



**STANDARD TERMS AND CONDITIONS OF SALE**

## **1. INTRODUCTION**

- 1.1. The purchaser purchases from the seller, the goods supplied by the seller on the terms and conditions contained herein.
- 1.2. The purchaser accepts that all business is transacted in terms of this Agreement (a copy of which is available on request), which terms and conditions are binding on all purchase orders concluded in terms hereof.
- 1.3. It is recorded that the parties to this Agreement have their places of business in different geographical territories.
- 1.4. Accordingly, this Agreement is regulated and drafted in accordance with the United Nations Convention on Contracts for the International Sale of Goods ("CISG").
- 1.5. The application of CISG shall be retained in transactions for the supply of goods to be manufactured or produced, unless the purchaser undertakes to supply a substantial part of the materials necessary for such manufacture or production.

## **2. PURCHASE ORDERS AND ACCEPTANCE**

- 2.1. All purchase orders received are subject to acceptance by the seller.
- 2.2. A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance, however silence or inactivity does not in itself amount to acceptance.
- 2.3. An acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror. An acceptance is not effective if the indication of assent does not reach the offeror within the time fixed or, if no time is fixed, within a reasonable time, due account being taken of the circumstances of the transaction, including the rapidity of the means of communication employed by the offeror.
- 2.4. However, if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act, such as one relating to the dispatch of the goods or payment of the price, without notice to the offeror, the acceptance is effective at the moment the act is performed, provided that the act is performed within the period of time laid down in the preceding clause 2.3.
- 2.5. Material terms relating, among other things, to the price, payment, quality and quantity of the goods, place and time of delivery are to be expressly stated in the quotation alternatively, the purchase order.

## **3. DELIVERY**

- 3.1. Risk in the goods supplied by the seller passes to the purchaser on delivery, irrespective of any subsequent installation requirements.
- 3.2. The purchaser's obligation to take delivery consists:
  - 3.2.1. in doing all the acts which could reasonably be expected of him in order to enable the seller to make delivery; and
  - 3.2.2. in taking over the goods.
- 3.3. Loss of or damage to the goods after the risk has passed to the purchaser does not discharge him from its obligation to pay the price, unless the loss or damage is due to an act or omission of the seller.
- 3.4. If the Agreement of sale involves carriage of the goods and the seller is not bound to hand them over at a particular place, the risk passes to the purchaser when the goods are handed over to the first carrier for transmission to the purchaser in accordance with the Agreement of sale. If the seller is bound to hand the goods over to a carrier at a particular place, the risk does not pass to the purchaser until the goods are handed over to the carrier at that place.
- 3.5. The fact that the seller is authorized to retain documents controlling the disposition of the goods does not affect the passage of the risk.
- 3.6. Nevertheless, the risk does not pass to the purchaser until the goods are clearly identified to the Agreement, whether by markings on the goods, by shipping documents, by notice given to the purchaser or otherwise.
- 3.7. If the purchaser fails to take delivery of the goods when tendered, then the risk in the goods shall immediately pass to the purchaser who shall refund to the seller on demand  
the reasonable costs (including storage, transport and insurance) of moving the goods and keeping them during the period of the delay.

