

TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1. In this Agreement the following terms shall have the meanings set out below:
- 1.2. **"AFSA"** means the Arbitration Foundation of South Africa or its successor in title;
- 1.3. **"Agreement"** means the Supplier Application Form, all Purchase Orders, all AQL's and these Terms and Conditions and any documents incorporated by reference, as each may be amended from time to time;
- 1.4. **"Applicable Law"** means any statute, regulation, policy, by-law, directive, notice or subordinate legislation, the common law, any binding court order, judgment or decree, any applicable industry code, policy or standard enforceable by law or any applicable direction, policy or order that is given by a regulator;
- 1.5. **"AQL"** means the acceptable quality levels document, which will be agreed to between the Parties in writing, from time to time and incorporated herein by reference in terms of clause 18;
- 1.6. **"Business Day"** means any day other than a Saturday, Sunday or public holiday within the meaning of the Public Holidays Act, 1994, in the Republic of South Africa;
- 1.7. **"Company"** means Indigo Brands (Pty) Ltd, registration number 2003/009934/07;
- 1.8. **"Confidential Information"** means the terms and conditions of this Agreement, business, business policies, business plans, pricing models and other business and commercial information, know-how, trade secrets, specifications, drawings, sketches, models, recipes, samples, data, diagrams and flow charts, potential customers, customer lists, sales and sales figures, technical information and related material and documentation and past, present and future research and development;
- 1.9. **"Incoterm"** means the International Commerce Terms 2010, as published by the International Chamber of Commerce;
- 1.10. **"Intellectual Property Rights"** means any and all rights in the nature of intellectual property rights anywhere in the world (whether registered or unregistered) owned, possessed or controlled by a Party, directly or indirectly, including, without limitation, patents, trademarks, service marks, design rights, copyright (including all copyright in any designs and computer software), source codes, moral rights, databases, trade or business names, whether capable of registration or not, but including any right to register same;
- 1.11. **"Losses"** means all direct losses, liabilities, costs, expenses, fines, penalties, damages, claims and all related costs and expenses (including legal fees on the scale as between attorney and own client, tracing and collection charges, costs of investigation, interest and penalties);
- 1.12. **"Parties"** means collectively the Supplier and the Company and the term **"Party"** refers to either one of them, as the context may require;
- 1.13. **"POPI"** means the Protection of Personal Information Act, 4 of 2013 (as amended), including any regulations and/or code of conduct made under the Act;
- 1.14. **"Products"** means the products to be supplied by the Supplier to Company, details of which are set out in the Purchase Order;
- 1.15. **"Purchase Order"** means a written purchase order, which has been duly authorised and issued by the Company to the Supplier in respect of an order for the manufacture and the supply of Products and/or the provision of the Services;
- 1.16. **"Safety Data Sheet"** means the:



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- 1.16.1. raw material specification sheet completed by the manufacturing company, being an important component of Product stewardship, occupational safety and health and spill-handling procedures, which specification sheet complies with SANS 10234 and SANS 11014;
- 1.16.2. specification sheet completed by the Supplier in respect of the finished Product, which specification sheet complies with SANS 10234 and SANS 11014;
- 1.17. **"Services"** means the services to be provided by the Supplier to Company, details of which are set out in the Purchase Order;
- 1.18. **"Specifications"** means the specifications of the Products (including without limitation the packaging specifications), as agreed to between the Parties in writing, from time to time;
- 1.19. **"Supplier"** means the entity or person supplying the Products and/or providing the Services, details of which are set out in the Purchase Order;
- 1.20. **"Supplier Application Form"** means the Company's supplier application form and all declarations attached thereto, which is signed by the Supplier, from time to time; and
- 1.21. **"Terms and Conditions"** means the terms and conditions set out in this document.

