

## GENERAL TERMS AND CONDITIONS OF PURCHASE

### 1. SCOPE OF APPLICATION

- 1.1 To the extent that the Parties have concluded an agreement in addition to these General Terms and Conditions of Purchase ("**GPC**"), in respect of the subject matter hereof, the terms of such agreement will prevail over these GPC's.
  - 1.2 Subject to **clause 1.1** above these GPC's shall apply to the purchase by the relevant ERG Group entity ("**Buyer**") of any equipment, materials, products, components, software or other items ("**Goods**") offered, sold or provided by any third party ("**Seller**") (collectively referred to as the "**Parties**" or "**Party**" as the context may require) in terms of any purchase order (or amendment thereto) provided by the Buyer to the Seller ("**Order**").
  - 1.3 No terms and conditions other than these GPC, the provisions of the Order and any and all documents incorporated therein by reference shall be binding upon the Buyer unless expressly accepted in writing by the Buyer. Neither acceptance of any Goods by the Buyer (including any signature by any representative of the Buyer on any quotation or delivery confirmation) nor payment therefor shall constitute an acceptance by the Buyer of any such terms and conditions.
  - 1.4 No Order, variation or amendment thereof, addition or a complement thereto shall be binding on the Buyer other than an Order or change Order issued by the Buyer and duly signed by an authorised representative of the Buyer.
  - 1.5 If individual terms of these GPC cannot be applied for any reason whatsoever in respect of a particular Order, such terms shall be severed from the remaining terms of these GPC, which remaining terms and conditions will remain unaffected and binding on the Buyer and Seller.
  - 1.6 Special provisions of an Order and specific terms agreed in writing by the Buyer and the Seller, which may be in contradiction with these GPC, shall prevail over the corresponding GPC provisions.
- ### 2. PRICES - QUOTATION - CONDITIONS OF PAYMENT - INVOICING
- 2.1 Any offer/s, proposals and/or price quotation/s delivered by the Seller to the Buyer shall be subject to the terms and conditions set out on the initial quotation received by the Seller.
  - 2.2 All Order prices are fixed, firm and not subject to revision or escalation for any reason whatsoever, including but not limited to as a result of variations to exchange rates or metal prices unless expressly stated otherwise in the Order. Prices shall be inclusive of all applicable taxes, contributions, insurances and all other costs incurred by the Seller in performing the Order, including, the costs of: (i) Delivering the Goods at the location designated by the Buyer, (ii) all packaging, protecting, lashing and anchoring materials required for packing and transporting the Goods, (iii) all necessary documents, accessories, devices and/or appropriate tools necessary for the complete and functional use and maintenance of the Goods, and (iv) all necessary licence fees or other payments for the use by the Buyer of any intellectual property rights in relation to the Goods, including those of third parties.
  - 2.3 After each Delivery of Goods pursuant to an Order, the Seller shall send duplicate

invoices in accordance with all applicable laws and regulations and the Buyer's requirements, which invoices shall reflect the Buyer's Order number, date, the Seller's references, the relevant stage of contractual performance at which a progress payment may be invoiced in accordance with the Order, and shall specify the amount of any progress payment or balance requested. No invoice shall relate to more than one Order.

- 2.4 The Buyer shall pay the amount of duly issued and undisputed invoices within 60 (sixty) days, after date of receipt of the statement. For the avoidance of doubt, payment shall only be made in respect of the Goods that have in fact been delivered to the Buyer prior to the date of receipt of the statement. Notwithstanding anything else contained in these GPC, the Buyer is not required to pay the amount of any invoice if the Seller fails to meet the requirements of the Order. In this case, the Seller shall have no claim for interest (even on a portion of the price), penalties or any other compensation whatsoever in relation to such non-payment.

- 2.5 The absence of an express rejection of an invoice shall not constitute acceptance thereof or of the Goods by the Buyer and payment of an invoice shall not constitute acceptance by the Buyer of any Goods ordered or Delivered. Any acceptance of Goods by the Buyer shall be without prejudice to the Buyer's rights in terms of the Warranties or any of its other rights or remedies in terms of these GPC or in law.

### 3. QUALITY, SAFETY, SUSTAINABLE DEVELOPMENT AND HUMAN RIGHTS

- 3.1 Before making any offer or quotation, the Seller will (i) obtain all information relating to the Buyer's needs and foreseeable use of the Goods, in order to provide the Buyer with all necessary advice and information on Goods to be proposed by the Seller, and (ii) inform itself fully with regard to any quality or other standards, customs, policies, rules or laws applicable to the Goods and the Delivery thereof. For the proper performance of its obligations relating to Orders, the Seller shall (i) define and apply quality assurance programs and (ii) conduct all necessary quality investigations and testing in relation to the Goods. The Seller shall keep the Buyer fully informed of the results of such measures.

