment;
  - 8.6.3. any discounts given by the Company to the Customer will be forfeited by the Customer, notwithstanding that the Customer may already have paid a portion of the amount due, owing and payable in respect of any invoice or statement;
  - 8.6.4. the Company will be entitled to charge interest on the outstanding amount at the prime interest rate, as charged by the company's bankers, from time to time, plus 2%, until such time as payment in full is received by the Company; and
  - 8.6.5. the Company will be entitled, but not obliged, to forthwith demand payment of the whole amount owing by the Customer from whatsoever cause arising, or to take steps to recover possession of the Goods sold to the Customer.
- 8.7. The Customer will under no circumstances whatsoever be entitled to withhold, defer or set-off payment of any amount due, owing and payable to the Company, for any reason whatsoever, nor will any payment be withheld by virtue of any alleged counterclaim by the Customer against the Company, including in respect of credits for returned Goods.

- 8.8. In the event of the Customer disputing an invoice then the Customer must, within 3 Business Days of receipt of the invoice, lodge a written dispute with the Company.
- 8.9. It is and will always remain the Customer's responsibility to immediately request copies of documents relating to transactions reflected on their statements if such documents are not in their possession upon receiving their statement.
- 8.10. Notwithstanding any other provisions of this Agreement, the Company may in its sole discretion withdraw any credit terms granted by the Company to the Customer at any time on reasonable written notice by the Company to the Customer. The Company reserves the right, at any time and in its sole discretion, to review the extent, nature and duration of any credit terms granted by the Company to the Customer, including the right to request security.

## 9. DELIVERY

- 9.1. Delivery of all Goods will be Delivery at Place (DAP) (in accordance with Incoterms 2010 by road freight) to the Customer's delivery address, as set out in the Order and, other than as provided in this clause 9, the Company will pay all costs incurred in respect of the delivery of the Goods.
- 9.2. If the Customer requires delivery of the Goods by any means other than road freight, the increased costs thereof will be for the Customer's account and the place of delivery (DAP) will be the railhead or the airline terminal, as the case may be.
- 9.3. Should the Company, at the Customer's request, agree to engage a carrier to transport the Goods for the Customer, the Company is authorised to engage the carrier on such terms and conditions as it deems fit and the Customer hereby indemnifies the Company against all demands and claims which may be made against the Company by the carrier so engaged and all liability which the Company may incur arising out of the transportation of the Goods.
- 9.4. If the Goods are to be delivered by road freight, the Customer will be obliged to ensure that the delivery destination is easily accessible to road freight vehicles.
- 9.5. If the Goods are to be delivered by any means other than road freight, the Customer will be responsible for collection of the Goods from the place of delivery as contemplated in clause 9.2 above.
- 9.6. It will be the Customer's responsibility to ensure that it provides the Company with the information necessary to enable delivery of the Goods to be effected. If the Customer fails and/or refuses to do so, the Goods will be deemed to have been delivered to the Customer upon notification to the Customer that they are available for delivery. If the Customer's failure aforesaid results in delivery of the Goods to the incorrect address, the Goods will be deemed to have been delivered to the Customer on delivery to such incorrect address.
- 9.7. The Customer will provide at its cost the necessary labour, equipment or facilities required for the off-loading of Goods.
- 9.8. Delivery dates stated in Orders are estimates only. The Company accepts no liability for late deliveries and in no case will time be of the essence in terms of this Agreement unless otherwise agreed by the Company in writing. The Customer will not be entitled to delay and/or refuse delivery of the Goods nor withhold, defer, set off either in whole or in part the Prices payable in respect of the Goods.
- 9.9. The Company will be entitled to invoice each delivery separately, as and when executed and any delivery note and/or waybill (including copies) signed by the Customer or a third party engaged to transport the Goods, will be prima facie proof that the Goods were delivered to the Customer and that such Goods are in accordance with the quantity and quality reflected therein, unless the delivery note and/or waybill is endorsed, as to any missing and/or damaged Goods.
- 9.10. Partial delivery will not affect the payment period where credit terms have been approved and the Customer will pay each invoice in full on due date in accordance with such credit terms.
- 9.11. Notwithstanding the provisions of clause 9.10 above, if delivery of any particular Order is to be effected and paid for in consignments, the Company will not be obliged to deliver any part of the Order until payment has been made by the Customer for any invoices relating to that part or those parts of the Order which have already been delivered.
- 9.12. In the event that the Company is unable to deliver the Goods to the Customer due to any act or omission on the part of the Customer or where the Customer fails and/or refuses, for any reason whatsoever, to collect the Goods from the Company or from the place of delivery (in accordance with clause 9.2) on the applicable collection day, the Customer will be entitled to:

