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STANDARD SUPPLIER TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1. In this Agreement the following terms will have the meanings set out below:
- 1.2. "**ABC Laws**" means all Applicable Laws relating to anti-bribery and anti-corruption, including the Prevention and Combatting of Corrupt Activities Act, 2004, or any other public and commercial anti-bribery laws or regulations which may apply, as well as any international anti-corruption treaties such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the United Nations Convention against Corruption;
- 1.3. "**AFSA**" means the Arbitration Foundation of South Africa or its successor in title;
- 1.4. "**Agreement**" means the Supplier Credit Application Form (if applicable), all Purchase Orders, all AQL's, these Terms and Conditions, and any documents incorporated by reference, as each may be amended from time to time;
- 1.5. "**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;
- 1.6. "**AVI**" means AVI Limited, registration number 1944/017201/06;
- 1.7. "**AVI Codes of Conduct**" means the AVI Group code of conduct and ethics and the AVI supplier code of conduct, copies of which can be downloaded at <https://www.avi.co.za/code-of-conduct-ethics/> and <https://www.avi.co.za/legal/>, respectively;
- 1.8. "**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 39;
- 1.9. "**BBBEE**" means Broad-Based Black Economic Empowerment in accordance with the South African Broad-Based Black Economic Empowerment Act, 53 of 2003, and Codes;
- 1.10. "**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;
- 1.11. "**Business Continuity Plans**" has the meaning ascribed to it in clause 17.1;
- 1.12. "**Certificate**" means the certificate of conformance to be issued by the Supplier to the Company in respect of the inspection of the Products prior to Delivery thereof, the format of which will be provided by the Company to the Supplier and which the Company may change on notice to the Supplier in writing from time to time;
- 1.13. "**Company**" means Indigo Brands (Pty) Ltd, registration number 2003/009934/07;
- 1.14. "**Company Specifications**" has the meaning ascribed to it in clause 8.7;
- 1.15. "**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, patents, the Trademarks, Designs, copyright, 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;
- 1.16. "**Deliver**" means to hand over the Products into the control of the Company or its duly authorised representative or agent, and "Delivery", "Deliveries" and "Delivered" will have corresponding meanings;
- 1.17. "**Delivery Address**" means the Company's premises at 16 – 20 Evans Avenue, Epping, Cape Town, South Africa, or as advised by the Company to the Supplier from time to time in writing, which may



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- include the Company's clearing and forwarding agents in the country of origin of the Products;
- 1.18. "**Delivery Documents**" means, in respect of Products, the Certificate, a copy of the Supplier's tax invoice, the signed Delivery note and, if applicable, the Safety Data Sheet and the customs' documents set out in clause 15.4;
 - 1.19. "**Designs**" means a manifestation of creative effort including but not limited to, artwork, concepts, materials and designs created by or on behalf of the Supplier in response to a brief from the Company;
 - 1.20. "**Disclosing Party**" has the meaning ascribed to it in clause 28;
 - 1.21. "**Effective Date**" means the date of the first Quotation from the Supplier to the Company;
 - 1.22. "**Financial Crime Laws**" means all Applicable Laws relating to any crime or offences involving money, including in relation to money laundering, handling of the proceeds of crime, misconduct or the misuse of information relating to a financial market, terrorist financing, proliferation financing, and the evasion (or the facilitation of evasion) of taxation;
 - 1.23. "**Force Majeure Event**" means any strike, irregular industrial action short of strike, riot (save and except for strike or irregular action short of strike or riots, which actions are the result of poor industrial relations on the part of the Party calling a Force Majeure Event), floods, fires, storms, explosions, tempest, hurricane, acts of God, war (whether declared or not), insurrection, breakdown in law and order, supervening legislation, governmental or other regulations, restrictions or directives, epidemics, pandemics, declared states of disaster (whether local, regional or national epidemics, pandemics or declared states of disaster), or any other cause beyond the reasonable control of a Party;
 - 1.24. "**Incoterm**" means the International Commerce Terms 2010, as published by the International Chamber of Commerce;
 - 1.25. "**Infringing Products**" means "Infringing Products" means –
 - 1.25.1. any Products bearing the Trademarks, manufactured for and rejected by the Company, for any reason whatsoever, in terms of this Agreement;
 - 1.25.2. any products other than the Products, bearing the Trademarks, manufactured by the Supplier, without authorisation from the Company, for any party other than the Company; and
 - 1.25.3. any products other than the Products, bearing trademarks so nearly resembling the Trademarks as to be likely to deceive or cause confusion, manufactured by the Supplier, without authorisation from the Company, for any party other than the Company;
 - 1.26. "**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;
 - 1.27. "**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);
 - 1.28. "**Mould**" means, if applicable, any moulds used to manufacture Products;
 - 1.29. "**NCR**" means a non-conformance report to be issued by the Company to the Supplier in respect of Defective Products, as set out in clause 11.19;
 - 1.30. "**Parties**" means collectively the Supplier and the Company, and the term "**Party**" refers to either one of them, as the context may require;
 - 1.31. "**Personnel**" means any director, employee, agent, consultant, contractor, subcontractor, or other



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representative of a Party involved in the performance of each Party's obligations in terms of this Agreement;

