

TERMS AND CONDITIONS OF SALE

IMPORTANT NOTES

- A. These Terms and Conditions shall apply to the purchase of products, which includes, but is not limited to wood preservative products, (“**Products**”) by the Consumer from the Company and, if applicable, to the rendering of any services, including, but not limited to, transport of the Products (“**Services**”) by the Company to the Consumer (to the extent applicable). These Terms and Conditions shall be incorporated into every Supply Contract.
- B. **The price payable by the Consumer for Products and/or Services shall be as per the prevailing pricelist of the Company at the time of placement of an Order unless the Supply Contract provides its own price. The price payable for Products purchased and/or Services rendered from time to time may be varied by the Company, and it is therefore the responsibility of the Consumer to familiarise itself with the prevailing pricelist, or alternatively obtain a quotation from the Company, before placing an Order.**
- C. **The Company’s liability in respect of damages is limited, specifically the Consumer’s ability to recover losses and/or damages sustained, from the Company, in accordance with clauses 11 and 18 below.**
- D. **The Consumer will not be entitled to rely on representations not contained in a Supply Contract as stated in clause 9.3 below. The Consumer will not be entitled to rely on representations made to it in respect of the Products and/or Services unless same is recorded in the specific written Supply Contract and which contract records in writing that the Terms and Conditions are amended and which document must be signed by the Company and the Consumer in accordance with clause 3.2 below. The Consumer is to specify below which representations were made to it in respect of the Products and/or Services and which the Consumer relied on when entering into these Terms and Conditions:**
- _____
- _____
- _____
- E. **The Consumer warrants that the information completed by it and/or provided to the Company is truthful, complete and accurate in all respects, and is supplied voluntarily for the purpose of concluding these Terms and Conditions and, if applicable, obtaining credit from the Company in connection with the supply of Products from and/or rendering of Services by the Company.**
- F. **The Company shall be entitled to rely upon all and/or any of the information supplied herein as being completely true and accurate.**
- G. **These Terms and Conditions are applicable to (i) transactions falling within the ambit of the CPA (should the Consumer be a juristic person with a turnover or gross asset value at the date of the transaction of less than R2 000 000 or an individual), as well as (ii) transactions not falling within the ambit of the CPA (should the Consumer be a juristic person with a turnover or gross asset value at the date of the transaction of more or equal to R2 000 000). Where the terms contained in these Terms and Conditions differ between transactions falling within the ambit of the CPA and transactions not falling within the ambit of the CPA, it will be indicated as such under the applicable clause.**

1. INTERPRETATION AND DEFINITIONS

- 1.1 The headings of the clauses in these Terms and Conditions are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of these Terms and Conditions nor any clause hereof. Unless a contrary intention clearly appears, words importing:
- 1.1.1 any one gender include the other genders;
- 1.1.2 the singular include the plural and *vice versa* (the opposite of); and
- 1.1.3 natural persons include created entities (corporate or non-corporate) and the state and *vice versa* (the opposite of).
- 1.2 The rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply.
- 1.3 Any reference in these Terms and Conditions to a Party shall include a reference to that Party’s assigns expressly permitted under these Terms and Conditions and, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party’s liquidator or trustee, as the case may be.
- 1.4 The words “**include**”, “**including**” and “**in particular**” shall be construed as being by way of example or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding word/s.
- 1.5 The words “**other**” and “**otherwise**” shall not be construed *eiusdem generis* with any preceding words where a wider construction is possible.
- 1.6 Any references to “**days**” (other than a reference to a “**business day**”), “**months**” or “**years**” in these Terms and Conditions shall be construed as calendar days, months or years, as the case may be, and any reference to a “**business day**” shall be construed as any day of the week, excluding a Saturday, a Sunday and a statutory public holiday. Any reference in this Agreement to “**business hours**” shall be construed as being the hours between 08:30 and 17:00 on any business day.
- 1.7 In these Terms and Conditions (including the important notes), the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:
- 1.7.4 “**Company**” means Dolphin Bay Chemicals Proprietary Limited (Registration Number: 2003/031169/07);
- 1.7.5 “**Consumer**” means the consumer, procuring the supply of Products and/or rendering of Services by the Company pursuant to these Terms and Conditions and/or any Supply Contract;
- 1.7.6 “**DAP**” means the incoterm ‘Delivered At Place’, as defined in the Incoterms;
- 1.7.7 “**EXW**” means the incoterm “EXWorks”, as defined in the Incoterms;
- 1.7.8 “**Incoterms**” means the International Commerce Terms® 2020, as published by the International Chamber of Commerce;
- 1.7.9 “**Order**” means each acceptance of a quotation or placing of an order by the Consumer for Products and/or Services to be supplied and/or rendered by the Company, as indicated by the Consumer, whether same is conveyed to the Company in writing or orally;

- 1.7.10 **"Parties"** means the Consumer and the Company and **"Party"** shall refer to either one of them, as the context requires;
- 1.7.11 **"POPI"** means the Protection of Personal Information Act, No. 4 of 2013, as amended;
- 1.7.12 **"Supply Contract"** means the Order or other contract recording the terms of the specific sale of Products and/or rendering of Services which has been signed by both Parties, or as otherwise permitted in terms of clause 4.1;
- 1.7.13 **"Terms and Conditions"** means these trading terms and conditions of sale, set out in this document (which for the sake of clarity includes the important notes).

2. CREDIT

- 2.1 **Where the Consumer has applied for and has been afforded credit, these Terms and Conditions shall be read together with the terms of the credit application signed by the Consumer and the Company.**
- 2.2 **If applicable, the Consumer authorises the Company and its officer, employees and agents (together, "representatives") to investigate the Consumer's credit history in any manner and from any source deemed by the Company as appropriate.**
- 2.3 Should the Consumer exceed its credit limit as indicated on the credit application form or its account becomes past due, the Consumer agrees to and acknowledges that the Company has the right to refuse or cancel any Supply Contract until the account is satisfied in full. The Consumer also agrees to and acknowledges that the Company has the right to take any advisable and/or necessary steps to collect all and any amounts outstanding on the Consumer's account.
- 2.4 The Consumer will forthwith upon request from the Company update its credit information for the purpose of increasing or maintaining credit limits.
- 2.5 The Company reserves the right to withdraw any credit facilities at any time without prior notice and the nature and extent of such facilities shall at all times be at the Company's sole discretion.
- 2.6 Should the Consumer require an increase in the agreed credit limit, a written request must be submitted to the Company together with authorisation for the Company to do a complete assessment of the Consumer's ability to service the new increased credit limit, in terms of section 19 of the National Credit Act, No. 34 of 2005 (to the extent applicable).
- 2.7 The Consumer may, at any stage after entering into the contract of credit with the Company, request a temporary increase in the credit limit to accommodate a particular transaction of specified occurrence, on condition that the request is in writing and that the Company is given authority to do a complete assessment of the creditworthiness of the Consumer. **It is explicitly agreed that the credit limit so increased will revert back to the original agreed credit limit immediately after the specified occurrence has taken place.**
- 2.8 In the event that an assessment mentioned in any one of the provisions above proves that the Consumer is not capable of servicing the credit limit which has been applied for, the Company reserves the right to offer the Consumer a reduced credit limit.
- 2.9 **Should the Consumer require a decrease in the agreed credit limit, a written request must be submitted to the Company. Such decrease shall become effective 30 (thirty) business days after receipt of the written request by the Company.** In the event that the balance

