



# Terms and Conditions

(Including Suretyship)

## 1 INTERPRETATION

In this Agreement –

1.1 Clause headings are for convenience and reference only and shall not be used in its interpretation;

1.2 Unless the context clearly indicates a contrary intention –

1.2.1 an expression which denotes-

1.2.1.1 any gender includes the other genders; 1.2.1.2 a natural person includes an artificial person and vice versa; 1.2.1.3 the singular includes the plural and vice versa;

1.2.2 the following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings-

1.2.2.1 "**Agreement**" – means the Application and these Terms and Conditions;

1.2.2.2 "**Application**" – means the application form prefixed to these Terms and Conditions containing, amongst other things, the Customer's information;

1.2.2.3 "**CPA**" – means the Consumer Protection Act 68 of 2008 as amended;

1.2.2.4 "**Customer**" – shall mean the body corporate or person whose name appears on the Application, or who is otherwise identified as the customer;

1.2.2.5 "**Goods**" – means any items or services of whatsoever nature that are supplied by the Supplier to the Customer in terms of this Agreement;

1.2.2.6 "**Signatory**" – means the person or persons who signs this Agreement, including the Application on behalf of the Customer as well as any other agreement or document between the Supplier and the Customer;

1.2.2.7 "**Supplier**" – means Winning Media Proprietary Limited, registration number 2015/306122/07; and

1.2.2.8 "**Terms and Conditions**" – means, subject to clause 16, the Supplier's standard terms and conditions as contained herein.

## 2 NATURE OF THESE TERMS AND CONDITIONS AND TERMINATION

2.1 It is recorded that the only basis upon which the Supplier is prepared to do business with the Customer is that, notwithstanding anything in the Customer's enquiry, specification, acceptance, order or other documentation or any other documentation or discussion/s to the contrary, this Agreement shall constitute the sole terms of the agreement between the Supplier and the Customer and shall operate in respect of any and all business between the Customer and the Supplier.

2.2 All and any business undertaken, including any advice, information or service provided whether gratuitously or not by the Supplier to the Customer is and shall be subject to the Terms and Conditions, and each Term and Condition shall be deemed to be incorporated in and to be a term and condition of any agreement between the Supplier and the Customer.

2.3 This Agreement shall commence from the date of signature hereof, by the party signing last in time and shall be renewed automatically on an annual basis, subject to the provisions of this clause 2 and clause 18 below.

**2.4 Notwithstanding anything to the contrary contained herein, the Customer acknowledges that:**

**2.4.1 the Supplier shall at all times be entitled to determine (in its sole discretion) the nature, extent and duration of any credit facilities (if any) granted to the Customer in terms of this Agreement;**

**2.4.2 should the Customer not purchase any Goods for a period exceeding 2 (two) consecutive months, the Supplier shall be entitled (but not obliged) to terminate this Agreement, provided that should the Supplier terminate this Agreement for any reason whatsoever, such termination shall not affect any obligations of the Customer to the Supplier in terms hereof, which obligations arose prior to the date of termination and the Supplier shall furthermore be immediately entitled to claim all amounts owing by the Customer to the Supplier in terms hereof or in terms of any other agreement; and**

**2.4.3 these Terms and Conditions apply to all servants and subcontractors of the Supplier. The Supplier shall be entitled to enter into subcontracts with third parties of its choice in respect of any Goods without the knowledge or consent of the Customer.**

2.5 The Customer undertakes to inform the Supplier in writing within 7 days of any change of director, member, shareholder, owner or partner or address, or 14 days prior to selling or alienating the Customer's business, and failure to do so will constitute a material breach of this Agreement. Upon receipt of such written notification, the Supplier reserves the right, at its sole discretion, to withdraw any credit facility advanced to the Customer.

## 3 NO VARIATIONS OR AMENDMENTS

3.1 This Agreement constitutes the whole agreement between the Customer and the Supplier relating to the subject matter hereof.

3.2 No amendment or consensual cancellation of this Agreement or any provision or term thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or terms of this Agreement and no settlement of any disputes arising under this Agreement and no

extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement or of any agreement shall be binding unless recorded in a written document signed by a director or a duly authorised representative of the Supplier. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

3.3 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, or any other document issued or executed pursuant to or in terms of this Agreement, shall operate as a waiver of the Supplier's and/or the Customer's rights with regard to enforcement of this Agreement.

3.4 The Supplier shall not be bound by any express or implied term, representation, warranty (with the exception of the warranties as provided for in the CPA, if applicable), promise or the like not recorded herein, whether it induced the contract between the Supplier and the Customer or not.

3.5 No person other than a director or a duly authorised representative of the Supplier has any authority to delete, amend or in any respect vary any of these Terms and Conditions or accept any other conditions or agree to a consensual cancellation hereof.

## 4 QUOTATIONS

4.1 Any quotation given is not an offer by the Supplier to sell the Goods but constitutes an invitation by the Supplier to the Customer to do business with the Supplier.

4.2 A quotation may be revoked at any time by the Supplier.

4.3 The Supplier may accept or reject in whole or in part any order placed upon it by the Customer pursuant to the quotation. Accordingly, a contract shall only come into force between the Supplier and the Customer if after receipt by the Supplier of the Customer's order or acceptance of the quotation the Supplier supplies, or tenders to supply, the Goods in question to the Customer.

4.4 Any quotation (verbal or written) is based on rates of exchange, freight charges, insurance, rail costs, costs of labour and materials and other charges ruling at the date of the quotation. In the event of any variation occurring subsequent to the date of the quotation in any of the aforesaid rates and/or charges, as the case may be, the Supplier shall prior to delivery furnish the Customer with an amended quotation which quotation is to be accepted or rejected, either verbally or in writing by and on behalf of the Customer.

