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## TERMS AND CONDITIONS

### 1. DEFINITIONS

- 1.1. **"Customer"** means the person/s buying the Goods as specified in the Quotation, any invoice, document, or order, and if there is more than one, Customer is a reference to each Customer jointly and severally.
- 1.2. **"Flexco"** means Flexco (SA) (Pty) Ltd (Registration number 1992/000105/07) and its global affiliates or branch offices.
- 1.3. **"Goods"** means all goods supplied by Flexco to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4. **"Intellectual Property"** means all intellectual property rights in any part of the world including patents, designs, artwork, lithographies, utility models, rights in inventions, registered and unregistered trade and service marks, rights in business and trade names and get-up, rights in domain names, registered designs, semiconductor and topography rights, copyrights and neighboring rights, database rights, rights in confidential information and know-how, or corresponding character and in all applications and rights to apply for protection of any of the foregoing.
- 1.5. **"Price"** means the price payable for the Goods as agreed between Flexco and the Customer in accordance with clause 5.
- 1.6. **"South Africa"** means the Republic of South Africa.
- 1.7. **"Terms and Conditions"** means these terms and conditions together with the terms of the Quotation.
- 1.8. **"Quotation"** means the documentation that Flexco furnishes to the Customer for the Goods, indicating a specified price and conditions.

### 2. TERMS AND CONDITIONS

- 2.1. These Terms and Conditions shall apply to all supplies of Goods by Flexco to the Customer. The Terms and Conditions extend to all Customers purchasing Goods from South Africa, regardless of their geographic location or legal jurisdiction.
- 2.2. These Terms and Conditions are the sole record of the agreement between the parties.
- 2.3. The Customer is deemed to have exclusively accepted and is immediately bound, jointly and severally, by these Terms and Conditions from the date the Purchase Order is received by Flexco.
- 2.4. The Customer acknowledges and accepts that Flexco at their discretion, reserves the right not to supply Goods if, for any reason (including but not limited to, where the Goods are not or cease to be available, account disputes or conditions placed on Flexco's by their suppliers. Flexco shall not be liable to the Customer for any loss or damage the Customer suffers due to Flexco exercising its rights under this clause 2.4.
- 2.5. The Terms and Conditions herein constitute the entire agreement between Flexco and the Customer. In the event of any inconsistency between any document and these Terms and Conditions, the provisions of these Terms and Conditions shall prevail.

### 3. CHANGE IN CONTROL

- 3.1. The Customer shall give Flexco not less than fourteen (14) business days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by Flexco as a result of the Customer's failure to comply with this clause.

### 4. QUOTATION

- 4.1. Flexco's Quotations are not binding offers but merely invitations.
- 4.2. All orders for Goods ("**Purchase Order**") need to be placed by the Customer in writing, in accordance with Flexco's standard processes.
- 4.3. These Terms and Conditions shall commence on the date the Purchase Order is received by Flexco and continue thereafter until final payment of the price of the Goods stipulated in the Quotation and/or Purchase Order, save for provisions that should survive.
- 4.4. The Customer may execute Purchase Orders from time to time specifying the specific Goods and/or services which Flexco shall provide to the Customer. Purchase Orders shall: (i) be given in writing; (ii) specify the type and quantity of Goods and/or services ordered, and (iii) specify the delivery location.
- 4.5. Each party shall use the relevant Quotation number and Purchase Order number in all subsequent correspondence relating to the agreed goods or services.
- 4.6. The parties agree that these Terms and Conditions are hereby incorporated into each Quotation.
- 4.7. The Customer may, at any time prior to dispatch by Flexco, amend or cancel a Purchase Order by written notice to Flexco. If the Customer amends or cancels a Purchase Order, the Customer's liability to Flexco shall be limited to payment to Flexco of all costs incurred (whether direct or indirect) by Flexco in fulfilling the Purchase Order up until the date of receipt of the notice of amendment or cancellation. Flexco will use all reasonable endeavors to mitigate its losses.
- 4.8. Cancellation of Purchase Orders for Goods made to the Customer's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.
- 4.9. The Customer may not reject delivery of or return non-defective Goods without the prior written consent of Flexco (which remains at Flexco's sole discretion). Flexco shall be entitled to impose reasonable terms and conditions (including charging the Customer a handling fee of up to thirty percent (30%) of the value of the returned Goods plus any freight costs) when consenting to the return of any Goods.

