



UCT General Terms and Conditions of Purchase

1 Definitions and interpretation

1.1 In these terms and conditions of purchase:

- 1.1.1 “**Act**” means the Consumer Protection Act, 2008;
- 1.1.2 “**Agreement**” means these Terms and Conditions and the Order Form and the Schedules, annexures, attachments, addenda and variations or amendments thereof duly effected;
- 1.1.3 “**Business Day**” means any day other than a Saturday, Sunday or official public holiday in South Africa;
- 1.1.4 “**Business Hours**” means the hours between 08h00 and 17h00 on any Business Day. Any reference to time shall be based on South African Standard Time.
- 1.1.5 “**Consumer**” means The University of Cape Town, as specified as purchaser on the Order Form, as well as its employees, students, agents, contractors and any member of the public contemplated to make use of the Goods and/or Services;
- 1.1.6 “**Delivery Date**” means the date of delivery of Goods or the completion of Services in terms of an Order.
- 1.1.7 “**Goods**” means movable goods ordered by the Consumer in terms of an Order;
- 1.1.8 “**Order**” means an order for Goods and/or Services set out in an Order Form which has been accepted by the Supplier, or which has been deemed to have been accepted by the Supplier in accordance with clause 3.1 below, and which is regulated by these Terms and Conditions and the Order Form;
- 1.1.9 “**Order Form**” means an order document in which these Terms and Conditions are referred to or are attached to and all other attachments thereto, which may include, without limitation, any invitation to tender or documents issued by the Consumer in respect of the Goods and/or Services;
- 1.1.10 “**Price**” means a fixed price for the Goods supplied, or fixed rates or fees for Services rendered, subject to any amendment thereof in terms of clause 19 below;
- 1.1.11 “**Services**” means activities and/or work carried out or to be carried out by the Supplier in terms of an Order;
- 1.1.12 “**Supplier**” means the person or legal entity with whom the Consumer has placed an Order for Goods and/or Services; and
- 1.1.13 “**Terms and Conditions**” means these general terms and conditions of order that govern the supply of Goods and/or Services by the Supplier to the Consumer;

1.2 These Terms and Conditions and any Order Form must be interpreted to the benefit of the Consumer, so that:

- 1.2.1 any ambiguity that allows for more than one reasonable interpretation of a part of such a document is resolved to the benefit of the Consumer; and
- 1.2.2 any restriction, limitation, exclusion or deprivation of the Consumer’s legal rights set out in such a document or notice is limited to the extent that a reasonable person would ordinarily contemplate or expect.

1.3 Any notice, document or other visual representation that the Supplier is required to produce, provide or display to the Consumer in terms of these Terms and Conditions and/or an Order Form must be in plain language.

1.4 When any number of days is prescribed in these Terms and Conditions, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the immediately following Business Day.

- 1.5 Unless inconsistent with the context in which it is used in these Terms and Conditions, a word or an expression which denotes:
- 1.5.1 any gender includes the other genders;
 - 1.5.2 a natural person includes a body corporate, a trust, firm or association of persons and vice versa; and
 - 1.5.3 the singular includes the plural and vice versa.
- 1.6 Any reference herein to **"Party"** and **"Parties"** shall be a reference to the Supplier and the Consumer, either individually or collectively, as may be required by the context of the Agreement, and shall be deemed further to include the successors in title, whether administrators, assigns, liquidators, curators, executors, trustees, heirs or other legal representatives, as fully and effectively as if they had accepted these Terms and Conditions in the first instance.

2 Terms and Conditions regulating an order

- 2.1 The supply of Goods or the rendering of Services in terms of an Order shall be governed by, and be subject to, these Terms and Conditions, the Order Form and any specifications, drawings or documents attached to and forming part of the Order Form. The aforementioned shall constitute the entire agreement regarding the supply of Goods and/or rendering of Services by the Supplier to the Consumer (the **"Agreement"**) and neither the Consumer nor the Supplier shall be entitled to rely upon any other agreements, proposals, negotiations, quotations, guarantees or representations, in regard thereto, unless reduced to writing, expressly stated in such document to form part of the Order and/or these Terms and Conditions and signed by the Consumer and the Supplier.
- 2.2 It is specifically recorded and agreed that the terms and conditions of any quotation, delivery note and/or other documentation delivered by the Supplier to the Consumer prior to the placing of, or pursuant to any Order shall be of no force and effect to the extent that such terms and conditions conflict with clause 2.1 and the Consumer shall not be bound by any such terms and conditions.
- 2.3 In the event of any conflict between the provisions of these Terms and Conditions and the Order Form, together with any specifications, drawings or documents attached to and forming part of the Order Form, the provisions of the Order Form and its attachments shall take precedence over the provisions of these Terms and Conditions.

3 Acceptance of the order

- 3.1 The Order Form is an offer by the Consumer to purchase and/or be supplied with the Goods and/or Services set out therein, which offer shall be deemed to have been accepted by the Supplier on delivery thereof to the Supplier by hand, courier or by registered post or transmitted by facsimile or electronic transmission, unless the Supplier confirms to the Consumer in writing within 48 (forty eight) hours of the delivery of the Order Form that it has rejected the offer, or within such other period as may be indicated on the Order Form or agreed to in writing by the Consumer.
- 3.2 Acceptance of the Consumer's Order Form as set out in clause 3.1 above will bring about a valid and binding agreement as of the date of such acceptance for the sale and/or supply of Goods and/or Services by the Supplier to the Consumer, subject to the provisions of clause 2 above.

