TERMS AND CONDITIONS APPLICABLE TO THE SALE OF GOODS AND SERVICES

between

CRETEMIX MIXED CONCRETE (PTY) LTD

("Company")

Company Registration Number	2013/053051/07
VAT Number	4400220929
Trading As	Cretemix Mixed Concrete
Physical Address	4 Foundry Lane, New Germany, 3610
Postal Address	P O Box 1375, Pinetown, 3600
Telephone Number	031 701 1727
Mobile Number	083 981 1423
Accounts Contact	Leanne Connolly
Email Address	accounts@cretemix.co.za

and

_____

("Customer")

Company Registration Number	
VAT Number	
Trading As	
Physical Address	
Postal Address	
Telephone Number	
Mobile Number	
Accounts Contact	
Email Address	

Private & Confidential © Cretemix Mixed Concrete

Initials

SECTION C: TERMS AND CONDITIONS OF SALE

1. CONTRACT INTRODUCTION

1.1. This Agreement details the terms and conditions governing the sale of all Products and Services from the Company.

1.2. By applying for credit (if applicable), or by placing a verbal, written or electronic order with the Company, the Customer agrees to all of the terms and conditions as set out in our Agreement below and consent to the processing of personal information as set out in the Privacy Policy.

1.3. The Customer acknowledges that no other terms, conditions or stipulations, whether express or implied, which might have been attached to the Customer's order, shall be binding on the Company, unless the Company specifically agrees, in writing, to accept any variation hereto. The Customer agrees that all such conflicting conditions shall be deemed to have been substituted by these terms and conditions.

2. INTERPRETATIONS

2.1. In this Agreement:

2.1.1. The clause headings and sub-headings have been inserted for convenience only and not for interpretation purposes;

2.1.2. Any reference to the singular includes the plural and vice versa;

2.1.3. Any reference to natural persons includes legal persons and reference to any gender includes reference to the other gender and vice versa;

2.1.4. When any number of days are prescribed, these are calculated exclusive of the first day and inclusive of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next day which is not a Saturday, Sunday or public holiday;

2.1.5. Where numbers are expressed in numerals and words, if there is a conflict between the two, the words shall prevail.

3. DEFINITIONS

3.1. Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:

3.1.1. **Agreement** means the agreement as set out in this document, including Sections A, B and C, and any other schedules attached hereto;

3.1.2. **Company** means CRETEMIX MIXED CONCRETE (PTY) LTD (Registration No. 2013/053051/07);

3.1.3. **Contract Price** means the price agreed to between the Company and the Customer for the Product and/or the Services, together with value added tax thereon;

3.1.4. **Customer** means anyone who completes an Application for Credit, requests a quotation, or purchases or places an order for the sale of any Product or the provision of any Services from the Company;

3.1.5. **Delivery Address** means the address nominated by the Customer for the Product to be delivered to.

3.1.6. **Part Load** means any delivery of readymix concrete other than a "final" load that is less than 5m3 (Five Cubic Metres);

3.1.7. **Parties** means the parties to this Agreement and "party" has a corresponding meaning;

3.1.8. **Point of Delivery** means the discharge point at the Delivery Address, or in the case of collection, the point of dispatch of the Product from one of the Company's batching plants to the Customer's delivery vehicle.

3.1.9. **Product** means any goods of whatsoever nature, purchased by the Customer from the Company;

Initials

3.1.10. **Services** means any Services of whatsoever nature, rendered by the Company to the Customer.

4. QUOTATIONS, PRICING AND ORDERS

4.1. Prices are based on current input costs and are subject to rise and fall, with an annual escalation in the January of each year.

4.2. Notwithstanding Clause 4.1, the Company reserves the right to adjust or change any prices and/or discounts at any time, upon reasonable notice to the Customer.

4.3. All quoted prices exclude VAT and are valid for 30 (Thirty) days from date of quotation, unless extended or revoked, in terms of a written notice to the Customer, or otherwise agreed to in writing between the Parties.

4.4. The price, as set out in more detail in the quotation, for the Company's Products or Services will, upon acceptance by the Customer, whether such acceptance is tacit, verbal or written, constitute the Contract Price.

4.5. Quotations are based on the Company's standard mix designs which are subject to approval from the Customer's consulting engineer. Should any modification to the mix design be required, the quotation and resulting Contract Price will be adjusted accordingly.

4.6. Unless otherwise stipulated, prices include transport to the Delivery Address specified on the quotation. Should the Delivery Address be incorrect, the Company reserves the right to update the Contract Price accordingly.