- 9.12.1. store the Goods and charge the Customer for storage at the rate of 2% of the invoice value of the Goods, per month or part thereof, subject to a minimum charge of R150.00 per month, calculated from the date when the Goods were available for collection, dispatch, or delivery, as the case may be; or
- 9.12.2. cancel the Order for the Goods with immediate effect and without prejudice to the Company's rights under this Agreement or in law.
- 9.13. Should the Customer refuse to accept delivery of Goods and/or return Goods to the Company, which Goods have been correctly supplied against an Order, the Customer will pay all costs associated with the return of the Goods and will bear the risk in respect of such Goods until such time as they are delivered to the Company's Premises. Any Goods returned in terms of this clause must be returned unopened and in original condition and may only be returned with the prior written approval of the Company and will be subject to a handling fee, as referred to in clause 9.16.
- 9.14. The Customer may return Goods, which Goods have been incorrectly supplied by the Company, at the Company's risk and cost. Any incorrectly supplied Goods must be returned unopened and in original condition to the Company, alternatively arrangements must be made with the Company to uplift such incorrectly supplied Goods, within 5 Business Days of receipt thereof by the Customer.
- 9.15. Any Goods returned for whatsoever reason must be accompanied by the relevant delivery note number and invoice numbers failing which, the returned Goods will not be opened or credited to the Customer until such time, as the required information is received and the Company will have no liability whatsoever in respect thereof.
- 9.16. If the Company agrees to accept the return of Goods in terms of clause 9.13, the Company will be entitled to charge a handling fee of 10% of the invoice price of the Goods so returned and the Customer will make payment thereof.

## **10. SHORTAGES AND DAMAGES**

- 10.1. The Customer will inspect the Goods on delivery.
- 10.2. No claims for missing and/or damaged Goods will be valid unless the delivery note and/or waybill has been endorsed and the Customer has notified the Company, in writing, within 7 Business Days of the delivery of the Goods, of the claim for missing and/or damaged Goods, failing which the correct number of Goods will be deemed to have been delivered and received in good order and condition.
- 10.3. Any delivered Goods signed for and not checked in the presence of the carrier will be deemed to have been sealed and wholly intact at the time of delivery and no claims for tampering in transit will be accepted by the Company or the carrier.
- 10.4. If there are any shortages of Goods identified by the Customer at the time of receipt of the Goods, or if there is evidence of tampering, the Customer will endorse the waybill and the endorsed waybill must be signed by both the carrier and the Customer, in order for the claim to be considered by the Company.
- 10.5. If there are any damaged Goods identified by the Customer at the time of receipt of the Goods, or on opening sealed Goods, the Company will only consider claims received by the Company within 7 Business Days of date of delivery, in writing, and accompanied by photographs of the damaged Goods.

## **11. OWNERSHIP AND RISK**

- 11.1. Risk in and to the Goods will pass to the Customer in accordance with the applicable Incoterm referred to in clauses 9.1 or 9.2 and the Customer will ensure that the Goods are comprehensively insured against all risks until ownership of the Goods passes to the Customer in terms of clause 11.2 The Customer will produce proof of such insurance to the Company on request.
- 11.2. Notwithstanding the passing of risk of any Goods delivered to the Customer in terms of clause 11.1, ownership in and to the Goods will remain with the Company until the purchase price for the Goods has been paid in full and received by the Company.
- 11.3. The provisions of clause 11.2 do not imply a restriction on the resale of the Goods by the Customer to third parties in the normal course of the Customer's business.

