STANDARD TERMS AND CONDITIONS

1. **DEFINITIONS**

1.1.	**AGREEMENT:**	The CUSTOMER INFORMATION AND ACCEPTANCE FORM, these STANDARD TERMS AND CONDITIONS, and any technical specifications of the CUSTOMER's order as have been specifically agreed in writing by the COMPANY.
1.2.	**AGREEMENT PRICE:**	Shall have the meaning ascribed thereto in clause 5.1.1.
1.3.	**COMPANY:**	MELCO CONVEYOR EQUIPMENT PTY LTD, registration number 1970/006325/07
1.4.	**CPA:**	Consumer Protection Act, No 68 of 2008
1.5.	**CUSTOMER:**	The party indicated as such on the CUSTOMER INFORMATION AND ACCEPTANCE FORM, which party is desirous of purchasing GOODS from the COMPANY in accordance with this AGREEMENT.
1.6.	**CUSTOMER INFORMATION AND ACCEPTANCE FORM:**	The customer information and acceptance of the terms and conditions form attached to this document.
1.7.	**GOODS:**	The materials, products and/or services ordered by the CUSTOMER, which order has been accepted by the COMPANY in terms of Clause 3.
1.8.	**STANDARD TERMS AND CONDITIONS:**	The standard terms and conditions of purchase and sale contained in this document.
1.9.	**NCA:**	National Credit Act, No 34 of 2005.

2. **INTRODUCTION**

2.1. The CUSTOMER agrees that (a) this AGREEMENT determines the rights and obligations of the COMPANY and of the CUSTOMER in respect of every order, purchase and sale, between the COMPANY and the CUSTOMER for any GOODS supplied and/or rendered by the COMPANY (b) this AGREEMENT represents the entire agreement between the CUSTOMER and the COMPANY and that no alterations or additions to this AGREEMENT may be effected by the CUSTOMER unless agreed to by both parties hereto ("**Parties**"), reduced to writing and signed by the CUSTOMER and a duly authorised representative of the COMPANY; (c) this AGREEMENT will govern all future contractual relationships between the Parties; (d) this AGREEMENT is applicable to all existing debts and future debts between the Parties; (e) this AGREEMENT is final and binding and is not subject to any suspensive or resolutive terms or conditions; (f) any conflicting conditions stipulated by the CUSTOMER are expressly excluded; (g) the COMPANY hereby expressly objects to and rejects all terms and conditions in the CUSTOMER's purchase order, confirmation or other writing, of whatever kind, inconsistent with or in addition to the terms and conditions of this AGREEMENT. Such inconsistent and additional terms and conditions will not bind the COMPANY unless expressly approved in writing by the COMPANY making specific reference to the inconsistent or additional term or condition; (h) these terms and conditions supersede any terms and conditions of sale, purchase, order or the like, without prejudice to any security or guarantees held by the COMPANY; and (i) by placing an order with the COMPANY, the CUSTOMER accepts the provisions of this AGREEMENT without restriction or limitation, unless expressly agreed in writing by the COMPANY when accepting the order.

2.2. Subject to clause 2.10, the COMPANY reserves the right to unilaterally vary or amend this AGREEMENT from time to time upon written notice to the CUSTOMER, in which event any such variation or amendment will take effect from the date of such written notice. In the event that this AGREEMENT has been varied or amended by the COMPANY prior to the delivery of any GOODS ordered by the CUSTOMER, the CUSTOMER will be entitled to cancel its order for those GOODS if any such variation or amendment will adversely affect the CUSTOMER's purchase of the GOODS. The CUSTOMER will be under no obligation to place any new orders for GOODS after notice of any such variation or amendment to this AGREEMENT, provided that any new orders placed by the CUSTOMER, or a failure by the CUSTOMER to cancel any existing orders, after any such notice of variation or amendment of this AGREEMENT will be deemed to constitute a full acceptance by the CUSTOMER of the variations or amendments to this AGREEMENT.

2.3. This AGREEMENT applies to the contractual relationship between the COMPANY and the CUSTOMER and is subject to the CPA and/or the NCA where the CUSTOMER is a natural person (being a living, identifiable individual acting in his/her own name or operating as a sole proprietor) or a juristic person (being a company, close corporation, body corporate, partnership, or association or trust) who qualifies as a consumer for purposes of the CPA or a consumer or juristic person for purposes of the NCA.

2.4. **Where the CUSTOMER is a consumer or a juristic person for purposes of the CPA and/or the NCA, it will enjoy the benefit of the CPA and/or the NCA irrespective of whether the rights are explicitly stated in this AGREEMENT or not or whether anything herein provides otherwise.**

2.5. Where the CUSTOMER is not a consumer or juristic person for purposes of the CPA and/or the NCA, it will enjoy only the benefit of the provisions of this AGREEMENT and the application of the entire CPA and/or NCA is not agreed between the Parties.

2.6. **Certain provisions of this AGREEMENT which appear in similar text style to this clause 2.6 (ie bold) ("Critical Provisions") –**

2.6.1. **may limit the risk or liability of the COMPANY;**

2.6.2. **may create risk or liability to the CUSTOMER;**

2.6.3. **may compel the CUSTOMER to indemnify the COMPANY; and/or**

2.6.4. **serves as an acknowledgement of a fact by the CUSTOMER.**

2.7. **The CUSTOMER's attention is specifically drawn to these Critical Provisions because they are important and should be carefully noted.**

2.8. **If there is any provision in this AGREEMENT which the CUSTOMER does not fully understand, the CUSTOMER should ask the COMPANY to explain such provision before transacting. By signing this AGREEMENT, the CUSTOMER confirms that it fully understands and agrees to all provisions of this AGREEMENT, including the Critical Provisions.**

2.9. **Nothing in this AGREEMENT is intended to or must be understood to lawfully restrict, limit or avoid any rights or obligations, as the case may be, created for either the CUSTOMER or the COMPANY in terms of the CPA and/or the NCA.**