2. INTERPRETATION

- 2.1. Unless otherwise stated references:
 - 2.1.1. to clauses, sub-clauses or paragraphs are to be construed as references to clauses, sub-clauses or paragraphs of this Agreement;
 - 2.1.2. persons shall include companies, corporations and partnerships, the singular shall include the plural and vice versa, any one gender shall include a reference to all other genders and days shall be deemed to be to calendar days, unless specifically stipulated as being Business Days.
- 2.2. When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next Business Day.
- 2.3. If any provision in a definition is a substantive provision conferring rights or imposing duties on any Party, notwithstanding that it is only in the interpretation clause, effect will be given to it as if it were a substantive provision in this Agreement.
- 2.4. The rule of construction that the Agreement will be interpreted against the Party responsible for the drafting or preparation of the Agreement, will not apply.
- 2.5. The words "include", "includes", and "including" means "include without limitation", "includes without limitation", and "including without limitation". The use of the word "including" followed by a specific example will not be construed as limiting the meaning of the general wording preceding it.
- 2.6. Terms other than those defined within the Agreement will be given their plain English meaning, and those terms, acronyms, and phrases known in general commercial or industry-specific practice, will be interpreted in accordance with their generally accepted meanings.

3. PURCHASE ORDERS

- 3.1. Prior to commencing with the manufacture and/or supply of the Products and/or the provision of the Services, the Supplier shall raise any discrepancies in the Product and/or Service descriptions, pricing and/or quantities, with the Company.
- 3.2. Purchase Orders may not be cancelled, revoked or amended unless agreed to in writing by the Parties. The Supplier will not commence with the manufacture of the Products and/or supply the Products and/or provide the Services unless and until it is in possession of a numbered and duly authorised Purchase Order.



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4. SUPPLY AND DELIVERY OF PRODUCTS

- 4.1. Upon the issue of a Purchase Order for the supply of Products, the Supplier sells to the Company and the Company purchases from the Supplier, the quantity of Products listed in such Purchase Order for the prices set out in such Purchase Order.
- 4.2. Time is of the essence in respect of the delivery of Products and accordingly, the Supplier shall:
 - 4.2.1. deliver the Products to the delivery address on the delivery date, details of which are set out in the Purchase Order;
 - 4.2.2. immediately notify the Company of any delivery delays and provide the Company with the new delivery time and date.
- 4.3. Where applicable, Products will be manufactured according to the Specifications and the Quality Standards as communicated by the Company to the Supplier.
- 4.4. Where applicable all Products will be delivered with a certificate of assurance and/or compliance, as the case may be.
- 4.5. In the case of Products originating from countries within the European Union, all Products supplied must be accompanied by a EUR 1 certificate.
- 4.6. In the case of Products originating outside South Africa, the country of origin and relevant importers code (as provided by the Company to the Supplier) must be printed on all Products (as specified by the Company) manufactured and/or supplied to and/or on behalf of the Company.
- 4.7. In the case of Products being manufactured to the Company's Specifications and Quality Standards, the Company will be entitled to inspect and review all Products during the manufacturing process ("**Inspections**") provided that such Inspections do not interfere with the Supplier's manufacturing process.
- 4.8. If during the Inspections the Company finds any Products or raw materials that do not comply with the Specifications and/or Quality Standards ("**Non-Conforming Items**"), the Company will advise the Supplier thereof and request the Supplier to investigate and implement a corrective plan.
- 4.9. The Company may inspect all Products manufactured outside South Africa at the Supplier's manufacturing facility prior to delivery to the Company or the Company's designated clearing agents, as the case may be. All defective or damaged Products will be removed from a consignment and, in the case of Products bearing the Trademarks, destroyed by the Supplier at the Supplier's cost. The Supplier will provide proof of destruction to the Company. The Supplier will implement a corrective plan to eliminate future defective or damaged Products. If the Products meet the required Specifications and Quality Standards the Company will accept the Products (excluding defective, damaged and missing Products) and the Supplier will deliver same in accordance with the Company's instructions.
- 4.10. The Company will determine in its sole discretion whether it will accept a Product quantity variance on Products delivered in terms of any Purchase Order on condition that the Company will only pay for the quantity actually delivered. Any agreed quantity variance will be recorded in the Purchase Order.
- 4.11. In the event that a dispute arises in respect of any defective, damaged or missing Products, the provisions of clause 13 will apply.
- 4.12. If applicable, the delivered Products will be weighed at the weighbridge situated at the delivery address ("**Weighbridge**") and a weighbridge certificate will be issued. Upon the departure of the vehicle transporting the Products from the delivery address, the empty vehicle will be weighed at the Weighbridge and a weighbridge certificate will be issued. Notwithstanding the provisions of the Supplier's delivery documents, the difference between the two weighbridge certificates shall be deemed to constitute the volume of Products delivered to the delivery address in respect of a specific Purchase Order and such amount shall be used to calculate the amount payable by the Company to the Supplier.



