

# CONDITIONS OF SALE

## 1. DEFINITIONS

1.1 In these Conditions of Sale:

“we” or “us” means Pump and Abrasion Technologies (Pty) Ltd, a company incorporated under the laws of South Africa (company no. 2013/114441/07) and having its registered office at 299 Barolong Street, Icon Industrial Park, Sunderland Ridge, Centurion, South Africa, 0157,

“you” means the person who is party to the Contract with us;

“Custom Goods” means Goods which are either (i) Standard Goods which are to be modified, customized or refurbished in accordance with an applicable Specification; or (ii) Goods which are to be designed and/or manufactured in accordance with an agreed Specification.

“Business Day” means, in respect of any notice to be served under or in connection with the Contract, any day (other than a Saturday or a Sunday) on which clearing banks in the town in which the recipient has its principal place of business are open for business;

“Contract” means the contract for the supply by us of the Goods and Services to you;

“Customer Inputs” means any inventions, documents, images, photographs, drawings, specifications, schematics, models, data, test results, computer software, prototypes and materials provided, created or disclosed by you to us in connection with the Contract;

“Intellectual Property Rights” means patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“Goods” means the goods (or any part of them) set out in the Order;

“Order” means our written confirmation of your order for the Goods and Services, which refers to these Conditions of Sale;

“Place of Delivery” the place to which the Goods are to be delivered, as specified in the Order or as subsequently agreed by the parties in writing;

“Premises” means 299 Barolong Street, Icon Industrial Park, Sunderland Ridge, Centurion, 0157

“Price” means the price for the Goods and/or Services in question;

“Standard Goods” means Goods which are sold by sample or description and are not Custom Goods;

“Specification” means, in respect of any Goods, any specification for such Goods referred to in the Order or otherwise agreed in writing by the parties;

“VAT” means value-added tax as levied in terms of the Value-added Tax Act 89 of 1991, as amended from time to time.

1.2 Furthermore:

- a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- b) by the “parties”, we mean you and us and a reference to a party includes its personal representatives, successors or permitted assigns;
- c) the masculine gender shall import the feminine and the singular shall import the plural and, in both cases, vice versa;
- d) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- e) a reference to writing or written includes faxes and emails.

## 2. BASIS OF CONTRACT

2.1. The Contract is constituted by:

- a) the Customer Order;
- b) these Conditions of Sale;
- c) any applicable Specification; and
- d) any other documents referred to in the Order.

For the purposes of interpretation, the constituent parts of the Contract shall rank in the order above, with the Order being of the highest rank, these Conditions of Sale being of the second highest rank and so on. In the event of any ambiguity or conflict between any term or condition of any of the constituent parts of the Contract, those of the higher ranking part shall prevail over those of the lower ranking part.

These Conditions of Sale apply to the Contract to the exclusion of any other terms that you may seek, or may already have sought, to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Any purchase order previously issued by you merely constituted an offer by you to purchase the Goods and Services. It does not form part of the Contract and no contract shall come into force until we have acknowledged the Purchase Order. You are responsible for ensuring that the terms of the Purchase Order and any applicable Specification are complete and accurate.

Any photographs, diagrams, drawings, images and illustrations contained in our catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

### 3. STATUS OF QUOTATIONS AND PRICES

Unless otherwise specifically stated, our quotations are merely quotations and do not constitute an offer capable of acceptance. Furthermore, unless otherwise specifically stated, any prices we quote:

- a) are only effective for the particular transaction contemplated by the relevant quotation and, accordingly, subsequent changes to, among other things, the quantity, quality or specification of goods to be supplied, the scope of services to be performed, the identity of the purchaser or the delivery location may alter the price;
- b) are, subject to our rights to increase the price in certain circumstances (see section entitled "Price" below), only valid for 14 (fourteen) days (inclusive);
- c) exclude VAT and all other taxes, duties and levies that may be applicable to the supply of the goods or services in question;
- d) exclude the costs of delivery; and
- e) are, in the case of itemised quotations for the supply of goods, for a single item only (not pairs or batches).