2.10. Notwithstanding clause 2.2, where the CUSTOMER is a consumer or a juristic person for purposes of the NCA, unless specifically stated and agreed in writing between the Parties, no amendment to this AGREEMENT will create a new agreement between the Parties. Any agreed amendments to this AGREEMENT will be made in writing and signed by both Parties. The COMPANY will deliver a revised document reflecting the agreed amendments within 20 business days after the date upon which the relevant amendments to this AGREEMENT were agreed. The Parties may only amend this AGREEMENT in terms of this clause if –

2.10.1. such amendment reduces the CUSTOMER's liabilities;

2.10.2. the CUSTOMER signs or initials in the margin opposite the amendment;

2.10.3. the amendment is recorded in writing and signed by the CUSTOMER and the COMPANY; and

2.10.4. any oral change must be recorded electromagnetically and subsequently reduced to writing.

2.11. The COMPANY requires certain information from the CUSTOMER in order to give effect to this AGREEMENT, including taking orders, providing quotations, processing payments and awarding an extended payment term / CREDIT FACILITY. The CUSTOMER is obliged to provide the information requested in the CUSTOMER INFORMATION AND ACCEPTANCE FORM attached to this AGREEMENT on the terms and subject to the provisions of clause 14 to the extent that they are applicable. **Any failure on the part of the CUSTOMER to provide complete and accurate information will constitute a material breach of this AGREEMENT**.

3. ORDERS OF GOODS AND/OR SERVICES

3.1. Orders placed by the CUSTOMER will not be binding upon the COMPANY unless and until accepted in writing (by issuing an acceptance of order to the CUSTOMER) or executed upon by the COMPANY. Every order placed will be a separate and distinct order subject to the terms and conditions contained in this AGREEMENT.

3.2. It is the sole responsibility of the CUSTOMER to determine that the GOODS ordered are suitable for the purposes of intended use by the CUSTOMER.

3.3. **The CUSTOMER agrees to pay all additional costs resulting from any acts or omissions by the CUSTOMER including suspension of work, modification of requirements, failure or delay in giving particulars required to enable work to proceed on schedule or requirements that work be completed earlier than agreed.**

3.4. The COMPANY reserves the right to offer to provide alternative goods of the same quality and quantity at the prevailing prices to those ordered by the CUSTOMER should such GOODS be superseded, replaced or their manufacture terminated.

3.5. **The CUSTOMER agrees that the COMPANY will be immediately and irrevocably released from any contractual damages and penalty obligations should an order be cancelled by the COMPANY due to any event in clauses 17 or 19 having occurred.**

4. QUOTATIONS AND DELIVERY OF GOODS

4.1. All prices quoted are ex works at the relevant place of business of the CUSTOMER at or through which the relevant order was placed or is to be executed and will remain valid for a period of 30 (thirty) days from the date of the quotation or until the date of issue of a new COMPANY pricing list, whichever occurs first.

4.2. All quotations are subject to –

4.2.1. clause 5;

4.2.2. the availability of the GOODS;

4.2.3. correction of good faith errors by the COMPANY; and

4.2.4. reasonable variations up to the time of delivery in relation to any fluctuations or the cost price of the GOODS or forex fluctuations, as more fully contemplated in clause 5.

4.3. Should the CUSTOMER dispute the amount of the increase referred to in clause 4.2.4, the amount of such increase may be certified by any independent auditor to be appointed by the COMPANY and such certificate shall be final and binding on the CUSTOMER.

4.4. Subject to the provisions of this clause 4, the CUSTOMER agrees to the standard rates of the COMPANY for any GOODS, which rates may be obtained upon written request.

4.5. Unless otherwise stipulated in the AGREEMENT, delivery shall be “ex the COMPANY’s works” and the AGREEMENT PRICE is based on such “ex works” delivery and is exclusive of VAT.. All taxes, packaging, transport, insurance and other costs incidental to the further movement of the GOODS, shall be for the CUSTOMER's account, as more fully contemplated in clause 5.

4.6. Claims for non-delivery or for shortages or damage upon receipt of the GOODS must be made in writing by the CUSTOMER within 7 (seven) days of the consignment note or receipt of the GOODS as the case may be, failing which the COMPANY shall have no liability in respect of such claims.

4.7. Should the CUSTOMER fail or refuse to take delivery of the GOODS when they are tendered by the COMPANY, the CUSTOMER shall be liable for such costs as may be incurred by the COMPANY in consequence thereof.

4.8. **The CUSTOMER has the responsibility to inspect and verify the tax invoice and the prices quoted on such tax invoice received by it upon delivery thereof. The CUSTOMER will be entitled to notify the COMPANY, in writing, within 7 (seven) days of receipt by the CUSTOMER of such tax invoice, of any inaccurateness of the tax invoice which it has identified, failing which the CUSTOMER will be deemed to have inspected and verified the tax invoice and the prices quoted on such tax invoice and confirmed the accurateness of the tax invoice. To the extent permitted in law, the COMPANY's liability to the CUSTOMER in respect of any defects notified by the CUSTOMER timeously in accordance with this clause 4.8 shall be limited to the remedies set out in clause 9.**

4.9. **To the extent that the CPA is applicable, the CUSTOMER has the responsibility to inspect and verify the GOODS received by it upon delivery thereof. The CUSTOMER shall be entitled to notify and return to the COMPANY any GOODS in accordance with clause 11.**

4.10. Notwithstanding the provisions of clause 2, all orders or variations to orders made in accordance with clause 4.2.4 or elsewhere in this AGREEMENT, if in writing and signed by the CUSTOMER, shall be binding and subject to the provisions of this AGREEMENT and may not be revoked by the CUSTOMER.

4.11. The COMPANY shall be entitled in its reasonable discretion to split the delivery/performance of the GOODS ordered in the quantities and on the dates it decides.