- 3.2 The Seller shall provide the Buyer with Goods and/or any necessary equipment referred to in **clause 4.1** hereof ("**Necessary Equipment**"), which fully satisfy the safety, health, social dialogue and environmental laws, rules and policies applicable to the Goods and each Delivery, including but not limited to the Buyer's health, safety and security policies and environmental laws and regulations.

- 3.3 Without derogating from the obligations of the Buyer in terms of **clause 3.2** above, the Seller shall inform the Buyer of any pertinent information in the areas of safety, health, security or the environment that relates to the Goods and/or their Delivery, processing, handling or use. To this end, the Seller shall request information from the Buyer with regard to all special features (configuration, activities, transportation, traffic and circulation) of the specified place of Delivery. Such information provided to the Seller shall in no way limit the Seller's liability in terms of these GPC, or otherwise. Should the Seller breach any of its obligations in relation to safety, health or environmental compliance, the Buyer will

be entitled to cancel any Order, and the Seller shall bear all expenses and liability arising there from. For the avoidance of doubt, the Seller shall have no claim of whatsoever nature against the Buyer as a result of such cancellation.

- 3.4 The Seller shall procure that all its employees, representatives and agents shall, at all times ensure that all Goods and/or any Necessary Equipment to be transported to the Buyer as contemplated in **clause 4.1** or otherwise in accordance with any Order or these GPC shall be transported in a such a manner so as to avoid causing any Pollution.

- 3.5 The Seller indemnifies the Buyer and holds it harmless against all loss, liability, damage or expense which the Buyer may suffer as a result of, or which may be attributable to any claims or liabilities as a result of a breach by the Seller of the provisions of this **clause 3.4**.

- 3.6 For purposes of **clause 3.4**:

- 3.6.1 "**Pollution**" includes contamination, release or spilling of hazardous or toxic materials and/or hazardous or toxic substances or emissions. To this end, the Seller shall, at its own cost, be responsible for any Environmental Liability that may arise as result of any Pollution caused on any site and/or its surrounding areas while the Seller is transporting the Goods and/or any Necessary Equipment to the Buyer in accordance with any Order or these GPC; and

- 3.6.2 "**Environmental Liability**" means any liability or obligation (including any liability for damages, costs of environmental remediation or reclamation, fines, penalties, orders or indemnities), directly or indirectly resulting from or based upon all applicable laws relating (in whole or in part) to the protection and/or preservation of the environment, human or animal health safety and the use, handling, transport, treatment, storage, disposal, presence, release or threatened release of or exposure to any hazardous materials and/or toxic substances.

- 3.7 The Seller at all times undertakes to ensure compliance with the International Labour Organisation's (ILO) labour and human rights standards, the International Finance Corporation's (IFC) Performance Standards on Environmental and Social Sustainability, the IFC sector guidelines on mining, the World Bank Group's Environmental, Health and Safety Guidelines, and its guidelines for mining, the United Nations Guiding Principles on Business and Human Rights, the OECD Guidelines for Multi-national Enterprises, OECD's Supply Chain Due Diligence Guidance Annex II and the Voluntary Principles on Security and Human Rights. The Seller shall take all reasonable steps to ensure that the Seller's employees and others under its direction and control likewise observe and comply with the foregoing.

- 3.8 Further to **clause 3.7** above, the Seller acknowledges that it is aware that the ERG Human Rights Policy is available at the following link: (<https://www.ergafrica.com/working-at-erg/>). The Seller warrants that it has read and understood the Human Rights Policy.

- 3.9 The Seller agrees that if it breaches any of the provisions of this clause, the Buyer will have the right to immediately terminate the Order on written notice to the Seller. The

