

TERMS AND CONDITIONS OF SALE ("SALES TERMS")

1. INTRODUCTION

- 1.1. This document defines the terms and conditions of doing business with Espresso Africa (Pty) Ltd ("the Company").
- 1.2. The Sales Terms will apply to the exclusion of all other terms and conditions, whether express, tacit or implied, unless the Company specifically agrees in writing to accept any variation.
- 1.3. The Customer, by engaging the Company with the purpose to undertake business with the Company, including by requesting a quotation or placing an order or accepting delivery of any Goods or the rendition of any Services pursuant, accepts the Sales Terms as is.
- 1.4. In the event of there being a conflict between the provisions of any written quotation and the Sales Terms, the Sales Terms will prevail over the written quotation.
- 1.5. The Sales Terms can be found on the Company's website and are available in hard copy on request.
- 1.6. By agreeing to these terms, you confirm that you have taken the time to read the Sales Terms and you understand all your rights, risks and obligations.

2. INTERPRETATION

- 2.1. The following rules apply to the interpretation of the agreement:
 - 2.1.1. Clause and subclause headings are for reference only and do not affect the interpretation;
 - 2.1.2. Whenever a clause lists specific examples or items following a listing word, such as 'including', 'includes', 'excluding' or 'excludes', they will not limit its scope.
 - 2.1.3. All words or phrases that the agreement does not define have their English meaning;
 - 2.1.4. References to any enactment includes as a re-enactment, amendment or extension;
 - 2.1.5. References to a person includes natural and juristic person;
 - 2.1.6. References to a party includes their successors or permitted assigns;
 - 2.1.7. When any number of days is prescribed, the first day will be excluded and the last day included; and
 - 2.1.8. The rule of construction that an agreement must be interpreted against the party responsible for its drafting or preparation does not apply.

3. DEFINITIONS

- 3.1. **"Business Day"** means any day other than a Saturday, Sunday or holiday (including a public or bank holiday) in the Republic of South Africa.
- 3.2. **"Confidential information"** means: information, documentation, or other materials provided by disclosing party before or after the date of this agreement that is identified as being confidential or proprietary, or which disclosing party considers as having the necessary quality of confidence about it, and includes:
 - 3.2.1. The discloser's past, present and future research and development;
 - 3.2.2. The discloser's business activities, financial information, products, services, customers, as well as discloser's technical knowledge and trade secrets;
 - 3.2.3. The discloser's software and associated material and documentation, including the contained information;
 - 3.2.4. Any confidential information disclosed by a third party on behalf of the discloser; and
 - 3.2.5. The terms of this agreement.
- 3.3. **"Company"** means Espresso Africa (Pty) Ltd (Registration No. 2021/437853/07) and all the employees, directors, and agents of Espresso Africa (Pty) Ltd.
- 3.4. **"CPA"** means the Consumer Protection Act 68 of 2008 and any regulation thereto and as amended from time to time.
- 3.5. **"Customer"** means the Customer as defined in the Customer Agreement, or in the absence of a Customer Agreement, any person, including a Consumer, a Sole Proprietor, a Partnership, a Company a Close Corporation, and the person with authority acting on behalf of any such entity with whom the Company undertakes any business or provides any advice, information or service, whether gratuitously or for reward.
- 3.6. **"Customer Agreement"** means a written agreement between the Customer and the Company, where such agreement exists.
- 3.7. **"Customer Application"** means the application in writing, on the predefined form, by the Customer to do business with the Company.
- 3.8. **"Deposit"** means any advance amount required to be paid by the Customer to the Company in relation to an Order or Special Order Goods.

