

INNOVATIVE SEALING CONCEPTS TERMS AND CONDITIONS

1 INTRODUCTION

- 1.1 These Terms shall be deemed to be incorporated in and shall apply consistently to every agreement entered into between Innovative Sealing Concepts and the Consumer.
- 1.2 In the event of a conflict between these Terms and any provisions of any subsequent agreement entered into between the Parties, the provisions of these Terms shall, unless otherwise specifically provided for, take precedence only to the extent of such conflict.

2 DEFINITIONS

- 2.1 In these Terms, the following expressions shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) shall bear corresponding meanings:
- 2.2 **"Accepted Job"** means the Goods and Services required by the Consumer in terms of a Quotation, alternatively Invoice rendered by ISC to which the Consumer duly accepted and to which, ISC has subsequently agreed;
- 2.3 **"Address"** means either the Delivery Address or Service Address as the context may require;
- 2.4 **"Business Day"** means any day other than a Saturday, Sunday or gazetted national public holiday in the Republic of South Africa and **"Days"** shall mean calendar days;
- 2.5 **"Consumer"** means the Consumer who is a Consumer as defined in and within the ambit of the Consumer Protection Act, 68 of 2008;
- 2.6 **"Delivery Address"** means the physical address selected by the Consumer for the supply of any Goods and/or Services by ISC and/or ISC Agent, which physical address shall be provided to the Supplier in writing by the Consumer and as recorded in any relevant Accepted Job;
- 2.7 **"Delivery Date"** means the date by which the Goods and/or Services must be supplied to the Delivery Address, as specified in any job rendered by ISC and duly accepted by the Consumer;
- 2.8 **"Fees"** means the tariffs, fees, prices, charges, costs, expenses and disbursements payable by the Consumer to ISC in respect of any Goods and/or Services, as defined in, and more fully set out in clause 4 below and as recorded in any Fee Invoice;
- 2.9 **"Fee Invoice"** means an invoice setting out the Fees and/or additional Fees, as the case may be, payable by the Consumer to ISC for the provision of the Services and/or supply of the Goods in accordance with the terms of an Accepted Job;
- 2.10 **"Force Majeure Event"** means any adverse weather conditions, road closures, road works, requirements of any authority, illegal strike, irregular industrial action short of strike, riots (save and except for irregular action short of strike or riots, which are the direct result of poor industrial relations practices on the part of ISC), demurrage, fires, smugglers, stowaways, explosions, acts of God, war (whether declared or not), insurrection, breakdown in law and order, supervening legislation, governmental or other regulations, restrictions or directives or any other cause beyond the reasonable control of such Party, including any electricity disruptions caused by load shedding;
- 2.11 **"Goods and/or Services"** means the product to which ISC shall provide to the Consumer, as the case may be, as per an Accepted Job;

- 2.12 **"ISC"** means Innovative Sealing Concepts CC with Company Registration Number: 2010/016281/23;
- 2.13 **"Parties"** means collectively ISC, and the Consumer and **"Party"** shall mean either of them, as the context may require;
- 2.14 **"Premises"** means the business premises of ISC situated at 8 & 10 Charlie Lane, Hughes, Jet Park Boksburg, 1459.
- 2.15 **"Product(s)"** means all goods manufactured and/or supplied by the ISC.
- 2.16 **"Quotation"** means a quotation of the Fees payable by the Consumer for the Goods and/or Services ordered by the Consumer in terms of a job request received by ISC ;
- 2.17 **"Services"** means, the services provided by ISC and/or ISC Agent, which include, but are not limited to hydraulic systems with tailored replacement, seal kits engineered for earthmoving and mining machinery, Distribution of top-tier seals , wipers, and bearings
- 2.18 **"Service Address"** means the address at which the Goods and/or Services are to be provided by ISC and/or ISC Agent, as recorded in any relevant Accepted Job;
- 2.19 **"Signature Date"** means the date of last signature to these Terms, provided that both Parties have signed these Terms;
- 2.20 **"Specifications"** include all technical drawings, measurements, designs, or parameters provided by the Consumer for the manufacture of the Product(s).
- 2.21 **"Staff"** means any director, officer, employee and/or other representative of either Party;
- 2.22 **"Taxes"** means all forms of taxation, duties and levies, owing in any jurisdiction to any government or other authority, including, without limitation, normal income tax (including any liability for deferred tax), customs duty, stamp duty, marketable securities tax, rates and taxes, secondary tax on companies, VAT, sales tax, capital gains tax, donations tax, workman's compensation, skills development levy, municipal charges and dividend withholding tax;
- 2.23 **"Terms"** means these Consumer terms and conditions and any annexures, schedules and all amendments thereto, from time to time;
- 2.24 **"VAT"** means value-added tax in terms of the Value-Added Tax Act 89 of 1991 (as amended).