### 5. PRICE

- 5.1. Flexco has the exclusive right to determine the Price in the Quotation, which will be either one of the following options:
  - 5.1.1. Flexco's quoted price in the Quotation, subject to clause 5.2, which remains valid for the specified period in the Quotation or for thirty (30) days, whichever is applicable;



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- 5.1.2. the amount specified on any invoice issued by Flexco to the Customer; or
- 5.1.3. the price as at the date of delivery of the Goods based on Flexco's current price list.
- 5.2. Flexco reserves the right to change the Price if a variation to the Quotation is requested by the Customer. Any variation from the plan of scheduled Goods or specifications (including, but not limited to, any variation as a result of additional Goods required due to hidden or unidentifiable, overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges, inaccurate measurements provided by the Customer or as a result of increases to Flexco in the cost of materials and labour) will be charged for on the basis of the amended Quotation and will be shown as variations on Flexco's invoice. Payment for all variations must be made in full at their time of completion.
- 5.3. At Flexco's sole discretion a non-refundable deposit may be required.
- 5.4. Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Flexco which may be:
  - 5.4.1. on delivery of the Goods;
  - 5.4.2. before delivery of the Goods;
  - 5.4.3. thirty (30) calendar days following the end of the month in which a statement is sent to the Customer's address or address for notices; or
  - 5.4.4. the date specified on any invoice or other form as being the date for payment.
- 5.5. The Price shall be exclusive of any taxes and the Customer shall pay applicable taxes when invoiced by Flexco.

## **6. PAYMENT**

- 6.1. Payment must be made according to the payment terms contained in clause 5.4 of these Terms and Conditions.
- 6.2. Interest on overdue invoices shall accrue daily from the date when payment becomes due until the date of payment, at a rate equal to the prime lending rate, compounded monthly.
- 6.3. Should the Customer owe Flexco any money, the Customer shall indemnify Flexco from and against all costs and disbursements incurred by Flexco in recovering the debt (including but not limited to internal administration fees, legal costs on an attorney and own client basis, Flexco's collection agency costs, and bank dishonor fees).
- 6.4. Flexco may, at any time require full or partial payment in advance of further performance if the financial condition of the Customer, in the reasonable judgment of Flexco, warrants such action.
- 6.5. Payment may be made through various means, including but not limited to cheque, bank cheque, electronic/online banking, or any other mutually agreed-upon methods between the Customer and Flexco. For cash Customers exclusively, the Price must appear in Flexco's authorised bank account before the Goods are released in the case of electronic/online banking payments.
- 6.6. Receipt by Flexco of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honored, cleared or recognised.

- 6.7. The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Flexco nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.8. The Customer represents that the Customer is solvent and that payment shall be made for each shipment separately in accordance with Flexco's invoice.

