

**Octopi Solutions Pty (Ltd)**  
**(Reg. No. 2020/222196/07);**

**Website Privacy Policy**

## Table of Contents

1. PERSONAL INFORMATION WE COLLECT AND RECEIVE.....	3
2. HOW WE USE THE PERSONAL INFORMATION WE COLLECT AND RECEIVE.....	5
3. HOW WE SHARE THE PERSONAL INFORMATION WE COLLECT AND RECEIVE.....	7
4. YOUR RIGHTS .....	7
5. RETENTION OF DATA.....	8
6. OUR COMMITMENT TO SECURITY .....	8
7. TRANSFER OF DATA .....	9
8. LINKS TO OTHER WEBSITES .....	10
9. CHANGES TO THIS PRIVACY POLICY .....	10
10. ACCESS TO YOUR PERSONAL INFORMATION .....	10
11 HOW TO WITHDRAW YOUR CONSENT.....	12
12 HOW TO CONTACT US.....	12
13 FEEDBACK.....	12
14 COMPLAINTS.....	12

This Privacy Policy describes how we process personal information we collect and/or receive from you from whatever source. We are committed to the privacy and confidentiality of information provided to us. This Privacy Policy provides you with information concerning the manner in which we collect, use and share your personal information collected by us from you directly and/or through our Website, or the use of our products and services.

We are continually improving our methods of communication and adding new channels of communication to our existing services. Because of these ongoing changes, changes in the law and the changing nature of technology, our data protection practices will change from time to time. If and when our data protection practices change, we will update this Privacy Policy to describe our new practices.

References to “Octopi”, “we”, “us”, “our” and “ours” in this Privacy Statement mean Octopi Solutions Pty (Ltd) (Reg. No. 2020/222196/07);

The terms “you”, “your” and “yours” when used in this Privacy Policy mean any user of our Website and any person or entity doing business with us or communicating with us.

Personal information means information which identifies you, and includes information such as your name, email address, telephone number, biometric information, passwords, as well as any other personal data collected or received by us.

We currently collect and process the personal information of individuals and entities referred to below. In terms of the Protection of Personal Information Act, 2013 (Act No. 4 of 2013) (‘POPIA’) we may not process (e.g. collect, record, and distribute) your personal information without your consent.

There may be instances where we may also collect some information that is not Personal Information because it does not identify you. The information collected is also kept confidential.

**By visiting this Website and communicating electronically or otherwise with us, you consent to the processing of your personal information as set out in this Privacy Policy.**

## **1. PERSONAL INFORMATION WE COLLECT AND RECEIVE**

We collect and receive Personal Information about you in the following ways:

### 1.1. **Personal Information you disclose to us**

This includes any Personal Information that you provide to us directly through personal contact or:

- 1.1.1. when you sign-up to utilise our services;
- 1.1.2. by filling in forms on our websites, or those provided to you;
- 1.1.3. when you enter a competition, promotion or complete a survey;
- 1.1.4. by posting comments or content on our social media pages;
- 1.1.5. when you contact us or we contact you and you provide information directly to us;
- 1.1.6. when you buy products and/or services from us; and
- 1.1.7. in general, via correspondence via e-mail, fax, telephone, and post.

### 1.2. **What Personal Information we collect**

1.2.1. When you use our services or our Website or purchase products and/or services from us, you may be required to provide us with the following types of Personal Information:

- 1.2.1.1. name and surname;
- 1.2.1.2. telephonic contact details and email address;
- 1.2.1.3. physical address and postal address;
- 1.2.1.4. identity or passport number;
- 1.2.1.5. date of birth;
- 1.2.1.6. your date of incorporation, registration number and registered address;
- 1.2.1.7. your preferences for particular products and services that we offer or may offer in the future; and/or
- 1.2.1.8. your contact with us – such as a note or recording of a call you make to one of our contact numbers, an email or letter you send to us, or other records of any contact you have with us;
- 1.2.1.9. if you provide us with products or services, your bank details;
- 1.2.1.10. if you provide us with products or services, your tax status and income tax and VAT numbers;

1.2.1.11. if you provide us with products or services, particulars of your BEE status;

1.2.1.12. your trading name;

1.2.1.13. such Personal Information we are obliged to collect to comply with the minimum health, safety, and social distancing measures and requirements on COVID-19, referred to in the Directives and the Regulations published under the Disaster Management Act; and/or

1.2.1.14. such other Personal Information as required by applicable laws.