3 DURATION AND TERMINATION

- 3.1 The Parties agree that these Terms shall commence on Signature Date and subsist and be of force and effect indefinitely subject to the Parties rights to terminate these Terms on notice given, as provided for in clause 3.2.
- 3.2 Notwithstanding anything else contained in these Terms, either Party shall be entitled to terminate these Terms for any reason whatsoever, provided that the terminating Party provides at least 60 Days written notice to the other Party, of its intention to terminate and subject to each Party's compliance with these Terms during the notice period.

4 DESIGN SPECIFICATIONS AND APPROVAL

- 4.1 The consumer shall, prior to commencement of the manufacturing of the product, provide all relevant specifications required for the productions of the product(s).
- 4.2 The consumer warrants that the specifications supplied are accurate, complete, and suitable for the intended use of the product(s).

- 4.3 ISC shall be entitled to rely on the specifications provided by the consumer without any obligations to verify or validate their accuracy or suitability.
- 4.4 Once the manufacturing has commenced based on the approved specifications, the Consumer shall not be entitled to make any changes thereto without written approval from ISC, which shall be subject to additional costs.

5 ORDERS

- 5.1 The Consumer will issue ISC with a request for a job card for the provision by ISC for Goods and/or Services that the Consumer orders ("**Purchase Order**").
- 5.2 Notwithstanding clause 5.5 below, the Purchase Order shall be duly signed and dated by the Consumer, and shall include the following information:
- 5.2.1 Goods and/or Services ordered;
- 5.2.2 Specifications;
- 5.2.3 Address, if applicable, alternatively shall stipulate that the Consumer shall collect the Goods at the Premises;
- 5.2.4 Delivery Date, alternatively shall stipulate the date upon which the Consumer shall collect the Goods at the Premises;
- 5.2.5 The appointed times for delivery or collection of the Goods at the Delivery Address; and/or
- 5.2.6 The appointed times for provision of the Services at the Service Address.
- 5.3 ISC shall have 3 (three) Business Days in which to acknowledge receipt of the Purchase Order, which acknowledgement shall be in writing and signed by a duly authorised representative of ISC ("**Quote**"). Should ISC fail to acknowledge receipt of the Purchase Order within the afore stated period, it shall be deemed to have rejected the Purchase Order.
- 5.4 Should either Party wish to cancel a Quote, such cancellation shall be negotiated in good faith by the Parties and with minimum damages to either of them, provided that the Consumer shall be liable for such Fees as recorded in a Fee Invoice, to be provided by ISC in the event that the Consumer cancels and ISC has incurred any expenses.
- 5.5 In the event that the Consumer intends to add and/or remove Goods, or items of Goods and/or amend any information, as referred to in clause 5.2, from a Purchase Order prior to ISC providing the Consumer with a Quote in accordance with these Terms, the Consumer shall advise ISC in writing, of such addition, removal and/or amendment and shall provide ISC with an amended Purchase Order which shall be signed and dated by the Consumer ("**Amended Purchase Order**" or "**Amended PO**") and shall, from the date of signature of the Amended PO, replace in its entirety the previous version of the Purchase Order. These terms shall apply mutatis mutandis to the Amended PO.
- 5.6 Should the Consumer wish to amend an Accepted PO as provided for in clause 5.5, after ISC has provided a Quote or otherwise in accordance with these Terms, ISC shall assist the Consumer, as far as is reasonable, in accepting the Amended PO, subject to these Terms, provided that the Consumer agrees herewith that it shall be liable for any and all Fees of ISC, as shall be recorded in a Fees Invoice, for the Quote and/or for the processing of the Quote, alternatively for any other Fees of ISC in respect of the Quote.