- 1.32. "**POPI Act**" means the Protection of Personal Information Act, 4 of 2013 (as amended), including any regulations and/or code of conduct made under the Act;
- 1.33. "**Premises**" means the Supplier's premises at which the Products will be manufactured and/or stored, as advised by the Supplier to the Company from time to time in writing;
- 1.34. "**Products**" means the products to be supplied by the Supplier to Company, details of which are set out in the Purchase Order;
- 1.35. "**Proprietary Products**" has the meaning ascribed to it in clause 25.1;
- 1.36. "**Price**" means the price payable by the Company to the Supplier in respect of the purchase and Delivery of the Products, as set out in the Quotation and Purchase Order;
- 1.37. "**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;
- 1.38. "**Quality Management System**" means a formal system that documents processes, procedures, and responsibilities for achieving quality policies and objectives; helps coordinate and direct an organisation's activities to meet customer and regulatory requirements; and improve its effectiveness and efficiency on a continuous basis and includes, but is not limited to, Good Manufacturing Practice (GMP) for cosmetic products, Good Laboratory Practices (GLP), and ISO 9001;
- 1.39. "**Quotation**" means a written quotation issued by the Supplier to the Company setting out, the details of the required Products to be supplied, the quantities, the Price, the Incoterm, the payment terms, and any other relevant details required by the Company to enable it to assess the quotation;
- 1.40. "**Raw Materials**" means all Raw Materials required for the manufacture of the Products;
- 1.41. "**Receiving Party**" has the meaning ascribed to it in clause 28;
- 1.42. "**Relationship Manager**" means the representative of each Party appointed by such Party to manage the relationship between the Parties;
- 1.43. "**Safety Data Sheet**" means the:
 - 1.43.1. Raw Materials specification sheet completed by the Raw Material 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;
 - 1.43.2. specification sheet completed by the Supplier in respect of the finished Product, which specification sheet complies with SANS 10234 and SANS 11014;
- 1.44. "**Services**" means the services to be provided by the Supplier to the Company, details of which are set out in the Purchase Order;
- 1.45. "**Service Levels**" means the service levels advised by the Company to the Supplier in writing and which the Company may change on reasonable notice to the Supplier in writing from time to time;
- 1.46. "**Service Level Failure**" means the Supplier's failure to meet the Service Levels;
- 1.47. "**Specifications**" means the specifications of the Products (including without limitation the formulations, designs, standards and quality technical specifications, and packaging specifications), in respect of the Products and/or Raw Materials, as agreed to between the Parties in writing or advised to the Supplier by the Company (if the Specifications are Company Specifications, as contemplated in clause 8.7 below), from time to time and incorporated herein by reference;
- 1.48. "**Supplier**" means the entity or person supplying the Products and/or providing the Services, details of which are set out in the Purchase Order;



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- 1.49. **"Supplier Agreement"** has the meaning ascribed to it in clause 41.6.3;
- 1.50. **"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
- 1.51. **"Terms and Conditions"** means the terms and conditions set out in this document;
- 1.52. **"Trademarks"** means all trademarks owned or lawfully used by the Company, as at the Effective Date, whether registered or unregistered and whether in the Republic of South Africa or any other country; and
- 1.53. **"VAT"** means value added tax, as defined in the Value Added Tax Act, 89 of 1991.

2. INTERPRETATION

- 2.1. Unless otherwise stated references to:
 - 2.1.1. clauses, sub-clauses, schedules, or paragraphs are to be construed as references to clauses, sub-clauses, schedules, or paragraphs of this Agreement;
 - 2.1.2. persons will include companies, corporations and partnerships;
 - 2.1.3. the singular will include the plural and vice versa;
 - 2.1.4. any one gender will include a reference to all other genders;
 - 2.1.5. days will be deemed to be to calendar days, unless specifically stipulated as being Business Days; and
 - 2.1.6. any Party will, where relevant, be deemed to be references to, or to include, as appropriate, their respective successors or permitted assigns.
- 2.2. When any number of days is prescribed in this Agreement, same will 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 will 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. REVOCATION OF ALL PREVIOUS AGREEMENTS

These Terms and Conditions revoke and supersede all other written and oral agreements in existence between the Parties in respect of the same subject matter prior to the Effective Date.

4. QUOTATIONS

- 4.1. The Company may from time to time request the Supplier to provide it with a Quotation for the supply of Products and/or Services.
- 4.2. The Supplier will provide the Company with a Quotation and the Company will either accept or reject such Quotation.
- 4.3. A request for a Quotation by the Company does not create an agreement between the Company and



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the Supplier for the supply of any Products and/or Services.

- 4.4. Any terms and conditions contained in a Quotation will automatically be superseded by these standard Terms and Conditions.
- 4.5. On providing a Quotation to the Company, the Supplier will be deemed to have accepted these Terms and Conditions.

5. **PURCHASE ORDERS**

- 5.1. On acceptance by the Company of a Quotation, the Company will provide the Supplier with a Purchase Order.
- 5.2. Purchase Orders will contain, inter alia, details of the Products to be manufactured and/or supplied or the Services to be provided, the Specifications, Service Levels, required quantities, delivery date and address, and any other special terms applicable to the Purchase Order.
- 5.3. On receipt of a Purchase Order the Supplier will advise the Company in writing within 3 Business Days whether it accepts or rejects the Purchase Order, failing which the Purchase Order will be deemed to have been accepted and the Supplier will manufacture and/or supply the Products or provide the Services in accordance therewith.
- 5.4. Prior to accepting a Purchase Order, the Supplier will, insofar as possible, raise any discrepancies in the Product and/or Service descriptions, Prices and/or quantities, with the Company.
- 5.5. Once accepted by the Supplier, Purchase Orders may not be cancelled, revoked or amended by the Supplier 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. Should the Supplier commence with the manufacture of the Products and/or supply the Products and/or provide the Services without being in possession of a numbered and duly authorised Purchase Order, such manufacture and/or supply of Products and/or provision of Services will be at the sole risk and cost of the Supplier, unless otherwise agreed by the Company in writing.
- 5.6. Notwithstanding any other provisions of this clause 5, the Company will on a monthly basis review its forecast and actual sales and materials requirement planning and, if necessary, adjust Purchase Orders, including but not limited to quantities and Delivery dates. Such adjustments will be captured and communicated automatically and directly to the Supplier by e-mail out of the Company's SAP MRP system without the need to obtain prior approval from the Supplier. In the event that the Supplier is unable to accommodate any adjustments they will, without delay, engage with the Company's Planning Department in regard thereto.

6. **APPOINTMENT**

- 6.1. Any appointment by the Company for the Supplier to manufacture and/or supply the Products and/or provide the Services will be non-exclusive.
- 6.2. No fixed term agreement is implied or created by these Terms and Conditions or the issuing of a Quotation and/or a Purchase Order. There is no obligation on the Company to procure the Products and/or the Services from the Supplier, unless otherwise agreed in writing between the Parties.
- 6.3. The Supplier will manufacture and/or supply the Products and/or provide the Services in accordance with the AQL, Specifications, Service Levels and Quality Management System, and the Supplier accepts such appointment and undertakes to manufacture and/or supply the Products and/or provide the Services in accordance with the Agreement.
- 6.4. Notwithstanding the provisions of clause 6.2, it is agreed that in circumstances where AQL and/or Service Levels and/or Specifications are changed, these will be amended and advised to the Supplier on at least 30 days' written notice.



