GENERAL TERMS AND CONDITIONS OF SALE

Name / Company Name: MSA ENERGY SOLUTIONS (PTY) LTD
Registration Number: 2020/242052/07
Address: UNIT 53 EXECUTIVE CITY
CNR CROSS STREET AND CHARMAINE AVENUE
PRESIDENT RIDGE
RANDBURG
GAUTENG
(Hereinafter referred to as the "Seller")

And

The Purchaser

The Seller and the Purchaser are hereinafter collectively referred to as "the Parties" and individually as a "Party."

1. DEFINITIONS AND INTERPRETATION

1.1. In these General Terms and Conditions "GTCs":

1.1.1. "Agreement" means the agreement for the sale or supply of Goods and any Services by MSA to the Purchaser and which agreement incorporates any document titled Agreement of Sale or Supply of Goods/Services or any pro forma invoice/invoice, quotation document and any other document or attachment incorporated by reference in any such documents;

1.1.2. "Business Day" means Monday to Friday, and excluding weekends and public holidays in South Africa;

1.1.3. "Claim" includes, in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or received by or against the person;

1.1.4. “Confidential Information” has the meaning given to it in section 12.2;

1.1.5. “Force Majeure” has the meaning given to it in section 11;

1.1.6. “Goods” means the goods specified in MSA’s quote/proforma invoice, invoice, quotation or Order;

1.1.7. “MSA” means MSA Energy Solutions (Pty) Ltd, CIPC Registration No: 2020/242052/07;

1.1.8. “Offer” means a written offer for the sale of Goods and Services by MSA;

1.1.9. “Orders” means Orders submitted to MSA by the Purchaser, be it via purchase order, email, WhatsApp or any other form of written communication.

1.1.10. “Purchaser” means the customer purchasing the Goods and/or any Services;

1.1.11. “Services” means any services specified in the Seller’s quote/proforma invoice, invoice quotation or order.

2. GENERAL PROVISIONS

2.1. These GTCs, together with any other documents referred to in the definition of “Agreement” represent the entire agreement between the parties and no alterations or additions may be effected (including to this clause) unless agreed to by both parties, reduced to writing and signed by the Parties.

2.2. If not otherwise agreed in writing separately by the Parties, these GTC’s shall apply to all agreements for sale and supply by MSA of Goods and any Services, including pursuant to Orders.

2.3. When the Purchaser places their first Order with MSA, when any of the purchaser’s details change, or at MSA’s request, the Purchaser shall provide MSA with:

2.3.1. in the case of a juristic person, copies of documents validating its incorporation (CIPC documentation), registered and beneficial ownership and proof of registered address;

2.3.2. in the case of a natural person, copies of ID and proof of registered address; and

2.3.3. any other documentation, including in terms of the Financial Intelligence Centre Act, that MSA may by law be required to obtain prior to transacting with the Purchaser which will include the list of documentation as per annexure ‘MSA1”

2.4. It is agreed that the following shall *inter alia* be deemed as acceptance by the Parties to be bound by the GTC version effective as of the date of agreement or conclusion or issuance of the proforma invoice/sales invoice by MSA:

2.4.1. signing of a specific Agreement without the Parties specifically agreeing that the GTCs shall not apply to that Agreement; or

2.4.2. accepting MSA's proforma invoice or sales invoice, depending on which will be issued first by MSA to the Purchaser (which is also equal to execution of any Agreement).

2.5. A purchaser shall be bound by the GTCs in its latest updated and available version,

2.6. These GTCs are final and binding and are not subject to any suspensive or resolutive condition and expressly exclude and takes precedence over any standard or special terms and conditions stipulated by the Purchaser that have not been expressly agreed to and signed for by MSA in writing.

3. CONCLUSION OF THE AGREEMENT

3.1. An Agreement is concluded when:

3.1.1. the parties sign a specific agreement for sale and supply of Goods and any Services; or

3.1.2. MSA's Offer has been accepted by the Purchaser, as referred to below.

3.2. After MSA receives an Order or any other order from the Purchaser to purchase Goods and/or Services, specifying at least the type and quantity of the ordered Goods and/or description of Services, the proposed date of their delivery/performance and its delivery/performance location, MSA will endeavour to determine whether it is possible to fulfil the Order.

3.3. If MSA is able to fulfil the Order, MSA will provide the Purchaser with its offer for sale and supply of goods, including or comprising a quote/proforma invoice/sales invoice.

