



General Terms and Conditions of Supply

For the purposes of this Agreement:

"**Agreement**" shall mean the contract between AWC and the Customer for the supply of Goods and/or Services. Each order from the Customer for Goods or Services which is accepted by AWC shall constitute a separate Agreement which shall be governed by these terms and conditions;

"**AWC**" or "**we**" means AFRICAN WELDING COMPANY (PTY) LTD Registration Number: 2020/176625/07 whose registered office is at Grayston Office Park, Building 7, 128 Peter Road, Sandown, Sandton, 2196

"**AWC Product Return Policy**" means the AWC policy governing the return of faulty and non-faulty AWC Goods which is available upon request to the Customer;

"**Customer**" or "**you**" means the individual, partnership or company entering into the Agreement with AWC;

"**Customer Equipment**" means any equipment owned by the Customer used in connection with the supply of Goods and/or Services under this Agreement;

"**Data Protection Laws**" means The Protection of Personal Information Act 2013 and any other directly applicable South African law, regulation or generally accepted requirement relating to privacy, all as may be amended, supplemented, succeeded or replaced from time to time;

"**Effective Date**" is the date when the last party signs the Agreement and/or account application, as the case may be;

"**Factored Products**" means Goods that AWC purchases from other suppliers;

"**Goods**" means any goods or materials sold by AWC to the Customer;

"**Personal Information**" has the meaning given to it in Data Protection Laws (and related terms shall have corresponding meanings);

"**Product Source**" means AWC's normal source of supply of Goods to the Customer;

"**Safety Data Sheet**" means a sheet prepared by AWC containing material safety and other data relating to the applicable Goods; and

"**Services**" means any services provided by AWC to the Customer (including, without limitation, the provision of training, technical advice and the inspection and maintenance of Customer Equipment).

1. DELIVERY/COLLECTION AND INSTALLATION/COMMISSIONING

- (a) Save as set out in Clauses 1(b), 1(c) and 6(g) below and the other terms of this Agreement, or as otherwise agreed in writing between the parties, AWC shall supply Goods and Services against orders placed by the Customer and which are accepted and confirmed by AWC. Subject to Clause 17 below, all orders or variations to orders once accepted by AWC may not be revoked or cancelled by the Customer without AWC's prior approval.
- (b) Dates for completion of Services will be subject to further agreement between AWC and the Customer.
- (c) Except as set out in the Clause 1(j), deliveries of all Goods will be made during AWC scheduled delivery rounds. Any dates quoted for such delivery rounds are estimates only and AWC shall have no liability if the delivery is not made at the time originally quoted. The Customer shall be entitled to amend any delivery date by providing written notice to AWC no less than 24 hours prior to the original intended delivery time.
- (d) Where AWC is unable to supply the Goods or Services ordered, in accordance with its scheduled delivery obligation under Clause 1(b), or any agreed date under Clause 1(c), or for all deliveries/performance covered by Clause 1(d) within what AWC at its discretion considers to be a reasonable period, AWC shall endeavour to notify the Customer in advance and offer it the following options:
 - (1) offer alternative delivery times (including split deliveries) for the affected Goods or Services; and/or
 - (2) where possible, offer alternative Goods or Services of equivalent quality or quantity; and/or
 - (3) offer to cancel the part of the order relating to the Goods or Services that AWC is unable to supply;If AWC offers the options set out above (where possible), then AWC shall not be deemed to have delayed or failed such delivery for the purposes of the rest of this Agreement.
- (e) The Customer acknowledges that collection of Goods from an AWC site or agent shall be at the Customer's own risk and that the Customer is responsible for handling and transporting the load safely, training the driver on the hazards of the Goods and compliance with all relevant legislation including (without limitation) the National Road Traffic Regulations, 1999. AWC may refuse to load any vehicle not compliant or considered by AWC not to be safe.
- (f) Prior to signing such delivery note/waybill the Customer shall inspect the Goods to satisfy itself that these conform in all respects to the quality and quantity ordered and are free from any defects and suitable for the use for which they are intended. Once signed by or on behalf of the Customer, AWC's delivery note/waybill shall be conclusive evidence of the quantity of the Goods delivered.
- (g) Failure by AWC to deliver or perform by any time specified by AWC shall not entitle the Customer to terminate this Agreement and this failure is not material in respect of deliveries or performance.
- (h) If delivery and/or collection of any Goods or provision of Services, cannot be made due to the act or omission of the Customer (or the act or omission of any employee, agent or contractor of the Customer), the items shall be deemed to have been delivered/collected and AWC may charge for waiting time, abortive journeys or part deliveries and for storage thereof until delivered.
- (i) Customers shall be afforded a 10 (ten) day period within which AWC shall accept the return of non-faulty Goods, with the exception of the following; Goods which may not be returned within the aforesaid 10 (ten) day period:
 - (1) Consumables or any hardgoods/welding products that are no longer in a sealed package;
 - (2) Make to Order (MTO) Goods and Strategic Stock;
 - (3) Products that have expired; and/or
 - (4) Obsolete or discontinued items



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Where accepted such non-faulty returns will be subject to the AWC Product Return Policy and may also be subject to a handling fee of up to 25% of the invoice value for the return of Goods. No refund shall be made, or credit given for unused products which are returned to AWC in broken packaging without intact AWC seals. The Customer must present AWC with a copy of the original document which substantiates proof of purchase.