4 The price

- 4.1 All Prices quoted by the Supplier in respect of an Order should be quoted in:
- 4.1.1 South African Rands in respect of Goods or Services which are sourced locally; or
 - 4.1.2 a foreign currency specified by the Supplier should Goods or Services be imported by the Consumer; and must be fair, reasonable and just in accordance with the provisions of the Act.
- 4.2 The exchange rate which shall be applicable to Prices quoted in a foreign currency, as provided for in clause 4.1.2 above, shall be the prevailing exchange rate of such currency against the Rand at the time when the Supplier accepts an Order in accordance with the provisions of 3 above.
- 4.3 The Price of the Goods and/or Services shall be the price stated on the Order Form, which shall be inclusive of VAT.

- 4.4 Subject to the provisions of clause 5 below the Price shall be fixed and include all the Supplier's costs in supplying the Goods and/or rendering the Services. Such costs shall include, but not be limited to, any applicable taxes, licence fees, costs related to materials, labour, manufacture, packaging, handling, storage, delivery, shipment, transportation, duties, installation, inspection, testing, insurance (if any required), costs for the drawing up of documentation to be provided for the Order and currency exchange rate variations where applicable.

5 Variation in rates and taxes

If prior to the Delivery Date, but after placement of an Order, any custom, excise or other duties, levies or taxes are varied or abolished, with the result that the Price is affected and such Price is adjusted accordingly, then:

- 5.1 Documentary proof of such variations and the effect thereof on the Price must be submitted by the Supplier to the satisfaction of the Consumer within 30 (thirty) days of such variation.
- 5.2 Price adjustments shall be calculated only on the net variation in the cost of the Supplier without any element of profit or overheads.

6 Payment of purchase price

6.1 Payment of the Price will be due by the Consumer to the Supplier within 30 (thirty) days, or such longer or shorter period as may be agreed in writing by the Supplier and the Consumer, of receipt of the Supplier's invoice, issued in accordance with clause 6.3 below, stating the official Order number of the Order Form and the following information:

- 6.1.1 the Supplier's full name, or registered business name, and VAT registration number, if any;
- 6.1.2 the street address of the premises at which, and/or from which, the Goods and/or Services were supplied;
- 6.1.3. the date on which the transaction occurred;
- 6.1.4 the name or description of any Goods and/or Services supplied or to be supplied;
- 6.1.5 the unit price of any particular Goods and/or Services supplied or to be supplied;
- 6.1.6 the quantity of any particular Goods and/or Services supplied or to be supplied;
- 6.1.7 the total price of the transaction, before any applicable taxes;
- 6.1.8 the amount of any applicable taxes; and
- 6.1.9 the total price of the transaction, including any applicable taxes.

6.2 The Supplier's invoice must be accompanied by:

- 6.2.1 in the case of the supply of Goods, a copy of the delivery note signed by an authorised representative of the Consumer as proof of delivery of the Goods; or
- 6.2.2 in the case of a progress payment for the supply of Services or manufacture of Goods, a progress report signed by an authorised representative of the Consumer, should the Consumer request such report; or
- 6.2.3 in the case of final payment for the rendering of Services, a certificate signed by an authorised representative of the Consumer confirming the completion and acceptance of the Services; and
- 6.2.4. any other document which, in terms of the Agreement, is required to accompany the Supplier's tax invoice.

6.3 The Supplier shall only be entitled to issue an invoice to the Consumer upon the later of due and proper delivery of all of the Goods or on completion of the Services, or as otherwise stated in the Order Form.

6.4 Unless otherwise agreed in writing by the Supplier and the Consumer, all amounts which are payable by the Consumer to the Supplier in terms of the Agreement shall be paid in South African Rands.

7 Quantities

Notwithstanding any estimated quantities given to the Supplier, no undertaking whatsoever is given by the Consumer, as to the eventual quantities which will be required by it during the currency of an Order.

8 Packaging

- 8.1 Goods supplied must be securely packaged in boxes, crates or drums or in such other manner or form as approved by the Consumer and must be adequately protected from damage by such packaging when transported and stored. The Goods must further be packed in such a manner so as to protect the Goods against deterioration whilst in storage for any period after delivery and before it is put to use by the Consumer. The Supplier shall be liable for any loss or damage suffered as a result of a failure to do any of the foregoing.
- 8.2 All packaging must be clearly marked to properly identify the Goods, and must indicate the quantity of Goods contained therein and must contain the Order number appearing on the relevant Order Form.
- 8.3. All labelling of Goods by the Supplier must comply with the Act, including that:
 - 8.3.1 the labelling on Goods must not in any manner mislead the Consumer as to any material fact in respect of the Goods;
 - 8.3.2 the producer or importer of Goods must disclose the country of origin of those Goods on the packaging thereof;
 - 8.3.3 should Goods contain any genetically modified ingredients or components, the presence thereof in the Goods must be clearly disclosed on the packaging provided by the Supplier; and
 - 8.3.4 in addition to the Supplier's obligations in terms of clause 12 below, Goods which are potentially hazardous or unsafe must be packaged in a manner that provides the Consumer with sufficient instructions for the safe handling and use of those Goods.