- 3.8. The off-loading of the goods at the delivery point is the responsibility of the purchaser and the seller's obligation does not extend beyond tendering the goods at the agreed delivery point.
- 3.9. If the seller, in accordance with this Agreement hands the goods over to a carrier and if the goods are not clearly identified by markings on the goods, by shipping documents or otherwise, the seller must give the purchaser notice of the consignment specifying the goods.
- 3.10. If the seller is bound to arrange for carriage of the goods, it must make such contracts as are necessary for carriage to the place fixed by means of transportation appropriate in the circumstances and according to the usual terms for such transportation.
- 3.11. If the seller is not bound to effect insurance in respect of the carriage of the goods, it must, at the purchaser's request, provide him with all available information necessary to enable him to effect such insurance.
- 3.12. The seller must deliver goods which are of the quantity, quality and description required by the purchase order and which are contained or packaged in the manner required in terms of this Agreement.
- 3.13. Except where the parties have agreed otherwise, as per 8.3 below, the goods do not conform with the Agreement unless they:
  - 3.13.1. are fit for the purposes for which goods of the same description would ordinarily be used;
  - 3.13.2. are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the Agreement, except where the circumstances show that the purchaser did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgment;
  - 3.13.3. possess the qualities of goods which the seller has held out to the purchaser as a sample or model;
  - 3.13.4. are contained or packaged in the manner usual for such goods or,
  - 3.13.5. where there is no such manner, in a manner adequate to preserve and protect the goods.
- 3.13.6. The seller is not liable under the subclauses to preceding clause 3.8 for any lack of conformity of the goods if, at the time of the conclusion of the Agreement, the purchaser knew or could not have been unaware of such lack of conformity.
- 3.13.7. The purchaser must examine the goods, or cause them to be examined, within as short a period as is practicable in the circumstances.

#### **4. RETURNS**

- 4.1. The seller shall not be obliged to accept the return of any goods sold by it, but if it agrees to do so the purchaser shall pay a handling charge to be determined by the seller but not exceeding ten per cent of the sales value of the goods plus transport costs.

#### **5. PAYMENTS**

- 5.1. If the purchaser has not been granted credit facilities, the terms of payment shall be in accordance with the applicable incoterms, alternatively on such terms prescribed in the quotation, alternatively the invoice.
- 5.2. If credit facilities have been granted payment must be made within 30 days nett from date of statement unless other terms have been agreed upon in writing, in which case those terms agreed upon will apply.
- 5.3. All payments shall be made in the currency stated in the quotation, free of bank exchange and other charges, at the seller's sales office nearest to the point of delivery or in any other manner as may be agreed upon between the parties, including, but not limited to, electronic funds transfer.
- 5.4. If delivery is made in instalments, each instalment will be invoiced and paid for separately.
- 5.5. A party may suspend the performance of its obligations if, after the conclusion of the Agreement, it becomes apparent that the other party will not perform a substantial part of its obligations as a result of:
  - 5.5.1. a serious deficiency in its ability to perform or in its creditworthiness; or
  - 5.5.2. its conduct in preparing to perform or in performing the Agreement.
- 5.6. If the seller has already dispatched the goods before the grounds described in the preceding paragraph become evident, it may prevent the handing over of the goods to the purchaser even though the purchaser holds a document which entitles him to obtain them. The present paragraph relates only to the rights in the goods as between the purchaser and the seller.
- 5.7. A party suspending performance, whether before or after dispatch of the goods, must immediately give notice of the suspension to the other party and must continue with performance if the other

party provides adequate assurance of its performance.

- 5.8. In the case of an agreement for delivery of goods by instalments, if the failure of one party to perform any of its obligations in respect of any instalment constitutes a fundamental breach of Agreement with respect to that instalment, the other party may declare the Agreement avoided with respect to that instalment.
- 5.9. If one party's failure to perform any of its obligations in respect of any instalment gives the other party good grounds to conclude that a fundamental breach of Agreement will occur with respect to future instalments, it may declare the Agreement avoided for the future, provided that it does so within a reasonable time.
- 5.10. If any amount is not paid upon due date, all amounts owed to the seller will at once become due, owing and payable. Any discount granted to the purchaser will be forfeited and the purchaser will pay interest on all overdue amounts at the prevailing overdraft rates as determined by an account held by the seller at a commercial bank and shall in addition pay any legal costs incurred by the seller on the attorney and client scale, including collection commission.
- 5.11. Payment may not be withheld pending the settlement of any dispute.
- 5.12. All payments received shall be allocated by the seller firstly as to interest, secondly as to legal and collection costs and lastly as to capital.