- 3.9. **"Force Majeure Event"** means any strike, lockout, irregular industrial action short of strike, cessation of labour, accident, embargo, riots, fires, tempest, hurricane, flood, drought, storms, explosions, acts of God, disease outbreaks, epidemics or pandemics, war (whether declared or not), insurrection, civil commotion, unrest, disturbance, breakdown in law and order, supervening legislation, governmental or other regulations, restrictions or directives or any other cause beyond the reasonable control of a Party.
- 3.10. **"Goods"** means any tangible object supplied by the Company to the Customer.
- 3.11. **"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, exclusively represented by 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.
- 3.12. **"Minimum Advertised Price"** or **"MAP"** means the lowest price at which the Customer may advertise Goods or Services as defined in clause 7.
- 3.13. **"Order"** means a commitment by the Customer to the Company to acquire Goods or Services from the Company and is governed by this agreement in terms of clause 8 below;
- 3.14. **"Party/Parties"** mean either or both the Company or the Customer.
- 3.15. **"POPIA"** means the Protection of Personal Information Act 4 of 2013;
- 3.16. **"Price"** means the Price for the Goods and/or the Services as detailed in terms of clause 6;
- 3.17. **"Pricelist"** means the list of indicative prices and MAP for Goods and Services sold by the Company as published by the Company from time to time;
- 3.18. **"Privacy Policy"** means the Privacy Policy as published on the Company's website and is available on request;
- 3.19. **"Quotation"** or **"Quote"** means the Company's written response to the Customer's request for pricing of Goods or Services and is governed in terms of clause 6;
- 3.20. **"Returns Policy"** means the Returns Policy as published on the Company's website and is available on request;
- 3.21. **"Services"** mean maintenance, repairs and installation activities, and other services provided by the Company to the Customer;
- 3.22. **"Special Order Goods"** means Goods that the Customer expressly requires the Company to procure, create or alter specifically to satisfy the Customer's needs;
- 3.23. **"VAT"** means valued-added tax levied in terms of the Value-Added Tax Act, 89 of 1991, as amended;
- 3.24. **"Warranty Policy"** means the Warranty Policy as published on the Company's website and is available on request;

4. **ADDITIONAL RESPONSIBILITIES OF THE CUSTOMER**

- 4.1. The Customer is responsible for advising the Company of any changes to its details, including contact details and address details of the Customer within five (5) Business Days of it changing.

5. **AUTHORITY AND INDEMNITY**

- 5.1. The Customer warrants that its employees, agents or servants are authorised to bind the Customer to the Sales Terms and conclude any transaction with the Company in terms of the Sales Terms.
- 5.2. Any act by a director, member or partner of the Customer, who has purported at any time to act on behalf of the Customer, will nevertheless bind the Customer by the terms of the Sales Terms regardless of whether being authorized to do so.

6. **QUOTATION AND PRICE**

- 6.1. A Pricelist will be published by the Company from time to time representing indicative prices for the Goods or Services. The Pricelist does not represent an offer by the Company. The prices on the Pricelist are not a binding price but are merely an indication of the price that the Customer would pay should they decide to do business with the Company.
- 6.2. Any Quotation given by the Company will constitute an invitation to the Customer to do business with the Company. A Quotation does not represent an offer by the Company. The prices on the Quotation are not a binding price but are merely an indication of the price that the Customer would pay should they decide to do business with the Company.
- 6.3. Any Quotation submitted by the Company is intended as one indivisible transaction. Should the Customer wish to place an Order in relation to a portion of a Quotation, the Customer should request an updated Quotation as it is likely that the Price will be different.
- 6.4. Unless otherwise agreed in writing, the Goods or Services will be supplied at the ruling price on the date of dispatch of the Goods or the rendering of Services by the Company.
- 6.5. Prices are subject to adjustment for any increases in the cost of Goods or Services that may arise, directly or indirectly from any cause whatsoever, whether statutory or otherwise.

- 6.6. The following factors are beyond the control of the Company and changes to these costs will have an impact on the Price of Goods and Services: the rates of exchange, freight charges, insurance, rail costs, cost of labour and material.
- 6.7. The following amounts will be added to the Price of the Goods or Services and the Customer is obliged to pay to the Company:
- 6.7.1. the amount of any tax, duty or other charge of any nature whatsoever imposed by any law, regulation or enactment of whatsoever nature which is in force on or before the date of dispatch of the Goods or the rendering of Services by the Company;
 - 6.7.2. any costs incurred by the Company at the instance of the Customer in modifying or otherwise altering or making additions to the design, quantities or specifications of standard Goods or Services;
 - 6.7.3. any additional costs in relation to a transaction with the Customer, reasonably incurred by the Company, of any nature arising due to factors beyond the control of the Company; and
 - 6.7.4. any additional costs incurred by the Company as a result of any delay by the Customer, or as a result of suspension of work by the Company due to instructions given, or a failure to give instruction by the Customer.
- 6.8. The Price quoted by the Company is based on the site location as provided by the Customer. The Company reserves the right to change the Price quoted should the site location differ from the initial site location provided by the Customer.
- 6.9. The Company will endeavour to honour the Prices published on the Company Pricelist as well as Prices quoted on a Quotation. In the event of any substantial change in Price, the Company will, prior to delivery, advise the Customer of the change in Price and provide the Customer with the updated Price. Except in the case of Special Order Goods, where the Price increases by more than 10% from the original Price quoted or published on the Pricelist, the Customer will have the option to cancel the Order without incurring any penalty.
- 6.10. Unless otherwise expressly stated, the Price is exclusive of VAT, which will be for the account of the Customer, unless the Customer has given acceptable proof to the Company that the supply is a zero-rated or exempt supply. The Customer must pay or reimburse to the Company the amount of any VAT simultaneously with the Price.
- 6.11. An export transaction is defined as a transaction where the Company supplies the Goods or Services directly to an export location, which transaction will attract VAT at a zero rate. Any Goods or Services delivered to a location in South Africa, regardless of the final destination of the Goods, will attract VAT at the full rate.