9 Delivery of goods

- 9.1 All Goods shall be delivered by the Supplier to the Consumer or its nominee on the Delivery Date and at the place specified on the Order Form.
- 9.2 The Supplier shall not be entitled to give, nor shall the Consumer be required to take, partial or late delivery of Goods, unless specified in the Order Form.
- 9.3 Delivery of the Goods by the Supplier shall only be made during normal working hours, unless otherwise arranged in advance with an authorised representative of the Consumer, and shall further be at such time of day as will allow sufficient time to complete the off loading of the Goods during normal working hours.
- 9.4 The Supplier must timeously notify the authorised representative of the Consumer at the nominated place of delivery of the Supplier's intention to deliver the Goods so as to allow the Consumer sufficient time to make appropriate arrangements for the off loading and storage of the Goods.
- 9.5 Prior to or together with the delivery of Goods, the Supplier shall furnish the Consumer with such documentation as specified in the Order Form as well as all documentation containing operating and maintenance instructions for the Goods, and drawings providing sufficient detail for the Consumer to maintain, dismantle, re-assemble, and adjust all Goods or parts thereof.
- 9.6 The Supplier shall prepare a delivery note in respect of Goods delivered, which delivery note shall specify the Order number relevant to the Order, the contact person for the Consumer, the type and quantity of Goods delivered and whether or not the delivery of the Goods is partial or in full and the Supplier shall ensure that a duly authorised representative of the Consumer signs such delivery note on delivery of the Goods.
- 9.7 Should the Consumer wish to inspect the Goods on the delivery thereof, the Supplier must allow it a reasonable opportunity to examine those Goods for the purpose of ascertaining whether or not the Goods are of the type and quality stipulated in the Agreement.
- 9.8 Signature of the delivery note by the Consumer shall, regardless of what the delivery note may state, not be an acknowledgement that the Goods have been received in good order and condition or that the Goods comply with all specifications and requirements in respect thereof.
- 9.9 Should the Supplier at any time become aware that it will not be able to deliver Goods on the Delivery Date, then it shall immediately notify the Consumer in writing of such inability and of an alternative later Delivery Date by which the Goods can be delivered. It shall be within the Consumer's sole discretion whether or not to accept such later alternative

Delivery Date. Should the Consumer not accept such later alternative Delivery Date, or should the Supplier fail to give such notice, and should the Supplier fail to deliver all of the Goods on the Delivery Date relevant to such Goods, then the Consumer shall immediately be entitled to cancel all or only a portion of the Order for the Goods by giving written notice to the Supplier, which cancellation shall be without prejudice to the Consumer's rights in terms of clause 10 below or to any claim for damages which the Consumer may have and the Consumer shall further not be liable to compensate the Supplier in any way, save that where the Consumer has only partially cancelled the Order, the Consumer shall be liable to pay for the portion of the Order not cancelled as reduced by any agreed, reasonable liquidated penalty which may be applicable in terms of clause 10 below, which payment shall be made in accordance with the Agreement.

10 Penalty for late delivery or defective performance

Subject to the provisions of clause 26 below, should the Supplier fail to deliver any or all of the Goods or to perform the Services in accordance with the provisions of clauses 9 above or 16 below, or should any Goods and/or Services be defective or be rejected by the Consumer in accordance with clauses 17 and 18 below, the Consumer may, without prejudice to its other remedies hereunder, deduct from the Price, as an agreed, reasonable, liquidated penalty, an amount equal to [10% (ten percent)] of the Price of such Goods and/or Services.

11 Identification of deliverers, installers and others

Whenever a person is performing any Services on behalf of the Supplier for the Consumer at the premises of the Consumer, or delivering any Goods to or installing any Goods for the Consumer at any such premises, that person must visibly wear or display a badge or similar identification device or must provide suitable identification on request by the Consumer.

12 Goods or services subject to risk

Should the Consumer be supplied or rendered with Goods and/or Services that are subject to any risk of an unusual nature, which are hazardous or unsafe or which could result in serious injury or death, the Supplier must draw the Consumer's attention to such fact, nature and potential effect at the earliest possible time during the negotiation of the Agreement.

13 Quality of goods

All Goods supplied and all materials, parts or components used therein or forming part thereof shall be of a good quality and in good working order, must be free from any defects and must be reasonably suitable for the purpose for which they are intended and, unless otherwise specified in the Order Form, be new and in good condition. No second-hand, used, reconditioned, old or previously sold and returned Goods, materials, parts or components shall be supplied or used by the Supplier in the supply of the Goods. All Goods, materials, parts and components shall be manufactured and supplied in accordance with the specifications given therefor and be of the highest quality reasonably associated with such type of Goods, materials, parts or components shall have been manufactured and/or produced by a person duly qualified and well experienced in manufacturing such Goods, materials, parts or components and must comply with any applicable standards set therefor under the Standards Act, 2008.

14 Safety monitoring and recall

Notwithstanding the provisions of the Agreement and any other rights that the Consumer may have in terms thereof, should the Supplier become aware that any Goods which have been supplied to the Consumer pose a safety or health risk to the Consumer, of which risk it was not aware and of which it was not reasonably expected to be aware of at the time of the delivery of those Goods, it must inform the Consumer of such risk and must initiate a recall of those Goods in terms of the Act.

