

GENERAL TERMS AND CONDITIONS OF PURCHASE

BLUE NOVA ENERGY PROPRIETARY LIMITED and **THE SUPPLIER**

1987/001382/07
2 & 4 Erica Way
Somerset West Business Park
Somerset West
7130
SOUTH AFRICA
(Herein referred to as the "Purchaser")

1 APPLICABILITY, PRECEDENCE

- 1.1 These Terms and Conditions (as defined below)
 - 1.1.1 shall govern each PO and any Supply Agreement resulting from acceptance of a PO;
 - 1.1.2 will only be amended or varied or cancelled or replaced or waived to the extent expressly agreed to in writing and signed by the authorised representatives of each Party;
 - 1.1.3 shall overrule any terms and conditions of contract of the Supplier, unless specifically otherwise agreed between the Parties in writing; and
- 1.2 If there are any discrepancies or conflict between the provisions of:
 - 1.2.1 these Terms and Conditions and any annexure/s hereto, the provisions of the annexure/s shall prevail;
 - 1.2.2 annexures hereto, the annexure with the lower number shall prevail over an annexure with a higher number;
 - 1.2.3 these Terms and Conditions including its annexures and any Purchase Order, the provisions of the Purchase Order shall prevail in respect of that specific Purchase Order only.

2 INTERPRETATION, DEFINITIONS

- 2.1 In these Terms and Conditions and each Supply Agreement:
 - 2.1.1 clause headings are for reference purposes only and shall not influence the interpretation;
 - 2.1.2 reference to one gender shall include the other genders;
 - 2.1.3 reference to natural persons include juristic persons and vice versa;
 - 2.1.4 reference to the singular shall include the plural and vice versa;
 - 2.1.5 if any provision in a definition is a substantive provision conferring rights or imposing obligations on a Party, effect shall be given to it as if it were a substantive provision in the body of the Supply Agreement;
 - 2.1.6 where figures are referred to in numerals and in words, if there is any conflict, the words shall prevail;
 - 2.1.7 all annexures hereto shall be deemed to be incorporated herein and shall form an integral part hereof;
 - 2.1.8 expressions defined in these Terms and Conditions shall bear the same meanings in annexures hereto;
 - 2.1.9 reference to days, months or years shall be construed as Gregorian calendar days, months or years;
 - 2.1.10 durations shall be reckoned exclusively of the first and inclusively of the last day.
- 2.2 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings:
 - 2.2.1 **"Acceptance Criteria"** means the technical specifications and/or other requirements of the Goods and/or Services to be supplied by the Supplier in terms of the Supply Agreement.

2.2.2	“Business Day”	means any day except a Saturday, Sunday or statutory public holiday in South Africa.
2.2.3	“Corrupt Act”	means any offence in respect of corruption or corrupt activities contemplated in the Prevention and Combatting of Corrupt Activities Act, 12 of 2004.
2.2.4	“Customer”	means any customer of the Purchaser.
2.2.5	“Delivery”	means, regardless whether the word is capitalised or not, delivery in accordance with the applicable Incoterms.
2.2.6	“Delivery Acceptance”	means the written acceptance of the Purchaser acknowledging that the Acceptance Criteria in respect of Goods delivered and/or Services rendered by the Supplier have been met;
2.2.7	“Effective Date”	means the date on which the Purchase Order is accepted by the Supplier and any suspensive conditions agreed to by the Parties have been fulfilled.
2.2.8	“Goods”	means the equipment, parts, components, and materials sold by the Supplier to the Purchaser, as set out in a PO.
2.2.9	“Incoterms”	means the International Commercial Terms 2010 rules, published by the International Chamber of Commerce.
2.2.10	“OHSACT”	means the Occupational Health and Safety Act, 85 of 1993.
2.2.11	“Non-performance”	means and includes without limitation, Customer complaints, Goods or Services which do not conform to the Supply Agreement, inferior quality of work carried out or materials supplied by the Supplier.
2.2.12	“Parties”	means the Purchaser and the Supplier and “Party” means either of them.
2.2.13	“Purchase Order” or “PO”	means an official, written order issued by the Purchaser to the Supplier to supply Goods and/or Services.
2.2.14	“Sanctioned Entity”	means a person, country or territory (and including any resident of such country or territory) appearing on a sanctions list of the (i) United Nations; (ii) European Union; (iii) government of the United States of America; (iv) government of the United Kingdom; or (v) government of South Africa;
2.2.15	“Services”	means the services, if any, sold and rendered by the Supplier to the Purchaser in connection with the Goods or otherwise, as set out in a PO.
2.2.16	“Supplier”	means the Party selling the Goods and/or rendering the Services under the Supply Agreement.
2.2.17	“Supply Agreement”	means following acceptance of a PO, for Goods, or Services, the agreement concluded between the Purchaser and the Supplier, in each instance specifically incorporating these Terms and Condition, as well as the terms and conditions of the Purchase Order.

