

MHPS (PTY) LTD

TERMS AND CONDITIONS OF PURCHASE

1. **Acceptance; Agreement.** Supplier's commencement of work on the goods or services subject to this purchase order or shipment of any such goods, whichever occurs first, shall be deemed an effective mode of acceptance of this purchase order. Any acceptance of this purchase order is limited to acceptance of the express terms contained on the face and reverse hereof. Any proposal for additional or different terms or any attempt by Supplier to vary, in any degree, any of the terms of this offer in Supplier's acceptance is hereby objected to and rejected, but such proposals shall not operate as a rejection of this offer unless such variances are in the terms of the description, quantity, price or delivery schedule of the goods or services, but shall be deemed a material alteration of such offer, and said offer shall be deemed accepted by Supplier without said additional or different terms. If this purchase order shall be deemed an acceptance of a prior offer by Supplier, such acceptance is limited to the express terms contained on the face and on the back hereof. Any additional or different terms contained in the terms of Supplier's prior offer shall be deemed material and such additional or different terms are hereby objected to; provided, however, that this purchase order shall not operate as a rejection of that prior offer unless such variance is in the term of the description, quantity, price, or delivery schedule of the goods or services.

2. **Termination for Convenience.** Buyer reserves the right to terminate this order or any part hereof for its sole convenience. In the event of such termination, Supplier shall immediately stop all work hereunder, and shall immediately cause its suppliers or subcontractors to cease such work. Buyer will reimburse Supplier for reasonable expenses (which shall not include indirect costs or lost profits) resulting directly from any such termination for convenience. Supplier shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Supplier's suppliers or subcontractors which Supplier could reasonably have avoided. Supplier shall not unreasonably anticipate the requirements of this order.

3. **Termination for Cause.** Buyer may also terminate this order or any part hereof for cause in the event of any default by the Supplier, any late deliveries, deliveries of goods or services which are defective or which do not conform to this order, or in the event that Supplier fails to comply with any of the terms and conditions of this agreement or fails to provide Buyer, upon request, with adequate assurance of future performance to the satisfaction of Buyer. In the event of termination for cause, Buyer shall not be liable to Supplier for any amount, and Supplier shall be liable to Buyer for any and all damages sustained by reason of the circumstances which gave rise to the termination for cause. If it should be determined that Buyer has improperly terminated this contract for cause, such termination shall be deemed a termination for convenience.

4. **Changes.** Buyer shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery, and method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for the performance, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly. Supplier agrees to accept any such changes subject to this paragraph.

5. **Warranty.** Supplier expressly warrants that all goods or services furnished under this agreement shall conform in every respect to any specifications, drawings, samples or descriptions provided by Buyer or upon which this order is based and shall be new, of the highest quality, and free from defects in material or workmanship. Supplier warrants that all such goods or services will conform to any statements made on the containers or labels or advertisements for such goods or services, and that any goods will be adequately contained, packaged, marked, and labeled. Supplier warrants that the goods or services shall conform to any and all applicable technical and safety provisions and comply in all respects with any and all applicable industry, federal/national, state/provincial and local laws, regulations, directives and standards including, but not limited to, those concerning safety, labor, health, environmental and fire. Supplier further warrants that all goods or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which goods or services of that kind are normally used. If Supplier knows or has reason to know the particular purpose for which Buyer intends to use the goods or services, Supplier warrants that such goods or services will be fit for such particular purpose. Supplier warrants that goods or services furnished will conform in all respects to samples provided to the Buyer by the Supplier prior to the conclusion of the agreement. Inspection, testing, acceptance or use of the goods or services furnished hereunder shall not affect the Supplier's obligation under this warranty, and such warranty shall survive inspection, testing, acceptance and use. Supplier's warranty shall be in favour of Buyer, its successors, assigns and customers, and users of products sold by Buyer. Supplier agrees to replace or correct defects of any goods or services not conforming to the foregoing warranty promptly, without expense to Buyer, when notified of such nonconformity by Buyer, provided Buyer elects to provide Supplier with the opportunity to do so. In the event of failure of Supplier to correct defects and/or replace nonconforming goods or services promptly, Buyer, after reasonable notice to Supplier, may make such corrections or replace such goods and services and charge Supplier for the cost incurred by Buyer in doing so.

6. **Price Warranty.** Supplier warrants that the prices for the goods or services sold to Buyer hereunder are not less favorable than those currently extended to any other customer of Supplier for the same or similar articles in similar quantities (**Standard Price**). In the event that Supplier reduces its Standard Price for such articles during the term of this order, Supplier agrees to reduce the prices hereof correspondingly. Supplier warrants that prices shown on this purchase order shall be complete, and no additional charges of any type shall be added without Buyer's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, and crating. In the event that no price is stated in the order, the price shall be deemed to be the price last supplied to Buyer or the current market price, whichever is lower.