We reserve the right to withdraw our tender submission and quotations, without any liability to you or any other person, any time prior to becoming party to a legally binding contract for the supply of the relevant goods and/or services.

### 4. SUPPLY

In consideration for you paying the price for the Goods and Services, we shall supply the Goods and Services to you in accordance with the Contract.

In respect of Custom Goods, we reserve the right to amend the Specification or, in the case of Standard Goods, the specification of the Goods, if required by any applicable statutory or regulatory requirements. If this happens, we will inform you without undue delay and, in any event, prior to dispatch of such Goods.

### 5. CANCELLATION OF ORDERS

To the maximum extent permissible in terms of relevant laws, once the Contract is in force, your order for the Goods and Services cannot be cancelled, in whole or in part, without our express consent. We reserve the right to withhold such consent for any reason.

Without prejudice to the foregoing, we usually permit cancellation where:

- a) the Goods no longer required or desired by you are Standard Items; and
- b) you notify us of your desire to cancel at least 7 (seven) days before the Goods are due to be dispatched.

We do not usually permit whole or partial cancellation of an order for Custom Goods.

In the case of a cancelled order for Standard Goods, you will generally be released from your obligations to take delivery of and pay for the Standard Goods. However, you will reimburse us a **minimum handling fee of 15%** of the value of Goods should we, prior to receiving your notice of cancellation, have already contracted to transport the Standard Goods to the place of delivery.

If we permit cancellation of an order for Custom Goods, you will indemnify us against all costs, expenses and losses (including loss of profit) which we sustain as a result. You accept that this may involve you having to pay the full price for any Custom Goods which we have already manufactured (or partially manufactured) for you at the time of cancellation.

### 6. DELIVERY

Unless otherwise stated in the Order, delivery of Goods shall be made in accordance with the INCOTERMS, published by the International Chamber of Commerce, 2010 Edition, EXW ("ex works") and you shall be responsible for (at your own expense) collecting the Goods from our Premises within 14 (fourteen) days of us notifying you that they are ready for collection. If you fail to do so, we shall be entitled to charge you for storing the Goods pending collection, in accordance with our published list of charges then in force. We shall be deemed to have delivered the Goods upon placing them into your custody or that of your servants.

Where the Order states that we are to deliver the Goods to some other location, we shall deliver the Goods to the Place of Delivery. The price of delivery shall be as stated in the Order or as otherwise agreed between us in writing.

We reserve the right to withhold any delivery if you become subject to any insolvency proceedings or if we have reasonable grounds to form the opinion that your credit worthiness or credit standing have deteriorated to a material extent.

Although we always strive to ensure that deliveries are made within a reasonable time, any dates or timescales quoted for delivery are to be treated as estimates only and are not binding.

## 7. TITLE AND RISK

You shall not obtain valid title to any Goods until you have paid for them in full. Until that time, we shall retain title to the Goods.

In the event that you fail to pay in full for any Goods by the due date for payment, we reserve the right to require you to deliver up the Goods and/or to retake possession of such Goods and you hereby authorise us and our representatives, servants, agents and employees to, (except in case of emergency) having given reasonable notice to you and at reasonable hours, enter upon any premises owned or occupied by you at which such Goods are located or stored for the purpose of retaking possession.

In the case of Goods to be delivered ex works from our premises, risk in the Goods shall pass to you upon you or your servants taking custody of the Goods. In all other cases, risk in the Goods shall pass to you upon delivery at the Place of Delivery.

## 8. SUPPLY OF SERVICES

Any Services we perform under the Contract shall be performed with reasonable skill and care by persons who have sufficient skills, knowledge, experience and qualifications to perform them.

Any dates or timescales quoted by us for provisions of the Services are indicative only and are not legally binding, provided that we will, to the extent possible, provide the Services within a reasonable period of time.

Where any part of the Services are to be performed at any location other than our own premises, you will ensure that we and our servants are granted access to the relevant location at the appointed time or (if there is no appointed time) during normal business hours at the relevant location provided we have given reasonable prior notice of arrival. If the performance of the Services at any such location requires us or our servants to have access to and make use of basic utilities and amenities, such as electricity, water or gas supplies or telecommunications line, you will use reasonable endeavours to ensure that we are granted all such permits, licenses, consents and authorizations as we may require in order to have access and use, free of charge.