3 ORDERS AND DELIVERY

3.1 The Purchaser may from time to time place Purchase Orders on the Supplier for the Goods and/or Services.

- 3.2 Acceptance of a PO shall in each instance result in the conclusion of a Supply Agreement.
- 3.3 Each Supply Agreement shall consist of:
 - 3.3.1 the accepted PO; and
 - 3.3.2 these Terms and Conditions, specifically incorporated in each and every PO.
- 3.4 Nothing in these Terms and Conditions shall prevent the Purchaser from purchasing the same or similar goods and services from a third party.
- 3.5 The Purchaser may at any time terminate a specific Supply Agreement, for convenience if the relevant contract in terms whereof Goods and/or Services are on-sold by the Purchaser to a Customer is terminated, by giving the Supplier 30 (thirty) days' written notice to such effect, in which event the Purchaser shall be liable to pay only for Goods ordered under Purchase Orders placed prior to the delivery of such notice of termination.
- 3.6 The Goods to be supplied pursuant to the Supply Agreement shall be delivered by the Supplier in accordance with the Incoterm specified in the PO, or otherwise as agreed between the Parties in writing, on or before the delivery date/s stated in the relevant PO or delivery schedule. Time is of the essence in the performance of the Supplier's obligations.
- 3.7 Subject to the Supplier's strict compliance with this clause 3, the Purchaser shall grant to the Supplier an extension of time if and to the extent that delivery is or will be delayed by the following causes:
 - 3.7.1 Additional Goods and/or Services are ordered under clause 4, or
 - 3.7.2 Any delay, impediment or prevention caused by either *vis major* or the Purchaser occurs.
- 3.8 If the Supplier considers itself entitled to an extension of time, the Supplier shall give notice to the Purchaser describing the event or circumstance giving rise to the requested extension of time (in this clause referred to as the "claim"). The notice shall be given as soon as practicable, and in any event not later than 2 (two) days after the Supplier became aware, or should have become aware, of the event or circumstance.
- 3.9 Within 7 (seven) days after the Supplier sent the notice referred to in clause 3.8 or within such other period as may be proposed by the Supplier and approved by the Purchaser, the Supplier shall send to the Purchaser a fully detailed claim and revised draft delivery schedule which includes full supporting particulars of the basis and duration of the claim. If the event or circumstance giving rise to the claim has a continuing effect:
 - 3.9.1 this fully detailed claim shall be considered as interim;
 - 3.9.2 the Supplier shall send further interim claims at weekly intervals, giving the accumulated delay, and such further particulars as the Purchaser may reasonably require; and
 - 3.9.3 the Supplier shall send a final claim within 7 (seven) days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Supplier and approved by the Purchaser.
- 3.10 Within 7 (seven) days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Purchaser and approved by the Supplier, the Purchaser shall respond with approval, or with disapproval and detailed comments. It may also request further clarification or additional particulars. Should the Purchaser fail to respond within the stated time, it shall be deemed to have rejected the claim.
- 3.11 A revised delivery schedule shall only become valid and binding once approved by the Purchaser, which approval shall not be unreasonably withheld.

4 SCOPE CHANGES

In the event of the Purchaser requiring the Supplier to provide any additional Goods or Services not specified in a Purchase Order, such additional items may only be supplied once authorised by the Purchaser in a Purchase Order. In the event of any additional items being supplied without such authorisation, the Supplier

- 4.1 will have no claim whatsoever for compensation, and
 - 4.2 may not request any revision to the delivery schedule
- in respect of such additional Goods or Services.