4.5 All quotations are subject to the availability of the Goods and subject to correction of good faith errors made by the Supplier.

4.6 All quotations are valid for 7 days.

4.7 All variations to the quotation must be in writing and signed by both parties.

## 5 PLACING OF ORDERS

5.1 If telephone orders are placed by the Customer, the Supplier may require such orders to be confirmed in writing by the Customer, prior to acceptance by the Supplier.

5.2 An order may not be withdrawn until accepted or rejected by the Supplier. Any such order shall upon acceptance thereof by the Supplier be irrevocable by the Customer.

5.3 In the event of this Agreement being subject to the provisions of the CPA, the Customer can cancel or withdraw an order but in such event the Supplier will be entitled to charge a reasonable cancellation fee at the Supplier's discretion.

**5.4 The Supplier will not be responsible for any errors or misunderstandings occasioned by the Customer's failure to record not only the details of the order correctly, but also the Customer's failure to clearly notify the Supplier at the time of placing the order of its specific requirements regarding each and every item included in the order.**

**5.5 The Customer accepts that any order that requires the specific manufacture (including printing) of a Good by the Supplier or which manufacture (including printing) is outsourced by the Supplier is subject to a maximum 10% variation against the actual specification.**

**5.6 The Customer accepts that where a Good requires specific artwork and specific colours, an initial sample of the Good must be signed off by the Customer as proof of acceptance before the order is fulfilled at the required quantity and the final Good is subject to a maximum 10% variation against the signed actual specification.**

**5.7 With regards to clauses 5.5 and 5.6 above once a proof, pull, sample, specimen, sketch, photograph or any other presentation, whether partial or total, of the finished Good in whatever form is approved by the Customer, the Customer will have no claim against the Supplier, unless there is an error on the side of the Supplier.**

**5.8 The Customer accepts that when an order is placed for Goods to be branded, irrespective whether such Goods can only be used by the Customer due to its logo, the Customer will inevitably be liable for the entire quantity ordered whether the Customer chose to no longer use these Goods or not.**

**5.9 Where the Customer allows the Supplier to maintain stock levels at the Supplier's discretion for its branded Goods, the Customer**

**hereby irrevocably accepts that it will be liable for the entire stock holding of its branded Goods. The responsibility of informing the Supplier in writing of an expected change in the Customer demand pattern rests solely with the Customer.**

6.10 Any cancellation of scheduled dates or no adherence thereto, in those instances where the Customer's asset is required for performance of work, shall give the Supplier the right to, in its discretion, levy a cancellation fee.

## 6 PURCHASE PRICE AND PAYMENT

6.1 Unless stated otherwise, prices are exclusive of value added tax which shall be for the account of the Customer unless the Customer has given acceptable proof to the Supplier that the supply is a zero rate or an exempt supply. The Customer shall pay or reimburse to the Supplier the amount of any value added tax simultaneously with the purchase price.

6.2 The Customer shall be obliged to pay to the Supplier in addition to the purchase price-

6.2.1 the amount of any tax, duty or other charge of any nature whatsoever imposed by any law, regulation or enactment of whatsoever nature which comes into force on a date after the date on which any purchase price charged is determined; and

6.2.2 any other additional costs of any nature whatsoever arising due to factors beyond the control of the Supplier. In particular, but without limiting the generality of the foregoing, the Supplier shall be entitled to increase the purchase price in respect of any Goods supplied as a result of:

6.2.2.1 the Customer modifying or otherwise altering or making additions to the Goods, quantities or specifications for Goods;

6.2.2.2 acts/omissions by the Customer;

6.2.2.3 failure/delay by the Customer in giving a particular requisite to enable work to proceed on schedule;

6.2.2.4 the Customer's requirement that work be completed earlier than agreed;

6.2.2.5 suspension of work by the Supplier due to instructions given by the Customer; and/or

6.2.2.6 a failure to give instructions by the Customer.

6.3 In the event that delivery is required urgently by the Customer, which results in the Supplier carrying on business outside of normal work hours, the Supplier's charges for overtime work will be determined by the Supplier from time to time and will be reasonable having regard to the additional hours of work, the complexity of the exercise, the degree of urgency, the number of staff required and the level of technical skills of the staff involved.

6.4 The Customer shall pay for preliminary work which is produced at its request whether experimentally or otherwise unless agreed to in writing by the Supplier.

6.5 The purchase price in respect of any Goods sold by the Supplier to the Customer in terms of this Agreement shall be payable-

6.5.1 by the Customer to the Supplier, at the Supplier's head office or at such other places as the Supplier may direct from time to time;

6.5.2 in cash or by electronic funds transfer only;

6.5.3 in South African currency without deduction or set-off and free of any exchange, and

6.5.4 during or before the expiry of the credit period indicated on the Application which is annexed hereto, which period shall commence upon the issuing of an invoice by the Supplier, or if there is no credit period indicated, or no credit period has been approved in terms of clause 6.7 below, or no Application is annexed, cash on order.

6.6 No order will be processed for a non-credit Customer until such time as the purchase price has cleared in the bank account of the Supplier.

6.7 After the completion of the Application by the Customer and acceptance of these Terms and Conditions by the Customer, the Supplier shall at its own discretion be entitled to-

6.7.1 make such enquiries as it may deem necessary to determine whether or not to grant the Customer credit as applied for in the Application;

6.7.2 determine whether or not to grant the Customer credit as applied for in the Application, and

6.7.3 inform the Customer of the determination made pursuant to clause 6.7.2 above.

