

## TERMS AND CONDITIONS OF PURCHASE

### 1. DEFINITIONS

**"Affiliate"**: as regards a party, its ultimate holding company and each company or person: (a) in which that ultimate holding company either directly or indirectly owns: (i) 50% or more of the entire issued share capital; or (ii) a majority of the voting rights; or (b) over which that ultimate holding company either directly or indirectly has the power to secure the manner in which the company's or person's affairs are conducted (and where "indirectly" means through a chain of ownership or control, of the sort described in (a) or (b), which links the ultimate holding company to the company or person concerned);

**"Applicable Customer Policies"** means the Customer's Supplier Code of Conduct, Standards of Business Conduct, Principles for Engagement (available at [www.bat.com](http://www.bat.com) >>> About Us >>> Policies, Principles and Standards) and any other policies (including changes and additions) which Customer may from time to time notify to the Supplier and as may be amended from time to time;

**"Applicable Incoterms® Rule"**: the Incoterms® 2010 rule stated in the Order (or, if none is stated or otherwise agreed in writing by the parties, DAP) including the named place or port (and terminal at port, if any) specified in the Order (or otherwise agreed in writing by the parties);

**"Associated Parties"** includes officers, directors, employees, shareholders, representatives or agents;

**"Customer"**: means Twisp Proprietary Limited (registration number: 2014/273628/07) a company registered in the Republic of South Africa, having its registered address at 19 Frazzitta Business Park, Milnerton, Cape Town, South Africa;

**"Customer Materials"**: any equipment, tools, specifications, artwork, designs, reports, inventions, documents or other materials in any media made available to Supplier by Customer and/or any of its Affiliates in connection with the Contract and all IPR in such materials;

**"Confidential Information"**: any information concerning the business affairs, operations, technology, know-how, customers, suppliers, products, pricing or Personnel of either party which is either expressly indicated to be confidential or which any reasonable commercial person would be expected to regard as confidential and which either party may from time to time receive or obtain in any form as a result of entering into, or performing its obligations pursuant to, the Contract;

**"Conditions"**: these terms and conditions of purchase;

**"Contract"**: has the meaning given to it in Condition 2.3 or 2.4, as applicable;

**"Data Protection Legislation"**: means the Protection of Personal Information Act, 4 of 2013, Electronic Communication and Transaction Act, 25 of 2002 and Promotion of Access to Information Act,

2 of 2000 and all Laws in any jurisdiction applicable to this Contract relating to the processing or protection of personal information and privacy, including where applicable the guidance and codes of practice issued by the Information Regulator or relevant supervisory authority from time to time;

**"Deliverables"**: all artwork, ideas, inventions, documents, designs, specifications, reports, computer software and other work products and materials developed or supplied by Supplier as part of or in relation to the supply of the Goods or the Services or described in the Order;

**"Dispute"**: any dispute, disagreement or claim arising out of or in connection with the Contract, its subject matter or formation (including without limit non-contractual disputes, disagreements and claims);

**"Goods"**: the goods described in the Order (including without limit any Deliverables developed or supplied as part of or in relation to the Goods) or to be supplied as part of the Services and including without limit any instalment or part of them and all substances, preparations, articles and all single substances contained in preparations and articles;

**"IPR"**: all patents, copyright and related rights, design rights, trade or service marks, domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, database rights, rights in confidential information (including without limit know-how and trade secrets) and all other intellectual and industrial property rights, whether registered or unregistered, including without limit all applications, renewals or extensions, and all similar or equivalent rights or forms of protection which exist in any part of the world;

**"Law"**: all laws, regulations, directives, statutes, subordinate legislation, common law and civil codes of any jurisdiction together with all codes of practice having force of law, statutory guidance, regulatory policy or guidance and industry codes of practice (as amended from time to time). For the avoidance of doubt, "Law" includes, without limitation the UK Bribery Act 2010, the US Foreign Corrupt Practices Act 1977 and applicable local bribery and corruption laws;

**"Order"**: a purchase order for Supplies placed by Customer with Supplier;

**"Personal Information"**: as defined in the Protection of Personal Information Act 4 of 2013;

**"Personnel"**: any officer, employee, contractor, temporary/casual worker, third party supplier, subcontractor or agent of the person concerned;

**"Price"**: the price payable for the Supplies as stated in the Order;

**"Processing"**: as defined in the Protection of Personal Information Act 4 of 2013;

**"Public Official"** includes, without limitation, any person holding or acting on behalf of a person holding a legislative, administrative or judicial office, including any person employed by or acting on behalf of a public agency, a public enterprise or a public international organisation, any political party

or an official thereof or any candidate for any political office, any Associated Party of any government or any department, agency, or part thereof, or of any state owned enterprise or joint venture/partnership with a state owned enterprise (including a partner or shareholder of such an enterprise) or of a public international organisation, or any person acting in an official capacity for or on behalf of any such government or department, agency, or part thereof, or for or on behalf of any such public international organisation, or a relative or Associated Party of any such person;

**“Sanctions”**: any sanctions administered or imposed by the United Nations, the European Union, the US Department of Treasury, the UK HM Treasury or any other body (governmental or otherwise) and any applicable law or regulation relating to sanctions (as amended from time to time);

**“Supplier”**: the person, company or entity from whom Customer purchases Supplies, as identified in the Order;

**“Services”**: the services described in the Order (including without limit any Deliverables developed or supplied as part of or in relation to the Services);