### 1.3. Information we collect or receive when you use our website or social media platforms

We collect information when you use our Website or social media platforms by using cookies, web beacons and other technologies. Depending on how you access and use websites, we may receive:

1.3.1. log-in information;

1.3.2. information we infer about you based on your interaction with our products and services;

1.3.3. device information (for example the type of device you're using, how you access platforms, your browser or operating system and your Internet Protocol ("IP") address);

1.3.4. location information.

### 1.4. Information from third-party sources

We may receive additional information about you that is publicly or commercially available and combine that with the information we have collected or received about you in other ways.

With your consent and/or as permitted by law, we may also collect information about you from other organisations or third parties if this is appropriate and allowed by law. These include fraud-prevention agencies, banks, lawyers, accountants and credit bureaus.

## 2. HOW WE USE THE PERSONAL INFORMATION WE COLLECT AND RECEIVE

We take your privacy seriously and will only use your Personal Information to provide the products and services you have requested from us or to which you are contractually entitled. We will only use this information subject to your instructions, Personal Information protection laws and/or any duty of confidentiality that we may have. We use the information we collect and receive for the following general purposes:

2.1. to provide you with information, products or services you request from us;

2.2. in order to refer you to an appropriate third-party service provider;

2.3. to communicate with you;

2.4. to provide you with support; and

2.5. to provide effective advertising (for example to be provide you with news, special offers and general information about products, services and events which we offer, that are similar to those that you have already hired, purchased or enquired about).

2.6. We may use and analyse your personal information:

2.6.1. to provide or manage any information, or services requested by customers in general;

2.6.2. to help us identify customers or potential customers when they contact us;

2.6.3. to facilitate the delivery of our products and services to our customers;

2.6.4. to help us administer customer matters;

2.6.5. to assent to receive newsletters, alerts (such as Covid-19 or other alerts), reports, or other information or services from us;

2.6.6. to provide you with more information about a product or service or to contact you in respect of a question or complaint;

2.6.7. to maintain customer records;

2.6.8. to maintain supplier records;

2.6.9. for legal or contractual purposes;

2.6.10. for health and safety purposes;

2.6.11. to retain records in compliance with any applicable legislation;

2.6.12. to help us detect and prevent fraud and money laundering;

2.6.13. to help us recover outstanding debts;

2.6.14. to bill customers for products supplied and services rendered;

2.6.15. to carry out research and statistical analysis;

2.6.16. to recover outstandings or trace those who owe us money; and

2.6.17. to utilise equipment information for reporting purposes, global tracking of equipment and photos for warranty procedures in order to meet the MARC (Maintain and Repair Agreement) contractual obligations.

### 3. HOW WE SHARE THE PERSONAL INFORMATION WE COLLECT AND RECEIVE

- 3.1. We don't provide in any manner your Personal Information to third parties for any marketing purposes. Where appropriate, before disclosing personal information to a third party, we contractually require the third party to take adequate precautions to protect that information and to comply with applicable laws.
- 3.2. We may share information with:
  - 3.2.1. a limited number of our employees or sub-contractors to assist you to interact with us and do business with us;
  - 3.2.2. our business partners. We may share non-personally identifiable information with select business partners;
  - 3.2.3. other parties in response to legal process or when necessary to conduct or protect our legal rights;
  - 3.2.4. suppliers or agents involved in delivering the products and services you have ordered or used;
  - 3.2.5. where applicable, credit reference and/or fraud prevention agencies;
  - 3.2.6. any relevant regulatory authorities;
  - 3.2.7. debt collection agencies or other debt recovery organisations;
  - 3.2.8. law enforcement agencies, courts, or other public authorities if we have to, or are authorised to by law;
  - 3.2.9. our lawyers, accountants, for purposes of drafting or amending agreements, to recover amounts owing to us and to comply with applicable legislation;
  - 3.2.10. we will release information if it is reasonable for protecting us against fraud, defending our rights or property, or protecting the interests of Octopi, their directors and employees.

### 4. YOUR RIGHTS

- 4.1. You have the right to ask us not to contact you for marketing purposes. You can exercise this right at any time by emailing us at [eckaard@octopi.solutions](mailto:eckaard@octopi.solutions). We won't send you marketing messages if you tell us not to but we will still need to send you service-related messages.

- 4.2. Our websites use cookies. If you wish to reject our cookies, you can configure your browser to do so.
- 4.3. We want to make sure that any data we hold about you is up to date. So, if you think your Personal Information is inaccurate, you can ask us to correct or remove it.
- 4.4. You have a right to refuse to provide us with your Personal Information. However, if you do refuse to provide such information, or request restrict the use of such information, we may be unable to complete or fulfil the purpose for which such information was collected, including providing you with the products and/or services we were contracted to perform.