## **7. DELIVERY OF GOODS**

- 7.1. Delivery and passing of the risk of the Goods shall be deemed to have taken place when:
  - 7.1.1. the Customer or the Customer's nominated carrier takes possession of the Goods at Flexco's premises. Signature of nominated carrier or of any Customer or employee of the Customer on Flexco's delivery note or invoice shall be prima facie proof of delivery; or
  - 7.1.2. Flexco (or Flexco's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 7.2. Flexco reserves the right, at its sole discretion, to determine whether the cost of delivering the Goods (direct from Flexco's premises) is included in the Price or is to be added separately to the Price.
- 7.3. The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as scheduled, Flexco reserves the right to charge a reasonable fee for redelivery and/or storage of the Goods.
- 7.4. Flexco may deliver the Goods in separate installments. Each separate installment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.5. In the event that the Customer need to collect the Goods, Flexco will hold the goods for shipment for ten (10) business days after the Customer is notified that the goods are available for delivery. Thereafter, Flexco may, at its option, deliver the Goods by common carrier. Regardless of the party paying freight charges, all risk of loss or damage to the Goods borne in transit shall be borne by the Customer, commencing with the placement of the Goods in the custody of a carrier or shipping agent.
- 7.6. Any time or date given by Flexco to the Customer is an estimate only. Flexco shall use its best efforts to meet specified delivery dates; however, delivery dates are approximate, and Flexco shall be allowed a reasonable variance from all such dates. The Customer must still accept delivery of the Goods even if late and Flexco will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

## **8. OWNERSHIP & RISK**

- 8.1. Notwithstanding that all risk in and to the Goods sold by Flexco to the Customer shall pass on delivery, ownership in the Goods sold and delivered shall remain vested in Flexco until the Customer has paid Flexco all amounts owing to Flexco, and the Customer has met all of its other obligations to Flexco. In the event of breach of the terms of these Terms and Conditions by the Customer, or if the Customer is sequestered or placed under liquidation or judicial management or commits any act in insolvency or enters into any compromise with its creditors or fail to satisfy a judgement granted against it within seven (7) business days of the date of judgement or changes the structure of its ownership, Flexco shall be entitled to



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take possession of the Goods without prejudice to any further right vested in Flexco.

8.2. It is specifically agreed that:

- 8.2.1. the Customer shall fully insure the Goods purchased from Flexco against loss or damage, until the Price has been paid by the Customer for such Goods. Pending payment to Flexco for Goods purchased, all benefits in terms of the insurance policy relating to the insurance of such Goods are ceded to Flexco;
  - 8.2.2. if any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Flexco is entitled to receive all insurance proceeds payable for the Goods. The production of these Terms and Conditions by Flexco is sufficient evidence of Flexco's rights to receive the insurance proceeds without the need for any person dealing with Flexco to make further enquiries;
  - 8.2.3. the Customer irrevocably authorises Flexco to enter any premises where Flexco believes the Goods are kept and recover possession of the Goods;
  - 8.2.4. Flexco may recover possession of any Goods in transit whether or not delivery has occurred;
  - 8.2.5. the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Flexco; and
  - 8.2.6. Flexco may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 8.3. If the Customer requests Flexco to leave Goods outside Flexco's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 8.4. The Customer will ensure that the landlord of the premises rented by the Customer waives its rights of hypothec on all Goods supplied to the Customer by Flexco. The Customer is obliged to supply Flexco with a copy of the written waiver of the landlord's hypothec.

**9. FORCE MAJEURE**

- 9.1. "Force Majeure" means an event that prevents or delays a party from being able to perform an obligation other than the payment of money under these Terms and Conditions, where such event would constitute force majeure, such as wars, insurrections, strikes, acts of God, governmental actions or controls, pandemics/virus outbreaks, electricity/water restrictions or other causes beyond the control of a party. Should any party be prevented from performing its obligations in terms hereof, then such failure shall not be regarded as a breach of its obligations provided that:
- 9.1.1. the party subject to the Force Majeure shall give prompt notice to the other party of the nature and estimated duration of the Force Majeure concerned;
  - 9.1.2. the parties shall co-operate and collaborate together and use all reasonable efforts to overcome the Force Majeure concerned and/or nullify its effect; and
  - 9.1.3. any suspension of performance within the provisions of the above shall be limited to the period during which such inability shall exist and the period of these Terms and Conditions shall be interrupted by the period of such suspension.
- 9.2. If the Force Majeure event, as mentioned in this clause 9 above substantially or permanently prevents the continued performance of either party of its obligations in terms of these Terms and Conditions

for a period exceeding thirty (30) calendar days, then either party shall be entitled, by giving notice in writing, to terminate the Terms and Conditions in respect of any of its obligations still to be performed hereunder.