- (j) Where the Customer requires a delivery outside the normal quoted delivery, such a delivery will be regarded as an emergency delivery. If AWC is able to deliver the Goods, then AWC may charge the Customer an emergency delivery charge, as per the Standard Rates of AWC (available on request). AWC does not guarantee to make emergency deliveries, but will use reasonable endeavours to do so, subject to availability of resources. AWC reserves the right to charge for any emergency call out of our technical staff where such call out is required due to circumstances outside of AWC's control or for a reason which is not AWC's fault.
- (k) All Goods taken on an evaluation or consignment basis by the Customer are deemed sold if not returned within 10 (ten) days of issue in the original condition, in the original packaging and with all accessories and manuals intact.
- (l) If the customer takes delivery of any Goods the value of which is less than a minimum order weight of 100kg (One Hundred Kilogram) excluding the pallet weight, AWC shall be entitled to charge a delivery fee as set out in the Standard Rates of AWC (available on request).

2. CUSTOMER'S DUTIES AND RESPONSIBILITIES

The Customer shall:

- (a) provide free of charge adequate and safe access to the Customer's sites, information, documents and facilities (including labour for loading and unloading of Goods and the provision of electricity and materials for use during testing and commissioning) as are reasonably necessary for AWC (subject to AWC complying with a Customer's reasonable site safety rules) to carry out its duties and rights under this Agreement;
- (b) be responsible for the safe custody of AWC's and its sub-contractors' property left on the Customer's site for the performance of any other Services;
- (c) ensure that all work and materials for which the Customer is responsible meet and comply with all legal and statutory requirements and with AWC's specifications;
- (d) obtain all necessary consents and comply with all legal obligations in connection with installation or use of any Goods and/or any Services performed at the Customer's or its nominee's site;
- (e) be responsible for any risks to health or safety from AWC Goods in the Customer's possession and/or control. The Customer acknowledges that the Customer has received the relevant Safety Data Sheets and that it is aware of the cautionary labels attached to AWC's Goods and equipment, the precautions for the use of the Goods as set out in the South African Bureau of Standards' Code of Practice SANS10019:2001 (and all its amendments), and those contained on the products themselves (including but not limited to the hazards and dangers of welding fumes), the Occupational Health and Safety Act 85 of 1993 and the Instruction Booklets/Charts published by AWC which are available on request. The Customer undertakes as "user" of the Goods to draw the above to the attention of all persons using, handling or transporting the Goods and indemnifies AWC against any and all claims that may arise as a result of the Customer's failure to do so; and
- (f) ensure that it and all of its employees, contractors and subcontractors comply with all legislation (including but not limited to the Occupational Health and Safety Regulations, Environmental Impact Assessments, flammable licenses, etc.), municipal by-laws and the like thereof ("laws") applicable to the use of the Goods and AWC Equipment on its premises and indemnifies AWC against any and all liability incurred by AWC as a result of the Customer or any of its employees', contractors' or subcontractors' failure to comply with the laws. AWC reserves the right to remove the Goods and/or equipment when justified due to safety issues.

3. TITLE AND RISK

- (a) Property in any Goods shall only pass to the Customer on receipt by AWC in full of:
 - (1) the price (and value-added tax in terms of the Value-Added Tax Act 89 of 1991 "VAT") for the relevant Goods and/or ; and
 - (2) all other sums due from the Customer under this Agreement; and
 - (3) all sums due from the Customer under any other contracts, agreements or arrangements between the Customer and AWC.
- (b) The Customer shall have no rights over any other property of AWC, or its contractors brought onto the Customer's or its nominee's site.
- (c) Until such time as the property in any Goods has passed to the Customer under Clause 4(a) the Customer shall:
 - (1) hold such Goods as a fiduciary of AWC;
 - (2) not pledge or allow any encumbrance, lien, charge or other interest to arise or be created over the Goods and/or the; and
 - (3) not dispose of or deal with the Goods and/or the or any documents of title relating to them or any interest in them, except that the Customer may, without prejudice to Clause 3((c))(1)), and subject to the other terms of this Agreement, on its own account use the Goods in the ordinary course of its business.
- (d) The risk of loss or damage to Goods shall pass to the Customer upon delivery to or collection by the Customer.