6.8 Until a determination is made by the Supplier as contemplated in terms of clause 6.7.2 above, any Goods supplied by the Supplier to the Customer shall be supplied on a cash on order basis only.

6.9 The Supplier shall not be obliged to make a determination in terms of clause 6.7.2 above and to the extent that it does not, any Goods supplied by the Supplier to the Customer shall be supplied on a cash on order basis.

6.10 The purchase price **does not include** charges for delivery of the Goods to the Customer's premises (including any specified location) unless specifically stated and agreed to in writing by the Supplier. The Customer shall provide at its cost the necessary labour, equipment or facilities required for off-loading of the Goods at its premises. Failing which, the Supplier reserves the right to charge the Customer for these additional services.

6.11 Subject to the provisions of the CPA (if applicable), the Customer has no right to withhold payment for any reason whatsoever. Subject to the provisions of the CPA (if applicable), the Customer is not entitled to set off any amount due to the Customer by the Supplier against any debt owed by the Customer to the Supplier nor shall any payment be withheld by virtue of any alleged counterclaim against the Supplier by the Customer.

6.12 All discounts, if any, shall be forfeited if payment in full is not made on the due date.

6.13 Subject to the provisions of the CPA (if applicable), the Customer hereby confirms that the Goods on the tax invoice issued duly represent the Goods ordered by the Customer at the prices agreed to by the Customer and, where delivery / performance has already taken place, that the Goods were inspected and that the Customer is satisfied that these conform in all respects to the quality and quantity ordered and are free from any defects.

## 7 RISK

7.1 The risk of damage to or destruction of any relevant Goods passes to the Customer on delivery thereof by the Supplier (or the Supplier's appointed transporter) to the Customer, provided that if such delivery is frustrated by Customer in any manner whatsoever, risk of damage and destruction shall pass when the Supplier tenders delivery.

7.2 Where the Customer arranges its own delivery, the risk of damage to or destruction of any relevant Goods passes to the Customer on collection by the Customer (including the Customer's selected transport company) as evidenced by the Customer's (including the Customer's selected transport company) signature of the delivery note, waybill or job card.

## 8 REPAIRS

8.1 In respect of those Goods that have a repair option, the Supplier will prepare and issue a quotation for the repair of Goods if so requested by the Customer, which quotation will be furnished to the Customer and on acceptance of the quotation by the Customer, the Supplier will undertake the repairs in accordance with the quotation.

8.2 The Customer is entitled to waive the necessity of a quotation for the repairs, alternatively is able to furnish the Supplier with a pre-authorisation for the repairs up to a specific maximum amount.

8.3 In the event of a quotation having been prepared by the Supplier and the Customer not accepting such quotation, the Supplier will be entitled to charge a reasonable fee for the cost of preparing the estimate, including the cost of performing any diagnostic work, disassembly or reassembly required to prepare the quotation including any damage or loss of material or parts reasonably incurred in the course of preparing the estimate.

8.4 The Supplier shall have the right of retention and lawful lien over the Goods submitted for repairs until such time as the Customer effects payment for the repairs and/or quotation fee in full.

**8.5 Subject to the provisions of the CPA (if applicable), the Customer hereby agrees that any item handed in for repair may be sold by the Supplier to defray the cost of such repairs and the Supplier's usual storage cost, if the item remains uncollected within 30 days of the repair being completed.**

## 9 IMPORTED GOODS

Subject to the provisions of the CPA (if applicable), where the Goods or any part thereof are to be imported, this Agreement is subject to the condition that the Supplier's order is accepted and confirmed by the Supplier's own suppliers and that delivery is made there under in due course.

## 10 DELIVERY

10.1 Subject to the provisions of the CPA (if applicable), any delivery date indicated by the Supplier shall merely be regarded as the estimated date of delivery and shall not bind the Supplier to effect delivery on or near such date.

10.2 Subject to the provisions of the CPA (if applicable), the Customer shall accept delivery whenever it is tendered and shall not be entitled to resile from this Agreement nor to withhold or defer any payment nor to a reduction in price nor to any other right or remedy against the Supplier, its servants, agents or any other persons for whom it is liable in law (in whose favour this constitutes a stipulation alteri) whether for losses, costs, damages, expenses, interest or otherwise (not limited ejusdem generis) on account of delays in effecting delivery, partial delivery or non-delivery, whether occasioned by any negligent (including grossly negligent) act or omission on the part of the Supplier, its servants, agents or any other persons for whom it is liable in law, or not.

10.3 If delivery of any particular order is to be effected in packs, the Supplier shall not be obliged to deliver any parts of the order unless any part of the order which has already been delivered has been paid. The Supplier is not obliged to accept the return of any Goods and this clause shall not be used to imply that the Supplier shall be obliged to accept the return of any Goods.

10.4 Subject to the provisions of the CPA (if applicable), the Supplier shall have the right to deliver any portion of the Goods sold, or making provision for delivery of all the Goods sold and to invoice the Customer therefore and the Customer shall accept such Goods when tendered.

10.5 If Goods are to be delivered by road, the Customer shall be obliged to ensure that the delivery destination shall be easily accessible to road transport vehicles. The Customer shall be responsible for off-loading the Goods at the delivery destination. If Goods are to be delivered by rail, the Customer shall be responsible for collection of Goods at the railhead.

