



+27 11 794 1306 info@valsa.co.za www.valsa.co.za

Head Office 1500 Zeiss Road, Laser Park, Honeydew, Gauteng, South Africa, 1724
Cape Town Office Unit 8, 7 Alternator Avenue, Montague Gardens, Cape Town, 7441

Valsa Trading
Registration number 2015/337142/07

Terms and Conditions

Table of Contents

	Page No
1. Introduction	1
2. Definitions	1
3. Interpretation	2
4. Basis of Contract	3
5. Goods	3
6. Delivery	4
7. Quality and Warranties	5
8. Title and Risk	7
9. Price and Payment	8
10. Returns, Exchanges, Refunds and Credit Notes	9
11. Limitation of Liability	11
12. Termination	11
13. Force Majeure	12
14. Dispute Resolution	13
15. General	13
16. Assignment and other dealings	13
17. Entire Agreement	13
18. Confidentiality	13
19. Variation	14
20. Waiver	14
21. Severance	14
22. Notices	14
23. Governing Law	15
24. Jurisdiction	15

1. INTRODUCTION

These terms and conditions are binding and enforceable against persons or entities who are entering into an agreement of sale with Valsa Trading ("Valsa"). These terms and conditions are important and the contents thereof are binding.

It is the sole responsibility of the Customer to ensure that these terms are read and understood.

2. DEFINITIONS

Business Day: a day, excluding weekends and public holiday's, including any Public Holiday declared by the President in terms of Section 2A of the Public Holidays Act 36 of 1994;

Business Hours: the period from 7.30 am to 4.30 pm on any Business Day;

Conditions: the terms and conditions set out in this document as amended from time to time;

Contract: the contract between the Supplier and the Customer for the supply of Goods in accordance with these Conditions;

Customer: the person, entity or firm who purchases the Goods from the Supplier including its employees, agents consultants, contractors as may be applicable;

Defect means any defect, shrinkage, fault or omission in the Goods otherwise any aspect of the Goods, excluding any such defect, shrinkage, fault, omission or aspect which arises from a breach of the warranty under clause 7 and excludes any defect caused by the installation or the Customer;

Delivery Location: has the meaning given in clause 6.2;

Engineer: A person qualified with an Engineering degree, either in Civil, Mechanical or Electrical;

Force Majeure Event: an event, circumstance or cause beyond a party's reasonable control;

Goods: the merchandise or supplies (or any part of them) supplied by the Supplier as set out in the Order;

Installation: Work completed on site and signed off, including storage of the Goods by the Customer;

Latent defect: a defect which is not visible or discoverable upon an ordinary and proper inspection;

Law: means, from time to time any law applicable to the carrying out of the Goods, including legislation, regulations, by-laws and other subordinate legislation; approvals; and any other requirements of an authority, body or other organisation having any jurisdiction in connection with the carrying out of the Goods;

Order: A document giving Valsa permission to create a sales order/invoice;

Parties: means the Customer and the Supplier;

Patent defect: a defect which is not hidden and can easily be identified upon inspection;

Quotation: a document which sets out the estimated cost/fee for the purchase of Goods;

Spare Parts: means the spare parts, consumables, re-agents, catalysts and/or other items sold and packaged with the Goods;

Special Order: means a custom order made according to the Specification;

Specialist: an Engineer with relevant experience in Civil, Mechanical or Electrical engineering at an expert level;

Specification: means a detailed description of the Goods, including any related plans, drawings, design or materials that are agreed to in writing by the Customer and the Supplier;

Supplier: Valsa Trading, situated at 1500 Zeiss Street, Laser Park, Honeydew, 2170, with registration number 2015/337142/07, registered in accordance with the laws of South Africa;

3. INTERPRETATION

- 3.1. Should there be any provision in these terms and conditions that the Customer does not understand, it is the sole responsibility of the Customer to enquire with Valsa prior to accepting these terms and conditions.
- 3.2. These terms and conditions are not intended and should not be interpreted to unlawfully restrict, limit or avoid any rights created for the Customer or Valsa.
- 3.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 3.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 3.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 3.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.
- 3.7. This agreement shall be binding on, and endure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

- 3.8. Unless expressly provided otherwise in this agreement any reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time OR it is in force as at the date of this agreement.
- 3.9. A reference to writing or written includes email (excluding any amendments or variations these Conditions).
- 3.10. The doctrine of *contra proferentem* shall not apply to this Contract. If any ambiguity exists in the interpretation of this Contract, the interpretation or uncertainty shall not be construed against the drafter of this Contract.
- 3.11. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 3.12. A reference to this agreement or to any other agreement or document is a reference to this agreement or such other agreement or document, in each case as varied or novated from time to time.
- 3.13. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

4. **BASIS OF CONTRACT**

- 4.1. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 4.2. The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions.
- 4.3. The Order shall only be deemed to be accepted when the Supplier has received payment from the Customer and/or delivery of the Goods, at which point the Contract shall come into existence.
- 4.4. A quotation for the Goods given by the Supplier shall not constitute an offer.