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7. **RAW MATERIALS**

- 7.1. The Supplier will be responsible for:
 - 7.1.1. sourcing and acquiring all Raw Materials at its own cost, which Raw Materials will comply with the AQL;
 - 7.1.2. examining and testing all Raw Materials prior to the use thereof in order to ensure that they comply with the AQL;
 - 7.1.3. accepting or rejecting Raw Materials in accordance with the AQL.
- 7.2. The Supplier will not amend, supplement, vary and/or modify the Raw Materials without the prior written consent of the Company. A breach of the provisions of this clause 7.2 will constitute a material breach of the Agreement and will, notwithstanding any provision to the contrary contained herein, entitle the Company to immediately cancel any outstanding Purchase Orders and/or terminate this Agreement on written notice to the Supplier, without prejudice to any other rights or remedies that the Company may have in terms of this Agreement or in law.
- 7.3. The Supplier will be solely responsible for the payment of all its suppliers who provide it with the Raw Materials and hereby indemnifies the Company from any and all Losses arising from the Supplier's failure to make payment to its Raw Material suppliers.

8. **QUALITY ASSURANCE AND SPECIFICATIONS**

- 8.1. The Supplier will operate and maintain a documented Quality Management System acceptable to the Company.
- 8.2. The Supplier warrants that Products will be:
 - 8.2.1. manufactured, packaged and supplied strictly in accordance with the Specifications, the AQL, the Quality Management System, and any other reasonable quality control procedures deemed necessary by the Company from time to time;
 - 8.2.2. handled and stored in accordance with the AQL and Quality Management System; and
 - 8.2.3. free from material defects in manufacture, workmanship and materials;
 - 8.2.4. of merchantable quality, fit for the purpose for which they are supplied;
 - 8.2.5. unencumbered; and
 - 8.2.6. Delivered to the Company in accordance with the Service Levels.
- 8.3. In the event of any required changes to the Specifications arising from changes to Applicable Laws, the Supplier will provide the Company with proof of such required changes and updated Specifications. Where possible the Supplier will provide the changes to the Company no less than 6 months prior to the changes being implemented. All documents will be updated by the Supplier as soon as possible after becoming aware of the changes.
- 8.4. Notwithstanding the provisions of clause 8.3, the Parties agree that the Specifications may not be amended, varied, modified and/or supplemented unless agreed to in writing by the Parties. In the event that the Parties agree in writing to amend, vary, modify, and/or supplement the Specifications and this causes a change in the Price, the Parties will agree revised Prices in respect of the amended, varied, modified and/or supplemented Products, in writing.
- 8.5. The Supplier will not be entitled to deviate from the Specifications and/or the AQL and/or the Quality Management System unless agreed to in writing by the Company. A breach of the provisions of this clause 8.5 will constitute a material breach of the Agreement and shall, notwithstanding any provision to the contrary contained herein, entitle the Company to cancel any outstanding Purchase Orders and terminate this Agreement on written notice to the Supplier, without prejudice to any other rights or remedies that the Company may have in terms of this Agreement or in law.



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- 8.6. The Supplier will retain production samples of the Products from each batch of Product manufactured, for at least 1 year and will retain production records from each batch of Product for at least 3 years.
- 8.7. In the event that the Specifications for the Products are provided to the Supplier by the Company ("**Company Specifications**") then such Company Specifications:
 - 8.7.1. are and will be the sole and absolute Intellectual Property of the Company; and
 - 8.7.2. will at all times remain the sole and absolute Intellectual Property of the Company.
- 8.8. Nothing in this Agreement, including the Supplier's right to use the Company Specifications in terms hereof, constitutes a cession or assignment of the Company's Intellectual Property Rights, in particular its right, title and interest in and to the Company Specifications.
- 8.9. The Company hereby authorises the Supplier to use the Company Specifications solely for the purposes of manufacturing the Products in accordance with the provisions of this Agreement and any instructions, which may be issued by the Company from time to time.
- 8.10. No other right of use of the Company Specifications by the Supplier is agreed or implied by this Agreement.
- 8.11. The Supplier shall not manufacture any products or materials for itself or any third party either inside or outside the Republic of South Africa, using the Company Specifications, unless otherwise agreed in writing with the Company. The provisions of this clause 8.11 shall survive the cancellation of any Purchase Order or the termination of this Agreement.
- 8.12. Any breach by the Supplier of the provisions of clauses 8.8, 8.9, 8.10 and/or 8.11, or any infringement of the Company's right, title and interest in and to the Company Specifications, will constitute a material breach of this Agreement and will, notwithstanding any provision to the contrary contained herein, entitle the Company to cancel any outstanding Purchase Orders and/or terminate this Agreement on written notice to the Supplier, without prejudice to any other rights or remedies that the Company may have in terms of this Agreement or in law.

9. **MOULDS**

- 9.1. Ownership in and to Moulds will be and will remain the sole and absolute property of the Party holding ownership of the Moulds immediately prior to the Effective Date ("**Mould IP Rights**").
- 9.2. The Company hereby authorises the Supplier to use any Moulds to which the Company holds the Mould IP Rights, which Moulds may be required to manufacture the Products. Such authorisation is given solely for the purposes of manufacturing applicable Products in accordance with the provisions of this Agreement and no other rights of use of the Moulds is agreed or implied by this Agreement.
- 9.3. The Supplier may not manufacture any products or materials for itself or any third party either inside or outside the Republic of South Africa, using the Moulds owned by the Company, unless otherwise agreed in writing by the Company.
- 9.4. The provisions of clause 9.3 will survive the cancellation of any Purchase Order or the termination of this Agreement and will, notwithstanding any provision to the contrary contained herein, entitle the Company to either cancel any outstanding Purchase Orders and/or terminate this Agreement on written notice to the Supplier, without prejudice to any other rights or remedies that the Company may have in terms of this Agreement or in law.
- 9.5. On cancellation of any Purchase Order and/or termination of this Agreement, the Supplier will immediately return to the Company any Moulds owned by the Company and the Supplier will act in accordance with such instructions.