## 9. REPAIRS

Any repair work we perform under the Contract shall be performed with reasonable skill and care by persons who have sufficient skills, knowledge, experience and qualifications to perform them.

1. **Repair service:** We shall repair your product as described and for the estimated charges shown on the quotation provided. When the product was originally purchased from us and is still covered by warranty, we will perform repairs under the terms of such warranty, provided that you have presented satisfactory proof of the product's eligibility for such repairs. You will be responsible for any additional charges applicable under or beyond your product's warranty, including any applicable tax.
2. **Subcontractors:** We may subcontract with other service providers for the repair of your product.
3. **Payment:** Unless your product is repaired under warranty, you will promptly pay us the charges identified in accordance with the provisions of these terms and conditions. Your payment is due when the product is returned to you by us. Unless specified otherwise, the estimated amount includes all parts, labour, any transportation required for the repair of the product, and any applicable tax. You may, at our sole discretion, be responsible for the diagnostic fee on the invoice, plus any applicable tax, if we inspect your product, provide an estimate for you, and you do not authorise us to undertake the repairs for the estimated charges. We reserve the right to return the product to you without repairing it, and may hold you responsible for the diagnostic fee, plus any applicable tax.
4. **Non collection of repairs:** If you have not claimed your repairs and paid all charges due within thirty (30) days after being invoiced by us and informed that your product is available to be returned to you, all spares affixed to the repair shall be stripped and sold to defray costs. Pump and Abrasion will consider your product abandoned and will dispose of the repair in accordance with applicable provisions of law, and specifically may sell your product without liability to you. We shall will provide such notice to you at the mailing address you furnished when you authorised the repairs. Pump and Abrasion reserves its statutory and any other lawful liens for unpaid charges.

Should we be in possession of a repair job and no purchase order received within ninety (90) days from quotation, we will consider your product abandoned and will dispose of the repair in accordance with the applicable provisions of law, in order to defray expenses.

## 10. PRICE

The Price shall be the price set out in the Order or, in the absence of being set out in the Order, in our written quotation, or in the absence of a quotation, in our published price list in force at the date of acceptance of your Order.

Unless otherwise explicitly stated, the Price excludes VAT and all other taxes, duties and levies that may be applicable to the supply of the goods or services in question. To the extent that any such taxes, duties or levies are applicable to the transaction, you shall be liable to pay them in addition to the Price.

The Price is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which you shall also be liable for.

Unless otherwise specified, all prices are quoted in South African Rand.

We may, by giving notice to you at any time before delivery, increase the Price to reflect any increase in the cost of the Goods and/or Services that is due to:

- a) any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- b) any request by you to change the delivery date(s), quantities or types of Goods ordered, the Specification for any Custom Goods or the scope or nature of the Services; or
- c) any delay caused by your instructions or your failure to give us adequate or accurate information or instructions.

#### 11. PAYMENT AND CREDIT TERMS

Unless the Order specifies otherwise, you must pay in full for Goods prior to dispatch or collection (as the case may be) and for Services prior to them being performed.

Should you require credit facilities with us, you will be required to complete and submit a credit application for credit worthiness checks by an accredited Risk Management firm.

Should approval be granted for credit, you will be granted credit terms of **30 days nett** and a credit limit as stipulated in the credit application or amended on express consent of both parties.

In the event of you defaulting in payment of any amount that has become due and owing, which action shall amount to a breach of this agreement, then we shall have the right to enforce the relevant provisions of this agreement, and to declare the whole balance of all amounts owing/outstanding (whether due or not) in terms hereof, to be immediately due, owing and payable, without further notice to you. We shall reserve the right to cancel all credit facilities provided to you; thereafter you will be required to pay in full of all Goods prior to dispatch or collection.

Any expenses incurred by us in recovery of debts are to be met by you. This will not apply to the extent that we are to blame for non-payment of an account.

