



TERMS AND CONDITIONS OF PACKAGING:

UNIPACK FRUIT PROPRIETARY LIMITED

(Registration Number: 2000/025396/07)

IMPORTANT NOTES

- A. These Terms and Conditions shall apply to the rendering of *inter alia* packing, cooling and/or storing services ("**Services**") by Unipack to the Producer, as applicable and relevant. These Terms and Conditions shall be incorporated into every Supply Contract. These Terms and Conditions created hereby, as amended from time to time, shall subsist indefinitely until terminated in accordance with these Terms and Conditions.
- B. Please read these Terms and Conditions carefully. Please note in particular the parts that are in **bold** writing as these parts might limit the Company's risk or liability, require the Producer to assume risk and/or liability for certain issues, or to acknowledge certain facts.
- C. **The Company's liability in respect of damages is limited, specifically the Producer's ability to recover losses and/or damages sustained from the Company, as contemplated in clauses 12, 14, 15 and 18 below.**
- D. **The Services to be rendered in relation to these Terms and Conditions and/or any Supply Contract, will be rendered in accordance with: (i) Unipack's standard operating conditions and protocols applicable at such point in time, as communicated by Unipack to the Producer and as amended by Unipack from time to time; (ii) the specific packaging, cooling, handling and/or storing instructions, specifications and conditions as agreed upon between Unipack and the Producer; and (iii) the forecasts and schedules provided by the Producer to Unipack in relation to the delivery of Fruit by the Producer to Unipack.**
- E. **The Producer will not be entitled to rely on any warranties or representations not contained in a Supply Contract, as stated in clause 14 below. The Producer will not be entitled to rely on warranties or representations made to it in respect of the 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 Producer in accordance with clause 3.2 below.**
- F. **The Producer 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 rendering of Services by the Company.

- G. **These Terms and Conditions are applicable to (i) transactions falling within the ambit of the CPA (should the Producer 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 Producer 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*; and
- 1.1.3 natural persons include created entities (corporate or non-corporate) and the state and *vice versa*.
- 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:
- 1.7.1 “**Company**” or “**Unipack**” means Unipack Fruit Proprietary Limited (Registration Number 2000/025396/07);
- 1.7.2 “**CPA**” means the Consumer Protection Act, No. 68 of 2008, as amended;
- 1.7.3 “**Dibanisa**” means Dibanisa Fruit Proprietary Limited (Registration Number (2005/009756/07);
- 1.7.4 “**Fruit**” means the fruit of the Producer, in relation to which the Services are rendered by the Company to the Producer;
- 1.7.5 “**Order**” means each acceptance of a quotation or placing of an order by the Producer for Services to be rendered by the Company, as indicated by the Producer, whether same is conveyed to the Company in writing or orally;
- 1.7.6 “**Parties**” means the Producer and the Company and “**Party**” shall refer to either one of them, as the context requires;
- 1.7.7 “**POPI**” means the Protection of Personal Information Act, No. 4 of 2013, as amended;
- 1.7.8 “**Prime Rate**” means the publicly quoted minimum lending rate of interest, calculated on a net annual compounded basis, charged by Nedbank Limited on unsecured overdrawn current accounts of its most favoured corporate clients in the private sector from time to time (and in the case of a dispute as to the rate so payable, the rate shall be certified by any manager of any branch of the said bank, who’s authority or appointment need not be proved and whose decision shall be prima facie proof of the said rate);
- 1.7.9 “**Producer**” means the producer, procuring the rendering of Services by the Company pursuant to these Terms and Conditions and/or any Supply Contract;
- 1.7.10 “**Rand**” means South African Rand, the lawful currency of the Republic of South Africa;
- 1.7.11 “**Supply Contract**” means the Order or other contract recording the terms of the specific rendering of Services which has been signed by both Parties, or as otherwise permitted in clause 4.1;
- 1.7.12 “**Terms and Conditions**” means these trading terms and conditions set out in this document (which, for the sake of clarity, includes the important notes).
- 2. CREDIT**
- 2.1 **Where the Producer 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 Producer and the Company.**
- 2.2 **If applicable, the Producer authorises the Company and its officer, employees and agents (together “representatives”) to investigate the Producer’s credit history in any manner and from any source deemed by the Company as appropriate.**
- 2.3 Should the Producer exceed its credit limit as indicated on the credit application form or its account becomes past due, the Producer 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 Producer 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 Producer’s account.
- 2.4 The Producer will forthwith upon request from the Company update its credit information for the purpose of increasing or maintaining credit limits.
- Clause 2.5 will only apply in the event of these Terms and Conditions not being regulated by the CPA:
- 2.5 As security for all moneys (whether past or present) owing by the Producer to the Company pursuant to these Terms and Conditions, the Producer hereby cedes, assigns and make over to Unipack all its right, title and interest in and to any payments due to it by any agent responsible for the marketing and/or selling of the Producer’s Fruit (to the extent that the Company is not responsible for same) or by any third party distributing or buying the Producer’s Fruit. Unipack hereby accepts the said cession. The Producer undertakes and warrants that it has not ceded the aforesaid entitlement to payments to any other person and that it will not cede such rights further.
- 3. CONTRACT**
- 3.1 These Terms and Conditions (with the applicable Supply Contract(s)) shall solely govern the relationship between the Company and the Producer in respect of the rendering of the Services by the Company to the Producer.
- 3.2 These Terms and Conditions shall be subordinate to any terms and conditions referred to in any other documentation (including any Supply Contract), which is a formal written agreement signed by the Company and the Producer.