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- 4.13. The Company shall be entitled to inspect and test all delivered Products and in the event that such Products do not comply with the Specifications and/or Quality Standards, the Company shall be entitled to reject and return such Products to the Supplier, at the Supplier's cost and expense.
- 4.14. The Parties agree that any acceptance of the Products by the Company will not exonerate the Supplier in the event of hidden defects nor preclude the Company from seeking compensation for damages suffered, as a result of the acceptance of such defective Products.
- 4.15. All deliveries of Products will be accompanied by a delivery note and a copy of the tax invoice.

5. SERVICES

- 5.1. Upon the issue of a Purchase Order for the provision of the Services, the Supplier agrees to provide the Services to the Company.
- 5.2. The Supplier will provide the Services at the premises set out in the Purchase Order and on the dates and times agreed to between the Parties in writing.
- 5.3. In providing the Services, the Supplier will:
 - 5.3.1. render the Services with honesty and integrity and provide the highest possible standards of service and professionalism with a reasonable degree of care and diligence and will be responsible for providing all personnel required to provide the Services;
 - 5.3.2. comply with all Applicable Laws, good manufacturing practices and the Company's safety, health, security, fire and environmental policies and procedures when providing the Services at the Company's sites.

6. PRICING

- 6.1. Provided that the Company is in receipt of a valid tax invoice and all supporting documentation (including without limitation and where applicable, certificates of assurance and/or compliance), the Company shall pay the Supplier the prices set out in each Purchase Order within 30 days from date of statement, unless otherwise agreed to by the Parties in writing.
- 6.2. Prices set out in the Purchase Order shall remain fixed unless otherwise agreed to by the Parties in writing in an amended Purchase Order.
- 6.3. If applicable, all storage and demurrage costs resulting from the late arrival of customs' documentation will be borne by the Supplier.
- 6.4. Customs documentation includes, but is not limited to:
 - 6.4.1. SAD500;
 - 6.4.2. customs worksheet;
 - 6.4.3. release notification;
 - 6.4.4. bill of landing/ air waybill/ express release;
 - 6.4.5. Supplier invoice; and
 - 6.4.6. SDB invoice.
- 6.5. Unless otherwise agreed to by the Parties, original tax invoices will be sent by the Supplier to the address set out on the Purchase Order and will not accompany the delivery of the Products.
- 6.6. The Parties agree that payment of any amounts by the Company to the Supplier shall not constitute an acceptance by the Company of any defective Services, Product shortages, defective and/or damaged Products and/or waiver of the Company's rights in respect thereof or a compromise or



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settlement by the Company in respect of any defective Products, unless expressly stated by the Company, in writing.

7. **RISK AND OWNERSHIP**

- 7.1. Ownership of the Products shall pass from the Supplier to the Company upon delivery thereof to the delivery address. The Company shall remain liable to the Supplier for payment in respect of the Products delivered in terms of this Agreement.
- 7.2. All risk in and to the Products will pass from the Supplier to the Company in accordance with the applicable Incoterm and where no Incoterm is applicable, risk shall pass from the Supplier to the Company upon delivery of the Products to the delivery address.