outstanding on the account after the implementation of the new decreased credit limit exceeds the new credit limit, the amount in excess shall not be determined as reckless credit, in terms of section 118(4) of the National Credit Act, No. 34 of 2005 (to the extent applicable).

- 2.10 **To the extent required by the Company, in its sole discretion, the Consumer will be obliged to provide security to the Company in the form of, for example (which list is not exhaustive):**

2.10.1 **a bank guarantee and/or stand by letter of credit from a reputable bank (in the opinion of by the Company) for amounts as determined by the Company, in its sole discretion, which guarantee shall remain in force until termination of these Terms and Conditions and all Supply Contracts concluded between the Consumer and the Company, or until full and final payment in terms of these Terms and Conditions and all Supply Contracts has been made to the Company by the Consumer, or until all consignment stock in the possession of the Consumer has been returned to the Company, whichever occurs the latest. The aforementioned bank guarantee will be utilised in the event of a non-payment from the Consumer. At no point will any credit provided by the Company to the Consumer exceed the guarantee amount. The value of the consignment stock will be included in the credit amount to reflect a total credit exposure; or**

2.10.2 **such other form of security as required by the Company from time to time, in the sole discretion of the Company, including, but not limited to, the registration of a notarial bond over the movable assets of the Consumer and/or any guarantors, directors, members', trustees, shareholders' or the like of the Consumer.**

Clause 2.11 will only apply in the event of these Terms and Conditions not being regulated by the CPA:

- 2.11 As security for all moneys (whether past or present) owing by the Consumer to the Company pursuant to these Terms and Conditions or any Supply Contract, the Consumer hereby cedes and assigns any and all right, title and interest in and to any book debts and other debts and claims of whatsoever nature, present and future, due or to become due to the Consumer (including any reversionary rights that there may be from time to time) and to all rights of action arising thereunder.

3. CONTRACT

- 3.1 These Terms and Conditions (with the applicable Supply Contract) shall solely govern the relationship between the Company and the Consumer in respect of the supply of the Products and/or rendering of the Services by the Company to the Consumer.
- 3.2 The Terms and Conditions shall prevail over any terms and conditions referred to in any other documentation (including any Supply Contract), unless such other document is a formal written agreement signed by the Managing Director of the Company and the Consumer, specifically stipulating that the Parties are supplementing or amending these Terms and Conditions.
- 3.3 Each Order accepted by the Company shall constitute a separate Supply Contract between the Parties.
- 3.4 Any quotation furnished by the Company is only an invitation to place an order with the Company and acceptance of the quotation will only be deemed to be a Supply Contract placed by the Consumer which is open for

acceptance by the Company, and until being accepted, the Company is not obliged to deliver the Products and/or render the Services as referred to in the quotation.

4. ORDER PROCESS

- 4.1 The Company is entitled to accept, at its own discretion, verbal requests for Products and/or Services and in such circumstances the information contained in any document reflecting the Consumer's order instructions (whether or not signed by the Consumer and/or the Company) shall serve as *prima facie* (at first sight) proof of such order and the Consumer's instructions relating thereto.
- 4.2 The Supply Contract for the Products and/or Services the Consumer wishes to procure from the Company shall indicate the following minimum information:
- 4.2.1 the types of Products and/or Services and the number of units of each type of Product which the Consumer wishes to procure;
- 4.2.2 the date of delivery of the Products and/or the date upon which the Services are to be performed;
- 4.2.3 the place of delivery, should the place of delivery not be the Consumer's place of business, as contemplated in clause 12.5 below;
- 4.2.4 any special delivery terms or other relevant instructions or information;
- 4.2.5 whether such Supply Contract relates to Products to be held on consignment.
- 4.3 **The Company shall be entitled to accept or reject any or all requests for Products and/or Services placed by the Consumer.**

5. PRICE

- 5.1 The price payable by the Consumer for Products to be supplied and/or Services to be rendered by the Company in respect of each Supply Contract shall be those as set out in the Supply Contract and in the event the Supply Contract does not specify the price, the price contained in the Company's prevailing price list in force and effect on the date the Consumer has placed the relevant Order for the relevant Products and/or Services. The Consumer shall, on request, be furnished with a copy of the Company's prevailing price list. The Company however reserves the right to amend its price list at any time without notice to the Consumer.
- 5.2 **The purchase price is exclusive of value added tax, sales tax, and any and all other taxes that may be applicable to the Products and/or Services and any additional items not forming part of the purchased Products and/or Services, and any such taxes shall be payable by the Consumer at the applicable rates. Where an advance payment is subject to sales or value added tax (or equivalent), the sales or value added tax (or equivalent) arising on the advance payment shall be payable by the Consumer with the advance payment.**

6. PAYMENTS

- 6.1 The Company shall render a tax invoice in respect of Products sold and/or Services rendered and shall, unless a sale takes place on a cash basis, issue statements on a monthly basis.
- 6.2 **Payment shall be made by the Consumer in full to the Company, without any set-off, deduction or withholding, within 30 (thirty) days of the date of the relevant statement or tax invoice (as applicable),**

unless (i) in the event of sales taking place on a cash basis (in which event payment must be made in full prior to delivery) or (ii) expressly otherwise stated on such statement or tax invoice (as applicable).