## 5. RETENTION OF DATA

We will retain your personal information only for as long as is necessary for the purposes set out in this privacy policy or to comply with our legal obligations, resolve disputes, and enforce our legal agreements and policies.

## 6. OUR COMMITMENT TO SECURITY

- 6.1. The security of your Personal Information and other data is important to us. While we strive to use commercially acceptable means to protect your Personal Information, we cannot guarantee its absolute security. However, we do employ a number of safeguards intended to mitigate the risk of unauthorized access or disclosure of your information. We will do our best to protect your Personal Information and we will use up to date technology that will help us to do this. We will at all times comply with our obligations under the applicable laws.
- 6.2. We are committed to implementing Personal Information safeguards. These security measures could for instance be measures such as one or more of the following:

6.2.1. access authorisations for employees and third parties;

6.2.2. protection and restriction of entrances and exits (restricted key cards and/or passes);

6.2.3. logging of the persons having access;

6.2.4. security of relevant premises (alarms and/or security guards);

6.2.5. access control to data and user control;

6.2.6. requirements for user authorisation and strict access control;

6.2.7. confidentiality obligations;

6.2.8. differentiated access policies (e. g. partial blocking);

- 6.2.9. controlling destruction of personal information;
- 6.2.10. logging of events and activities (monitoring of break-in attempts, or attempts of unauthorised access);
- 6.2.11. issuing and safeguarding the identification codes;
- 6.2.12. use of encryption where deemed appropriate by us;
- 6.2.13. automatic log-off of user IDs that have not been used for a substantial period;
- 6.2.14. controlling the removal of Personal Information;
- 6.2.15. ensuring that people only have access to their Personal Information; and/or
- 6.2.16. a commitment that all staff with access to Personal Information has this authority on a need-to-know basis, through restrictions to databases to ensure that the Personal Information can only be accessed and used to provide the products and services allowed as aforesaid.

- 6.3. Communications over the internet (such as emails) are not secure unless they have been encrypted. Your communications may go through several countries before being delivered – as this is the nature of the internet. We cannot accept responsibility for any unauthorised access or loss of Personal Information that's beyond our control.
- 6.4. Despite the security measures we have in place to protect your Personal Information, you acknowledge that it may be accessed by an unauthorised third party, e.g. as a result of illegal activity (such as hacking). . You are responsible for keeping your Personal Information secure and not sharing it with others.

## 7. TRANSFER OF DATA

- 7.1. We are based in and operate from South Africa. If you are corresponding with us from a country other than South Africa the various communications will necessarily result in the transfer of information across international boundaries. Your information, including Personal Information, may also be transferred to and maintained on servers located outside of your country of residence, where the data privacy laws, regulations and standards, may not be equivalent to the laws in your country of residence, however, we will make sure that your Personal Information is protected and we will enter into appropriate agreements to achieve this.
- 7.2. We might transfer your personal information to places outside of South Africa and store it there, where our suppliers may process it. If that happens, your Personal Information will only be transferred to and stored in a country that has equivalent, or better, data protection legislation than South Africa or with a service provider which is subject to an agreement requiring it to comply with data protection

requirements equivalent or better than those applicable in South Africa. Please note that countries in the European Economic Area (“EEA”) are considered to have adequate data protection laws. Other countries outside the EEA may not have data protection laws that are similar to those of South Africa, however, we will make sure that your Personal Information is protected and we will enter into appropriate agreements to achieve this.

- 7.3. Your use of our Website, followed by your submission of Personal Information to us, represents your consent to such transfer.
- 7.4. We will take all steps reasonably necessary to ensure that your Personal Information is treated securely and in accordance with this Privacy Policy.

## **8. LINKS TO OTHER WEBSITES**

Our Website or social media platforms may contain links to and from websites, mobile applications or services of third parties, advertisers or affiliates. Please note that we are not responsible for the privacy practices of such other parties and advise you to read the privacy statements of each website you visit which collects Personal Information. . You should make sure you are familiar with these.

## **9. CHANGES TO THIS PRIVACY POLICY**

We may update this Privacy Policy from time to time. Any changes that we may make to our Privacy Policy will be posted on our Website and will be effective from the date of posting.

The Privacy Policy was last updated on 10 April 2022.