4. GOODS RE-SALE

- (a) The Customer may not re-sell Goods supplied by AWC unless it has received the prior written consent of AWC. Such consent shall be at the discretion of AWC and shall be subject to the Customer's agreement to further contractual terms with AWC, including indemnities.

5. PRICE AND PAYMENT

- (a) The prices for the Goods and Services will be adjusted by AWC from time to time to reflect changes in AWC's costs, which may occur with or without notice to the Customer, but such changes shall not affect orders that have already been accepted by AWC. In addition, AWC may at its own discretion, levy any of the charges (e.g. waiting time, free rider etc.) as set out in the Standard Rates of AWC available from customer.service@awc.linde.com It is the responsibility of all Customers without contracted pricing to satisfy themselves of the acceptability of the current prices and charges before placing an order. This Clause 5(a) shall not apply to the extent that it conflicts with the provisions of a signed supply contract between the Customer and AWC.

- (b) AWC shall be entitled to invoice each delivery/performance separately. AWC will provide the Customer with a tax invoice: (1) for cash sales shortly after delivery/performance via eBilling; or (2) for credit approved Customers a tax invoice will be dispatched shortly after order processing. AWC will also provide a monthly statement to account Customers where there have been transactions on the account during that month.
- (c) The Customer agrees that the full amounts for all Goods and Services ordered shall be due and payable by it, either: (1) Electronic Fund Transfer "EFT" reflecting in the AWC bank account prior to delivering; or (2) if the Customer is a credit approved Customer, full payment must be received by AWC in cleared funds within the granted credit period (as notified by AWC from time to time) measured from the date of the relevant monthly statement. Cheques shall not be used as a means of payment.
- (d) AWC may at its absolute discretion increase or decrease credit terms provided to the Customer. Without prejudice to its other rights or remedies (including its rights of termination) AWC may withdraw any credit terms provided to the Customer in the event that the Customer fails to make any payment due to AWC.
- (e) AWC reserves the right to introduce electronic invoicing. If AWC introduces electronic invoicing AWC reserves the right to charge any additional costs AWC incurs in generating paper invoices or non-standard invoices for the Customer.
- (f) All quotations:
 - (1) will remain valid for a period of 7 days from the date of quotation;
 - (2) are subject to the availability of the relevant Goods and Services;
 - (3) are subject to the correction of good faith errors by AWC; and
 - (4) For the avoidance of doubt quotations shall not affect Goods or Services which are subject to contracted pricing.
- (g) AWC should be notified of any error on an invoice or online order confirmation within 14 days of date of the invoice or online order confirmation, as the case may be. By paying an invoice/online order confirmation the Customer certifies that the invoice is correct and waives any rights to challenge such voice/online order confirmation at a later date.
- (h) The Customer agrees that where it fails to pay any sum by the due date AWC may at its discretion: (a) charge interest on the overdue debts at an annual rate equal to 5% above the prime overdraft rate charged by First National Bank, if that Act is not applicable. Such interest shall be calculated daily and compounded monthly from the date payment first became overdue; or (b) apply a late payment penalty fee at the then applicable rate as set out in the Standard Rates (copies of which are available on request from customer.service@awc.linde.com).
- (i) All prices and charges are expressed exclusive of VAT which shall be charged and paid as applicable, in addition to such prices and charges.
- (j) If at any time AWC's costs change due to government action or to a change in the law, AWC reserves the right to adjust prices to take account of such change in its costs.
- (k) If the price variation indices (or any substitute indices) are changed or discontinued, AWC will adopt an appropriate substitute.
- (l) Where the Customer is a juristic person the Customer undertakes to inform AWC in writing within 7 days of any change greater than 20% of the legal or beneficial ownership of the Customer, and failure to do so will constitute a material breach of this Agreement. Upon receipt of such written notification, AWC reserves the right, at its sole discretion, to withdraw any credit facility advanced to the Customer.
- (m) Any item handed in for repair may be sold by AWC to defray the cost of such repairs if the item remains uncollected within 30 days of the repairs being completed. Any excess balance will at AWC's discretion be offset against the Customer's account or paid to the Customer.
- (n) Any item delivered to AWC for repair shall serve as pledge in favour of AWC for present and past debts and in the event of any breach of Agreement by the Customer AWC shall be entitled to retain or realise such pledges as it deems expedient at the value as determined by a sworn valuator and such valuation shall be conclusive proof of the value. The sworn or realised value of pledged Goods will be offset against the Customer's debts, the valuator's expenses deducted, and any excess balance will be paid to the Customer.
- (o) All amounts due shall be paid by the Customer in full without any set-off, counterclaim, deduction or withholding whatsoever as per agreed terms.
- (p) AWC shall have the right to allocate any payments received by the Customer to any outstanding invoice as it deems fit at its sole and absolute discretion. The right to allocation of payments includes the allocation of any payment made by the Customer to the oldest debt of that Customer. AWC further has the right to refuse any further credit and/or supply of Goods or Services to a Customer if that Customer fails to make payments in accordance with this Agreement or make appropriate arrangements to settle all existing outstanding debt.