5 PRICES

- 5.1 The prices set out in a Purchase Order are the total amounts payable by the Purchaser to the Supplier in respect of the Goods and/or Services to be supplied in terms of such Purchase Order and include

compensation for all costs of whatsoever nature to the Supplier in the supply and delivery thereof, in accordance with the Incoterm stated in clause 3.6.

- 5.2 The prices are exclusive of Value Added Tax (VAT) which shall be calculated in terms of the Value Added Tax Act, 89 of 1991 and shown separately on invoices.
- 5.3 Except as may be otherwise agreed in relation to a specific PO, the Prices shall remain fixed and firm for the duration of the Supply Agreement and shall not be subject to escalation.

6 PAYMENT TERMS

- 6.1 The Supplier shall electronically deliver tax invoices and monthly statements to the Purchaser at its nominated e-mail address.
- 6.2 The tax invoice must contain the following minimum information:
 - 6.2.1 Purchase Order number;
 - 6.2.2 the Purchaser's address and VAT Registration Number;
 - 6.2.3 The Supplier's address and VAT Registration Number;
 - 6.2.4 Such additional information and substantiating documentation as the Purchaser may reasonably require from time to time.
- 6.3 Following receipt of each monthly statement, the Purchaser will pay the Supplier within such period as may be mutually agreed and if no payment term has been agreed, the Purchaser shall pay the Supplier within 60 days. The Supplier shall submit monthly statements by no later than the 25th of the month. Payment shall be made by electronic funds transfer into the Supplier's nominated bank account.
- 6.4 If the Purchaser disputes an invoice or part thereof, it shall be entitled to withhold payment of any items so disputed. The disputed items shall be agreed or referred for determination in terms of the dispute resolution mechanism provided in clause 16.
- 6.5 The Purchaser shall be entitled to set off against any monies due by it to the Supplier all indebtedness of the Supplier to the Purchaser, including damages resulting from Non-performance or breach under the Supply Agreement. If such indebtedness is not liquidated, set-off shall operate to the extent of the amount which in the written opinion of the Purchaser's auditors is the value of the claim which the Purchaser has against the Supplier, without prejudice to the rights of either Party subsequently to have the amount determined by the dispute resolution procedure in clause 16.

7 OBLIGATIONS OF THE SUPPLIER

- 7.1 The Supplier undertakes:
 - 7.1.1 To provide the Goods and/or Services in accordance with the Supply Agreement, timeously and in a manner consistent with best industry practice. The Supplier warrants that it has and shall maintain the professional ability, trained personnel and infrastructure to provide the Goods and/or Services;
 - 7.1.2 To comply with the reasonable written requests and instructions from time to time of the Purchaser's authorised representative;
 - 7.1.3 To ensure that any facilities of the Purchaser or the Customer made available to the Supplier's employees are kept clean and in good order;
 - 7.1.4 Not to hold its employees out as employees of the Purchaser;
 - 7.1.5 Not to hold itself out to any third party to be authorised to bind the Purchaser to any contracts whatsoever;
 - 7.1.6 To conduct its employment relationships in accordance with the principles of fair practice and to comply with all applicable labour legislation;
 - 7.1.7 To maintain its Black Economic Empowerment ("BEE") status as measured on the PO date and forthwith notify the Purchaser of any change in its BEE rating and to issue a new scorecard to the Purchaser within 7 (seven) days after the expiry of its existing scorecard;
 - 7.1.8 To procure that any sub-contractor of the Supplier is bound, mutatis mutandis, by the terms and conditions of the Supply Agreement
- 7.2 The Supplier shall adequately insure for all risks any of its own and, if Services are rendered also the Purchaser's, material, equipment and property regardless whether located on or off the premises at which the Goods are to be manufactured or delivered. Furthermore, if Services are rendered, the Supplier shall

also insure against third party liability as well as contract works and all other risks associated with the supply of Services.