**“Specification”**: the description or specification of the Supplies referred to in the Order or otherwise agreed by Customer and Supplier (including without limit any product specification and any technical parameters);

**“Supplies”**: the Goods, Services and/or Deliverables which are the subject of, or are to be supplied in connection with, the Order;

**“Valid Invoice”**: an invoice that satisfies each of the following requirements: (a) it is sent by Supplier and received by Customer in such form and by such method as specified by Customer; (b) it is received by Customer no later than during the first calendar week of the month following the month in which it is dated; (c) it is received by Customer no later than 6 calendar months following the date on which the supply of Supplies was completed; and (d) it includes: (i) a reference to the Contract; (ii) Customer’s Order number to which it relates; (iii) a short description of the Supplies supplied; (iv) the Price (or relevant instalment of the Price) for the Supplies being charged; (v) the period to which it relates; (vi) Supplier’s Sales Tax registration number or equivalent; (vii) the applicable Sales Tax rate and amount; and (viii) any other requirements made known by Customer to Supplier;

**“Sales Tax”**: value added tax and any other tax based on sales of goods or services such as sales taxes and any similar, replacement or additional tax;

**“writing”** or **“written”**: includes without limit email except in relation to any proceedings or other documents in any legal action or any arbitration or any other method of dispute resolution; and

**“Working Day”**: any day which is not a weekend or a public or bank holiday in the place stated in Supplier’s address in the Order.

## 2. BASIS OF CONTRACT

2.1 Customer and Supplier shall be bound by the Order if: (a) Supplier accepts it within 2 Working Days of the date stated on the Order; or (b) Supplier does anything consistent with, or implying, acceptance of the Order, or does not reject the Order, within 2 Working Days of the date stated on the Order, and if (a) or (b) applies Supplier will be deemed to have accepted unconditionally the Order and these Conditions. Customer and Supplier shall not be bound by a purchase order from Customer for Supplies unless it is placed (including without limit by electronic transmission) by Customer with Supplier on Customer’s purchase order form from time to time.

2.2 Customer may, without liability, by notice to Supplier, cancel with immediate effect any Order (or any instalment) in whole or in part at any time before Supplier accepts or is deemed to accept it.

2.3 Subject to Condition 2.4, where Supplier accepts or is deemed to accept the Order: (i) Supplier shall supply the Supplies in accordance with the Contract; and (ii) these Conditions, together with the Order and any Specification, shall constitute the entire agreement between the parties in relation to the Supplies and be deemed to be the **Contract**, to the exclusion of any other terms and conditions that Supplier seeks to impose or incorporate (whether or not Customer subsequently communicates that to Supplier) or which are implied by trade, custom, practice or course of dealing.

2.4 Where the Order is placed under a separate negotiated written agreement (a **“Negotiated Agreement”**), unless it states otherwise, the Negotiated Agreement, together with these Conditions, the Order and any Specification, shall constitute the entire agreement between the parties in relation to the Supplies and be deemed to be the **Contract**, to the exclusion of any other terms and conditions that Supplier seeks to impose or incorporate (whether or not Customer subsequently communicates that to Supplier) or which are implied by trade, custom, practice or course of dealing.

2.5 If there is any conflict or inconsistency in or between a Negotiated Agreement, these Conditions, an Order, a Specification or the Applicable Incoterms® Rule (together the **“Contract Documents”**), the Contract Documents shall be applied in the following descending order of precedence: first (a) the Negotiated Agreement; then (b) the Order; then (c) the Specification; then (d) these Conditions; and then (e) the Applicable Incoterms® Rule. However, Condition 5.6 shall take precedence over the Order and the Specification where it would extend the period for payment of a Valid Invoice.

2.6 A variation to the Contract shall only be valid if it is in writing and is approved in writing by a duly authorised Customer representative. Signing a delivery note shall not constitute a valid variation or

the acceptance of any terms or conditions of Supplier.

2.7 These Conditions supercede all previous versions and apply to the exclusion of any terms and conditions of the Supplier.

### 3. DELIVERY

3.1 Unless otherwise agreed in writing by the parties, the date for the supply of the Supplies is as stated in the Order. If there is no such date in an Order, Supplier shall request one from Customer; the date provided by Customer will be deemed the date of supply in the Order. The dates and times for supply are of the essence of the Contract. If Supplier fails to supply any Supplies in accordance with the Contract by their due date:

- (a) Supplier will bear all costs, charges, damages, losses and expenses suffered or incurred by Customer and any of its Affiliates arising out of or attributable (in whole or in part) to Supplier's failure (including without limit any costs for re-supply to the correct place, port or terminal at port, or for storage or demurrage); and
- (b) Customer may, at its sole option: (i) accept Supplies but make a proportionate reduction in the Price; (ii) by notice, terminate the Contract with immediate effect in respect of Supplies not yet supplied; (iii) return any Supplies already supplied under the Contract at Supplier's risk and expense; (iv) require the Supplies to be re-supplied to the correct place, port or terminal at port; and/or (v) have any advance payments made for Supplies that have not yet been supplied immediately returned by Supplier.

3.2 Customer shall not be deemed to have accepted any Supplies until it has had a reasonable time to inspect them following supply or, if later, within a reasonable time after any latent defect in them has become apparent.