4.12. The COMPANY shall be entitled to invoice each delivery/performance actually made separately.

4.13. Any delivery note, waybill, time sheet, handover certificate or job card (copy or original) signed by the CUSTOMER or a third party engaged to transport the GOODS and held by the COMPANY shall be prima facie proof that delivery was made to the CUSTOMER.

4.14. Delivery, installation and performance times quoted are merely estimates and are not binding on the COMPANY. Calculations of these times will be determined by the COMPANY from the date upon which –

4.14.1. the COMPANY received all technical data or other information required from the CUSTOMER;

4.14.2. reasonable access has been received by the COMPANY from the CUSTOMER to the relevant site or machinery;

4.14.3. any down payment has been agreed upon between the Parties; or

4.14.4. any necessary import or other permits have been granted.

4.15. **If the COMPANY agrees to engage a third party to transport the GOODS on the CUSTOMER's behalf from the relevant place of business of the COMPANY at or through which the relevant order was placed or is to be executed, the COMPANY is hereby authorised by the CUSTOMER to engage a third-party on the CUSTOMER's behalf, on the terms deemed fit by the COMPANY and at the CUSTOMER's cost.**

4.16. **The CUSTOMER hereby indemnifies the COMPANY against any claims against the COMPANY that may arise from such agreement in clause 4.15.**

5. AGREEMENT PRICE AND PAYMENT

5.1. Unless otherwise specifically agreed in writing in each particular instance

5.1.1. the AGREEMENT price to be paid by the CUSTOMER for the GOODS ("**AGREEMENT PRICE**") shall be set out in the relevant tax invoice and is based on the costs of materials, transport, labour, insurance rates, exchange rates and import duties, ruling at the date of the AGREEMENT and any variation in such costs or rates occurring between the date of the AGREEMENT and the date of payment, shall be for the account of the CUSTOMER, and shall be determined in accordance with the formula included in the AGREEMENT, and if no formula is included, in accordance with SEIFSA principles;

5.1.2. if the GOODS or any part thereof are to be imported, the price will be based on the rates of exchange, freight, insurance premiums, lighterage, landing charges, port dues, custom duty and railage at the date of delivery, or as specifically agreed. Should these rates vary between the date of delivery and the date upon which the charges are incurred, the price shall be varied by the amount of the increase or decrease in such charges; and

5.1.3. the AGREEMENT PRICE shall, subject to clause 5.4, be paid in full, in cash, free of exchange, deduction, or set off.

5.2. The CUSTOMER agrees that the amount contained in a tax invoice issued by the COMPANY shall be due and payable unconditionally (i) by way of cash on order; or (ii) if the CUSTOMER has been granted a CREDIT FACILITY, within the period specified, and approved in writing by the COMPANY.

5.3. **The CUSTOMER has the responsibility to verify the banking details of the COMPANY (with the designated manager of the relevant COMPANY at which the relevant order was placed) prior to any and every payment to be made by it to the COMPANY in terms of this AGREEMENT or otherwise and the COMPANY shall not be held liable for any payments incorrectly made by the CUSTOMER to a bank account, the details of which have not been verified by the CUSTOMER prior to such payment.**

5.4. **The CUSTOMER has no right to withhold payment for any reason whatsoever, save where the CUSTOMER is enforcing a legal right in instances where the CPA applies, and agrees that no extension of payment of any nature shall be granted to the CUSTOMER and any such extension will not be applicable or enforceable unless agreed to by the COMPANY, reduced to writing and signed by the CUSTOMER and a duly authorised representative of the COMPANY.**

5.5. The CUSTOMER agrees that the amount due and payable to the COMPANY may be determined and proven by a certificate issued and signed by any director or manager of the COMPANY, whose authority need not be proven, or by any independent auditor appointed by the COMPANY. Such certificate shall be binding and shall be prima facie proof of the nature and the amount of the indebtedness of the CUSTOMER.

5.6. The CUSTOMER agrees that in the event that it does not make any payment under this AGREEMENT by its due date –

5.6.1. where the CUSTOMER is a natural person or a juristic person for purposes of the NCA –

5.6.1.1. such unpaid amount will accrue interest at a rate equal to 2% per month; and

5.6.1.2. once interest has been levied by the COMPANY for the first time, a statement of account will be delivered monthly to the CUSTOMER's email address unless otherwise requested;

5.6.2. where the CUSTOMER is not a natural person or a juristic person for purposes of the NCA, **such unpaid amount will accrue interest at** the publicly quoted basic rate of interest, compounded monthly in arrears and calculated on a 365-day year irrespective of whether or not the year is a leap year, from time to time published by any of the five major banks in the Republic of South Africa as being its prime overdraft rate, plus 2% above this rate;

5.6.3. the COMPANY reserves the right to withhold the delivery of any GOODS not yet delivered until the CUSTOMER has paid, in full, all amounts outstanding and to declare, by notice in writing to the CUSTOMER, all amounts owing to be due and payable; or

5.6.4. to the extent not in conflict with any applicable law, the COMPANY may retake possession of the GOODS delivered under this AGREEMENT for which total payment has not been received according to the terms of this AGREEMENT. **The CUSTOMER irrevocably authorises the COMPANY to enter its premises (or any premises where the GOODS are located) upon the order of a competent court to repossess any GOODS delivered. The CUSTOMER hereby indemnifies the COMPANY, and/or the COMPANY's representatives, and/or the Sheriff and/or the Sheriff's representatives, completely against any damage whatsoever relating to the removal of any such repossessed GOODS and the CUSTOMER further irrevocably agrees to pay the COMPANY's costs of transporting and repossessing the GOODS;** and