- provisions of **clause 10** shall apply, in so far as it is applicable, in the event of any such termination.
- 4. DELIVERY TRANSFER OF TITLE PACKAGING - TRANSPORTATION**
- 4.1** Unless otherwise agreed in writing, all Goods shall be sold FCA, Buyer's warehouse/office or such other location (as specified in the relevant Order), in accordance with Incoterms 2010 or its successor, as amended by these GPC, and shall be unloaded at the final destination indicated by the Buyer to the Seller ("**Delivery**", and all variations thereof shall have corresponding meanings). If no specific place of Delivery is specified, Delivery can be made only at the place where the Buyer usually takes Delivery of such Goods. Before Delivery:
- 4.1.1** The Seller shall inspect the Goods for compliance with the Order specifications, quality, weight, and physical dimensions, as well as for any damage to the Goods or their packaging.
- 4.1.2** Without prejudice to the terms of **clause 4.1.1**, the Buyer reserves the right to verify the progress and proper performance of any obligation relating to an Order by the Seller and to conduct any quality investigations and testing it deems advisable in respect of the Goods, or otherwise. The Seller shall provide the Buyer and its representatives or agents free access to the Seller's workshop/s at all reasonable times during the Seller's normal working hours. Any verification or inspection by the Buyer pursuant to this clause shall in no way relieve the Seller from its obligations in terms of the Order or these GPC, or limit such obligations in any way.
- 4.1.3** The Goods shall be packaged in full accordance with the "**Packing and Marking Specification**" contemplated in or accompanying the relevant Order so that they will not be damaged during transportation or handling. All items shall be properly marked according to (i) applicable rules and laws, especially in the case of hazardous or dangerous goods, and (ii) the Buyer's instructions.
- 4.1.4** If the Seller requires the use of the Buyer's lifting equipment or employees to assist with unloading at the place of Delivery, the Buyer will require at least 24 hours' notice and their use by the Seller shall be at the Seller's risk.
- 4.2 Transportation and Supply:**
- 4.2.1** The Seller undertakes to take all measures necessary to perform proper transportation or supply of the Goods by all appropriate means and using all appropriate equipment and accessories, and with the assistance of competent and solvent agents or subcontractors where necessary. The Seller shall organize transportation or supply of the Goods to the place of Delivery in a manner designed to avoid damage to the Goods, and so as to avoid difficulties in unloading the Goods at the place of Delivery.
- 4.2.2** Delivery times set out in the Order shall be of the essence. If the Order is not performed within the specified time, the Buyer shall be entitled to cancel the Order. The Buyer reserves the right to refuse partial or early Deliveries, and in such cases may return the Goods or, in its discretion, store them, at the Seller's cost and risk.
- 4.2.3** The Seller shall immediately notify the Buyer in writing of any delays in Delivering the Goods and simultaneously provide all information concerning the reason for and/or extent of the delay, as well as details relating to the efforts the Seller is making or intends to make in order to avoid further delay and expedite Delivery. In the event of a repeated delay in Delivery, the Buyer shall be entitled, without prejudice to any other remedies or rights it may have in terms of these GPC or in law, to liquidated damages in the amount of 1% of the Order price for each full week of delay, not to exceed a maximum of 10% of the Order price. The Buyer shall be entitled to set off the amount of such liquidated damages against the amount owing by the Buyer to the Seller in respect of any invoice relating to such Order and/or any previous Orders not yet paid in full by the Buyer. The Buyer shall communicate its decision to claim liquidated damages to the Seller by no later than the date of payment of the first invoice following the delay. The Seller agrees that the liquidated damages constitute a reasonable pre-estimate of the minimum damages which the Buyer may suffer as a result of the delay by the Seller. Such liquidated damages shall be without prejudice to the Buyer's rights to claim damages related to other aspects of Seller's performance or in relation to the Goods.
- 4.3** Title to the Goods shall transfer unconditionally to the Buyer upon receipt of payment thereof (whether in terms of **clause 4.1** or otherwise). Risk will, however, remain with the Seller until formal acceptance of the Goods in accordance with **clause 2.5**, without prejudice to the Buyer's rights in terms of the warranties provided by the Seller in terms of these GPC or otherwise.