- 6.3 Where Products and/or Services are purchased on credit, the credit terms of such purchases shall be regulated by the relevant credit application signed by the Consumer and the Company as well as clause 2 above.
- 6.4 All Supply Contracts accepted by the Company which result in the Consumer's account exceeding the prevailing credit limit granted by the Company to the Consumer shall, notwithstanding clause 6.2 above, become due and payable upon presentation of the tax invoice, and delivery of the relevant Products and/or Services may be postponed until the Consumer has effected payment.
- 6.5 Save for sales taking place on a cash basis, all payments in relation to Products and/or Services purchased by the Consumer shall be made in freely transferable funds, in the currency as stated on the applicable invoice, without any deductions or set-off, free of exchange and commission into the bank account designated by the Company for such purposes from time to time. No payment shall be deemed to have been received until the Company has received cleared funds.
- 6.6 **The Consumer shall be liable for any and all bank charges payable in respect of any payments made by the Consumer to the Company, pursuant to a Supply Contract or otherwise. The Consumer shall ensure that all such payments shall clear in the Company's designated bank account for the full purchase price payable.**
- 6.7 Unless otherwise agreed in writing between the Consumer and the Company, no early settlement discounts or any other discounts are given by the Company and the Consumer is not entitled to unilaterally deduct same from any amount due and payable for Products and/or Services rendered by the Company. Should the Company, in its sole discretion, agree to provide the Consumer with a discount (which agreement must be recorded in writing and signed by the Consumer and the Company), such discount cannot be used to set-off any amounts owing to the Company by the Consumer and the provision of such discount shall not place any obligation on the Company to provide any further or future discounts to the Consumer. The Company shall be entitled, in its sole discretion, to cease the giving of a discount to the Consumer, for whatsoever reason and without prior notice thereof.
- 6.8 **Every tax invoice and/or statement of the Company shall be deemed to be accepted by the Consumer if the Consumer has not expressly rejected such tax invoice in writing within 5 (five) business days from date of receipt thereof.**
- 6.9 **To the extent permitted by the CPA and where these Terms and Conditions are not subject to the CPA, the Consumer hereby waives all benefits which may arise out of the legal exceptions *non numeratae pecunial* (amount not paid over), *non causa debiti* (no cause of debt), *errore calculi* (computation errors), and revision of accounts and the Consumer hereby confirms that it is fully conversant with the force and effect thereof.**

7. INTEREST

The Company shall be entitled to charge interest on any amounts due and payable at the rate confirmed by the Company to the Consumer in writing from time to time (which may differ in respect of each Supply Contract), and failing such confirmation, shall accrue interest at an interest rate of 16% (sixteen percent) per annum,

calculated daily and compounded monthly in arrears, which interest rate will increase with 1% (one percent) per month up to a maximum interest rate of 25% (twenty five) percent. For the avoidance of doubt, “due and payable” shall mean such amounts that have not been paid by the date provided for payment thereof in clause 6.2.

8. DEPOSIT

- 8.1 The Company may in its sole discretion determine whether the Consumer is required to pay a deposit to the Company, prior to the placement of an Order or otherwise, and the amount of such deposit.
- 8.2 The Company shall be entitled to require the Consumer to increase the deposit held by the Company, should the Products held on consignment by the Consumer and/or the credit limit provided to the Consumer exceed the deposit then held by the Company.

Clauses 8.3 to 8.4 will only apply in the event of these Terms and Conditions being regulated by the CPA:

- 8.3 **All deposits paid are subject to a reasonable cancellation fee being deducted therefrom should the Consumer cancel the Order prior to the fulfilment of such Order for any reason.**
- 8.4 **The Consumer, to the extent that the Consumer has not already provided same in a credit application to the Company, elects to provide the Company with the Consumer’s bank account details for the sole purpose of enabling the Company to repay the Consumer the remainder of the deposit paid should the Consumer cancel the Order prior to the fulfilment of such Order for any reason. The “remainder of the deposit” shall be the aggregate amount of the deposit which remains subsequent to the deduction of the reasonable cancellation fee contemplated in clause 8.3.**

Clauses 8.5 and 8.6 will only apply in the event of these Terms and Conditions not being regulated by the CPA:

- 8.5 The Company may, to the extent that the Consumer has not already provided same in a credit application to the Company, require the bank account details of the Consumer.
- 8.6 All deposits paid are non-refundable unless (save in such instances as provided for under clause 18) the Company (i) cancels a Supply Contract for reasons other than a breach by the Consumer of the provisions of the Supply Contract, or (ii) cannot fulfil an Order per a Supply Contract in full.

9. WARRANTIES

Clauses 9.1 to 9.3 will only apply in the event of these Terms and Conditions being regulated by the CPA:

- 9.1 **The Company does not give any warranty, express or implied, in respect of the Products and/or Services not contained in these Terms and Conditions or a Supply Contract, other than those as contemplated in section 56 of the CPA. The warranties contemplated by the CPA will be limited in its scope and to the time period as prescribed by the CPA.**
- 9.2 **The Company warrants that the Products shall conform to the relevant product specifications as provided by the Company or the Consumer through the Company’s analytical data (such as a Certificate of Analysis) or other literature.**
- 9.3 **The Consumer further confirms that representations not contained in these Terms and Conditions or a Supply Contract, or reduced to writing and signed by the Company, will not entitle the Consumer to any**

claim against the Company in respect of such representations.

Clause 9.4 will only apply in the event of these Terms and Conditions not being regulated by the CPA:

- 9.4 The Company does not give any warranty express or implied for Products supplied or in respect of Services rendered and advice furnished except those contained in these Terms and Conditions or a Supply Contract. The Consumer further confirms that representations not contained in these Terms and Conditions or a Supply Contract or reduced to writing and signed by the Company will not entitle the Consumer to any claim against the Company in respect of such representations.

10. COMPLIANCE WITH LAWS

- 10.1 The Consumer warrants that, in respect of the Products, including but not limited to the storage, use and disposal thereof, it shall obtain and shall make available to the Company (on request by the Company and at the Consumer’s expense) copies of:

- 10.1.1 any and all licenses, permits, certificates, approvals and authorisations prescribed by applicable laws, whether statutory or regulatory;
- 10.1.2 any licence for customs and excise purposes required, including for a ‘Special Storage Warehouse’ or to register as a ‘rebate user’ in terms of the Customs and Excise Act, No. 91 of 1964. The Consumer furthermore warrants that it is and will at all times comply with the conditions and restrictions contained in the aforementioned licenses, as required by the laws of each applicable jurisdiction;
- 10.1.3 insurance against any pollution and/or environmental degradation that may be caused by the use, transport and/or handling of the Products by the Consumer (whether in the manufacturing process for which the Products are utilised or otherwise), in line with standard industry practices,

provided that, in the event of non-compliance by the Consumer with any customs and excise related licence, the Consumer undertakes to pay and reimburse the Company any penalties and costs which may be imposed and levied by the South Africa Revenue Service against the Company in terms of the Customs and Excise Act, No. 91 of 1964, or by any relevant authority in accordance with applicable laws. The Company shall, when penalised, be entitled to issue an invoice against the Consumer and the Consumer shall be liable to pay the Company within 30 (thirty) days from date of issue of the invoice. Failing which, the Company shall be entitled to institute legal action against the Consumer for recovery of same and all legal costs on an attorney and own client scale incurred by the Company shall be for the account of the Consumer.