- 5.7 The Consumer agrees herewith and absolves ISC of any and all liability, whatsoever in nature and howsoever arising, as a result of the delay to the provision by ISC of the Services and/or supply of the Goods, caused by the Consumer providing an Amended PO.
- 5.8 ISC shall issue the Consumer with a notice confirming the acceptance of a job within 3 (Three) Days of an Accepted PO, which may be effected by email or in writing, which Quotation shall remain open for acceptance by the Consumer in writing ("**Accepted Job**"), the Consumer shall confirm the acceptance of the Accepted Job within 10 Days on receipt of the Accepted Job from ISC.. Should the Consumer fail to accept or reject the Accepted Job in the manner and within the allotted period, it shall be deemed to have rejected the Accepted Job, provided that the Consumer shall still be liable, in the sole discretion of ISC, for any and all Fees of ISC, as shall be recorded in a Fees Invoice, for the Quotation and/or for the processing of the Quotation.
- 5.9 The Fees contained in a Quotation are subject to amendment by ISC in its sole discretion, at any time before receipt by ISC of the Accepted Job. ISC, at their sole discretion, may terminate after the Accepted Job for any reasonable reason and said notification of termination shall be given to the Consumer as contemplated in these Terms and Conditions. If the Consumer suffers any expenses and/or liability as a result of the termination of an Accepted Job, the Consumer shall indemnify ISC from any claim for damages and the like. ISC will make reasonable attempts to limit and/or lessen any damages which the Consumer may or may not incur.
- 5.10 In the event that the Consumer, for any reason whatsoever, and without derogating from any other rights that ISC may have in law and in the sole discretion of ISC, cancels an Accepted Job:
- 5.10.1 prior to ISC having received the Goods from its suppliers, then the Consumer shall be liable to pay ISC an amount equal to 100 % (one hundred percent) of the total value of the Accepted Job; or
- 5.10.2 after ISC has taken delivery of the Goods from its suppliers then the Consumer shall remain liable for the full amount due in terms of the Accepted Job; and/or
- 5.10.3 prior to ISC providing the Services to the Consumer, then the Consumer shall be liable to pay ISC an amount equal to 100% (one hundred percent) of the total value of the Accepted Job; or
- 5.10.4 after ISC has commenced with providing the Services ordered, then the Consumer shall remain liable for the full amount due in terms of the Accepted Job.
- 5.11 In the event that there is a conflict between these Terms and the terms and conditions contained in any Accepted Job, the terms and conditions contained in the Accepted Job shall take precedence only to the extent of such conflict. The Parties agree herewith that in the event that the Consumer requires ISC to sign or countersign (and conclude) any other agreement (regardless of the name thereof) ("**Consumer Terms**") which relates to and contains terms and conditions in respect of, the relationship or transaction between ISC and The Consumer, as envisaged in these terms and conditions and should ISC conclude the Consumer Terms, then and notwithstanding anything else to the contrary in the Consumer Terms and regardless of the Consumer Terms being concluded after the date of conclusion of these terms and conditions, The Consumer and ISC both agree herewith that the Consumer Terms (including any annexures referred to therein or attached thereto, from time to time) are subject to and must be read with these terms and conditions and the Consumer Terms will be deemed to be incorporated herein, by reference and both the Consumer Terms and these terms and conditions, as read together, constitute the entire agreement between The Consumer and ISC ("**the Agreement**"), and in the event of any conflict and/or contradiction between these terms and conditions and the Consumer Terms, these terms and conditions shall take precedence to the extent of such conflict

and/or contradiction. For the avoidance of doubt the Consumer Terms shall not be regarded as an annexure to nor are they an amendment or novation of, these terms and conditions.

- 5.12 An Accepted Job shall be converted into a Fee Invoice by ISC which shall be rendered to the Consumer once the Goods and/or Services are, in ISC sole discretion, ready for delivery to the Consumer and/or capable of being provided and the Consumer shall make payment of such Fee Invoice in accordance with the terms and conditions contained therein, failing which, on the terms and conditions contained in these Terms. It is specifically recorded that in the event that the Consumer is not a South African tax resident, alternatively if the Goods are to be delivered and/or the Services are to be provided outside the borders of the Republic of South Africa, ISC reserves the right to amend the Fees contained in a Fee Invoice to account for any exchange rate fluctuations and/or any Taxes, on written notice to the Consumer and the Consumer agrees to be bound by any such amendments to the Fee Invoice and agrees to pay any amount recorded in such amended Fee Invoice, immediately upon receipt of such Fee Invoice.
- 5.13 In the event of ISC receiving a Purchase Order for Goods and/or Services from the Consumer, the Purchase Order shall be deemed to have been received from the Consumer and the Consumer shall be estopped from denying the validity of any such Purchase Order, notwithstanding the fact that such Purchase Order may have been given or signed by a person not duly authorised to do so.
- 5.14 Should ISC request, in writing, that the Consumer provide proof, to the satisfaction of ISC, of the authorisation given to the Consumer's Representative to sign these Terms and act on behalf of and for the Consumer, the Consumer shall comply with such request within 2 Business Days of receipt of such request.

6 PAYMENT

- 6.1 ISC shall supply the Consumer with a Fee Invoice.

The Consumer shall make full payment of any Fee Invoice immediately prior to the Consumer taking possession of the goods and provide proof thereof in writing.

Deposit

- 6.1.1 Within 2 Days on the Consumer accepting ISC quote, thereby confirming an Accepted Job, the Consumer shall make a 50% (Fifty Percent) deposit of the amount stipulated in the Fee Invoice;

Cash on Delivery ("COD")

- 6.1.2 within 2 Day of the completion date of the Accepted Job, the Consumer shall make payment of the remainder of the amount stipulated in the Fee Invoice;
- 6.1.3 it is agreed that payment as stipulated in 6.1.1, is required to be made, and in the case of payment by way of electronic funds transfer, is required to reflect as cleared in the banking account of ISC prior to ISC being obligated to supply the Goods and/or provide the Services and the Consumer shall not be entitled to enforce its rights for the supply of the Goods and/or provision of the Services, by ISC unless and until payment as aforesaid in this clause, has been made; and
- 6.1.4 The Consumer shall provide ISC with proof of payment on date payment has been made.