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 until being accepted, the Company is not obliged to 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 Services and in such circumstances the information contained in any document reflecting the Producer's order instructions (whether or not signed by the Producer and/or the Company) shall serve as *prima facie* (at first sight) proof of such order and the Producer's instructions relating thereto.

4.2 The Supply Contract for the Services the Producer wishes to procure from the Company shall indicate *inter alia* the following information:

4.2.1 the types of Services which the Producer wishes to procure;

4.2.2 the amounts payable by the Producer to the Company for the Services;

4.2.3 the date(s) upon which the Services are to be performed;

4.2.4 specifications in relation to the rendering of the Services by the Company.

4.3 **The Company shall be entitled to accept or reject any or all requests for Services placed by the Producer.**

5. PRICE

5.1 The price payable by the Producer for 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 Producer has placed the relevant Order for the relevant Services. The Producer 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 Producer, and it is therefore the responsibility of the Producer to familiarise itself with the prevailing pricelist, or alternatively obtain a quotation from the Company, before placing an Order.

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 Services and any additional items not forming part of the purchased Services, and any such taxes shall be payable by the Producer 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 Producer with the advance payment.

6. PAYMENTS

6.1 The Company shall render a tax invoice in respect of Services rendered and shall, unless a sale takes place on a cash basis or in the event that Dibanisa is appointed as agent of the Producer, issue statements on a monthly basis, unless otherwise stipulated in the relevant Supply Contract.

6.2 **Unless otherwise stipulated in these Terms and Conditions and/or any Supply Contract, payments shall be made by the Producer 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 expressly otherwise stated on such statement or tax invoice (as applicable).**

6.3 Where Services are requested on credit, the credit terms of such purchases shall be regulated by the relevant credit application signed by the Producer and the Company as well as clause 2 above.

6.4 All Supply Contracts accepted by the Company which result in the Producer's account exceeding the prevailing credit limit granted by the Company to the Producer shall, notwithstanding clause 6.2, above, become due and payable upon presentation of the tax invoice, and rendering of the Services may be postponed until the Producer has effected payment.

6.5 Save for sales taking place on a cash basis or in the event that Dibanisa is appointed as agent of the Producer, all payments in relation to Services purchased by the Producer 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.

6.6 It is recorded that in the event that Dibanisa is appointed as agent of the Producer (i.e. where Dibanisa markets, distributes and sells fruit on behalf of the Producer), the Producer irrevocably authorises and instructs Dibanisa to deduct all amounts owing by the Producer to the Company in terms of a Supply Contract from the selling price received by Dibanisa arising from it acting as agent of the Producer. To the extent applicable, aforementioned provision shall stipulate a *stipulatio alteri* (contract for the benefit of a third party) and shall be capable of express or implied acceptance at any time, either in writing or orally, by Dibanisa as if it were a party to these Terms and Conditions. Notwithstanding the foregoing, the consent of Dibanisa shall not be required in respect of any amendment or termination of these Terms and Conditions.