10.6 Subject to the provisions of the CPA (if applicable), the Customer shall be obliged to inspect all Goods upon delivery and shall endorse the delivery note/waybill/job card as to any missing or damaged Goods. No claims for missing or damaged Goods shall be valid unless the delivery



note/waybill/job card has been endorsed as aforesaid and unless, in addition the Customer notifies the Supplier in writing within 3 business days of the delivery of the Goods of the claim in question and the Goods relating to such claim furnishing full details in regard thereto. The Customer shall bear the onus of proving that upon delivery, any Goods are missing or damaged or that the Customer's order was in any way not complied with.

10.7 If the Supplier is unable to deliver the Goods to the Customer due to any act or omission on the part of the Customer, the Supplier shall be entitled to charge the Customer for the storage of the Goods. If the Customer elected to collect the Goods, the Customer accepts that if the Goods are not collected on the agreed delivery date, the Supplier shall be entitled to charge the Customer for the storage of the Goods.

10.8 Subject to the provisions of the CPA (if applicable), the Customer shall be obliged to furnish information necessary to enable delivery of the relevant Goods to be effected and if the Customer fails or refuses to do so, or if it fails or refuses to take delivery, the Goods shall without prejudice to the provisions of clause 10.7, be deemed to have been delivered to the Customer upon notification by the Supplier to the Customer to that effect.

10.9 If the Supplier agrees to engage a third party to transport the Goods, the Supplier is hereby authorised to engage a third party on the Customer's behalf and on the terms deemed fit by the Supplier. Subject to the provisions of the CPA (if applicable), the Customer hereby indemnifies the Supplier against any claims that may arise from such Agreement against the Supplier. The Customer shall reimburse the Supplier for any costs incurred in arranging delivery, including but not restricted to, the costs of necessary disbursements and insurance. Any documentation purporting to evidence the said extra costs will be deemed to be prima facie proof thereof.

10.10 The Customer accepts that if it receives branded Goods of another Customer of the Supplier, it will reject these Goods and notify the Supplier immediately upon receipt.

## 11 WARRANTIES AND GUARANTEES

11.1 Subject to the provisions of the CPA (if applicable), no warranties, guarantees or representations, express or implied or tacit whether by law, contract or otherwise and whether they induced the contract or not, which are not set forth in this Agreement shall be binding on the Supplier and the Customer irrevocably waives any right (common law or otherwise) it may have to rely thereon. Goods may be guaranteed under the manufacturer's product specific warranties only, and all other guarantees and warranties including common law guarantees and warranties in relation to Goods and services are hereby specifically excluded by the Supplier, with the exception of any implied warranties described in the CPA (if applicable). This notwithstanding, the Supplier reserves the right to alter, amend or change any manufacturer's product specific warranties as applicable and undertakes to inform the Customer of any and all such alterations, amendments or changes upon the sale of the Goods.

11.2 Notwithstanding anything to the contrary in this Agreement but subject to the provisions of the CPA (if applicable), to the extent that Goods supplied by the Supplier are in any way defective, the Customer shall be entitled, within the warranty period (if any) applicable to such Goods to claim the replacement or repair of Goods to eliminate any defect in workmanship or materials found to be due exclusively to any acts or omissions on the part of the Supplier, provided that the Customer notifies the Supplier, in writing, of such defect within 7 days after the defect arises (which notice shall specify the alleged defect), provided that the Supplier shall have been given a reasonable opportunity of inspecting any alleged defect.

11.3 In order to be a valid claim, the terms of the guarantee as set out in clause 11.1 must be in writing, and the claim must specify the alleged defect, and be supported by the original tax invoice and a signed delivery note. In addition, the Goods (where applicable) must be returned by the Customer to the Supplier at the Supplier's expense.

11.4 Subject to the provisions of the CPA (if applicable), the parties agree that the Supplier shall have no liability in respect of any injury, loss or damage (direct, indirect or consequential) arising out of the use of, or inability to use, the Goods and whether or not occasioned by the Supplier's negligence (gross or otherwise) or any act or omission on its part. Without limiting the foregoing the Supplier does not warrant that the Goods will be fit for the purposes for which they are to be used by the Customer (notwithstanding that the use to which the Customer intends to put the Goods is known to the Supplier). It is the sole responsibility of the Customer to determine that the Goods ordered are suitable for the purpose of intended use. For the purposes hereof, any reference to the Supplier shall include its servants, agents or contractors or any person for whose acts or omissions the Supplier may be liable in law. This also constitutes a stipulation alteri in favour of such persons the benefits of which may be accepted by them at any time.

11.5 The Supplier shall be relieved of all obligations in terms of this clause, if-

11.5.1 repairs or modifications have been made by persons other than the Supplier, unless such repairs or modifications are made with the prior written consent of the Supplier;

11.5.2 any Goods are operated with any accessory, equipment or part not specifically supplied or approved in writing by the Supplier;

11.5.3 the Goods shall not have been operated or maintained in accordance with the Supplier's instruction, or under normal use; the Goods shall not have been properly installed.

11.6 If repairs or replacements are effected by the Supplier, only the parts actually worked on and not the complete Goods shall be subject to a new guarantee, if any, hereunder.

11.7 Customers who acquire Goods for the purpose of on-selling these Goods, whether that Customer is permitted to do so or not (and nothing herein contained shall be deemed to allow that the Customer to on-sell Goods acquired from the Supplier whilst ownership vests in the Supplier), shall not advertise or issue or in any other way give or make any warranties guarantees or representations as to the Goods in any form whatsoever or offer to do so, which could result in liability being imposed upon the Supplier.

11.8 Notwithstanding the contents of this clause 11, insofar as any transactions in terms hereof fall with the ambit of the CPA, the following provisions shall apply in respect of warranties and guarantees in respect of the Goods.