3.4. The offer may be withdrawn before the Agreement is executed or accepted if MSA submits a declaration (notice) of withdrawal to the Purchaser before it accepts MSA's offer in accordance with Section 3.5 below.

3.5. Acceptance of the offer whether verbally or in writing by the Purchaser constitutes conclusion of an Agreement. The Purchaser is entitled to either accept and confirm the offer only in full scope (all terms and conditions provided by MSA) without any modifications; or to reject it in full. An offer accepted with a stipulation of changes or supplements to its content is deemed a new offer and requires the written acceptance of MSA management to be of any force and effect. For the sake of clarity, the Purchaser's acceptance and confirmation is deemed effective and, consequently, the Agreement is concluded, on the earliest of any or all of the following occurring, i.e., when the Purchaser:

3.5.1. accepts the Offer verbally or in writing (including by the signature of an Agreement);

3.5.2. takes delivery of any Goods or permits the performance of any Services;

3.5.3. by other conduct indicates acceptance; or

3.5.4 makes full or partial payment of the amounts stipulated in a quote/proforma invoice/sales invoice.

3.6. If not accepted (and MSA may on notice require that acceptance by the Purchaser be in writing), the Offer shall cease to be binding and shall lapse at no later than at the moment when payment is due per the terms of the Offer (either on the basis of a proforma invoice or a sales invoice) and in the case when the parties agreed to instalment payments, when the payment of the first instalment is due, unless otherwise specified in the proforma invoice or any other document agreed in writing by the parties.

3.7. **For the sake of clarity, the Purchaser may not cancel any valid Agreement, other than on the terms of these GTC's, without MSA's express and written consent and any changes to the terms of the Agreement, in order to be valid, require compliance with the procedure indicated in Section 2.1.**

3.8. **Should any stock sold by MSA no longer be available due to a prior sale, stock shortage, or any other reason beyond MSA's reasonable control, MSA shall notify the Purchaser as soon as reasonably possible. Where payment has already been received by MSA in respect of such stock, MSA shall refund the Purchaser the amount paid in respect thereof within a reasonable period. Orders are actioned by the agreed delivery date. Any changes in delivery dates of orders have to be communicated in writing. MSA has the right to cancel any order should the Purchaser change the delivery date more than once.**

3.9. MSA shall not be liable for any particulars in the offer claimed as errors by the Purchaser, after the offer documentation has been accepted and confirmed by the Purchaser. It is the responsibility of the Purchaser to verify and confirm as correct, all the offer terms prior to its signature or acceptance.

3.10. By entering into the Agreement with MSA, the Purchaser represents that:

3.10.1. **It has been given the opportunity to make inspection of the Goods, and/or is familiar with such Goods, its specifications, its properties and intended use and thus makes the purchase with full knowledge of these factors. It is the Purchaser's responsibility to determine whether the Goods ordered are suitable for the purpose of its intended use. Should the Purchaser be uncertain as to the suitability of the Goods, it is the responsibility of the Purchaser to contact MSA offices for assistance prior to placing an Order;**

3.10.2. it is aware that MSA is not the producer or manufacturer of the Goods being sold, and imports the Goods which is sold to the Purchaser;

3.10.3. it is liquid and solvent, it has sufficient funds to pay the agreed price without any delays, and these funds are not derived from money laundering or terrorist financing;

3.11. In the event that MSA, at the request of the Purchaser, has ordered Goods under an order without a written Agreement being executed, and where the Purchaser has abandoned or repudiated such Agreement, any part of the amount paid as a deposit by the Purchaser shall be forfeited to MSA to defray the expenses incurred in the preparation, administration and storage of Goods in respect of the Order in addition to MSA being entitled to claim actual damages in respect of the Goods where such amount is less than actual damages incurred, or any other remedy at law.

3.12. Notwithstanding other provisions of these GTCs, in the event an Order under an Agreement is not collected by the Purchaser within 3 weeks from the date of its delivery, MSA shall be entitled to claim from the Purchaser for its benefit an additional amount of compensation equivalent to 5% of the Order price paid under the Agreement in respect of its storage and handling costs for the Goods, and in addition to MSA being entitled to claim damages in respect of any unpaid amounts in respect of the Goods, or any other remedy at law.

3.13. Notwithstanding other provisions to these GTC's, in the event that an Order under an Agreement is cancelled, MSA has the right to request full compensation for the purchase price of any goods ordered, in circumstances where MSA has ordered same from their supplier, be it a national or international company.