15 Consumer's property in possession or under the control of the supplier

15.1 Property of the Consumer supplied or made available to the Supplier for the execution of the Order remains the property of the Consumer and shall at any time be available for inspection by the Consumer or its representatives. Any such property in the possession or under the control of the Supplier on completion of the Order shall, at the Supplier's expense, be returned to the Consumer forthwith in the condition it was in when the Consumer made it available to the Supplier, fair wear and tear excepted. The Supplier shall at all times be responsible for the cost of

repair for any loss or damage to such property, or for the payment to the Consumer of the fair market value of such property, if lost or destroyed while in the possession of the Supplier.

- 15.2. The Supplier must retain any parts or components removed from any property of the Consumer in the course of repair or maintenance work, and return those parts or components to the Consumer after the completion of such repair or maintenance work, unless the Consumer declined the return of any such parts or materials.

16 Performance of services

- 16.1 The Supplier shall perform and complete the Services, or any phase, stage, task or activity forming part thereof, on or before the date specified therefor in the Order Form.
- 16.2 All Services shall be performed and/or executed in accordance with the specifications given therefor and with the care, skill, proficiency, expertise and diligence reasonably expected from a person duly qualified and well experienced in performing such Services.
- 16.3 The Supplier must notify the Consumer in writing as soon as it becomes aware of any unavoidable delay in the performance of Services which could result in the failure to perform those Services by the date specified therefor in the Order Form.
- 16.4 Should the Services, or any phase, stage, task or activity thereof, not be completed on the completion date therefor, then, without prejudice to the Consumer's rights in terms of clause 10 above, the Consumer shall immediately be entitled to cancel the Order for the Services by giving written notice to the Supplier, which cancellation shall be without prejudice to any claim for damages which the Consumer may have. The Consumer shall further be entitled to stop and withhold the payment of any amounts which may otherwise have been owing and/or due by the Consumer to the Supplier and use such amounts to pay any one or more alternate suppliers to complete the Services, whereafter any balance remaining, as reduced by any agreed, reasonable liquidated penalty which may be applicable in terms of clause 10 above, shall be paid to the Supplier for such part of the Services actually completed or performed by it.
- 16.5 Where the Services include, as a necessary element thereof, the provision or installation of any goods, the provisions of clauses 9, 12 and 13 shall apply mutatis mutandis thereto.

17 Inspection

- 17.1 The Consumer or its nominated representative shall at all reasonable times prior to delivery of Goods or completion of Services be entitled to inspect, test and/or examine any Goods to be supplied by the Supplier and/or any progress made or results arising out of any part of the Services rendered.
- 17.2 The Supplier undertakes to take all necessary measures to enable the Consumer to inspect the Goods and/or Services to be supplied or rendered by the Supplier.
- 17.3 Any inspection by the Consumer shall not release the Supplier from any of its obligations or warranties in terms of the Agreement or at law.
- 17.4 Should any inspection prior to delivery of the Goods, or prior to the completion of the Services, reveal that the Goods or Services are, in the reasonable opinion of the Consumer, defective in any manner or do not comply with the specifications and requirements given therefor, then, without prejudice to the Consumer's rights in terms of clause 10 above, the Consumer reserves the right to either cancel all or any part of the Order relating to such Goods or Services, or to require the Supplier, at the Consumer's election, to repair, replace or remedy the defective Goods or Services, without prejudice to any claim which the Consumer may have for damages or any agreed, reasonable liquidated penalty which may be applicable in terms of clause 10 above, by giving written notice to that effect to the Supplier.

18 Rejection of goods

- 18.1 The Consumer shall, at its sole and absolute discretion, be entitled to reject the Goods, or any part thereof, at any time within 10 (ten) days, or such other period as may be specified in the Order Form, of delivery of the Goods by the Supplier should the Goods, or any part thereof, not fully comply with the specifications given therefor or with the requirements set out in clause 13 or be defective in any manner.

- 18.2 All costs incurred by the Supplier resulting from the rejection of the Goods by the Consumer in terms of this clause 18 shall be for the Supplier's account, and the Consumer shall not be liable for any loss or damage of whatsoever nature suffered by the Supplier in consequence of the rejection of Goods.
- 18.3 The Supplier shall remove rejected Goods from the Consumer's premises or the place of delivery within 48 (forty eight) hours of the Consumer advising the Supplier in writing that the Goods have been rejected by the Consumer, or within such other longer period as may be allowed by the Consumer in writing, failing which the Consumer shall be entitled to reasonable storage costs for the Goods and/or at its entire discretion shall be entitled to return the Goods to the Supplier and the Supplier shall be liable for all costs incurred by the Consumer in so storing or returning the Goods.
- 18.4 On rejection of all or any part of the Goods by the Consumer, the Consumer shall, without prejudice to the Consumer's rights in terms of clause 10 above, at its sole discretion, be entitled to either cancel all or part of the Order, or to require the Supplier to replace, repair or remedy the Goods, in each case without prejudice to any claim by the Consumer for damages or any agreed, reasonable liquidated penalty which may be applicable in terms of clause 10 above.
- 18.5 No payment is due for any Goods that are rejected by the Consumer in terms of these Terms and Conditions, and all payments made by the Consumer for such Goods are immediately repayable in full with interest, at the rate of interest prescribed by law, by the Supplier to the Consumer on the cancellation of the Order.