Any sums to be paid by you under the Contract must be paid without any deduction or withholding and you shall not be entitled to assert any credit, setoff or counterclaim against us in order to justify withholding payment of

any such amount in whole or in part. We may at any time, without limiting any other rights or remedies we may have, set off any amount you owe us against any amount we owe you, under this Contract or any other.

#### 12. INTEREST

Without prejudice to our other remedies under the contract, we shall be entitled to charge interest at the rate of 5% (five per cent) above the prevailing prime interest lending rate prescribed by the South African Reserve Bank on all overdue sums which you owe us from the due date to the actual date of payment.

#### 13. INTELLECTUAL PROPERTY

You hereby acknowledge that nothing in the Contract shall be deemed to transfer or create any license in your favour in respect of any Intellectual Property Rights owned and/or licensed by us. We shall own the Intellectual Property Rights in any documents, materials, inventions, diagrams, schematics, drawings, specifications, test results, data, software, images, photographs, blueprints and things that we create, conceive of, provide or disclose in connection with the Contract.

You shall defend, hold harmless and indemnify us (on demand) against all losses, damages, costs, claims, expenses (including legal expenses) and liabilities incurred by us, or for which we may become liable, in connection with any allegation, suit, demand, action or legal proceeding made against us for actual or alleged infringement of the Intellectual Property Rights of any third party arising out of or in connection with our use of any Customer Inputs.

You hereby grant us an irrevocable, royalty-free, sub-licensable, worldwide license to do all such acts and things as we may reasonably require to do in respect of any Customer Inputs and any of your Intellectual Property Rights for the purpose of enabling us to comply with our obligations under the Contract. To the extent that the Intellectual Property Rights in any Customer Inputs are owned by any third party, you shall procure (at your own expense) that such third party grants us such a license in respect of such Customer Inputs.

#### 14. GOODS WARRANTY

We hereby warrant that if, within a period of 18 (eighteen) months from the date of delivery or 12 (twelve) months from the date of commissioning whichever is sooner (the "Warranty Period"), any Goods (other than Goods excluded from the scope of this warranty, as identified below) are found:

- a) to be materially defective in materials or workmanship; and/or
- b) not to conform with their description in all material respects and any applicable Specification,

then we will, at our option, either repair such Goods so as to make them non-defective or conformant (as the case may be) or replace them with non-defective or conformant Goods.

Our obligations under this warranty are conditional upon:

- 1) you notifying us of the defect or non-conformity within 7 (seven) days of becoming aware of same and, in any event, within the Warranty Period or, in the case of a non-conformity which would have been apparent to any reasonably skilled person carrying out a visual inspection of the Goods upon delivery, within 30 (thirty) days of delivery;
- 2) you providing us with a reasonable opportunity to perform all appropriate tests on allegedly defective or non-conformant Goods; and
- 3) if we request that you do so, you returning the allegedly defective or non-conformant Goods to one of our designated service centres within 14 (fourteen) days of our request.

If, at our request, you return Goods which are alleged to be defective or non-conformant to us, we shall reimburse you in respect of all packing and transportation costs reasonably and properly incurred by you after we have determined that the Goods are in fact defective or non-conformant.

Any defective or non-conformant Goods which we replace will become our property upon delivery of the replacement Goods, which will be delivered to your site free of charge.

If we choose to repair defective or non-conformant Goods, we may elect to do so either at one of our premises or onsite. If we elect to repair such Goods onsite, we shall arrange a repair appointment with you and you shall procure that we and our servants are granted access to the location at which such Goods are situated at the appointed time. You acknowledge that several repair appointments may be required to implement a successful repair.

The express warranty above shall apply to replacement Goods and repaired Goods just as it applied to the defective or non-conformant Goods that were replaced or repaired except that the Warranty Period shall expire on the later of (i) 6 (six) months from the date of delivery of the replacement Goods or from the date of repair (as the case may be) and (ii) the date that the original Warranty Period on the defective Goods which were replaced or repaired (as the case may be) would have expired.