## **6. FREIGHT AND TRANSPORT**

- 6.1. If the Agreement involves carriage of the goods :-
  - 6.1.1. any carrier other than the seller, shall be deemed for all purposes to be the purchaser's agent, irrespective as to who pays or is to pay for the carriage.
  - 6.1.2. delivery to be effected in consignments, will entitle the seller not to deliver any part of the order until the purchase price due in respect of the part of the order delivered having been paid;
  - 6.1.3. the purchaser bears the duty to inspect all goods upon delivery and shall endorse the delivery note as to any missing or damaged goods. No claims for missing or damaged goods shall be valid unless the delivery note has been endorsed as aforesaid and unless, and in addition the customer having notified the supplier in writing within 3 business days of the delivery of the goods of the claim in question, furnishing full details in regard thereto. The purchaser shall bear the onus of proving that the order was in any way not complied with;
  - 6.1.4. the seller's rates are subject to fuel fluctuation and vehicle availability, and estimates provided exclude standing time and remain valid in accordance with the freight company terms from date of issue;
  - 6.1.5. such services and corresponding rates shall exclude (unless otherwise agreed):
    - 6.1.5.1. provision of labour to load onto truck at seller's premises;
    - 6.1.5.2. insurance (unless arranged upon request);
    - 6.1.5.3. any additional costs as a result of government legislation beyond our control;
    - 6.1.5.4. any extraneous charges such as customs stops, exams, surveys, permits, pre-shipment inspection, weighbridge, escorts traffic fines due to incorrect loading and offloading costs at destination;
    - 6.1.5.5. any standing time / storage and demurrage charges;
    - 6.1.5.6. clearance / customs duty, VAT/GST: withholding tax and other related cost at destination;
    - 6.1.5.7. any costs for stock control, if required;
    - 6.1.5.8. any penalties imposed by customs for non and /or late submittal of the acquittal confirming proof of export;
    - 6.1.5.9. any pre-shipment inspection, which is to be arranged by the seller;
    - 6.1.5.10. the costs for temporary import / bond fees / customs deposits;
    - 6.1.5.11. VAT and duties payable at destination;
    - 6.1.5.12. responsibility for any 3rd party rate increases at the time of the shipment;
    - 6.1.5.13. exporting country VAT as determined from time to time.
- 6.2. In the event of the seller being unable to deliver goods timeously due to any act or omission on the part of the purchaser, the seller shall be entitled to charge the purchaser for any storage of the goods.
- 6.3. In the event of the purchaser failing to furnish necessary information to enable delivery by the seller

of the goods or if the purchaser fails or refuses to supply such information, or if it fails or refuses to take delivery of the goods, the seller shall, without prejudice, to the provisions of clause 6.2 be deemed to have been delivered to the purchaser upon notification by the seller to the purchaser to that effect.

- 6.4. The seller may dispatch the goods on terms whereby the goods, or documents controlling their disposition, will not be handed over to the purchaser except against payment of the price.
- 6.5. The purchaser's obligation to effect payment in terms hereof is not contingent upon it being afforded an opportunity to examine the goods.

## **7. PRICES**

- 7.1. The price of goods supplied by the seller to the purchaser, in terms of a quotation or other similar written communication, shall be in the seller's official invoice price at the date of delivery and only valid for a period of 30 days or such extended period.
- 7.2. If the seller has issued a quotation for the supply of goods to the purchaser, then all prices quoted thereon are subject to change if, as a result of currency fluctuations and other factors beyond the seller's control, there is an increase in the seller's costs, at which point the seller shall be entitled to issue a revised quotation and shall not be bound by the first quotation.