19 Modifications and adjustments to the order

- 19.1 Should the Consumer require any change, modification, addition or adjustment to, or the replacement or substitution of, any specification in respect of the Goods and/or Services, it shall give written notice thereof to the Supplier at any time.
- 19.2 Within 10 (ten) working days of receipt of such written notice by the Supplier, or such longer period as may be agreed between the Consumer and the Supplier, the Supplier shall give written notice to the Consumer of any increase or reduction in Price and in change in Delivery Date of the Goods and/or Services which would be caused by such change, modification, addition or adjustment.
- 19.3 Any increased or reduced Price specified in the written notice shall be in keeping with the pricing methods used in the calculation of the Price in terms of clause 4 above.
- 19.4 The Consumer shall have the right to reject or accept such new Price and/or Delivery Date within a period of 5 (five) Business Days after receipt of such notice from the Supplier. Failing any such notice by the Consumer, the new Price and/or Delivery Date will be deemed to have been rejected. The Supplier shall discontinue any work on the affected part of the Goods and/or Services until it receives notice of acceptance of the new Price and/or Delivery Date from the Consumer.
- 19.5 Upon the rejection or deemed rejection of the new Price and/or Delivery Date by the Consumer, the Consumer shall have the right to cancel the Order for the Goods and/or Services and the provisions of the Agreement dealing with the cancellation by the Consumer of an Order shall apply.
- 19.6 Should the Consumer accept the new Price and/or Delivery Date, then the Order shall be amended by the incorporation of such change, modification, addition or adjustment and by such new Price and/or Delivery Date.
- 19.7 Should the Supplier fail to give the notice as required in clause 19.2 and should the change, modification, addition or adjustment to the specification of the Goods and/or Services in any event be effected, then the Supplier waives all rights to claim an increase in the Price or later Delivery Date at a later stage or on delivery of the Goods and/or on completion of the Services.
- 19.8 Nothing in this clause 19 shall be construed as giving the Supplier the right to unilaterally change the Price or Delivery Date for whatsoever reason.

20 Risk and ownership

Ownership of the Goods shall, notwithstanding the fact that payment has not occurred, pass to the Consumer upon delivery of the Goods to the Consumer in accordance with the provisions of clause 9, provided that no such passing of ownership shall effect or alter any of the Consumer's rights to return or reject all or any of the Goods in accordance with the provisions hereof. The Supplier accepts all risk in respect of Goods until those Goods are delivered to the Consumer.

21 Warranties

The Supplier hereby warrants to and in favour of the Consumer, as well as in favour of any third party to whom the Consumer may on-sell the Goods or who may rely on the Services rendered to the Consumer, that:

- 21.1 it has the legal right or authority to supply the Goods and/or Services to the Consumer;
- 21.2 at no time shall it, by words or conduct, directly or indirectly, express or imply a false, misleading or deceptive representation concerning a material fact to the Consumer, use exaggeration, innuendo or ambiguity as to a material fact, or fail to disclose a material fact if that failure amounts to a deception, or fail to correct an apparent misapprehension on the part of the Consumer amounting to a false, misleading or deceptive representation and shall not allow another person to do so on behalf of it at any time;
- 21.3 the Goods and/or Services will be suitable for the purpose for which they were intended to be used;
- 21.4. the Goods will be in good working condition on the date of delivery thereof to the Consumer;
- 21.5 the Services will have been rendered in accordance with the specifications given therefor and will achieve the intended result or object of such Services;
- 21.6 no intellectual property rights, including, but not limited to patents, copyright or trademarks, shall be breached or infringed upon in the supply and/or use of the Goods or the performance of the Services;
- 21.7 the Goods and/or Services and the supply thereof shall comply with all relevant laws and regulations relating to their manufacture, use, export and import, including the Standards Act, 2008;
- 21.8 it has the necessary skill and expert knowledge required for the supply of the Goods and/or Services;
- 21.9 all Goods and/or parts thereof shall be free of defects, defective material and workmanship and general failure, save where same arises from fair wear and tear, for a period of 18 (eighteen) months after delivery thereof to the Consumer or for a period of 12 (twelve) months from the time that the Consumer puts such Goods into operation and use, whichever period expires the earlier, provided that the defect in such Goods shall not be as a result of improper use of the Goods; and
- 21.10 all Goods that are repaired or which are installed during any repair or maintenance work by the Supplier, and the labour required to install such Goods, are warranted to be safe and free from defects and failure for a period of 3 (three) months after the repair or installation of those Goods.

22 Confidentiality

- 22.1 The drawings, specifications, samples, technical documentation and information and any other information related to the Consumer's business and activities which is disclosed to the Supplier for the purpose of supplying the Goods or rendering the Services shall be, and remain confidential. The Supplier hereby undertakes that it shall not disclose any of such confidential information to any party and that it shall only use such confidential information for the purposes of supplying the Goods and/or rendering the Services.
- 22.2 The Supplier warrants and undertakes that if such information is disclosed to any employee or subcontractor of the Supplier in order to supply the Goods or render the Services, then it shall procure that such persons keep the information confidential. The Supplier shall be liable for any loss or damage suffered by the Consumer as a result of a failure by such parties to keep the information confidential and indemnifies the Consumer accordingly.
- 22.3 This undertaking of confidentiality excludes information already in the public domain, already known to third parties, and information known to the Supplier prior to being disclosed to it by the Consumer or independently developed by the Supplier.
- 22.4 Any confidential information which is in a physical or written form shall be returned to the Consumer upon final delivery of the Goods and/or completion of the Services.
- 22.5 The Supplier shall not without the prior written consent of the Consumer, which consent can be withheld or withdrawn at any time by the Consumer in its sole discretion, be entitled to make, issue, give, release or publish any announcement, press release, advertising or promotional material or statement in terms of which it discloses the fact that it is supplying the Consumer with any Goods and/or Services.