- 10.2 The Consumer shall promptly notify the Company, upon becoming aware thereof, of any suspension, revocation, modification or amendment of any authorisation, approval, license or permit, any actual or potential claims, lawsuits, prosecutions, directives or notifications pertaining to the Consumer’s activities performed under these Terms and Conditions or any Supply Contract.

11. INDEMNITY AND LIMITATION OF LIABILITY

Clauses 11.1 to 11.2 will only apply in the event of these Terms and Conditions being regulated by the CPA:

- 11.1 **The Consumer agrees that the Company shall not under any circumstances whatsoever, be held liable**

for damages, direct, indirect, consequential or otherwise, suffered by the Consumer in respect of its use or on selling of any goods, which the Products were utilised to manufacture, or pursuant to Services rendered or advice furnished by the Company, unless the Company acted with intent or gross negligence, or unless such claim falls within the ambit of section 55, section 56 or section 61 of the CPA, in which instance the Company shall be liable to the extent and for the duration prescribed by the CPA.

11.2 **The Consumer acknowledges that it is its obligation to acquaint it with the specifications and characteristics of the Products ordered and its suitability for the purpose it intends on using the Products for. The Consumer further undertakes to advise its Consumers when on selling any goods which the Products were utilised to manufacture of the fact that the Products have different specifications and characteristics and depending on same its suitability for specific purposes vary and, if put to the wrong use, may result in losses/damages to be sustained and may even cause bodily injury and/or the death of a person and/or animal.**

Clauses 11.3 to 11.5 will only apply in the event of these Terms and Conditions not being regulated by the CPA:

- 11.3 The Consumer agrees that the Company (including its directors, employees, agents, representatives, service providers and the like) shall not under any circumstances whatsoever, be held liable for damages, direct, indirect, consequential or otherwise, suffered by the Consumer in respect of its use or on selling of any goods, which the Products were utilised to manufacture or pursuant to Services rendered or advice furnished by the Company.
- 11.4 The Consumer hereby indemnifies and holds harmless the Company (including its directors, employees, agents, representatives, service providers and the like) from and against any claims of whatsoever nature instituted by third parties in relation to their use of Products supplied or pursuant to Services rendered or advice furnished by the Company to the Consumer, including but not limited to claims and liabilities arising from the provisions of the CPA.
- 11.5 The Consumer acknowledges that it is its obligation to acquaint itself with the specifications and characteristics of the Products ordered and its suitability for the purpose it intends using same. The Consumer further undertakes to advise its Consumers when on selling good which the Products were utilised to manufacture of the fact that the Products have different specifications and characteristics and depending on same its suitability for specific purposes vary and, if put to the wrong use, may result in losses/damages to be sustained and may even cause bodily injury and/or the death of a person or an animal.

12. DELIVERY AND RETURNS

- 12.1 The Products will be dispatched by the Company within 30 (thirty) days from acceptance of an Order, or as soon as possible thereafter (as determined by the Company, in its sole discretion).
- 12.2 The Company shall be entitled to split the delivery of Products forming the subject matter of a Supply Contract and to invoice the Consumer separately for the portion of Products actually delivered.
- 12.3 In the event that the Consumer's Order exceeds the Company's estimated product planning and/or production capacity, the Company shall within 2 (two) days from placing of the Order advise the Consumer and both Parties shall mutually agree and revise the Order or alternatively cancel the Order.

12.4 The quantity and sufficiency of the Products so delivered shall be agreed to be correct and the Products delivered in full, in accordance with and upon receipt of the bill of lading (in circumstances of export of the Products) or signature by any representative of the Consumer at the delivery site, as applicable.

12.5 Unless otherwise agreed in writing by both Parties, delivery of the Products shall take place at the Consumer's place of business.

12.6 The Parties agree that the Incoterms shall be incorporated into these Terms and Conditions and that the Products shall be delivered:

12.6.1 in respect of any deliveries taking place within the borders of the Republic of South Africa, in accordance with DAP;

12.6.2 in respect of any deliveries taking place outside of the borders of the Republic of South Africa, in accordance with the Incoterm stipulated in the applicable Supply Contract.

Clauses 12.7 to 12.9 will only apply in the event of these Terms and Conditions being regulated by the CPA:

12.7 **While the Company will make all reasonable endeavours to meet all times and dates for delivery, such times or dates are best estimates only and do not constitute contractual obligations. Accordingly, the Company will not be liable for any loss and/or damages of whatsoever nature occasioned by delays in deliveries or completion of the Supply Contract, save to the extent the Company has acted with gross negligence.**

12.8 **The Consumer is entitled to return Products to the extent permitted by the CPA and at the risk and cost of the party as determined in sections 20 and 56 of the CPA. In the instances where Products may be returned at the Company's risk and cost the Consumer shall be obliged to allow the Company 5 (five) business days to collect the Products before acquiring the service of a third party to do so.**

12.9 **If a Supply Contract resulted from direct marketing, the Consumer may terminate the Supply Contract by giving the Company written notice within 5 (five) business days after the later of the date on which the Contract was concluded or the Products were delivered and thereafter return the Products at the Consumer's expense within 10 (ten) business days after the Products were delivered. The Consumer does not have to give the Company a reason and there will be no penalty, but the Company may impose a reasonable charge, as contemplated in the CPA, in respect of the Products returned.**

Clauses 12.10 to 12.11 will only apply in the event of these Terms and Conditions not being regulated by the CPA:

12.10 While the Company will make all reasonable endeavours to meet all times and dates for delivery, such times or dates are best estimates only and do not constitute contractual obligations. Accordingly, the Company will not be liable for any loss or damages of whatsoever nature occasioned by delays in deliveries or completion of a Supply Contract.