- 5. TECHNICAL DOCUMENTATION: OPERATING AND MAINTENANCE MANUALS**
- 5.1** The Seller shall deliver to the Buyer at such times as may be agreed with the Seller, but at the latest, upon Delivery of the Goods, all technical documentation relating to the Goods, such as operating and maintenance manuals, training manuals, drawings, technical data sheets, product safety sheets, inspection certificates, certificates of conformity and any other supporting documentation ("**Manuals**"). If not otherwise specified in the Order, the Delivery of software or of Goods containing software, will include, for maintenance and/or adaptability reasons, all source and object codes relating to such software and/or Goods. Such technical documentation or any special tools in relation to Orders shall be the property of the Buyer and shall be considered an integral part of the Goods within the meaning of these GPC.
- 5.2** In the event that the Manuals are not delivered by the Seller as aforesaid, the Buyer shall be entitled to withhold payment of the Order, until the Buyer is in receipt of same.
- 6. WARRANTY – LIABILITY**
- 6.1** The Seller represents and warrants that: (i) the Goods shall comply with all specifications and requirements contained in the Order or agreed in writing between the Buyer and Seller; (ii) the Goods shall be state of the art and new; (iii) the Goods shall be fit for the particular purposes that such specific Goods will usually be expected to be used for; (iv) the Goods shall be free from defects in design, materials and workmanship; (v) the Goods shall satisfactorily comply with the performance requirements expected by the Buyer; and (vi) the Goods shall meet all applicable statutory requirements and standards, especially those relating to the environment, safety and health (individually "**Warranty**" and collectively the "**Warranties**"). Any representations or warranties relating to the Goods and included in the Seller's catalogues, brochures, proposals, sales literature and quality systems or otherwise made by the Seller to the Buyer (whether verbally or in writing) shall be binding on Seller. The Seller warrants the adequacy of the technical specifications of the Order to meet the specific needs of the Buyer, and the Seller acknowledges having examined those specifications thoroughly.
- 6.2** The Seller warrants that all Goods sold and delivered to the Buyer (whether in terms of **clause 4.1** or otherwise) are free from any lien or encumbrance of any nature whatsoever and upon delivery (whether in terms of **clause 4.1** or otherwise), of the Goods to the Buyer, free and unencumbered ownership of the Goods shall pass to the Buyer upon receipt of payment for the Goods and thereafter the Buyer will be the sole owner of, and have valid and exclusive title to, the Goods. The Seller warrants further that no third party shall have any right to acquire the Goods.
- 6.3** The Seller warrants that the Goods will comply with the Manufacturers' Warranty from date of delivery thereof.
- 6.4** If any Goods at any time are found not to comply with the Manufacturers' Warranty, the Buyer shall be entitled, at its sole discretion, by written notice to the Seller to: (a) rescind the Order according to the provisions of **clause 10** (Termination); (b) accept such Goods with a reduction in price equal to a reasonable estimate of the reduced utility of the Goods to the Buyer; or (c) to reject such non-complying Goods and, in its sole discretion, require Delivery of replacement Goods or the repair of the Goods, at the Seller's expense.
- 6.5** All Goods rejected due to a fault and inherent defect caused by the Seller must be collected by the Seller or will be returned to the Seller, at the Seller's risk and expense, and will be stored at the Seller's risk in the Buyer's warehouses until such time as they are collected by the Seller or its agent or sub-contractor. Should the Seller fail to collect the Goods within 15 (fifteen) days following notification of rejection, the Seller shall be liable to pay warehouse storage charges for the Goods from that date until the date on which the Goods are collected. Notwithstanding the above, should the Seller fail to collect the Goods within 30 (thirty) days following notification of rejection, the Buyer shall be entitled to have the rejected Goods delivered to the Seller's address appearing on the Order at the Seller's risk and expense.
- 6.6** If the Seller fails to Deliver suitable replacements or make repairs promptly to the Goods, as the case may be, the Buyer shall be entitled to repair the Goods itself, or to appoint any contractor to do so, or to replace the Goods through any alternative supplier and recover all costs relating to such repair or replacement from the Seller.