3.14. All commercial information of announcements, advertisements, price lists and any other marketing information addressed to the public or to individual persons, regardless of its form, is issued in good faith purely for information purposes and does not constitute any Offer by MSA. Same should be deemed only as an invitation to execute an agreement though arrangement with duly authorized personnel of MSA.

4. COMPLETION OF THE ORDER

4.1. Payment of the full amount indicated in the quote/proforma invoice/sales invoice, or payment of the first instalment in the case of payment in instalments, is required to be paid into MSA's bank account specified on the invoice, prior to MSA proceeding with processing the Order.

4.2. If MSA's bank account is not credited as available funds with the payments on the due date specified on the invoice, and if not otherwise agreed by the parties in writing, the Agreement may be considered by MSA as automatically terminated, and MSA shall no longer be obliged to perform the Agreement.

4.3. The period to complete the Order under the Agreement shall commence on a date agreed between MSA and the Purchaser in writing, but not earlier however than on the day of crediting MSA's bank account with the payment under the Agreement. In no case shall the completion period exceed the period of 6 (six) months from the date of the Agreement's conclusion, except for the reasons beyond the control of MSA – in such cases, upon prior notice to the Purchaser, this period shall be extended by an additional 1 (one) month.

4.4. Upon the occurrence of extraordinary circumstances beyond MSA's control, including Force Majeure referred to in section 11, mandatory changes of law or extraordinary adverse changes of the market conditions such as currency rates or goods' price fluctuations, MSA shall be entitled to reasonably alter the terms and conditions of the Agreement unilaterally to the extent necessary to adjust to such changed circumstances, upon prior notification to the Purchaser of any of such change and, if applicable, submission to the Purchaser of respectively amended accounting documents.

4.5. In the event described in Section 4.4. above, within (5) five Business Days from the receipt of notification on the changes to the Agreement, the Purchaser shall be entitled to cancel the Agreement. The cancellation may apply only to the part of the Agreement that has not yet been performed.

5. DELIVERY

5.1. **The delivery of Goods together with the necessary delivery documents, including those required by the applicable law, shall be made available upon delivery.**

5.2. **The delivery of the Goods under the Agreement shall take place at MSA's warehouse specified in the Agreement and, if not so specified, to a MSA warehouse chosen by MSA, AT THE EXPENSE AND RISK OF THE PURCHASER.**

5.3. **The Purchaser shall bear the delivery costs in addition to the price of Goods and any Services under the Agreement.**

5.4. **Each delivery of Goods shall be documented by a respective consignment note and any other documents required by MSA. Any original or copy of a consignment note, delivery note or waybill signed by the Purchaser or person accepting delivery on the Purchaser's behalf and held by MSA shall be sufficient proof that delivery was made to the Purchaser.**

5.5. **Upon delivery, the Purchaser shall inspect the packaging of the Goods for any visible damage, shortages or discrepancies. Any visible damage to the packaging, shortages or discrepancies must be noted on the delivery note and reported to MSA immediately upon delivery, together with a description and photographic evidence thereof.**

5.6. **The Purchaser shall have a period of seven (7) days from the date of delivery to inspect the Goods for any latent or non-visible damage or defects that could not reasonably have been identified upon delivery. Any such damage or defect must be**

reported to MSA in writing within the aforesaid seven (7) day period and must be accompanied by a detailed description and photographic evidence of the alleged damage or defect.

5.7. **Should the Purchaser fail to notify MSA of any visible damage, shortages, discrepancies, damage or defects within the periods stipulated above, the Goods shall be deemed to have been delivered in good order and condition and in accordance with the Purchaser's order, unless the Purchaser can prove otherwise.**

5.8. **MSA shall notify the Purchaser without undue delay, in case of any potential delay of delivery or in case of any other event or circumstances that may affect the delivery.**

5.9. **Any changes to the delivery shall be determined and agreed in writing between the Purchaser and MSA, unless caused by Force Majeure referred to in section 11 in which case, that section will govern.**

5.10. **In any case, MSA is not liable for the delay of delivery due to the reasons not attributable to it, including Force Majeure referred to in section 11 and MSA SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE OF WHATSOEVER NATURE WHICH THE PURCHASER MAY SUFFER AS A RESULT OF ANY DELAYED DELIVERY.**