12.11 Products ordered and supplied by the Company in good order may not be returned once same has been delivered to the Consumer unless the Company has consented thereto in writing, and such Products shall be returned to the place as the Company may determine and all costs relating thereto shall be for the Consumer's account. All risk in and to the Products returned (and the liability to pay the purchase price thereof) shall remain vested in the

Consumer until the Company has inspected the Products and confirmed in writing that the Products and its packaging are in the Company's sole discretion, in a good condition. The Consumer will only be released from payment for the Products returned in good order once the Company has issued the written confirmation that the Products and its packaging are in a good condition.

13. PRODUCTS ON CONSIGNMENT

Delivery

- 13.1 Products held on consignment will be supplied to the Consumer, by the Company, by means of a computerised delivery note generated by the Company.
- 13.2 The Consumer shall send a month end stock sheet by no later than the 2nd (second) business day of each calendar month, in relation to the quantities of the Products on consignment consumed by the Consumer, by email to consignment@dolphinbay.co.za, which stock sheet needs to be accurate, and **in the event of any discrepancy found in the stock sheet and the actual volumes of Products consumed by the Consumer, the Company reserves the right to charge the Consumer the total amount of Product on hand.** The Company will invoice the Consumer for the Products on consignment consumed by the Consumer by the last business day of each month.
- 13.3 The quantity of any consignment of Products as recorded by the Company upon dispatch from the Company's place of business shall be conclusive evidence of the quantity received by the Consumer on delivery, unless the Consumer can provide conclusive evidence proving the contrary. The Company shall not be liable for any shortages in the quantity of the Products and the Consumer shall be deemed to have waived all its claims against the Company pursuant thereto, unless, the Consumer notifies the Company, the carrier and, where relevant, the appropriate agent of the Company's insurers, in writing:
- 13.3.1 within 48 (forty eight) hours of date of delivery in the event of partial loss or damage to the Products in transit;
- 13.3.2 within 14 (fourteen) days of date of invoice or advice of dispatch (whichever is the earlier) in the event of non-delivery of the whole or any separate part of the consignment.
- 13.4 The Company's liability for any purported shortages shall be limited to the replacement of the Products or, at the sole discretion of the Company, the issuing of a credit note at the *pro rata* purchase price of the Products against any invoice raised for that specific consignment.
- 13.5 All such consignments shall be physically checked and signed as correct, on the Company's delivery note or a nominated agent of the Company, by representatives or agents of both the Company and the Consumer. In the absence of a signed delivery note being provided to the Company, the quantity and sufficiency of the Products as dispatched by the Company, shall be agreed to be fully delivered once such Products have been included in the applicable consignment sheet.

Stocktaking and removal

- 13.6 The Products on hand with the Consumer from time to time shall at all times be clearly identifiable and be stored separate from the Consumer's own stocks. In this regard, the Consumer will demarcate a storage area separate from the area where it stores its own stock in which area only the stock of Products will be kept. For the purposes of reconciling stock holdings of Products from time to time,

only Products situate in such demarcated area will be taken into account.

- 13.7 The Company shall be entitled to remove the whole or any portion of the Products on consignment, subject to the following provisions:
- 13.7.1 if in the sole discretion of the Company, based on consumption by the Consumer over a reasonable period, the quantities of the Products in the Consumer's possession are in excess of what is reasonably required to satisfy the demands of the Consumer, the Company may withdraw the Products on consignment in whole or in part, which removal will be at the expense of the Company;
- 13.7.2 should the Company require utilising a part of such consignment stock, then such Products on consignment may be withdrawn by the Company, at its expense, should the Parties agree thereto in writing;
- 13.7.3 if the consignment stock remains unused by the Consumer for a period of 6 (six) months or more, from delivery thereof, the Company may, at the sole discretion of the Company, either (i) withdraw such unused Products at the expense of the Consumer or (ii) invoice the Consumer for such unused Products.
- 13.8 The Company will be entitled from time to time to verify the stocks of Products on hand and quantities thereof, and the Consumer shall make available to the Company's representative(s) the necessary clerical and manual assistance for this purpose. This will normally coincide with month end but can occur at such times as determined by the Company. **The onus to disprove the existence of any of the events or circumstance as contemplated hereinbefore shall be borne by the Consumer.**
- 13.9 **In the event of any deficiency in the quantity of the Products on consignment found on any check, or on termination of these Terms and Conditions, the Consumer will be liable to pay for the deficiency at the prevailing price list of the Company for the Products at the time of discovery of the deficiency.**

Access

- 13.10 The Consumer will ensure that free site entry and access to the Products is given to the Company during ordinary business hours by prior arrangement.
- 13.11 All assistance will be given to the Company, its officers, employees, representatives and agents to inspect the Products and to satisfy themselves and the Company in regard to proper use, storage and maintenance of the Products, and any other storage equipment of the Consumer as well as any other matters related to the Products or these Terms and Conditions.

Ownership

- 13.12 The Consumer shall ensure that the Products will not be subject to any lien, hypothec or attachment, and in the event of the Consumer not being the owner of the property on which the Products are stocked, it shall forthwith notify the landlord of the property of the fact that the Products are the property of the Company.

14. PRODUCT MODIFICATION

Any modification of the Products ordered and/or Services performed in terms of a Supply Contract shall require the prior written consent of the Company.

15. OWNERSHIP AND RISK

- 15.1 Ownership of and title to the Products shall not pass to the Consumer until the later of (i) the purchase price in respect