6.7 **The Producer shall be liable for any and all bank charges payable in respect of any payments**

made by the Producer to the Company, pursuant to a Supply Contract or otherwise. The Producer shall ensure that all such payments shall clear in the Company's designated bank account for the full purchase price payable.

- 6.8 No early settlement discounts or any other discounts are given by the Company and the Producer is not entitled to unilaterally deduct same from any amount due and payable for Services rendered by the Company.
- 6.9 **Every tax invoice and/or statement of the Company shall be deemed to be accepted by the Producer if the Producer has not expressly rejected same in writing within 5 (five) business days from date of receipt thereof.**
- 6.10 **To the extent permitted by the CPA and where these Terms and Conditions are not subject to the CPA, the Producer 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 Producer hereby confirms that it is fully conversant with the force and effect thereof.**

7. INTEREST

The Company shall charge interest on any amounts due and payable at the rate confirmed by the Company to the Producer in writing from time to time (which may differ in respect of each Supply Contract), and failing such confirmation, interest shall be charged at the Prime Rate plus 2% (two 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 Producer is required to pay a deposit to the Company, prior to the placement of an Order or otherwise, and the amount of such deposit.

Clauses 8.2 and 8.3 will only apply in the event of these Terms and Conditions being regulated by the CPA:

- 8.2 **All deposits paid are subject to a reasonable cancellation fee being deducted therefrom should the Producer cancel the Order, prior to the fulfilment of such Order, for any reason.**
- 8.3 **The Producer, to the extent that the Producer has not already provided same in a credit application to the Company, elects to provide the Company with the Producer's bank account details for the sole purpose of enabling the Company to repay the Producer the remainder of the deposit paid should the Producer 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 8.2.

Clauses 8.4 and 8.5 will only apply in the event of these Terms and Conditions not being regulated by the CPA:

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

9. SPECIFICATIONS AND STANDARDS

- 9.1 It shall be the duty of the Producer to acquaint itself with the:
- 9.1.1 operating conditions relating to the Company's packing and cooling protocols;
- 9.1.2 the Company's regulations regarding delivery, quantities, sorting, packing, storing and cooling of the Fruit;
- 9.1.3 obligations of the Company and the Producer; and
- 9.1.4 relevant packaging material to be used, collectively herein "**the Protocol**".
- 9.2 The Company shall at its discretion be entitled to update the Protocol from time to time and provide the Producer with the updated Protocol and which updated Protocol shall then be the one that the Producer shall adhere to.

10. PROGRAM

- 10.1 The Company and the Producer shall agree on a delivery, packing and cooling program ("**the Program**") before the delivery of Fruit by the Producer to the Company in terms of these Terms and Conditions and/or any Supply Contract. The Program shall, *inter alia*, stipulate cultivars, volumes, delivery dates, packing dates, quality expectations regarding Fruit size and pack out percentages.
- 10.2 The Producer shall ensure that delivery of the Fruit to the Company complies with the picking program and maturity specifications of the relevant marketing agent or purchaser of the relevant Fruit.
- 10.3 The Company will not accept any responsibility for under or over maturity as defined in the relevant marketing agent's or purchaser's grading regulations.
- 10.4 The Producer will:
- 10.4.1 immediately advise the Company if it cannot deliver Fruit to it in terms of the Program;

- 10.4.2 harvest the Fruit and at its cost transport and deliver the Fruit to the Company's premises in accordance with the provisions for delivery set out in the Program;
- 10.4.3 deliver the Fruit to the Company of the required standard as to quality and otherwise as prescribed by any state authorities, and the Producer confirms herewith that the Fruit will not contain residues of any agricultural, chemical or other substances which do not comply with the prescribed statutory parameters;
- 10.4.4 accept any reasonable amendment of the Program as determined by the Company and in general comply with the normal reasonable operational requirements of the Company to ensure successful packing and storage of Fruit; and
- 10.4.5 deliver to the Company all Fruit not pre-cooled by the Producer on the date of picking, but not later than 24 (twenty four) hours after picking.