6. LIABILITY AND EXCLUSIONS

- (a) AWC shall have no liability of whatsoever nature, howsoever arising subject to this Clause 6. Notwithstanding any other provision of this Agreement, but subject to Clause 6(b), AWC shall have no liability arising out of or in connection with this Agreement, the Goods or the Services, howsoever arising, for any:
 - (1) other loss or damage (whether direct or indirect); or
 - (2) loss of or damage to revenue, profits, savings, use, contracts, goodwill or business (whether direct or indirect); or
 - (3) consequential or indirect loss or damage.When used or referred to in this Clause 6 the term "howsoever arising" shall cover all causes and actions giving rise to liability whether in contract, delict (including negligence), restitution, for breach of statutory duty, misrepresentation or otherwise.
- (b) Nothing in this Agreement limits or excludes either Party's liability:
 - (1) for death or personal injury to the extent that it results from that Party's negligence; or
 - (2) for fraud or fraudulent misrepresentation; or
 - (3) to the extent not permitted by law.
- (c) AWC accepts liability, to the extent that it results from breach of contract or AWC's gross negligence in connection with the performance of this Agreement, for the Customer's proven losses, costs, expenses or damage:
 - (1) caused by AWC supplying any defective Goods up to a limit of an amount equal to AWC's price for the relevant Goods, for any one incident; and
 - (2) arising from delay or failure by AWC in delivery of any Goods up to a limit of an amount equal to AWC's price for the Goods that AWC has failed to deliver or, for any one incident; and

- (3) resulting from the provision of Services by AWC in return for a specific fee up to a limit of the amount of the fee received for such Services.
- (d) The provisions of Clause 6(c) shall not apply to physical damage to the Customer's real property and AWC accepts liability for physical damage to the Customer's real property to the extent that it results from willful breach of contract or AWC's gross negligence in connection with the performance of this Agreement subject to a limit of ZAR 1,000,000 (One Million Rand) per claim or series of claims arising out of the same event or circumstances.
- (e) AWC shall not be liable for any shortage, loss, damage or discrepancy in Goods or failure to perform the Services unless notified to AWC in writing within 14 days of completion of the Services or receipt of the relevant Goods by the Customer. This exclusion of liability shall not apply if the Customer proves that it was not reasonably possible to notify AWC within this time period, and such notification was given as soon as was practicable and in any event within 14 days after the Customer became aware, or could reasonably be expected to have become aware, of the claim. If acceptance tests are provided in this Agreement for Goods or Services, this Clause 6(e) shall not apply to such Goods or Services and the Customer shall be deemed to have accepted the Goods or Services upon successful completion of those tests.
- (f) Subject to the other terms of this Agreement (and in particular Clause 16), where any shortage, loss, damage, defect or discrepancy in or Goods and/or failure to perform the Services is notified to AWC in accordance with Clause 6(e), AWC shall at its option rectify the shortage, loss, damage or discrepancy in the or Goods free of charge, re-perform the Services or refund or forego an appropriate proportion of the price for the Goods or Services. If AWC complies with this obligation it shall have no further liability in respect of or arising from the relevant Goods or Services under this Clause 6(f).
- (g) Under no circumstances shall AWC be liable for any damage arising from any misuse, abuse or neglect of the Goods by any person other than AWC or its employees or authorised agents.
- (h) The Customer shall indemnify and keep indemnified and hold harmless AWC at all times against all claims, demands, liability, loss, damages, costs (including legal costs on a full indemnity basis) and expenses incurred by AWC arising out of or in connection with AWC's presence on the Customer's or its nominee's site except to the extent caused by the negligence of AWC.
- (i) The Customer and AWC both recognise that it is open to either party to consider insuring against the risks apportioned in this Clause 6.