10. **MANUFACTURE OF PRODUCTS**

- 10.1. For the duration of this Agreement, the Supplier will:
 - 10.1.1. manufacture the Products:



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- 10.1.1.1. at the Premises;
- 10.1.1.2. using the Specifications;
- 10.1.1.3. without any modifications to the Specifications of whatsoever nature unless agreed in writing between the Parties;
- 10.1.2. manufacture the required volumes of the Products, as set out in Purchase Orders;
- 10.1.3. execute all Purchase Orders in a diligent, reliable and efficient manner;
- 10.1.4. take all steps and do all such things as may be necessary to ensure the safety of the Products and the Raw Materials;
- 10.1.5. not be entitled to manufacture and/or pack the Products at premises other than the Premises, unless the Company or its authorised representative has audited the additional premises and has consented to the use thereof by the Supplier, in writing.
- 10.2. Nothing in this Agreement detracts from the Supplier's right to modify any Supplier's technology using newer technology, without notifying or obtaining the Company's consent, provided that such modifications would have the effect of improving the Supplier's technology and the Products.

11. SUPPLY AND DELIVERY OF PRODUCTS

- 11.1. 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.
- 11.2. Where applicable, Products will be manufactured according to the Specifications and the AQL as communicated by the Company to the Supplier.
- 11.3. Where applicable all Products will be Delivered with a Certificate, as the case may be.
- 11.4. In the case of Products originating from countries within the European Union, all Products supplied must be accompanied by a EUR 1 certificate.
- 11.5. 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 primary packaging where the Products comprise finished goods and on all secondary packaging where the Products comprise components (or as specified by the Company from time to time).
- 11.6. In the case of Products being manufactured to the Company's Specifications and AQL, 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.
- 11.7. If during the Inspections the Company finds any Products or Raw Materials that do not comply with the Specifications and/or AQL ("**Non-Conforming Items**"), or the Company finds that the Supplier does not have an acceptable Quality Management System in place, the Company will advise the Supplier thereof and request the Supplier to investigate and implement a corrective plan.
- 11.8. 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 AQL 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.
- 11.9. Time is of the essence in respect of the Delivery of Products and accordingly, the Supplier will:
 - 11.9.1. Deliver the Products to the Delivery Address on the Delivery date, details of which are set out in the Purchase Order;



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- 11.9.2. immediately notify the Company of any Delivery delays and provide the Company with the new Delivery time and date.
- 11.10. The Supplier will, where applicable, be solely responsible for the payment of all its transport providers who transport the Products from the Premises to the Delivery Address and the Supplier hereby indemnifies the Company from any and all Losses arising from the Supplier's failure to make payment to its transporters.
- 11.11. In storing, handling and transporting the Products the Supplier will ensure that the Products are adequately protected against inclement weather, contamination and/or damage.
- 11.12. 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.
- 11.13. In the event that a dispute arises in respect of any defective, damaged or missing Products, the provisions of clause 27 will apply.
- 11.14. The Delivered Products will be measured by the Company and the Company's measured quantities, or volume will be deemed to constitute the quantity or volume of Products Delivered to the Delivery Address in respect of a specific Purchase Order and such amount will be used to calculate the amount payable by the Company to the Supplier.
- 11.15. The Company will be entitled to inspect and test all Delivered Products and in the event that such Products do not comply with the Specifications and/or AQL, the Company will be entitled to reject and return such Products to the Supplier, at the Supplier's cost and expense.
- 11.16. All Deliveries of Products will be accompanied by the Delivery Documents.
- 11.17. The Company or its duly authorised representatives will be entitled to inspect every Delivery of Products on receipt thereof and perform such tests, as it may deem appropriate, in order to ensure that the Products comply with the Specifications, the AQL, and the Certificate.
- 11.18. If the Company finds that there are Products, which:
 - 11.18.1. do not comply with the Specifications, the AQL and the Certificate, ("**Defective Products**") the rejection of batches process as set out in the AQL will be followed by the Company and, depending on the severity of the Product defects, the Company will either reject the Defective Products or accept the Defective Products by notifying the Supplier thereof in writing;
 - 11.18.2. have not been Delivered and are reflected on the applicable Purchase Order and the Supplier has not notified the Company that the Products will be short Delivered, the Supplier shall be required to Deliver the short Delivered Products to the Delivery Address within 24 hours from the agreed Delivery date.
 - 11.18.3. In the event that the Company rejects the Defective Products:
 - 11.18.3.1. the Parties will agree in writing as to whether or not the Defective Products will be:
 - 11.18.3.2. replaced and collected by the Supplier from the Delivery Address, at the Supplier's cost, in which event the Supplier will uplift the Defective Products and Deliver replacement Products, which comply with the Specifications, the AQL and the Certificate, within 5 Business Days from the date that written agreement as contemplated in clause 11.18.3.1 is reached; or
 - 11.18.3.3. destroyed by the Company, the costs of which will be borne by the Supplier;
 - 11.18.4. the Company will not be required to make payment in respect of the rejected Defective Products.
- 11.19. Whether or not the Company accepts or rejects the Defective Products, the Company will, within 2 days of receiving the Certificate in respect of the Defective Products, issue an NCR to the Supplier and the Supplier will, within the required NCR completion dates, provide the Company with a written



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correction, root cause analysis, and corrective plan detailing the steps to be taken to ensure no future occurrence of the issues that gave rise to the Defective Products.

- 11.20. Failure on the part of the Supplier to provide the written correction, root cause analysis and the corrective plan within the required NCR completion dates, will constitute a Service Level Failure and the terms of clause 12 will apply.
- 11.21. In the event of a dispute regarding any Defective Products the provisions of clause 27 will apply.
- 11.22. 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.

12. SERVICE LEVEL FAILURES

- 12.1. The Parties agree that the Supplier's performance in terms of this Agreement and compliance with the Service Levels will be monitored and measured by the Company.
- 12.2. In the event that that the Supplier fails to achieve the minimum Service Levels measurements as advised by the Company to the Supplier, the Parties will, notwithstanding any provision to the contrary contained in this Agreement, at the end of the affected calendar month, meet and agree a corrective plan to rectify the Supplier's performance.
- 12.3. Should the Supplier fail to rectify its performance in terms of the corrective plan and/or should the Supplier fail to achieve the minimum Service Level measurements for any continuous 3 calendar month period, such failure will constitute a Service Level Failure and the terms of clause 22 will apply.

