

TERM OF THE AGREEMENT (FORCE AND EFFECT OF AGREEMENT)

TERMS AND CONDITIONS OF SALE

1. Definitions
- 1.1. The following terms shall have the meanings assigned to them hereunder and similar expressions shall have corresponding meanings, namely:
 - 1.1.1 "Agreement" means these terms and conditions of sale including all annexures attached hereto;
 - 1.1.2 "Buyer" means the person referred to on the cover page;
 - 1.1.3 "Goods" shall mean whatever is ordered by the Buyer from the Supplier in terms hereof and includes, where applicable, work to be done or services to be rendered;
 - 1.1.4 "Order" shall mean and include the contents of each order by the Buyer from the Supplier as amplified by these conditions or documents attached to or referred to in each separate Order Form, and including where applicable the Specification, the Schedule of Drawings attached to the Specification or any drawings relative to the Order, provided that if there should in any manner be any conflict between any such documents then the typewritten contents of the Order Forms shall prevail;
 - 1.1.5 "Order Form" means an order form completed by the Buyer for each order;
 - 1.1.6 "Parties" means reference to both the Supplier and the Buyer;
 - 1.1.7 "Prescribed Interest Rate" means the interest as prescribed by the Minister in term of section 1(2) of the Prescribed Rate of Interest Act 55 of 1975;
 - 1.1.8 "Prices" shall mean the price stated in the Order Form in respect of the Goods ordered by the Buyer;
 - 1.1.9 "Supplier" means Kwikot (Pty) Ltd with registration number 1997/003045/07;
 - 1.1.10 "Surety" means the person(s) referred to in Annexure A attached to these terms and conditions;
- 1.2 In this Agreement:
 - 1.2.1 references to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time;
 - 1.2.2 words importing any one gender include the other gender; the singular include the plural and vice versa; and natural persons include created entities (corporate or non-incorporate) and vice versa;
 - 1.2.3 any definition, wherever it appears in this Agreement, shall bear the same meaning and apply throughout this Agreement unless otherwise stated or inconsistent with the context in which it appears;
 - 1.2.4 if there is any conflict between any definitions in this Agreement then, for purposes of interpreting any clause of the Agreement or paragraph of any

- 1.2.5 Annexe, the definition appearing in that clause or paragraph shall prevail over any other conflicting definition appearing elsewhere in the Agreement;
 - 1.2.5 any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (ie *pro non scripto*) and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction;
 - 1.2.6 save where otherwise indicated in this Agreement when any number of days are prescribed in this Agreement, such number shall be reckoned exclusively of the first day and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday in the Republic of South Africa, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday in the Republic of South Africa;
 - 1.2.7 this Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa;
 - 1.2.8 The grant of any indulgence, extension of time or relaxation of any provision by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor;
 - 1.2.9 A Party may not rely on any representation which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.
2. Conditions of Sale
 - 2.1. Any Order resulting from this whether purchased on account or upfront, such transaction(s) shall be subject to the conditions herein unless varied by the Supplier in writing, and these conditions will take precedence over any terms, conditions or stipulations contained in any of the Buyer's documentation which may be in conflict herewith.
 - 2.2. The Supplier has the discretion at all times whether or not to sell to the Buyer.
 - 2.3. The Supplier's discretion to sell any Goods to the Buyer in terms hereof may be guided by *inter alia* the following:
 - 2.3.1 The availability of stock;
 - 2.3.2 Timeous receipt by the Supplier of any drawings, designs and specifications that may be required by the Buyer provided that such drawings, designs and specifications shall be deemed to have been given to the Supplier for the purpose of description only and shall not form part of the Agreement;
 - 2.3.3 Status and age analysis of Buyer's accounts with the Supplier.
 - 2.4. Set off shall operate automatically as a matter of law at the moment reciprocal debts between the Parties come into existence and independently of their will. It shall not be necessary for either the Supplier or the Buyer to specifically raise set

off. Upon the operation of an automatic set off aforementioned, the debt shall be mutually extinguished to the extent of the lesser debt with retrospective effect.