- of the Products in question have been paid in full or (ii) use of the Products by the Consumer.
- 15.2 Risk in and to the Products shall pass to the Consumer in accordance with EXW, from the applicable factory of the Company (unless otherwise agreed in writing between the Parties).
- 15.3 The Company is entitled to enter all and any premises owned, leased or utilised by the Consumer at any time during normal business hours to remove all and any Products supplied in terms of these Terms and Conditions that have not been paid for in part or in full by the Consumer. The Consumer herewith consents to such removal. For the avoidance of doubt, all Products bearing labels of the Company equivalent to those supplied in terms of these Terms and Conditions situated on any such premises owned, leased or utilised by the Consumer shall be deemed to have been supplied by the Company in terms of the Terms and Conditions unless the Company confirms otherwise in writing.
- 16. INTELLECTUAL PROPERTY**
- 16.1 The Company retains all intellectual property rights of whatsoever nature in its drawings, specifications, data and all other information and documents in relation to its Products and Services.
- 16.2 The Company's trademarks and names shall not be used by the Consumer without the prior written consent of the Company. The Consumer agrees that it shall not (or permit any third party to) reverse engineer, decompile, modify or tamper with the Products and/or Services provided.
- 16.3 No right or licence is granted in favour of or between the Parties hereto under these Terms and Conditions in relation to any patent, trademark, copyright, registered design, or other intellectual property right.
- 17. SAFETY, HEALTH AND ENVIRONMENTAL**
- 17.1 Should the Consumer arrange its own transport for the Products, the Consumer shall ensure that the transporter complies with all applicable laws regulating the transportation of dangerous goods. The Consumer shall at its cost implement and comply with:
- 17.1.1 all applicable laws;
- 17.1.2 all of the Company's policies, guidelines and standard to ensure safety and protection of health, life and the environment, as communicated by the Company to the Consumer from time to time, pertaining to the activities performed under these Terms and Conditions or any Supply Contract; and
- 17.1.3 any and all responsible care management practice standards applicable at the place of delivery.
- 17.2 The Consumer shall be liable for any incidents that may occur in connection with the Products resulting from or arising out of, without limitation, the storage, use, transport and disposal of the Products by the Consumer after delivery of the Products, which incidents include, but are not limited to, pollution or environmental degradation resulting from the unexpected, sudden and uncontrolled release of the Products ("Incidents"). This includes the following remediation process at the Consumer's cost:
- 17.2.1 implement emergency response, containment, mitigation and remedial measures, based on applicable laws (in particular sections 28 and 30 of the National Environmental Management Act, No. 107 of 1998, or similar legislation applicable in the jurisdiction where the Consumer uses, transports, handles and/or otherwise deals with the Products) and being reasonably acceptable to the Company and relevant authorities, pertaining to any Incidents, failing which the Company may initiate or undertake the required measures and recover the costs associated in so doing from the Consumer; and
- 17.2.2 identify, monitor, mitigate, contain and remediate any pollution, contamination or degradation of the environment caused by a release or spill of the Products, as may be required by applicable laws or any other specific obligation in terms of these Terms and Conditions, risk to human health or the environment, or a directive from a governmental authority, to a standard reasonably acceptable to the Company and relevant authorities, failing which the Company may initiate or undertake the requisite measures and recover the costs associated in so doing from the Consumer.
- 17.3 In the event of an Incident, the Consumer shall at its own cost:
- 17.3.1 immediately or as soon as reasonably possible after becoming aware thereof, notify the Company and relevant authorities (as the Act may stipulate) as well as the emergency response team appointed by the Company to conduct Remediation; and
- 17.3.2 conduct a root cause analysis as soon as reasonably possible after the Incident, with reference to the Company's root cause analysis guidelines.
- 17.4 The Consumer shall, at its cost and expense, dispose of any waste or hazardous waste and/or Product's drums and containers (as well as any Product residue, including contaminated soil/substances or any discarded matter) in a responsible manner and as required by applicable laws.
- 17.5 In the event of the removal of any equipment utilised in relation to delivery of the Products, at the point of delivery, the Consumer shall, at its cost and expense, be responsible for the rehabilitation of any areas at the point of delivery affected by the removal of such equipment.
- 17.6 Any Incidents at the point of delivery, whether caused intentionally or negligently by the Consumer, shall constitute a material breach of these Terms and Conditions and the Company shall in its sole discretion be entitled to terminate any and all Supply Contracts concluded with the Consumer, summarily without further notice to the Consumer.
- 17.7 Should the Company assist the Consumer in the disposal of any contaminated waste, as agreed between the Company and the Consumer, the Company expressly does not accept any responsibility during or after the disposal of the waste. The Company shall not be associated with the waste, including the disposal thereof, in any manner, apart from offering assistance. The Company expressly confirms that it is not an expert in the field of waste disposal and as such its assistance cannot be construed as professional advice in such regard. **The Consumer indemnifies and holds the Company harmless from any and all damages, loss, liability or costs which might arise out of or pursuant to the Company assisting the Consumer in the disposal of any waste as aforementioned.**
- 18. EXCLUSIONS**
- Clause 18.1 will only apply in the event of these Terms and Conditions being regulated by the CPA:**
- 18.1 **Except to the extent that the Company acted with gross negligence or fraudulent intent, the Company shall not be liable for any loss or damages arising from any failure or delay in providing Products and/or Services to the Consumer resulting from**

circumstances beyond the Company's reasonable control, including but not limited to labour disruptions, power failures, unforeseen public unrest, civil commotion, strikes, riots, terrorism, inclement weather, diesel shortages, coal shortages, strikes in the transport industry and/or acts of State.

Clause 18.2 will only apply in the event of these Terms and Conditions not being regulated by the CPA:

- 18.2 The Company shall not be liable for any loss arising from any failure or delay in providing Products and/or Services to the Consumer resulting from circumstances beyond the Company's reasonable control, including but not limited to labour disruptions, power failures, unforeseen public unrest, civil commotion, strikes, riots, terrorism, inclement weather, diesel shortages, coal shortages, strikes in the transport industry and/or acts of State.

19. INSPECTION AND DEFICIENCIES

- 19.1 **The Consumer shall be obliged to inspect the Products upon the delivery thereof and indicate on the waybill or delivery note (as applicable) if there is any damage and/or deficiencies to the Products delivered, and also immediately provide written notice thereof to the Company describing the aforesaid damage and/or deficiency in detail, failing which it will be deemed that the Products were received in good and working order.**
- 19.2 **Where the Supply Contract is subject to the CPA, clause 11.1 shall be applicable, save where the CPA provides otherwise, then the time period within which the Consumer shall be entitled to inspect Products purchased by it and to notify the Company of any failure of the Products to meet the Product Specifications shall be limited to the minimum time period prescribed by the CPA.**
- 19.3 The Company undertakes to supply Products to the Consumer which conform to the Company's specifications as set out in the Certificate of Analysis or product label.
- 19.4 The Company warrants that the Products will comply with the SANS 673 (CCA 60%) specifications at all times
- 19.5 Should any of the delivered Products be defective, the Consumer will advise the Company thereof within 72 (twenty two) hours from delivery of the Products, subject thereto that:
- 19.5.1 the Consumer must immediately ship to the Company a sample of the alleged defective Products, in an adequate quantity as directed by the Company;
- 19.5.2 the Company will submit the said sample to an independent laboratory for analysis, and the report will be made available to the Consumer immediately upon receipt thereof;
- 19.5.3 If the sample is found to be defective, the Company will replace the defective Products at its own cost;
- 19.5.4 all costs involved and associated with the independent analysis will be for the account of the Consumer. If the Products are found to be defective, the Company will refund the aforementioned costs to the Consumer;
- 19.5.5 should it be found that any safety seal or cap was tampered with or the integrity of the packaging of the Products has otherwise been compromised, the Company shall not be liable for any defect in such Products and shall not be obliged to follow the abovementioned process.
- 19.6 **The Company shall only be liable for defective or damaged Products if those Products were defective or damaged prior to delivery of those Products to the**

Consumer. For the avoidance of doubt, the Company's liability for damaged and/or defective Products shall be limited in accordance with clause 11.