- 7.3 The Supplier warrants that it shall use only safe and effective equipment, machinery, materials and methods in supplying the Goods and rendering the Services, consistent with best industry practice and its obligations under the OHSACT and environmental legislation.

8 EMPLOYEES AND SUB-CONTRACTORS

- 8.1 The Supplier shall at all times employ only competent and reliable employees and agents. The Purchaser shall be at liberty to object in writing to any person employed by the Supplier in the execution of the Supply Agreement, on reasonable grounds which shall be stated, and the Supplier shall immediately replace the person so objected to.
- 8.2 The Supplier shall submit in writing to the Purchaser for approval the names of any proposed sub-contractor, and the Supplier shall not enter into any sub-contract for the execution of the Supply Agreement or any part thereof without the prior written consent of the Purchaser, which consent shall not be unreasonably withheld. The consent of the Purchaser shall not relieve the Supplier of its liability or obligations under the Supply Agreement.

9 AUTHORISED REPRESENTATIVES

- 9.1 The Supplier and the Purchaser shall each appoint an authorised representative to liaise with the other regarding day-to-day decisions in connection with the performance of the Supply Agreement. The authorised representatives shall each have the power to make all such decisions as may be required from him by the other Party (except to vary the Supply Agreement or any price or amount due hereunder) and the other Party shall be entitled to act upon such decisions. The Parties shall not accept instructions or requests from the other Party other than through the authorised representative, and all such instructions and/or requests shall be in writing.
- 9.2 The appointed representative of a Party may be changed by written notice.

10 WARRANTY

- 10.1 Unless specific warranty terms to the contrary are agreed to in writing, the Supplier warrants all Goods and Services for a period of 12 (twelve) months from Delivery Acceptance. Any defect in workmanship or material that manifests itself during the warranty period shall be rectified by the Supplier by replacement, or at the Purchaser's election, repair.
- 10.2 The warranty in clause 10.1 does not limit or affect the Supplier's warranty in respect of any latent defect, which latent defect liability period is for a period of 5 (five) years following Delivery Acceptance.
- 10.3 The Supplier shall rectify any defect within 14 (fourteen) days of notification thereof by the Purchaser, or within such other period as may be agreed in writing.
- 10.4 This clause 10 is severable from the rest of the Supply Agreement and shall survive expiry or termination for any reason whatsoever of the Supply Agreement.

11 ACCESS TO SITES, AUDIT PROCEDURES

- 11.1 The Supplier hereby grants to the Purchaser, its employees and agents permission to enter any premises at which the Goods are to be manufactured or delivered or Services to be rendered between the hours of 08:00 and 17:00 on any Business Day solely for the purposes of the Supply Agreement and always subject to the security and safety rules pertaining to such access.
- 11.2 The Supplier shall on 24 (twenty-four) hours' notice allow the Purchaser's quality assurance representative, internal and external auditors reasonable access to its premises, invoicing and payment records, quality records, and any related documentation for the purpose of assessment and audit. The Purchaser may periodically perform random spot checks.
- 11.3 Within 14 (fourteen) days following the provision to the Supplier of the written findings of an audit, the Supplier will provide to the Purchaser, and the Customer where applicable, a plan to address shortcomings attributable to the Supplier raised in such audit findings.

12 DELAY AND LIQUIDATED DAMAGES

- 12.1 Should the Supplier become aware that a delivery date or any other requirement in a Purchase Order is unlikely to be met for whatsoever reason, the Supplier shall:

- 12.1.1 immediately notify the Purchaser in writing and as soon as possible thereafter provide detailed reasons for such delay or failure;
 - 12.1.2 inform the Purchaser of the expected duration of such delay or failure; and
 - 12.1.3 use its best endeavours to minimize such delay.
- 12.2 Notwithstanding any other provisions of the Supply Agreement, in the event of the Supplier failing to deliver the Goods on or before the delivery date/s reflected in the latest delivery schedule approved by the Purchaser, except for a delay due to reasons of *vis major*, the Purchaser shall be entitled to levy liquidated damages in the amount of 0,75% (zero comma seven five percent) of the PO value for each Business Day of delay up to a maximum amount of 15% (fifteen percent) of the PO value. The Purchaser may for each delay elect to claim its damages in lieu of the liquidated damages stipulated in this clause.
- 12.3 Liquidated damages paid pursuant to this clause 12 shall not relieve the Supplier from its obligations to provide the Goods, or from any other obligations under the Supply Agreement.
- 12.4 Once the maximum liquidated damages stated in clause 12.2 has been reached, this shall constitute a material breach of contract.