7. MINIMUM ADVERTISED PRICE

- 7.1. In order to protect and maintain the strong brand recognition and perceived value of the Company's Goods and Services, the Company has adopted a policy of a Minimum Advertised Price on certain Goods.
- 7.2. The MAP represents the lowest price the Customer may advertise the Goods or Services in any public forum, physical signage, in any media, and on-line.
- 7.3. Where applicable, the Company will publish the MAP as part of the Pricelist from time to time.
- 7.4. Although the Customer shall have sole discretion as to the selling price of the Goods and Services, the Customer agrees to adhere to the Minimum Advertised Price policy.
- 7.5. In cases of violation of the MAP policy, the Customer will be notified by the Company and will be allowed 48 hours to bring the advertised price in line with the MAP policy. In cases of intentional or repeat failure to abide by this policy, the Company shall be entitled to cancel all orders with the Customer and cease the relationship with the Customer.

8. PLACING OF ORDERS

- 8.1. Orders placed by the Customer shall be made either orally or in writing.
- 8.2. The Company may in its sole discretion require the Customer to pay a Deposit before accepting an Order, or as a condition of an Order.
- 8.3. Upon receiving an Order, the Company will generate a sales order or a pro forma invoice document detailing the Goods or Services and the Price relating to the Order.
- 8.4. Upon acceptance of the Order by the Company, a binding contract for that Order will exist.
- 8.5. The production of a sales order, pro forma invoice, delivery note, or invoice setting out the Goods or Services concerned and the Price is deemed to be acceptance of the Order by the Company.
- 8.6. It is the Customer's responsibility to ensure that the Order is placed correctly, and that the Goods, Services and all of the Customer details are reflected correctly on the sales order or pro forma invoice and that the Order clearly and accurately specifies, in all aspects, the requirements of the Customer.
- 8.7. All Goods and Services are supplied on an "as available" basis. In the case that the Company is unable to supply the Goods or Services, the Company will replace the Goods with similar Goods, alternatively if no such replacement is possible, it shall pass a credit in favour of the Customer for the full purchase price of the Goods or Service.
- 8.8. The Company reserves the right to charge a reasonable cancellation fee for Orders cancelled by the Customer determined at the sole discretion of the Company. The Company may apply any Deposit held against the cancellation fee.

9. SPECIAL ORDER GOODS

- 9.1. Orders placed for Special Order Goods by the Customer must be made in writing.
- 9.2. The Customer will pay the Company a Deposit as defined by the Company for the Special Order Goods before any Goods will be ordered by the Company.
- 9.3. In the event of the cancellation by the Customer of the purchase of the Special Order Goods from the Company, and notwithstanding any other legal remedies that may be available to the Company, the Company reserves the right to retain the Deposit, in part or full payment, towards losses that the Company may suffer as a result of the Customer's cancellation of the Order.
- 9.4. The Customer acknowledges that Special Order Goods are acquired specifically to satisfy the Customer's requirements. Accordingly, the Company will incur losses in attempting to resell, or may be unable to resell the Special Order Goods to another customer.
- 9.5. In the circumstances, the Customer acknowledges that both the amount of the Deposit and any retention of the Deposit by the Company is fair, reasonable and just.
- 9.6. The Customer's attention is specifically drawn to the disclosure in terms of s49(1) of the CPA. The Customer hereby acknowledges that the fact, nature and effect of the provision which has specifically been brought to the Customer's attention prior to placing the Order for Special Order Goods, that this clause 9 is written in plain language, and the Customer has been given an adequate opportunity to receive and comprehend it.