5.6.5. the COMPANY will be entitled to keep any partial payment made by the CUSTOMER as liquidated damages (without prejudice to any of its rights to claim any other damages in lieu of such liquidated damages) and the COMPANY's exercise of these rights and remedies shall be subject to and exercised in accordance with the provisions of applicable laws (including the CPA and/or the NCA (if applicable)), **and the CUSTOMER hereby indemnifies and holds the COMPANY harmless against any claim for any loss or damage that it may incur as a result of such action by the COMPANY.**

5.7. In addition to the remedies available to the COMPANY in terms of clause 5.6, the CUSTOMER agrees that if an account is not settled in full (a) against order; or (b) within the period agreed in clause 5.2 in the case of a CUSTOMER that has been granted an extended payment term / CREDIT FACILITY, the COMPANY is entitled to (i) immediately institute action against the CUSTOMER at the sole expense of the CUSTOMER; **in order to enforce any and all of the COMPANY's rights under this AGREEMENT**, or (ii) cancel this AGREEMENT. **In the event of cancellation of this AGREEMENT, the COMPANY is entitled not to produce any unmade balance of any order already in process or otherwise accepted by the COMPANY and to recover any loss sustained thereby from the CUSTOMER.**

5.8. Subject to clause 7.3, should any amount be outstanding and due and payable to the CUSTOMER by any third party in respect of the GOODS, and should the CUSTOMER not have made payment in terms of this Clause 5, the CUSTOMER undertakes, on request by the COMPANY, to immediately cede "*in securitatem debiti*" all its right and interest in such payment from such party to the COMPANY and to advise the third party accordingly, and to sign all and any documentation to give effect to such cession.

5.9. These remedies are without prejudice to any other right the COMPANY may be entitled to in terms of this AGREEMENT or in law, and the COMPANY's exercise of these rights and remedies shall be subject to and exercised in accordance with the provisions of applicable laws (including the CPA (if applicable)). The COMPANY reserves its right to stop supply immediately on cancellation or on non-payment.

5.10. A CUSTOMER that has been granted a CREDIT FACILITY will forthwith lose this payment facility when payment is not made according to the conditions of clause 5.2 (ii) and all amounts then outstanding shall immediately become due and payable.

6. EXTENDED PAYMENT TERMS / CREDIT FACILITY

6.1. The CUSTOMER may, upon application to the COMPANY and subject to clause 6.2 below, be awarded an extended payment term / credit facility (hereinafter referred to as "CREDIT FACILITY") on terms and conditions which shall be determined / acceptable by the COMPANY.

6.2. The COMPANY may, in its sole discretion, grant the CUSTOMER a CREDIT FACILITY and may, at any time and within its sole discretion, withdraw same upon written notice to the CUSTOMER.

6.3. The CUSTOMER hereby agrees that any CREDIT FACILITY which may be granted to it by the COMPANY is a variable facility and that the COMPANY shall be entitled, at any time and within its sole discretion, to decrease or otherwise amend the CUSTOMER's limit and/or other credit terms from time to time on written notice to the CUSTOMER.

6.4. It is hereby recorded that the information set out in the CUSTOMER INFORMATION AND ACCEPTANCE FORM (and any updates in respect thereof) by the CUSTOMER shall form the basis of the COMPANY's decision to grant (or amend) a CREDIT FACILITY to the CUSTOMER in accordance with the STANDARD TERMS AND CONDITIONS.

6.5. Should the COMPANY so require, the CUSTOMER shall provide the COMPANY with such security as the COMPANY may in its sole discretion determine, which security shall be deemed to form part of the CUSTOMER's CREDIT FACILITY.

7. RISK IN AND OWNERSHIP OF THE GOODS

7.1. **The risk of damage to, destruction or theft of GOODS shall pass to the CUSTOMER on delivery of the GOODS to the CUSTOMER (in accordance with clause 4) and the CUSTOMER undertakes to comprehensively insure the GOODS until paid for in full. The COMPANY may, without any prejudice to its rights arising from the failure by the CUSTOMER to insure the GOODS in terms of this clause 7.1, recover insurance premiums from the CUSTOMER for such ordered and uninsured GOODS.**

7.2. Ownership in and to the GOODS supplied by the COMPANY shall vest in the COMPANY until the AGREEMENT PRICE for those GOODS has been paid in full to the COMPANY. The CUSTOMER shall notify, if applicable, the owner and landlord of the premises on which the GOODS are located that ownership in the GOODS vests in the COMPANY until paid for in full and the CUSTOMER hereby authorises the COMPANY to give such notice.

7.3. The CUSTOMER is not entitled to sell or dispose of any GOODS unpaid for without the prior written consent of the COMPANY. The CUSTOMER shall not allow the GOODS to become encumbered in any manner prior to the full payment thereof and shall advise third parties of the rights of the COMPANY in the GOODS.

7.4. If any GOODS supplied to the CUSTOMER are of a generic nature and have become the property of the CUSTOMER by operation of law (by mixing or blending) the CUSTOMER shall be obliged on notice of cancellation of this AGREEMENT to retransfer the same quantity of GOODS in ownership to the COMPANY.

8. **GUARANTEES AND CLAIMS**

8.1. **To the extent not in conflict with the CPA (if applicable) or any other law –**

8.1.1. the GOODS will conform to such specifications in respect of each order as have been specifically accepted by the COMPANY in writing and in the event of the GOODS proving not to be in accordance with such specifications, the COMPANY shall, if requested to do so in writing within a reasonable time of discovery of such failure to conform to such specifications, but not in any event after 36 (thirty six) months have elapsed from the date of delivery of such non-conforming GOODS to the CUSTOMER, at its option, repair or replace the defective portions/components of the GOODS in question in accordance with clause 11;

8.1.2. the GOODS shall bear a 36 (thirty six) month warranty in accordance with the COMPANY'S guarantee policy, a copy of which can be requested by the CUSTOMER from the COMPANY;

8.1.3. **new GOODS are guaranteed according to the manufacturer's product specific warranties only and all other guarantees, including common law guarantees, warranties of merchantability, fitness for a particular purpose, and non-infringement of third-party rights, are hereby specifically excluded. The guarantee shall run from the delivery date;**