11.8.1 Provided the CPA is applicable, within 6 months after delivery of the Goods to the Customer, the Customer may return the Goods to the Supplier, without penalty, if the Goods do not satisfy the requirements and standards contemplated in Section 55 of the CPA in which event the Supplier may either:

11.8.1.1 repair or replace the failed, unsafe or defective Goods; or

11.8.1.2 refund the Customer for the price paid by the Customer for the Goods.

11.8.2 In the event of the Supplier repairing any particular Goods or component of such Goods and within 3 months of that repair, the failure or defect or unsafe features not being remedied or a further failure, defect or unsafe feature is discovered, The Supplier may:

11.8.2.1 replace the Goods; or

11.8.2.2 refund the Customer the price paid by the Customer for the Goods.

11.8.3 In the event of the Supplier providing any new or reconditioned parts installed during any repair or maintenance work and the labour required to install it, such work and parts will be warranted for a period of 3 months after date of installation or such longer period as the Supplier may specify in writing.

11.8.4 The warranty set out in section 55 of the CPA is at all times subject to the Supplier's policies containing circumstances where the warranties and/or guarantees are excluded due to, inter alia, Goods being misused or abused and does not apply to any ordinary wear and tear in respect of the Goods, having regard to the circumstances in which the Goods were intended to be ordinarily used.

11.9 Repair times given are merely estimates and are not binding on the Supplier. The Supplier shall not be liable for any loss or damage of whatsoever nature which the Customer may suffer as a result of any unforeseen delayed repairs.

11.10 With specific regards to the application of vinyl products due to its elastic properties lifting can occur. Should lifting occur within the first 6 months of application, the Supplier will use a primer adhesive to re-apply the vinyl product at no cost to the Customer, thereafter repair charges will apply.

## 12 HANDLING FEE ON RETURN OF GOODS

Subject to the provisions of the CPA (if applicable):

12.1 the Supplier is not obliged to accept the return of any Goods and this clause shall not be used to imply that the Supplier shall be obliged to accept the return of any Goods; and

12.2 the Supplier reserves the right to levy a handling fee of 20% of the purchase price of the relevant Goods on such Goods returned to and accepted by the Supplier, if the return of Goods takes place after 14 days from the date of invoice. No returns shall be accepted after 30 days have lapsed since the Goods were delivered to the Customer or collected by the Customer.

## 13 AVAILABILITY OF IMPORT PERMITS

The Supplier's obligations hereunder shall be subject, in those cases where the Goods or part thereof are to be imported, to the availability of an import permit to the Supplier.

## 14 OWNERSHIP

14.1 Ownership of the Goods shall not pass to the Customer until the purchase price in full (including interest if any) in respect of the Goods in question has been paid. The provisions hereof shall apply notwithstanding the installation of such Goods on the Customer's premises (including selected location) or accession thereof to any of the Customer's property or that the Goods may be incorporated into or form part of other goods or change their essential character. All Goods, whether fixed to immovable property or not, shall be deemed to be severable without injury or damage to any property.

14.2 The Supplier reserves the right to inform the owner/landlord of the premises in which the Goods are or at any time may be, of the provisions

of this clause. The Customer shall be obliged to advise the Supplier of the name and address of the landlord of any such premises and shall promptly advise the Supplier of any change in the name and/or address of any landlord or of any new landlord.

14.3 The Customer shall take all such steps as may be necessary to notify interested third parties that ownership of the relevant Goods has not passed from the Supplier to the Customer. In particular the Customer shall inform the owner/landlord of the premises in which the Goods are or at any time may be, of the provisions of this clause. The Customer shall produce written proof of such notices to the Supplier on demand.

#### 15 SUBSTITUTE GOODS OR PARTS

15.1 Subject to the provisions of the CPA (if applicable), the Supplier shall be entitled to substitute any Goods specified in this Agreement with such other Goods which the Supplier in its sole discretion may regard as suitable substitutes therefore on reaching an Agreement with the Customer.

15.2 Subject to the provisions of the CPA (if applicable), the Supplier reserves the right to alter specifications without notice. Subject to the provisions of the CPA (if applicable), should conditions render unavailable any materials or Goods specified herein or otherwise required in order to fulfill this Agreement, a substitution deemed by the Supplier to be suitable for the performance of its obligations will be supplied on acceptance by the Customer.

15.3 Subject to the provisions of the CPA (if applicable), the Supplier reserves the right at its sole discretion to provide alternative Goods at the prevailing prices to those ordered by the Customer should such Goods be unavailable, superseded, replaced or their manufacture terminated.

#### 16 DOCUMENTATION

Subject to the provisions of the CPA (if applicable), all specifications, descriptive matter, drawings and other documents furnished by the Supplier do not form part hereof and may not be relied upon by the Customer unless they are agreed in writing by the Supplier to form part hereof. All descriptive matter, specifications, drawings and particulars given by the Supplier are approximate only and the Supplier cannot be held responsible for loss including consequential loss due to discrepancies therein.

#### 17 INSURANCE

The Customer will, at its own expense, and prior to taking delivery of the Goods, insure the Goods and thereafter keep the Goods insured until such time as Goods have been paid for in full. Such insurance shall be taken with such insurers as may be approved by the Supplier in writing, for such amount and on such terms as may be approved by the Supplier in writing. The insurance policy shall record the interest of both the Supplier and the Customer. The Customer shall, if so required by the Supplier, cede to the Supplier all rights in terms of such insurance policy. The Supplier shall exercise the said option by giving the Customer written notice that it is doing so at any time prior to the delivery of the Goods by the Supplier to the Customer.