7 DELIVERY

- 7.1 ISC shall deliver the Goods and/or Services at the Delivery Address on or before the Delivery Date as detailed in the Accepted PO, subject to the remainder of these Terms.
- 7.2 Delivery of Goods will take place between the hours of 07h00 to 17h00 on Business Days. Deliveries outside normal working hours may be subject to extra Fees, in the sole discretion of ISC.
- 7.3 ISC shall notify the Consumer immediately by email address recorded for the Consumer in these Terms, of any actual or expected delay in the provision of the Services and/or supply of the Goods.
- 7.4 The Consumer shall notify ISC of any loss and/or damages of, or to the Goods, the cause of which loss and/or damage was due to the gross negligence or wilful misconduct of ISC ("**Defective Goods**"), within 5 Days of the Consumer receiving the Defective Goods at the Delivery Address, failing which, the Consumer shall be deemed to have accepted that the Goods received at the Delivery Address are free from any and all damages and/or loss. Notwithstanding the aforementioned, the Consumer acknowledges and agrees herewith that ISC shall not be bound by any delivery receipt of ISC or the Consumer and the onus of proof in respect of any Defective Goods will at all times be upon the Consumer.
- 7.5 All interest and risk in and to the Goods shall at all times vest in the Consumer, notwithstanding anything else contained in these Terms.
- 7.6 In the event that the Consumer notifies ISC of any Defective Goods within the period provided for in clause 7.4, then ISC shall, at its cost and in its sole discretion:
- 7.6.1 within 30 days, repair or replace the Defective Goods; and
 - 7.6.2 deliver the replaced Goods to the Consumer in accordance with this clause 7; and
 - 7.6.3 whereafter the provisions of 7.4, 7.5 and 7.6 shall apply again.
- 7.7 ISC shall not be responsible for delays in delivery or non-delivery of Goods and/or Services whatsoever due to causes beyond ISC 's control (e.g. adverse weather conditions, road congestion, labour-related actions, shortage of stock, delays on the part of subcontracted transport services) and including any Force Majeure Event, nor will ISC accept liability for damages or for any loss the Consumer may suffer pursuant thereto, of whatsoever nature, arising from the late delivery or non-delivery of Goods as a result of this clause 7.7 being applicable.
- 7.8 The Consumer accepts responsibility and liability for whatever means or method it chooses to adopt for the handling, placing, storage and consolidation of the Goods after the supply by ISC of such Goods. Furthermore, the Consumer accepts responsibility and liability for any lack of quality, fault or failure of the Goods resulting from such handling, placing, storage or consolidation of the Goods by the Consumer and/or on the Consumer's behalf.
- 7.9 The Consumer shall ensure that the delivery vehicles of ISC or its own transport service providers, offload the Goods at the specific site point at the Delivery Address. In the event of the Goods being offloaded at an incorrect site point due to a fault on the part of the Consumer, ISC shall not be liable for any loss arising therefrom, whether direct, indirect, consequential, special or general.
- 7.10 Should the Consumer wish to amend the Address, subsequent to providing ISC with an Accepted Quotation, alternatively ISC providing a Fee Invoice, the Consumer agrees herewith that it shall be liable for any Fees in respect of ISC delivering Goods and/or providing Services at the new Address.

- 7.11 ISC shall not be responsible and liable for the offloading, handling, placing, storage or consolidation of the Goods once ISC has supplied the Goods at the Delivery Address. In this regard the Consumer shall ensure that it appoints any Staff to attend to the aforementioned immediately once ISC has supplied the Goods at the Delivery Address, failing which ISC shall be entitled to return the Goods to the Premises and the Consumer shall be liable for any Fees in respect thereof and/or any additional Fees, should the Consumer require ISC to deliver the Goods again.
- 7.12 The Consumer through its authorised Staff and/or agents shall sign ISC 's delivery notes and this shall constitute prima facie proof that the type and quantity of Goods recorded thereon was delivered and accepted by the Consumer. In the event of a dispute regarding the delivery of the Goods and/or the quantity or quality of the Goods delivered, the onus of proving that the Goods were not delivered and/or that the quantity or quality thereof was not in accordance with the Accepted Quotation, shall rest with the Consumer.
- 7.13 Should the Consumer decide to utilise its own transport vehicles and or any third party for collection at the Premises and delivery of Goods at the Delivery Address, the Consumer agrees herewith that it shall not be entitled to hold ISC liable for any damages and/or loss caused as a result of the collection and delivery of Goods by the Consumer and/or a third party.

8 SUB-CONTRACTING

- 8.1 The Consumer acknowledges and agrees herein that ISC shall be entitled, in its sole discretion, to appoint its own subcontractors and agents ("**ISC Agent**") to deliver the Goods and/or Services in accordance with clause 7 and/or to provide the Services to the Consumer and in this regard the Consumer of such ISC Agent (for the avoidance of any doubt the Consumer of any ISC Agent shall be ISC in this context) shall be deemed to be a Consumer for the purposes of these Terms, which shall apply *mutatis mutandis*. Accordingly, any reference to ISC in these Terms may be construed as a reference to an ISC Agent, as the context may require.
- 8.2 Any written agreement entered into between ISC and the ISC Agent shall be delivered to ISC and shall at a minimum contain the same obligations on the ISC Agent as are imposed on ISC in terms of these Terms.
- 8.3 The Consumer acknowledges and agrees that ISC shall not be liable for any claims by the Consumer or any other person in respect of the wilful misconduct or any negligence of an ISC Agent.