7. **Force Majeure.** Without liability to Supplier, Buyer may delay delivery or acceptance of this order, or cancel this order completely, as a result of circumstances beyond Buyer's control which make performance commercially impractical including, but not limited to, acts of God, fire, unusually severe weather, flood, acts of war, government action, accident, labour difficulties or shortage, or inability to obtain materials, equipment or transportation. In the event of a delay, Supplier shall hold goods subject to such delay at the direction of the Buyer and shall deliver them when the causes affecting the delay have been removed.

8. **Payment; Taxes and Duties.** Payments shall be conditional upon goods or services being supplied in all respects in accordance with the purchase order and upon supply to the Buyer of a proper invoice from the Supplier. Such invoice shall correctly specify the purchase order number, order date, a description of the goods or services supplied, the date of supply, and the sum due and properly addressed and referenced. Unless otherwise stated, terms of payment shall be net sixty (60) days. Supplier shall be solely responsible for filing all appropriate tax forms and paying all applicable tax, duty, export preparation charges and export documentation charges resulting from the purchase of the goods or services under this agreement.

9. **Inspection/Testing.** Payment for the goods or services delivered hereunder shall not constitute acceptance thereof. Buyer shall have the right to inspect such goods or services and to reject any or all of said goods or services which are in Buyer's judgment defective or non-conforming. Goods rejected and goods supplied in excess of quantities called for herein may be returned to Supplier at its expense and, in addition to Buyer's other rights, Buyer may charge Supplier all expenses of unpacking, examining, repacking and reshipping such goods. In the event Buyer receives goods or services whose defects or non-conformity is not apparent on examination, Buyer reserves the right to require replacement, as well as payment of damages. Nothing contained in this purchase order shall relieve in any way the Supplier from the obligation of testing, inspection and quality control.

10. **Delivery.** Time is of the essence in this contract, and if delivery of goods or rendering of services is not completed by the time agreed, Buyer reserves the right without liability, in addition to its other rights and remedies, to terminate this order by notice effective when received by Supplier as to goods not yet shipped or services not yet rendered and to purchase substitute items or services elsewhere and charge Supplier with any loss incurred. Buyer shall not be obligated to accept early, late, partial or excess deliveries.

11. **Title and Risk of Loss; Shipment.** Unless otherwise specified in writing, title and risk of loss of all goods covered by this purchase order shall pass to the Buyer upon delivery FCA, Supplier's Premises (Incoterms 2010). If in order to comply with Buyer's required delivery date it becomes necessary for Supplier to

ship by a more expensive way than specified in this purchase order, any increased transportation costs resulting therefrom shall be paid for by Supplier unless the necessity for such routing or expedited handling has been caused by Buyer.

12. **Confidentiality; Advertising.** Supplier shall consider all information furnished by Buyer (hereinafter referred to as "Information") to be confidential and shall not disclose any such Information to any other person, or use such Information itself for any purpose other than performing this agreement, unless Supplier obtains written permission from Buyer to do so. Information shall include without limitation, any customer, prospect and price lists, plans, photographs, designs, component designs, drawings, blueprints, specifications, inventions, technical data, trade secrets, and any other materials relating to this order or to the business of Buyer. All Buyer Information is and shall remain the property of Buyer. Upon Buyer's written request or the termination of this agreement, Supplier shall return to Buyer all Buyer Information. In no event will Supplier use less than the degree of care and means that it uses to protect its own confidential information of like kind, but in any event not less than reasonable care to prevent the unauthorized disclosure or use of Buyer's Information. The Supplier will not, without the prior written consent of the Buyer, advertise, publicly announce or provide to any other person information relating to the existence or details of the purchase order or use the Buyer's name in any format for any promotion, publicity, marketing or advertising purpose. Unless otherwise agreed in writing, no commercial, financial, or technical information disclosed in any manner or at any time by Supplier to Buyer shall be deemed secret or confidential and Supplier shall have no rights against Buyer with respect thereto except such rights as may exist under patent laws.

13. **Buyer Property.** All equipment, jigs, tools, drawings, fixtures, dies, moulds, patterns, materials and other such items supplied to the Supplier by or at the expense of the Buyer shall remain the Buyer's property. Supplier will maintain such items in good working order. The Supplier shall ensure that the above items are clearly marked and stored as being the legal property of the Buyer and that they are not used for contracts for any third party. While such items are in the possession of the Supplier, the Supplier shall make provision to adequately insure, against all normal risks, all such items that are the property of the Buyer, and Buyer shall be named as an additional insured.

14. **Ownership of Work Product.** All materials, and any inventions (whether or not patentable), works of authorship, trade secrets, ideas, concepts, trade names and trade or service marks created or prepared for Buyer (collectively "Inventions"), shall belong exclusively to Buyer. Standard goods manufactured by Supplier and sold to Buyer without having been designed, customized, or modified for Buyer do not constitute Inventions. Furthermore, any works conceived or reduced to practice by Supplier which were developed entirely on Supplier's own time without using equipment, suppliers, facilities, or Buyer's information do not constitute Inventions. Supplier hereby assigns the worldwide right, title and interest in and to the Inventions to Buyer. Buyer shall have the right, at Buyer's option and expense, to seek protection by obtaining patents, copyright registrations, and filings related to proprietary or intellectual property rights. Supplier agrees to execute, and to cause its employees to execute, such documents, applications, and conveyances and to supply information as Buyer shall request, in order to permit Buyer (at Buyer's expense) to protect, perfect, register, record and maintain its rights in the Inventions and effective ownership of them throughout the world. These obligations survive the expiration or termination of this agreement.