## **8. WARRANTIES**

- 8.1. The seller warrants that the goods are free from defects in materials and workmanship for a period indicated in the quotation which shall not be less than 1500 hours or 12 months, unless otherwise recorded in the quotation or elsewhere in writing.
- 8.2. Test certificates or copies of test certificates relating to the goods sold are supplied in good faith and if the seller is not the author of such test certificates then its obligation in respect of any test certificate does not extend beyond ceding to the purchaser any claim which it may have against the author of such certificate in respect of any goods sold by the seller to the purchaser.
- 8.3. The seller gives no warranty as to the suitability of the goods for the purpose for which they are intended to be used.
- 8.4. The seller shall not be liable for any loss suffered by the purchaser arising from or in connection with the goods sold to the purchaser.
- 8.5. The purchaser shall not have any claim of any nature whatsoever against the seller for any failure by the seller to carry out any of its obligations as a result of any circumstances beyond the control of the seller including, without prejudice to the generality of the foregoing, and default or delay on the part of any sub-contractor, carrier, supplier or its servants
- 8.6. Liability for a breach of a condition or warranty implied for the goods or services supplied under this contract must be made within 7 (seven) days of delivery and is limited to the fullest extent permitted by law (in the seller's discretion):
  - 8.6.1. in the case of goods, any one or more of the following:
    - 8.6.1.1. the replacement of the goods or the supply of equivalent goods;
    - 8.6.1.2. the repair of the goods;
    - 8.6.1.3. the payment of the cost of replacing the goods or of acquiring equivalent goods;
    - 8.6.1.4. the payment of the cost of having the goods repaired
    - 8.6.1.5. the cost of returning the goods for repair and /or replacement;
  - 8.6.2. in the case of services:
    - 8.6.2.1. the supplying of the services again; or
    - 8.6.2.2. the payment of the cost of having the services supplied again whichever is the lowest amount.
- 8.7. Any goods repaired in the seller's workshops and not removed within sixty (60) days of repair will incur a storage charge equivalent to 20% per month of the cost of the repair.

## **9. OWNERSHIP**

- 9.1. Ownership of goods sold will not pass the purchaser until the seller has received payment of the full price outstanding on the goods sold.

## **10. EXPORT PROVISIONS AND INTELLECTUAL PROPERTY**

- 10.1. The purchaser shall, at its expense, procure any permits required in relation to the goods sold by the seller to the purchaser.
- 10.2. The goods to be supplied by the seller must not be exported, re-exported or transported in violation of any applicable export control laws and regulations promulgated and administered by the government of the country claiming jurisdiction over the parties or transactions.
- 10.3. The goods to be supplied by the seller must not knowingly be applied in the design, development, production, stockpiling or use of the weapons of mass destruction, such as nuclear, chemical and biological weapons or missiles to deliver any such weapons, nor for any use supporting these weapons activities. The purchaser further certifies that these goods will not be sold or disposed of to any party intending to use the products and/or technologies for any purpose or activity specified above.
- 10.4. All artwork and/or content for any advertising and/or promotional activity that includes the the seller's products or logos must be approved by the seller prior to production or publication.
- 10.5. The seller grants the purchaser a perpetual, revocable, world-wide, nonexclusive royalty free licence to use intellectual property that vests in the goods and the associated services, ("the Intellectual Property Rights") for the sole purpose of using the goods and services as intended. This licence excludes the right to commercialise the Intellectual Property Rights for the Purchaser's own benefit and is therefore subject to the provisions below.
- 10.6. The purchaser acknowledges and agree that all Intellectual Property Rights comprised in the goods remain vested in the seller and shall be and remain the sole property of the seller despite transfer of ownership in the goods.
- 10.7. The purchaser shall not be entitled to use any of the seller's trademarks, logos, brand names, domain names or other marks ("the marks") without the seller's prior written approval.
- 10.8. For purposes of monitoring and enforcing the provisions above, the purchaser shall provide the seller (including any third-party auditors and/or internal audit Personnel), access to any facility at which the goods and services are being performed and to the data and records maintained by the purchaser with respect to the services for the purpose of performing audits and inspections of the Purchaser's performance of its obligations.