8. **WARRANTIES**

- 8.1. In addition to any warranties contained elsewhere in this Agreement, the Supplier warrants to and in favour of Company that:
 - 8.1.1. the Products will comply with the Specifications and/or Quality Standards;
 - 8.1.2. the Products will comply at all times with the provisions of the Material Data Sheet;
 - 8.1.3. it has all the necessary consents, authorisations, licenses and permits, which are required to manufacture and supply the Products and provide the Services;
 - 8.1.4. in providing the Products and Services it will comply with all Applicable Laws;
 - 8.1.5. the manufacture and supply of the Products and the provision of the Services will not infringe any Intellectual Property Rights of any third party;
 - 8.1.6. it will discharge its obligations in terms of this Agreement with due care, skill and diligence;
 - 8.1.7. it will perform its obligations under this Agreement in an honest and ethical manner and will not, either directly or indirectly, make any statement or do or omit to do anything that would or could harm the reputation or good name of the Company;
 - 8.1.8. it shall declare and disclose to the Company any of its interests and activities which, are or may potentially be in conflict with the Company's interests or which would detract from the proper fulfilment of its obligations under this Agreement;
 - 8.1.9. neither it nor, its directors, officers, employees, contractors, sub-contractors and/or agents:
 - 8.1.9.1. has offered, given or authorised;
 - 8.1.9.2. shall offer, give, promise to give or authorise the giving of;
 - any reward, incentive and/or anything of value including, without limitation, gifts or entertainment payments, in order to obtain, influence, induce or reward any advantage in connection with this Agreement or any other business transaction involving the Company, to any person employed by the Company or contracted to or by the Company;
 - 8.1.10. have any kind of relationship with the Company (whether direct or indirect) or any person employed by the Company;
 - 8.1.11. it has full capacity and authority to enter into and to perform its obligations in terms of this Agreement and that this Agreement is executed by a duly authorised representative.
- 8.2. In addition to any warranties contained elsewhere in this Agreement, the Company warrants to and in favour of the Supplier that it has full capacity and authority to enter into and to perform its obligations in terms of this Agreement and that this Agreement is executed by a duly authorised representative.



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9. INDEMNITY

- 9.1. Each Party ("**Indemnifier**") hereby indemnifies the other Party, its directors, employees, officers, contractors and agents ("**Indemnified Party**") against any and all Losses suffered or incurred by the Indemnified Party, as a result of any:
 - 9.1.1. negligent act or omission by the Indemnifier or its Personnel;
 - 9.1.2. breach of this Agreement by the Indemnifier or its Personnel;
- 9.2. Save for any claims brought in terms of any Applicable Laws, neither Party will be liable for any indirect, punitive, special, incidental or consequential damage in connection with or arising out of this Agreement, regardless of how it arises, whether for breach of this Agreement or in derelict and even if previously advised of the possibility of such damage.
- 9.3. Nothing in this Agreement will in any way limit or exclude a Party's liability:
 - 9.3.1. for damages occasioned by fraud or the wilful misconduct or gross negligence of such Party;
 - 9.3.2. to the extent that a Party is not permitted by Applicable Law to exclude or limit such Party's liability.

10. TERMINATION

- 10.1. In the event that either Party ("**Defaulting Party**"):
 - 10.1.1. commits a breach of the terms of this Agreement:
 - 10.1.1.1. which is capable of being remedied and fails to remedy such breach within 14 days of having been called upon in writing by the other Party to do so; or
 - 10.1.1.2. which is not capable of being remedied; or
 - 10.1.2. effects or attempts to effect an arrangement, compromise or composition with its creditors generally;
 - 10.1.3. is liquidated (whether provisionally or finally) or placed in business rescue;
 - 10.1.4. commits an act of insolvency, as contemplated in the Insolvency Act 24 of 1936, as amended;
- 10.2. then the other Party may, in its discretion and without prejudice to its rights to claim damages from the Defaulting Party, on written notice to the Defaulting Party, terminate this Agreement immediately (with or without claiming specific performance).