- 2.5. Should the Supplier agree to accept the return of any Goods after same has been delivered, the Buyer shall be liable to pay the Supplier a handling charge of not less than 10% on the invoiced price of the goods so returned. Where any damages are suffered as a result of the return of damaged goods, the purchase price will be repaid after the damages have been deducted and where applicable a credit will be set off against other amounts due by the Buyer to the Supplier.
- 2.6. When the Supplier is required to manufacture or supply Goods to the Buyers' specification and/or drawings, or carries out work according to the Buyer's instructions, or those of its nominees, the Supplier accepts no responsibility for the efficiency or workability of goods so manufactured or work so carried out.
- 2.7. Should there be any apparent contradiction or mistake in the description, dimensions or quantity of the Goods ordered, the Buyer shall refer the matter to the Supplier for correction or clarification before proceeding to execute the Order and shall notwithstanding delivery of the Goods, be obliged to effect payment of the account if the Buyer has failed to query any such apparent contradiction, mistake or anomaly in the Order within 5 days of the delivery of the Goods.

3. Application for an Account with the Supplier

- 3.1. The Buyer hereby authorizes the Supplier or its agents at all times to contact and request information from any persons, credit bureaus or businesses, including those mentioned under trade references, and to obtain any information relevant to the Buyer's application and upkeep of the Buyer's account.
- 3.2. The Buyer understands that the information given in relation to this Agreement will assist the Supplier in determining whether or not to sell the Goods to the Buyer on account and will be used by the Supplier for the purposes of assessing its creditworthiness. The Buyer confirms that the information given by it is accurate and complete.
- 3.3. The Buyer further agrees to update the information supplied, as and when necessary, to ensure the accuracy and completeness of the above information at all times.
- 3.4. The Supplier does not grant any credit facilities and payment terms are to be strictly adhered to.

4. Price and Payment

- 4.1. Prices and discounts are those ruling at the date of dispatch of the Goods contained on the Order Form.
- 4.2. The Supplier reserves the right to adjust or change any prices and/or discounts at any time with prior written notice to the Buyer prior to the dispatch of the Goods in the event of any material changes in pricing including but not limited to labour costs and fluctuating exchange rates.

4.3. Notwithstanding anything to the contrary contained herein (with specific reference to clause 1.2.6 above) the Buyer acknowledges that the purchase price as contained in the invoice is payable (in this clause 4.3 payable must be read to include clearance of the funds in the bank account of the Supplier) on or before the last day of the month, following the month during which the invoice is dated notwithstanding the fact that such a date is on a Saturday, Sunday or public holiday in the Republic of South Africa.

4.4. Interest shall immediately begin to run on any overdue accounts; without any notice from the Supplier; that has not been paid on the due date (clause 4.3 above) at the Prescribed Interest Rate, which shall be calculated from the date following the due date of each account.

4.5. A certificate under the hand of any director or manager or the account manager (whose appointment need not be proved) as to the existence and the amount of the Buyer and/or Surety's indebtedness and to the Supplier at any time, as to the fact that such amount is due and payable, the amount of mora interest accrued thereon and the correctness thereof for the purpose of provisional sentence, summary judgment or any other proceedings of whatsoever nature against the Buyer and/or the Surety in any competent court and shall constitute as a liquid document for such purpose.

5. Delivery

- 5.1. Time shall not be of the essence of the contract and delivery dates shall be treated as estimates only. Under no circumstances shall the Buyer be entitled to withdraw from or terminate the contract on account of any delay in delivery or have any claim of any nature whatsoever against the Supplier arising from late delivery.
- 5.2. A signed Delivery Note shall constitute *prima facie* proof that the Goods have been delivered to and received by the Buyer in good condition, whether signed by the Buyer, an employee, an agent or a representative of the Buyer.

6. Disclaimer

- 6.1. The Supplier shall be exempted from and shall not be liable under any circumstances whatsoever for any damages including direct, indirect and/or consequential damages of any nature whatsoever or any loss of profit or special damages of any nature whatsoever and whether in the contemplation of the Parties or not, which the Buyer may suffer as a result of any delay in delivery of the Goods ordered.
- 6.2. Save as otherwise specifically provided for herein, the Supplier shall not be liable to the Buyer or to any other person for any damages including indirect or consequential damages of any nature whatsoever or any loss of profit, or special damages of any nature whatsoever and whether in the contemplation of the parties or not which the Buyer may suffer as a result of any breach by the Supplier of any of its obligations under these conditions or out of any other court

whatsoever. The Buyer hereby indemnifies the Supplier against any claim which may be made against the Supplier by any other person in respect of any matter for which the liability of the Supplier is excluded in terms of the foregoing.