#### 18 BREACH

18.1 Subject to clause 18.2, if the Customer breaches any of the terms or conditions hereof or any other agreement with the Supplier or fails to pay any amount payable by it on due date or commits any act of insolvency or is placed in business rescue or endeavours to compromise generally with its creditors or does or cause to be done anything which may prejudice the Supplier's rights hereunder or at all, or allows any judgement against it to remain unsatisfied for 7 days or is placed into provisional or final sequestration or if his estate is voluntarily surrendered, the Supplier shall have the right, without prejudice to any other right which it may have against the Customer, to elect to-

18.1.1 treat as immediately due and payable all outstanding amounts which would otherwise become due and payable over the unexpired period of this Agreement and to claim such amounts as well as any other amounts in arrears including interest and to cease performance of its obligations hereunder as well as under any other contract with the Customer until the Customer has remedied the breach; or

18.1.2 cancel this Agreement and retake possession of any of the Goods sold, without prejudice to its rights to claim damages.

18.2 Neither party shall be obliged to comply with its obligations hereunder in any respect whatsoever for so long as the other party is indebted to the innocent party in any amount whatsoever in respect of any cause whatsoever or fails to comply with any other obligations to the innocent party, whether arising out of this contract or otherwise.

18.3 No claim under this contract will arise against the Supplier unless the Customer has given the Supplier 7 days' written notice sent by prepaid registered post to rectify any defect or breach of contract.

18.4 Subject to the provisions of the CPA (if applicable), the Customer agrees that the Customer indebtedness to the Supplier shall be determined and proven by a certificate issued by the Supplier, which authority need not be proven. Such certification shall be prima facie proof of the indebtedness of the Customer.

18.5 Subject to the provisions of the CPA (if applicable), the Customer hereby indemnifies the Supplier against any and all damage of whatsoever nature, howsoever and by whomsoever caused in relation

to the removal of Goods, excluding any gross negligence by the Supplier, and without derogating from the generality of the foregoing, the removal of repossessed Goods from the premises of the Customer or any other premises where the Goods may be found.

18.6 The Customer hereby agrees that the Supplier shall not be required to furnish security in terms of rule 62 of the rules of Court of the Magistrate's Court.

18.7 The Supplier shall have the right to institute any legal action in either the relevant Magistrate's Court or the Supreme Court at its sole discretion and the Customer consents to jurisdiction of the Magistrates court.

#### 19 NOTICES

19.1 The parties choose as their address ("address") for the purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purpose arising from this Agreement their addresses as set out in the Application annexed hereto.

19.2 Each of the parties shall be entitled from time to time, by written notice to the other, to vary its address to any other address which is not a post office box or poste restante.

19.3 Any notice given and any payment made by any party to any other ("the addressee") shall be in writing and if-

19.3.1 delivered by hand during the normal business hours of the addressee at the addressee's address for the time being shall be presumed, until the contrary is proved by addressee, to have been received by the time of delivery;

19.3.2 posted by prepaid registered post from an address to the addressee at the addressee's address for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the fourteenth day after the date of posting.

#### 20 NO CESSION AND ENCUMBRANCES

20.1 Neither party shall not be entitled to cede or assign any rights and/or obligations which it may have in terms of this Agreement to any third party, without the prior written consent of the other party, which shall not be unreasonably withheld or delayed.

20.2 The Customer shall not allow the Goods to become encumbered in any manner prior to the full payment thereof.

#### 21 SECURITY FOR OBLIGATIONS

The Supplier reserves the right to require satisfactory security from the Customer for the due performance of any of the Customer's obligation hereunder including but not limited to the payment of the purchase price. If the Supplier so requires, the Customer shall deliver to Supplier prior to the Supplier complying with any of its obligations hereunder, confirmed irrevocable letters of credit by financial institutions acceptable to the Supplier. If such security or guarantees or letters of credit are not furnished within 7 days after any such demand, the Supplier shall be entitled to withdraw without prejudice to its rights of whatsoever nature to any credit provided to the Customer in terms thereof.

#### 22 COSTS AND GOVERNING LAW

22.1 A party shall be liable for all costs incurred by the other party in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and own client scale and costs of counsel as on brief whether incurred prior to or during the institution of legal proceedings or if judgement has been granted, in connection with the satisfaction or enforcement of such judgement.

22.2 This Agreement shall be governed and construed under and in accordance with the laws of the Republic of South Africa.

22.3 Any print out of computer evidence tendered by the Supplier shall be admissible evidence and the Customer shall not be entitled to object to the admissibility of such evidence purely on the grounds that such evidence is computer evidence.

#### 23 SURETYSHIP AND WARRANTY OF AUTHORITY (PLEASE TAKE NOTE)

23.1 With the exception of the Supplier, each Signatory by his signature hereto, binds himself in favour of the Supplier, its successors-in-title and assign as surety for and co-principal debtor with the Customer for the due and punctual performance by the Customer of all its obligations to the Supplier in terms of this Agreement.

23.2 The suretyship in clause 23.1 shall remain of full force and effect notwithstanding –

23.2.1 any amendment/s to this Agreement and/or any agreement for the time being subsisting between the parties;

23.2.2 any indulgence, concession, leniency or extension of time which may be shown or given by the Supplier to the Customer;

23.2.3 the winding-up, dissolution, business rescue (including but not limited to the adoption of a business rescue plan) or re-organisation of the Customer, or a compromise with the Customer's creditors or any change in the status, function, control or ownership of the Customer.