3.3 Where Supplies may be supplied in instalments, they may be invoiced and paid for in instalments. Failure to supply any one instalment on time or at all or any defect in an instalment shall entitle Customer to the remedies in Condition 3.1 and 7.3.

3.4 Supplier shall deliver to Customer an ASN (Advanced Shipping Notification), in a format agreed by the parties, by the "Latest ASN Confirmation Date" in the Order or, if none is stated, by such other time requested by Customer.

3.5 All Goods and Deliverables shall be properly packed and secured by Supplier to enable them to reach their destination in good condition and be accompanied by all relevant shipping and delivery documentation (including without limit consignment notes and bills of lading) specifying them, the Order number, any special storage instructions and, where applicable, the outstanding balance of Goods and Deliverables still to be supplied.

3.6 Supplier shall ensure that any hazardous Goods have prominent and suitable warnings on all containers, packages and documents, and that such markings comply with all relevant

requirements of any Law. Prior to supplying any hazardous Goods, Supplier shall supply Customer with all relevant data relating to their hazardous nature and shall promptly update such data from time to time as additional data comes into Supplier's possession.

3.7 Unless otherwise stated in the Contract, Supplier shall deliver the Goods and Deliverables in accordance with the Applicable Incoterms® Rule. Supplier shall comply with all of its obligations under the Applicable Incoterms® Rule. Services shall be supplied at the place stated in the Order.

### 4. QUALITY & DESCRIPTION

4.1 Supplier warrants and undertakes to Customer and each of its Affiliates that:

- (a) the Supplies shall conform as to quantity and description with the Contract;
- (b) the Supplies shall be supplied with all the due diligence, care and skill to be expected of a properly qualified and experienced person in Supplier's profession or business in delivering goods and performing services of a similar type, scope, complexity and purpose;
- (c) Goods and Deliverables shall be supplied using best quality goods, materials, standards and techniques;
- (d) Goods and Deliverables shall be free from defects in design, installation, materials and workmanship and remain so for at least twelve months (or for such other period(s) agreed in writing by the parties) after the date of receipt by Customer;
- (e) the Supplies shall be of satisfactory quality and fit for any purpose specified in the Contract and in this respect, Customer relies on Supplier's skill and judgement;
- (f) Goods and Deliverables shall be free of any foreign odour;
- (g) the Supplies shall be free for use and/or adaptation by Customer and any of its Affiliates without infringing any third party rights or breaching any Law or restriction (whether it be in any Law, contract or elsewhere);
- (h) the Supplies shall comply as to design, construction, composition and quality with all relevant requirements of any Law and conform to any trade description applied by Supplier;
- (i) wherever practicable, Goods and Deliverables shall be constructed and packaged using environmentally friendly and reusable/recyclable material; and
- (j) where applicable, Goods and Deliverables shall be capable of running on Customer's and its Affiliates' equipment.

4.2 Supplier shall:

- (a) co-operate with Customer in all matters relating to the Supplies and comply with all reasonable instructions of Customer;
- (b) ensure that at all times it has and maintains all licences, permissions, authorisations, consents

and permits reasonably necessary to perform the Contract;

- (c) comply with all policies of Customer and its Affiliates, including but not limited to, the Supplier Code of Conduct and any other Customer policies that are applicable to the supply of the Supplies and are either notified to the Supplier or are available at www.bat.com;
- (d) retain Personnel in sufficient numbers to ensure that its obligations are fulfilled in accordance with the Contract;
- (e) provide all equipment, tools and vehicles and such other items as are required to supply the Supplies; and
- (f) comply, and procure that its Personnel and Affiliates comply, with all applicable Laws (including but not limited to Laws relating to anti-bribery and anti-corruption, broad based black empowerment and Sanctions) in relation to the Contract.

## 5. PRICE AND PAYMENT

- 5.1 The Price is exclusive of Sales Tax but inclusive of all other charges (including without limit insurance, storage, packing, despatch, shipping, excise and import/export duties), unless varied by the Order and subject to applicable Law. No extra charges shall be effective unless agreed with Customer in writing. If a currency stipulated in the Order ceases to be legal tender, Customer may use any reasonable replacement currency and exchange rate to re-establish the Price.
- 5.2 Sales Tax, where applicable, shall be payable by Customer subject to delivery to Customer of a Valid Invoice;
- 5.3 Supplier shall maintain complete and accurate records of the time spent and materials used by Supplier in providing the Supplies, and Supplier shall allow Customer and its nominees to inspect such records at all reasonable times on request.
- 5.4 Neither the Price nor any instalment of it agreed by the parties shall be payable for Supplies until they have been supplied in all respects in accordance with the Contract and until Supplier has submitted all relevant Valid Invoices in respect of the Price (or any instalment) in accordance with the Contract. The only invoices that Customer may be obliged to pay are Valid Invoices.
- 5.5 Unless varied by the Order, Customer will pay a Valid Invoice within 60 days of receipt by Customer of a Valid Invoice (or, if later, in which Customer receives the Supplies), subject to Condition 5.6.
- 5.6 Supplier acknowledges and accepts that Customer's payment processing centres (and those of its Affiliates) operate a calendar weekly payment run system and that, if the final day of any period for payment (whether established by the Order or Condition 5.5) of a Valid Invoice falls after the weekly payment run day in (or in respect of) the relevant week, then the period for payment shall be deemed extended to and including the following weekly payment run day.