## **10. ACCESS TO YOUR PERSONAL INFORMATION**

- 10.1. You have the right to request a copy of the Personal Information that we hold about you. If you would like a copy of some or all of your Personal Information, please email or write to us at the following address. We may make a small charge for this service. We want to make sure that your Personal Information is accurate and up-to-date. You may ask us to correct or remove information you think it is not accurate. Under the law, you have the right to access, correct, amend, delete your Personal Information, or object to the processing of your Personal Information.
- 10.2. You may at any time request:
  - 10.2.1. confirmation that we hold your Personal Information;
  - 10.2.2. access to your Personal Information;
  - 10.2.3. the identities or categories of third parties to whom we have disclosed your Personal Information; or

- 10.2.4. that we correct or delete any Personal Information that is incomplete, misleading, inaccurate, excessive or out of date.
- 10.3. Upon receipt of your written request and enough information to permit us to identify your Personal Information, we will disclose to you the Personal Information we hold about you, for which we may make a charge as allowed by applicable laws.
- 10.4. Requests to delete Personal Information are subject to any applicable legal and ethical reporting or document retention obligations imposed on us.
- 10.5. Requests may be made in writing to

Physical address:	19 Don Rose Woods, 951 Koedoeberg Road, Faerie Glen, Pretoria, Gauteng, South Africa
Postal address:	19 Don Rose Woods, 951 Koedoeberg Road, Faerie Glen, Pretoria, Gauteng, South Africa
Telephone	+27 789841611
Website	<a href="#">Octopi Solutions</a>
E-mail	<a href="mailto:eckaard@octopi.solutions">eckaard@octopi.solutions</a>

## 11. HOW TO WITHDRAW YOUR CONSENT

- 11.1. If you no longer want to receive communications (other than notifications required by law) from us, please contact our Information Officer, stating in writing that you wish to withdraw your consent and the extent of such withdrawal and you will be 'opted out'.
- 11.2. If you choose to opt-out, we will hold your contact details on file marked so that we do not contact you again. This is so that we do not contact you if your details are subsequently provided to us by a third party.

## 12. HOW TO CONTACT US

- 12.1. Please contact us if you have any questions about our Privacy Policy or Personal Information we hold about you:
- by email; or
  - write to us at our postal address stated above.

- 12.2. All comments, questions, concerns, or complaints regarding Personal Information/ Consents or this Policy, should be forwarded to our Information Officer at the following email address: [eckaard@octopi.solutions](mailto:eckaard@octopi.solutions)

### **13. FEEDBACK**

We welcome comments about this Privacy Policy. If you have any questions about this Privacy Policy, you may contact us by e-mailing us or by writing to us at the postal address set above.

### **14. COMPLAINTS**

- 14.1. Should you believe that We have utilised your personal information contrary to applicable law, you undertake to first attempt to resolve any concerns with US. If you are still not satisfied, you have the right to complain with the Information Regulator, under POPIA.

- 14.2. The contact particulars of the Information Regulator are:

The Information Regulator (South Africa), Forum III 3rd Floor Braampark, PO Box 31533, Braamfontein, Johannesburg, 2107

Mr. Marks Thibela

Chief Executive Officer

Tel No: +27 010 023 5207

Cell No: 082 746 4173

E-mail: [infoereg@justice.gov.za](mailto:infoereg@justice.gov.za)

## **IMPORTANT NOTICE**

***IN COMPLIANCE WITH SECTION 49 OF THE CONSUMER PROTECTION ACT (NO. 68 OF 2008) THE MEMBER'S ATTENTION IS DRAWN TO THE PROVISIONS OF:***

- ***CLAUSES 2.9, 3.1.3, 3.7, 8.1, 8.3, 10.2 AND 11 WHICH CONTAINS TERMS AND CONDITIONS THAT PURPORT TO LIMIT OR EXCLUDE THE COMPANY'S RISK AND/OR LIABILITY AND THE RISK AND/OR LIABILITY OF THE COMPANY'S REPRESENTATIVES;***
- ***CLAUSES 3.4, 4.3, 4.4, 7.1, 7.2, 10.1, 13.2, 13.3, AND 13.4 WHICH CONTAIN ACKNOWLEDGEMENTS OF CERTAIN FACTS WHICH APPLY TO THE CUSTOMER;***
- ***CLAUSE 8.2 AND 13.1 WHICH IMPOSE AN OBLIGATION ON CUSTOMERS TO INDEMNIFY THE COMPANY;***
- ***CLAUSES 3.1.2, 3.6, AND 5.4 WHICH CONSTITUTE AN ASSUMPTION OF RISK OR LIABILITY BY THE CUSTOMER.***

## **STANDARD TERMS AND CONDITIONS OF SUPPLY**

### **1. DEFINITIONS**

1.1 In this agreement, unless the context requires otherwise, the words as defined below will have meanings assigned to them hereunder namely:

- 1.1.1 "the company" means Octopi Solutions Pty (Ltd) (Reg. No. 2020/222196/07);
- 1.1.2 "the customer" means the person, partnership, firm, association, close corporation or company buying from the company in terms of this agreement;
- 1.1.3 "the goods" means all equipment, parts and other movables sold by the company;
- 1.1.4 "the intellectual property" means all the rights to intellectual property including (without limitation) the rights in and to the trademarks, service marks, trade names, domain names, logos, get-up, marketing and sales know-how, designs, patents, provisional patents, inventions (whether patentable or not), know-how (including confidential industrial and commercial information and techniques in any form), utility models, registered and unregistered design rights, copyright, software, database rights, rights in respect of any new or existing compilation of any data or information not covered under any existing copyright, any structured analysis, rating or other reports, application and any resulting know-how, use or any other results originating or following from or as a consequence of data being made available in respect of any of the aforementioned or part thereof, and all similar proprietary rights which may subsist in any part of the world including, where such rights are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such registrations, as well as any confidential information and all other intellectual property used, from time to time, for purposes of supply and conducting the business of the company;
- 1.1.5 "the quotation" means the written proposal to the customer for the supply of goods and/or services to which these terms and conditions are attached;
- 1.1.6 "the services" means all services rendered by the company at the request of the customer in terms of this agreement.

- 1.2 These terms and conditions do not apply to supplies to the extent that they would otherwise be void or unenforceable by reason of the provisions of the Consumer Protection Act, 2008. The statutory rights of consumers that enjoy the protection of the Consumer Protection Act are preserved throughout.

## **2. CONCLUSION OF CONTRACT**

- 2.1 The customer must place an order for goods and/or services in writing with the company.
- 2.2 The company shall be entitled to accept the customers' order in whole or part.
- 2.3 The company shall not be obliged to accept any order unless it is reduced to writing. In the event of the customer supplying the company with a verbal order, then, and in that event only, the company shall e-mail the customer a written confirmation of the said verbal order, which written confirmation shall be deemed to be binding on the customer, unless the customer objects to the terms of the written confirmation within 3 days of date of dispatch of the written confirmation by the company.
- 2.4 Upon acceptance by the company of the customer's written order, or upon dispatch by the company of the written confirmation and acceptance of a verbal order to the customer, a contract of supply shall be deemed to have been concluded between the customer and the company on the terms and conditions set forth herein. All sales of goods by the company are subject to these conditions of sale and no other conditions shall be binding on the parties notwithstanding that such conditions may be annexed, continued in or incorporated by reference in, any documents exchanged between the company and the customer and purport regulate the terms of any purchase by the customer.
- 2.5 In the event of any terms contained in the company's quote being at variance with the terms contained in these conditions of sale, then, and only in that event, shall the terms in the company's quotation supersede these conditions of sale.
- 2.6 In the event of the customer requesting the company to perform additional work, it shall request such additional work in writing to the company and, if accepted by the company, such acceptance shall be communicated to the customer in writing, and such additional work shall then be undertaken by the Company at its normal rates (unless otherwise specified in writing) on the terms and conditions set forth herein.
- 2.7 A binding agreement shall also be concluded on receipt of the customer's signature on the company's written quotation.
- 2.8 When the company is required to manufacture or engineer or supply goods to the customer's specification and/or drawings or design, or carries out work according to the customer's instruction, or those of its nominees, the company accepts no responsibility for the efficiency, effectiveness or workability of goods so manufactured or work so carried out.
- 2.9 Orders, tender or quotations are based on information and measurements supplied by the customer or measurements taken on behalf of the customer and the company will accept no responsibility for incorrect measurements and/or incorrect description of materials, the correctness of which lies solely with the customer. It is accepted that the customer has checked and agreed to the measurements, description of goods and materials and conditions of sale as stated on the order form or quotation of the company.
- 2.10 Where specifications are to be supplied, the customer shall supply such specifications in a reasonable time to enable the company to complete delivery timeously.
- 2.11 Any alteration to the goods at the customer's request will be for the customer's account calculated at the company's prevailing rates in respect of material used, time and labour spent and transport costs.

## **3. DELIVERY**

- 3.1 Notwithstanding any other provision to the contrary, the obligation to deliver goods and/or services shall in all cases be subject to the following provisions:
- 3.1.1 the availability to the company of the goods ordered or the materials or parts or labour needed to manufacture, engineer and/or supply the goods and/or services;
- 3.1.2 time shall not be of the essence of the contract and delivery dates shall be treated as approximate only based on the latest information available to the company. Under no circumstances shall the customer be entitled to withdraw from or cancel the contract on account of any delay in delivery or have any claim of any nature whatsoever against the company arising from late delivery;
- 3.1.3 the company shall be exempted from and shall not be liable under any circumstances whatsoever for any indirect or consequential damages of any nature whatsoever and whether in the contemplation of the parties or not which the customer may suffer as a result of any delay in delivery of the goods and/or services ordered.
- 3.2 The company however undertakes to use its best endeavours to adhere to the specified delivery dates.
- 3.3 Delivery shall be by the company ex works from the company's premises.