15. **Insurance.** In the event that Supplier's obligations hereunder require or contemplate performance of services by Supplier's employees, or persons under contract to Supplier, to be done on Buyer's property, or the property of Buyer's customers, the Supplier agrees that all such work shall be done on an independent contractor basis and that the persons doing such work shall not be considered employees of the Buyer. Supplier and/or independent/sub contractor, if applicable, shall maintain all necessary insurance coverages, including public, product, auto liabilities and worker's compensation insurance. Supplier shall indemnify, defend and hold harmless Buyer from any and all claims or liabilities arising out of the work covered by this paragraph. Supplier shall provide a certificate to Buyer evidencing such insurance coverage and naming Buyer as an additional insured. The policy shall contain minimum limits of \$2 million per occurrence with an aggregate of \$5 million and, with respect to worker's compensation insurance, shall contain the limits required by applicable law.

16. **Indemnification.** Supplier shall indemnify, defend and hold harmless Buyer, its directors, officers, parents, affiliates, subsidiaries, employees, agents, successors, and assigns against any suits, actions or proceedings at law (including costs, expenses and reasonable attorney's fees incurred in connection with the defense of any such matter) and all claims, losses, damages, judgments, obligations, liabilities and expenses arising out of or resulting in any way from: (i) any defects in the goods or services purchased hereunder; (ii) any acts or omissions of Supplier, its agents, employees or subcontractors; or (iii) any claim of infringement (including patent, trademark, copyright, industrial design right, or other proprietary right, or misuse or misappropriation of trade secret) arising out of the purchase, sale or use of the goods or services covered by this order whether such goods or services were provided alone or in combination with other products, software or processes. Supplier expressly waives any claim against Buyer that such infringement arose out of compliance with Buyer's specification. If Supplier fails to fulfill any of its obligations under this paragraph or this agreement, Supplier agrees to pay Buyer all costs, expenses and attorney's fees incurred by Buyer to establish or enforce Buyer's rights under this paragraph or this agreement. This indemnification shall be in addition to the warranty obligations of Supplier.

17. **Entire Agreement; Modification.** This Agreement is the complete, final and exclusive statement of the terms of the agreement between the parties and supersedes any and all other prior and contemporaneous negotiations and agreements, whether oral or written, between them relating to the subject matter hereof. Except for any changes requested in accordance with Paragraph 4 hereof, this agreement, including this paragraph 17, may not be varied, modified, altered, or amended unless agreed to in writing by the parties. The terms and conditions of this agreement shall prevail notwithstanding any variance with the terms and conditions of any acknowledgment or other document submitted by Supplier.

18. **Assignments and Subcontracting; Waiver; Severability.** No part of this order may be assigned or subcontracted without the prior written approval of Buyer. Any assignment or transfer without such written consent shall be null and void. This agreement shall inure to the benefit of, and be binding upon, the successors and assigns of Buyer without restriction. A failure to strictly enforce the terms of this Agreement in respect of any default hereunder or of any term or condition of this agreement shall not be deemed to be a continuing waiver or a waiver of any other default or any other term or condition or be capable of founding an estoppel. If any provision of this Agreement shall be deemed to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

19. **Limitation on Buyer's Liability.** In no event shall Buyer be liable for anticipated or lost profits or for indirect, incidental or consequential damages, regardless of whether or not Buyer was advised of the possibility of such damage.

20. **Set-off.** All claims for money due or to become due from Buyer to Supplier shall be subject to deduction or set-off by the Buyer by reason of any counterclaim arising out of this or any other transaction between Buyer and Supplier.

21. **Compliance with Laws.** Supplier shall comply with all applicable laws, rules, regulations, orders or standards of that relate to the manufacture, labeling, transportation, importation, exportation, use, operation, licensing, approval or certification of the Products, including, but not limited to, those relating to environmental matters, product safety, wages, hours and conditions of employment, sub-contractor selection, discrimination, occupational health/safety and motor vehicle safety. Supplier represents that neither it nor any of its sub-contractors will engage in or utilize human trafficking, child, slave, prisoner or any other form of forced or involuntary labour. Upon request, Supplier shall provide MHPS with such information and cooperation as MHPS may require in order to meet any obligations MHPS may have under any and all conflict minerals laws.

22. **Applicable Law; Jurisdiction.** This Agreement shall be construed in accordance with, and disputes shall be governed by laws of accordance with the laws of South Africa. The parties agree that the proper and non-exclusive forum and venue in all legal actions brought to enforce or construe any of the provisions of this agreement shall be in the South Gauteng Division of the High Court of South Africa.

Supplier's Initials: _____