5.7 Customer may set off against the Price (including without limit any instalment of it) and against any Valid Invoice any sum owed by Supplier to it and/or any of its Affiliates. Supplier will request an Order number from Customer for any proposed invoice where Supplier does not have one. Supplier irrevocably waives the right to payment of any sums not included in a Valid Invoice.

5.8 Should Customer be required by Law to make any deduction on account of tax or otherwise on any sum payable under the Contract, Customer may deduct or withhold such amount from such payment, remit the amount to the proper revenue or other authority and (if possible) furnish Supplier with an official receipt evidencing such remittance. Where any payment is made pursuant to an indemnity and that sum is subject to a charge to taxation in the hands of Customer the sum payable shall be increased to such a sum as will ensure that, after taxation, Customer shall be left with the sum that it would have received in the absence of any such charge to taxation.

5.9 Supplier warrants and represents that:

- (a) it has three or more full-time employees actively engaged in providing the Supplies that are neither support staff, shareholders nor members of Supplier nor are they connected persons in relation to Supplier; and
- (b) the Prices to be paid by Customer to Supplier in terms of the Contract and any other agreement existing between the parties, or between Supplier and any of Customer's Affiliates, will not constitute more than 80% of Supplier's annual income.

Accordingly, Supplier is not a 'Personal Services Provider' for the purposes of the Fourth Schedule and section 23(k) of the Income Tax Act, 58 of 1962 and accordingly Customer shall not be obliged to pay any pay-as-you-earn income tax to the South African Revenue Services in respect of Supplier. In the event that Supplier is deemed to be a Personal Service Provider at any time, Supplier hereby indemnifies Customer against any and all liabilities, costs, losses (whether direct or indirect), damages, claims and expenses which Customer may incur as a result thereof.

5.10 The Prices together with any applicable Sales Tax, are the only amounts payable by Customer under the Contract. Supplier shall perform all its other obligations under the Contract at no cost to Customer (unless expressly stated otherwise in the Contract).

5.11 Unless stated otherwise, Supplier shall be solely responsible for all expenses it incurs in providing the Supplies.

5.12 To the extent that the Contract allows the reimbursement of expenses, Supplier shall use all reasonable endeavours to keep them to a minimum and in order to be recoverable as an expense must:

- (a) be reasonably and properly incurred without due influence by any of Customer's employees;

- (b) be agreed in advance with Customer based on a pre-approved vendor list;
- (c) comply with any relevant policy of Customer where required;
- (d) be supported by a detailed invoice or receipt including the supporting documentation evidencing that it has been incurred and paid;
- (e) at all times operate a system of accounting and maintain complete and accurate records of all actions taken in connection with, and all supporting documentation in relation to, the performance of its obligations under this Condition; and
- (f) be invoiced to Customer at cost without any mark-up.

5.13 The term "Tax" when used in an Order has the meaning given to Sales Tax in Condition 1.

## 6. PASSING OF PROPERTY AND RISKS

6.1 If Goods or Deliverables are specifically identifiable upon manufacture as Customer's, ownership in them shall pass immediately to Customer upon manufacture. Otherwise, ownership shall pass to Customer on delivery being completed in accordance with the Applicable Incoterms® Rule unless payment for the Goods or Deliverables is made before delivery, when ownership shall pass to Customer once payment is made. Supplier shall keep Goods and Deliverables which are Customer's property separate from any other goods in its possession and shall mark them as being Customer's property.

6.2 Risks in all Goods and Deliverables shall pass to Customer when their delivery is completed in accordance with the Applicable Incoterms® Rule.

## 7. ACCEPTANCE AND REJECTION

7.1 If so required by Customer, Supplier shall submit samples of the Goods and Deliverables for Customer's approval before the Goods and Deliverables the subject of the Order are supplied. Such samples shall be marked for identification by Supplier and may be retained by Customer at no cost to Customer.

7.2 Customer may inspect and test Supplies any time before supply including without limit during manufacture, processing or storage. Supplier shall facilitate such inspection and testing as reasonably required which shall not amount to acceptance of the Supplies. If Customer informs Supplier it believes Supplies and/or production or storage facilities do not comply with the Contract or are unlikely upon completion of manufacture or processing so to comply, Supplier shall promptly take such steps and undertake any such remedial action as may be necessary to ensure such compliance and Customer may conduct further inspections and tests after Supplier has carried out remedial action.

7.3 If Supplies are not in accordance with the Contract, whether at the time of supply or performance or subsequently, and/or if Supplier breaches any

warranty or undertaking given by it, and regardless in any case of whether the Price for them has been paid, Customer may:

- (a) reject the Supplies (in whole or in part), whether or not (in respect of Goods and Deliverables) title has passed, and return them to Supplier at Supplier's own risk and expense;
- (b) require Supplier, at Supplier's cost, immediately (unless Customer agrees otherwise in writing) to repair the Supplies or supply replacement Supplies so that they satisfy the requirements of the Contract;
- (c) at Customer's sole option, treat the Contract as discharged and recover from Supplier any part of the Price which has been paid;
- (d) refuse to accept any subsequent delivery of Supplies which Supplier attempts to make;
- (e) recover from Supplier any expenditure incurred by Customer and/or any of its Affiliates in destroying or procuring the destruction of any such Supplies and/or in obtaining substitute goods, services and/or deliverables; and/or
- (f) claim damages for any costs, losses, charges or expenses incurred by Customer and/or any of its Affiliates arising from Supplier's failure to supply the Supplies in accordance with the Contract.