4.7. The Company reserves the right to charge, at the Company's ruling rates from time to time:

4.7.1. A *Demurrage Surcharge,* where the discharge time exceeds 9 (Nine) minutes per cubic metre of concrete, unless such delay is proved to be the fault of the Company;

4.7.2. A *Diverted Load Surcharge,* for any delivery diverted to another job site that is not the Delivery Address;

4.7.3. A *Part Load Surcharge,* on all deliveries of less than 5m3 (Five Cubic Metres);

4.7.4. A *Plant Opening Surcharge* for orders of less then 40m3 (Forty Cubic Metres) for delivery on Saturdays, Sundays and Public Holidays;

4.7.5. A *Transport Surcharge* for deliveries after 18h00.

4.8. Whilst every reasonable effort is made to capture the Customer's verbal instructions accurately, it is the Customer's responsibility to check the details of the order and to notify the Company, in writing, of any mistakes.

4.9. Should the price reflected on the order be incorrect due to a clerical error, the Company shall have the right to amend such price accordingly.

4.10. The Customer accepts responsibility for the safekeeping and issue of its orders and agrees to pay for orders that purport to be issued on its behalf, and given effect to, in good faith by the Company.

4.11. Should Order Numbers be required, it is the Customer's responsibility to ensure that the Order Numbers are sent to the Company before the Product is batched and the delivery note printed.

5. INVOICING AND TERMS OF PAYMENT

5.1. Unless otherwise agreed, invoices will be supplied electronically.

5.2. Regardless of the terms agreed, the Company has the absolute discretion, at any time, not to sell the Product or Services to the Customer.

5.3. Unless credit facilities have been granted, the Customer shall pay the full Contract Price prior to the dispatch or collection of the Product without deduction or set-off. The delivery or collection of the Product shall only be allowed once the funds have been cleared by the Company's bank.

5.3.1. Regardless of the quantities originally ordered and paid for, the Customer agrees that they are responsible for the full payment of any "finals" ordered by the Customer's site manager, foreman or agent in order to complete the pour.

Initials

5.4. Where credit facilities have been granted, unless otherwise agreed to in writing, all payment shall be made, without deduction or set-off, within 30 (Thirty) days after the last day of the month in which delivery took place.

5.4.1. Should this day fall on a Saturday, Sunday or Public Holiday, then payment must be made on or before the preceding business day.

5.5. The Company will inform the Customer in writing should they be entitled to a discount, which may only be taken if payment has reflected in the Company's bank account on or before the date specified on the respective invoice.

5.6. Should the Customer fail to clearly indicate which invoices on the Company's statement it is paying, the Company reserves the right to match said payments, to those invoices for which payment is overdue the longest.

5.7. In the event that the account becomes overdue, the Company shall be entitled to charge interest on the overdue balance, at 16.5% (Sixteen Point Five Percent) per annum, calculated from the due date.

5.8. Should any amount not be received by the Company on or before due date, all other amounts payable, but not yet due by the Customer, shall immediately (and without notice to the Customer) become both due and payable.

5.9. The Customer shall not be entitled to withhold, deduct or set-off any payments due for any reason whatsoever, notwithstanding any query, claim or dispute that may be pending between the Parties.

5.10. The Company reserves the right to withdraw, suspend or amend any credit facilities granted to the Customer and/or, to require the Customer to furnish guarantees and/or suretyships that are acceptable to the Company for its current or future obligations.

5.11. The Company reserves the right to suspend deliveries in its absolute discretion for any reason whatsoever.

5.12. The Company reserves the right to inform any reputable credit bureau(s) of any payment default.

6. CERTIFICATE

6.1. The Customer acknowledges that a certificate of account signed by the Company's external auditor and/or any Director at the time of the Company, shall be *prima facie* proof of the amount of its indebtedness to the Company and shall be sufficient proof of such indebtedness for purpose of provisional sentence and/or summary judgement proceedings against the Customer.

7. DELIVERIES AND DELIVERY NOTES

7.1. The Company shall endeavour to deliver the Product to the Delivery Address on the agreed date and time, provided the Company receives a minimum of 48 (Forty-Eight) hours written notice of the preferred delivery date and time.

7.2. The Company is not responsible for any delays in delivery or non-delivery of the Product due to causes beyond the Company's control. These include, but are not limited to, adverse weather conditions, traffic congestion, machinery breakdown, labour-related actions, shortages of stock and delays on the part of sub-contracted transport services.

7.3. The Customer may suspend or delay the delivery of the Product as a result of any reasonable contingency or event beyond its control. However, should the delivery of the Product be unreasonably delayed, the Company reserves the right to revise its Contract Price to the ruling prices at the time, such revision to be completed and the notification of the price update sent to the Customer before said delivery.