11. DEGREE OF SORTING QUALITY

- 11.1 The Company and the Producer agree that the Company will solely determine the grade of the Fruit in accordance with instructions/guidelines received from the Producer or relevant marketing agent and that the Company's determination of such grade will be final and binding on the Producer. The Producer will not have the right to make any claims against the Company in respect of or by reason of the pack-out figures achieved.
- 11.2 The Producer will furthermore have no claim for damages of any kind should any of the packed Fruit be rejected by the customers to whom the Producer has sold the Fruit or should it fetch a lower-than-expected sales price.
- 11.3 Should the Fruit supplied on any delivery/intake for packing in terms of these Terms and Conditions and/or any Supply Contract be of such a degree/quality that it is not suited for the export or local market, the Company shall be entitled to refuse to accept delivery thereof.

12. OWNERSHIP AND RISK

All Fruit received, graded, handled, stored and/or cooled by the Company in terms of these Terms and Conditions and/or any Supply Contract, on behalf of the Producer, will remain the property of the Producer and will be so handled at the sole and absolute risk of the Producer and the Parties hereto record that the Company will not be liable for any loss or damage suffered by the Producer unless it is proven that the loss was caused by the intentional or grossly negligent conduct of the Company or its employees. Notwithstanding anything to the contrary contained herein, it is agreed that the Company shall not be liable for consequential, special or indirect damages suffered by the Producer.

13. INSURANCE

- 13.1 The Company shall insure the Fruit, whilst in its custody or control, against fire, lightning, explosion, earthquake, storm, wind, water, hail, snow, deterioration of stock following machinery or equipment breakdown, goods in transit and SASRIA (hereinafter jointly referred to as "**the material cover**"). The extent and other terms of the material cover shall from time to time be determined by the Company, and the Producer shall be entitled to obtain particulars of the material cover from the Company during ordinary business hours of the Company. The liability of the Company to the Producer arising from the implementation of this Agreement shall be limited to any claim which falls within the ambit of the material cover, but only to the extent that such claim is settled by the relevant insurer. The Company shall be free, but not obliged, to extend the material cover by:
 - 13.1.1 taking out insurance policies in respect of other risks; and
 - 13.1.2 advising the Producer in writing that such latter policies shall also be deemed to form part of the material cover.
- 13.2 The Company shall procure that the interest of the Producer will be noted on the relevant insurance policies, which form part of the material cover.
- 13.3 The cost of the abovementioned insurances shall be for the Producer's account.
- 13.4 Any losses suffered by the Producer, as a result of the insurance pay-out being less than the amount claimed for, shall be for the Producer's account.
- 13.5 The insurance policies referred to in this clause 13 shall be available for inspection by the Producer, should the Producer so require.
- 13.6 The Producer herewith cedes to the Company all legal rights and title to sue any third party on behalf of the Producer in the event of any claim which may occur.

14. WARRANTIES

Clauses 14.1 and 14.2 will only apply in the event of these Terms and Conditions being regulated by the CPA:

- 14.1 The Company does not give any warranty, express or implied, in respect of the Services not contained in 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.
- 14.2 The Producer further confirms that representations not contained in a Supply Contract or reduced to writing and signed by the Company will not entitle the Producer to any

claim against the Company in respect of such representations.

Clause 14.3 will only apply in the event of these Terms and Conditions not being regulated by the CPA:

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

15. INDEMNITY, LIMITATION OF LIABILITY AND EXCLUSIONS

Clauses 15.1 to 15.3 will only apply in the event of these Terms and Conditions being regulated by the CPA:

- 15.1 **The Producer agrees that the Company shall not under any circumstances whatsoever, be held liable for damages (direct, indirect, consequential or otherwise) suffered by the Producer 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.**
- 15.2 **The Producer hereby indemnifies and holds harmless the Company from and against any claims of whatsoever nature instituted by third parties pursuant to Services rendered or advice furnished by the Company to the Producer, including but not limited to claims and liabilities arising from the provisions of the CPA.**
- 15.3 **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 the Services to the Producer 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 the State.**

Clauses 15.4 to 15.6 will only apply in the event of these Terms and Conditions not being regulated by the CPA:

- 15.4 The Producer agrees that the Company shall not under any circumstances whatsoever, be held liable for damages (direct, indirect, consequential or otherwise) suffered by the Producer pursuant to Services rendered or advice furnished by the Company.
- 15.5 The Producer hereby indemnifies and holds harmless the Company from and against any claims

of whatsoever nature instituted by third parties pursuant to Services rendered or advice furnished by the Company to the Producer, including but not limited to claims and liabilities arising from the provisions of the CPA.