7.4 Any right of Customer to terminate the Contract (in whole or in part) and any right set out in Condition 7.3 includes, without limit, a right for Customer to require Supplier to collect Goods and Deliverables and take them away (including without limit obtaining all required export and import licences and other official authorisations and carrying out all customs formalities) at Supplier's own risk and expense.

7.5 These Conditions shall extend to any substituted, remedial, repaired or replacement goods, services and deliverables supplied by Supplier.

## 8. SUBCONTRACTORS AND VENDORS

8.1 Supplier may not appoint any sub-contractor and/or vendor (as the case may be) to perform any of Supplier's obligations under the Contract, without Customer's prior written consent. Supplier shall obtain Customer's prior written approval before sourcing or sub-contracting any element of the Supplies from a third party vendor and/or subcontractor. In doing so, Supplier shall itemise each element to be sourced or sub-contracted from the third party(ies) and shall disclose the mark-up, if any, to be passed on to Customer in relation to each of the service elements concerned.

8.2 Subject always to Supplier having obtained Customer's prior written consent, Supplier:

- (a) acknowledges that it is ultimately responsible for all Supplies rendered to Customer, whether by a vendor or a sub-contractor;
- (b) shall not be relieved of any of its duties or obligations under the Contract by entering into any subcontract with any sub-contractors, nor shall any agreement with any sub-contractor create any contractual relationship between

Customer and such sub-contractor, and Supplier shall remain liable for the Supplies provided and to be provided by sub-contractors as well as the conduct of such sub-contractors to the same extent as if Supplier had itself provided such Supplies; and

- (c) agrees that it shall promptly remove any sub-contractors and terminate the relevant subcontract if Customer determines that the sub-contractor in question is detrimental to performance of the Contracts or to the work environment or that the sub-contractor's performance has been materially deficient or serious doubt exists concerning the sub-contractor's ability to render future performance; and
- (d) shall ensure that its agreements with its sub-contractors include a provision whereby the sub-contractors are required to take out insurance to cover the risks relating to the Supplies they will be providing under such agreements.

8.3 Supplier will:

- (a) submit a list of vendors to Customer on request;
- (b) only be reimbursed for expenses incurred with the pre-approved vendors;
- (c) never act on instruction from any of Customer's employees to make any payment to or provide any quotation to any vendor outside of their band of pre-approved vendors; and
- (d) ensure that the Supplies provided by any vendor at Supplier's instance are aligned to the requirements of Customer and the intent of the Contract.

## 9. INTELLECTUAL PROPERTY RIGHTS

9.1 The IPR in any Deliverables shall belong to Customer upon creation or production as applicable. Supplier will assign (and to the extent possible hereby assigns) all its rights, title and interest in the IPR in such Deliverables free from any charges, legal burdens, restrictions or third party rights to Customer immediately upon creation and without cost. Supplier warrants to Customer that the use of the Supplies by Customer and/or any of its Affiliates will not infringe any third party's rights.

9.2 Supplier shall promptly at Customer's request, and at Supplier's expense, do all such further acts and things and execute all such other documents as may be necessary to vest fully and completely in Customer the IPR assigned or to be assigned under Condition 9.1. Supplier shall procure the waiver of any moral rights in any Deliverables created by its Personnel in the performance of or in connection with the Contract.

9.3 Supplier grants to Customer and its Affiliates a royalty-free, worldwide, non-exclusive, perpetual, irrevocable, transferable and sub-licensable licence to use any IPR which are owned by or licensed to Supplier or are developed by it, and which are not assigned to Customer under Condition 9.1, where that licence is required by Customer in order to fulfil the purposes for which the Supplies were bought.

Supplier acknowledges that Customer and its Affiliates may use, modify, exploit, distribute and otherwise deal with all Deliverables and Supplies freely and at Customer's absolute discretion anywhere in the world.

9.4 Supplier shall not without Customer's prior written consent use any trademarks, logos, initials or other indicia of Customer and/or any of its Affiliates nor sell any goods which bear them.

## 10. CUSTOMER MATERIALS

10.1 All Customer Materials belong to Customer or its Affiliates. Supplier shall have no rights in any Customer Materials, and shall not dispose of, use or make available Customer Materials, other than in accordance with the Contract and as strictly necessary to perform Supplier's obligations under the Contract (but subject to Condition 13).

10.2 Until they are returned to Customer, Supplier is responsible for any loss or damage to Customer Materials and shall keep them safe, insured against all insurable risks and maintain them in good condition. Supplier shall return all Customer Materials on the completion of the Contract or at such other times as Customer may require.

## 11. INDEMNITY AND INSURANCE

11.1 Supplier shall indemnify and keep indemnified Customer and all of its Affiliates on demand and without counterclaim against all liabilities, costs, losses (whether direct or indirect), damages, claims and expenses (including without limit any interest, fines, legal and other professional fees and expenses) suffered or incurred by Customer and/or any its Affiliates arising out of or attributable (in whole or in part) to:

- (a) any claim by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Supplies which are attributable to the acts or omissions of Supplier or its Personnel;
- (b) any claim by a third party arising out of, or in connection with, a breach of the Contract or negligent performance or failure or delay by Supplier or its Personnel;
- (c) any breach of Condition 4.1, 4.2(c), 4.2(f), 8, 9, 13, 14, 15, 16 or 17.6 including without limit any breach of the warranty in Condition 9.1;
- (d) any infringement or alleged infringement of any Laws relating to the quality, marking, labelling, safety or use of the Goods or Deliverables; and
- (e) any damage to the property of Customer or its Affiliates caused by any Supplies.