10. PAYMENT TERMS AND CREDIT

- 10.1. On the sale of Goods or provision of Services, the Company will generate a tax invoice indicating the Price and the amount of VAT due. The Customer will settle the full amount due as per the tax invoice, without deduction or set-off of any claims of the Customer against the Company, on the due date.
- 10.2. In the case of a sale of Goods or Services to a Customer that has not been granted credit facilities, the following will apply:
 - 10.2.1. The due date will be in advance of the dispatch, delivery or collection of the Goods or provision of the Services. The Price plus VAT and any other amounts due must be paid in full by the Customer prior to dispatch, delivery or collection of the Goods and/or provision of the Services;
 - 10.2.2. Any amount unpaid at the time of dispatch, delivery or collection of the Goods and/or provision of the Services will be regarded as overdue and must be settled immediately.
- 10.3. In the case of a sale of Goods or Services to a Customer that has been granted credit facilities, the following will apply:
 - 10.3.1. The Price plus VAT and any other amounts must be paid in full by the Customer on or before the due date in accordance with the approved credit terms;
 - 10.3.2. Any amount unpaid after the due date has passed will be regarded as overdue and must be settled immediately.
- 10.4. Any amounts due must be settled by the Customer, in the currency as invoiced, by way of electronic funds transfer, credit or debit card, or cash deposit into the bank account of the Company. Amounts due shall only be deemed paid once they reflect and are available in the Company's bank account. Facilities are available at all of the Company sites to settle amounts due by the Customer by means of credit card or cash payment. In the case of online transactions, payment may be initiated directly on the Company website.
- 10.5. To avoid possible fraudulent activities, the Customer agrees that it will notify the Company if it receives any notification that the Company has changed its banking details. The Customer further agrees that any payments made by the Customer to any bank account other than the Company's bank account will not constitute a valid discharge of their obligations. The Customer is responsible for all losses they suffer as a result of the Customer or its employees not complying with their obligations in terms of these Sales Terms, including any amounts paid into a bank account that is not owned by the Company.
- 10.6. The Customer will be liable for all bank charges incurred by the Company as a result of the payment method elected by the Customer, including cash deposit fees.
- 10.7. A Customer that has amounts that are overdue will be regarded as in default and the following will apply:
 - 10.7.1. The Customer will be considered to be in breach and the terms of clause 16 below will apply; and
 - 10.7.2. The Customer account will be placed on credit hold and no further transactions will be processed against the Customer account; and
 - 10.7.3. All other amounts owing by the Customer to the Company, will immediately (and without notice to the Customer) become both due and payable; and
 - 10.7.4. The Company will be entitled to charge interest at the prime interest rate as published by First National Bank, plus 3%, on the total amount due, charged from the due date until the amount due is settled in full.
- 10.8. The Company reserves the right to apply and allocate payments received from the Customer as it deems fit to any debt then owing by the Customer.

- 10.9. The Company will be entitled to determine, in its sole and absolute discretion, the nature, extent and duration of any credit facilities granted to the Customer. The Company reserves the right to withdraw or amend any credit facilities which may have been granted to the Customer at any time and to require the Customer to furnish guarantees or Suretyships acceptable to the Company for its current or future obligations.
- 10.10. The Customer is not entitled to withhold payment for any reason whatsoever, notwithstanding that any dispute may be pending between the Parties, nor will the Customer be entitled to make any deduction from the Price or to apply set off in any manner.
- 10.11. In the event of the Customer authorising payment by way of debit order, then the Company will be entitled to draw against the Customer's banking account any amount due and payable to the Company, including amounts in arrears.
- 10.12. Customer Deposits held by the Company will not accrue interest.

11. CERTIFICATE

- 11.1. The Customer acknowledges that a certificate signed by any manager of the Company (whose authority and appointment will not be necessary to prove) as to the indebtedness of the Customer to the Company or as to any other fact in relation to any indebtedness of the Customer, will be prima facie proof of the amount of such indebtedness to the Company. Such certificate will be sufficient proof of the Customer's indebtedness for the purposes of provisional sentence or summary judgment proceedings against the Customer, or for any other purpose whatsoever.