5. **GOODS**

- 5.1. The Goods are the solar energy products supplied by the Supplier, including but not limited to the Goods as set out in the Order.
- 5.2. To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs,

expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 5.2 shall survive termination of the Contract.

- 5.3. The Supplier has the sole discretion to amend the Specification if required by any applicable statutory or regulatory requirement. The Supplier shall notify the Customer if any such event occurs as soon as practicable.

6. DELIVERY

- 6.1. The Supplier shall ensure that:

6.1.1. each delivery of the Goods is accompanied by a shipping note that reflects the date of the Order, the contract number and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

- 6.2. The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**") at any time after the Supplier notifies the Customer that the Goods are ready. All deliveries from the Supplier to the Customer shall be subject to a delivery fee,

OR

- 6.3. The Customer shall collect the Goods from the Supplier's premises at its elected address or such other location as may be advised by the Supplier prior to delivery ("**Delivery Location**") at such time when the Supplier notifies the Customer that the Goods are ready. The Goods may be collected by the Customer in installments.

6.3.1.1. Goods which are eligible for collection following a repair must be collected within 3 months of the notification for collection. Should the Customer fail to collect the Goods within the specified time period, the Supplier may resell or otherwise dispose of part or all of the Goods.

- 6.4. A signature on the Shipping note shall constitute the acceptance of the Goods.
- 6.5. Subject to clause 9, any Goods or Special Orders purchased in instalments, must be paid in full prior to any delivery or collection of the Goods or Special Orders from the Supplier:
- 6.6. The Supplier may deliver the Goods in instalments. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

- 6.6.1. Once the first instalment of a Special Order has been delivered to the Customer, the Customer may not cancel the remainder of the Order and will remain liable for the full cost of the Special Order.
- 6.7. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 6.8. If the Supplier fails to deliver the Goods, its liability shall be limited to its costs and expenses incurred by the Customer in obtaining replacement Goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

7. QUALITY AND WARRANTIES

7.1. GOODS WARRANTIES

- 7.2. The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (Warranty Period), the Goods shall:
- 7.2.1. conform in all material respects with the specifications of the Goods;
 - 7.2.2. be free from material defects in design, material and workmanship and/or;
 - 7.2.3. be of satisfactory quality
- 7.3. The Supplier shall not be liable for Defective Goods if:
- 7.3.1. the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - 7.3.2. the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
 - 7.3.3. the Customer alters or repairs such Goods without the written consent of the Supplier;
 - 7.3.4. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

- 7.3.5. the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 7.4. Except as provided in this Clause 7, the Supplier shall have no liability to the Customer in respect of the Defective Goods.
- 7.5. These Conditions shall not apply to any repaired or replacement Goods supplied by the Supplier.
- 7.6. **SUPPLIER WARRANTIES**
- 7.6.1. The Supplier represents and warrants to the Customer, as on the Delivery Date (unless the contrary is indicated in the relevant provision) that:
- 7.6.1.1. it is a limited liability company, duly incorporated and validly existing under the Applicable Laws and has taken all necessary actions to authorise its execution of and to fulfil its obligations under this Contract;
 - 7.6.1.2. it has the sole purpose, object and business of supplying PV Solar System solutions;
 - 7.6.1.3. the Supplier is not subject to any obligation or non-compliance which is likely to have a material adverse effect on its ability to perform its duties and obligations;
 - 7.6.1.4. no proceedings or any other steps have been taken or, to the best of the knowledge of the Supplier (having made all reasonable enquiries), threatened for the winding-up or liquidation (whether voluntary or involuntary, provisional or final), judicial management (whether provisional or final), business rescue or deregistration of the Supplier or for the appointment of a liquidator, judicial manager, business rescue practitioner or similar officer over it or over any of its assets;
 - 7.6.1.5. it has not carried out any trading or business activities since its incorporation or incurred any liabilities other than in connection with the design, manufacture and supply of mounting solar system solutions;
 - 7.6.1.6. all information disclosed by or on behalf of the Supplier to the Customer at any time up to the Delivery Date, is true, complete and accurate in all material respects and the Supplier is not aware of any material facts or circumstances not disclosed to the Customer which would, if disclosed, be likely to have an adverse effect on the Customer's decision (acting reasonably) to enter into the Contract with the Supplier;

7.6.2. the Customer's products may be inspected for latent defects, within 3 years from the date of installation by the Supplier, the fee shall be market-related for the service provided.

7.6.2.1. The Customer has a duty to establish that a latent defect existed at the time of installation. If the Supplier discovers that any product inspected is not covered by the foregoing warranty, the Supplier reserves the right to charge the Customer for expenses incurred by the Supplier in examining, processing or handling such product.