11.2 Supplier shall maintain (at its own expense) such insurance: (a) as required by applicable Law; and (b) against its relevant potential liabilities in connection with the supply of the Supplies (including without limit for such period as would be expected of a prudent supplier seeking to act in accordance with good industry practice, the Contract and Customer's reasonable requirements).

## 12. TERMINATION

Without prejudice to any other rights and remedies of Customer or its Affiliates, Customer may, by notice to Supplier, terminate the Contract with immediate effect:

- 12.1 in whole or in part, for convenience, provided that where the Contract is formed under Condition 2.1(a) (only) Customer shall pay Supplier the Price for all Goods and Deliverables allocated by Supplier to the Contract that may not reasonably be allocated by it to another contract or returned to stock and a reasonable price (to be determined by Customer) for any other work reasonably done in fulfilling the Contract before termination (provided in all cases that any such Price is otherwise payable according to the Contract and that Supplier allows Customer to take ownership of the Goods, Deliverables and work in progress for which it pays), and these Conditions shall otherwise apply to all such Goods, Deliverables and work in progress as they would do if the Contract had not been so terminated;
- 12.2 in the event of any material breach by Supplier of the Contract;
- 12.3 if Supplier has a receiver or administrative receiver appointed or passes a resolution for winding up (other than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect or if Supplier enters administration or gives notice of its intent to do so or enters into any voluntary arrangement with its creditors (or if Supplier undergoes anything in any jurisdiction that is similar to something included in this Condition 12.3); and/or
- 12.4 if it appears to Customer that Supplier is or is likely to become unable to pay its debts or meet any of its contractual obligations or if Supplier ceases or threatens to cease to carry on all or any material part of its business.

## 13. CONFIDENTIALITY

- 13.1 Subject to Condition 13.2, at all times during the Contract and for five years thereafter, Customer and Supplier shall and shall each procure that its Personnel shall maintain in confidence (and not use) the other party's Confidential Information, other than as necessary to perform or in connection with the performance of the Contract.
- 13.2 Confidential Information shall exclude information and data which:
- at the time of receipt is in the public domain, or subsequently becomes so through no fault of or breach of confidentiality by the recipient;
  - is lawfully received by the recipient from a third party on an unrestricted basis;
  - is already known to the recipient before receipt under the Contract;
  - is required by any law, regulation, directive, statute, subordinate legislation, common law, civil code or any judgment, decision or order of a competent authority to be disclosed by the

recipient provided that (to the extent permitted by the same) the disclosing party is given reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the requirement to make the disclosure;

- is disclosed by the recipient with the prior written approval of the other party in accordance with the terms of such written approval; or
  - is disclosed, Processed or used as contemplated by Condition 17.7.
- 13.3 Supplier and Customer shall each ensure that disclosure of Confidential Information is restricted to those of its Personnel who need access to it for the purposes of the Contract.
- 13.4 Supplier shall not, and shall procure that its Personnel shall not, disclose the fact or subject matter of the Contract or its relationship with Customer unless it first obtains Customer's written consent or unless that disclosure is made under Condition 13.1.

## 14. DATA PROTECTION

- 14.1 Both parties shall comply at all times with any applicable Data Protection Legislation.
- 14.2 To the extent that it Processes any data of Customer or its Affiliates which is Personal Information, Supplier shall:
- Process the Personal Information only for the purposes of performing the Contract and otherwise in accordance with Customer's instructions;
  - take reasonable steps to ensure the reliability of its Personnel who have access to the Personal Information and ensure that such Personnel are aware of Supplier's obligations under this Condition and the Data Protection Legislation;
  - take all appropriate technical and organisational measures in accordance with the Data Protection Legislation and otherwise in accordance with good industry practice against unauthorised or unlawful Processing of, and against accidental loss or destruction of, the Personal Information, and in order to maintain the integrity of the Personal Information, including without limit by ensuring a level of security appropriate to the harm that might result from such unauthorised or unlawful Processing or accidental loss, destruction or damage and appropriate to the nature of the Personal Information;
  - promptly deal with and inform Customer within 3 Working Days of any complaints about, or subject access requests for, the Personal Information so Processed. Supplier shall provide any information Customer requires to respond to that request or complaint. If Supplier is required to respond directly, Supplier shall inform Customer of its so doing; and
  - not transfer or Process the Personal Information outside the Republic of South Africa without Customer's prior written consent, which may be

refused or granted subject to such conditions as Customer (in its sole discretion) deems necessary.

## 15. WHISTLEBLOWING

15.1 Supplier commits to whistleblowing where any request from a Customer employee is deemed to be inappropriate, or if Supplier suspects any fraud or malpractice relating to the provision of the Supplies.

Supplier can call the toll free number 0800 204 912, which may be utilised to disclose unethical and/or irregular conduct. Callers can be assured of their anonymity and is not expected to disclose their identity should they prefer not to do so. All calls will be treated with the utmost confidentiality.