11. RESTRAINT

- 11.1. In the case of Products designed and/or manufactured and/or supplied to the Company in accordance with the Company's Specifications ("**Proprietary Products**"), the Supplier will not, either directly or indirectly, for the duration of, or at any time after the termination of this Agreement:
 - 11.1.1. design, manufacture and/or supply the Proprietary Products to any person or entity other than the Company anywhere in the world; and/or
 - 11.1.2. design, manufacture and/or supply any products which are identical to or so nearly resembling the Proprietary Products as to be likely to deceive or cause confusion with the Proprietary Products, to any person or entity other than the Company anywhere in the world.

12. INSURANCE

- 12.1. Without limiting the Supplier's obligations under this Agreement, the Supplier shall have in force, and maintain with a reputable insurance company, insurance cover reasonably acceptable to the Company, which shall include, without limitation and where applicable, product liability, general public liability, professional liability, contractors all risk and South African special risks insurance cover.
- 12.2. The Supplier shall supply proof of such insurance cover to the Company on request.
- 12.3. Nothing in this clause 12 shall in any way be construed as a limitation on the liability of the Supplier.



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13. DISPUTE RESOLUTION AND ARBITRATION

- 13.1. The Parties undertake to mutually co-operate in settling any dispute and/or difference that may arise between them or their representatives in respect of any matter relating to this Agreement, its subject matter and/or its interpretation, whether during its subsistence or after its termination.
- 13.2. Any dispute arising between the Parties in connection with this Agreement will in the first instance be referred for resolution to the respective Managing Directors of each Party who shall attempt to resolve the dispute within 10 Business Days of it having been referred to them for resolution. In the event that the Managing Directors are unable to resolve the dispute within the aforesaid 10 Business Day period, either Party shall be entitled to refer the matter in writing for resolution by arbitration in terms of this clause 12.
- 13.3. Any dispute referred to arbitration in terms of this clause 12 will be held:
 - 13.3.1. in Sandton; and
 - 13.3.2. in accordance with the rules of AFSA or any successor or replacement body (if any);
 - 13.3.3. it being the intention that the arbitration will be held and concluded within 21 Business Days after it has been demanded.
- 13.4. The decision of the arbitrator will be final and binding on the Parties and there will be no right of appeal and the arbitrator's decision may be made an order of court at the instance of any Party to the arbitration.
- 13.5. Nothing herein contained will prevent or prohibit either Party from applying to the appropriate court for interim or urgent relief.

14. CONFIDENTIALITY

Each Party ("**Receiving Party**") warrants that it will treat and hold as confidential the Confidential Information, which it may receive from the other Party ("**Disclosing Party**") or which becomes known to the Receiving Party concerning the Disclosing Party and not disclose any Confidential Information to any third party without having obtained the Disclosing Party's prior written consent.

15. INTELLECTUAL PROPERTY

- 15.1. The Supplier acknowledges and agrees that:
 - 15.1.1. the Company is the proprietor and owner of the Trademarks and any goodwill attaching to the Trademarks;
 - 15.1.2. the Company is the owner of the copyright existing in any Designs and/or Specifications and/or artwork used in the manufacture of the Products and/or the packaging materials;
 - 15.1.3. in the case of the supply of footwear, the Company is the owner of the Product lasts, being the mechanical forms that have a shape similar to that of a human foot used by the Supplier in the manufacture of the Products) ("the Lasts") and the Intellectual Property Rights in such Lasts;
 - 15.1.4. the use of the Trademarks, the Lasts, the Designs, the Specifications and the artwork by the Supplier is not a cession or assignment by the Company of its rights, title, and interest in and to the Trademarks, the Lasts, the Designs, the Specifications or the artwork;
 - 15.1.5. the Trademarks and/or the artwork, all materials bearing the Trademarks and/or labels incorporating the Trademarks and/or the artwork, are, and will at all times remain, the absolute and exclusive property of the Company;
 - 15.1.6. the Supplier is only authorised by the Company to use the Trademarks and any artwork:
 - 15.1.6.1. on and in relation to the Products and/or the packaging materials and pursuant to the provisions of this Agreement; and
 - 15.1.6.2. in accordance with any other Company requirements, guidelines and/or instructions, provided to the Supplier, from time to time;