## **12. TRADEMARKS AND USE OF THE COMPANY'S NAME OR LOGO**

- 12.1. The Customer may not under any circumstances advertise any of the Goods or use the Company's Trademarks, for any purpose whatsoever, including but not limited to billboards, carrier bags and all print advertising, without the prior written consent of the Company.

- 12.2. Use of the Company's Trademarks with the Company's prior written consent will be strictly in accordance with the trademark use guidelines which will be provided to the Customer if applicable and any infringement of the trademark use guidelines will be a material breach of this Agreement.
- 12.3. In the event that the Company, in its sole discretion, believes that the Customer's advertising, displaying, promoting or general management of the Company's Trademarks and/or brands may be detrimental to the brand integrity of the Goods, then the Company will inform the Customer of the required changes to be made in order to meet the Company's reasonable standards for advertising, displaying, promoting or general management of the Company's Trademarks and/or brands and the Customer will be required to conform to such standards. Should the Customer fail to conform the Company will be entitled to immediately stop supplying the Goods to the Customer and may forthwith cancel a delivery in terms of an Order or any uncompleted part of an Order.
- 12.4. The Customer's right to use the Company's Trademarks in terms of this clause 12 does not grant to the Customer any rights of ownership to the Trademarks and does not constitute a cession or assignment of the Trademarks by the Company to the Customer.

The Customer warrants and undertakes that it will not use the Company's Trademarks other than in accordance with the provisions of this clause 12. A failure by the Customer to comply with the provisions of this clause 0 will constitute unauthorised use by the Customer of the Company's trademarks.

### 13. WARRANTY AND INDEMNITY

- 13.1. The Company will not be bound by or liable for any representation or warranties, express, implied, or tacit, whether by operation of law or otherwise, and whether they induced the contract or not, which are not set out in this Agreement.
- 13.2. **To the extent permitted by law:**
- 13.2.1. the Goods are sold without any warranties whatsoever;
- 13.2.2. the Company will have no liability in respect of any injury, loss or damage arising out of the use of, or inability to use the Goods, and whether or not occasioned by the Company's negligence or any act or omission on its part;
- 13.2.3. the Company is relieved of all liability in respect of Goods which became defective resulting from damage in the course of third party transportation arranged at the request of the Customer, or by handling or storage by the Customer in a manner or environment not conforming to the instructions or specifications of the Company, or of which the Customer ought reasonably to have been aware;
- 13.2.4. the Company will have no liability to the Customer whatsoever until the Customer has paid the full amount due, owing and payable to the Company in respect of the Goods concerned; and
- 13.2.5. in the case of defective Goods, the Company reserves the right to uplift and replace the Goods, at the Company's expense;
- 13.2.6. the Company will have no liability for any losses, liabilities, damages, costs and expenses (including legal fees, disbursements, costs of investigation, litigation, settlement, or judgment) fines, interest and penalties ("**Losses**") in respect of any claims arising out of the use of the Goods by the Customer or any third party, and the Customer indemnifies and holds the Company harmless from any and all such Losses;
- 13.2.7. the Customer indemnifies and holds the Company harmless against any Losses of whatsoever nature by whomsoever suffered arising directly or indirectly from the printing of bar codes on the Goods by either the Company or the Customer.

### 14. FORCE MAJEURE

- 14.1. The Company, in its sole discretion, will have the right to postpone or suspend delivery of all or part of the Goods to the extent or for so long as such delay is caused, or attributable to, Force Majeure Events.
- 14.2. In the event that the Force Majeure Events persist for a period of 60 Business Days or longer the Company will be entitled to forthwith cancel any outstanding Orders on written notice to the Customer, without any liability.
- 14.3. The Customer will remain liable for payment of any Goods delivered.