7.4. The Customer shall advise the Company as soon as possible, should adverse weather conditions or site problems necessitate a change in the agreed delivery date and/or time of the Product or Services. The Customer shall, in any event, be liable for the payment of any Products already batched, prior to the notification of the delay or cancellation of the order, for any reason whatsoever.

7.5. The Customer shall ensure that the Company's delivery vehicles have full and free access to the Point of Delivery and that the routes to and from the Point of Delivery are safe and suitable for the Company's delivery vehicles.

Initials

7.5.1. Notwithstanding Clause 7.5, the delivery vehicle driver may refuse to proceed to the Point of Delivery if, at his discretion, he considers it too great a risk to do so, in which case he shall be entitled, but not obliged, to offload the Product at the nearest safe discharge point, which shall thereupon be deemed to be the Point of Delivery.

7.6. The Customer shall ensure that delivery vehicles are offloaded at the correct Point of Delivery. In the event that the Product is offloaded at an incorrect point, the Company shall not be liable for any loss arising therefrom, whether direct, consequential, special or general.

7.6.1. Where multiple Points of Delivery exist for a delivery by a single delivery vehicle in a single load, the Customer shall be responsible for ensuring that the correct quantity of Product is offloaded at each discharge point.

7.7. The Customer accepts responsibility and liability for the methods adopted for the offloading, handling, placing, curing and compacting of the Product and for any lack of quality, fault or failure as a result of those methods used. This includes any lack of precautionary measures taken against weather conditions.

7.7.1. The Customer acknowledges that it is aware that the way concrete is offloaded, handled, placed, cured and compacted; and the addition of water, aggregate and additives can and does affect the quality and strength of concrete, mortars and plasters and that specialised concrete mixes, require specialised skills and experience in offloading, handling, placing, compacting and curing, if a satisfactory final Product is to be achieved.

7.8. Each delivery shall have a corresponding delivery note which will include the name of the project, the delivery address and the description and quantity of the Product supplied. Delivery of the correct Product will be deemed to have taken place upon signature of the delivery note by the Customer, its employee or agent.

7.8.1. The addition of any substance, including water, to the Product by the Customer, prior to and/or during discharge must be recorded and endorsed on the delivery note by the Customer. The Customer hereby accepts the sole risk that such additions may pose to the Product in terms of Clause 11.2.

7.9. Without detracting from the Customer's responsibilities in Clause 9, in the event of a dispute regarding the quantity or quality of Product delivered, the onus of proving that the Product was not delivered and/or that the quantity or quality thereof was not in accordance with the Customer's order, shall rest with the Customer.

8. OWNERSHIP AND RISK

8.1. Notwithstanding the actual delivery of any Product to the Customer, the ownership of the Product shall not pass to the Customer until the Company has received full payment for the Product.

8.2. If payment is not made within the agreed payment terms, the Company reserves the right to recover possession of such Product immediately, without notice and without the necessity to first cancel the contract of sale in respect of such Product. The Company shall be entitled to enter the Customer's site to bring about said recovery of Product by whatsoever means necessary.

8.3. Notwithstanding Clause 8.1, the risk in the Product shall pass to the Customer at the Point of Delivery.

8.4. The signed delivery note shall constitute *prima facie* proof (sufficient evidence) that the correct type and quantity of Product recorded thereon was delivered, received and accepted by the Customer.

8.5. Where the Customer is collecting the Product, the Company's responsibility for proving delivery is limited to producing the delivery note signed by the person purporting to be the Customer's transporter. Risk shall pass to the Customer once the Product is loaded onto the Customer's delivery vehicle and the delivery note is signed.

8.5.1. Where the Customer provides its own transport, then the Customer, its employees or agents will enter the Company's premises at their own risk and must comply with the Company's health and security procedures.

Initials

9. SHORT / INCORRECT DELIVERY CLAIMS

9.1. In respect of the Product, the Company shall not be liable for any claim for short or incorrect delivery unless:

9.1.1. The Customer verbally notifies the Company within 2 (Two) hours of the alleged short / incorrect delivery;

9.1.2. Reasonable opportunity and assistance is provided to the Company to verify the correctness of the claim; and

9.1.3. The Company's representative is permitted to measure the Product whilst it is still in a plastic state.

9.2. If proved to be at fault, the Company's sole liability for short or incorrect delivery shall be limited, at the Company's option, to either replace the Product that was incorrectly or short delivered or the generating of a credit note for the cost thereof.

10. CONCRETE TESTING

10.1. Any test cubes taken by the Company are for internal quality control purposes only. Any test cubes required for acceptance testing are the Customer's responsibility and any costs incurred will be for the Customer's account.

11. WARRANTIES

11.1. The Company warrants that the Product delivered is manufactured in accordance with the South African National Standard, SANS 878 specification for Ready Mixed Concrete.