**10. LIMITATION OF LIABILITY**

- 10.1. Flexco's responsibility for any claims, damages, expenses, losses or liabilities arising out of or related to the Goods delivered hereunder or for non-delivery of Goods, shall not exceed the Price paid by the Customer for such Goods.
- 10.2. In no event shall Flexco be liable for any special, indirect, incidental or consequential damage or expense of any character, including but not limited to loss of use of productivity facilities or equipment, lost profits, property damage, personal injuries or lost production, whether suffered by the Customer or any third party, irrespective of whether claims or actions for such damages are based upon contract, tort (including negligence and negligent misrepresentation, warranty, strict liability or otherwise).
- 10.3. If the Customer is providing Flexco with design specifications, including but not limited to Computer Aided Design drawings, it is the Customer's responsibility to ensure the accuracy of the data. Flexco shall not be held liable for any errors in the Goods resulting from the incorrect or inaccurate data supplied by the Customer.

**11. BREACH**

- 11.1. In the event that the Customer:
- 11.1.1. breaches any condition contained in these Terms and Conditions or any other agreement between the parties and/or fails to pay any amount due and payable on due date, and having failed to rectify such breach or outstanding payment within ten (10) calendar days of having been requested to do so in writing by Flexco;
  - 11.1.2. suffers any civil judgment to be taken or entered against it, causing a notice of surrender of its estate to be published in terms of the Insolvency Act No. 24 of 1936 (as amended);
  - 11.1.3. dies or ceases to exist;
  - 11.1.4. is placed under provisional or final liquidation, business rescue and/or provisional or final sequestration as the case may be, then and in such event, Flexco shall, without retracting from other remedies which may be available to it, be entitled to cancel these Terms and Conditions and cancel the sale of any Goods to the Customer without notice to the Customer and to rely on the provisions of these Terms and Conditions to repossess those Goods sold and delivered by Flexco to the Customer, to claim specific performance of all the Customer's obligations whether or not such obligations would otherwise have fallen due for performance and/or to claim payment of any amounts due to Flexco, in either event, without prejudice to the Flexco's rights to claim damages.
- 11.2. Flexco may cancel any contract to which these Terms and Conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. Upon providing such notice, Flexco shall refund the Customer any money paid by the Customer for the Goods. Flexco shall not be liable for any loss or damage, whatsoever, arising from such cancellation.
- 11.3. Without prejudice to Flexco's other legal remedies, Flexco shall be entitled to cancel all or any part of any unfulfilled order of the Customer, and all amounts owed to Flexco, whether due for



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payment or not, become immediately payable under the following circumstances:

- 11.3.1. any money payable to Flexco becomes overdue, or if, in Flexco's exclusive opinion, the Customer will be unable to make a payment when it falls due;
- 11.3.2. the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- 11.3.3. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 11.4. Goods in the possession of the Customer bearing Flexco's name, trademarks and labels shall be deemed to be those for which payment has not yet been made.

**12. CONSUMER PROTECTION ACT NO. 68 of 2008 (the "CPA")**

- 12.1. The Customer shall notify Flexco in writing forthwith, should it not sell or supply the Goods supplied by Flexco to it, pursuant to these Terms and Conditions, to "consumers" (as defined in the CPA). Notwithstanding anything to the contrary in these Terms and Conditions, the Customer indemnifies and holds harmless Flexco from and against any and all claims, actions, liabilities, damages, costs and expenses (collectively "losses") asserted against, imposed upon or incurred by the Customer (a) as a result of or arising out of the Customer breaching the aforesaid undertaking, or (b) from any harm alleged or proven by a consumer himself, or other person contemplated in section 4(1) of the CPA, to the extent such harm is attributable to the negligent or intentional conduct of the Customer or any contravention of the Customer of any applicable law, where the Customer is not able to prove that it is not liable for such losses in terms of 61(4) of the CPA.