## **11. BREACH AND REMEDIES CANCELLATION**

- 11.1. If either Party commits a breach of any provision of this Agreement, the other Party may provide the defaulting Party with written notice to remedy the breach within a period of 30 (thirty) days following the date of the notice.
- 11.2. Should the Party in breach ("Offending Party") fail to remedy the breach within the applicable period provided for in clause 11.1 above, the other party ("Terminating Party") will be entitled, without prejudice to any other rights which it may have in law, including (without being limited) its right to claim specific performance or its right to claim damages or otherwise, to terminate this Agreement forthwith by means of written notice to the Offending Party.
- 11.3. Notwithstanding the above, the seller may cancel this Agreement immediately, and any sale executed in terms hereof in whole or in part, if the purchaser: –
  - 11.3.1. becomes insolvent or wound-up or sequestrated or subject to any winding up procedure, or makes any arrangements with its creditors, or if a receiver or administrator or equivalent is appointed of all or any of its assets or undertaking, or any re-organization takes place for the purposes of amalgamation or reconstruction, or
  - 11.3.2. is placed under business rescue or a debt review, or
  - 11.3.3. dies or ceases to carry on business,
  - 11.3.4. has judgment is granted against it or if it ceases to trade or compromises with any of the its creditors.
- 11.4. If a sale is cancelled through the fault of the purchaser, the purchaser will be liable for any reasonable expenses, cost, loss or damage incurred or suffered by the seller.
- 11.5. If an amount owed by the purchaser to the seller from any cause whatsoever, is not paid on the due date, then without prejudice to any other rights which it may have, the seller may:
  - 11.5.1. require that all amounts then owed to it by the purchaser, from any cause whatsoever shall immediately become due and payable;
  - 11.5.2. retain in its possession any goods of the purchaser until all those amounts have been paid;
  - 11.5.3. until payment is made, suspend the carrying out of any of its then uncompleted obligations from any cause whatsoever;

- 11.5.4. terminate any credit facilities granted to the purchaser.

## **12. DAMAGES AND CLAIMS**

- 12.1. The purchaser shall have no claim against the seller for goods short delivered or wrongly delivered unless the purchaser gives notice thereof in writing to the seller within 36 (thirty six) hours of delivery.
- 12.2. Damages for breach of Agreement by one party consist of a sum equal to the loss, excluding loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the Agreement, in the light of the facts and matters of which it then knew or ought to have known, as a possible consequence of the breach of Agreement.
- 12.3. If the Agreement is avoided and if, in a reasonable manner and within a reasonable time after avoidance, the purchaser has bought goods in replacement or the seller has resold the goods, the party claiming damages may recover the difference between the Agreement price and the price in the substitute transaction as well as any further damages recoverable under this clause.
- 12.4. If the Agreement is avoided and there is a current price for the goods, the party claiming damages may, if it has not made a purchase or resale, recover the difference between the price fixed by the Agreement and the current price at the time of avoidance as well as any further damages recoverable under this clause. If, however, the party claiming damages has avoided the Agreement after taking over the goods, the current price at the time of such taking over shall be applied instead of the current price at the time of avoidance.
- 12.5. For the purposes of the preceding paragraph, the current price is the price prevailing at the place where delivery of the goods should have been made or, if there is no current price at that place, the price at such other place as serves as a reasonable substitute, making due allowance for differences in the cost of transporting the goods.

## **13. EFFECTS OF TERMINATION AND/OR AVOIDANCE**

- 13.1. Avoidance of the Agreement releases both parties from their obligations under it, subject to any damages which may be due. Avoidance does not affect any provision of the Agreement for the settlement of disputes or any other provision of the Agreement governing the rights and obligations of the parties consequent upon the avoidance of the Agreement.
- 13.2. A party who has performed the Agreement either wholly or in part may claim restitution from the other party of whatever the first party has supplied or paid under the Agreement. If both parties are bound to make restitution, they must do so concurrently.
- 13.3. The purchaser loses the right to declare the Agreement avoided or to require the seller to deliver substitute goods if it is impossible for him to make restitution of the goods substantially in the condition in which it received them.
- 13.4. The preceding paragraph does not apply:
- 13.4.1. if the impossibility of making restitution of the goods or of making restitution of the goods substantially in the condition in which the purchaser received them is not due to its act or omission;
- 13.4.2. if the goods or part of the goods have perished or deteriorated as a result of the examination provided for in this Agreement; or
- 13.4.3. if the goods or part of the goods have been sold in the normal course of business or have been consumed or transformed by the purchaser in the course of normal use before it discovered or ought to have discovered the lack of conformity.