20. FORCE MAJEURE

In the event of any act of God, strike, war-like operation, rebellion, riot, war, civil commotion, lock-out, combination of workmen, interference of trade unions, suspension of labour, fire, explosion, floods, failure of water or power supply, accident, acts, regulations or laws of any government or any circumstance arising or action taken beyond or outside the reasonable control of the Parties hereto preventing them or any of them from the performance of any of the obligations in terms of these Terms and Conditions or a Supply Contract (any such event hereafter called "**Force Majeure**") then the Party affected by such Force Majeure shall be relieved of its obligations hereunder during the period that such Force Majeure continues but only to the extent so prevented and shall not be liable for delay or failure in the performance of any obligations hereunder or loss or damage which the other Party may suffer due to or resulting from the Force Majeure, provided always that a written notice shall be promptly given of any such inability by the affected Party. Any Party invoking Force Majeure shall upon termination of such Force Majeure give prompt written notice thereof to the other Party.

21. BREACH

- 21.1 If the Consumer ("**Defaulting Party**") breaches any provision of these Terms and Conditions or a Supply Contract and remains in breach for 14 (fourteen) days after written notice to the Defaulting Party requiring that Defaulting Party to rectify that breach, the Company ("**Aggrieved Party**") shall be entitled, without prejudice to its right to hold the Defaulting Party liable for damages or any of its other rights, at its option:
- 21.1.1 **to sue for immediate specific performance of any of the Defaulting Party's obligations under these Terms and Conditions, whether or not such obligation is then due; or**
- 21.1.2 **cancel these Terms and Conditions, in which case written notice of the cancellation shall be given to the Defaulting Party, and the cancellation shall take effect on the giving of the notice.**
- 21.2 The Aggrieved Party's remedies in terms of this clause are without prejudice to any other remedies to which the Aggrieved Party may be entitled in applicable law, including without limitation, the Aggrieved Party's rights to claim damages.
- 21.3 **All legal costs incurred by the Company in consequence of any default of the provisions of these Terms and Conditions by the Consumer shall, subject to specific limitations in terms thereof, be payable on demand by the Consumer on the scale as between attorney and own client and shall include collection charges, tracing fees, the costs incurred by the Company in endeavouring to enforce such rights prior to the institution of legal proceedings and the costs incurred in connection with the satisfaction or enforcement of any judgment awarded in favour of the Company in relation to its rights in terms of or arising out of these Terms and Conditions.**
- 21.4 **All payments received shall be allocated firstly towards legal costs (if applicable), thereafter interest, and lastly towards the capital amount owing in respect of the Consumer's outstanding indebtedness.**

22. CANCELLATION

- 22.1 Without prejudice to any other rights of the Company under these Terms and Conditions, the Company shall be entitled to immediately terminate these Terms and Conditions by written notice in the event that the Consumer is placed in liquidation or under business rescue, whether provisional or final, or has passed a resolution for its voluntary winding-up (or, in each case, the equivalent or similar nature under the laws of the jurisdiction in which the Consumer is registered or its principal place of business) or the Consumer defaults on payment for the Products and/or Services.
- 22.2 The Company shall be entitled to cancel these Terms and Conditions at any time and for any reason, by giving 3 (three) months' written notice to that effect to the Consumer. Any and all obligations on the part of the Parties in respect of these Terms and Conditions that accrued before the date of cancellation shall remain enforceable between the Parties.
- 22.3 Upon cancelling these Terms and Conditions, the Company shall be entitled to elect whether the separate Supply Contracts, entered into between the Consumer and the Company, will be cancelled as well.

23. NOTICES AND DOMICILIUM

Any notice given by either Party shall be hand delivered or sent by registered post or e-mail to the other's *domicilium citandi et executandi* (i.e. an address where notices and legal documents may be delivered as will either be indicated on the relevant credit application or the Supply Contract, as the case may be) and shall be deemed to have been delivered 5 (five) business days after it has been sent by prepaid registered post to the Party's *domicilium citandi et executandi*, on the date of delivery by hand, the business day immediately following the date on which the email was sent, unless the contrary is proved. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

24. DISPUTE RESOLUTION

- 24.1 Save in respect of those provisions of these Terms and Conditions which provide for their own remedies which would be incompatible with the dispute resolution process contemplated hereinbelow, a dispute which arises between the Parties in connection with:
- 24.1.1 the formation or existence of;
- 24.1.2 the implementation of;
- 24.1.3 the interpretation or application of the provisions of;
- 24.1.4 the Parties' respective rights and obligations in terms of or arising out of, or the breach or termination of;
- 24.1.5 the validity, enforceability, rectification, termination or cancellation, whether in whole or in part of;
- 24.1.6 any documents furnished by the Parties pursuant to the provisions of,
- these Terms and Conditions and/or any Supply Contract, or which relates in any way to any matter affecting the interests of the Parties in terms of these Terms and Conditions and/or any Supply Contract, that dispute shall be referred to arbitration in Cape Town before a Senior Counsel of the Cape Bar of at least 15 (fifteen) years' standing. Should the Parties be unable to agree upon an arbitrator, such will be appointed by the chairperson/s of the Cape Bar Council.
- 24.2 The provisions of this clause:

- 24.2.1 constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions;
- 24.2.2 are severable from the rest of these Terms and Conditions and shall remain in effect despite the termination of or invalidity for any reason of these Terms and Conditions and/or any Supply Contract.

25. LAW AND JURISDICTION

- 25.1 The terms of any Supply Contract (including these Terms and Conditions) shall be governed by and construed in accordance with the laws of the Republic of South Africa, regardless of the place of execution or performance in terms of these Terms and Conditions or any Supply Contract. The Terms and Conditions set out in the United Nations Convention for the International Sale of Goods (CISG) and the Unidroit-Agreement dated May 28th, 1988 are hereby expressly excluded.
- 25.2 The Consumer and the Company agree that the courts of the Republic of South Africa shall have exclusive jurisdiction for any action or proceedings commenced under these Terms and Conditions and/or any Supply Contract.