**13. LIMITED WARRANTY AND REMEDY**

- 13.1. The Customer is obliged to inspect the Goods immediately upon arrival and has ten (10) business days from delivery of Goods to notify Flexco, in writing, of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote or reason whereof the Customer may allege that the Goods are not in accordance with the Purchase Order. The Customer must notify Flexco of any other alleged defects in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Flexco to inspect the Goods.
- 13.2. Flexco warrants that the Goods supplied hereunder shall be free from defects in materials and workmanship (fair wear and tear excluded) for a period of 1 (one) year after shipment to Customer.
- 13.3. This warranty is extended only to the Customer hereunder and shall apply only to defects appearing within 1(one) year from the date of delivery of the Goods. The Customer agrees to promptly notify Flexco in writing of any such defects.
- 13.4. Flexco's liability, if any, and at the Customer's sole and exclusive remedy with respect to defects or any other condition of Goods, however caused, under any legal or equitable theory, shall be limited to repair and replacement or repayment of the purchase price of the Goods at Flexco's discretion.

13.5. This warranty does not cover, and Flexco shall not be liable for, defects which are caused by:

- 13.5.1. faulty maintenance;
- 13.5.2. misuse, abuse, neglect or negligence;
- 13.5.3. any damage or injury resulting from accident;
- 13.5.4. incorrect installation/ or faulty repair by the Customer;
- 13.5.5. alterations carried out without Flexco's consent in writing; or
- 13.5.6. damage occurring during shipment or delivery of the Goods.

**14. INDEMNITY**

- 14.1. The Customer shall indemnify, hold harmless, and at Flexco's request, defend Flexco, its agents and employees, from and against all claims, liabilities, damages, losses and expenses, including attorneys' fees on the scale as between attorney and client, arising out of or in any way connected with the Goods provided and/or Services rendered under these Terms and Conditions, including, without limitation, any claim by a third party against the Customer alleging that the Goods provided under these Terms and Conditions, infringe a patent, copyright, trademark, trade secret or other proprietary or personal right of a third party, whether such are provided alone or in combination with other products, software or processes.
- 14.2. The Customer shall indemnify, hold harmless, and at Flexco's request, defend Flexco its agents and employees, from and against all claims, liabilities, losses, damages, obligations, settlement costs and other expenses, including but not limited to reasonable attorney's fees, which relate to or arise out of:
  - 14.2.1. Flexco's compliance with the Customer's specifications, design or instructions;
  - 14.2.2. Any modification or alteration of any product by the Customer or on the Customer's behalf; or
  - 14.2.3. Any claim by a third party against Customer alleging that the Goods provided under these Terms and Conditions, infringe a patent, copyright, trademark, trade secret or other proprietary or personal right of a third party, whether such are provided alone or in combination with other products, software or processes.
- 14.3. The Customer shall have the right and obligation, at its sole expense to assume the defense of any claim or litigation as to which it has an indemnification obligation hereunder. If the Customer fails to do so, Flexco shall have the right to assume its own defense, and in addition to any other indemnity provided hereunder, shall be reimbursed by the Customer for any and all attorney's fees and other expenses incurred in the defense of such claim or litigation.
- 14.4. Any advice or opinion given by Flexco is for the Customer's benefit only and Flexco accepts no responsibility for any damage incurred as a result of the reliance thereon and the Customer confirms this applicable indemnity.

**15. DATA PROTECTION**

- 15.1. In compliance with personal data protection legislation, the Customer is informed that the personal data (the "Data") that has been provided to Flexco and such Data as may be obtained in the future has been and will be included on filing systems controlled



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by Flexco in compliance with the Protection of Personal Information Act, Act 4 of 2013, "POPIA")

- 15.2. The purpose of processing, the Data shall be Flexco to deliver the Goods and, as the case may be, for the maintenance, management and control of the professional relationship entered into under the Terms and Conditions.
- 15.3. In order to exercise its rights of access, rectification, cancellation and objection, the Customer may send a letter to Flexco to the address stipulated in the Quotation or invoice, indicating its identifying particulars in both cases.