12. DELIVERY, OWNERSHIP AND RISK

- 12.1. Once the Company receives an Order from the Customer to deliver the Goods, the Company will endeavour to dispatch the Goods as soon as reasonably practicable to the address the Customer requirements. The Company will try to adhere to estimated delivery dates but accepts no liability for failing to do so. The Customer may not withdraw an Order due to a delay in delivery.
- 12.2. All risk of loss or damage to the Goods will pass to the Customer upon delivery of the Goods. Delivery is defined as follows:
 - 12.2.1. Where the Company delivers the Goods to the Customer, whether directly or through a third-party delivery service appointed by the Company, delivery occurs when the Goods are physically delivered to the delivery address;
 - 12.2.2. Where the Customer appoints a third party to act as a delivery service on their behalf, delivery occurs once the Goods are received by the third-party delivery service; or
 - 12.2.3. Where the Customer collects the Goods themselves, delivery occurs when the Goods are received by the Customer.
- 12.3. Ownership in the Goods will only pass to the Customer upon full payment of the Price.
- 12.4. The Company may withhold the delivery of the Goods if the Customer does not comply with any of its obligations under the Sales Terms or the Customer Agreement. The Customer indemnifies the Company against any and all damages that the Customer may suffer for Customer's inability to comply with its obligations under the Sales Terms or Customer Agreement.
- 12.5. Should the Customer request a change in its requested delivery date at a time when the Company has already incurred costs in attempting to comply with the date originally requested, the Customer will be responsible for all additional costs and expenses incurred by the Company in altering the delivery date.
- 12.6. Where the Company is prevented from effecting delivery of the Goods or providing the Services to the Customer due to any act or omission on the part of the Customer, the Company will be entitled to charge the Customer a reasonable fee for the storage of the Goods until it is no longer prevented from effecting delivery of the Goods or provision of the Services. In addition, the Customer will be responsible for all additional costs and expenses incurred by the Company in attempting to deliver the Goods or providing the Services (including travel, labour and accommodation) as well as all additional costs and expenses incurred by the Company in the subsequent delivery of the Goods or provision of Services.
- 12.7. The Customer must ensure that routes to and from the points of delivery of Goods or provision of Services on site are safe and suitable for the delivery vehicles, and that full and free access is available for the delivery vehicles of the Company or its transport service providers. The Company reserves the right to refuse to enter the Customer's site to make delivery or provide Services if in the Company's opinion the Customer's site is unsafe.
- 12.8. The Customer must ensure that the delivery vehicles of the Company or its transport service providers are instructed to offload the Goods at the Customer's desired point on the site. In the event of the Goods being offloaded at an incorrect point due to a failure by the Customer to so instruct, the Company will not be liable for any loss arising therefrom, whether direct, consequential, special or general.
- 12.9. Any notification by the Customer in terms of the Company Returns Policy or Warranty Policy must indicate clearly and comprehensively the Customer's complaint, but will not in itself be of any probative value if there should be a dispute between the Parties in regard thereto and in such event the Customer will bear the onus of proving each and every element of its complaint.

- 12.10. The Company reserves the right to inform the owner/landlord of premises in which the Goods are or at any time may be, of its reservation of ownership in the Goods in terms of clause 12.3. The Customer must to this end advise the Company of the name and address of the owner/landlord of any such premises and must promptly advise the Company of any change in the name and the address of any owner/landlord or of any new owner/landlord.
- 12.11. Notwithstanding clause 12.10 above, the Customer must take all such steps as are necessary to notify interested third parties that ownership of the Goods in question has not passed to the Customer. In particular, the Customer must inform the owner/landlord of the premises in which the Goods already are, or any time may be, of the provisions of this clause. The Customer must produce written proof of such notices to the Company on demand.

13. RETURN OF GOODS AND WARRANTY

- 13.1. These Sales Terms should be read in conjunction with the Company's Returns Policy and Warranty Policy, both of which can be found on the Company website and are available in hard copy on request.
- 13.2. The Company is not obliged to accept the return of any Goods and this clause 13 will not be used to imply that the Company is obliged to accept the return of any Goods.
- 13.3. To the extent allowed by applicable law, the Company does not give any express or implied warranty or make any other promise about the Goods or Services. The Company does not warrant the Goods are good quality, fit for any particular purpose, accurate, complete, up to date, legally effective or secure. The Company also does not warrant that the Customer will have quiet or uninterrupted use of it.
- 13.4. Despite the Company's warranties, the Company is not liable for any defects that the Customer's negligence, failure to follow instructions or misuse causes.

14. SUBCONTRACTING ARRANGEMENTS

- 14.1. The Company may, at its sole discretion, employ subcontractors for the execution of any portion of its obligations.

15. CREDIT BUREAU

- 15.1. The Customer consents and agrees that the Company may:
- 15.1.1. Perform a credit search on the Customer and the Customer's Directors, Members or Partners records with a registered credit bureau;
 - 15.1.2. Monitor the Customer and the Customer's Directors, Members or Partners behaviour by researching the records with a registered credit bureau;
 - 15.1.3. Use new information and data obtained from other registered credit bureaus in respect of the Customer and the Customer's Directors, Members or Partners business relationship with the Company;
 - 15.1.4. Record and transmit details in respect of:
 - 15.1.4.1. the conduct of the Customer's account in meeting its obligations on the account;
 - 15.1.4.2. how the Customer has performed in meeting its obligations in terms of any agreement concluded between the Customer, the Customer's Directors, Members or Partners, and the Company, with a registered credit bureau.
 - 15.1.5. Convey the information provided herein by the Customer to a registered credit bureau, which information may be used by the registered credit bureau in the normal course of its business as a registered credit bureau accessed by the other Credit Providers (as defined in the National Credit Act 34 of 2005) and Customers of the registered credit bureau;
 - 15.1.6. The Company undertakes to give the Customer notice prior to the forwarding of the details as mentioned in clause 15.1.4. above to any registered credit bureau.