26. ASSIGNMENT

- 26.1 The Consumer shall not cede and/or assign the benefit and/or the burden of any Supply Contract or these Terms and Conditions, in whole or in part to any third party without the prior written consent of the Company, which consent may in the Company's sole discretion be withheld.
- 26.2 The Consumer may not assign or cede its payment obligations hereunder without the prior written consent of the Company.
- 26.3 **The Company shall be entitled to cede, delegate and/or assign, subcontract and/or outsource any of the rights and/or obligations of the Company in terms of these Terms and Conditions and/or any Supply Contract to other parties ("Subcontractors") without any further the consent of the Consumer.**
- 26.4 The Company shall use its best endeavours to procure that the Subcontractors shall comply with the provisions of these Terms and Conditions and the terms hereof shall be applicable to such services to be provided by the Subcontractors *mutatis mutandis*.

27. PROTECTION OF PERSONAL INFORMATION

- 27.1 Where a Party hereto "**processes**" or requires the other Party to process any "**personal information**", as such terms are defined in POPI, belonging to that Party, or that of a related party (both acting as "responsible parties" as such term is defined in POPI), the Parties:
- 27.1.1 agree to comply with the provisions of POPI for processing of such personal information, including to only process any personal information received by a Party to the extent required hereunder and any further processing as may be authorised by a Party in writing; and
- 27.1.2 consent to the processing of any of their/its personal information in terms of, pursuant to or for purposes of any Supply Contract and/or these Terms and Conditions.
- 27.2 Without limiting the generality of the above, the Consumer hereby:

- 22.2.1 consents to the Company sharing its personal information with any of its third-party service providers, insurers or to other parties within the Company's group of companies, for the purposes of and in line with the provisions hereof;
- 22.2.2 warrants that where it provides any personal information on behalf of any other person (including its shareholders, directors, members, trustees and the like), it is authorised to give such personal information and to consent to the processing of such person's personal information on their behalf; and
- 22.2.3 agrees to the Company using its personal information for the purposes of informing the Consumer about any products or services the Consumer might be interested in, except if otherwise indicated by the Consumer.
- 27.3 The Consumer hereby agrees, notwithstanding any contrary provision in any other agreement between the Parties, that the Company retains its full rights to pursue any legal or equitable remedies in the event of any breach or threatened breach of POPI and/or this clause 21, and may prevent the Consumer, any of its agents or subcontractors, or any third party who has received personal information from the Consumer in breach hereof from processing such personal information by any legal means available. The Consumer further acknowledges that any breach of POPI and/or this clause 21 may subject it to applicable legal penalties, including those provided for under POPI and that the Company shall not be liable for any such legal penalties as may be incurred by the Consumer in this regard.
- 27.4 Within 30 (thirty) days after the termination hereof, for whatsoever reason, the Consumer shall return any personal information received by it under or pursuant hereto to the Company, or at the discretion of the Company, destroy such personal information, and shall not retain copies, samples or excerpts thereof (including any and all back-ups or other digital records thereof).
- 27.5 In cases where the Company has elected for the personal information to be destroyed, as provided for in clause 21.6 above, the Consumer shall, within 5 (five) business days of receiving the instruction to destroy the personal information, send a written confirmation to the Company confirming the destruction of such personal information.

28. MISCELLANEOUS

- 28.1 The Consumer shall take all reasonable steps to (a) protect and hold the Company's Confidential Information in confidence and prevent its disclosure to third parties; and (b) restrict its use to those purposes consented to in writing by the Company or permitted by these Terms and Conditions; provided, however, that the Consumer shall not be required to protect or hold in confidence any Confidential Information which (i) is or becomes available to the public without the fault of the Consumer, (ii) is independently developed by the Consumer, (iii) is disclosed to the Consumer by a third party known to the Consumer not to be under any duty of confidentiality to the Company with respect to such information or (iv) except as may otherwise be required by law. "**Confidential Information**" means the Company know-how, trade secrets, data, proprietary and business information and all other information advised by the Company to be confidential information or which, by its nature is or should be considered confidential, whether such information is marked as "confidential" or not. The termination of these Terms and Conditions, for any reason whatsoever, shall not impact or relieve the Consumer's obligations in terms of the Company's Confidential Information, as stipulated

hereinbefore (i.e. these confidentiality undertakings shall survive the termination of these Terms and Conditions).

- 28.2 Notwithstanding any express or implied provisions of these Terms and Conditions to the contrary, no latitude or extension of time which may be allowed by the Parties hereto in respect of any matter or thing that the Parties are bound to perform or observe in terms hereof, shall under any circumstances be deemed to be a waiver of the rights of the Party which grants the said latitude or extension, at any time, and without notice, to require strict and punctual compliance with each and every provision or term hereof.
- 28.3 No alteration, cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by both Parties to these Terms and Conditions.
- 28.4 Reference to "**writing**" or "**written**" means in writing signed by the issuing party and served by any means including facsimile and any form of electronic data interchange, i.e., the transmission of data via electronic communication links between the Parties or other machine-readable data media.
- 28.5 Reference to "**specifications**" used herein means the technical description (including relevant drawings) of the Products (including any packaging) and/or Services including but not limited to quality assurance programs, data, material content, method of manufacture, testing and generally describing the functional, technical and finished products requirements.
- 28.6 Each provision in these Terms and Conditions is severable, the one from the other, and, if at any time any provision is or becomes or is found to be illegal, invalid, defective or unenforceable for any reason by any competent court, the remaining provisions shall be of full force and effect and shall continue to be of full force and effect.
- 28.7 These Terms and Conditions and any Supply Contract shall bind, and shall endure for the benefit of, the Parties and their respective successors and assigns.

29. CPA CONSUMER'S WARRANTIES

- 29.1 In the event of the Consumer being a juristic person, the Consumer herewith warrants to the Company that as at date of signature hereof the Consumer's: (Tick ✓ the applicable box)

29.1.1	asset value (after allowance for depreciation) is equal to or exceeds R2 000 000;	Yes	No
29.1.2	annual turnover is equal to or exceeds R2 000 000	Yes	No
29.1.3	asset value (after allowance for depreciation) is less than R2 000 000;	Yes	No
29.1.4	annual turnover is less than R2 000 000.	Yes	No

- 29.2 The Consumer warrants that it will advise the Company by not later than the time of placing an Order or entering into a Supply Contract, in writing, that any of the warranties given in clause 29.1 is no longer applicable due to a change in the Consumer's annual turnover and/or gross asset value (after allowance for depreciation).
- 29.3 The Consumer acknowledges that the Company relies on these warranties to ensure that the Company complies with the provisions of the CPA.