- 6.7 Any Goods repaired or replaced shall be subject to the provisions of this **clause 6**, and the warranty period hereunder shall start anew following such Delivery of replacement Goods or completion of repair of the Goods, to the satisfaction of the Buyer.
- 6.8 The Seller shall be liable on the scale set out in **clause 4.2.3** for any direct, damages, incurred by the Buyer as a result of any delays in Delivery, any defects in the Goods, any breach of the Warranties or any other non-compliance by the Seller with the provisions of the Order or these GPC. The Seller's liability will not be affected by the Buyer's choice of remedy or the period taken by the Buyer to elect an appropriate remedy.
- 6.9 No inspection, approval or acceptance of Delivery of Goods shall relieve the Seller from responsibility for defects or other failures to meet the requirements of the Order or comply with these GPC.
- 6.10 The Seller shall supply the Goods and all spare parts, accessories or components thereof for repair, maintenance or extensions of the Goods ("**Parts**"), through the whole period of the Order and thereafter for a period of 2 (two) years after the relevant Goods have been put into service and warrants that the production and/or distribution of the Goods and the Parts will not be discontinued. If the Seller intends to stop production and/or distribution of all or part of the Goods or the Parts after the Delivery date of the Order, the Seller shall inform the Buyer of this fact at least 1 (one) year in advance, so that the Buyer still has an opportunity to place additional orders and obtain sufficient Parts.
- 6.11 Without prejudice to any of the rights of the Buyer arising from any of the provisions of these GPC, the Seller indemnifies the Buyer and holds it harmless against all loss, liability, damage or expense which the Buyer may suffer as a result of, or which may be attributable to any claims or liabilities as a result of a breach by the Seller of any of the Warranties or other obligations set out these GPC and/or arising from any negligent act or omission of the Seller or any of its employees or agents in relation to the performance of its obligations in terms of any Order or these GPC.
- 7. INTELLECTUAL PROPERTY RIGHTS**
- 7.1 The Seller warrants that neither the Goods nor the sale thereof covered by the Order will infringe upon or violate any trademarks, patents, copyright, inventions, designs, drawings, protectable creations and the like or other legal rights of third parties, whether or not capable of registration ("**Intellectual Property Rights**"). The Seller indemnifies the Buyer against all actions, claims, liability, loss, costs, attorneys' fees, expenses and damages due to or arising from any infringement of the Intellectual Property Rights of any third party. The Seller shall, at its own expense, if so requested by the Buyer, defend the Buyer against all such claims, proceedings and suits and shall fully co-operate with and follow all lawful instructions of the Buyer in respect thereof.
- 7.2 In the event that the Goods become the subject of any actions or claims of infringement of Intellectual Property Rights, the Seller shall either, in the shortest possible period, obtain the right for the Buyer to use the Goods, or modify or replace the Goods so that the infringement ends. Modification or replacement of the Goods shall never result in a decrease or reduction of the functionality or fitness of the Goods for the particular purpose for which the Goods were ordered by the Buyer. If the Seller fails to carry out its obligations as set out herein, the Buyer, with 5 (five) business days advance notice to the Seller, shall be entitled to take such actions as it deems necessary and to recover the total cost of the Goods from the Seller.
- 7.3 Patentable inventions and protectable creations as well as their results, insofar as they arise from the Order, shall belong to the Buyer unless the Seller establishes that they arise from the Seller's sole inventive capacity, and were developed independently of the Order.
- 7.4 Where the Seller has (or will acquire) any Intellectual Property Rights in respect of the Goods, or any software relating thereto, it shall grant to the Buyer a perpetual, non-exclusive licence to use the Goods for the purpose for which they were ordered by the Buyer.
- 8. NON-DISCLOSURE - PROPRIETARY RIGHTS**
- 8.1 All written or verbal information supplied by the Buyer to the Seller regarding the Buyer's know how, specifications, procedures, needs, business strategies and all technical information, documents and data ("**Confidential Information**") shall be treated as confidential and shall not be disclosed by the Seller to third parties without the Buyer's prior written consent. Such information shall be used exclusively by the Seller for the performance of any obligation relating to an Order, including, without limitation, for the purpose of preparing offers or quotations.