**16. INTELLECTUAL PROPERTY**

- 16.1. Flexco retains all right, title and interest in and to their proprietary Intellectual Property that exists as at the commencement date of these Terms and Conditions, and at any time thereafter.
- 16.2. The Customer shall not be permitted to use Flexco's Intellectual Property (or any part thereof) for (i) the benefit of any entities other than Flexco without the written consent of Flexco, which may be withheld at Flexco's sole discretion and (ii) outside of the scope of the Goods and the Terms and Conditions generally.
- 16.3. The Customer hereby grants to Flexco a fully paid-up, royalty-free, non-exclusive license to use any Customer Intellectual Property solely as necessary to use and produce the Goods being manufactured by Flexco.
- 16.4. Any Intellectual Property owned, developed or acquired by a party prior to the Terms and Conditions coming into effect shall remain the sole and exclusive property of the party who is the lawful proprietor thereof.
- 16.5. Any Intellectual Property made, created or discovered by the Customer in the course and scope of the Terms and Conditions in connection with or relating to the business of Flexco, shall be disclosed to Flexco and shall belong to and be the absolute property of Flexco.
- 16.6. The Customer hereby irrevocably assigns, transfers and conveys to Flexco without further consideration all of its right, title and interest in such developed Intellectual Property, including all Intellectual Property rights and/or other proprietary rights in such materials and where such materials/product have not yet been created, all future copyright therein (with immediate effect from the date that such copyright comes into existence) – and which assignment, transfer and conveyance Flexco hereby accepts.
- 16.7. The Customer agrees to execute any documents or take any other actions as may reasonably be necessary, or as Flexco may reasonably request in writing, to perfect Flexco's ownership of the Intellectual Property rights in such developed Intellectual Property, and further, hereby irrevocably grants to Flexco its power of attorney *in rem suam* with the right on behalf of the Customer to sign all such deeds and documents and to take all such actions as may be necessary for Flexco to perfect its rights of ownership over such Intellectual Property should the Customer fail to comply with any such written request within seven (7) calendar days after date thereof.

**17. CONFIDENTIALITY**

- 17.1. The Customer undertakes to keep information concerning Flexco's technical and commercial knowledge, of which it may learn through the business relationship with Flexco, secret and to use such information for the purposes intended by these Terms and Conditions only. This obligation is effective as long as the business

relationship lasts and beyond that the obligation shall be effective for 2 (two) years, after the relationship has come to an end.

- 17.2. This obligation shall not apply to knowledge known to the public, of which the Customer learned without breaching this confidentiality undertaking. If the Customer breaches this confidentiality agreement and is at fault, it will be obliged to pay a contractual penalty, which shall be determined by Flexco at the Flexco's reasonable discretion.

**18. CHANGES TO THE TERMS AND CONDITIONS**

- 18.1. Flexco may modify the Terms and Conditions at any time, for example (but not limited to), in order to reflect changes to the law or changes to the purchase requirements. The modified Terms and Conditions will regulate the relationship between the Flexco and the Customer regarding the subject matter of these Terms and Conditions.
- 18.2. Flexco will inform the Customer of any changes to these Terms and Conditions in writing. The onus is on the Customer to regularly check for updates to these Terms and Conditions. If the Customer does not agree with a material modification to the terms of these Terms and Conditions, the Customer is obliged to inform Flexco in writing without delay within seven (7) business days from Flexco's submission of the Quotation.
- 18.3. The Customer will be deemed to have accepted any modifications to these Terms and Conditions if they submit another request for Flexco to supply Goods to them.