8.1.4. **liability under clause 8.1.3 is restricted to the cost of repair or replacement of returned GOODS or granting of a credit or to refund an equitable portion of the purchase or AGREEMENT PRICE at the sole discretion of the COMPANY, as more fully set out in clause 11;**

8.1.5. **to be valid, claims must be supported by the original tax invoice relevant to the GOODS in respect of which a claim relates;**

8.1.6. **the CUSTOMER shall return any defective moveable GOODS to the premises of the COMPANY in accordance with clause 11; and**

8.1.7. **all guarantees are immediately null and void should any GOODS be tampered with or should the seals on GOODS be broken by anyone other than the COMPANY or should the GOODS be used or stored outside of the manufacturer's specifications.**

8.2. **Any item delivered to the COMPANY shall serve as a pledge in favour of the COMPANY for present and past debts and the COMPANY shall be entitled to retain or realize such pledges as it deems expedient. The sworn or realized value of pledged GOODS will be offset against the CUSTOMER's debts and any excess balance will be paid to the CUSTOMER.**

8.3. **Nothing in this AGREEMENT should be understood to limit any warranty a CUSTOMER may have in terms of the CPA (if applicable).**

9. **LIABILITY**

9.1. **Notwithstanding anything to the contrary anywhere contained the liability of the COMPANY howsoever arising out of the AGREEMENT or in delict or by operation of statute shall not extend beyond the obligations specifically assumed in terms of clause 8 and this clause 9.**

9.2. **To the extent not in conflict with the CPA (if applicable) or any other law and notwithstanding anything herein contained –**

9.2.1. **the COMPANY shall not be liable for any special, consequential or indirect damages, nor shall the COMPANY be liable to any person for any loss or damage whether to person or property howsoever arising, save where such damage or loss is due to the gross negligence or willful misconduct of the COMPANY, its employees, agents or authorised representatives;**

9.2.2. **under no circumstances shall the COMPANY be liable for any damage arising from any misuse, abuse or neglect of the GOODS by the CUSTOMER or any other third party; and**

9.2.3. **the CUSTOMER hereby indemnifies the COMPANY against all and any claims of whatsoever nature which may be made by any person against the COMPANY for any loss or damage of any nature arising out of the use of the GOODS whilst same are at risk of the CUSTOMER, save for any claims which arise from the gross negligence or willful misconduct of the COMPANY, its employees, agents or authorised representatives. The aforesaid indemnity includes any legal costs which may be incurred by the COMPANY in defending and/or opposing any such claim, calculated on the scale as between attorney-and-own client;**

9.2.4. **the COMPANY shall not be liable to the CUSTOMER for any loss or damage of any nature arising out of the use of the GOODS, the delivery or supply or failure to deliver or supply the GOODS, or arising in respect of the GOODS whilst same are in the CUSTOMER's possession, save where such loss or damage is due to the gross negligence or willful misconduct of the COMPANY, its employees, agents or authorised representatives.**

10. **REPRESENTATIONS**

10.1. **The CUSTOMER acknowledges that it does not rely on any representations made by the COMPANY in regard to the GOODS or any of its qualities leading up to this AGREEMENT other than those contained in this AGREEMENT. All specifications, price lists, performance figures, advertisements, brochures and other technical data furnished by the COMPANY in respect of the GOODS orally or in writing will not form part of this AGREEMENT in any way unless agreed to in writing by the COMPANY.**

10.2. **The CUSTOMER agrees that neither the COMPANY nor any of its employees will be liable for any misrepresentations made to the CUSTOMER which are grossly negligent or constitute willful misconduct.**

11. **RETURNS, REPAIRS AND CANCELLATIONS**

Returns

11.1. **Where the CUSTOMER is a consumer for purposes of the CPA, it will be entitled to notify, in writing, and return to the COMPANY –**

11.1.1. **any GOODS which are returnable under the CPA, but specifically excluding GOODS which are defective, within 10 (ten) days; or**

11.1.2. **any defective GOODS, within 6 (six) months,**

of receipt by the CUSTOMER of such GOODS, of any reason for their return in respect of GOODS referred to in clause 11.1.1 or defects to the quality of the GOODS in respect of GOODS **referred to in clause 11.1.2, which it has identified, failing which the CUSTOMER will be deemed to have inspected and verified the GOODS delivered to it and confirmed the good quality of the GOODS free from any and all defects, and the correctness of the order. To the extent permitted in law, the COMPANY's liability to the CUSTOMER in respect of any returned GOODS timeously in accordance with this clause 11 shall be limited to the remedies set out in clause 9.**

11.2. **To the extent that the CPA is not applicable, the same provisions of clause 11.1 shall apply, except that notice to the COMPANY and any GOODS returned to the COMPANY, whether defective or not, must be made within 7 (seven) days of the receipt by the CUSTOMER of such GOODS (subject to clause 11.3).**

11.3. Should a CUSTOMER return GOODS which are not defective in accordance with clause 11.2, and the COMPANY, in its sole discretion, accepts such return upon such terms as the COMPANY may prescribe, the CUSTOMER shall be credited in full, less a minimum of –

11.3.1. in respect of standard GOODS: 10% of the order value of the returned GOODS as a handling charge, subject to the GOODS being within their specified shelf life and in a marketable condition; or

11.3.2. in respect of GOODS that have been tailor made for the CUSTOMER: 100% of the order value of the returned GOODS.

11.4. **Whenever GOODS are returned to the COMPANY, the CUSTOMER shall be obliged to return such GOODS cleaned and sufficiently marked to enable the COMPANY to identify it as GOODS returned by the CUSTOMER and packed in the original or suitable packaging.**

11.5. Where GOODS are returned to the COMPANY –

11.5.1. in accordance with clause 11.1 or as a result of them being defective, such GOODS shall be returned to the COMPANY at the COMPANY's cost;

11.5.2. in accordance with clause 11.2 and for any reason other than them being defective, such GOODS shall be returned to the COMPANY at the CUSTOMER's cost.