13. CONTINUOUS IMPROVEMENTS

- 13.1. The Supplier will, in consultation with the Company, continuously examine the costs of the Raw Materials, the Delivery costs in respect of the Products, and the costs of its manufacturing processes and procedures in order to achieve continuous improvements, cost savings and efficiencies in:
 - 13.1.1. the Specifications;
 - 13.1.2. its manufacturing processes and procedures;
 - 13.1.3. its technology, operations and management of the manufacturing and Delivery processes in respect of the Products; and
 - 13.1.4. the Raw Materials.
- 13.2. The Supplier agrees to proactively and continuously propose any cost saving opportunities that may be available to the Company.

14. SERVICES

- 14.1. Upon the issue of a Purchase Order for the provision of the Services, the Supplier agrees to provide the Services to the Company.
- 14.2. The Supplier will provide the Services at the place set out in the Purchase Order and on the dates and times agreed to between the Parties in writing.
- 14.3. In providing the Services, the Supplier will:
 - 14.3.1. 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;
 - 14.3.2. comply with all Applicable Laws, and the Company's safety, health, security, fire and environmental policies and procedures when providing the Services to the Company.

15. PRICING

- 15.1. Provided that the Company is in receipt of a valid tax invoice and all supporting documentation



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(including without limitation and where applicable, the Certificate), the Company will pay the Supplier the Prices set out in each Purchase Order within the payment terms set out in the applicable Purchaser Order, unless otherwise agreed to by the Parties in writing.

- 15.2. The Prices will remain fixed unless otherwise agreed to by the Parties in writing in an amended Purchase Order.
- 15.3. If applicable, all storage and demurrage costs resulting from the late arrival of customs' documents will be borne by the Supplier.
- 15.4. Customs' documents include, but is not limited to:
 - 15.4.1. SAD500;
 - 15.4.2. customs' worksheet;
 - 15.4.3. release notification;
 - 15.4.4. bill of lading/air waybill/express release;
 - 15.4.5. Supplier invoice; and
 - 15.4.6. SDB invoice.
- 15.5. 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.
- 15.6. The Parties agree that payment of any amounts by the Company to the Supplier will not constitute 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 settlement by the Company in respect of any defective Products, unless expressly stated by the Company, in writing.

16. RISK AND OWNERSHIP

- 16.1. Ownership of the Products will pass from the Supplier to the Company upon payment thereof in full unless agreed otherwise between the Supplier and the Company in writing.
- 16.2. 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 will pass from the Supplier to the Company upon Delivery of the Products to the Delivery Address.
- 16.3. Notwithstanding the provisions of clause 16.2, all risk of damage, loss or destruction to all or any Products, which are rejected by the Company, will remain with the Supplier.

17. BUSINESS CONTINUITY PLANS

- 17.1. The Supplier will, on an annual basis, formulate and update disaster management and recovery plans and business continuity plans (collectively referred to as "**Business Continuity Plans**"), which will set out policies and procedures to ensure the:
 - 17.1.1. continuation of all essential aspects of the manufacturing processes applicable to the Products;
 - 17.1.2. continuation of all essential aspects of the operation application to the provision of the Services;
 - 17.1.3. recovery and continuation of the manufacturing technology systems applicable to the Products;following a significant disruptive event and/or a Force Majeure Event.
- 17.2. The Supplier will provide the Business Continuity Plans to the Company as and when requested for approval by the Company.

18. WARRANTIES

- 18.1. In addition to any warranties contained elsewhere in this Agreement, the Supplier warrants to and in favour of Company that:



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- 18.1.1. it will not manufacture and/or sell and/or distribute any Infringing Products;
- 18.1.2. it is able and will manufacture and supply to the Company the volumes of Products set out in each Purchase Order; or
- 18.1.3. it is able and will provide the Services set out in each Purchase Order;
- 18.1.4. the Products will comply with the Specifications and/or AQL;
- 18.1.5. it has all the necessary consents, authorisations, licenses and permits, which are required to manufacture and supply the Products and provide the Services;
- 18.1.6. in providing the Products and Services it will comply with all Applicable Laws;
- 18.1.7. the manufacture and supply of the Products and the provision of the Services will not infringe any Intellectual Property Rights of any third party;
- 18.1.8. it will discharge its obligations in terms of this Agreement with due care, skill and diligence;
- 18.1.9. 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;
- 18.1.10. it is duly registered with any government agency, which may require registration;
- 18.1.11. it will:
 - 18.1.11.1. employ a sufficient number of suitably trained and qualified Personnel to manufacture and supply the Products or provide the Services in accordance with the provisions of this Agreement;
 - 18.1.11.2. remunerate its Personnel in compliance with all Applicable Laws;
 - 18.1.11.3. not permit its Personnel to work in excess of the hours stipulated in the Applicable Laws;
 - 18.1.11.4. not use the labour of any children below the age of 18 years in the manufacture and/or supply of the Products or the Services or at its Premises and not contract with any third parties who use child labour;
 - 18.1.11.5. provide its Personnel a safe and healthy work environment;
- 18.1.12. any Moulds used in the manufacture of the Products, which Moulds are not Moulds to which the Company holds the Mould IP Rights, will not infringe any Intellectual Property Rights of any third party;
- 18.1.13. the manufacture of the Products will not infringe the Intellectual Property Rights of any third party;
- 18.1.14. it will 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;
- 18.1.15. neither it nor, its directors, officers, employees, contractors, sub-contractors and/or agents:
 - 18.1.15.1. has offered, given or authorised;
 - 18.1.15.2. will 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;
- 18.1.16. it does not have any kind of relationship with the Company (whether direct or indirect), or any person employed by the Company;