5.11. **FOR THE SAKE OF CLARITY, THE DELIVERY SHALL BE MADE ONLY TO THE EXTENT TO WHICH THE GOODS UNDER THE AGREEMENT ARE PAID FOR, UNLESS SPECIFICALLY AGREED TO OTHERWISE. IF THE PAYMENT HAS NOT BEEN MADE PURSUANT TO THE AGREEMENT, MSA SHALL BE ENTITLED TO REFRAIN FROM DELIVERING THE GOODS UNTIL THE PAYMENT IS RECEIVED, AND ANY DELAYS IN DELIVERY ARISING FROM THE ABOVE SHALL NOT BE ATTRIBUTABLE TO MSA.**

5.12. **If transportation of the Order is arranged by the Purchaser, MSA must be notified of the carrier and such arrangement prior to the collection. THE COST AND RISK OF CARRIAGE SHALL BE BORNE BY THE PURCHASER, AND THE PURCHASER INDEMNIFIES MSA AGAINST ANY CLAIMS OF WHATSOEVER NATURE THAT MAY ARISE FROM SUCH AN ARRANGEMENT.**

5.13. **At the Purchaser’s request, at least 5 (five) Business Days before the expected delivery date, MSA may agree in writing to arrange transport for the Goods to the Purchaser’s designated location as an additional Service and at an agreed cost.**

5.14. **In the event referred to in Section 5.11:**

5.14.1. **MSA shall provide the Purchaser with the costs and estimated time of transport of the Goods to the Purchaser’s designated location and after the acceptance of such terms or after payment of the transportation fee by the Purchaser, MSA shall proceed with its execution, and**

5.14.2. **THE TRANSPORT ARRANGEMENT SHALL NOT AFFECT AND CHANGE ANY OTHER RULES OF THE GOODS' DELIVERY, INCLUDING THE TRANSFER OF THE OWNERSHIP AND PASSING OF RISK (WHICH BOTH TRANSFER AND PASS TO THE PURCHASER AFTER THE GOODS ARE MADE AVAILABLE TO THE PURCHASER AT MSA WAREHOUSE).**

6. STORAGE OF GOODS

6.1. If the Purchaser refuses or fails to collect the delivered Goods as specified in Section 5, MSA will store the Goods in its warehouse and the Purchaser shall be obliged to pay a fee to MSA for the storage in the amount of R 5,00 (five rand) per day excluding VAT per each 1 (one) pallet of the goods.

6.2. The stored Goods shall be considered delivered to the Purchaser per the date for delivery in the Agreement. Any subsequent collection of the Goods from the warehouse after the due date for delivery will be arranged on the date and time agreed win writing by MSA and the Purchaser, and subject to prior payment of the storage fee. A postponed pickup shall not be in any case considered as a delay in delivery resulting from any fault of MSA.

6.3. If within the period of30 days from the commencement date of storage, the Purchaser does not collect the goods or request that MSA deliver the goods to a specific location, MSA shall be entitled to cancel the Agreement and claim damages from the Purchaser for breach of contract, or to take any other available remedy at law to recover its costs, which may include at the sale election of MSA to resell the Goods and defray any costs associated with the Goods and its storage.

7. TRANSFER OF THE LEGAL TITLE AND RISK

7.1. Legal title and ownership of the Goods shall pass to the Purchaser on the later of the date of delivery or the date on which the Goods including any storage fees and any other charges have been paid in full.

7.2. All risk of loss of or damage to or arising from the Goods shall be effectively transferred to the Purchaser when the Goods or any part of them are made available to the Purchaser at the place of delivery.

7.3. For the avoidance of doubt, the ownership of the Goods under the Agreement is not transferred before they and all related charges have been paid for in full.

8. PRICE AND PAYMENTS

8.1. Any payments under the Agreement shall be made in accordance with the terms and at the price stipulated by MSA in the quote/proforma invoices/sales invoices and the Purchaser shall provide MSA with bank payment confirmations within 3 (three) Business Days from the date of payment.

8.2. The price as stated or quoted, unless expressly stated otherwise in writing, excludes VAT, all other taxes, duties and transport costs. The inclusion or exclusion of any customs duties, import taxes, freight charges, shipping costs, inland transport costs, insurance, clearance charges and any other costs relating to the supply, delivery or importation of the goods shall be determined by the applicable Incoterm in respect of the relevant order or transaction.

8.3. All quotes/proforma invoices/sales invoices issued under the Agreement may be issued in electronic form and, in such cases, shall be sent to the Purchaser's e-mail address indicated by the Purchaser.