9 OWNERSHIP AND RISK

- 9.1 Notwithstanding the delivery of any Goods and/or Services to the Consumer, ownership of the Goods shall not pass until ISC has received payment in full of the Fee Invoice in respect of such Goods. In the event of payment not being timeously effected, ISC reserves the right to recover possession of such Goods immediately, without notice and without the necessity to first cancel these Terms.
- 9.2 Where the Consumer has appointed its own transport service provider to effect delivery of the Goods, ISC 's responsibility for providing proof of delivery of Goods will be limited to proving that the Goods were accepted by a person purporting to be the transport service provider.
- 9.3 ISC reserves the right to refuse to enter the site of an Address if in ISC 's view it is unsafe.
- 9.4 In the event of a dispute or complaint by a Consumer, who purchased the Goods from ISC regarding the quality, quantity or performance of the Goods supplied, ISC shall use reasonable endeavours to resolve the dispute or complaint as soon as possible.

10 RETURNS AND DEFECTIVE GOODS

- 10.1 ISC may, in its sole discretion, accept the return of any Goods by the Consumer for any reason, provided that:
- 10.1.1 the Goods are in the same packaging in which they were delivered and are unopened and in their original condition;
 - 10.1.2 the Goods are returned within 10 days of delivery and/or collection of such Goods, in accordance with these Terms,
 - 10.1.3 however, such returns shall at all times be subject to the remaining terms and conditions of these Terms.
- 10.2 In the event that ISC accepts the return of any Goods, a 10% handling Fee may apply, in the sole discretion of ISC to such return and the Consumer will be liable to make payment of this handling Fee on acceptance of the return of the Goods by the Consumer and as recorded in a Fee Invoice.
- 10.3 The following will NOT be regarded as defects and will not entitle you to a return under this section:
- 10.3.1 faults resulting from normal wear and tear;
 - 10.3.2 damage arising from negligence, user abuse or incorrect usage of the product;
 - 10.3.3 damage arising from electrical surges or sea air corrosion;
 - 10.3.4 damage arising from a failure to adequately care for the product;
 - 10.3.5 damage arising from unauthorised alterations to the product; and
 - 10.3.6 where the specifications of a product, although accurately described in accordance with ISC's Job Card and generally fit for its intended purpose, do not suit you.

11 LIMITATION OF LIABILITY AND INDEMNIFICATION

- 11.1 ISC shall under no circumstances become liable to the Consumer for any damages and/or losses sustained by the Consumer, whether direct or indirect, consequential, special or otherwise as a result of but not limited to:
- 11.1.1 any delay or failure in the supply of the Goods and/or provision of the Services;
 - 11.1.2 any reason whatsoever as a result of clauses 13 and/or 14;
 - 11.1.3 defective and/or incorrect raw materials, materials, workmanship, design and/or drawings in respect of the Goods and/or the Goods Specifications.
- 11.2 In any event, and within the sole discretion of ISC, ISC may pass through any rights in relation to warranties and/or guarantees that it is afforded by its suppliers ("**Third Party Warranties**"), onto the Consumer, provided that it is agreed that ISC does not represent herewith that there are any such Third-Party Warranties in respect of any Goods and/or Services.
- 11.3 If the Product(s) are manufactured in accordance with the Specifications provided and approved by the Consumer, the Consumer shall not be entitled to withhold payment, demand a refund, or claim damages on the basis that the Product(s) do not meet the Consumer's subjective expectations or intended application.
- 11.4 The Consumer agrees and acknowledges that the Supplier shall not be liable for any losses, damages, or claims arising from errors, omissions, or inadequacies in the Specifications provided by the Consumer

- 11.5 The Consumer hereby indemnifies ISC and its Staff and/or agents, against any direct and/or indirect damages, costs or losses incurred by ISC arising out of any claim by any third party for, or in respect of, injury, death or illness affecting such third party, or any loss or damage to property of such third party caused by, the Goods and/or provision of the Services and/or the negligence or wilful misconduct of the Consumer and/or its Staff.