- 8.2 The rights of ownership and copyright in any samples, designs, drawings and other technical documents delivered to the Seller by the Buyer shall belong to Buyer and such items shall not be duplicated or disclosed to third parties at any time without the Buyer's prior written consent.
- 8.3 The Seller agrees that it shall, immediately on receipt of a written notice from the Buyer requesting the Seller to do so, return or destroy all of the original Confidential Information and any copies and reproductions (both written and electronic) in its possession and in the possession of any third Party to whom the Seller has disclosed such Confidential Information as contemplated in **clause 8.1**.
- 9. FORCE MAJEURE**
- 9.1 A Party affected by an event beyond its reasonable control, which prevents it from complying with any of its obligations under an Order or these GPC ("**Affected Party**"), and which could not reasonably have been foreseen or avoided, including (without limitation) terrorism, insurrection, epidemic, flood, earthquake or like natural disaster ("**Force Majeure Event**"), shall immediately notify the other Party in writing of such event and furnish the other Party with all relevant information and proof relating thereto, and particularly the period of time the Force Majeure Event may delay the timely performance of any obligation in respect of an Order. In the case of the Seller, strikes affecting the Seller only, lack of public transportation, a shortage of labour, equipment, materials and supplies required to comply with the Order as well as the breakdown, failure or existence of defects in the Seller's equipment or machinery shall not, however, constitute a Force Majeure Event. An event of any type (including those defined as a Force Majeure Event hereunder) which affects the Seller's subcontractors or suppliers shall not be considered a Force Majeure Event for the purposes of this **clause 9**. The Affected Party shall immediately notify the other Party of the cessation of a Force Majeure Event.
- 9.2 In the event of a Force Majeure Event affecting the Seller, the Buyer shall be entitled, in its sole discretion:
- to agree with the Seller on an extension of time for Delivery of the Goods; or
  - to terminate the Order or any part thereof, at any time, without further obligation or liability, in which case the Buyer shall be entitled to reimbursement by the Seller of any sums already paid by the Buyer in respect of those Goods within 7 (seven) days of such termination.
- 9.3 The price of any Goods Delivered to the Buyer prior to the Force Majeure Event occurring shall only be due and payable by the Buyer to the Seller if those Goods may be fully used by the Buyer notwithstanding the subsequent failure to Deliver the rest of the Goods relating to that Order as a result of the Force Majeure Event. If the Buyer elects to terminate the remaining obligations of the Buyer under that Order, any excess amount paid as an advance by the Buyer shall be refunded by the Seller to the Buyer within 7 (seven) days of such termination.
- 9.4 Equipment breakdowns, shortage of materials, or any other cause beyond the reasonable control of the Buyer preventing the use of the Goods or reducing the needs of the Buyer with respect to the Goods shall entitle the Buyer, at its option, to suspend or postpone Delivery of the ordered Goods or to terminate the Order, in whole or in part, without further obligation or liability.
- 10. TERMINATION**
- 10.1 The Buyer shall always be entitled, even though the Seller is not in breach of any obligation, to suspend the Order for a period determined by the Buyer, or to terminate the same, in whole or in part, by giving 10 (ten) days' prior written notice to the Seller.
- 10.2 In the event of a suspension by the Buyer in terms of **clause 10.1**, the Seller shall protect, store and secure the Goods, or part thereof against any deterioration, loss or damage for the duration of the period of suspension. If the Seller suffers delay and/or incurs costs as a direct result of the suspension, the Seller shall be entitled to an extension of time for the delay corresponding to the period of suspension, and payment of costs necessarily and reasonably incurred by it during the period of suspension, provided that:
- the Seller must take all reasonable measures to mitigate such costs immediately on receipt of the notice of suspension in terms of **clause 10.1** above;
  - the Seller will not be entitled to payment of any costs incurred as a result of its negligence, wilful default or delay in protecting, storing or securing the Goods or any breach by the Seller of any of its obligations, representations or warranties in the Order or these GPC; and
  - where the suspension arises as a result of any action or omission by the Seller, the Seller will not be entitled to claim any costs incurred in relation thereto.
- 10.3 If the period for which the Buyer suspends any Order in terms of **clause 10.1** exceeds