- 6.3. Ownership in and to the Goods sold and delivered to the Buyer on account shall pass to the Buyer only when all amounts due by the Buyer to the Supplier has been paid in full, notwithstanding the delivery of the Goods to the Buyer. Risk in and to the Goods shall however pass to the Buyer on delivery.

7. Breach

- 7.1 The Buyer agrees and acknowledges that in the event of –
7.1.1 the Buyer breaching any condition contained in these conditions;
7.1.2 the Buyer failing to pay any amount due and payable on due date;
7.1.3 the Buyer suffering any civil judgment to be taken or entered against it;
7.1.4 the Buyer causing a notice of surrender of its estate to be published in terms of the Insolvency Act No. 24 of 1936, as amended;
7.1.5 the Buyer passing away;
7.1.6 the Buyer's estate being placed under any order of provisional or final sequestration, provisional or final winding up, placed under business rescue proceedings, or provisional or final judicial management, as the case may be;

then the Supplier shall, without detracting from any other remedies which may be available to it, be entitled to summarily cancel the sale of the Goods to the Buyer without notice to the Buyer and to re-possess those Goods sold and delivered by the Supplier to the Buyer, or to claim specific performance of all of the Buyer's obligations whether or not such obligations would otherwise then have fallen due for performance, in either event without prejudice to the Supplier's right to claim damages.

- 7.2 In the event of the Supplier or its agents instructing attorneys to collect from the Buyer any amount owing to the Supplier, the Buyer agrees to pay all costs on the scale as between attorney and own client, including collection commission and tracing charges.
- 7.3 In the event of the Supplier or its agent instructing a debt collector or attorney to collect from the buyer an amount owing to the Supplier, the Buyer agrees to pay the collections commission as allowed by law in addition to capital, interest and legal costs.
- 7.4 If the Buyer fails to meet its obligations under these terms and conditions of sale, it authorizes the Supplier or its agents to record its non-performance with any credit bureau, which information will be available to third parties. The Buyer further authorizes researching its records at a credit bureau, use new information and data obtained from the credit bureau in respect of details of how the Buyer has performed in terms of these terms and conditions of sale.

8. Domicilium address

- 8.1 The Buyer nominates as its *domicilium citandi et executandi* (address where he will accept service of all legal processes) the address reflected on the face hereof under the heading registered office/business physical address, and the surety nominates as his *domicilium citandi et executandi* the address reflected on the face hereof alongside his name, for service upon them of all notices and processes in connection with this Agreement and its implementation.
- 8.2 A Party may change his address for this purpose to another physical address in the Republic of South Africa by notice in writing to the other Party, such change to be effective only on and with effect from the 7th Business Day after the giving of such notice.
- 8.3 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate service of such written notice or communication to that Party notwithstanding that it was not sent to or delivered or served at that Party's *chosen domicilium citandi et executandi*.

9. Miscellaneous

- 9.1 The Buyer consents to the jurisdiction of the Magistrates' Court in terms of Section 45 of the Magistrates' Court Act, No. 32 of 1944, as amended, having jurisdiction under Section 28 of the said Act, notwithstanding that the claim exceeds the normal jurisdiction of the Magistrate' Court.
- 9.2 No relaxation or indulgence granted to the Buyer by the Supplier, at any time, shall be deemed to be a waiver of any of the Supplier's rights in terms hereof, and such relaxation or indulgence shall not be deemed as a novation of any of the terms and conditions set out herein, or create any estoppel against the Supplier.
- 9.3 Any agreement purporting to vary or novate the terms of this Agreement, or any consensual cancellation, shall not be valid unless reduced to writing and signed by the Buyer and the Supplier. For the purposes of this clause electronic communication does not constitute writing.