7. SHORT SUPPLY

- (a) In the event of part or all of AWC's supply of Factored Products from their Product Source being interrupted for any reason then for the duration of the period AWC is affected by such cause AWC may (where possible) obtain such Factored Products from another source, in which case AWC reserves the right to implement a surcharge for the duration of the affected period to recover its additional costs, such additional costs to be notified to the Customer in advance. If the Customer objects to such price increase, then AWC shall cease supplying the relevant Factored Products for the remainder of such period of interruption, but this shall not be deemed to be a failure or inability to supply for the purposes of the remainder of this Agreement. In the event that AWC is unable to find an alternative source of the Factored Products then AWC's obligation to supply the relevant Factored Products shall be deemed to be suspended for the duration of the interruption. For the avoidance of doubt this suspension shall not be deemed to be a failure by AWC to supply but it shall be an inability to supply allowing the Customer to exercise its rights (where relevant) under Clause 2(b) above.
- (b) If AWC's performance of any of its obligations under this Agreement by its normal means is prevented or delayed due to any war, civil disturbance, riot, government action, state of emergency, act of God, interruption of utilities, strike or labour dispute, or any other cause beyond AWC's reasonable control, that obligation shall be suspended during the period AWC is affected by such cause.
- (c) In the event of AWC's supply of Goods (which are not Factored Products) from their Product Source being interrupted and for the duration of the period AWC is affected by such cause AWC may obtain such and/or Goods from another source, in which case AWC reserves the right to vary the price for the duration of the affected period to recover its additional costs, such additional costs to be notified to the Customer in advance. If the Customer objects to such price increase, then AWC's obligation to supply shall remain suspended under Clause 7(b) above.

8. RECOVERY OF GOODS

- (a) If:
- (1) payment becomes overdue; or
 - (2) the Customer is in breach of any of its obligations relating to the Goods; or
 - (3) AWC exercises any right to suspend or terminate this Agreement; or
 - (4) AWC reasonably determines that the Customer's use of any Goods supplied that poses a risk to health and safety;
 - (5) any event referred to in Clause 9(a)(1) occurs; or
 - (6) the Customer, for any reason, ceases to obtain or Goods from AWC, whether or not in breach of any contract with AWC;

AWC shall be entitled upon demand to the immediate return of all or any Goods without prejudice to the rights of AWC under Clause 2. The Customer irrevocably authorises AWC to recover such Goods, AWC Equipment and any documentation relating thereto and for that purpose, to enter any sites, vehicle or other location of, or under the control of, the Customer. The Customer shall take all reasonable steps to help AWC to recover the Goods and AWC Equipment. Demand for, or recovery of Goods or AWC Equipment shall not of itself discharge the Customer's liability to pay the whole of the price or any other rights of AWC under this Agreement. AWC may also charge, and the Customer will pay all reasonable costs of removal of Goods and/or AWC Equipment.

9. BREACH AND TERMINATION

- (a) Without affecting any other rights or remedies that AWC may have, AWC may cancel any order the Customer has placed and/or terminate this Agreement immediately at any time by written notice to the Customer if the Customer:
- (1) has any corporate action, application, order, proceeding or appointment or other step taken or made by or in respect of it for any composition or arrangement with creditors generally, winding-up other than for the purpose of a bona fide scheme of solvent reconstruction or amalgamation, dissolution, administration, receivership (administrative or otherwise) or bankruptcy, or if it is unable to pay its debts as



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they fall due, or if it ceases to trade or if a distress, execution or other legal process is levied against any of its assets which is not discharged or paid out in full within three working days or if any event analogous to any of the foregoing shall occur in any jurisdiction in which the Customer is incorporated, resident or carries on business; or

- (2) fails to make any payment due to AWC; or
 - (3) there is a material change in the ownership of the shares in the Customer, or any parent company.
- (b) Without prejudice to either party's other rights and remedies either party may terminate this Agreement by written notice at any time if the other party is in material breach of any of its terms and (in the case of a remediable breach) the breach is not remedied within 28 (twenty- eight) days of receipt of a notice specifying the breach and requiring it to be remedied.
 - (c) Without prejudice to its other rights or remedies (including its rights of termination) AWC may elect to suspend performance of all or any of its obligations under this Agreement by written notice to the Customer upon the occurrence of any of the events specified in Clauses 9(a)(1), (a)(2) or (b). In the case of a remediable breach referred to in Clause 9(b) AWC may elect to suspend performance upon the occurrence of the breach and shall not be required to wait until the 28 (twenty-eight) day period referred to in Clause 9(b) has expired.
 - (d) Termination shall be without prejudice to any accrued rights of either party.
 - (e) If this Agreement is terminated and any charges which are payable in instalments are still outstanding, an amount representing the outstanding instalments shall become due and payable by the Customer on termination of this Agreement, this shall include agreed minimum volume undertakings and / or facility fees for any agreed contract period, as may be applicable. The Customer shall immediately pay to AWC all of the AWC's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, AWC shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - (f) The Customer shall be liable to AWC for all legal expenses on the attorney-and-own-client scale incurred by AWC in the event of (a) any default by the Customer or (b) any litigation in regard to the validity and enforceability of this Agreement. The Customer shall also be liable for any tracing, collection or valuation fees incurred as well as for any costs, including stamp duties, for any form of security that AWC may demand. AWC shall be entitled to use any and all means including utilization of a debt collection agency or credit bureau to assist in the collection of monies owed by the Customer to AWC and in addition AWC shall have the right to list the Customer with the credit bureau if the Customer's account is in arrears.

10. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- (a) AWC's trademarks and names shall not be used otherwise than as applied by AWC to Goods and Services.
- (b) No right or license is granted under this Agreement to the Customer under any patent, trademark, copyright, registered design or other intellectual property right, except the right to use or re-sell the and/or Goods as permitted under this Agreement. No warranty is given as to whether that use, or re-sale will infringe the rights of any third party.
- (c) Any know-how, information or documents supplied at any time by AWC to the Customer shall be treated as confidential by the Customer and shall not be disclosed to any third party or used for any purpose other than for the purpose of this Agreement without the prior written consent of AWC, unless and until the same is public knowledge other than through default of the Customer or comes into the Customer's possession bona fide from a third party.
- (d) AWC retains all intellectual property rights in its drawings, specifications, data and all other information and documents prepared by AWC for the Customer in whatever medium.

11. NOTICES

- (a) Any notices under this Agreement shall be in writing and signed by or on behalf of the party giving it.
- (b) Any such notice may be served by delivering it personally or by sending it by pre-paid recorded delivery post or email at or to the address shown above of the relevant party or any other address which it may from time to time notify in writing to the other parties.
- (c) Any such notice delivered personally shall be deemed to be received when delivered; any notice sent by pre-paid registered post shall be deemed to be received 5 days after posting and in proving the time of dispatch it shall be sufficient to show that the envelope containing such notice was properly addressed, stamped and posted; and any such notice sent by email transmission shall be deemed to have been received at the time of transmission, and in proving the service of the same it shall be sufficient to show a delivery receipt from an email address that the other party has nominated (where applicable) or has otherwise consistently used to communicate with the other party.
- (d) The parties choose as their domicilium citandi et executandi the addresses provided in accordance with Clause 11(b) above, or if the Customer is a juristic person its registered address from time to time.

12. ASSIGNMENT

- (a) AWC shall be entitled to cede, assign, novate, charge or hold on trust for another all or any of its rights and obligations under this Agreement on giving written notice to the Customer, but without any further consent of the Customer being requested. AWC shall be entitled to sub-contract any of its obligations under the Agreement provided that AWC shall remain liable for the acts and/or omissions of its sub-contractors.
- (b) The Customer shall not without the prior written consent of AWC cede, assign, novate, charge or hold on trust any of its rights or sub-contract any of its obligations under this Agreement in whole or in part to any third party.

13. GENERAL

- (a) If by arrangement with the Customer, Goods, or Services are supplied to an Affiliate of the Customer who is not a party to this Agreement, the Customer shall be liable in full for all claims, actions and/or obligations as if the services were supplied to that Customer directly. The onus will further rest on the Customer to ensure that such an Affiliate understands the terms and conditions of this Agreement and shall procure proof that such person agrees to be bound in full by the terms of this Agreement as though a party to this Agreement. The Customer herewith indemnifies and holds harmless AWC against any consequences (including any claim made by such person which he could not make if a party to this Agreement) of the Customer failing to do so or of such person not fulfilling the obligations applicable to it under this Agreement. Any order

from or supply to such person shall be on behalf of the Customer and is made pursuant to the terms of this Agreement. Nothing in this Clause 14 shall relieve the Customer of any of its obligations under this Agreement, in particular, without limitation, payment of any Charges and any liability in relation to AWC Equipment. For the purposes of this Clause 'Affiliate' means in relation to the Customer, a company which is, from time to time, a subsidiary or holding company of the Customer, or is a subsidiary of the Customer's holding company.

- (b) This Agreement cannot be varied, added to, or cancelled by agreement otherwise than by means of a further written agreement between the parties. No relaxation of the terms of this Agreement and no indulgence which one party may grant to the other, will in any way operate as an estoppel against the former party or be deemed to be a waiver of his rights, or in any other way limit, alter, or prejudice those rights.
- (c) To the extent that a Customer places orders online the terms applicable shall be as agreed to at the time of the order having been placed. If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any way under any law, it shall to the extent of such invalidity, illegality or unenforceability be deemed severable and the remaining provisions of this Agreement and the remainder of such provision shall continue in full force and effect.
- (d) This Agreement contains the entire agreement between the parties. Neither party will have any right or remedy arising from any undertaking, warranty, or representation not included in this document.
- (e) The Customer acknowledges and agrees that:
 - (1) in entering into this Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty (in each case whether negligently or innocently made), or understanding of any person (whether party to the Agreement or not) which is not expressly set out in these terms and/or the Agreement; and
 - (2) the only remedy available to it for breach of any statement, representation or other term that is expressly set out in the Agreement shall be for breach of contract under the terms of this Agreement.