Repairs

11.6. **All risks for the duration of any repair shall remain with the CUSTOMER at all times.**

11.7. **Repair times and repair costs given are merely estimates and are not binding on the COMPANY. Should the repair costs exceed the estimated repair cost, the COMPANY will inform the CUSTOMER of the additional estimated charges and the COMPANY will only proceed to continue with the repair once the CUSTOMER has authorised the repair to continue based on the increased estimated repair cost.**

11.8. **Save where the CUSTOMER expressly and in writing indicates otherwise, the CUSTOMER hereby declines the return of any parts of components removed from the GOODS in the course of any repairs.**

11.9. **Any item handed in for repair may be sold by the COMPANY to defray the cost of such repairs if the item remains uncollected within 30 (thirty) days after –**

11.9.1. **the repairs being completed or**

11.9.2. **notice being given to the CUSTOMER that the repairs have been completed,**

whichever is the later.

Cancellations

11.10. **Where the CUSTOMER is a consumer for purposes of the CPA, it will be entitled to notify the COMPANY, in writing, and cancel any order of GOODS before receipt thereof by the CUSTOMER.**

11.11. **To the extent that the CPA is not applicable, the same provisions of clause 11.10 shall apply, except that notice to the COMPANY of such cancellation must be made no later than 14 (fourteen) days prior to the date on which the GOODS ordered by the CUSTOMER is scheduled to be received by the CUSTOMER.**

11.12. **Should a CUSTOMER cancel any order of GOODS, the COMPANY may prescribe a charge for the cancellation of such order ("Cancellation Fee").**

11.13. **Where the CUSTOMER is a consumer for the purposes of the CPA the COMPANY will determine the Cancellation Fee to be charged having regard to –**

11.13.1. **the nature of the GOODS ordered (for the sake of clarity, the Cancellation Fee for any GOODS that have been tailor made or specifically sourced for the CUSTOMER will be 100% of the order value of the cancelled GOODS);**

11.13.2. **the length of notice of cancellation provided by the CUSTOMER;**

11.13.3. **the reasonable potential for the COMPANY, acting diligently, to find an alternative consumer between the date of receiving the cancellation notice and the date on which the GOODS were to be received by the CUSTOMER; and**

11.13.4. **the general practice of the industry.**

11.14. **To the extent that the CPA is not applicable, the Cancellation Fee charged by the COMPANY shall be –**

11.14.1. **in respect of standard GOODS: 10% of the order value of the cancelled order as a handling and administration charge; or**

11.14.2. **in respect of GOODS that have been tailor made for the CUSTOMER: 100% of the order value of the cancelled GOODS.**

12. **WHERE THE CUSTOMER IS SPECIFICALLY A CONSUMER OR JURISTIC PERSON FOR PURPOSES OF THE NCA ONLY**

12.1. Legal Costs and Charges

12.1.1. Default Administration Charges

If the CUSTOMER defaults on any payment obligation under this AGREEMENT, the COMPANY will charge the CUSTOMER a default administration charge in respect of each letter of demand sent to the CUSTOMER. The cost of each registered letter of demand sent to the CUSTOMER may not exceed the amount payable for a registered letter of demand as stipulated in the High Court Rules as well as the COMPANY's reasonable and necessary expenses incurred to deliver such letter of demand, including but not limited to postage or delivery costs.

12.1.2. Collection Costs

The COMPANY will be entitled to charge the CUSTOMER, at the maximum permissible rate allowed by law, all costs incurred by the COMPANY in collecting any amount due and/or payable by the CUSTOMER in terms of this AGREEMENT, the COMPANY's legal costs as between attorney-and-own-client and as taxed by the High Court, incurred as a result of any breach of this AGREEMENT by the CUSTOMER and/or as a result of the CUSTOMER having to enforce its rights under this AGREEMENT against the CUSTOMER in terms of clause 12.2 and all other costs as provided for by the NCA.

12.2. Consequences of Default

12.2.1. Should the CUSTOMER not make payment of any amounts due to the COMPANY in accordance with this AGREEMENT, the CUSTOMER will be in default.

12.2.2. In the event of default, the COMPANY may give written notice to the CUSTOMER of such default, requesting the CUSTOMER to rectify the default and/or propose that the CUSTOMER refers this AGREEMENT to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that the Parties resolve any dispute under this AGREEMENT or develop and agree on a plan to bring the CUSTOMER's repayments up to date. Furthermore, the CUSTOMER herby consents and authorizes the COMPANY to furnish the name, credit record and repayment history of the CUSTOMER to any credit bureau as a delinquent debtor should the Company so choose. It is also agreed that the COMPANY may use any means to verify the information contained in this document

12.2.3. Delivery of the written notice referred to in clause 12.2.2 at the address provided by the CUSTOMER in the CUSTOMER INFORMATION AND ACCEPTANCE FORM attached to this AGREEMENT will serve as proof of delivery of such written notice.

12.2.4. The CUSTOMER may at any time prior to cancellation of this AGREEMENT by the COMPANY, remedy its default by paying to the COMPANY all amounts that are due and owing to the COMPANY by the CUSTOMER, together with the prescribed default administration charges and collection costs referred to in clause 12.1 incurred by the COMPANY to enforce the provisions of this AGREEMENT against the CUSTOMER up to the date upon which the CUSTOMER's default is remedied.

12.2.5. The COMPANY will be entitled, without prejudice and in addition to any other rights which the COMPANY may have in terms of law and in terms of this AGREEMENT, to institute legal action against the CUSTOMER to enforce the provisions of this AGREEMENT in the event that –

12.2.5.1. the CUSTOMER does not respond to the written notice delivered to it by the COMPANY in accordance with clause 12.2.2; or

12.2.5.2. the CUSTOMER rejects the COMPANY's proposal for referral of this AGREEMENT in accordance with clause 12.2.2; or

12.2.5.3. where 10 business days have lapsed after delivery of such written notice to the CUSTOMER; and

12.2.5.4. the CUSTOMER has been in default under this AGREEMENT for at least 20 business days.