16. BREACH OF TERMS

- 16.1. The Customer is deemed to have breached the Sales Terms and the Customer Agreement if the Customer:
- 16.1.1. fails to comply with any of the provisions in the Sales Terms where:
 - 16.1.1.1. such failure which is capable of being remedied and the Customer fails to remedy such breach within 7 days of having been called upon in writing by the Company to do so, or
 - 16.1.1.2. such failure which is not capable of being remedied;
 - 16.1.2. fails to make payment in accordance with the payment terms;
 - 16.1.3. resolves to enter into, or enters into, any moratorium, arrangement, compromise or composition with any of its creditors, other than in the ordinary course of its business;
 - 16.1.4. is, or is presumed to be, bankrupt, insolvent, applies to be deregistered or commits an act of insolvency;

- 16.1.5. ceases or threatens to cease 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;
- 16.1.6. is financially distressed or placed under 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 against it;
- 16.1.7. makes a false declaration or submits an inaccurate or false report or any untrue document to the Company; or
- 16.1.8. is, other than for the purposes of reconstruction or amalgamation, placed in administration, receivership under voluntary or compulsory liquidation (whether provisional or final);
- 16.2. In the case of a breach as described in clause 16.1 ("the breach"), the Company will be entitled, without prejudice to any other rights or remedies which it may have in law, including the right to claim for damages:
 - 16.2.1. To immediately suspend all Services or cancel any transaction, contract, agreement or the Customer Agreement and claim immediate performance of all obligations due by the Customer; and
 - 16.2.2. Inform any reputable credit bureau of payment default (where applicable); and
 - 16.2.3. Suspend the supply of the Goods or provision of Services if same have already been paid for, until such time as the breach has been remedied by the Customer;
 - 16.2.4. Proceed with or participate in legal steps or proceedings to recover possession of the Goods; and
 - 16.2.5. Proceed with or participate in legal steps or proceedings to ensure compliance with the Sales Terms and/or the Customer Agreement.
- 16.3. The Customer will not be entitled to claim damages in the case of any cancellation or suspension of Services by the Company in accordance with clause 16.2 above.

17. EXTENSION OF TIME

- 17.1. No leeway, extension of time or other lenience which the Company may offer to the Customer will in any way prevent the Company from enforcing any of its rights in the future, with or without notice, by requiring the Customer's strict and timely compliance with each term and condition of the Sales Terms or the Customer Agreement.

18. LEGAL COSTS

- 18.1. To the extent permitted by law, should the Company elect to take or be involved in any legal steps or proceedings or actions to enforce, defend, preserve or protect any of the rights or provisions of the Sales Terms or the Customer Agreement, such costs and charges are payable by the Customer to the Company on demand by the Company.

19. DISPUTE

- 19.1. Should any dispute arise concerning the Sales Terms or the Customer Agreement, the Parties will make every effort to resolve the dispute by negotiation. This will require the one Party inviting the other, by Notice, to meet within 5 Business Days from date of the written invitation to attempt to resolve the dispute.
- 19.2. In the event that the dispute remains unresolved after the attempt set out in clause 19.1, the dispute shall be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa (or its successor-in-title) ("AFSA") by an arbitrator appointed by AFSA.
- 19.3. Notwithstanding anything to the contrary contained in this clause 19, either Party is entitled to obtain interim relief on an urgent basis from any competent court having jurisdiction.
- 19.4. For the purposes of this clause 19 and for the purposes of having any award made by the arbitrator being made an order of court, each of the Parties hereby submits itself to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg.
- 19.5. This clause 19 is severable from the rest of the Sales Terms or Customer Agreement, and shall remain in full force and effect notwithstanding any termination or cancellation of the Customer Agreement, or any part thereof.