15.2 Supplier acknowledges that failure to whistle blow will result in immediate termination of the Contract, and / or the withholding of any payment due to Supplier until the matter has been fully investigated. Customer reserves its right to claim damages from Supplier arising out of failure to whistle blow within a reasonable timeframe.

## 16. ANTI-BRIBERY AND CORRUPTION

16.1 Supplier warrants and represents that:

(a) in performing its obligations under the Contract neither it, nor any of its Associated Parties, will:

(i) directly or indirectly, either in private business dealings or in dealings with the public sector, offer, give, receive or agree to offer, give or receive (either itself or in Contract with others) any payment, gift or other advantage with respect to any matters which are the subject of the Contract which: (A) is intended to, or does, influence or reward any person for acting in breach of an expectation of good faith, impartiality or trust, or which it would otherwise be improper for the recipient to accept; (B) is made to or for a Public Official with the intention of influencing them and obtaining or retaining an advantage in the conduct of business; or (C) which a reasonable person would otherwise consider to be unethical, illegal or improper ("**Corrupt Act**") ; or

(ii) breach any Applicable Laws or cause Customer or their Affiliates to breach any Applicable Laws;

(b) it has the requisite skill, knowledge and experience to perform its obligations under the Contract; and

(c) to the best of its knowledge and belief, neither it nor any of its Associated Parties has:

(i) engaged in any Corrupt Act prior to the date of the Contract;

(ii) been found by a court in any jurisdiction to have engaged in any Corrupt Act (or similar conduct);

(iii) admitted to having engaged in any Corrupt Act (or similar conduct); or

(iv) been investigated or been suspected in any jurisdiction of having engaged in any Corrupt Act (or similar conduct).

16.2 Supplier further agrees and undertakes:

(a) to notify Customer immediately in writing if, at any time, it becomes aware that any of the representations set out in Condition 16.1 are no longer correct;

(b) to maintain, for a period of at least 7 years, complete, accurate and up to date records of all transactions which relate in any way to the Contract or to Supplies provided by Supplier under it, including without limit all Supplies provided and payments made or received;

(c) to read and at all times comply with the principles set out in the Applicable Customer Policies in respect of its performance under the Contract, and to notify Customer immediately should it learn or have reason to know of any potential breach of the Applicable Customer Policies by it or its Associated Parties;

(d) to take reasonable steps to ensure that its Associated Parties, and any sub-contractors or suppliers providing goods or services in connection with Supplier's provision of Supplies to Customer or their Affiliates under the Contract, are provided with a copy of and will comply with the principles contained in the Applicable Customer Policies;

(e) not to use any sub-contractor without Customer's prior written consent, such consent to be given at Customer's discretion and not to be given unless that Sub-contractor agrees to the same or materially equivalent representations, warranties and obligations as set out in these Condition 16.1 and 16.2;

(f) to provide to Customer reports on its activities under the Contract, in such format and at such frequency, as may be reasonably requested by Customer;

(g) to undertake any such anti-corruption training as Customer or their Affiliates may reasonably require; and

(h) to notify Customer immediately in writing if at any time it becomes aware of any Corrupt Act being requested by a Supplier or official in connection with the performance of the Contract.

16.3 Customer, their authorised advisers and other representatives may audit the compliance of Supplier and its Associated Parties with the terms of the Contract (including compliance with Applicable Customer Policies) and the accuracy of Supplier's invoicing of the charges payable by Customer under the Contract. For the purpose of facilitating an audit under this Condition, Supplier shall provide to Customer and its Affiliates, their authorised advisers and other representatives on request (at no cost to Customer):

(a) reasonable access to the records referred to in Condition 16.2(b);

(b) reasonable access to all relevant information, premises, data, employees, agents, subcontractors and assets at all locations at which the same are present (or may reasonably be expected to be present), including locations from which obligations of Supplier are being or have been or should have been carried out (but not to information which Supplier is obliged to keep confidential or information which is legally privileged and/or subject to litigation privilege); and

(c) all reasonable assistance in carrying out any audit.

16.4 All invoices issued in accordance with the Contract must contain a detailed breakdown of all work completed in relation to that invoice.

16.5 Save as disclosed in writing in advance to Customer, neither Supplier nor any of its Associated Parties or anyone in their families are: (i) Public Officials; or (iii) persons who might otherwise assert a corrupt or illegal influence on behalf of either Party.

16.6 Notwithstanding any other provision of the Contract, Supplier shall to the fullest extent permitted by law indemnify, defend and hold harmless Customer and their Affiliates from and against any claim, loss, damage, penalty, liability, expense, attorney's fees and costs of whatever nature arising out of, or related to, or connected with Supplier's failure to comply with this Clause 1 or of any Applicable law or Applicable Customer Policies.

16.7 Customer may terminate the Contract with immediate effect on giving written notice to Supplier if Customer reasonably suspects Supplier is in breach of this Condition 16 or of any Applicable Laws or Applicable Customer Policies.

#### **Investigation**

16.8 Without prejudice to any termination rights Customer may have, in the event Customer consider that there may have been a breach of Conditions 16.1 to 16.5, Customer may notify Supplier by notice in writing ("**Advice Letter**") of the suspected breach.