**19. APPLICABLE LAW**

- 19.1. The Terms and Conditions shall be governed by, construed and take effect in all respects in accordance with the laws of South Africa.
- 19.2. The Customer consents to the non-exclusive jurisdiction of either the Regional Court for the Regional Division of the Free State sitting at Bloemfontein, the Regional Court for the Regional Division of Gauteng sitting at Johannesburg, the High Court of South Africa, Gauteng Local Division, Johannesburg or the High Court of South Africa, Free State Division, Bloemfontein for the purpose of any action instituted against it, upon or arising out of the Terms and Conditions. Notwithstanding the above, Flexco shall in its discretion be entitled to bring any action or proceedings to enforce its rights under these Terms and Conditions in the Magistrate's Court, notwithstanding that any such action or proceedings may otherwise be beyond the jurisdiction of such Court, for which purposes this clause shall constitute a consent as contemplated in section 45 of the Magistrate's Court Act, No 32 of 1944.

**20. TRADE RESTRICTIONS**

- 20.1. The Customer acknowledges and understands that the Goods and related technology are subject to United States export control and economic sanctions laws and regulations, including but not limited to the U.S. Export Administration Regulations (15 C.F.R. Part 730 et seq.), the International Traffic in Arms Regulations (22 C.F.R. Parts 120-130) and the economic sanctions rules and regulations implemented under statutory authority and/or President's Executive Orders and administered by the U.S. Treasury Department's Office of Foreign Assets Control and/or the U.S. State Department (31 C.F.R. Part 500 et seq.) (collectively, "**Trade Control Laws**"). The Customer will not export, re-export, transfer, re-transfer or otherwise ship the Goods or related technology except as authorised under applicable Trade Control Laws.



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- 20.2. The Customer hereby acknowledges and confirms that neither the Customer nor any of its customers for the Goods (if applicable) (i) are included on, owned or controlled by an individual or entity included on, or acting on behalf of an individual or entity included on any of the restricted party lists maintained by the U.S. Government (e.g., Specially Designated Nationals List, Foreign Sanctions Evader List, Sectoral Sanctions Identification List, Denied Persons List, Unverified List, Entity List or List of Statutorily Debarred Parties) (collectively, "**Restricted Parties**"); (ii) will export, re-export, transfer, re-transfer or otherwise ship, directly or indirectly, the Goods or related technology to or for use by Restricted Parties; (iii) will export, re-export, transfer, re-transfer or otherwise ship, directly or indirectly, the Goods or related technology to or for use in or by countries or territories subject to U.S. economic sanctions (e.g., Crimea, Cuba, Iran, North Korea, the Republic of Sudan or Syria); or (iv) will use the Goods or related technology for, or directly or indirectly export, re-export, transfer or re-transfer the Goods or related technology for use in, nuclear end-uses, rocket systems, unmanned air vehicles, chemical or biological weapons, maritime nuclear propulsion, weapons of mass destruction, military end-uses/users, military-intelligence end-uses/users, or other restricted end-uses except to the extent consistent with Trade Control Laws.
- 20.3. The list of Restricted Parties is managed on the U.S. Treasury Department website by the U.S. Office of Foreign Assets Control. The Customer can access this list on the following website: <https://sanctionssearch.ofac.treas.gov/>.
- 20.4. The Customer commits to promptly reporting any suspected or confirmed violations of the Trade Control Laws through Flexco's compliance hotline at: [www.flexco.ethicspoint.com](http://www.flexco.ethicspoint.com).

**21. GENERAL CONDITIONS**

- 21.1. No failure by a party to enforce any provision of these Terms and Conditions shall constitute a waiver of such provision or affect in any way a party's rights to require performance of such provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself.
- 21.2. These Terms and Conditions, in conjunction with the Quotation and the Purchase Order, constitutes the entire agreement between the parties and no other conditions, stipulations, warranties or representations whatsoever have been made by either party or agent other than such as are contained herein.
- 21.3. If any of these provisions are determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remainder of these Terms and Conditions shall be unaffected. Furthermore, there shall be substituted for the affected provision a valid and enforceable provision as similar as possible to the affected provision.
- 21.4. Flexco may license or sub-contract all or any part of its rights and obligations without the Customer's consent.