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- 18.1.17. 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.
- 18.2. 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.
- 19. COMPLIANCE WITH ABC LAWS, FINANCIAL CRIME LAWS, AND AVI CODES OF CONDUCT**
- 19.1. The Parties shall, and shall procure that all persons acting on its behalf (including its directors, officers, employees and agents) in connection with this Agreement shall:
- 19.1.1. comply with all ABC Laws, Financial Crime Laws and AVI Codes of Conduct;
- 19.1.2. not do, or omit to do, any act that will cause or lead any Party or its licensors to be in breach of any of ABC Laws, Financial Crime Laws, or the AVI Codes of Conduct;
- 19.1.3. if requested, provide the other Parties with any reasonable assistance, at the cost of the requesting Party, to enable such to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any ABC Laws, Financial Crime Laws or the AVI Codes of Conduct;
- 19.1.4. maintain and enforce policies and procedures for:
- 19.1.4.1. assessing the risk of breaching any ABC Laws, Financial Crime Laws or the AVI Codes of Conduct; and
- 19.1.4.2. reviewing and monitoring the risks described in paragraph 19.1.4.1;
- 19.1.5. use all reasonable endeavours to ensure that any third party engaged to provide services in connection with this Agreement is only engaged on the basis of a contract which imposes on such person terms which seek to ensure compliance with ABC Laws, Financial Crime Laws and the AVI Codes of Conduct; and
- 19.1.6. promptly report to the other Parties any request or demand for any undue financial or other advantage of any kind received in connection with the performance of this Agreement.
- 19.2. The Supplier shall procure that, in carrying out its responsibilities under this Agreement, neither the Supplier, nor any of its affiliates, shareholders, directors, officers, partners, employees, agents or any other person who is able to exercise control over the business or operations of the Supplier shall directly or indirectly solicit or accept any financial or other advantage or anything else of value in exchange for his or her having violated his or her duty or loyalty to the AVI Group or as a reward for having done so.
- 19.3. The Supplier shall notify the Company promptly of any development or circumstance that would or might render incorrect or misleading any representation, warranty, covenant or undertaking in this paragraph 19.
- 19.4. If the Company reasonably believes that there has, or may have been, a breach of any of the obligations in this paragraph 19, the Company may suspend the Supplier's appointment under this Agreement until such time as the Company has received confirmation to its satisfaction that no breach has occurred or, if a breach has occurred, that no such breach will occur again (and the Company shall not be liable to the Supplier for any Losses incurred by the Supplier during the period of the suspension).
- 19.5. The Supplier indemnifies and holds the Company and its affiliates harmless against any Losses incurred by, or awarded against, the Company or its affiliates as a result of any breach of this paragraph 19 by the Supplier or persons acting on its behalf.



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20. INTELLECTUAL PROPERTY

- 20.1. The Supplier acknowledges and agrees that:
- 20.1.1. the Company is the proprietor and owner of the Trademarks and any goodwill attaching to the Trademarks;
 - 20.1.2. 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;
 - 20.1.3. 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;
 - 20.1.4. 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;
 - 20.1.5. 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;
 - 20.1.6. the Supplier is only authorised by the Company to use the Trademarks and any artwork:
 - 20.1.6.1. on and in relation to the Products and/or the packaging materials and pursuant to the provisions of this Agreement; and
 - 20.1.6.2. in accordance with any other Company requirements, guidelines and/or instructions, provided to the Supplier, from time to time;
 - 20.1.7. the Supplier is only authorised by the Company to use the Lasts, the Designs and Specifications:
 - 20.1.7.1. in relation to the manufacture of the Products and pursuant to the provisions of this Agreement; and
 - 20.1.7.2. in accordance with any other Company requirements, guidelines and/or instructions, provided to the Supplier, from time to time.
- 20.2. The Supplier warrants and undertakes that neither it nor its Personnel will:
- 20.2.1. 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
 - 20.2.2. 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;
 - 20.2.3. 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;
- 20.3. 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.
- 20.4. 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.



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- 20.5. The Supplier warrants and undertakes that it will not, under any circumstances:
- 20.5.1. 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
- 20.5.2. make any admissions of liability and/or agree to compromise or settle any action.
- 20.6. Upon termination of this Agreement for any reason whatsoever, the Supplier will immediately –
- 20.6.1. 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
- 20.6.2. return the Designs, the Specifications, the artwork and the Lasts to the Company.
- 20.7. 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.
- 20.8. Each Party will retain all its rights in and to its Intellectual Property Rights.
- 20.9. 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.
- 20.10. Any breach by either Party of this clause 29 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.
- 20.11. The Supplier acknowledges and agrees that

21. INDEMNITY

- 21.1. 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:
- 21.1.1. negligent act or omission by the Indemnifier or its Personnel;
- 21.1.2. breach of this Agreement by the Indemnifier or its Personnel;
- 21.2. 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.
- 21.3. Nothing in this Agreement will in any way limit or exclude a Party's liability:
- 21.3.1. for damages occasioned by fraud or the wilful misconduct or gross negligence of such Party;
- 21.3.2. to the extent that a Party is not permitted by Applicable Law to exclude or limit such Party's liability.

22. TERMINATION

- 22.1. If either Party ("**Defaulting Party**"):
- 22.1.1. commits a breach of the terms of this Agreement:
- 22.1.1.1. 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
- 22.1.1.2. which is not capable of being remedied (and for the sake of clarify any breach which is deemed to be a material breach in terms of any other provision of this Agreement, is a breach not capable of being remedied); or



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- 22.1.2. effects or attempts to effect an arrangement, compromise or composition with its creditors generally;
- 22.1.3. is financially distressed or placed in business rescue or business rescue proceedings are pending or threatened against it or any steps have been taken at any time to commence business rescue proceedings;
- 22.1.4. commits an act of insolvency, as contemplated in the Insolvency Act 24 of 1936, as amended;
- 22.1.5. is placed in liquidation (whether provisionally or finally);
- 22.1.6. has a judgment in excess of ZAR100 000 taken against it and fails to rescind or apply to rescind such judgment within 14 days of becoming aware of such judgment;
- 22.1.7. ceases or threatens to carry on all or a substantial part of its business or changes or proposes substantial changes to the nature or scope of its business;
- 22.2. 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).
- 22.3. Any costs, including attorney and client costs, incurred by a Party arising out of a breach by another Party, shall be borne by the Party in breach.

23. **CHANGE OF CONTROL OF SUPPLIER**

If there is a change in control in the ownership, control, and/or legal form of the Supplier, which results in more than 50% of the shares in the Supplier being controlled by another party and/or voting control of the Supplier being acquired by another party and/or control of the composition of the board of the Supplier being acquired by another party, the Company will be entitled (but not obliged) to terminate this Agreement on 60 days' written notice to the Supplier.