16.9 Following the issue of an Advice Letter, Customer, where permitted by law, will investigate the suspected breach ("**Investigation**") and Supplier shall provide any information and assistance reasonably requested by Customer in connection with such Investigation. Where permitted by law, Supplier shall have the opportunity to respond to the findings of the Investigation. If no time period for a response is notified, such response should be provided within 14 days of the date of the findings of any Investigation being notified to Supplier by Customer.

16.10 Where Customer is not permitted by law to investigate the matter, it may terminate the Contract forthwith.

16.11 Following issue of the Advice Letter, any right to payment of the Charges will be suspended. Further, during the course of the Investigation, Supplier shall not meet or communicate with any customers or potential customers in connection with Customer's goods, products and services.

16.12 Where Customer reasonably consider the results of the Investigation to provide prima facie evidence of a breach of the Contract and the breach is incapable of remedy or has not been remedied within 20 days of the date of the notification of the findings of the Investigation to Supplier, the Contract will be terminated forthwith. Customer shall notify Supplier of the date of termination in writing as soon as practicable.

16.13 Where the breach is remedied to Customer's satisfaction or the Investigation concludes that there is no prima facie evidence of such a breach, then Supplier will be notified in writing and Condition 16.12 will no longer apply in relation to that incident of breach. Delay

16.13 If Supplier believes that production or delivery of goods or services under the Contract has been or may

be delayed because of demands for illegal payments from Public Officials or other third parties, Supplier shall notify Customer immediately of any such demands. Supplier and its Associated Parties will make no such payments unless an individual's personal safety is at risk.

16.14 Supplier will take all reasonable steps to complete production and delivery as quickly as possible without making illegal payments, but Supplier will not be deemed to be in breach of timeliness requirements or be subject to penalties for delay under the Contract for the length of any reasonable delay caused by Supplier's failure to make illegal payments.

#### **17. GENERAL**

17.1 Supplier shall not assign, transfer, charge, sub-contract or deal in any other manner with any of its obligations under the Contract without the prior written approval of Customer. Supplier will remain fully responsible for the performance of any obligations under the Contract which it sub-contracts to other parties.

17.2 Any notice given by either party to the other under these Conditions shall be in writing, addressed to that other party at its registered office or principal place of business or such other address (including without limit an email address) as may have been notified to the party giving such notice and may be delivered by hand or sent by first class post, email or facsimile (except that delivery of a notice in relation to any proceedings or other documents in any legal action or any arbitration or any other method of dispute resolution shall not be carried out by email or facsimile).

17.3 Customer may perform any obligation or exercise any right under the Contract by itself or through any of its Affiliates acting as its agent. Rights of Customer and its Affiliates under the Contract are in addition to any other rights and remedies Customer or its Affiliates may have.

17.4 Customer and its Affiliates may enforce the rights, indemnities and warranties given in favour of Customer and/or its Affiliates in these Conditions. Otherwise, a person who is not a party to the Contract has no right to enforce any of its terms under any provision in any law, regulation, directive, statute, subordinate legislation or civil code specifically created or brought into force to confer on third parties the right to enforce terms of contracts to which they are not parties, but this does not affect any right or remedy of a third party which exists or is available apart from such a provision.

17.5 Supplier and Customer may terminate or vary the Contract or any part of it without the consent of any person who is not a party to the Contract.

17.6 Supplier shall immediately notify Customer if Supplier or any of its Personnel or Affiliates breaches or is affected directly or indirectly by Sanctions (which shall include but is not limited to becoming a "Specially Designated National", a "Designated Person" or designated in any way for

any Sanctions purposes (a “Supplier Sanctions Event”). If Customer considers that Supplier or any of its Personnel or Affiliates has exposed or may expose Customer or any of its Affiliates to any risk of directly or indirectly breaching any Sanctions, Supplier shall, if Customer requires, engage with Customer to agree how to continue the Contract without breaching any Sanctions. However, Customer may terminate the Contract with immediate effect if there is a Supplier Sanctions Event or Customer considers one may occur.

17.7 Notwithstanding any other Condition, Customer and its Affiliates (subject to applicable Law) may: (a) Process and otherwise use information (including without limitation Personal Information) received from or held about Supplier to: (i) conduct due diligence and identity checks; and (ii) design, develop, test, demonstrate, provide training on and implement new (or changes to) systems, processes, functionality, operating models and business practices; and (b) engage contractors, third party suppliers, subcontractors and agents based in or outside the Republic of South Africa to carry out anything contemplated by (a) on their behalf.

17.8 No delay, failure or omission to enforce the Contract or any forbearance granted by Customer and/or any of its Affiliates in respect of any obligation of Supplier shall operate as a waiver unless the waiver is expressly set out by Customer or the relevant Affiliate in writing. No waiver by Customer or any of its Affiliates of any breach of an obligation of Supplier under the Contract shall constitute a waiver of any prior or subsequent breach by Supplier. No single or partial exercise of a right or remedy under the Contract shall preclude or restrict the further exercise of that or any other right or remedy.

17.9 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, then it shall be severed and the validity and enforceability of the remainder of the Conditions shall continue in effect.

17.10 The Contract and any Dispute shall be governed by and construed in accordance with the law of Republic of South Africa, and (subject to the next sentence) each party irrevocably agrees that the competent courts of the Republic of South Africa shall have jurisdiction to settle any Dispute. This Condition operates for the benefit of Customer which retains the right to bring claims or enforce judgments against Supplier in the courts of any competent jurisdiction.