### 23.3 Each Signatory hereby renounces the following benefits:

23.3.1 benefit of excussion, meaning that the Supplier may proceed directly against a Signatory before first attempting to recover payment from, or compliance by, the Customer;

23.3.2 benefit of division, meaning that if there are two or more Signatories, the Supplier is entitled to proceed against any Signatory for the full amount of the Customer's indebtedness or liability;

23.3.3 benefit of cession of actions, meaning that a Signatory is not entitled to withhold payment or performance of the Customer's obligations until the Supplier has ceded to that Signatory any of its rights against the Customer and/or any co-surety.

23.4 Each Signatory warrants, as a material warranty which the Supplier relies on in entering into this Agreement that he is duly authorised to represent and bind the Customer to this Agreement, and that he has read and understood each term and condition of this Agreement and accepts them as binding on him and the Customer. The Customer hereby warrants that it regards this Agreement as binding upon it.

23.5 Each Signatory and the Customer hereby warrant that the signatory to any tax invoice, delivery note or other documentation of the Supplier made out in the name of, or to the Customer is duly authorised to bind the Customer in respect of the relevant transaction.

23.6 The Signatory shall be bound by the provisions of this Agreement as if he were the Customer, with the changes required by the context particularly, but without limitation thereto, insofar as this Agreement provides for proof of facts, costs of proceedings, service of process, limitations of defences and jurisdiction.

### 24 EXEMPTION, INDEMNITY AND LIMITATION OF LIABILITY

24.1 Subject to the provisions of the CPA (if applicable, the Customer shall have no claim of any nature whatsoever for damages, a remission of the purchase price, cancellation or otherwise, against the Supplier, its servants, agents or others on whose behalf the Supplier would be liable, in respect of any loss or damage sustained by the Customer of any nature whatsoever or any damage caused to the assets of the Customer or assets kept on its premises by any third parties or in regard to the Customer's business or sustained by any of its Customers, howsoever caused including the negligent (excluding grossly negligent) acts or omissions of the Supplier, its servants, agents or others for whom it may be liable in law. This constitutes also a stipulatio alteri in favour of such person the benefits of which may be accepted by them at any time.

24.2 The Customer acknowledges all copyrights and shall not duplicate copyrighted material and that each infringement attempt shall immediately render the full prevailing price payable to the Supplier. The Customer shall indemnify the Supplier against any claims, costs and expenses arising out of the infringement of copyright, patent, trade mark or design supplied by the Customer.

24.3 Subject to the provisions of the CPA (if applicable, delivery, installation, commencement and performance times quoted are merely estimates and are not binding on the Supplier. The Supplier shall not be liable for any loss or damage of whatsoever nature which the Customer may suffer as a result of any incorrect or delayed delivery.

24.4 The Customer acknowledges that it does not rely on any representations made by the Supplier in regard to the Goods or any of its qualities leading up to this Agreement other than those contained in this Agreement. Any recommendation, formula, advice, dimension, weight, specifications, price list, performance figure, advertisement, brochure and other technical data furnished by the Supplier in respect of the Goods orally or in writing is approximate and for information only and will not form part of this Agreement in any way unless agreed to in writing by the Supplier.

24.5 The Customer warrants that neither the Supplier nor any of its employees will be liable under any circumstances whatsoever for any loss or damage arising out of the use by the Customer of any information referred to in clause 24.4.

24.6 Under no circumstances shall the Supplier be liable for any damage arising from any misuse, abuse or neglect of the Goods.

24.7 Subject to the provisions of the CPA (if applicable), under no circumstance will the Supplier be liable for damage of the Customer's asset during an application process.

24.8 Whilst the Supplier will use its best endeavours to reproduce to the size specified by the Customer, absolute precision cannot be guaranteed.

### 25 CONSEQUENTIAL LOSS

Subject to the provisions of the CPA (if applicable), under no circumstances whatsoever including as a result of its negligent (including grossly negligent) acts or omissions or those of its servants, agents or contractors or other persons for whom in law may be liable, shall the Supplier be liable for any consequential loss sustained by the Customer. This also constitutes a stipulatio alteri in favour of such persons the benefits of which may be accepted by them at any time.

### 26 SEVERABILITY

Each paragraph or clause in this Agreement is severable, the one from the other and if any paragraph or clause is found by any competent Court to be defective or unenforceable for any reason whatsoever, the remaining paragraphs or clauses shall be of full force and effect and continue to be of full force and effect.

### 27 FORCE MAJEURE

Any transaction is subject to cancellation by the Supplier due to force majeure from any cause beyond the control of the Supplier, including without restricting the generality of the foregoing, inability to secure labour, power, materials or supplies, or by reason of an act of God, war civil disturbances, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation.

### 28 CESSION

28.1 The Customer hereby irrevocably cedes, assigns and transfers, makes over unto and in favour of the Supplier, all the Customer's right title and interest in and to its claims against its debtors, both present and future and from whatsoever cause arising, as security for all or any of the amounts which the Customer may now or at any time in the future owe to the Supplier.

28.2 The Customer irrevocably and in rem suam authorises the Supplier in its absolute discretion to claim from all or any of the Customer's debtors the whole or any portion of the indebtedness, to take any action in its name in any court of competent jurisdiction and to proceed in execution there under against all or any of the said debtors, to exchange promissory notes, cheques, agreements, documents of title or any other security held by the Customer.

28.3 The security created by the cession shall be a continuing one notwithstanding any fluctuation in the amount of indebtedness of the Customer to the Supplier.

28.4 The Customer hereby undertakes on demand to furnish the Supplier with such information concerning its debtors as may be reasonably required, to enable the Supplier to give effect to the provisions of this clause.