### 15. LANDLORD'S LIEN

- 15.1. The Customer will:

- 15.1.1. keep the Goods in respect of which ownership has not yet passed to the Customer in terms of clause 11, free from any and all attachments, hypothecs or other legal charges or processes and will not encumber the Goods or permit any third party lien to arise in respect thereof.
- 15.1.2. be obliged (and the Company will be entitled) to notify the landlord, if any, of the Customer's premises that the Goods contained therein are the sole and exclusive property of the Company and that such Goods will at all times be free of any landlord's hypothec or third party lien, whether in respect of outstanding rental or otherwise.

#### **BREACH AND TERMINATION**

- 15.2. The Company may terminate this Agreement or any Credit Application if the Customer:
  - 15.2.1. commits a breach of this Agreement or any Credit Application:
    - 15.2.1.1. which is capable of being remedied and fails to remedy such breach within 5 Business Days of having been called upon in writing by the Company; or
    - 15.2.1.2. which is not capable of being remedied; or
  - 15.2.2. being an individual dies or is finally sequestrated or surrenders or makes application to surrender his/her estate; or
  - 15.2.3. being a partnership, the partnership is terminated; or
  - 15.2.4. being a company, is placed under a provisional or final order of liquidation or business rescue; or
  - 15.2.5. compromises or attempts to compromise generally with its creditors.
- 15.3. During any period of notice to the Customer in terms of clause 16.1.1.1, the Company will not be obliged to comply with its obligations in terms of this Agreement including, for the sake of clarity, delivery of any Order or any part of any Order.
- 15.4. Upon termination of the Agreement for any reason whatsoever:
  - 15.4.1.1. the Company will immediately cancel all undelivered Orders;
  - 15.4.1.2. the Customer will immediately cease all use of the Company's Trademarks;
  - 15.4.1.3. all amounts owing by the Customer to the Company in terms of this Agreement or any Credit Application will forthwith become due, owing and payable, whether such amounts have been invoiced or not; and
  - 15.4.1.4. the Company may enter the Customer's premises and retake possession of any Goods in respect of which ownership has not passed to the Customer.
- 15.5. The Customer indemnifies the Company against all and any claims, losses or damages of whatsoever nature, howsoever and by whomsoever caused, in relation to the removal of Goods, and without derogating from the generality of the foregoing, the removal of repossessed Goods from the premises of the Customer.
- 15.6. The Company's rights in terms of this clause 16 are not exhaustive and will be in addition to its common law rights.
- 15.7. A certificate signed by a director of the Company (whose appointment will not be required to be proved) showing the amount due, owing and payable by the Customer to the Company will be conclusive proof of the facts therein stated for the purposes of all legal proceedings by the Company against the Customer for recovery of the said amount, including obtaining provisional sentence or any judgement against the Customer.

#### **16. AUDITS OR INSPECTION**

The Company may, on reasonable notice to the Customer, audit or inspect the Customer's facilities and records in order to evaluate quality procedures in accordance with the Company's specifications and compliance with the law.

#### **17. EXCLUSIONS**

- 17.1. To the extent allowed by law:
  - 17.1.1. If any Goods or any part thereof is supplied in accordance with specifications, measurements or any other instructions furnished by the Customer, the Customer will not have any claim of any nature whatsoever against the Company:
    - 17.1.1.1. for any loss or damage sustained by the Customer, as a result of any error, discrepancy or defect in the specifications, measurements or other instructions provided by the Customer to the Company; or



- 17.1.1.2. if the Goods are not suitable for the purpose for which they are required, whether that purpose is known to the Company or not.
- 17.2. The Company's liability for any damages sustained by the Customer, or any third party whose assets are kept on the premises of the Customer in regard to the business of the Customer, from any cause whatsoever, including damages arising out of the Company's negligence or that of its employees, agents or sub-contractors, will in any event any under all circumstances be limited to the replacement or credit of Goods.
- 17.3. The Company will in no circumstances whatsoever be liable for any loss of profit or any indirect, special or consequential losses whether or not caused by the negligence of the Company, its employees, agents or sub-contractors.
- 17.4. Insofar as any of the Company's obligations under this Agreement are carried out by any of its employees, agents, sub-contractors or associates, the provisions of this Agreement are stipulated for their benefit as well as the Company's.