CESSION OF CLAIMS

10. The Buyer and Surety hereby jointly and severally, irrevocably and *in rem suam* cede and assign as a pledge unto and in favour of the Supplier, all the right, title, interest in and to all claims of whatsoever nature and description and howsoever arising which the Buyer and/or Surety may now or at any time hereafter have against all and any persons, companies, corporations, firms, partnership, associations, syndicates and other legal personae whomsoever without exception as continuing covering security for the due payment of every sum of money which may now or at any time hereafter be or become owing by the Buyer and/or Surety from whatsoever cause or causes arising, it being acknowledged that this cession is a cession in *securitatum debiti* and is not an out-and-out cession.
11. Should it transpire that the Buyer and/or Surety entered into prior deeds of cession or otherwise disposed of any of the right, title and interest in and to any of

the claims which will from time to time be subject to this cession, then this cession shall operate as a cession of all the Buyer and/or Surety's reversionary rights.

12. This Cession shall be and remain in full force and effect as a continuing security notwithstanding any fluctuation, or temporary extinction of the Buyer and/or Surety's indebtedness to the Supplier.
13. For the purpose of giving effect to the foregoing Cession both the Buyer and Surety hereby nominate, constitute and appoint the Supplier to be its Attorney and Agent, *in rem suam*, with full authority for the Buyer and/or Surety and in the Buyer and/or Surety's name to demand, sue for, recover and receive all sums of money hereby ceded and assigned and with the authority to sign all documents on the Buyer and/or Surety's behalf and in the Buyer and/or Surety's name in connection with the recovery of the said sums and to give acquittances and receipts for the Buyer and/or Surety's.
14. The Buyer and Surety agree that, on request by the Supplier, they shall be obliged to hand over to the Supplier all books of account, contracts, invoices, documents and the like which it may require for the purposes of ascertaining the amounts due to the Buyer and/or Surety for the purpose of recovery of payment.
15. The Buyer and Surety shall be obliged to furnish the Supplier with a schedule of all debts due to the Buyer and/or Surety by its debtors monthly and upon demand. Notwithstanding the foregoing, the Supplier or its nominee shall at all times be entitled to inspect all or any of the Buyer and Surety's records as the Supplier deems fit. Failure by either party to give effect to the foregoing shall not in any way prejudice the rights of the Supplier hereunder, and the Supplier shall at all times be deemed to have perfected its security in terms hereof.

DEED OF SURETYSHIP

16. The signatory hereto binds himself as surety and co-principal Buyer in solidum with the Buyer in favour of the Supplier for the due payment of all amounts which may at any time be payable by the Buyer to the Supplier from any cause use of action whatsoever and whether acquired by the Supplier by way of cession or otherwise. He further waives the benefits of excussion and division and of the legal exceptions *non numeratae pecuniae* and *non causa debiti* and acknowledges himself to be fully acquainted with the meanings of these terms.
17. This suretyship is a continuing suretyship and shall remain of full force and effect notwithstanding any fluctuation in, or temporary extinction of the Buyer's indebtedness to the Supplier. It may not be withdrawn, revoked or cancelled by the Buyer without the Supplier's prior written consent. Any consensual cancellation or withdrawal of this suretyship by the Buyer and the Supplier shall only be valid and effective if reduced to writing and signed by both parties thereto.
18. Any admission of liability by the Buyer shall be binding upon the surety.

19. A certificate under the hand of any director or manager of the Supplier (whose appointment need not be proved) as to the existence and the amount of the Buyer's indebtedness and the surety's indebtedness to the Supplier at any time, as to the fact that such amount is due and payable, the amount of morae interest accrued thereon and as to any other fact, matter or thing relating to the Buyer's indebtedness to the Supplier and the surety's indebtedness to the Supplier, shall be sufficient and satisfactory proof of the contents and correctness thereof for the purpose of provisional sentence, summary judgment or any other proceedings of whatsoever nature against the Buyer and/or the surety in any competent court and shall be valid as a liquid document for such purpose.

CESSION BY SUPPLIER

20. Should the Supplier cede its claim against the Buyer and surety to any third party ("the Cessionary"), then the above Cession of Claims and Deed of Suretyship shall be deemed to have been given by the buyer and surety to such Cessionary as continuing covering security for the due payment of every sum of money which may at the time of such Cession or at any time thereafter be or become owing by the Supplier and Surety to the Cessionary (whether acquired the Cessionary by way of Cession or otherwise), and such Cessionary shall be entitled to exercise all rights in terms of the Cession of Claims and Deed of Suretyship as if such Cessionary were the supplier hereunder.
21. The Buyer agrees that if one clause is found to be invalid, this invalid clause does not affect the validity of the remainder of the Agreement.