24. **CONSEQUENCES OF TERMINATION**

- 24.1. On termination by the Company of this Agreement for breach by the Supplier, any and all Purchase Orders will be cancelled with immediate effect and the Company shall not be required to make payment of any amounts to the Supplier in respect of such cancelled Purchase Orders, and the Supplier will immediately cease manufacturing and supplying the Products or providing the Services.
- 24.2. On termination by the Supplier of this Agreement for breach by the Company, the Supplier will be entitled to elect whether to complete manufacture and supply of Products in accordance with any outstanding Purchase Orders. The Company will be required to make payment of any amounts due to the Supplier in respect of Products manufactured and supplied in accordance with such Purchase Orders.
- 24.3. On termination by the Company of this Agreement in terms of clause 23, the Supplier will complete manufacture and Delivery of all Purchase Orders outstanding at the effective date of termination of this Agreement and the Company will be required to make payment of any amounts due to the Supplier in respect of Products manufactured and supplied in accordance with such Purchase Orders.
- 24.4. Notwithstanding any other provisions of this Agreement, termination will not affect the Company's obligation to make payment to the Supplier for any Products manufactured and Delivered to the Company (and not rejected by the Company as Defective Products), or Services provided, prior to the effective date of termination of this Agreement.

25. **RESTRAINT**

- 25.1. 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:
 - 25.1.1. design, manufacture and/or supply the Proprietary Products to any person or entity other than



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the Company anywhere in the world; and/or

- 25.1.2. 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.

26. **INSURANCE**

- 26.1. Without limiting the Supplier's obligations under this Agreement, the Supplier will have in force, and maintain with a reputable insurance company, insurance cover reasonably acceptable to the Company, which will include, without limitation and where applicable, product liability, general public liability, professional liability, contractors all risk and special risks insurance cover.
- 26.2. The Supplier will supply proof of such insurance cover to the Company on request.
- 26.3. Nothing in this clause 26 will in any way be construed as a limitation on the liability of the Supplier.

27. **DISPUTE RESOLUTION AND ARBITRATION**

- 27.1. 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.
- 27.2. 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 will 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 will be entitled to refer the matter in writing for resolution by arbitration in terms of this clause 27.
- 27.3. Any dispute referred to arbitration in terms of this clause 27 will be held:
- 27.3.1. in Sandton, Johannesburg, South Africa; and
- 27.3.2. in accordance with the rules of AFSA or any successor or replacement body (if any);
- 27.3.3. it being the intention that the arbitration will be held and concluded within 21 Business Days after it has been demanded.
- 27.4. 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.
- 27.5. Nothing herein contained will prevent or prohibit either Party from applying to the appropriate court for interim or urgent relief.

28. **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.

29. **INTELLECTUAL PROPERTY**

- 29.1. The Supplier acknowledges and agrees that:
- 29.1.1. the Company is the proprietor and owner of the Trademarks and any goodwill attaching to the Trademarks;
- 29.1.2. the Company is the owner of the copyright existing in any Designs and/or Company Specifications and/or artwork used in the manufacture of the Products and/or the packaging materials;
- 29.1.3. the use of the Trademarks, Designs, Company Specifications and artwork by the Supplier is not a



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- cession or assignment by the Company of its rights, title, and interest in and to the Trademarks, Designs, Company Specifications or the artwork;
- 29.1.4. the Trademarks and/or the Designs and/or the artwork and/or 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;
- 29.1.5. the Supplier is only authorised by the Company to use the Trademarks and any
- 29.1.6. Designs and/or artwork:
- 29.1.6.1. on and in relation to the Products and/or the packaging materials and pursuant to the provisions of this Agreement; and
- 29.1.6.2. in accordance with any other Company requirements, guidelines and/or instructions, provided to the Supplier, from time to time;
- 29.1.7. the Supplier is only authorised by the Company to use the Designs and Company Specifications:
- 29.1.7.1. in relation to the manufacture of the Products and pursuant to the provisions of this Agreement; and
- 29.1.7.2. in accordance with any other Company requirements, guidelines and/or instructions, provided to the Supplier, from time to time.
- 29.2. The Supplier warrants and undertakes that neither it nor its Personnel will:
- 29.2.1. 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
- 29.2.2. 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;
- 29.2.3. use or authorise the use of the Company's Trademarks, Designs, Company Specifications or other trademarks, designs or specifications so nearly resembling the Company's Trademarks, Designs and Specifications as to be likely to deceive or cause confusion, other than for the manufacture of the Products;
- 29.3. 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 any other Company Intellectual Property Rights and of any actual or threatened passing-off and will provide the Company with full details in respect thereof.
- 29.4. 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 other 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.
- 29.5. The Supplier warrants and undertakes that it will not, under any circumstances:
- 29.5.1. 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 other Company Intellectual Property Rights; and
- 29.5.2. make any admissions of liability and/or agree to compromise or settle any action.
- 29.6. Upon termination of this Agreement for any reason whatsoever, the Supplier will immediately –
- 29.6.1. discontinue any use of Company branded packaging materials and/or the Trademarks and/or the



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- Designs and/or the Company Specifications and/or any Company artwork and/or any excess Company branded packaging material that remains in the manufacturing facility; and
- 29.6.2. return the Designs, the Company Specifications, and the artwork to the Company.
- 29.6.3. As at date of termination of this Agreement any excess branded 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 if such quantities of branded packaging were in line with the agreed forecast, failing which the Supplier will destroy the excess branding packaging materials at the Supplier's sole cost and provide documentary proof of destruction to the Company.
- 29.7. Each Party will retain all its rights in and to its Intellectual Property Rights.
- 29.8. 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.
- 29.9. Any breach by either Party of this clause 29 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.

30. INFRINGING PRODUCTS

- 30.1. 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.
- 30.2. 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 the AQL. Any Products bearing the Trademarks, manufactured for the Company in terms of this Agreement, which do not meet the Specifications and/or AQL, 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.
- 30.3. Any Products , 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.
- 30.4. 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.

31. POPI ACT

- 31.1. Terms capitalised and used within the context of this clause 31 only but not defined in clause 1, will have limited application to this clause 31 and will bear the meanings ascribed to them in the POPI Act.
- 31.2. The Parties will fully comply with the statutory obligations contained in the POPI Act, 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 will ensure that the conditions for the lawful processing of Personal Information by or for a Responsible Party as set out in the POPI Act are strictly adhered to when Processing a Data Subject's Personal Information.
- 31.3. The Parties will comply with the security and information protection obligations equivalent to those imposed on them in terms of the POPI Act and other applicable data protection legislation, and failing such legislation, they will 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



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or unlawful disclosure, access or processing, accidental loss, destruction or damage.