- 3.4 The company's delivery note signed or countersigned by the customer or employee of the customer shall for all purposes be deemed to be accurate in all respects and shall serve as *prima facie* proof of delivery of the goods ordered by the customer.
- 3.5 Unless otherwise agreed in writing, the company is entitled to make deliveries by instalments or partial deliveries. Each instalment shall be construed as constituting a separate contract to which all the provisions of these conditions shall (with the necessary changes) apply.
- 3.6 The customer shall take delivery of the goods promptly upon the delivery date or dates or at the intervals stated in the contract or as soon thereafter as it is notified by the company that the goods are available for delivery. If for any reason the customer fails to call off or give delivery instructions, or take delivery of the goods on the due date, or upon receipt of such notification, or otherwise causes or requests a delay in delivery, then, without prejudice to any other rights of the company hereunder, the company shall be entitled to store or arrange for the storage of the goods at the risk of the customer and it if does so:
  - 3.6.1 it shall so inform the customer in writing, and
  - 3.6.2 the customer shall pay or reimburse the reasonable cost (including insurance) of such storage from the due date, or the date of notification as aforesaid, until delivery to the customer.
- 3.7 In cases where the company carries or procures the carriage of the goods, the company shall not in any event be liable for loss of or damage to the goods in transit unless the following conditions are complied with:
  - 3.7.1 in the case of any loss from a consignment of goods or of damage to the goods the company must be notified in writing within 3 clear days of delivery to the customer;
  - 3.7.2 in the case of non-delivery of the whole consignment of the goods, the company must be notified within 14 clear days after the date of invoice.

#### 4. PRICE AND PRICE INCREASES

- 4.1 The price of the goods and/or services shall be that stated in the quotation at the time of the conclusion of the contract and shall exclude VAT and where no price has been quoted, the price shall be the company's standard price current at the date of acceptance of the order.
- 4.2 All prices quoted are valid for the period stated on the quotation or if no period is stated for 30 days.
- 4.3 The company reserves the right by giving notice to the customer at any time before delivery to increase the price of the goods to reflect any increase in the cost to the company which is due to any factor beyond the control of the company (such as without limitation, foreign exchange rate fluctuations, alteration of import duties) any change in delivery dates, quantities or specifications for the goods which are requested by the customer or any delay caused by any instructions of the customer or failure of the customer to give adequate information or instructions, or pay the required deposit.
- 4.4 Any tender or quotation made by the company may be withdrawn at any time before acceptance. If not accepted within 30 days from the date thereof the tender or quotation shall be deemed to have been withdrawn.

#### 5. PAYMENT

- 5.1 Payment of the contract price shall be made in the following manner, unless otherwise stipulated in the company's quote:
  - 5.1.1 A deposit of 50% of the contract price shall be paid to the company upon acceptance by the company of the customer's order, or upon receipt by the customer of the company's e-mailed confirmation of a verbal order placed by the customer or upon the customer's acceptance of the company's written quotation.
  - 5.1.2 The balance of the contract price shall be paid by the customer upon the date of delivery but prior to the goods being dispatched for or made available for delivery.
- 5.2 Payment of the contract price:
  - 5.2.1 Shall be made by the customer into the company's bank account with First National Bank (FNB), Account no 62860489931, Branch (branch code: 250655) or such other bank account of the company as it may advise the customer from time to time; or
  - 5.2.2 Shall be affected in cash to the company's address reflected on the company's invoice; or
  - 5.2.3 Shall be affected by way of electronic funds transfer in favour of the company prior to dispatch/delivery of the goods ordered to the customer.
- 5.3 Payment shall be deemed to have been made only when the amount owing in respect of the contract price is correctly reflected as a credit in the bank account of the company, and provided that the amount is in fact paid.