20. CESSION (TRANSFER) AND DELEGATION (HANDING OVER)

- 20.1. The Customer will not be entitled to transfer any of its rights to any other entity or person (this is known as ceding any of your rights) or transfer any of the Customers obligations or responsibilities to any other entity or person (this is known as delegating or handing over any of your obligations or responsibilities) without the prior written consent of the Company.
- 20.2. The Company undertakes not to withhold its consent unreasonably.
- 20.3. The Company is entitled to transfer all of its rights and obligations to another party without the consent of the Customer and the Customer hereby accepts and approves any such transfer of the Company's rights and obligations. In the event of such transfer, the Company's rights and obligations shall automatically be discharged.

21. NO REPRESENTATIONS, AMENDMENTS, AND VARIATIONS

- 21.1. The Customer acknowledges that the Company is not in any way bound by any oral statement, representation, guarantee, promise, undertaking, inducement or otherwise which may have been made at any time by any salesman, employee, representative or any Person acting or purporting to act for or on behalf of the Company, whether negligently or otherwise, unless such statement, representation, guarantee, promise, undertaking, warranty or inducement are supplied or made in writing by an employee duly authorised by written resolution of the board of Directors of the Company in response to a written enquiry specifying accurately and in complete detail what information is required.
- 21.2. A Party may not rely on any representation which allegedly induced that Party to enter into any transaction or any agreement with the other Party unless the representation is recorded in writing and signed by both Parties.
- 21.3. The Company may amend the Sales Terms from time to time at its sole discretion for any reason, including as a result of any new or amended law, tax and regulation. The amended Sales Terms will apply to all transactions entered into between the Company and the Customer from the date the new Sales Terms are published on the Company's website.

22. CONFIDENTIAL INFORMATION

- 22.1. Each Party ("**Receiving Party**") must keep 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 as a result of the relationship between the Parties.
- 22.2. The Receiving Party agrees that in order to protect the proprietary interests of the Disclosing Party in its Confidential Information, the Receiving Party will:
 - 22.2.1. only use the Confidential Information to comply with its responsibilities under this agreement;
 - 22.2.2. only give the information to any of its employees or agents that need it, and only give as much of it as they need;
 - 22.2.3. use reasonable security procedures to make sure employees or agents keep the information confidential;
 - 22.2.4. get promises of confidentiality from those employees or agents who need access to the information;
 - 22.2.5. not reveal the information to anyone else; and
 - 22.2.6. not use it for any purpose other than this agreement.
- 22.3. At the end of the agreement, or on written request by a party, the Receiving Party will give back to the other, all originals and copies of Confidential Information of the other that the party has. If the other party agrees, the Receiving Party may destroy the Confidential Information in their possession.
- 22.4. The parties agree that these responsibilities will not apply to any information that:
 - 22.4.1. is lawfully in the public domain (available to the general public) when a party received it;
 - 22.4.2. lawfully becomes part of the public domain afterwards;
 - 22.4.3. is given to the Receiving Party afterwards by a different person who is allowed to reveal the Confidential Information; or
 - 22.4.4. is given to comply with a court order or other legal duty.
- 22.5. This clause 22 (Confidential Information) is separate from the rest of this agreement and remains valid for three years after the expiry of the agreement.

23. INTELLECTUAL PROPERTY RIGHTS

- 23.1. Each Party (including such Party's holding company and subsidiaries) will retain all its rights in and to its intellectual property.
- 23.2. None of the intellectual property rights in the Company's trademarks and brands will be used by the Customer for any purpose without the Company's prior written consent.

24. LIMITATION OF LIABILITY

- 24.1. The Customer agrees to indemnify the Company, its directors, employees, officers, contractors and agents against any and 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) suffered or incurred by the Company and any claims of whatsoever nature which may be made against the Company by the Customer, or any third party, as a result of or arising from:
 - 24.1.1. Any act or omission by the Customer or its personnel,
 - 24.1.2. A breach of the Sales Terms or the Customer Agreement by the Customer or its personnel,