8.4. Payments shall be made in ZAR to MSA's bank account indicated in the quote/proforma invoice/sales invoice. Payment must be made by electronic funds transfer and it is the Purchaser's responsibility to ensure that MSA receives the payment. The Purchaser's liability to MSA will only be discharged when MSA receives as freely available funds in its bank account the full amount owing without risk of the bank reversing the payment.

8.5. In the event of any reason whatsoever, which included reasons due to cyber-attack, fraud or other criminal or unlawful activity, payment is made by the Purchaser into a bank account that is not the actual bank account of MSA then the liability to make payment is not discharged and the Purchaser shall remain fully liable to make payment into the actual bank account of MSA.

8.6. If the Purchaser is in default by being late with any payments owing to MSA under the Agreement, MSA shall have the right to charge the Purchaser interest at the rate of 2% per month, from the day after date of default to the date of payment in full and MSA may postpone the delivery of the goods until the payment is made.

8.7. The Purchaser may not make any deductions from payments to MSA or apply set-off against any amounts that may be owing by MSA to the Purchaser

8.8. A certificate signed by any director of MSA (whose appointment need not be proved) shall be proof until proven otherwise, of any amounts owing to MSA and the fact that such amounts are due, owing and payable.

9. WARRANTY

9.1. The goods are covered only by the warranty issued by the manufacturer of the Goods, which may be provided to the Purchaser in a separate document – confirming the wording of the warranty.

9.2. MSA does not cover any goods by its own warranty and the manufacturer's warranty of goods does not constitute, under any circumstances, any obligations or liabilities of MSA under such manufacturer's warranty.

9.3. MSA may cooperate with and assist the Purchaser, if in the given circumstances any action or support from MSA is required, in the scope of providing documents available to MSA that need to be processed by the producer of the goods for recognition of the Purchaser's warranty of goods Claims, e.g. packing list, Bill of Lading, invoice etc.

9.4. MSA may assist the Purchaser to claim on the warranty of the Purchaser, but same shall not be obliged and shall not be construed as MSA accepting any for of responsibility and / or liability.

10. LIMITATION OF LIABILITY

10.1. **MSA'S LIABILITY TOWARD THE PURCHASER IN CONNECTION WITH ANY AGREEMENT, SHALL BE LIMITED TO DIRECT LOSSES, WITH THE EXCLUSION OF ALL INDIRECT, CONSEQUENTIAL, SPECIAL LOSSES OR DAMAGES, LOST PROFITS OR LOSS OF BUSINESS OPPORTUNITIES. MSA SHALL NOT BE LIABLE, IN PARTICULAR, FOR:**

10.1.1. **DAMAGE CAUSED BY INAPPROPRIATE OR UNPROFESSIONAL OPERATION,** IMPROPER INSTALLATION OR COMMISSIONING BY THE PURCHASER OR **THIRD PARTIES, NORMAL WEAR AND TEAR, IMPROPER OR NEGLIGENT USE, AND IN PARTICULAR FOR THE CONSEQUENCES OF UNPROFESSIONAL ALTERATIONS UNDERTAKEN WITHOUT THE CONSENT OF THE MANUFACTURER OR REPAIR WORK CARRIED OUT BY THE PURCHASER OR THIRD PARTIES;**

10.1.2. **FUNCTIONAL DEFICIENCIES OF THE GOODS, RESULTING FROM POOR SELECTION OF EQUIPMENT OR FROM IMPROPER DESIGN OF THE PURCHASER'S SYSTEM, WHERE THE PURCHASER SHOULD HAVE CAREFULLY STUDIED AND VERIFIED WHETHER THE FUNCTIONALITIES AND CHARACTERISTICS OFFERED BY MSA'S GOODS CORRESPOND TO ITS NEEDS PRIOR TO PURCHASE, OR FROM IMPROPER INSTALLATION BY THE PURCHASER OR BY PURCHASER- APPOINTED PERSONNEL, WHO SHOULD BE SUITABLY QUALIFIED TO DO SO, OR FROM INSTALLATION OR USE OF GOODS NOT IN ACCORDANCE WITH THE MANUFACTURER'S SPECIFICATIONS;**

10.1.3. **ANY CLAIMS OF THIRD PARTIES ARISING IN CONNECTION WITH THE USE OF THE GOODS BY THE PURCHASER, OR FOR THE USE OF THE GOODS BY THIRD PARTIES;**

10.1.4. **PURCHASER'S OBLIGATIONS TOWARDS THIRD PARTIES; AND**

10.1.5. **PURCHASER'S FAILURE TO OBTAIN ANY LEGALLY REQUIRED PERMITS, AUTHORISATIONS OR CERTIFICATIONS UNDER APPLICABLE LAW.**