Nothing in this Clause 13(e) shall, however, operate to limit or exclude any liability for fraud or fraudulent misrepresentation

- (f) This Agreement shall be governed by South African law.
- (g) These South African courts shall have exclusive jurisdiction in any litigation between the parties arising from whatsoever source. The parties consent to the jurisdiction of the Magistrate's Court in terms of Section 45 of Act 32 of 1944, that has jurisdiction over them in terms of Section 28 of the aforementioned Act, but without depriving the parties from their rights to approach any competent court with jurisdiction, including the High Court.
- (h) The Customer hereby acknowledges that the storage, processing and use of their personal information provided to AWC is necessary for pursuing the legitimate interests of AWC. In particular, but without limitation, Customer acknowledges that the above processing activities would include:
 - (1) providing any trade references requested by the Customer;
 - (2) establishing the Customer's credit rating and to AWC disclosing such information to credit control companies, banks and other institutions involved in rating credit; and
 - (3) disclosing Customer information to any third party where required by law or in order to protect the rights, property, or safety of AWC, its employees or members of the public and whether arising in connection with the Customer's breach of this Agreement or otherwise; and
 - (4) sharing of personal information with other customers in the event of electronically identified being returned by another party, other than the one to whom the was issued to.
- (i) When the Customer provides AWC with Personal Information about third parties or such Personal Information is obtained by AWC, or on its behalf, from the Customer (including from the Customer's employees, agents and other representatives) in connection with the Agreement ("Shared Personal Information"):
 - (1) The Customer warrants and undertakes that it will be responsible for ensuring that there is a lawful basis on which the Shared Personal Information can be processed (the "Processing Purpose"), including in respect of the disclosure of Shared Personal Information to AWC and processing of Shared Personal Information by AWC in connection with the Processing Purpose and performance of AWC' obligations under the Agreement;
 - (2) The Customer warrants and undertakes that it will be responsible for ensuring that appropriate privacy notices and/or policies, are communicated to the relevant Data Subjects which explain how the Shared Personal Information will be processed, including the fact that the Shared Data may be disclosed to AWC in connection with the Processing Purposes and performance of AWC' obligations under the Agreement;
 - (3) AWC and the Customer each agree not to do or permit anything to be done through act or omission which would cause the other to incur any liability under Data Protection Laws; and
 - (4) AWC and the Customer each agree to comply with Data Protection Laws at all times in respect of the processing of the Shared Personal Information.

14. WARRANTY FOR SERVICES

- (a) Subject to clause 1(i), AWC warrants that: (a) at the time of delivery the Goods is to the specification set out in the relevant AWC Safety Data Sheet; (b) to the extent that the AWC Equipment is utilised for the storage and/or use of, it will be suitable for such storage and/or use; and (c) the Services (if any) will be provided with reasonable care and skill. All warranties and conditions which arise from statute and relate to the supply of goods and services are excluded from this Agreement except to the extent that such exclusion is prevented by law.
- (b) Recommendations relating to the use of the Goods supplied by AWC in its technical literature or in response to a specific enquiry or otherwise are given in good faith, but no warranty is given by AWC as to the suitability of the Goods for any particular purpose.
- (c) Technical advice or training supplied to the Customer by AWC shall be prepared or delivered in good faith, in the context of the law in force as at the date of its preparation and on the basis of the matters and information disclosed by the Customer to AWC. AWC accepts no responsibility for subsequent changes in law which may affect the conclusions of and/or recommendations in technical advice or training or for any loss or damage incurred or suffered by the Customer arising out of a failure by the Customer to disclose facts or circumstances necessary for the preparation of technical advice or training.

- (d) Subject to the AWC Product Return Policy, the Customer may return any faulty goods within 6 (six) months of purchase or within 6 (six) months of having accepted delivery of the goods if the goods are defective, provided that:
- (1) the Customer notifies AWC promptly in writing with details of any alleged defects or malfunction; and
 - (2) the Customer gives AWC the opportunity to inspect the goods and, if AWC so requests, the goods are returned promptly carriage paid by AWC (and details of carriage notified in writing to AWC in advance); and
 - (3) the goods have not been repaired, tampered with, modified or altered by anyone other than AWC; and
 - (4) the Customer provides proper proof of purchase for the relevant Goods.
- (e) If the outcome of the faulty return investigation concludes that AWC is not at fault, or the reason for the return is deemed invalid, the Customer will be liable for the replacement charge as well as a handling fee.