- 5.4 The company does not appoint the post office or any courier as its agent for payment by post. In the event of any payment/s being mislaid or lost in the post, the customer shall be liable to the company for payment of the amount owing.
- 5.5 The customer accepts that manufacturing/engineering (if applicable) shall not commence until the deposit has been paid in full.
- 5.6 A certificate signed by any manager or director of the company stating the customer's indebtedness, as at the given date shall be *prime facie* proof of the amount due and owing for the purpose of all legal proceedings instituted by the company against the customer.
- 5.7 The customer shall not be entitled to withhold payment or to do a set-off for whatever reason.
- 5.8 All payments shall be made to the company in South African currency.
- 5.9 No retention monies may be deducted from any amount due by the customer to the company.
- 5.10 If payment for the goods supplied under this or any other contract is overdue in whole or in part, the company (without prejudice to any of its other rights) may suspend its performance until such payment is received and/or after having obtained a court order to that effect or with the consent of the customer retake possession of and/or resell any goods, the title to which it has by these conditions retained and the customer shall, upon the request of the company, allow the company's agents to enter its premises during normal working hours for the purpose of recovering possession of such goods.
- 5.11 Notwithstanding any other agreement as to the terms of payment, the total invoice price shall immediately become due and payable and the company shall have the right (but shall not be obliged) forthwith to terminate this contract (without prejudice to any other of its rights) upon the occurrence of any of the following events:
  - 5.11.1 if the customer commits any act of insolvency or if an application for its liquidation/sequestration is made against the customer;
  - 5.11.2 if the customer ceases or threatens to cease carrying on its business;
  - 5.11.3 if the customer shall enter into any negotiations for an arrangement or composition with its creditors or any of them;
  - 5.11.4 in the event of the customer being a limited company, if an application is presented for business rescue or a resolution is proposed/passed to wind up the customer or if a receiver of its assets or undertaking or part thereof, is appointed;
  - 5.11.5 if any execution is levied on the customer.
- 5.12 Upon any such termination the company shall have such rights of repossession and resale as are set out in condition 5.10 above.

## 6. PASSING OF OWNERSHIP AND RISK

- 6.1 Ownership in the goods supplied by the company shall remain vested in the company until payment has been made by the customer in full of all amounts owing to the company (whether under this contract or otherwise), but risk in and to the goods shall pass to the customer on delivery.
- 6.2 Notwithstanding such retention of title, the company shall be entitled to institute an action for the price as soon as payment falls due.
- 6.3 The customer acknowledges that it is in possession of the goods solely as bailee and in a fiduciary capacity for the company until such time as the price and all other sums due from the customer to the company, whether under this contract or otherwise, have been paid in full. Until such time the customer will store the goods on its premises separately from others' goods (including its own) and in a manner which makes them readily identifiable as belonging to the company and shall not alter, modify or add to any such goods or any marking or identification on them and shall maintain them in good condition.

## 7. CLAIMS AGAINST THE COMPANY

- 7.1 It is a condition of each sale that goods are sold voetstoots and unless stated in writing otherwise, without any warranties whatsoever. In addition the customer shall be precluded from raising any complaints or disputing liability to the company in any way unless it shall have notified the company of its complaints or grounds of dispute in writing within 7 (seven) days of receipt of the goods in question. Notwithstanding the timeous raising of a complaint or dispute of liability by the customer, the customer shall under no circumstances be entitled to withhold payment in respect of the goods from the company pending the resolution of such dispute or complaint. Subject to the foregoing, the company shall in its discretion be entitled to either remedy any failure by adjusting, repairing or replacing the goods in question or refunding the whole or part (as the case may be) of the contract price paid to it by the customer in respect of such goods.

- 7.2 All items of equipment and supply which have neither been designed nor manufactured by the company will have the standard manufacturers/suppliers warranties and guarantees against defects.

## 8. LIMITATION OF LIABILITY

- 8.1 The customer shall have no right of action (notwithstanding the termination or lapse of this contract) against the company, its agents, servants, employees or independent contractors and the company shall not be liable for any loss (including pure economic loss), damage or injury whether direct, indirect or consequential suffered by the customer as a result of a breach of this contract or the commission of a delict by the company.
- 8.2 The customer hereby indemnifies and holds the company harmless against all liability for any loss (including pure economic loss), damage or injury whether direct, indirect or consequential suffered by the customer as a result of a breach of this contract or the commission of a delict by the company.
- 8.3 In the event of the company incurring any liability of whatever nature in terms hereof or any delictual liability, then such liability shall be limited to the purchase price of the goods and/or services (excluding VAT).