- 24.1.3. The use of the Goods sold by the Company to the Customer or the Services provided by the Company to the Customer, or at the direction of the Customer, unless such claims arise out of gross negligence of the Company.
- 24.1.4. The Goods or Services being defective (including without limitation due to any defect in the Goods, the Goods constituting an unsafe product, there being any failure, defect or hazard in any of the Goods or inadequate instructions or warnings being provided pertaining to any hazard arising from or associated with the use of the Goods). The Customer acknowledges that it is aware that the Company is only an agent for and distributor of the Goods and is not in any way involved in the manufacture of the Goods.
- 24.2. The Company's maximum liability to the Customer for direct damages:
 - 24.2.1. For claims related to Services rendered by the Company to the Customer will be the ten percent (10%) of the total amount the Customer paid the Company for Services in the preceding 12 months; and
 - 24.2.2. For claims related to Goods sold by the Company to the Customer will be ten percent (10%) of the amount paid by the Customer to the Company for the Goods in relation to which the damages relate.
- 24.3. The total aggregate liability for all claims under this agreement will never be greater than the maximum liability. This limitation applies to the extent allowed by any law that applies and regardless of the basis of the claim (whether in contract, delict, tort or any other legal basis).
- 24.4. Despite anything in the Sales Terms or the Customer Agreement, the Company will never be liable for any indirect, incidental, special or consequential damages or losses of any kind arising from any cause. These include foreseeable or unforeseeable loss of profits, loss of goodwill or pure economic loss.
- 24.5. Where reference is made to the Company, such reference includes the Company, the Company's sub-contractors and suppliers, and their respective partners, officers, directors, shareholders and employees.
- 24.6. Communication between the Parties may occur via email transmission. The Company will have no liability for any loss or damage to any person or entity resulting from the use of email transmissions, including any consequential, incidental, direct, indirect, or special damages, such as loss of revenues or anticipated profits, or disclosure or communication of confidential or proprietary information.
- 24.7. The Customer uses the Goods and Service at their own risk.

25. **USE OF CUSTOMER'S INFORMATION AND PRIVACY AND PROTECTION OF PERSONAL INFORMATION (POPIA)**

- 25.1. In order to comply with its obligations under the Sales Terms and the Customer Agreement, the Company will process personal information about the Customer.
- 25.2. The Sales Terms and Customer Agreement are subject to the terms of the Privacy Policy. For more information about how the Company process the personal information of the Customer, the Customer can access the Privacy Policy on the Company's website.

26. **NOTICES**

- 26.1. The Company chooses its domicillium citandi et executandi ("Domicile Address") for the delivery of notices, legal processes and other documents as **La Marzocco SA, The Old Biscuit Mill, 375 Albert Road, Woodstock, Cape Town, 7915**, marked for the attention of the Financial Manager. A copy of all notices, legal processes or other documents delivered to the Domicile Address above will also be emailed by the Customer to the Company email address: **accounts@msa.co.za**.
- 26.2. The Customer chooses as its Domicile Address for the delivery of notices, legal processes and other documents as the address listed in the Customer Application in Section 1 under the heading **Address of principal place of business (Domicile Address)**, or in the absence of this information, the business address provided by the Customer to the Company for the delivery of Goods or the provision of Services, or any other address provided to the Company by the Customer.
- 26.3. Either party may update its Domicile Address by providing the other party with the updated address in writing.
- 26.4. A written notice or communication actually received by either Party is adequate written notice or communication to the other Party.

27. **FORCE MAJEURE**

- 27.1. No party is responsible for any breach of this agreement caused by Force Majeure Event or any other circumstances beyond its control.
- 27.2. If there is an event of force majeure, the party affected will tell the other immediately of:
 - 27.2.1. The cause, nature and extent of the circumstances;
 - 27.2.2. The expected duration of the circumstances; and

27.2.3. The extent to which its performance will be affected;

and they will meet within seven days to negotiate other ways to carry out any affected responsibilities under this agreement. The parties will continue to comply with the responsibilities that are not affected by the circumstances.

27.3. If a party cannot fulfil a material part of its responsibilities under this agreement for more than 30 days because of force majeure, the other party may cancel this agreement, without liability to the affected party, on seven days' written notice.

28. UNENFORCEABLE PROVISIONS

28.1. If any term is void (invalid), unenforceable, or illegal, the term may be severed (removed) from and will not affect the rest of this agreement, provided that it does not change the purpose.

29. RECEIPT OF ELECTRONIC DOCUMENTS

29.1. The Customer hereby agrees to the receipt of any and all documentation from the Company from time to time in electronic format, including but not limited to tax invoices, credit notes and statements. Tax Invoices and credit notes will be emailed to the email address designated by the Customer for billing purposes, as indicated in the relevant section of the Customer Application, unless the Customer requests that such documents be sent to another email address or physical address.

30. JURISDICTION AND APPLICABLE LAW

30.1. South African Law governs this agreement.

30.2. The Parties consent to the jurisdiction of the Magistrate's Court in respect of any action or proceedings that the Company may bring against the Customer in connection with this agreement, even if the action or proceedings would otherwise be beyond its jurisdiction without prejudice to the Company's right to institute any action in any other court having jurisdiction.

31. REVOCATION OF ALL PREVIOUS TERMS AND AGREEMENTS

31.1. These Sales Terms revoke and supersede all previous versions of the Sales Terms and all other written and oral agreements in existence between the Parties in respect of the same subject matter.