## **14. GENERAL**

- 14.1. The parties may in writing, agree to exclude the application of the CISG in which event if parties choose the law of a non-contracting territory or the substantive domestic law of a contracting territory as the law applicable to the Agreement.
- 14.2. In the absence of any express derogation from the CISG, such derogation will in any event occur whenever a provision in the Agreement provides a different rule from that found in the CISG.
- 14.3. This CISG does not prevail over any international agreement which has already been or may be entered into and which contains provisions concerning the matters governed by this CISG, provided that the parties have their places of business in territories parties to such agreement.
- 14.4. Two or more contracting territories which have the same or closely related legal rules on matters governed by this CISG may at any time declare that the CISG is not to apply to contracts of sale or to their formation where the parties have their places of business in those territories. Such

declarations may be made jointly or by reciprocal unilateral declarations.

- 14.5. A contracting territory which has the same or closely related legal rules on matters governed by this CISG as one or more non-contracting territories may at any time declare that the CISG is not to apply to contracts of sale or to their formation where the parties have their places of business in those territories.
- 14.6. If a territory which is the object of a declaration under the preceding paragraph subsequently becomes a contracting territory, the declaration made will, as from the date on which the CISG enters into force in respect of the new contracting territory, have the effect of a declaration made under 14.5 provided that the new contracting territory joins in such declaration or makes a reciprocal unilateral declaration.
- 14.7. Any indulgence or leniency granted by the seller to the purchaser shall not be construed as a waiver of the seller's rights in relation thereto.
- 14.8. Any sale made under this application for credit facilities shall be governed by CISG and in accordance with the laws of the jurisdiction determined in terms of clause 15 below.
- 14.9. At all times the purchaser shall maintain its account within any credit terms and credit limit granted by the seller.
- 14.10. No alteration or variation of these conditions of sale shall apply unless agreed to in writing by the seller and the purchaser. Accordingly, article 11 of CISG shall not apply and therefore this clause 14.10 may also not be altered or varied unless by agreement between the parties recorded in writing.
- 14.11. "communication" and/or "writing" under this Agreement and CISG should be construed so as to include electronic communications.
- 14.12. The seller may in its discretion modify or withdraw the credit facilities granted to the purchaser.
- 14.13. Upon withdrawal of the credit facilities, all amounts owing by the purchaser to the seller become payable immediately and the seller may take possession of any goods not paid for in full.
- 14.14. In case any provision of the Agreement shall be invalid, illegal or unenforceable, such provision shall be valid, legal and enforceable to the extent possible, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 14.15. This Agreement may be executed in two or more counterparts, which may be faxed counterparts, each of which shall be deemed an original and enforceable against the parties actually executing such counterpart, and all of which when taken together shall constitute one and same instrument.

## **15. JURISDICTION AND DISPUTE RESOLUTION**

- 15.1. This Agreement shall be subject to the CISG in determining jurisdiction as well as the United Nations Commission on International Trade Law (UNCITRAL) Model Law ("Model Law") principle of identifying the principal jurisdiction based on the "centre of main interest" (or COMI) concept.
- 15.2. Accordingly, this Agreement shall in all respects (including its existence, validity, interpretation, implementation, termination and enforcement) be governed by the COMI jurisdiction determined in accordance with 15.1 above.
- 15.3. Consequently, the seller may enforce this Agreement in any court of competent COMI jurisdiction determined pursuant to 15.1 above.
- 15.4. All parties, including domestic courts and arbitral tribunals, are therefore admonished to observe its international character and to promote uniformity in its application and the observance of good faith in international trade. In particular, when a question concerning a matter governed by this CISG is not expressly settled in it, the question is to be settled in conformity with the general principles on which the CISG is based. Only in the absence of such principles should the matter be settled in conformity with the law applicable by virtue of the rules of private international law.
- 15.5. For the avoidance of doubt, if a party has more than one place of business, the place of business is that which has the closest relationship to this Agreement and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the Agreement; if a party does not have a place of business, reference is to be made to its habitual residence.
- 15.6. Where any dispute or matter is to be referred to dispute resolution in terms of this Agreement, such dispute or matter shall, notwithstanding anything to the contrary in this Agreement, first be referred to the senior management of the Parties for resolution. If said matter cannot be resolved by the senior management of the Parties within a period of 10 (ten) Business Days from the date on which the matter was referred to them, the matter shall be referred to arbitration in accordance with this clause 15.
- 15.7. Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the