23 Liability and indemnity

- 23.1 The Supplier hereby indemnifies the Consumer, against any loss or damage suffered by the Consumer resulting from any claim made against the Consumer by any person, legal or otherwise, for any loss, damage, death or injury arising out of unsafe or defective Goods, inadequate warnings or instructions in respect of such Goods and/or out of their use for any purpose for which they were intended and/or out of the rendering of defective or incomplete Services.
- 23.2 Where any Goods or Services have been manufactured, designed, supplied or rendered in accordance with any plans, specifications, drawings or designs drawn up or prepared by the Supplier, then the Supplier shall, notwithstanding the fact that the Consumer approved of or signed off on such plans, specifications, drawings or designs, be liable for any error, omissions, design faults or discrepancies therein which result in the Goods or Services being defective or unsuitable for their intended purpose.
- 23.3 Should any Goods be returned or recalled pursuant to clause 14 above, the Supplier shall be liable for and indemnifies the Consumer against any claim made against it arising out of the return or recall of such Goods.
- 23.4 The Supplier shall be liable for and indemnifies the Consumer against any claim made against the Consumer arising out of the infringement, or alleged infringement, of any intellectual property rights, including but not limited to, patent, design, copyright and trademarks, caused by the supply and/or use of the Goods and/or Services.
- 23.5 The Supplier shall be liable for and indemnifies the Consumer against any claim or loss suffered by the Consumer arising out of a breach by the Supplier of any law and/or regulation in the course of supplying the Goods and/or Services, including in particular the Act.

24 Breach and cancellation

Subject to all other rights of cancellation of the Consumer provided for elsewhere herein, should the Supplier commit any act of insolvency, be wound up, be placed under judicial management, enter into any arrangement or compromise with the general body of its creditors, be the subject of any resolution passed for its winding up or dissolution, have a judgement given against it in any court of law which remains unsatisfied for a period of 10 (ten) days, or breach of any of the terms of the Agreement and fail to remedy such breach, if capable of remedy, within 10 (ten) days of the Consumer giving written notice to the Supplier requiring such breach to be remedied, then the Consumer shall be entitled forthwith to cancel the Agreement by written notice to that effect to the Supplier, which cancellation shall be without prejudice to any other rights which the Consumer may have at law or in terms hereof.

25 Termination for convenience

The Consumer shall at any time, by written notice, be entitled to terminate the Order or any part thereof after its acceptance, or deemed acceptance, in terms of clause 3 above. On receipt of such notice the Supplier shall cease all work on the Order or part thereof, as the case may be, and cancel, if possible, and cease making any orders for material or supplies to be used in the Order or the affected part thereof. Any partially completed Goods and/or Services, as well as any materials or supplies obtained therefore, shall be disposed of and dealt with in accordance with the Consumer's instructions. The Consumer shall be liable to the Supplier for all work satisfactorily done and materials obtained for the Order, or the affected part thereof, up until date of termination and for all costs and expenses incurred by the Supplier directly as a result of such termination. Should the Consumer and the Supplier not be able to agree on what a reasonable amount would be for the foregoing, then the matter shall be referred to arbitration in terms of clause 34.

26 Force majeure

It is recorded and agreed that the Supplier shall not be liable for any failure to deliver any Goods or render any Services timeously where such failure is due to an impediment reasonably unforeseeable at the time of the acceptance of the Order and beyond the Supplier's control, provided that the Supplier took all reasonable steps to overcome such impediment both at the time it arose and when it became reasonably foreseeable. If, notwithstanding the taking by the Supplier of all such reasonable steps, the Supplier remains unable for the reasons described in this clause 26, to deliver Goods and/or perform Services for a continuous period of more than 21 (twenty one) Business Days, the Consumer shall be entitled forthwith to terminate the Agreement without the payment of any compensation to the Supplier.

27 Disputes

Pending final resolution of any dispute that may arise under the Agreement, whether the dispute concerns a question of fact or law or any claim made by either Party under the Agreement, the Supplier shall proceed diligently with performance of work under the Agreement in accordance with directives of the Consumer.

28 Other suppliers

The Consumer has the right to purchase or order Goods or Services, the same or similar to those covered by an Order, from any other supplier.

29 The occupational health and safety act

Goods supplied or Services rendered in terms of the Agreement must be supplied or rendered in accordance with the provisions of the Occupational Health and Safety Act, 1993 and its regulations.

30 Correspondence

All correspondence, even if purely technical, must be addressed to the Consumer at the address stated on the Order Form.

31 Governing law

The Agreement shall be governed by and interpreted under the laws of the Republic of South Africa.