#### Exceptions

We shall not have any liability to you under the warranty above where:

- a) the defect arises as a result of fair wear and tear, willful damage by or negligence of anyone other than us or our servants, or abnormal storage or working conditions;
- b) the defect arises because you failed to follow our oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (in the absence of such instructions) good trade practice regarding the same.

- c) the defect results from the Goods having been in any way tampered with or altered by anyone other than one of our own employees or authorised representatives, unless with our permission;
- d) the defect arises as a result of damage caused in the course of loading, unloading or transportation of the Goods except where such damage is caused by our acts or omissions or that of our servants; or
- e) the defect results from the incorporation of, or failure of, parts in the Goods that were not supplied by us.

Goods manufactured and/or supplied to us by third parties are excluded from the coverage of the warranty above unless we have affixed our branding to them. However, the manufacturer of such goods may give you the benefit of its own warranty.

#### No Performance Guarantee

To the maximum extent permissible under law, you hereby acknowledge and agree that, because the performance of a pump on site will be influenced by many factors which are beyond our control, we do not warrant or guarantee that Goods supplied by us will be capable of any particular standard of performance. Any information in our published sales, marketing and technical literature, or made orally or in writing, by our sales representatives which relate to the performance of any Goods are made in good faith and believed to be accurate in the context of the operating conditions within our own testing facilities but are only to be considered as indicative (i.e. non-binding) as regards the performance of any Goods in any other conditions.

#### 15. LIMITATION OF LIABILITY

The remedies provided under the warranty above are your exclusive remedies for any failure of the Goods to conform to their description and/or any applicable Specification, and for defects in the materials or workmanship of the Goods.

Nothing in these terms and conditions shall be construed or interpreted as an attempt to exclude or limit our liability for death or personal injury or any other liability that cannot be limited or excluded by law.

Subject to the mandatory provisions of any applicable law, without prejudice to the foregoing, we shall not have any liability for indirect, special or consequential losses or any of the following losses, regardless of whether same may be classified as direct or indirect losses: loss of profit; loss of revenue, loss of use; loss of goodwill or reputation; loss of anticipated savings and loss of production.

Without prejudice to the foregoing, our entire liability under or in connection with the Contract (whether under contract, in delict, under statute or otherwise) shall be limited to the aggregate Price paid by you in respect of all Goods and Services supplied under it.

Nothing in the Contract shall be construed as releasing you from any duty you have at law to mitigate your losses.

To the fullest extent permitted by law, all conditions, warranties, terms, undertakings, representations and obligations, whether expressed or implied, and whether arising under statute, common law, equity, custom, trade usage or otherwise (including without limitation, any implied condition, warranty, term or representation as to the correspondence of the Goods with any description or as to merchantable quality, fitness for any purpose or safety of the Goods, or operating performance where such performance is conditional on empirical factors or on the whole installation or on the individual or overall operation or on the skills of an operator), whether made known or not and our liability (if any) to compensate or indemnify any person or persons in respect of the foregoing, are expressly excluded.

## 16. INDEMNITY

You agree to indemnify and hold us harmless against any claims under or in connection with the Contract (whether under contract, in delict, under statute or otherwise) to the extent that they would, if proved, cause our aggregate liability under or in connection with the Contract to exceed the aggregate Price paid by you in respect of all Goods and Services supplied under the Contract.

## 17. RETURNS POLICY

While we generally endeavour to accept returns of Goods in order to offer you the best service, we do so entirely at our own discretion and subject to the mandatory provisions of any applicable law. Generally, we only accept Standard Goods for return with our prior agreement and only if the Goods and their packaging are in original condition, and free from damage and blemishes. We regret that we generally cannot accept returns of Custom Goods.

In order to enable us to process your return, you need to tell us the original invoice number and the reason why you wish to return the Goods, within 30 (thirty) days from the date of our invoice. If you are returning the Goods because you ordered them in error, we reserve the right to charge you a **minimum a handling charge of 15% (fifteen percent)** of the value of the Goods being returned.