- 15.6 The Company shall not be liable for any loss arising from any failure or delay in providing the Services to the Producer 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 the State.

16. SERVICES AMENDMENTS

Any amendments of the Services performed in terms of a Supply Contract shall require the prior written consent of the Company.

17. INTELLECTUAL PROPERTY

- 17.1 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 Services.
- 17.2 The Company's trademarks and names shall not be used by the Producer without the prior written consent of the Company. The Producer agrees that it shall not (or permit any third party to) reverse engineer, decompile, modify or tamper with the Services provided.
- 17.3 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.

18. FORCE MAJEURE

- 18.1 In these Terms and Conditions, without in any way limiting the scope thereof, the expression "**force majeure**" includes the application of any statute, regulation or order of a government or any other authoritative power, labour disturbances, disputes and disruptions, strikes, lock-outs, riot, explosion, war, incursion, inability to obtain materials, equipment, supplies, power, fuel or labour, intervention by civil or military authority or any force of nature or any natural disaster.
- 18.2 If the achievement of any objective or the performance of any obligation in terms of these Terms and Conditions (including, for the sake of clarity, pursuant to a Supply Contract) is inhibited or impeded or prevented by *force majeure* which is beyond the control of a Party to these Terms and Conditions, that Party shall be relieved of any duty to achieve that objective or perform that obligation to the extent that, and for as long as, such hindrance or impediment makes the achievement of that

objective or performance of that obligation impossible, provided that the Party thus inhibited or impeded or prevented shall always be obliged to do its utmost to avoid or to overcome such hindrance or impediment and:

- 18.2.1 shall immediately advise the other Party in writing of the *force majeure* which has resulted in the hindrance or impediment; and
- 18.2.2 shall pursue the achievement of the objective in question and the performance of the obligation in question as soon as such hindrance or impediment can be avoided or overcome.
- 18.3 If an objective must be achieved or an obligation performed within a limited time in terms of these Terms and Conditions (including, for the sake of clarity, pursuant to a Supply Contract), then that time limit shall be extended for the time that *force majeure* renders such performance or achievement impossible in terms of clause 18.2.
- 18.4 A Party whose achievements or performances in terms of these Terms and Conditions (including, for the sake of clarity, pursuant to a Supply Contract) are hindered or impeded by *force majeure* shall not be entitled to claim any loss, damages or costs from the other Party ("**Other Party**") which is caused by the resultant delay or caused by the failure of the Other Party to by reason of such *force majeure* comply with its obligations; and no Party shall be entitled to benefit in any way from any such delay at the expense of the Other Party so that any such benefits shall accrue for the benefit of the Parties.

19. BREACH

- 19.1 If a Party ("**Defaulting Party**") breaches any provision of these Terms and Conditions and/or any relevant 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 other Party ("**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:
 - 19.1.1 **to sue for immediate specific performance of any of the Defaulting Party's obligations under these Terms and Conditions and/or any relevant Supply Contract, whether or not such obligation is then due; or**
 - 19.1.2 **cancel these Terms and Conditions and/or any relevant Supply Contract, 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.**
- 19.2 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.