12 SURETY

- 12.1 The Consumer's Representative who is signing on behalf of the Consumer ("**Surety**") acknowledges having read these Terms and agrees that both the Consumer and the Surety (wherever applicable) are bound by them.
- 12.2 The Surety hereby binds himself, in favour of ISC its successors in title and assignees, jointly and severally, as surety and co-principal debtor *in solidum* with the Consumer, for the payment to ISC of any and all sums of money which the Consumer may in terms of these Terms, or any other cause of action whatsoever, and from time to time hereafter, owe or be indebted to ISC for arising from and for the proper and timeous performance in all respects of all the Consumer's obligations to ISC in accordance with these Terms ("**Principal Debt**").
- 12.3 The Surety renounces the benefits of:
- 12.3.1 excussion (which means that the Surety is no longer entitled to claim that the ISC first exhausts its remedies against the Consumer before proceeding against the Surety in terms of this clause 12; and
- 12.3.2 division (which means that the Surety is no longer entitled to claim that the obligations of the Surety be divided proportionately between the Surety and the Consumer);
- 12.4 to the extent not prohibited by the National Credit Act, 34 of 2005, the legal exception of:
- 12.4.1 *non numeratae pecuniae*, which means that the Surety is no longer entitled to claim that no moneys or Goods and/or Services were in fact paid over, supplied and/or provided to the Consumer; and
- 12.4.2 *non causa debiti*, which means that the Surety is no longer entitled to claim that the Principal Debt for which the Surety undertook liability does not exist; and
- 12.4.3 *errore calculi*, which means that the Surety is no longer entitled to claim that the amount claimed has been incorrectly calculated; and
- 12.4.4 revision of accounts, which means that the Surety is no longer entitled to claim that ISC revises its accounts in respect of the Surety and/or the Consumer's indebtedness; and
- 12.4.5 the Surety also renounces all other exceptions which might or could be pleaded in defence to the payment of the Surety's obligation or any part thereof, with the force and effect of which exceptions the Surety declares himself to be fully acquainted.
- 12.5 The suretyship in this clause 12 shall be in addition to and without prejudice to any other suretyship or security now held or hereafter to be held by ISC and shall remain in force as a continuing security notwithstanding any partial or intermediate settlement of account.
- 12.6 Notwithstanding any part payment by or on behalf of the Surety, the Surety shall have no right to any cession of action in respect of any such part payment and shall not be entitled to take any action against the Consumer or against any other surety for the Consumer in respect thereof unless and until the indebtedness of the Consumer to ISC shall have been discharged in full.
- 12.7 A certificate furnished by any manager or director for the time being of ISC (whose authority it shall not be necessary to prove) setting out the amount due in respect hereof shall be prima

facie proof of ISC 's claims against the Consumer and/or Surety of the amount of such claim for the purposes of obtaining judgement against the Surety and/or the Consumer.

13 **FORCE MAJEURE**

- 13.1 ISC shall not be liable for any failure to fulfil its obligations under these Terms if and to the extent such failure is caused by any circumstances beyond its reasonable control, including but not limited to:
- 13.1.1 an act of God or state of war (whether declared or not) or sabotage, fire, flood, riot, strike, customs seizures, port delays, lock-out;
 - 13.1.2 the interruption and/or cessation of power supply and/or any other consumed services to ISC 's premises, for any reason whatsoever, at which the Services are provided and/or Goods are supplied from;
 - 13.1.3 the Consumer failing, in ISC 's sole discretion, to provide ISC with all, or accurate, Required Information;
 - 13.1.4 any failure on the part of the Consumer or its Staff to comply with any obligation stipulated in these Terms, whether same constitutes a breach or not; or
 - 13.1.5 the failure by a supplier of ISC to supply any materials, Materials and/or Components required by ISC to supply the Goods and/or manufacture the ISC Goods and/or to provide the Services.
- 13.2 Should ISC be unable to fulfil a material part of its obligations under these Terms for a period in excess of 30 Days due to circumstances beyond its reasonable control, as recorded in clause 13.1, ISC may at its sole discretion cancel the Terms between ISC and the Consumer forthwith by written notice to Consumer, which may be effected by email.

14 **BREACH**

- 14.1 Should the Consumer commit a breach of any of the terms and conditions of these Terms and fail to remedy such breach:
- 14.1.1 within 7 days of having been called upon, in writing by ISC to do so; or
 - 14.1.2 in the event that the Consumer is a Consumer, within 20 Business Days of having been called upon, in writing by ISC to do so,
- 14.2 then ISC may, in its , cancel these Terms on written notice to the Consumer, in which event such cancellation shall be without prejudice to any claims which ISC may have for damages against the Consumer occasioned by the cancellation of these Terms, in terms of this clause 14.
- 14.3 Notwithstanding 14.1 above, ISC shall be entitled to cancel these Terms immediately, without any notice to the Consumer, in the event of any of the following breaches of these Terms by the Consumer:
- 14.3.1 where the Consumer commits an act of insolvency or is placed in liquidation or is sequestrated, whether voluntarily or otherwise and whether provisionally or finally; or
 - 14.3.2 where the Consumer is placed under business rescue proceedings whether voluntarily or otherwise; or
 - 14.3.3 where the Consumer allows a default or other judgment to be taken against it in any competent court or tribunal and fails to either satisfy that judgment or take effective steps to have it rescinded or otherwise set aside within 7 days thereafter.