13 INTELLECTUAL PROPERTY

13.1 Supplier's intellectual property:

- 13.1.1 If and to the extent that the Goods are based on know-how, designs and specifications of the Supplier and its licensors, as between the Parties it retains all intellectual property rights to, and in respect of, the Goods and all related parts, drawings, specifications, manuals, documents and data. In such event the Supplier hereby grants to the Purchaser a perpetual, transferable, royalty-free license to use, integrate and re-sell the Goods for the purposes for which the Goods have been supplied to it.
- 13.1.2 Except as expressly provided in clause 13.1.1, the Purchaser shall not have any right directly or indirectly to copy, reverse engineer or manufacture the Goods, or to license, lease, dispose of, distribute, disclose or otherwise exploit any intellectual property whatsoever of the Supplier and its licensors, or any part thereof, or allow others to do so.

13.2 Purchaser's intellectual property:

- 13.2.1 If and to the extent that the Goods are based on know-how, designs or specifications provided by the Purchaser and its licensors, as between the Parties it retains all intellectual property rights to, and in respect of, the Goods and all related parts, drawings, specifications, manuals, documents and data. In such event the Purchaser hereby grants to the Supplier a temporary, non-transferable, royalty-free license to manufacture the Goods solely for the purposes of the Supply Agreement. The Supplier shall use all such items solely for the performance of the Supply Agreement and not for any other purpose whatsoever.
- 13.2.2 Except as expressly provided in clause 13.2.1, the Supplier shall not have any right directly or indirectly to copy, reverse engineer or manufacture the Goods, or to license, lease, dispose of, distribute, disclose or otherwise exploit any intellectual property whatsoever of the Purchaser and its licensors, or any part thereof, or allow others to do so. The Supplier is strictly prohibited from marketing and selling any goods so developed to any person unless approved in writing by the Purchaser.

13.3 Should a Party (the "licensed Party") become aware of any threatened or actual infringement of any patent, design, copyright or other intellectual property of the other Party (the "owning Party"), then the licensed Party shall forthwith inform the owning Party accordingly and shall provide such cooperation and assistance as the owning Party may reasonably require in the enforcement of its rights against any person.

13.4 In the event of any claim being proved by a third party in respect of an infringement of any intellectual property rights relating to any part of the Goods (other than a part based on a design or instructions furnished by the licensed Party), the owning Party shall at its expense and on election by the licensed Party either replace or modify such part with a non-infringing part or procure the right for the licensed Party to use such a part, provided that the owning Party is given full opportunity to conduct all negotiations in respect of such claim. Such claim shall not be acknowledged or settled by the licensed Party without prior written consent of the owning Party.

14 CONFIDENTIALITY

14.1 Confidential information includes, without limitation:

- 14.1.1 information relating to the Goods, Services and the intellectual property, know-how, methods and techniques employed by a Party;
 - 14.1.2 financial and commercial information regarding the Supply Agreement, or a Party in relation to its obligations pursuant to the Supply Agreement.
- 14.2 Each Party shall not (and shall take all reasonable steps to ensure that its employees and agents shall not) for the duration of the Supply Agreement, or at any time after the expiration or termination of the Supply Agreement for any reason, disclose to any person (other than to its professional advisers on a need to know basis, or in compliance with a court order) or otherwise make use of any confidential information of the other Party.
- 14.3 Nothing in this clause 14 shall restrict the rights of either Party to use such information or documents for the purposes of legal enforcement of the Supply Agreement in accordance with its terms.