- 19.3 **All legal costs incurred by the Aggrieved Party in consequence of any default of the provisions of these Terms and Conditions and/or any relevant Supply Contract by the Defaulting Party shall, subject to specific limitations in terms thereof, be payable on demand by the Defaulting Party on the scale as between attorney and own client and shall include collection charges, the costs incurred by the Aggrieved Party 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 Aggrieved Party in relation to its rights in terms of or arising out of these Terms and Conditions and/or any relevant Supply Contract.**

- 19.4 **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 Producer's outstanding indebtedness.**

20. CANCELLATION

- 20.1 Without prejudice to any other rights of the Company under these Terms and Conditions and/or any Supply Contract, the Company shall be entitled to immediately terminate these Terms and Conditions and/or any Supply Contract by written notice in the event that the Producer 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 Producer is registered or its principal place of business) or the Producer defaults on payment for the Services.
- 20.2 The Company shall be entitled to cancel these Terms and Conditions and/or any Supply Contract at any time and for any reason, by giving 3 (three) months' written notice to that effect to the Producer. Any and all obligations on the part of the Parties in respect of these Terms and Conditions and/or any relevant Supply Contract that accrued before the date of cancellation shall remain enforceable between the Parties.
- 20.3 Upon cancelling these Terms and Conditions and/or any one Supply Contract, the Company shall be entitled to elect whether any or all of the separate Supply Contracts, entered into between the Producer and the Company, will be cancelled as well.

21. COOPERATION AND GOOD FAITH

The Parties reciprocally undertake in favour of one another to act in the utmost good faith towards one another in procuring the implementation of the provisions of these Terms and Conditions and all Supply Contracts.

22. NOTICES AND DOMICILIUM

22.1 Any notice given by either Party shall be:

22.1.1 hand delivered or sent by 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

22.1.2 deemed to have been delivered on the date of delivery by hand or the business day immediately following the date on which the email was sent (as applicable), unless the contrary is proved.

22.2 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*.

23. LAW AND JURISDICTION

23.1 These Terms and Conditions and any Supply Contract shall be governed by and construed in accordance with the laws of the Republic of South Africa.

23.2 The Producer 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.

23.3 **Save where the Company elects to institute action against the Producer in the Magistrate's Court (in which case the Parties submit to the exclusive jurisdiction of the Magistrate's Court), the Parties hereby submit to the exclusive jurisdiction of the Western Cape High Court, Cape Town, in respect of any claims or disputes arising out of these Terms and Conditions and/or any Supply Contract.**

24. ASSIGNMENT

24.1 The Producer 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.

24.2 The Producer may not assign or cede its payment obligations hereunder without the prior written consent of the Company.

24.3 **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 Producer.**

24.4 The Company shall use its best endeavours to procure that the Subcontractors shall comply with the provisions of these Terms and Conditions and/or any relevant Supply Contract, and the terms thereof shall be applicable to such services to be provided by the Subcontractors *mutatis mutandis*.

25. PROTECTION OF PERSONAL INFORMATION

25.1 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:

25.3.1 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

25.3.2 consent to the processing of any of their/its personal information in terms of, pursuant to or for purposes of these Terms and Conditions and/or any Supply Contract.

25.4 Without limiting the generality of the above, the Producer hereby:

25.4.1 consents to the Company sharing its personal information with any of its third-party service providers, agents, contractors, insurers or to other parties within the Company's group of companies, for the purposes of and in line with the provisions hereof;

25.4.2 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

25.4.3 agrees to the Company using its personal information for the purposes of informing the Producer about any products or services the Producer might be interested in, except if otherwise indicated by the Producer.

25.5 The Producer 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 25, and may prevent the Producer, any of its agents or subcontractors, or any third party who has received personal information from the Producer in breach hereof from processing such personal information by any legal means available. The Producer further acknowledges that any breach of POPI and/or this clause 25 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 Producer in this regard.

- 25.6 Within 30 (thirty) days after the termination hereof or upon receiving a written request to such effect from the Company, for whatsoever reason, the Producer 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).
- 25.7 In cases where the Company has elected for the personal information to be destroyed, as provided for in clause 25.6 above, the Producer 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.

26. GENERAL

- 26.1 For the purposes of this clause 26.1, “**Confidential Information**” means the Company’s 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. The Producer 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 Producer 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 Producer, (ii) is independently developed by the Producer, (iii) is disclosed to the Producer by a third party known to the Producer 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.
- 26.2 Notwithstanding any express or implied provisions of these Terms and Conditions and/or any Supply Contract 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.
- 26.3 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.
- 26.4 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.

- 26.5 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.
- 26.6 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.