32 Notices

32.1 Any notice in connection with the Agreement sent by one Party to the other may be delivered in one or more of the following manners and shall be deemed to have been duly received (unless the contrary is proved):

32.1.1 if delivered by hand to a responsible person during Business Hours, on the date of delivery;

32.1.2 if sent by registered mail, on the 7th (seventh) Day after posting;

32.1.3 if transmitted by e-mail, on the Day of transmitting, provided that there is no receipt of a system notification that such e-mail is undeliverable; or

32.1.4 if sent by facsimile during Business Hours, on the Day of transmission with a transaction report generated by the sender's facsimile machine. Any facsimile sent after Business Hours or on a Day which is not a Business Day, will be presumed to have been received on the following Business Day.

32.2 Any written notice actually received by a Party shall be valid, notwithstanding that it may not have been given in accordance with the preceding provisions of this clause 32.

33 Jurisdiction

The Supplier consents to the jurisdiction of the Magistrate's Court for the purpose of any action that may be instituted against it arising out of an Order, without prejudice to the Consumer's right to institute action in any other competent court or to refer any dispute between the Supplier and the Consumer to arbitration in accordance with clause 34 below.

34 Dispute resolution

34.1 If any dispute arises out of or in connection with the Agreement, its termination or cancellation or the subject matter thereof, including claims in delict or for rectification of the Agreement, a Party may declare that a dispute exists by notice in writing to the other Party.

34.2 Save in respect of those provisions of the Agreement which provide for their own remedies that are incompatible with litigation or arbitration, a dispute (the "**Dispute**") which arises in regard to:

- 34.2.1 the interpretation of;
 - 34.2.2 the carrying into effect of;
 - 34.2.3 any of the Party's rights and obligations arising from;
 - 34.2.4 the termination or purported termination of or arising from the termination of; or
 - 34.2.5 the rectification or proposed rectification of; the Agreement or out of or pursuant to the Agreement other than where an interdict/injunction or other urgent relief may be obtained from a court with jurisdiction in terms of clause 33 above, such Dispute shall be resolved in the manner provided for in this clause 34.
- 34.3 Should any Dispute with regard to any of the matters described in clause 34.2 above arise between the Parties, such Dispute shall be dealt with as follows:
- 34.3.1 the Party contending that a Dispute has arisen (the "**Claimant**") shall deliver a written notice to such effect to the other Party;
 - 34.3.2 within 10 (ten) Business Days after receipt of the notice referred to in clause 34.3.1 above, persons nominated by the Parties to represent them with regard to the Dispute shall meet at a time and place convenient to the Parties and:
 - 34.3.2.1 resolve the Dispute by agreement between them;
 - 34.3.2.2 agree in writing a process for resolving the Dispute, including (without limitation) referring the Dispute to an expert (not acting as an arbitrator), mediation, alternative dispute resolution or such other dispute resolution mechanism as the Parties may agree to in writing; or
 - 34.3.2.3 agree to refer the matter to litigation in the courts described in clause 33 above or such other court as the parties may agree to in writing or to arbitration in terms of the provisions below of this clause 34.
- 34.4 Should the Parties not be able to meet within the period described in clause 34.3.2 above or such extended period as the Parties may agree to in writing or should the Parties not be able to reach agreement in the manner contemplated in clause 34.3.2 above, the Claimant shall be entitled to institute action in respect of the Dispute in the court with jurisdiction under the Agreement of the Claimant's choice or to refer the Dispute to arbitration in terms of the provisions below of this clause 34.
- 34.5 The Party referring the Dispute to arbitration shall do so by delivering to the other Party a notice in writing of its intention to do so (the "**Arbitration Notice**"). The Arbitration Notice shall contain:
- 34.5.1 a concise statement describing the Dispute; and
 - 34.5.2 the names of not less than 3 (three) natural persons, each of whom shall be either a retired judge of the High Court of South Africa, or a practising advocate or attorney of that High Court, of not less than 10 (ten) years standing, whom the referring Party proposes for appointment as arbitrator.
- 34.6 Should the Parties fail to agree the appointment of an arbitrator within 5 (five) Business days after the delivery of the Arbitration Notice, the referring Party shall request the President for the time being of the Cape Law Society, South Africa or its successor to appoint in writing an arbitrator from amongst the groups of persons contemplated in clause 34.5.2 above.
- 34.7 Unless otherwise expressly agreed to in writing by the Parties:
- 34.7.1 the arbitration proceedings shall be held at Cape Town, South Africa;
 - 34.7.2 the arbitration shall be conducted in accordance with the rules (the "**Arbitration Rules**") of the Arbitration Foundation of Southern Africa ("**AFSA**"), but not through the offices of or under the auspices of AFSA, unless the Parties should so agree in writing. Should AFSA, for any reason, have ceased to exist at the time of the referral of the Dispute to arbitration, the arbitration shall be conducted in accordance with the Standard Rules of the Association of Arbitrators of South Africa, which rules are hereinafter also referred to as the "Arbitration Rules";
 - 34.7.3 the arbitrator shall be entitled, in his or her sole discretion, on the written application of a Party to the Dispute (which application shall be made in a manner acceptable to the arbitrator) at any time after the referral of the Dispute to arbitration, to amend the Arbitration Rules and/or any time period provided for therein or to supplement the Arbitration Rules in the interests of resolving the Dispute effectively, efficiently