- 14.4 In amplification of clauses 14.1 and 14.3, the Consumer agrees and to the extent necessary provides its consent for ISC to:
- 14.4.1 inform any registered credit bureau of any default by the Consumer in making payment of any amount due and payable to ISC ;
 - 14.4.2 suspend the supply of Goods or provision of Services, until such time that the Consumer remedies its breach in accordance with these Terms; and
 - 14.4.3 take possession, by lawful means, of such of the Goods that the Consumer has failed to make payment in respect of in accordance with these Terms;
- 14.5 In the event of the Consumer defaulting in making payment of any amount that has become due and payable to ISC then the full balance outstanding (whether due or not) will immediately become due and payable and ISC shall not be required to provide notice to the Consumer.
- 14.6 In the event of ISC having to enforce its rights in terms of this clause 14, to recover any amount from the Consumer which is due and payable to ISC the Consumer agrees to pay all costs so incurred by ISC on an attorney and client scale and/or as incurred by ISC including all collection commission payable in terms of any law of general application.

15 **CONFIDENTIAL INFORMATION**

- 15.1 Each Party shall treat and hold as confidential all information which it may receive from the other Party, or which becomes known to it concerning the other Party which is marked as confidential or has the necessary quality of confidentiality about it.

16 **USE OF CONSUMER'S PERSONAL INFORMATION**

- 16.1 The Consumer warrants that all information supplied to ISC by the Consumer in terms of these Terms is true and correct.
- 16.2 The Consumer agrees to inform ISC immediately should there be any change of whatsoever nature in any of its information, including its addresses as previously supplied to ISC .
- 16.3 As and when necessary, the Consumer consents to ISC obtaining and/or disclosing the Consumer's information supplied to the ISC as follows:
- 16.3.1 to registered credit bureaux and/or banks and/or other financial institutions in order to ascertain information relating to the Consumer's creditworthiness (before acceptance of these Terms) and/or for fraud prevention purposes in order to process any payment transactions necessary for and relative to these Terms;
 - 16.3.2 to legal practitioners and/or debt collection agencies in the event that the Consumer is in breach of these Terms;
 - 16.3.3 to ISC 's Staff, subcontractors, trade partners, consultants and/or service providers, but only to the extent necessary and in order to allow the supply of the Goods and/or provision of the Services;
- 16.4 ISC will not disclose the Consumer's information to any other person or institution other than as stated under 16.3 and/or if ISC is compelled to do so in terms of any law of general application and/or a court order.

17 **INTELLECTUAL PROPERTY**

- 17.1 For the purpose of this clause 18, "**Intellectual Property**" means either of the Party's and/or its licensor's, materials, software, hardware, circuits, firmware, user interfaces, processes, source code, object code, methodologies, components, technologies, algorithms, techniques, designs,

reports, trade secrets, formulae, ideas, inventions, programmer interfaces, computer programs, specifications, know-how, drawings, concepts and documentation relating to the Goods and Services, regardless of whether intellectual property rights actually exist in any such items.

17.2 It is recorded that the Consumer may have access to ISC 's or ISC 's licensors, Intellectual Property.

17.3 The Consumer acknowledges and agrees that it shall not, at any time, acquire any right, title and/or interest in or to any Intellectual Property of ISC or ISC 's licensors, which Intellectual Property shall, subject to the reaming provisions of these terms, remain wholly owned by ISC and/or its licensors.

17.4 In the event that the Consumer supplies ISC with any Intellectual Property, in any format or media, the Consumer hereby grants to ISC a limited, perpetual, fully paid up, transferable, worldwide license to make use of such Intellectual Property for the purposes of manufacturing and/or supplying the Goods and/or providing the Services and/or marketing the business of ISC .

18 NOTICE AND ADDRESS

18.1 The Consumer hereby chooses as its *domicilium citandi et executandi* for all purposes arising out of these Terms and/or any action or proceedings instituted by ISC against the Consumer the address described as its *domicilium citandi et executandi* on the front page of these Terms.

18.2 ISC hereby chooses as its *domicilium citandi et executandi* for all purposes arising out of these Terms the Premises.

18.3 The Parties shall be entitled to deliver any notices that are not required to be delivered by hand at any chosen *domicilium citandi et executandi*, by email at any email address provided for each Party in these Terms.

18.4 Either Party shall be entitled to change their given address for the purposes of this clause 18, by providing written notice to the other Party, which change of address shall only become effective on date of the receipt by the other Party of a written acknowledgement that such Party has received the other Party's written notice of change of address.

18.5 Notwithstanding the above in clause 18.4, a written notice or communication actually received by a Party shall be an adequate service of such written notice or communication to that Party notwithstanding that the notice or communication was not sent to or delivered or served at that Party's chosen address in this clause 18.