Model Law in force from time to time, which Model Law is deemed to be incorporated by reference into this clause 15.

- 15.8. The arbitration shall be held within the jurisdiction determined in terms of 15.3 above, in the English language in front of a single arbitrator appointed in accordance with the Model Law, as provided for in terms of the UNCITRAL.
- 15.9. The arbitration award shall be final and binding on the Parties and the Parties undertake to carry out any award immediately and without any delay (subject only to the correction of awards and additional awards) and the Parties also waive irrevocably their right to any form of appeal, review or recourse to any Territory court or other legal authority, insofar as such waiver shall not be prohibited under any applicable law.
- 15.10. Notwithstanding the foregoing, nothing in this clause shall be construed as precluding either Party from applying to court for an interim interdict or other relief of an urgent nature. For these purposes, the Parties hereby consent and submit to the Model Law identifying the principal jurisdiction based on the COMI concept, in all respects (including its existence, validity, interpretation, implementation, termination and enforcement).
- 15.11. The provisions of this clause shall survive the cancellation or termination of this Agreement for any reason.

## **16. NOTICES**

- 16.1. The purchaser chooses the physical address cited in the quotation as its address for notice for all purposes in terms hereof.
- 16.2. The purchaser undertakes to notify the seller in writing of any change to its address within 7 (seven) days of such change becoming effective.

## **17. FORCE MAJEURE**

- 17.1. A party is not liable for a failure to perform any of its obligations if it proves that the failure was due to an impediment beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the Agreement or to have avoided or overcome it, or its consequences ("FORCE MAJEURE").
- 17.2. If the party's failure is due to the failure by a third person whom it has engaged to perform the whole or
- 17.3. a part of the Agreement, that party is exempt from liability only if:
  - 17.3.1. it is exempt under the preceding paragraph; and
  - 17.3.2. the person whom it has so engaged would be so exempt if the provisions of that paragraph were applied to him;
- 17.4. The exemption provided by this article has effect for the period during which the impediment exists.
- 17.5. The party who fails to perform must give notice to the other party of the impediment and its effect on its ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, it is liable for damages resulting from such non-receipt.

## **18. INDEMNITY**

- 18.1. CISG does not apply to the liability of the seller for death or personal injury caused by the goods to any person.
- 18.2. Consequently, and save as otherwise provided for herein or in the CISG, the purchaser ("indemnifying party") hereby indemnifies and holds harmless the seller from and against any and all claims, actions, liabilities, damages, costs and expenses asserted against, imposed upon or incurred by such other party as a result of or arising out of any harm alleged or proven by a consumer himself or herself.
- 18.3. Each party hereby indemnifies and holds harmless the other party from and against any and all claims, actions, liabilities, damages, costs and expenses asserted against, imposed upon or incurred by such other party as a result of or arising out of any repairs, replacements of the failed, unsafe or defective goods or refunds to the consumer of the price paid by the consumer for the goods attributable to conduct of the indemnifying party or any contravention by the indemnifying party of any applicable law, provided that the liability of the seller shall at all times be limited in total to the actual amount paid by the purchaser to the seller for the goods supplied by the seller irrespective of the amount paid or refunded by the seller to a protected consumer or purchaser of such goods.