15 BREACH AND INSOLVENCY

- 15.1 Should either Party fail to remedy any Non-performance within 7 (seven days) or any other breach of contract within 14 (fourteen) days of a written request by the other Party to do so, then in such event the innocent Party may, without prejudice to any of its rights in terms of the Supply Agreement or in law, cancel the Supply Agreement by written notice with immediate effect, with or without claiming damages.
- 15.2 In the event that a Party
- 15.2.1 commits an act of insolvency;
 - 15.2.2 is placed under a provisional or final winding-up, or is subject to business rescue proceedings;
 - 15.2.3 suffers that its credit rating is downgraded or its credit facilities withdrawn or rejected by any financial institution or credit bureau, or
 - 15.2.4 fails to satisfy or take steps to have set aside any judgment taken against it within 20 (twenty) days after such judgment has come to its notice;
- then the other Party may terminate the Supply Agreement on written notice with immediate effect.
- 15.3 Nothing in this clause 15 shall prevent a Party from claiming specific performance or damages for any breach, or from terminating the Supply Agreement by written notice with immediate effect for any material breach of contract.

16 DISPUTE RESOLUTION AND GOVERNING LAW

- 16.1 Subject to the Supplier's right in each instance to elect to institute action for payment of the prices and any other amounts due under the Supply Agreement in any court of competent jurisdiction, in the event of any disagreement or claim ("dispute") arising out of or relating to the Supply Agreement (including without limitation, as to its existence or validity), the senior executives of the Parties or their delegates designated in writing shall endeavour to settle the dispute through bona fide negotiations within 14 (fourteen) days of the dispute being referred to them by written notice from either Party.
- 16.2 Should the Parties be unable to settle the dispute by the means and within the timeframe stated above, either Party may refer the dispute for final decision by arbitration in accordance with the rules for commercial arbitrations ("rules") of the Arbitration Foundation of Southern Africa ("AFSA"), by one or more arbitrator/s appointed in accordance with the rules.
- 16.3 Unless otherwise agreed in writing the arbitration shall be held in Sandton in the Republic of South Africa and conducted in the English language. Only the Parties and their legal representatives or persons agreed to shall attend the arbitration proceedings.
- 16.4 The decision of the arbitrator/s may be made an order of court. For these purposes the Parties submit to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Division, Pretoria.
- 16.5 The Supply Agreement shall in all respects be governed by the law of South Africa, without regard to its conflict of law provisions. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980 shall be excluded.
- 16.6 This clause 16 is severable from the rest of the Supply Agreement and shall survive the expiry or termination for whatsoever reason of the Supply Agreement.

17 URGENT RELIEF

The provisions of clause 16 shall not preclude any Party from access to a competent court of law for relief in the form of an interdict, including a mandatory interdict; or an order for specific performance.

18 LIMITATION OF LIABILITY AND INDEMNITY

- 18.1 Neither Party shall be liable to the other for any loss of profit, loss of use, interruption or reduction of operation, loss of data (including the recovery thereof), loss of production, loss of contracts or for any indirect or consequential damage that may be suffered by the other even if advised of the possibility of such damages and regardless of the form in which any action is brought.
- 18.2 Nothing contained in clause 18.1 above shall limit either Party's liability to the other in respect of:
- 18.2.1 death or injury of any person, or damage to property;
 - 18.2.2 infringement of intellectual property rights, including a breach of the provisions of clause 13;
 - 18.2.3 breach of confidentiality, or
 - 18.2.4 intentional, fraudulent or criminal acts.
- 18.3 Subject to clauses 18.1 and 18.2 above, each Party (the "indemnifying Party") agrees to defend, indemnify and hold the other Party, its directors, employees, agents and other members of its group of companies, as that term is defined in the Companies Act 71 of 2008, (each an "indemnified Party") harmless from any and all claim, damage, cost, liability and expense including reasonable attorney's fees caused by, relating to or arising from:
- 18.3.1 the acts or omissions of the indemnifying Party, its directors, employees or agents;
 - 18.3.2 any alleged libel, defamation, slander, invasion of privacy or any similar delict, or breach of any contractual right of a third party, or infringement of any intellectual property right of a third party including rights under patents, trademarks, copyright, trade secret, or confidentiality obligations, or rights of privacy and publicity resulting from, relating to or arising out of the acts or omissions of the indemnifying Party, except where any such claim relates to or arises out of any material furnished by the indemnified Party.
- 18.4 The Parties will co-operate in the defence of any matter arising from an indemnity under clause 18.3. A Party has the right to participate in the conduct of the defence with legal counsel chosen by it.