- 31.4. 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 the POPI Act.
- 31.5. In the event that either Party to this Agreement is an “Operator” in terms of the POPI Act, then it is specifically agreed that such Operator will, in particular but without any limitation to any other applicable provisions of the POPI Act or this clause 31, and unless required by law or in the course of the proper performance of their duties:
 - 31.5.1. process Personal Information received only with the knowledge and authorisation of the Responsible Party;
 - 31.5.2. treat Personal Information which comes to their knowledge as confidential; and
 - 31.5.3. not disclose Personal Information which comes to their knowledge.
- 31.6. Any Operator will furthermore ensure that the Operator establishes and maintains the security measures referred to in section 19 of the POPI Act and notifies the Responsible Party immediately where there are reasonable grounds to believe that the Personal Information of a data subject has been accessed or acquired by any unauthorised person.
- 31.7. Each Party will only provide, collect, use, store or process Personal Information:
 - 31.7.1. in compliance with the POPI Act;
 - 31.7.2. as is necessary for the purposes of this Agreement; and
 - 31.7.3. in accordance with the lawful and reasonable instructions of the Party providing the Personal Information.

32. **FORCE MAJEURE**

- 32.1. Neither Party will be liable for any failure to fulfil its obligations under this Agreement if such failure is caused by a Force Majeure Event.
- 32.2. 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 a Force Majeure Event, the other 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.
- 32.3. In the event of termination for a Force Majeure Event, all and any outstanding Purchase Orders will be cancelled with immediate effect and the Company shall not be required to make payment of any amounts to the Supplier in respect of such cancelled Purchase Orders.
- 32.4. Notwithstanding the cancellation of all outstanding Purchase Orders in accordance with clause 32.3, the Supplier will be entitled to Deliver to the Company any finished Products already on hand with the Supplier in accordance with outstanding Purchase Orders once the Force Majeure Event ends, and the terms of this Agreement will apply in respect of such Products.

33. **AUDITS AND INSPECTIONS**

- 33.1. The Company or its duly appointed agent will, at its cost, be entitled to undertake regular:
 - 33.1.1. reviews, inspections and audits of the Supplier’s stock and quality control records and its risk and quality management systems;
 - 33.1.2. inspections and audits of the:
 - 33.1.2.1. Premises at which the Products are manufactured and/or stored and/or the Services provided;
 - 33.1.2.2. the Supplier’s manufacturing policies, procedures and quality management systems;
- 33.2. by providing the Supplier with reasonable prior written notice;



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- 33.3. The Supplier will:
- 33.3.1. provide all necessary documents, explanations, co-operation and assistance to the Company during the course of the applicable inspections, audits and/or reviews;
- 33.3.2. submit to the Company such reports and/or information as the Company may reasonably request, from time to time.
- 33.4. The Supplier specifically acknowledges and agrees that any audits and/or inspections undertaken by the Company in terms of this clause 33 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.
34. **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.
35. **DOCUMENTS**
- 35.1. As and when requested, the Supplier will provide the Company with all required documentation relating to the supply of the Products and/or the provision of the Services, including, without limitation:
- 35.1.1. BBBEE certificates (if applicable);
- 35.1.2. value added tax registration certificates;
- 35.1.3. certificates confirming its registration with the Commissioner for the Compensation of Occupational Injuries and Diseases or the equivalent registration in the country of manufacture of the Products.
36. **SUBCONTRACTING**
- 36.1. 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.
- 36.2. In the event of the Company giving its prior written consent to the sub-contracting of a part of the whole of the Supplier's obligations to a third party in terms of this Agreement:
- 36.2.1. such sub-contracting shall not absolve the Supplier from responsibility for manufacturing and supplying the Products or providing the Services or otherwise complying with its responsibilities in terms of this Agreement, and the Supplier hereby indemnifies and holds the Company harmless against any Losses which the Company may suffer as a result of such sub-contracting and for which the Supplier could, but for the sub-contracting, be liable in terms of this Agreement.
- 36.2.2. the Supplier will at all times remain the sole point of contact for the Company; and
- 36.2.3. the Supplier will ensure that the sub-contractor is aware of the Supplier's obligations and responsibilities in terms of this Agreement and accepts same in writing.
- 36.3. In the event that the Supplier sub-contracts any of its obligations in terms of this Agreement without having obtained the prior written consent of the Company, the Company will be under no obligation to accept and pay for any Products and/or Services provided by the unauthorised sub-contractor.
37. **RELATIONSHIP OF THE PARTIES AND DUTY OF GOOD FAITH**
- 37.1. Nothing in this Agreement shall be construed as creating a partnership, co-ownership agreement, and/or joint venture between the Parties and neither Party shall have any authority to incur any liability on behalf of the other, to pledge the credit of the other Party and/or to create or assume any obligations on behalf of the other Party.
- 37.2. It is specifically recorded and agreed that the Supplier is an independent contractor and that neither



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the Supplier nor any of the Supplier's Personnel is or will be an employee of the Company.

- 37.3. The Parties will at all times owe each other a duty of good faith and will, in all dealings with each other and in respect of the manufacture and/or supply of the Products or the provision of the Services, observe standards of the utmost good faith.

38. **CESSION AND ASSIGNMENT**

- 38.1. Subject to the provisions of clause 38.2, no Party will 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.

- 38.2. Notwithstanding the provisions of clause 38.1, the Company will 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.

39. **INCORPORATED PROVISIONS**

- 39.1. The Parties agree that the provisions contained in the Purchase Order and AQL, as amended from time to time:

- 39.1.1. 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;

- 39.1.2. will be binding on the Parties.

40. **NOTICES**

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.

41. **GENERAL**

- 41.1. The Agreement constitutes the sole record of the agreement between the Parties in relation to the subject matter thereof.

- 41.2. Neither Party will be bound by any express nor implied term, representation, warranty, promise or the like, not recorded herein.

- 41.3. 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.

- 41.4. 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.

- 41.5. 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.

- 41.6. If there is any conflict between the provisions of:

- 41.6.1. any Applicable law and this Agreement, the provisions of the Applicable Law will apply;

- 41.6.2. 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 will apply, unless otherwise agreed to between the Parties, in writing;

- 41.6.3. this Agreement and any signed substantive supplier agreement concluded between the Parties



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("Supplier Agreement") the provisions of that Supplier Agreement will supersede these Terms and Conditions.

- 41.7. 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.
- 41.8. This Agreement will 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.