28.5 Any item delivered to the Customer shall serve as a pledge in favour of the Supplier for present and past debts and the Supplier shall be entitled to retain or realize such pledges as it deems expedient at the value as determined. The sworn or realized value of pledged Goods will be offset against the Customer's debts and any remaining balance will be paid to the Customer.

### 29 FURNISHING OF INFORMATION BY CUSTOMER

The Customer shall forthwith after the conclusion of this Agreement, furnish the Supplier with all information reasonably required by the Supplier to enable it to comply with its obligations.

### 30 RECEIPT OF DOCUMENTS ETC

No notices, cash or other documents sent to the Supplier through the post shall be deemed to have been received unless and until actually received by the Supplier.

### 31 INTEREST

The Customer shall pay interest at the publicly quoted basic rate per annum ruling from time to time at which The Standard Bank of South Africa Limited lends on overdraft, which rate shall be proven by way of a certificate signed by any employee of such Bank, compounded monthly in arrear, on all amounts owing by the Customer to the Supplier which have not been paid on the due date thereof, reckoned from the due date thereof until date of payment. Such interest shall be payable on demand.

### 32 CREDIT BUREAU REPORTS

32.1 The Customer consents and agrees that the Supplier may:

32.1.1 perform a credit search on the Customer's record with a registered credit bureau;

32.1.2 monitor the Customer's behaviour by researching its record at a registered credit bureau;

32.1.3 use new information and data obtained from other registered credit bureaus in respect of the Customer's business relationship with the Supplier;

32.1.4 record and transmit details in respect of:

32.1.4.1 the conduct of the Customer's account in meeting its obligations on the account;

32.1.4.2 how the Customer has performed in meeting its obligations in terms of any Agreement concluded between the Customer and the Supplier, with a registered credit bureau.

32.1.5 convey the information provided herein by the Customer to a registered credit bureau which information may be used by the registered credit bureau in the normal course of its business as a registered credit bureau accessed by the other Credit Providers (as defined in the National Credit Act 34 of 2005) and Customers of the registered credit bureau;

32.1.6 evaluate the criminal history or record, previous convictions and any other relevant information of the Customer with the Criminal Record Centre.

32.2 The Supplier undertakes to give the Customer 20 (twenty) business days written notice prior to the forwarding of the details as mentioned in clause 32.1.4.1 and 32.1.4.2, above to any registered credit bureau.

### **33 NATIONAL CREDIT ACT 34 OF 2005**

If any agreement concluded between the Supplier and the Customer constitutes an incidental credit agreement in terms of the National Credit Act, 2005 ("NCA"), then despite any other provision in these Terms and Conditions and/or the Supplier's credit application form completed by the Customer (if any), the following provisions shall apply:

33.1 the interest rate charged by the Supplier on all overdue amounts owing by the Customer to the Supplier shall be the rate specified in clause 31 or the maximum rate permitted in terms of the NCA, whichever is lower;

33.2 the Supplier shall allocate the payments made by the Customer in accordance with the provisions of section 126(3) of the NCA;

33.3 the Supplier shall comply with all the provisions of the NCA, including but not limited to the provisions relating to debt enforcement.

### **34 PERSONAL INFORMATION**

The Parties acknowledge their respective obligations to comply with the substantive provisions of the Protection of Personal Information Act, 4 of 2013 (hereinafter referred to as 'POPI').

34.1. The Customer and any Surety for the Customer understands and agrees on the following:

34.1.1 Personal information requested by the Supplier is necessary for processing the terms and conditions of sale, assessing the credit worthiness of the Customer and any Surety for the Customer as well maintaining from time to time, the Customer's account with the Supplier

34.1.2 Should any of the information which is requested not be provided, the Supplier may not approve the Customers application for an account with the Supplier.

34.3 It is the Customer's responsibility to ensure that the Supplier has all the required information as required by Page 1 of this Application and further, that such information is complete, valid, accurate and current (including but not limited to all Personal Information in terms of this Application. The Customer agrees to update the information supplied, as and when necessary, in order to ensure the completeness, validity and accuracy of the information, failing which the Supplier will not be liable for any inaccuracies and the Customer and any Surety for the Customer fully indemnifies the Supplier in this regard.

34.4 The Customer and any Surety for the Customer provides its express consent and authority to the Supplier, at all times to : i) process the personal information of the Customer and any Surety for the Customer, for the purpose of concluding the terms and conditions of sale, for maintaining the Customer's account and for providing goods or services to the Customer, including benefits attached to the Customer's account; ii) make enquires to confirm and verify any information provided by the Customer and any Surety; iii) contact and request information from any third party, credit bureaux and business so as to obtain any information relevant to the Customer's and any Surety's current and future credit assessment including, but not limited to, information regarding the amounts purchased from suppliers per month, length of time Customer has dealt with such suppliers, types of goods or services purchased and manner and timing of payment; iv) obtain credit reports from credit bureaux, banks and agencies from time to time; v) furnish personal and credit information concerning the Customer's dealings with the Supplier to any credit bureaux, credit insurer and to any third party seeking a trade reference regarding the Customer and any Surety; vi) process the personal information of the Customer and any Surety for the Customer for the purpose of the prevention and detection of fraud and criminal activities, the identification of the proceeds of unlawful activities and the combating of money laundering activities.

34.5 All personal information obtained and processed by the Supplier for the purposes as set out above, shall be treated by the Supplier as confidential and in accordance with the Supplier's privacy policy which is available on request at [www.winningmedia.co.za](http://www.winningmedia.co.za).

34.6 The Customer has the right to access its personal information held by the Supplier and the Supplier will grant the Customer with access during office hours within a reasonable time after receiving a written request for such access.