12.2.6. In the event of default not being rectified, the full outstanding balance of any amount owing to the COMPANY by the CUSTOMER in terms of this AGREEMENT, will immediately become due and payable and the COMPANY may, without affecting any of its other rights in terms of this AGREEMENT or otherwise, recover from the CUSTOMER payments of all amounts owing under this AGREEMENT, which payments will include any accrued, but unpaid interest, default administration charges and collection costs, as contemplated in clause 12.1, and/or any reasonable legal costs and charges expended by the COMPANY to enforce the provisions of this AGREEMENT.

13. **WHERE THE CUSTOMER IS NOT A CONSUMER OR JURISTIC PERSON FOR PURPOSES OF THE NCA**

The provisions of clauses 12.1.1, 12.1.2 and 12.2.6 shall still apply *mutatis mutandis* even where the CUSTOMER is not a consumer or a juristic person for purposes of the NCA.

14. **CONSENT TO VERIFICATION OF ACCOUNT DETAILS, DATA PROTECTION AND PRIVACY AND CONFIDENTIALITY**

14.1. Personal Information is information relating to an identifiable, natural or juristic person, including but not limited to information relating to race, gender, sex, marital status, nationality, ethnic or social original, colour, sexual orientation, age, physical or mental health, religion, belief, disability, language, birth, education, identity number, telephone number, e-mail, postal or street address, biometric information and financial, criminal or employment history, as well as correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence, including any information provided by the CUSTOMER in terms of this AGREEMENT ("**PERSONAL INFORMATION**").

14.2. The CUSTOMER acknowledges that its PERSONAL INFORMATION provided to the COMPANY may be protected by data protection legislation such as the Protection of Personal Information Act, No 4 of 2013 ("**POPI**") and the NCA and the CUSTOMER expressly consents to the COMPANY collecting, receiving, recording, organizing, collating, storing, updating, modifying, retrieving, altering or processing of its PERSONAL INFORMATION.

14.3. The CUSTOMER hereby consents to the COMPANY making worldwide transfers of the CUSTOMER's PERSONAL INFORMATION on the COMPANY's corporate systems, to other entities, agents or subcontractors in the COMPANY's group, or to other relevant business partners, including without limitation, agents, distributors and third parties who may have incidental access to PERSONAL INFORMATION.

14.4. The CUSTOMER consents to all communications being monitored or recorded by the COMPANY in accordance with the applicable laws, for use in business practices, prevention of unauthorised use of the COMPANY's systems and in respect of the detection and prevention of crime.

14.5. The CUSTOMER will have the right to contact the COMPANY regarding any PERSONAL INFORMATION that the CUSTOMER is entitled to.

14.6. The CUSTOMER hereby consents to the storage and use by the COMPANY of its PERSONAL INFORMATION for establishing its credit rating and in providing the GOODS to the CUSTOMER in terms of this AGREEMENT and to the COMPANY disclosing such information to credit control companies, banks and other institutions involved in rating credit. **The CUSTOMER agrees that the COMPANY will not be held liable for the good faith disclosure of any of this PERSONAL INFORMATION to such third parties and that no further specific consent needs to be obtained for the transfer of such information to a specific third party for the purposes of establishing its credit rating and in providing the GOODS to the CUSTOMER in terms of this AGREEMENT.**

14.7. The CUSTOMER hereby consents that the COMPANY can also provide its PERSONAL INFORMATION to third parties other than those referred to in clause 14.3, if the CUSTOMER has indicated the COMPANY as a trade reference to third parties and the CUSTOMER agrees that the COMPANY will not be liable for the good faith disclosure of any of this information to such third parties.

14.8. Unless otherwise required for purposes of this clause 14, the COMPANY hereby agrees that it will take or cause to be taken such reasonable precautions as may be necessary to prevent the disclosure of any of the CUSTOMER's PERSONAL INFORMATION made available to the COMPANY by, or obtained from, the CUSTOMER which are not a matter of public knowledge or lawfully available from any other source.

15. **RENUNCIATION OF BENEFITS**

The CUSTOMER hereby renounces the benefits of and any other rights not expressly referred to in this AGREEMENT or not expressly agreed in writing and to which it may be entitled, or which it may acquire in terms of the Agricultural Credit Act no. 28 of 1966 as amended, the Moratorium Act no. 25 of 1953 or any other similar rights under any statute.

16. **VARIATIONS**

The COMPANY shall supply the GOODS strictly in accordance with the AGREEMENT. Should the CUSTOMER require variations to the GOODS, or to the quantities thereof, or should the COMPANY be hindered, delayed or prevented from supplying in terms of the AGREEMENT or be exposed to extra costs by the CUSTOMER owing to extensions to or omissions from the order, deviations from the specifications, late, defective or non-receipt of information or free issue of materials or by any other act, default or omission by or on behalf of the CUSTOMER, the COMPANY shall be entitled to an appropriate variation to the rates or to the AGREEMENT PRICE or to the programme, or any other obligation of the COMPANY, provided that no such variation shall, without the written consent of the COMPANY, be such as will, together with such other variations as have been requested, involve a variation of more than 10% to the AGREEMENT PRICE or to the quantities set out in the AGREEMENT.

17. **FORCE MAJEURE**

17.1. Neither party shall be liable to the other for inability to perform or delayed performance in terms of this AGREEMENT, should such inability or delay arise from any cause beyond the reasonable control of such party, the existence or happening of which cause has been drawn to the attention of the other party within a reasonable time of the occurrence of such cause ("**FORCE MAJEURE EVENT**").