- 90 (ninety) days, the Seller may notify the Buyer that unless the suspension is lifted within a further 30 (thirty) days from the date of the notice, the Seller shall be entitled to terminate the Order, on notice to the Buyer.
- 10.4 In no event shall the Seller be entitled to indemnification by the Buyer for any incidental or consequential damages, including loss of profits, arising from such a suspension or termination.
- 10.5 If the Seller breaches any term or condition of an Order, the Buyer shall be entitled, by written notice to the Seller and without prejudice to any other remedy that may be available to it in terms of these GPC, in law or otherwise, to terminate the Order, in whole or in part, without any further liability or obligation, and to recover from the Seller all moneys paid by the Buyer in respect thereof, any additional costs incurred in procuring replacement Goods from an alternative supplier and indemnification for losses or damages incurred by the Buyer as the result of the Seller's breach or failure to comply. If, in the sole discretion of the Buyer, the Seller has failed to make sufficient progress in producing or assembling the Goods so as to endanger the timely Delivery of the Goods in terms of the Order, the Buyer may terminate the Order, in whole or in part, without prejudice to any other remedy that may be available to it in terms of these GPC, in law or otherwise, and the foregoing provisions will apply.
- 10.6 Without detracting from the Buyer's discretion in **clause 10.5**, the Buyer shall be entitled to terminate the Order with immediate effect without any further obligation or liability if the Buyer has good reason to believe that the Seller will be unable to normally execute its obligations in full as and when they fall due and/or in the event that the Seller is liquidated, wound-up, deregistered, sequestered or otherwise commits an act of insolvency as contemplated in Zimbabwean Law. The Seller shall immediately notify the Buyer of any insolvency proceeding (provisional or final) that may be threatened or pending against the Seller.
11. **INSURANCE**
- The Seller shall take out and maintain in force all insurance policies necessary to cover its liability under these GPC (whether actual or contingent). The Seller agrees to provide the Buyer, upon request, with evidence of insurance pursuant to any Buyer requirements regarding insurance coverage, and to comply with such requirements, including third party liability as well liability towards the Buyer.
12. **ANTI-BRIBERY AND CORRUPTION, CODE OF CONDUCT AND SUPPLIER CODE OF CONDUCT**
- 12.1 The Seller hereby warrants that, for the duration of these GPC, it will (and will procure that all its employees, directors, officers, agents and subcontractors) comply with all laws, regulations or policies relating to economic sanctions, trade sanctions and/or export controls and the prevention and combating of bribery, corruption and money laundering to which the Buyer and/or its Affiliates is subject ("**Anti-Corruption Regulations and Sanctions Regulations**"). In particular, the Seller undertakes not to, and will procure that all its employees, directors, officers, agents or sub-contractors, do not:
- 12.1.1 pay, promise to pay or offer to pay, or authorise the payment of any commission, success fee, bribe, pay off or kickback related to these GPC or any Orders that violates any Anti-Corruption Regulations and Sanctions Regulations or enter into any agreement pursuant to which any such commission, success fee, bribe, pay off or kickback may, or shall at any time, be paid; or
- 12.1.2 offer, promise or give any undue pecuniary or other advantage, whether directly or indirectly to any public official, with the intent of influencing the actions or decisions of such official in performance of his/her official duties, with the purpose of obtaining or retaining business or other improper benefit or advantage.
- 12.2 Nothing in these GPC's shall render the Buyer liable to reimburse the Seller for any such consideration given or promised.
- 12.3 The Seller shall immediately notify the Buyer, if any of the Buyer's employees, Affiliates or suppliers solicits any payment or any other item of value, whether for benefit of the employee or for any other person outside of the consideration payable under these GPC's.
- 12.4 In order to comply with the Seller's obligation in **clause 12.3** above, it may use the following reporting channels established by the Buyer for purposes of reporting suspected violations of Anti-Corruption Regulations and Sanctions Regulations and other Applicable Laws:
- 12.4.1 Web Portal: <http://erg.ethicspoint.com>.
- 12.4.2 Email: [compliance@erg.net](mailto:compliance@erg.net)
- 12.4.3 Telephone: South Africa (+27) 0800 444 461
- 12.5 The Seller acknowledges that it is aware that the ERG Anti-Bribery and Corruption Policy and ERG Code of Conduct is available at the following link: (<https://www.ergafrica.com/working-at-erg/>). The Seller warrants that it has read and understood the said policy and code.
- 12.6 The Seller hereby warrants that, for the duration of these GPCs, it will (and will procure that all its employees, directors, officers, agents and subcontractors) comply with the ERG Supplier Code of Conduct to which the Buyer and/or its Affiliates is subject. The Seller acknowledges that it is aware that the ERG Supplier Code of Conduct is available at the following link: (<https://www.ergafrica.com/procurement/>). The Seller warrants that it has read and understood the content of the ERG Supplier Code of Conduct.
- 12.7 The Seller further warrants that the Seller has not used, and will not at any time hereafter use, any assets, including but not limited to any funds received or which the Buyer or they may in the future receive from the Buyer, to directly or indirectly;
- 12.7.1 pay, lend, contribute, or otherwise benefit any person that is, at the time of such payment, loan, contribution or making of other benefit; (a) the subject of Sanctions; or (b) located, organised or resident in a Sanctioned Territory;
- 12.7.2 facilitate any activity of or business or transaction with any person that, is at the time of such funding or facilitation: (a) the subject of Sanctions, or (b) is located, organised, or resident in a Sanctioned Territory; or
- 12.7.3 result in a violation of Sanctions by any person.
- 12.8 The Seller warrants that it has not received, and will not in the future, receive, any funds whether directly or indirectly from a Sanctioned Person or any person in a Sanctioned Territory.
- 12.9 The Seller warrants that it has not engaged in and will not engage in, any direct or indirect dealings or transactions in violation of applicable Sanctions, including but not limited to, any attempt to obscure or conceal the actual parties to or true nature of a transaction, or to evade sanctions.
- 12.10 The Seller further warrants and represents that, during the course of its business relationship with the Buyer it or any entity that is either directly or indirectly owned (including but not limited to, by owning directly or indirectly 50% or more of the shares or the equivalent in said entity) or controlled (including but not limited to by (a) holding a majority of the voting rights in it, or (b) being a member of it and having the right to appoint or remove a majority of its board of directors, or (c) being a member of it and controlling alone, pursuant to an agreement with other members or a majority of the voting rights) by it, has had any dealings and/or connections with Dan Gertler or any entity owned or controlled, directly or indirectly, by Dan Gertler
- 12.11 Any breach by the Seller of the foregoing provisions, shall be a material breach of these GPC and shall entitle the Buyer to cancel the Order immediately on written notice to the Seller.
- 12.12 It is expressly agreed between the Parties that should the Buyer cancel the Order under and in accordance with **clause 12.11**, neither the Seller nor any other affected person, shall be entitled by way of indemnity for any direct or indirect damages or consequential loss or damage, loss of opportunity, loss of revenue, loss of profit or anticipated profit, loss of contracts or loss of goodwill arising from such cancellation.
- 12.13 For purposes of this **clause 12**:
- 12.13.1 "**Affiliate**" means any other entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under the common control with the party in question. For the purpose hereof "**control**" means the beneficial ownership of the majority in number of the issued equity of any entity (or the whole or majority of the entity's assets), and/or the right or ability to directly or otherwise control the entity or the votes attaching to the majority of the entity's issued share capital and "**controlled**" or "**under common control**" shall have a similar meaning;
- 12.13.2 "**Sanctioned Person**" means any person or corporate entities subject to any Sanctions;
- 12.13.3 "**Sanctions**" shall mean any sanctions or designations administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control ("**OFAC**") (including but not limited to inclusion on the List of Specially Designated Nationals and Blocked Persons maintained by OFAC), the United Nations Security Council, the European Union, Her Majesty's Treasury ("**HMT**"), or any other relevant sanctions authority;
- 12.13.4 "**Sanctioned Territory**" means a country or territory that is the subject of comprehensive economic Sanctions including, without limitation, Cuba, Iran, North Korea, Syria and the Crimea.