19 NOTICES AND DOMICILIUM

- 19.1 For the purposes of the Supply Agreement, including the giving of legal notices and the serving of legal process, the Parties choose their respective addresses on the PO as their *domicilia citandi et executandi*.
- 19.2 Any notice addressed to a Party shall be delivered by hand during office hours to its physical address.
- 19.3 Any notice shall be deemed to be received (unless the contrary is proved), on the day of delivery.
- 19.4 A Party may by written notice to the other Party change its *domicilium* to another address in South Africa which is not exclusively a post office box or poste restante. The change will become effective on the 5th (fifth) day following deemed receipt of the notice.
- 19.5 No provision of this *domicilium* clause shall be taken as affecting the validity of any notice which is actually received by a Party, whether at its *domicilium* or not and whether delivered in terms of the express provisions of this *domicilium* clause or not and any notice which is actually received by a Party shall be deemed to be notice validly given.

20 COMPLIANCE WITH LAWS AND ANTI-CORRUPTION

- 20.1 Each Party shall in all matters arising from or relating to the fulfilment of the Supply Agreement conform at its own expense with all laws and legislation relevant hereto.
- 20.2 The Parties shall not be entitled to claim or receive any benefits or rewards arising from the Supply Agreement, other than specifically provided for in the Supply Agreement.
- 20.3 Neither Party shall engage or remunerate directly or indirectly any third party, including without limitation any Customer or its employee, in connection with the Supply Agreement or any goods or services hereunder or related hereto.
- 20.4 Each Party warrants that neither it nor any of its employees, associates or agents have committed, or admitted to, or have been convicted of, any Corrupt Act in relation to the Supply Agreement and that it has ensured that all anti-corruption laws, internal processes and anti-corruption preventative measures have been complied with, prior to acceptance of a PO and will continue to be complied with for the duration hereof.
- 20.5 Each Party warrants to the other Party that neither it nor any of its Affiliates, employees, directors, or agents will during the term of this Agreement enter into any transaction that results in, or is likely to result in, a Sanctioned Entity gaining access (regardless whether during or at any time after the termination of this

Agreement) to any Services rendered, or products manufactured by, or any intellectual property or confidential information of, the other Party, or a third party. Each Party (indemnifying Party) indemnifies the other Party against any breach of this clause by the indemnifying Party, its Affiliates, employees, directors or agents.

20.6 Failure by a Party to comply with this clause 20 shall constitute a material breach of contract.

21 GENERAL

21.1 Restriction Clause

The Supplier shall not interfere with a Customer or prospective Customer who is in the process of buying from or involved in negotiations with the Purchaser for the supply of Goods or Services or similar goods or services. The Supplier shall forthwith inform the Purchaser in writing when a Customer requests a quotation directly from the Supplier.

21.2 Modifications

Any modification proposed by the Supplier to the specifications of the Goods or Service is subject to the prior written approval of the Purchaser.

21.3 Validity and Severability

If any provision of the Supply Agreement is found or held to be invalid or unenforceable, the validity of all the other provisions hereof will not be affected thereby and the Parties agree to meet and review the matter and if any valid and enforceable means is reasonably available to achieve the same objective as the invalid or unenforceable provision, to adopt such means by way of variation of the Supply Agreement.

21.4 *Contra Proferentem*

The rule of construction that in the event of any uncertainty in any provision in any agreement, such agreement shall, in construing/interpreting the uncertainty, be construed or interpreted against the drafter of such agreement, shall not be applicable to the Supply Agreement.

21.5 Variation

No variation of or addition to the Supply Agreement will be of any force or effect unless reduced to writing and signed by the Parties.

21.6 Waiver

No waiver on the part of a Party of any rights arising from a breach of any provision of the Supply Agreement will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.