## 9. BREACH

- 9.1 In the event of the customer failing to make payment to the company on due date or committing a breach of any other terms of these Terms and Conditions and failing to remedy such breach within 7 (seven) days after delivery of written demand, the company shall be entitled (but not obliged) to terminate this contract forthwith.
- 9.2 Should the customer fail to pay the amount due on due date, or should any cheque, promissory note or other bill of exchange given to the company in respect of any indebtedness of the customer under this contract be dishonoured by non payment, or should the customer be sequestered/liquidated or placed under business rescue (whether finally or provisionally) or should the customer commit any act of insolvency in terms of Section 8 of the Insolvency Act or enter into any compromise with its creditors, or fail to satisfy any default judgment granted against him, or apply for his rescission thereof within 10 (ten) days after date of judgment, this contract may, at any time thereafter, without prejudice to any other rights or remedies available to it at law, be terminated at the company's discretion.

## 10. LEGAL CHARGES

- 10.1 In the event of the company instructing its attorneys to recover money or goods from the customer, the customer shall be liable for and pay all legal costs incurred by the company on the attorney and own client scale.
- 10.2 In the event of the customer instructing its attorneys to take action against the customer, the company shall be liable for and pay all legal costs incurred by the customer on the attorney and own client scale.

## 11. FORCE MAJEURE

- 11.1 The company shall not be considered in default of its obligations in terms of the agreement if the company is prevented from performing by acts of God, war, riots, civil insurrection, acts of foreign enemies, strikes or lockouts, acts of civil or military authority, fires, floods, earthquakes, tempests and/or legislation or directives of government ("force majeure").
- 11.2 Either Party shall have the right to terminate this agreement upon 30 days' written notice to the other Party, in the event that the force majeure event continues for a period of 182 days.
- 11.3 In the event that the agreement is terminated by either Party as aforesaid, the company shall be paid the price of work done and materials/goods delivered up to date of termination plus any costs incurred.

## 12. DOMICILIA

- 12.1.1 The Parties hereto choose *domicilia citandi et executandi* for all purposes of, and in connection with, the agreement, the physical and email addresses as detailed in the quotation.
- 12.1.2 The parties shall be entitled to change the address as referred in 12.1.1 from time provided that any address selected by either of them shall be situated in the Republic of South Africa and any such change shall only become effective upon receipt of notice in writing by the other party of such a change.

### 13. CUSTOMER'S SPECIFICATIONS AND DESIGNS

- 13.1 When goods or parts of goods are supplied to the customer's specifications or designs, the customer shall indemnify the company fully in respect of loss, damages, costs and expenses awarded against or incurred by the company in connection with or paid or agreed to be paid by the company in settlement of any claim made or proceedings brought against the company by any party claiming infringement of patent rights, copyright design, trade mark or other industrial or intellectual property rights which results from the company's use of the customer's specification or design.
- 13.2 The customer warrants that any design or specification furnished or given to the company shall not be such as will cause the company to infringe any patent, copyright design, trademark or other industrial or intellectual property right in the execution of the customer's order.
- 13.3 The customer warrants that any design or specification furnished or given to the company shall be complete in every respect (including without limitation all necessary technical information) sufficient to enable the company to manufacture the goods to comply with all applicable performance, durability, health, safety, conformity and labelling requirements whether the customer or the customer's customer or howsoever arising at law and the customer shall indemnify the company fully in respect of loss, damage, costs and expenses incurred by the company which results from any incompleteness in the customer's specification or design.
- 13.4 The customer acknowledges that any and all of the intellectual property of the company used in connection with the supply made in terms of this agreement is and will remain the exclusive property of the Company, or any successor-in-title.
- 13.5 The customer shall not question or dispute the ownership of such rights to intellectual property at any time during the subsistence of this agreement or thereafter.

### 14. GENERAL

- 14.1 The company shall not be bound by any oral statement, recommendations, figures, advises, formulae, specifications, prices quoted, acceptances, or representation unless they are in writing and signed on behalf of the company by its duly authorized representative.
- 14.2 No variation of any contract shall be binding upon the company unless in writing and signed by duly authorised representative of the company.
- 14.3 Unless inconsistent with the context, words relating to any gender shall include the other genders, words relating to the singular shall include the plural and *vice versa* and words relating to natural persons shall include associations of persons having corporate status by statute or common law.
- 14.4 No relaxation or indulgence granted to the customer by the company at any time shall be deemed to be a waiver of any of the company's rights in terms hereof and such relaxation or indulgence shall not be deemed a novation of any of the terms and conditions set out herein or create any estoppel against the creditor.
- 14.5 No verbal guarantee, warranty, representation or any promise of whatever nature made by the company's officials, employees or agents are binding upon the company unless expressly mentioned herein or confirmed in writing.
- 14.6 This contract will be interpreted according to the laws of the Republic of South Africa.
- 14.7 The customer consents to the jurisdiction of the High Court of South Africa in any action or application arising out of any contract.