19 CERTIFICATE OF BALANCE

19.1 The Consumer acknowledges that a certificate signed by any manager or director of ISC (whose authority and appointment shall not be necessary to prove) shall be prima facie proof (sufficient evidence) of the amount of such indebtedness to ISC . Such certificate shall be sufficient proof of the Consumer's indebtedness for the purposes of provisional sentence and/or summary judgment proceedings against the Consumer, or for any other purpose whatsoever.

20 FICA COMPLIANCE

20.1 The Consumer acknowledges that in terms of Section 29 (1) of the Financial Centre Intelligence Act, 38 of 2001 ("FICA") businesses are required to report any suspicious or unusual transaction or series of transactions to the Financial Intelligence Centre (or its successor in title) and in particular where ISC has received, or is about to receive, the proceeds of suspected unlawful activities in payment of the Consumer's indebtedness to ISC .

- 20.2 The Consumer indemnifies and holds ISC harmless against any claim of whatsoever nature instituted against ISC for any damage or harm suffered by the Consumer or a third party arising from any action taken by ISC in discharging its obligations in terms of FICA.
- 20.3 The Consumer acknowledges and agrees that specific documentation may be required by ISC from the Consumer in terms of FICA.
- 20.4 ISC shall notify the Consumer, in writing, of the specific documentation required in accordance with 20.3, within 10 Business Days of the signature of the Consumer to these Terms.
- 20.5 The Consumer agrees that the relevant documentation duly completed by the Consumer shall be provided to ISC within 10 days of receipt by the Consumer of ISC 's notification to do so in terms of 20.4, which documentation will form part of these Terms.

21 GENERAL AND INTERPRETATION

- 21.1 Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of these Terms.
- 21.2 References to a statute or a statutory provision include any subordinate legislation made from time to time under that statute or provision and include that statute or provision as modified or re-enacted from time to time.
- 21.3 Words importing any particular gender include the other genders (i.e. the masculine, feminine and neuter genders, as the case may be); the singular includes the plural and vice versa; and natural persons include artificial persons and vice versa.
- 21.4 If a definition imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition.
- 21.5 The rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (i.e. *the eiusdem generis rule*) shall not apply, and whenever the word "including" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given.
- 21.6 Any relaxation or indulgence which ISC may show to the Consumer shall not in any way prejudice any of ISC 's rights under these Terms and more particularly no act of ISC in accepting payments after due date, or in accepting a lesser sum than the instalment or amount due, shall be construed as a waiver by ISC of any right under these Terms or otherwise in law.
- 21.7 No consent for cancellation, variation or modification of these Terms, including this clause, shall be binding on ISC unless reduced to writing and signed by both Parties.
- 21.8 These Terms contain all the express provisions agreed on by the Parties with regard to the subject matter of these Terms and supersedes and novates in its entirety any previous understandings or agreements among the Parties in respect thereof; and the Parties waive the right to rely on any alleged provision not expressly contained in these Terms.
- 21.9 Each of these Terms is severable, the one from the other and if any one or more clauses are found to be invalid or unenforceable, that clause, or clauses, shall not affect the remaining provisions of these Terms, which shall remain of full force and effect.
- 21.10 In the event that ISC elects to cancel these Terms as a result of the Consumer's breach, then the Consumer agrees and specifically provides its consent, that ISC shall be entitled, without prejudice to any claim for damages, to obtain judgement against the Consumer for the amount

then due and owing by the Consumer to ISC as detailed in the Consumer's latest statement of account and/or a certificate provided in terms of clause 19, in terms of section 57 and/or section 58 of the Magistrates Court Act, No. 32 of 1944, as amended.

- 21.11 The Consumer hereby further expressly consents to ISC supplying any third party with any and all information pertaining to the Consumer, including, but not limited to, any and all information provided by the Consumer to ISC in accordance with these Terms. For the avoidance of any doubt, in the event that the insurer of ISC requires any amendment to these Terms in order for ISC to be insured against any default by the Consumer in respect of the Consumer's obligations towards ISC in terms of these Terms, and notwithstanding the provisions of clause 21.7, a letter from ISC's insurers, as appointed from time to time, stating which of the terms and conditions of these Terms are required to be amended, and the associated proposed amendments, shall be read and incorporated herein and shall form a part of these Terms.
- 21.12 The Consumer shall not be entitled to transfer any of its rights to any other person or transfer any of the Consumers obligations or responsibilities to any other person, in terms of these Terms, without the prior written consent of ISC which consent shall not be unreasonably withheld.
- 21.13 Any amounts to be paid in accordance with these Terms shall be construed as being VAT exclusive, unless the contrary is expressly stated.
- 21.14 The Parties hereby consent to the jurisdiction of the Magistrates court in terms of Act no. 32 of 1944, in respect of any legal proceedings arising out of or in connection with these Terms. Notwithstanding the foregoing, ISC may, in its discretion, institute legal proceedings arising out of or in connection with these Terms, or any transaction between the Consumer and ISC in the High Court of South Africa. The Parties consent herewith to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg.
- 21.15 These Terms shall be governed by, enforced and interpreted in accordance with, the laws of the Republic of South Africa.