7.7. The foregoing warranty is exclusive and in lieu of all other warranties, whether express, implied or otherwise arising by operation of law, trade, usage or course of dealing, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose. The Supplier shall not be liable for any consequential or incidental damages of any kind, nor under any circumstance shall the Supplier be liable for damages beyond the price of the product purchased by the Customer, whether in contract, in tort or under any warranty or other use, and whether or not said loss, cost, penalty or damage was reasonably foreseeable.

7.8. The Supplier is not responsible for loss or damage to products owned by the Customer and located on the Supplier's premises caused by fire or other casualties beyond Supplier's control.

8. TITLE AND RISK

8.1. The risk in the Goods shall pass to the Customer on completion of delivery/collection.

8.2. Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or electronically) for the Goods.

8.3. Until title to the Goods has passed to the Customer, the Customer shall:

8.3.1. store the Goods separately from all other Goods held by the Customer so that they remain readily identifiable as the Supplier's property;

8.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

8.3.3. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

8.3.4. notify the Supplier immediately if it becomes subject to any of the events listed in clause 12.1.2 to 12.1.4; and

8.3.5. give the Supplier such information as the Supplier may reasonably require from time to time relating to:

8.3.5.1. the Goods; and

8.3.5.2. the ongoing financial position of the Customer.

9. PRICE AND PAYMENT

9.1. The price of the Goods shall be the price set out in the Quotation.

9.2. The Supplier may, before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

9.2.1. any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

9.2.2. any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or

9.2.3. any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

9.3. The price of the Goods:

9.3.1. excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing lending rate of the bank account nominated in writing by the Supplier plus interest, subject to the receipt of a valid VAT invoice; and

9.3.2. excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

9.4. The Supplier may invoice the Customer for the Goods on before and/or at any time after the completion of delivery.

9.5. The Customer shall pay each invoice submitted by the Supplier prior to delivery and in any event within 30 days prior to collection unless otherwise specified.

9.6. Time is of the essence in relation to the payment in terms of the Contract.

9.7. Customers who hold an account with the Supplier which runs in arrears, shall pay interest at the prime interest rate on the overdue sum from the due date until payment of the overdue sum.

9.8. All amounts due under the Contract shall be paid in full which includes set-off, but excludes counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10. RETURNS, EXCHANGES, REFUNDS AND CREDIT NOTES

- 10.1. If the Warranty is not met, the Goods may be returned, exchanged, or a refund or credit note may be issued subject to the terms below:
- 10.1.1. The Customer must ensure that the original tax invoice or other proof of purchase is submitted when returning Goods.
 - 10.1.1.1. To receive in-warranty service, the Supplier must receive the product within the warranty period, accompanied by proof of purchase.
 - 10.1.2. Upon the discovery of a possible defect, the Customer must inform the Supplier immediately, or in any event, no later than 7 days that the Goods are defective.
 - 10.1.3. The Supplier will then endeavour to investigate the defective Goods, by sending an Engineer or relative specialist for the nature of the goods, to perform a technical assessment at the premises where the defective Goods are situated.
 - 10.1.4. The Engineer/Specialist will assess the Goods at the premises where the Goods are situated, if the defect is not remedied upon the initial inspection, the Goods shall be transported to the Suppliers warehouse for further technical assessments.
 - 10.1.5. If upon further investigation, if it is discovered that the Goods are defective due to a manufacturing defect, the Goods, along with all their parts, may be returned to the Supplier.
 - 10.1.6. The Customer shall be responsible for the costs of the Engineer's/Specialist call out. In the event it is discovered that the defect is a result of the following:
 - 10.1.6.1. The Goods have been damaged by normal wear and tear;
 - 10.1.6.2. The Goods have been damaged by negligence, user abuse, or incorrect use;
 - 10.1.6.3. The Goods have been damaged from incorrect handling;
 - 10.1.6.4. The Goods have been modified or altered;
 - 10.1.6.5. The Goods have not been returned with all accessories and parts which were sold with the product; and
 - 10.1.6.6. The Customer already registered the warranty
 - 10.1.7. In the event the Goods are eligible for return, the Customer may then opt to return, exchange, get a full refund or credit note for the cost of the defective Goods only.