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- 15.1.7. the Supplier is only authorised by the Company to use the Lasts, the Designs and Specifications:
 - 15.1.7.1. in relation to the manufacture of the Products and pursuant to the provisions of this Agreement; and
 - 15.1.7.2. in accordance with any other Company requirements, guidelines and/or instructions, provided to the Supplier, from time to time.
- 15.2. The Supplier warrants and undertakes that neither it nor its Personnel will:
 - 15.2.1. use any trademarks or other signs or symbols or artwork other than the Trademarks and the artwork on the packaging materials and on or in relation to the Products; or
 - 15.2.2. use or authorise the use of, or make or authorise any application to register, or attempt to register, any trademark that is identical to or so nearly resembling the Trademarks or artwork as to be likely to deceive or cause confusion;
 - 15.2.3. use or authorise the use of the Company's Lasts, the Designs, Specifications or other lasts, designs or specifications so nearly resembling the Company's Lasts, Designs and Specifications as to be likely to deceive or cause confusion, other than for the manufacture of the Products;
- 15.3. The Supplier will notify the Company, in writing, immediately it becomes aware of or suspects any actual or threatened infringement or misuse of, or any challenge or other action detrimental to, any of the Trademarks and/or Company Intellectual Property Rights and of any actual or threatened passing-off and will provide the Company with full details in respect thereof.
- 15.4. The Company may, at its expense, take all steps that it deems necessary to prevent or end any infringement or misuse and/or defend any challenge or other action concerning any of the Trademarks and/or Company Intellectual Property Rights, including the commencement of legal proceedings. The Supplier will provide the Company with all necessary co-operation in respect of all of the Company's reasonable requests in relation to the aforesaid steps and the Company will reimburse all of the Supplier's reasonable substantiated out of pocket expenses incurred in providing such co-operation.
- 15.5. The Supplier warrants and undertakes that it will not, under any circumstances:
- 15.6. take any steps to prevent or end any infringement or misuse and/or to defend any challenge or other action concerning any of the Trademarks and/or Company Intellectual Property Rights; and
 - 15.6.1. make any admissions of liability and/or agree to compromise or settle any action.
- 15.7. Upon termination of this Agreement for any reason whatsoever, the Supplier will immediately –
 - 15.7.1. discontinue any use of the Packaging Materials and/or the Trademarks and/or the Lasts and/or the Designs and/or the Specifications and/or any Company artwork and/or any excess packaging material that remains in the manufacturing facility; and
 - 15.7.2. return the Designs, the Specifications, the artwork and the Lasts to the Company.
- 15.8. As at date of termination of this Agreement any excess packaging material that remains in the manufacturing facility will be purchased by the Company from the Supplier at a price to be agreed between the Parties.
- 15.9. Each Party will retain all its rights in and to its Intellectual Property Rights.
- 15.10. No right to use a Party's Intellectual Property Rights including the Party's name, logos, brands or marks is agreed, granted or implied by this Agreement.
- 15.11. Any breach by either Party of this clause 15 will constitute a material breach of this Agreement and will, notwithstanding any provision to the contrary contained herein, entitle the Company to summarily terminate this Agreement without prejudice to any other rights or remedies that it may have in terms of this Agreement or in law.