17.2. Any order is subject to cancellation by the COMPANY due to any FORCE MAJEURE EVENT.

17.3. For the purposes of this clause 17 a FORCE MAJEURE EVENT shall, without limitation of the afore going, be deemed to include strikes, lock outs, labour disputes, accidents, plant and machinery breakdowns, fire, explosions, theft, war (whether declared or not), invasion, acts of foreign enemies, hostilities, riot, civil insurrection, flood, earthquake, lightning, act of local or national government, martial law, failure or delay on the part of the COMPANY's supplier(s) of services, of bought out materials, to meet delivery dates, or any failure or delay on the part of the CUSTOMER or the CUSTOMER's agents or other contractors to provide the COMPANY with free issue materials, specifications, or defects or changes in such specifications, or any other cause beyond the reasonable control of the party affected.

18. **PATENTS COPYRIGHT AND CONFIDENTIALITY**

18.1. **The CUSTOMER shall indemnify and hold harmless the COMPANY against all claims and expenses of whatsoever nature and description arising from the alleged or actual infringement of any patent, trade marks, designs or copyright supplied to the COMPANY by the CUSTOMER**.

18.2. **The COMPANY warrants however that any designs specified by it shall not infringe any such patent, trade marks, designs or copyright supplied to the COMPANY by the CUSTOMER**.

18.3. The CUSTOMER shall keep confidential and shall not use for any purpose other than this AGREEMENT itself, all drawings and designs supplied by the COMPANY in terms of this AGREEMENT, and the CUSTOMER shall indemnify the COMPANY against any loss suffered by the COMPANY as a result of a breach of this clause 18.

19. **BREACH**

Should either party be in breach of any material obligations in terms of this AGREEMENT (or any order, irrespective of whether it has been accepted by the COMPANY), and fail to remedy such breach or take positive steps towards remedying such breach within 14 (fourteen) days of written notice of such breach from the other party, then the non-defaulting party shall be entitled to cancel this AGREEMENT without prejudice to such other rights as such non-defaulting party may have in terms of this AGREEMENT or at law.

20. **GOVERNING LAW AND JURISDICTION**

20.1. This Agreement shall be construed and interpreted in accordance with the laws of the Republic of South Africa.

20.2. The CUSTOMER hereby consents to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg.

21. **GENERAL**

21.1. The CUSTOMER agrees that no indulgence whatsoever by the COMPANY will affect the terms of this AGREEMENT or any of the rights of the COMPANY and such indulgence shall not constitute a waiver by the COMPANY in respect of any of its rights herein. Under no circumstances will the COMPANY be estopped from exercising any of its rights in terms of this AGREEMENT.

21.2. **Nothing in this clause 21, or anywhere else in this AGREEMENT, should be understood to prevent the COMPANY or the CUSTOMER from taking any dispute to any court, tribunal, commission or other body of competent jurisdiction.**

21.3. **The CUSTOMER shall be liable to the COMPANY for all legal costs and expenses on the attorney-and-own-client scale incurred by the COMPANY in the event of (i) any default by the CUSTOMER (and any enforcement of the COMPANY's rights); or (ii) any litigation in regard to the validity and enforceability of this AGREEMENT. The CUSTOMER shall also be liable for any tracing, collection or valuation fees incurred as well as for any costs, including stamp duties, for any form of security that the COMPANY may demand.**

21.4. The CUSTOMER agrees that the COMPANY will not be required to furnish security in terms of Rule 62 of the Rules of Court of the Magistrate's Courts or in terms of Rule 47 of the Uniform Rules of the High Court.

21.5. Any document shall be deemed duly presented to and accepted by the CUSTOMER (i) within 5 (five) days of prepaid registered mail to any of the CUSTOMER's business or postal addresses or to the personal address of any director, member or owner of the CUSTOMER; or (ii) on being delivered by hand to the CUSTOMER or any director, member or owner of the CUSTOMER; or (iii) within 48 (forty-eight) hours if sent by overnight courier or (iv) within 7 days of being sent by surface mail; or (v) on successful transmission of being e-mailed to any e-mail address provided by the CUSTOMER.

21.6. The CUSTOMER chooses its address for any notification or service of legal documents or processes its business address as provided in the CUSTOMER INFORMATION AND ACCEPTANCE FORM attached to this AGREEMENT or the physical addresses (*domicilium citandi et executandi*) of any director (in the case of a company), member (in the case of a close corporation) or of the owner(s) or partner(s).

21.7. **The CUSTOMER undertakes to inform the COMPANY in writing within 7 (seven) days of any change of director, member, shareholder, owner or partner or address or 14 (fourteen) days prior to selling or alienating the CUSTOMER's business and failure to do so will constitute a material breach of this AGREEMENT. Upon receipt of such written notification, the COMPANY reserves the right, to the extent not in conflict with the NCA, at its sole discretion, to cancel this AGREEMENT (including any unfulfilled orders placed with the COMPANY prior to the aforementioned change) with the CUSTOMER.**

21.8. The CUSTOMER shall not be entitled to cede, assign or transfer any part, share or interest of this AGREEMENT without the prior written consent of the COMPANY. The COMPANY shall be entitled to cede, assign and transfer its rights and obligations under this AGREEMENT to any person upon notice to the CUSTOMER. This AGREEMENT shall be binding on the successors in title and permitted assigns of the Parties.

21.9. Each provision of this AGREEMENT is severable from the other provisions, notwithstanding the manner in which they have been grouped together or linked grammatically. Should any provision be found to be invalid or unenforceable for any reason, the remaining provisions of this AGREEMENT shall nevertheless remain binding and continue with full force and effect.

21.10. Any provision of this AGREEMENT which by its very nature requires or contemplates performance or applicability of such provision after the termination or expiration of this AGREEMENT will survive such termination or expiration.

21.11. The Parties do not intend for any of their rights or obligations under this AGREEMENT to benefit any third parties.