21.7 *Vis Major*

21.7.1 Failure to comply with any of the terms and conditions of the Supply Agreement if occasioned by or resulting from an act of nature or public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil strife, riot, strikes, blockade, embargo, sanctions, epidemics, act of any government or other authority, compliance with government orders, demands or regulations, as well as shortages, interruptions, fluctuations or the unavailability of electrical power, water supply or means of communication or any circumstances of like or different nature beyond the reasonable control of the Party so failing ("*vis major*"), will not be deemed to be a breach of the Supply Agreement, nor will it subject either Party to any liability to the other.

21.7.2 Should a Party's performance of an obligation become temporarily impossible owing to *vis major*, that Party shall:

21.7.2.1 as soon as reasonably possible after the *vis major* sets in notify the other Party in writing of the incidence of *vis major*;

21.7.2.2 be released from performance of the affected obligation for so long as the *vis major* prevails;

21.7.2.3 use its best endeavours to recommence performance of the affected obligation, to whatever extent reasonably possible, without delay; and

21.7.2.4 co-operate with the other Party in implementing such contingency measures as the other Party may reasonably require.

21.7.3 Should the circumstances of *vis major* continue for longer than 30 (thirty) days, the Party not relying on *vis major* shall be entitled to terminate the relevant PO, or if appropriate the Supply Agreement, with immediate effect by written notice.

21.8 Cession and Delegation

A Party cannot validly cede any right or delegate any obligation arising under the Supply Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the above, the Purchaser may by written notice to the Supplier cede and delegate the Supply Agreement to any other company controlled by Reunert Limited 1913/004355/06.

21.9 Warranties

No Party has given any warranty or made any representation to the other Party, other than as expressly set out in the Supply Agreement.

21.10 No Agency

The Supplier is an independent contractor of the Purchaser and nothing in the Supply Agreement constitutes a relationship of employment, agency, joint venture or partnership between the Parties. A Party shall not hold itself out as being an agent or partner of the other Party, or as being in a joint venture with the other Party. A Party shall not assume or create or attempt to assume or create directly or indirectly any obligation on behalf of or in the name of the other Party.

21.11 Arrangements under section 37(2) of the OHSACT

Each Party is an employer in its own right, a specialist in its own field of operations, performs work using its own employees and/or agents and its activities, methodologies and work are not directly supervised by the other Party. Each Party shall comply with the OHSACT accordingly.

21.12 Co-operation and Support

Each Party undertakes at all times to use commercially reasonable efforts to co-operate, to perform all such actions and take such steps and to procure the cooperation, the performance of all such actions and taking of all such steps as may be open to it and necessary for and incidental to the putting into effect and maintenance of the provisions of the Supply Agreement.

21.13 Non Solicitation

A Party shall not without the prior written consent of the other Party, either during, or within 12 (twelve) months after termination or cancellation of the Supply Agreement for whatsoever reason, engage, employ or otherwise solicit for employment, whether directly or indirectly, any person who during the currency of the Supply Agreement was engaged in the performance of the Supply Agreement as an employee or temporary employee of the other Party, or of the other Party's suppliers under the Supply Agreement. A Party in breach of this clause shall pay to the other Party as liquidated damages an amount equal to the gross annual salary as calculated immediately prior to the breach (including any commissions and other payments) of the person so engaged, employed or solicited.

21.14 Entire Agreement

The terms contained in the Supply Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all contemporaneous oral agreements and prior oral and written quotations, communications, agreements, and understanding of the Parties. The Purchaser shall not be bound by terms additional to or different from those in the Supply Agreement that may appear in the Supplier's quotations, acknowledgements, invoices or in any other communications unless such terms are expressly agreed to in writing and signed by the Purchaser.

21.15 Language

The ruling language of the Supply Agreement and for communications and notices shall be English. All documents, manuals, certificates, notices, materials and training, if any, to be supplied by a Party under the Supply Agreement shall be in English.

21.16 Costs

21.16.1 Each Party shall bear its own legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of the Supply Agreement.

21.16.2 Any legal costs incurred by a Party arising out of or in connection with a breach by the other Party, shall be borne by the Party in breach on a scale as between attorney and client.

21.17 Counterparts

The Supply Agreement may be executed by the Parties in one or more counterparts, all of which taken together shall constitute one and the same instrument.