## 18. DEFAULT

You will be in default if any of the following occurs:

- a) you are in breach of the Contract or of any other contract that we may have with you and, in the case of a breach capable of remedy, you fail to remedy same to our reasonable satisfaction within 7 (seven) days of being requested to do so;
- b) we have not received payment for any Goods by the due date of payment;
- c) you suspend, threaten to suspend, cease or threaten to cease to carry on all or substantially the whole of your business;

- d) you suspend, or threaten to suspend, payment of your debts, or are unable to pay your debts as they fall due or you admit your inability to pay your debts, or you are deemed by the law of any applicable jurisdiction to be unable to pay your debts;
- e) you commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or you make a proposal for or you enter into any compromise or arrangement with your creditors, other than where these events take place for the sole purpose of a scheme whereby you will undergo a solvent amalgamation with one or more other companies or you will undergo a solvent reconstruction;
- f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with you being wound up, other than for the sole purpose of a scheme whereby you will undergo a solvent amalgamation with one or more other companies or you will undergo a solvent reconstruction;
- g) an application is made to court, or an order is made, for the appointment of a business rescue practitioner or administrator over you or if a notice of intention to appoint a business rescue practitioner or administrator over you is given or if an administrator is appointed over you;
- h) a person becomes entitled to appoint a receiver over you or your assets or a receiver is appointed over you or your assets; or
- i) any event occurs, or proceeding is taken, with respect to you in any jurisdiction to which you are subject that has an effect equivalent or similar to any of the events mentioned in (e) to (h) above.
- j) If you default, or we reasonably believe that you are about to default and we notify you accordingly, without limiting any other rights or remedies available to us, we may cancel or suspend all further deliveries under the Contract and/or under any other contract between us and you;
  1. treat the Contract and any other contract we may have with you as having been repudiated by you and terminate the Contract and/or such other contracts immediately upon giving you notice;
  2. exercise our right (explained above) to retake possession of any Goods which are in your possession but to which title has not passed to you;
  3. (without notice to you, withdraw or vary any credit facilities we have provided to you; and/or
  4. without notice to you, make all monies owing by you to us under the Contract and/or any other contract we have with you immediately due and payable.

#### **19. ENTIRE AGREEMENT**

The Contract constitutes the whole agreement and understanding between us and you and supersedes any previous arrangement, understanding or agreement between us and you relating to the subject matter of the Contract.

You acknowledge that, in entering into the Contract, you have not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out in the Contract. You agree that all liability for and remedies in respect of any representations are excluded except as expressly provided in the Contract. Nothing in this clause shall limit or exclude any liability for fraud.

#### **20. FORCE MAJEURE (CIRCUMSTANCES BEYOND THE REASONABLE CONTROL OF THE PARTIES)**

We shall not be liable for any failure or delay in performing our obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "Force Majeure Event" means any event beyond our reasonable control, which by its nature could not have been foreseen by us, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving our own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of our suppliers or subcontractors.

#### **21. NOTICES**

Any notice which require to be given to a party under or in connection with the Contract shall be in writing, addressed to that party at its address specified in the Order, its principal place of business or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or email. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the appropriate address; if sent by pre-paid registered post or recorded delivery, at 9.00 am on the 5th (fifth) Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, 48 (forty eight) hours after successful transmission. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

#### **22. NO WAIVER**

No failure or delay by us in exercising any right, power or privilege to which we are entitled shall operate as a waiver nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise. The terms of this Contract and obligations and acknowledgments under this Contract may only be waived or modified by us by an agreement in writing between the parties to this Contract.

#### **23. SEVERANCE**

In the event of any part of the Contract becoming void or unenforceable, then that part shall be severed from the Contract and the remaining terms and conditions hereof shall remain in full force and effect.

#### **24. APPLICABLE LAW**

The Contract shall be governed by and construed in accordance with the laws of South Africa. The parties hereby agree to submit to the non-exclusive jurisdiction of the South African courts and any court which may hear appeals there from.

#### **25. SURVIVAL**

The clauses in this agreement headed INTELLECTUAL PROPERTY, TITLE AND RISK and LIMITATION OF LIABILITY, and any other clauses of the Contract which, by their nature, should survive termination, shall survive the termination or expiration of the Contract.