10.2**. IF THE PURCHASER IS AN ENTITY PROTECTED WITH THE OPERATION OF THE CPA, MSA'S LIABILITY IN RESPECT OF DEFECTIVE GOODS SUPPLIED SHALL BE**

LIMITED TO THE COST OF REPLACING THE GOODS OR REFUNDING THE PRICE PAID FOR THEM PLUS THE REASONABLE COST OF TRANSPORT IF APPLICABLE. OTHERWISE, UNLESS NOT PROTECTED BY THE ACT's OR OMISSIONS OF MSA, MSA'S LIABILITY FOR THE DEFECTIVE GOODS ARE LIMITED PER CLAUSE 9 (WARRANTY) ABOVE.

10.3. **ANY RIGHT TO COMPENSATION SHALL LAPSE IF THE PURCHASER FAILS TO NOTIFY MSA OF THE OCCURRENCE OF THE DAMAGE, THE SCOPE AND THE CAUSE, IN WRITING AND IN DETAIL, WITHIN TEN (10) BUSINESS DAYS AFTER THE EVENT CAUSING THE DAMAGE OR WHERE THE CONSUMER PROTECTION ACT APPLIES ANY MINIMUM PERIOD PRESCRIBED BY THAT ACT.**

10.5. **THE PURCHASER INDEMNIFIES MSA FOR ALL CLAIMS THAT MSA MAY SUFFER AS A RESULT OF ANY THIRD-PARTY CLAIMS IN CONNECTION WITH THE GOODS SUPPLIED BY THE MSA.**

11 FORCE MAJEURE

11.1. Neither MSA nor the Purchaser (an "Affected Party") shall be liable for non-performance or improper performance of their obligations under an Order and any Agreement for the sale of goods, provided that the non-performance or improper performance of obligations is due to the occurrence of unforeseeable and unavoidable events beyond the Affected Party's control ("Force Majeure").

11.2. The Force Majeure events referred to in the above sentence shall include:

11.2.1. war and other armed or similar activities, invasion, mobilization, embargo, nuclear explosion, radioactive contamination, revolt, revolution, insurrection, coup d'état or civil war, riot, civil unrest, terrorist attacks;

11.2.2. natural disaster, flood, hurricane, earthquake, storm, fire;

11.2.3. epidemic and pandemic states, lockdowns, disturbances of collective life, including strikes and riots, official actions;

11.2.4. unfulfilled cooperative deliveries from MSA's suppliers; and

11.2.5. other events that are impossible to foresee, which are imminent and serious in their consequences.

11.2. Inability to pay due to lack of funds shall in no circumstances constitute a Force Majeure event.

11.3. The occurrence of such events relieves the Affected Party from meeting its obligations under the concluded Agreements for the duration of the disruption and to the extent of its impact. Any Agreement deadline to perform a certain action shall be extended by the period during which the Affected Party is prevented from the performance of its contractual obligations on account of the Force Majeure event.

11.4. The Affected Party undertakes to notify the other party about the existence of such Force Majeure event immediately, within the shortest possible period of time, but in any case within 20 (twenty) Business Days from the day of occurrence of the Force Majeure event, and to provide any details about its ability to resume performance on the terms and conditions laid down in the Agreement and to do everything in its power to fulfil its obligations based on the principle of good faith, as much as the conditions of the situation will allow.

11.5. If the performance of the agreement is suspended on account of the occurrence of Force Majeure event, MSA shall be entitled to compensation for any reasonable and necessary expenses incurred prior to the suspension, in particular when the goods have been ordered by MSA from their producer.

12. CONFIDENTIALITY / TRADE SECRETS

12.1. The Purchaser shall not have the right to transfer to third parties any information relating to the trade secrets of MSA obtained as a result of the business relationship.

12.2. Any information and materials provided to the Purchaser by MSA and not available to the public shall be treated as confidential ("Confidential Information"), in particular any and all information concerning MSA, the quotation / Order / Agreement and its performance provided or disclosed before or after conclusion of the Agreement, regardless of its form or method of transmission, but in each case in connection with the activities of MSA in relation to the Agreement, by MSA, its partners, advisers, employees, directors, officers, contractors, legal advisers, entities related to them or controlled by them or other associated entities, by contract or in any other way, except for the information expressly marked as not being Confidential Information.