- 10.1.7.1. There shall be a 10% handling fee charged on all Goods which are subject to a full cash refund;
 - 10.1.7.2. Should the Customer elect to credit the refund to their account, the 10% handling fee shall be waived, subject to the Suppliers discretion;
 - 10.1.7.3. A 25% handling fee shall be charged on all returned on all Special Orders which have been manufactured or outsourced according to Specifications.
 - 10.1.8. The Customer must pay in advance, all delivery costs and shipping charges to return the product. If the Supplier discovers that any product returned is not covered by the warranty, the Supplier reserves the right to charge the Customer for expenses incurred by the Supplier in examining or processing such product.
- 10.2. Other returns
- 10.2.1. The Supplier will accept returns:
 - 10.2.1.1. Where the Goods in question are not defective or where the Customer does not have a statutory right to return Goods, the Supplier may, in its sole and absolute discretion, elect to accept returns and replace the Goods in question or refund the Customer. If the Supplier elects to do so, this is done in good faith. It is not an admission of liability, nor should it be taken as an acknowledgment that the Supplier will accept similar returns on the same basis in the future;
 - 10.2.1.2. Where the Customer was not given a reasonable opportunity to examine or inspect Goods prior to delivery and rejects the Goods on the basis that they are not of the type or quality reasonably contemplated or do not conform with the agreed specifications in the case of custom-made or special-order Goods;
 - 10.2.1.3. where Goods that the Customer ordered have been mixed with Goods that the Customer did not order (in this case all of the Goods or only those that differ from the order may be returned);
 - 10.2.1.4. where the Goods ordered are not suitable for their intended specified purpose (provided that the specified purpose was communicated and agreed to by the Supplier).

11. LIMITATION OF LIABILITY

- 11.1. The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding R 5 000 000.00 per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 11.2. The restrictions on liability in this clause 11 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 11.3. Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 11.3.1. death or personal injury caused by negligence;
 - 11.3.2. fraud or fraudulent misrepresentation;
 - 11.3.3. defective products under the Consumer Protection Act 68 of 2008.
- 11.4. Subject to clause 11.3, the Supplier's total liability to the Customer shall not exceed the cost of the Goods supplied.
- 11.5. Subject to clause 11.3, the following types of loss are wholly excluded:
- 11.5.1. loss of profits;
 - 11.5.2. loss of sales or business;
 - 11.5.3. loss of agreements or contracts;
 - 11.5.4. loss of anticipated savings;
 - 11.5.5. loss of use or corruption of software, data or information;
 - 11.5.6. loss of or damage to goodwill; and
 - 11.5.7. any type of indirect or consequential loss.

This clause 11 shall survive termination of the Contract.

12. TERMINATION

- 12.1. Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:

- 12.1.1. the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
 - 12.1.2. the Customer takes any step or action in connection with its provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
 - 12.1.3. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 12.1.4. the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 12.2. Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 12.3. Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 12.4. On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 12.5. Termination of the Contract, however arising, shall not affect any of the parties rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 12.6. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after the termination of the Contract shall remain in full force and effect.

13. **FORCE MAJEURE**

- 13.1. Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly. If the period of delay or

non-performance continues for 7 Business Days, the party not affected may terminate the Contract by giving 7 Business Days written notice to the affected party.

14. DISPUTE RESOLUTION

- 14.1. The parties undertake to use their best endeavours to amicably settle any dispute which may arise between them in connection with these terms and conditions.
- 14.2. In the event a dispute arises, the aggrieved party shall notify the other party in writing within a reasonable time of the dispute arising, in any event, no later than 7 days.
- 14.3. Within 10 Business Days following such notification, the parties shall seek an amicable resolution to such dispute by referring such dispute to designated representatives of each of the parties for the negotiation and resolution of the dispute. The representatives shall be authorised to resolve the dispute
- 14.4. In the event the dispute cannot be resolved by the representatives, the dispute shall be subject to arbitration proceedings.
- 14.5. In the event the dispute is in relation to the Supplier demanding payment from the Customer, the dispute shall be subject to the relevant court proceedings

15. GENERAL

16. ASSIGNMENT AND OTHER DEALINGS

- 16.1. Neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement without the other party's prior written consent.

17. ENTIRE AGREEMENT

- 17.1. This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 17.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

18. CONFIDENTIALITY

- 18.1. Each party undertakes that it shall not at any time during the Contract and for a period of 2 years after termination of the Contract, disclose to any person any confidential information concerning

the business, assets, affairs, Customers, clients or Suppliers of the other party, except as permitted by clause 18.2.

18.2. Each party may disclose the other party's confidential information:

18.2.1. to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 18.3; and

18.2.2. as may be required by the applicable Legislation.

18.3. Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

19. **VARIATION**

19.1. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

20. **WAIVER**

20.1. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

20.2. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

21. **SEVERANCE**

21.1. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 21.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

22. **NOTICES**

22.1. Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:

- 22.1.1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - 22.1.2. sent by email to the address last notified by a party.
- 22.2. Any notice or communication shall be deemed to have been received:
- 22.2.1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
 - 22.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
 - 22.2.3. if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- 22.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

23. **GOVERNING LAW**

- 23.1. This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of South Africa.

24. **JURISDICTION**

- 24.1. Each party irrevocably agrees that the High Court of South Africa, Gauteng Local Division, Johannesburg shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.