16. INFRINGING PRODUCTS



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- 16.1. Infringing Products will automatically infringe the Intellectual Property Rights of the Company and the Supplier will be obliged to destroy such Infringing Products and provide proof of destruction to the Company.
- 16.2. The Supplier's right to use the Trademarks on the Products in terms of the authorisation contained in this Agreement is subject to and conditional on such Products meeting the Specifications and/or Quality Standards. Any Products bearing the Trademarks, manufactured for the Company in terms of this Agreement, which do not meet the Specifications and/or Quality Standards, will automatically be deemed to be Infringing Products, notwithstanding that the Company may not yet have rejected such Products in terms of this Agreement. Once these Infringing Products have been rejected by the Company, the Supplier will be obliged to destroy such Infringing Products and provide proof of destruction to the Company.
- 16.2. Any Products and/or packaging materials, bearing the Trademarks, left in the Supplier's possession, for any reason whatsoever, and not uplifted by the Company following termination of this Agreement, will automatically be deemed to be Infringing Products. The Company will instruct the Supplier on the purchase and/or upliftment and/or destruction of such Infringing Products.
- 16.3. Any sale or use of Infringing Products by the Supplier or any third party will be unauthorised use and infringement of the Trademarks and the Company's Intellectual Property Rights.

17. **POPI**

- 16.3. Terms capitalised and used within the context of this clause 17 only but not defined in clause 1, shall have limited application to this clause 17 and shall bear the meanings ascribed to them in POPI.
- 16.4. The Parties shall fully comply with the statutory obligations contained in POPI, with which the Parties warrant that they are fully conversant as at the Signature Date, when processing Personal Information obtained by a Responsible Party and such Personal Information is entered into a Record. Without limiting the generality of the aforesaid, the Responsible Party shall ensure that the conditions for the lawful processing of Personal Information by or for a Responsible Party as set out in POPI are strictly adhered to when Processing a Data Subject's Personal Information.
- 16.5. The Parties shall comply with the security and information protection obligations equivalent to those imposed on them in terms of POPI and other applicable data protection legislation, and failing such legislation, they shall take, implement, and maintain all such technical and organizational security procedures and measures necessary or appropriate to preserve the security and confidentiality of the Personal Information in its possession and to protect such Personal Information against unauthorised or unlawful disclosure, access or processing, accidental loss, destruction or damage.
- 16.6. Each Party ("the Indemnifying Party") hereby indemnifies and holds the other Party harmless from any liability whatsoever arising from the Indemnifying Party's failure to comply with its statutory obligations contained in POPI.
- 16.7. Each Party shall only provide, collect, use, store or process Personal Information:
- 16.8. in compliance with POPI;
- 16.9. as is necessary for the purposes of this Agreement; and
- 16.10. in accordance with the lawful and reasonable instructions of the Party providing the Personal Information.

17. **FORCE MAJEURE**

- 17.1. Neither Party shall be liable for any failure to fulfil its obligations under this Agreement if such failure is caused by strike, flood, fire, earthquake, war, disease outbreaks, epidemics or pandemics, tempest, hurricane, government regulations, acts of God or any event beyond the reasonable control of a Party.
- 17.2. Should either Party be unable to fulfil a material part of its obligations under this Agreement for a period in excess of 14 days due to any of the circumstances contemplated in clause 14.1, the other



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Party may, notwithstanding any provision to the contrary contained herein, cancel this Agreement forthwith by providing the other Party with written notice of such termination.

18. AUDITS AND INSPECTIONS

- 18.1. The Company or its duly appointed agent shall, at its cost, be entitled to undertake regular:
 - 18.1.1. reviews, inspections and audits of the Supplier's stock and quality control records and its risk and quality management systems;
 - 18.1.2. inspections and audits of the:
 - 18.1.2.1. premises at which the Products are manufactured and/or stored and/or the Services provided;
 - 18.1.2.2. the Supplier's manufacturing policies, procedures and quality management systems;
- 18.2. by providing the Supplier with prior written notice;
- 18.3. The Supplier will:
 - 18.3.1. provide all necessary documents, explanations, co-operation and assistance to the Company during the course of the applicable inspections, audits and/or reviews;
 - 18.3.2. submit to the Company such reports and/or information as the Company may reasonably request, from time to time.
- 18.4. The Supplier specifically acknowledges and agrees that any audits and/or inspections undertaken by the Company in terms of this clause 15 are for information purposes only and accordingly, any failure by the Company to identify any non-compliance by the Supplier with the provisions of this Agreement or its obligations hereunder, will not constitute a waiver of the Company's rights and/or relieve the Supplier of any of its contractual obligations.