## 18. COMPLIANCE WITH THE LAW

- 18.1. The Customer will comply with all applicable laws, including but not limited to the provisions and regulations of the Consumer Protection Act, 68 of 2008 (as amended).
- 18.2. Any printout of computer evidence tendered by the Company will be admissible evidence and the Customer will not be able to object to it being used as evidence purely on the grounds that such evidence is computer evidence or that the requirements of the Electronic Communications and Transactions Act, 25 of 2002, have not been met.

## 20 THE POPI ACT

- 20.1 Terms capitalised and used within the context of this clause 20, will have limited application to this clause 20 and will bear the meanings ascribed to them in the POPI Act.
- 20.2 The Parties will fully comply with the statutory obligations contained in the POPI Act, with which the Parties warrant that they are fully conversant, when processing Personal Information obtained by a Responsible Party and such Personal Information is entered into a Record. Without limiting the generality of the aforesaid, the Responsible Party will ensure that the conditions for the lawful processing of Personal Information by or for a Responsible Party as set out in the POPI Act are strictly adhered to when Processing a Data Subject's Personal Information.
- 20.3 The Parties will comply with the security and information protection obligations equivalent to those imposed on them in terms of the POPI Act and other applicable data protection legislation, and failing such legislation, they will take, implement, and maintain all such technical and organizational security procedures and measures necessary or appropriate to preserve the security and confidentiality of the Personal Information in its possession and to protect such Personal Information against unauthorised or unlawful disclosure, access or processing, accidental loss, destruction or damage.
- 20.4 Each Party ("the Indemnifying Party") hereby indemnifies and holds the other Party harmless from any liability whatsoever arising from the Indemnifying Party's failure to comply with its statutory obligations contained in the POPI Act.
- 20.5 Each Party will only provide, collect, use, store or process Personal Information:
- 20.5.1 in compliance with the POPI Act;
- 20.5.2 as is necessary for the purposes of this Agreement; and
- 20.5.3 in accordance with the lawful and reasonable instructions of the Party providing the Personal Information.
- 19.6. The Customer hereby consents to the Company collecting, processing, storing and releasing the Customer's personal information and data for the purposes of undertaking credit checks on the Customer and/or relating to the supply of the Goods, the marketing thereof and/or the operation of the Company's business.
- 19.7. The Customer warrants that the information provided is accurate, true and correct and that the Customer has disclosed to the Company all information reasonably material and required by the Company to make an informed decision regarding the Customer's creditworthiness.

## 20. JURISDICTION AND GOVERNING LAW

- 20.1. The Company will be entitled but not obliged to institute any proceedings against the Customer in respect of any matter arising out this Agreement in any Magistrates Court having territorial jurisdiction over the Company, notwithstanding that the claim or the value of the matter in dispute, may exceed the jurisdiction of the Magistrates Court. The Customer further agrees to be liable for all legal and administrative costs of such proceedings on the scale as between attorney and client. In addition, the Customer further agrees to be liable for all collection charges and/or commission incurred by the Company with any collection agency or like organisation in attempting to recover outstanding monies due by the Customer to the Company.
- 20.2. This Agreement will be governed by and construed in accordance with the laws of the Republic of South Africa.

## 21. CESSION

The Customer will not be entitled to cede or assign any rights and/or obligations which it may have in terms of this Agreement.

## 22. DOMICILIUM

The Parties nominate their physical business addresses, as reflected in the Credit Application to which these terms and conditions are attached, as their domicilium citandi et executandi for service upon them of all notices and processes in terms of this Agreement.

## 23. 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 will continue to be of full force and effect.

## 24. NO WAIVER

No extension of time or any other relaxation or indulgence granted by the Company to the Customer will operate as or be deemed to be a waiver by the Company of any of its rights under this Agreement, nor will it preclude the Company from exercising its rights strictly in accordance with this Agreement.

## 25. INTERPRETATION

The headings in this Agreement are for convenience only and are not to be taken into account for the purpose of interpreting the Agreement. Words importing any one gender include the other two and words in the singular include the plural, and vice versa.