- and economically, but provided that no such amendment or supplemental rule shall operate retrospectively;
- 34.7.4 the arbitration shall be subject to the provisions of the Arbitration Act, 1965 (the “**Arbitration Act**”);
- 34.7.5 the arbitration proceedings shall be conducted as expeditiously as possible;
- 34.7.6 the arbitrator shall be entitled to determine his or her own jurisdiction and shall be entitled of own volition to raise matters as if the Dispute was being heard before a judge of the court referred to in clause 33 above;
- 34.7.7 the arbitration proceedings, including any appeal proceedings, shall be conducted in camera and the Parties shall treat as confidential the details of the dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.
- 34.8 The provisions of this clause 34 shall prevail to the extent of there being any conflict between the Arbitration Rules and this clause 34.
- 34.9 Without detracting from the effect, if any, of any other action taken by a Party which may affect the issue of prescription, the Parties irrevocably agree and acknowledge that the Arbitration Notice shall interrupt prescription and shall be deemed to constitute the service of process for the purpose of interrupting prescription in terms of section 13 of the Prescription Act, 1969 or, as the case may be, the corresponding provision in any amendment thereto or in any replacement legislation.
- 34.10 The provisions of this clause 34:
- 34.10.1 constitute an irrevocable consent by the Parties to the arbitration proceedings provided for herein and no Party shall be entitled to withdraw from the provisions of this clause 34 or claim at any such proceedings that it is not bound by this clause 34 or such proceedings; and
- 34.10.2 are severable from the rest of the Agreement and shall remain in effect despite the termination, cancellation, invalidity or alleged invalidity of the Agreement for any reason whatsoever.
- 34.11 Nothing in this clause 34 shall preclude a Party from seeking interim and/or urgent relief from the court referred to in clause 33 above for the protection of any rights pending the final determination of the Dispute.

35 Cession

The Supplier shall not be entitled to cede or assign any of its rights, or delegate any of its obligations, nor shall it be entitled to appoint any sub-contractor in respect of its obligations without the prior written consent of the Consumer being obtained.

36 Severability

If any provision of the Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, then, to the extent of the invalidity or unenforceability, such provision shall be severable from the remaining provisions and the remaining provisions shall continue to be of full force and effect.

37 General

- 37.1 No relaxation, indulgence or concession granted by the Consumer to the Supplier in respect of any of its obligations in terms of the Agreement shall constitute a novation thereof nor otherwise prejudice, derogate from or affect any rights which the Consumer may have against the Supplier.
- 37.2 The Supplier is and shall act as an independent contractor and is not an agent or employee of the Consumer.
- 37.3 No variation of the Agreement shall be of any force or effect unless recorded in writing and signed by the authorised signatories of both the Consumer and the Supplier, and approved by the executive director of finance of the Consumer.
- 37.4 The Consumer shall be entitled to set-off any amount owed to the Supplier in terms of the Agreement against any amount owed by it to the Supplier, from whatsoever cause arising.

38 Costs

The Supplier shall be liable to pay all legal costs incurred by the Consumer in respect of any dispute arising out of the Agreement and the Consumer enforcing its rights hereunder on the scale as between attorney and client.

The supplier shall conduct its business in accordance with the highest ethical standards and laws in the performance of its obligations, including, but not limited to, the Prevention and Combating of Corrupt Activities Act, 2004 (Act No 12 of 2004), laws dealing with ethical business practices and the prevention or prohibition of corruption and corrupt activities. The supplier shall perform the work and any matters resulting from it in a manner which is consistent with the university's [supplier code of conduct](#).

The supplier shall use all reasonable endeavours to perform work and any matters resulting from it in a manner which is consistent with the university's policies, procedures, and guidelines.

If at any time during the term the agreement, either party is informed or information comes to either party's attention that the supplier or any of its affiliates is or may be in violation of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No 12 of 2004), the supplier shall promptly inform the university of such information and shall immediately take all appropriate steps (including any reasonable requests by the university) to remedy such violation and comply with such anti-corruption law in all respects.

Where such violation occurs and/or is not remedied, without prejudice to any other express remedies elsewhere in this agreement or any remedies available at law or in equity, the university may terminate the agreement with immediate effect and without the payment of compensation or any other liability.

The supplier shall establish and maintain all proper records required by the Prevention and Combating of Corrupt Activities Act, 2004 (Act No 12 of 2004) and shall make such records available to the university if requested to do so.

The supplier undertakes to make all the supplier personnel aware of the relevant provisions in the Prevention and Combating of Corrupt Activities Act, 2004 (Act No 12 of 2004) in particular the general offence of corruption Section 3 of the above Act states-

"3. General offence of corruption - any person who directly or indirectly-

- (a) accepts or agrees or offers to accept a gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or
- (b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person., in order to act personally or by influencing another person so to act, in a manner:
 - (i) that amounts to the-
 - (aa) illegal. dishonest. unauthorised. incomplete. or biased: or
 - (bb) misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation:
 - (ii) that amounts to-
 - (aa) the abuse of a position of authority;
 - (bb) a breach of trust; or
 - (cc) violation of a legal duty or a set of rules;
 - (iii) designed to achieve an unjustified result; or
 - (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything.

is guilty of the offence of corruption."

Section 34 (1) places a duty on any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed an offence under Part 1, 2, 3 or 4, or section 20 or 21 or the offence of theft, fraud, extortion, forgery or uttering a forged document, involving an amount of R100 000 or more, to report such knowledge or suspicion or cause such knowledge or suspicion to be reported to the police official in the Directorate for Priority Crime Investigation.

Any person who fails to comply with [subsection \(1\)](#), is guilty of an offence."