19. NO LIEN

The Supplier hereby waives any right to acquire a special or general lien or pledge over the Products and documents relating thereto in respect of any amounts due and owing to it by the Company.

20. DOCUMENTS

- 20.1. As and when requested, the Supplier shall provide the Company with all required documentation relating to the supply of the Products and/or the provision of the Services, including, without limitation:
 - 20.1.1. BBBEE certificates;
 - 20.1.2. value added tax registration certificates;
 - 20.1.3. certificates confirming its registration with the Commissioner for the Compensation of Occupational Injuries and Diseases.

21. SUBCONTRACTING

The Supplier may not sub-contract any of its obligations in terms of this Agreement unless the Company has provided its prior written consent to such sub-contracting.

22. CESSION AND ASSIGNMENT

- 22.1. Subject to the provisions of clause 22.2, no Party shall be entitled to transfer, cede, assign and/or delegate 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.
- 22.2. Notwithstanding the provisions of clause **Error! Reference source not found.**, the Company shall be entitled to cede its rights and/or delegate its obligations in terms of this Agreement to any company which is a "related person" or "inter-related person" (as such terms are defined in the Companies Act, 71 of 2008) to the Company or any division (as the case may be), provided that the Company provides the Supplier with prior written notice of the cession and/or delegation.

23. INCORPORATED PROVISIONS

- 23.1. The Parties agree that the provisions contained in the Purchase Order and AQL, as amended from time to time:
 - 23.1.1. hereby form part of this Agreement with the same force and effect as if the provisions set out therein had been set out in full in this Agreement;
 - 23.1.2. shall be binding on the Parties.

24. NOTICES

- 24.1. The Parties choose their respective addresses as set out in the Purchase Order, as their chosen 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.
- 24.2. The Parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment or variation to this Agreement may be given or concluded via email.

25. GENERAL

- 25.1. The Agreement constitutes the sole record of the agreement between the Parties in relation to the subject matter thereof.
- 25.2. No right of use of either of the Party's Intellectual Property Rights by the other Party is agreed or implied by this Agreement.
- 25.3. Neither Party will be bound by any express nor implied term, representation, warranty, promise or the like, not recorded herein.
- 25.4. No addition to, variation or consensual cancellation of this Agreement (including the provisions of this clause) will be of any force or effect unless in writing and signed by or on behalf of the Parties.
- 25.5. No indulgence which either of the Parties ("**Grantor**") may grant to any other or others of them ("**Grantee**") will constitute a waiver of any of the rights of the Grantor, who will not thereby be precluded from exercising any rights against the Grantee which might have arisen in the past or which might arise in the future.
- 25.6. In the event that any one or more of the terms and conditions of this Agreement are held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions, which will continue to be valid and enforceable.
- 25.7. If there is any conflict between the provisions of:
 - 25.7.1. any Applicable law and this Agreement, the provisions of the Applicable Law shall apply;
 - 25.7.2. this Agreement, a Purchase Order and/or any standard terms and conditions of the Supplier (including, without limitation, any general conditions of sale, credit applications whether signed or unsigned), the provisions of this Agreement shall apply, unless otherwise agreed to between the Parties, in writing;
 - 25.7.3. this Agreement and any signed substantive supplier agreement concluded between the Parties ("**Supplier Agreement**") the provisions of that Supplier Agreement shall supersede these Terms and Conditions.
- 25.8. The Supplier hereby consents to the Company collecting, processing, storing and releasing its personal information and data for the purposes of undertaking credit checks on the Supplier in relation to the supply of the Products, the marketing of the Products and/or the operation of the Company's business.
- 25.9. This Agreement shall be governed and construed in accordance with the laws of the Republic of South Africa and the Parties hereby consent and submit to the jurisdiction of the South African courts.