13. **SUBCONTRACTING**

The Seller shall not be entitled to sub-contract any of its obligations to any person without the prior written consent of the Buyer. If the Seller is so authorized to sub-contract all or part of its obligations to third parties, such sub-contracting shall be at its sole expense and under its sole responsibility. The Seller shall inform all sub-contractors of the provisions of these GPC as well as those of the Order and shall procure that such sub-contractors comply with all of the obligations contained in these GPC and the relevant Order, and shall provide them with all information regarding the Buyer's requirements, especially in respect of applicable health, safety, security and environmental rules and policies. The Buyer reserves the right to reject any of Seller's sub-contractors that do not comply with these GPC or the Buyer's rules and policies. The Seller shall remain fully liable to the Buyer for all acts or omissions of its sub-contractors in terms of the relevant Order and these GPC.

14. **NOTICES AND DOMICILIA**

14.1 For the purposes of the Order and these GPC, including the giving of notices or communications and the serving of legal process, the Parties choose the addresses set out on the Order as their respective *domicilium citandi et executandi*.

14.2 Any notice, instruction, consent, confirmation, approval, agreement or other communication to be given to either of the Parties in terms of these GPC shall be valid and effective only if it is given in writing, provided that any notice given by telefax or email shall be regarded for this purpose as having been given in writing.

14.3 Notwithstanding anything to the contrary in this **clause 14**, a written notice or other communication actually received by a Party (and for which written receipt has been obtained) shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.

14.4 Either Party may, by written notice to the other Party, change its address for the purposes of **clause 14.1** to any other address (other than a post office box number), provided that the change shall only be effective on the 5th business day after the receipt of any such notice.

15. **ARBITRATION**

15.1 Should any dispute or claim arise out of, or relating to, these GPC, including the breach, Termination or invalidity of it ("**Dispute**"), the Parties shall use all reasonable endeavours to resolve the Dispute amicably within a period of 5 (five) business days from the date on which the Dispute arose (or such longer period as may be agreed between the Parties).

15.2 If the Dispute is not resolved amicably within the period contemplated in **clause 15.1**, either Party shall be entitled to refer the Dispute to arbitration on written notice to the other Party. The Parties may agree on the arbitration procedure and on the arbitrator and, failing agreement within 5 (five) business days of the written notice referring the Dispute to arbitration, the arbitration shall be conducted in accordance with the UNCITRAL Arbitration Rules in force at the time of the Dispute. The appointing authority in terms of the UNCITRAL Arbitration Rules shall be the Association of Arbitrators (Southern Africa).

15.3 Unless agreed otherwise in writing by the Parties, the arbitration shall be

administered by the Parties and the number of arbitrators shall be 1. The place of the arbitration shall be Zimbabwe. The governing procedural law of the arbitration shall be the law of Zimbabwe. The arbitrator shall deliver an award together with written reasons within 30 (thirty) days from the date upon which the arbitration ends. The decision of the arbitrator shall be final and binding.

15.4 Nothing in this **clause 15** shall preclude a Party from seeking interim or urgent relief from a court of competent jurisdiction in Zimbabwe.

16. **RIGHT TO AUDIT**

16.1 The Buyer shall be entitled, within 2 (two) calendar days of the giving of notice to the Seller to such effect, to conduct an audit of all relevant books, records, systems, data, processes, procedures and documents ("**Relevant Information**") in order to verify compliance by the Seller with their obligations in terms of these GPC's and/or to assess any entitlement or claimed entitlement by the Consultant under these GPC's.

16.2 The Seller shall co-operate and render all assistance and access to the Relevant Information requested by the Buyer relating to such audit. The Buyer shall have the right to take copies of any Relevant Information.

16.3 The Seller shall maintain all data, records and documentation relating to these GPC's and keep full and proper records in connection thereto (whether contained in documents or in electronic format) for the period of these GPC's, and for a period of at least 6 (six) years after termination of these GPC's.

17. **GENERAL PROVISIONS**

17.1 Headings are inserted in these GPC for ease of reference only and do not form part of it for the purposes of interpretation.

17.2 The Order and these GPC shall be governed by and construed exclusively in accordance with the laws of the Zimbabwe.

17.3 No modification, amendment or waiver of any of the provisions of this Agreement shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives. No extension of time or other indulgence which either Party allows the other Party, including the failure by a Party to enforce any provision of this Agreement, shall constitute a waiver by the former of its rights to require the latter to comply with its obligations strictly in accordance with this Agreement.

17.4 Subject to **clauses 1.2 and 6.1**, these GPC together with the Order, and such other document/s agreed to by the Buyer and the Seller in writing constitute the entire agreement between the Buyer and the Seller relating to its subject matter.

17.5 The Seller shall not cede any rights under the Order (including, without limitation, any receivables due from Buyer and rights accruing under **clauses 6 and 7**) or these GPC or delegate any obligations in terms of the Order or these GPC without the prior written consent of the Buyer. The Buyer shall be entitled to cede any rights in terms of the relevant Order or these GPC, including, without limitation, any rights in terms of the Warranties, or to delegate any obligations in terms of the relevant Order or these GPC to any person without the consent of the Seller.