12.3. The obligations specified in this Section 12 do not apply if:

12.3.1. Confidential Information is or has become publicly known in a way other than as a result of a violation of the GTCs;

12.3.2. Confidential Information was previously known to the Purchaser from other independent sources, which shall be demonstrated beyond reasonable doubt, both as to the time and source of obtaining the Confidential Information;

12.3.3. the disclosure of information is required pursuant to any mandatory laws, regulations, court judgments or administrative decisions of competent government authority or regulatory bodies. In such case, the Purchaser shall immediately notify MSA of receipt of the aforementioned request, unless the notification of transfer of such Confidential Information is prohibited by law or the decision of the entity requesting disclosure of the Confidential Information. The aforementioned notification should be sent, if possible, before disclosing the Confidential Information to the entity entitled to make such a request;

12.3.4. the disclosure of information to related parties of the Purchaser, its employees and collaborators, advisors, investors, auditors or lawyers, is made on the condition that such parties keep it confidential and that the Purchaser shall be liable for any non-authorised disclosure; and

12.3.5. the disclosure of information is preceded by the written consent of MSA.

12.4. The Purchaser undertakes to:

12.4.1. use the Confidential Information only in a manner consistent with the GTCs;

12.4.2. keep all Confidential Information confidential and not to disclose or transfer it to third parties; and

12.4.3 take all measures to ensure the security of Confidential Information.

12.5. The Purchaser shall be obliged to prevent disclosure of Confidential Information by current and future employees, co-workers, associates, as well as after termination of the employment relationship (termination of cooperation with the Purchaser).

12.6. Notwithstanding the above, where there has been a disclosure of Confidential Information, the Purchaser shall be obliged to immediately restore the lawful state of affairs, as well as to prevent further breaches of Confidential Information.

12.7. The obligation to maintain confidentiality shall apply indefinitely. Termination of the legal relationship between the Parties shall not terminate the obligations described in this section.

12.8. If Confidential Information is disclosed to third parties contrary to the provisions of this section 12, the Purchaser shall be obliged to compensate MSA for the damages resulting therefrom.

13. TERMINATION OF THE AGREEMENT

13.1. **Either party is entitled to terminate the whole or a part of the Agreement or Order, as the case may be, upon occurrence of a Force Majeure event referred to in section 11, which continues in excess of 30 (thirty) Business Days, by written notice to the other party and without liability for any damages arising out of such termination, other than the compensation specified in clause 11.5.**

13.2. **MSA may suspend any delivery of Goods, cancel any Order or Agreement and claim payment of all amounts which the Purchaser owes, if the Purchaser:**

13.2.1 fails to pay any amount which it owes MSA by the due date for payment;

13.2.2 breaches any provision of the Agreement including the GTC's;

13.2.3 is or becomes commercially insolvent or its liabilities fairly valued exceed its liabilities;

13.2.4 is financially distressed or subject to business rescue proceedings, as contemplated in section 129 of the Companies Act, 2008;

13.2.5 takes steps to place itself, or is placed, in sequestration, winding up, deregistration or liquidation, whether voluntary or compulsory and whether provisionally or finally;

13.2.6 commits any act of insolvency listed in section 8 of the Insolvency Act, 1936, or would be an act of insolvency if committed by a natural person;

13.2.7 fails to disclose any material information to MSA or any such material information is incorrect, or if the Purchaser fails to disclose all required material information.

13.3. **MSA is entitled to terminate the whole or a part of the Agreement or any Order, as the case may be, prior to delivery, due to mandatory changes of applicable law, or extraordinary adverse changes of market conditions such as currency and goods price fluctuations, by submitting to the Purchaser a written termination notice which shall include reasons for such termination.**

13.4. **In the event of termination by MSA if any Order for breaches of the Agreement or the GTCs attributable to the Purchaser, MSA shall be entitled to retain as a reasonable cancellation fee in an amount equivalent to 5% of the price of the Order.**

13.5. **Upon the termination of the Agreement, unless stated otherwise, the parties shall be released from their obligations arising under the Agreement, except for the obligations contemplated under this Agreement and this section or any other provision intended to survive termination.**

14. SEVERABILITY

14.1. If any provision of these GTCs or the Agreement is declared invalid, illegal or becomes unenforceable for any reason, or where any provision of these GTCs are inconsistent with any applicable laws such as the CPA, such provisions may be severed from the Agreement only to the extent of the invalidity, illegality or unenforceability, and the remaining provisions of these GTCs and the Agreement shall be fully binding and effective, as if the GTCs and Agreement were in effect without such invalidity or inconsistency.