15. WARRANTY FOR GOODS

- (a) Subject to clause 1(i), AWC undertakes to repair or, at its option, replace or credit Goods of its own manufacture or parts thereof which fail (fair wear and tear excepted) as a result of a defect in AWC's materials or workmanship, arising within 6 (six) months of purchase or within 6 (six) months of the Customer having accepted delivery of the Goods (or within such other period as may be specified by AWC having regard to the nature and properties of the Goods concerned), and occurring under normal conditions and subject to proper storage, use and maintenance, provided that:
- (1) the Customer notifies AWC promptly in writing with details of any alleged defects or malfunction; and
 - (2) the Customer gives AWC or its agent the opportunity to inspect the Goods and, if AWC so requests, the Goods are returned promptly carriage paid by AWC (and details of carriage notified in writing to AWC in advance); and
 - (3) the Goods have not been repaired, tampered with, modified or altered by anyone other than AWC or its agents; and
 - (4) the Customer provides proper proof of purchase for the relevant Goods.
- (b) In the event of AWC carrying out any repairs which are covered under a current warranty, or which have been requested by the Customer, AWC will extend the warranty for a period of 3 (three) months for the item repaired, which period runs from the date of the replacement or repair as the case may be.

16. EXPORT CONTRACTS

If the Customer is located outside South Africa, the following additional provisions shall apply, unless otherwise agreed:

- (a) all Goods shall be supplied ex-works as defined in accordance with Incoterms as in force on the date of this Agreement;
- (b) the Customer shall be responsible for complying with any legislation or regulations governing the export of the Goods from South Africa and import into the country of destination and for the payment of any duties;
- (c) the Customer may at its cost inspect the Goods at AWC's works before shipment, at a time to be agreed, and AWC shall rectify any defects notified by the Customer during such inspection. AWC shall not be liable for any defect discovered after shipment from AWC which would have been apparent on inspection (whether or not carried out), or any claim in respect of damage during transit;
- (d) in the event of a claim under the warranty in Clause 15 the Customer shall arrange and pay for transport of defective Goods to AWC and replacement and/or repaired Goods shall be supplied to the Customer ex-works; and
- (e) payment shall be made by means of an irrevocable letter of credit in a form agreed by AWC and confirmed by a bank in South Africa acceptable to AWC.

17. CONSUMER ORDERS PLACED ONLINE

The provisions of this Clause 17 only apply to purchases that are made online by Customers who are natural persons purchasing Goods, or Services for their own use. Subject to Clauses 15 (fifteen) and 16 (sixteen).

- (a) The Customer shall be entitled to cancel any order within 7 (seven) days of after receipt of order confirmation of such Goods and Services. Subject to Clause 17(b) AWC will refund within 30 days any payment (with the exception of rental charges) that the Customer has already made for such Goods and/or Services minus the costs incurred by AWC in recovering possession of such Goods.
- (b) AWC will not refund the price paid for any Goods without intact AWC seals, Goods that have been consumed and/or Services where performance has already begun.
- (c) If AWC fails to fulfill any order for any reason within 30 days of the date of order, then the Customer may cancel this agreement on giving 7 (seven) days written notice to AWC.
- (d) For the purposes of Clause 12 above where the Customer does not have an account with AWC the Customer's delivery address as stipulated in the confirmed order shall be deemed to be its domicilium citandi et executandi.

18. FORCE MAJEURE

- a) A Party shall not be considered to be in default or breach of this Agreement, and shall be excused from performance or liability for damages to any other party, if and to the extent it shall be delayed in or prevented from performing or carrying out any of the provisions of this Agreement, arising out of or from any act, omission or circumstance by or in consequence of any act of God, labour disturbance, sabotage, failure of suppliers of materials, act of the public enemy, war, invasion, insurrection, riot, fire, storm, flood, ice, earthquake, explosion, epidemic, pandemic (which includes, but is not limited to, COVID or similar viruses), breakage or accident to machinery or equipment or any other cause or causes beyond such Party's reasonable control, including, inter alia, any curtailment, order, regulation, or restriction imposed by governmental, military or lawfully established civilian authorities or by making of repairs necessitated by an emergency circumstance not limited to those listed above upon the property or equipment of the Party or property or equipment of others which is deemed under the operational control of the Party (hereinafter collectively and/or individually referred to as a "Force Majeure Event").



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- b) A Force Majeure Event does not include an act of negligence or intentional wrongdoing by a Party. Any Party claiming a Force Majeure Event shall use reasonable diligence to remove the condition that prevents performance and shall not be entitled to suspend performance of its obligations in any greater scope or for any longer duration than is required by the Force Majeure Event. Each Party shall use its best efforts to mitigate the effects of such Force Majeure Event, remedy its inability to perform, and resume full performance of its obligations herein.
- c) Should the Force Majeure event last longer than 90 (ninety) days , either party shall have the right to terminate the agreement in accordance.