14.2. If the extent of the asserted invalidity, or inconsistency prevents the achievement of the purpose of the Agreement, MSA and the Purchaser agree to commence negotiations immediately in good faith to replace the affected provisions with new valid and effective provision/s that correspond to the highest possible extent to the intention of the provision/s being replaced.

15. GENERAL PROVISIONS

15.1. MSA reserves the right to amend the GTC's unilaterally from time to time, however any Order placed shall be subject to the terms and conditions in force at the time the Order was placed.

15.2. The amended GTCs shall be immediately published on MSA's website indicated from time to time. Any such amendments will where possible be notified to the Purchaser.

15.3. The Purchaser shall not assign any of its rights under the Agreement to third parties without the prior written consent of MSA.

15.4. The GTCs and any transaction thereunder, including any Agreement are governed and shall be interpreted in terms of the South African law.

15.5. Unless otherwise provided in the GTCs or Agreement, any offer, notice or information in connection with the Agreement, for their validity, shall be made in writing.

15.6. **All disputes or Claims arising out of or in connection with these GTCs or the Agreement, including disputes relating to their validity, breach, termination or nullity, may be finally settled by arbitration held in Johannesburg, Gauteng, in terms of the rules of the Arbitration Foundation of Southern Africa (AFSA) and in the English language. Proceedings are to be conducted before a single arbitrator agreed to by the parties in writing but failing agreement within 5 Business Days of request nominated by the president or his deputy of AFSA. In addition to determining the main issues, the arbitrator must assess the costs of arbitration and who is liable for such costs.**

15.7. MSA will ensure that it processes all the Purchaser's personal information in strict compliance with the Personal Protection of Information Act, 2013, and only use it for the purposes for which it was supplied, and such information may be retained in our records for as long as the Purchaser remains a customer and thereafter for the minimum period required by Law or a period of 5 (five) years, whichever is longer, after the last purchase of Goods. Thereafter records may be retained for historical, statistical or research purposes.

15.8. The applicable language in communication between the Parties shall be English.

15.9. Unless the parties agree otherwise in writing, all notices and documents must be delivered by hand or electronic mail at each of their physical or email addresses set out on the front page of the Agreement or otherwise selected by them on written notice to the other. Any notice or communication shall if delivered by hand during business hours at that party's selected physical address, be deemed to have been received on the date of delivery, or if emailed to the selected email address, be deemed to have been received on the first business day following the date of transmission.

15.10. Any notice actually received is adequate notice even if not sent in such manner.

16. CONSUMER PROTECTION ACT

16.1 If the Purchaser is a **juristic person whose asset value or annual turnover exceeds the threshold prescribed in the Consumer Protection Act**, the Purchaser acknowledges that the provisions of the Act do not apply to this Agreement.

16.2 If the Act does apply, nothing in this Agreement shall be interpreted as limiting the Purchaser's statutory rights.

17. SARS / CUSTOMS SEIZURE AND REGULATORY COMPLIANCE

17.1. MSA warrants that the Goods will be imported into the Republic of South Africa in compliance with all applicable legislation, including but not limited to customs and import regulations.

17.2. MSA shall ensure that all necessary import permits, licences, duties, levies and taxes relating to the importation of the Goods have been properly declared and paid.

17.3. In the event that the Goods are seized, detained or confiscated by any governmental authority, including the South African Revenue Service or customs authorities, due to any act or omission by MSA occurring prior to the transfer of ownership, the Seller shall:

17.3.1. take all reasonable steps to secure the release of the Goods; and

17.3.2. indemnify the Purchaser against any loss, damage, costs or penalties arising from such seizure or detention.

17.4 Should such seizure or detention render delivery impossible, the Purchaser shall be entitled to cancel this Agreement and claim repayment of all monies paid.

18. EXCHANGE RATE ADJUSTMENT (WHERE GOODS WERE PURCHASED IN FOREIGN CURRENCY)

18.1. The Parties acknowledge that the Goods may have been acquired by the MSA in a foreign currency.

18.2. Should the Purchase Price be influenced by fluctuations in the exchange rate between the South African Rand and the applicable foreign currency, the Parties may agree that the Purchase Price shall be adjusted accordingly.

18.3. Unless otherwise agreed in writing, the exchange rate applicable shall be the prevailing rate published by MSA's commercial bank on the date of payment.

18.4 Any adjustment to the purchase price arising from exchange rate fluctuations shall be communicated to the Purchaser in writing together with reasonable supporting documentation.