11.2. The Company warrants that the Product delivered complies with the details shown on the delivery note and will reach the compressive strength that was ordered, 28 (Twenty-Eight) days after it was batched.

11.3. The onus shall be on the Customer to ensure, by examination before use, that the general consistency and workability of the Product delivered is within the agreed specification as ordered as determined by the slump test.

11.4. The Company offers no other warranty, whether express or implied, in respect of the Product, the colour consistency or texture, or the suitability of such Product for a particular purpose, even if such purpose was communicated to the Company.

11.5. The Company does not undertake to supply technical advice, and should it do so, it does not warrant the correctness thereof.

11.6. Concrete supplied where the COLTO Standard Specification for Road and Bridge Works for State Road Authorities applies (*Section 6400: Concrete for Structures and Section 7100: Concrete Pavements*), are subject to the following exclusion clauses:

11.6.1. *Section 6402(b)(3) and Section 7102(c)(i) : Drying Shrinkage*

Due to the proven repeatability and reproducibility problems related to concrete tested in accordance with *SANS 6085: Concrete Tests - Initial Drying, Shrinkage and Wetting Expansion of Concrete*, the Company reserves the right to agree upon the accredited laboratory where the tests will be conducted. Mix designs will be approved, based on the laboratory performance of the mixes. Concrete will be batched to the approved specification, in accordance with the accuracies prescribed in *SANS 878: Ready Mixed Concrete*.

11.6.2. Concrete Strength as per SANS 878

A valid test result for a sample of concrete shall be the average of three cubes sampled as per the truck sampling method defined in SANS 878 and made, cured and tested by an accredited laboratory in accordance with the relevant SANS Test Methods.

11.6.3. *Section 6406(f): Ready Mixed Concrete*

As the concrete supplied by the Company meets the requirements laid out in SANS 878, only the acceptance criteria specified in Section 14 of SANS 878 shall apply. The Judgement Plans defined in *Section 8200: Quality Control (Scheme 1)* and *Section 8300: Quality Control (Scheme 2)* shall therefore not apply.

Initials

11.6.4. *Section 6407(a): Placing and Compacting: General* and *Section 7105(d): Transporting the Concrete*
As the concrete supplied by the Company meets the requirements laid out in SANS 878, only the delivery times defined in Section 9.8 of SANS 878 will apply.

11.6.5. *Section 6414(a): Quality of Materials and Workmanship* and *Section 7124(a): Compressive Strength Control*
This section states that "*The resubmission of concrete lots on the basis of cores for full or conditional acceptance shall not be allowed*". In the event of a dispute related to in-situ concrete strength, the Company reserves the right to gain full or conditional acceptance based on core results, tested in accordance with *SANS 5865: Concrete Tests - The Drilling, Preparation, and Testing for Compressive Strength of Cores taken from Hardened Concrete* and analysed in accordance with *SANS 10100-2: The Structural Use of Concrete, Part 2: Materials and Execution of Work, Section 14.4.3: Acceptance of Concrete on the Basis of Core Strengths*. Should the core results meet the acceptance criteria as set out in SANS 10100:2, then full payment is due and payable.

11.6.6. *Section 7105: Batching, Mixing and Transporting Concrete*
Notwithstanding the requirements of this section, in the event of concrete being supplied for pavements, only the acceptance criteria specified in Section 14 of SANS 878 shall apply. The Judgement Plans defined in *Section 8200: Quality Control (Scheme 1)* and *Section 8300: Quality Control (Scheme 2)* shall therefore not apply.

11.6.7. Where there is a dispute regarding the in-situ strength of concrete supplied, the Company reserves the right to only accept test results from a laboratory accredited for the test in question.

12. LIABILITY

12.1. Delivery and Collection

12.1.1. The Company shall not, under any circumstances, be liable to the Customer, or to any other person, for any loss of profit or other damages, whether special or general, direct or consequential, arising as a result of late or non-delivery of the Product ordered.

12.1.2. The Customer shall be liable for the payment of any Products already batched, prior to the notification of a delay or cancellation of the order, for any reason whatsoever.

12.1.3. The Customer shall be liable for any Products ordered that exceeds their requirements onsite and is responsible for the use or disposal thereof.

12.1.4. The Customer shall be liable for any Product that is offloaded at an incorrect Point of Delivery.

12.1.5. Where the Product is collected by the Customer's transporter, the transporter is deemed to be the Customer's agent and any claims for under or over slumping, or non-delivery, must be made to the transporter and not the Company.

12.1.6. The Customer will be liable and bears the sole risk for any loss or damage, whether direct or consequential, to the Company's or its contractor's vehicles and/or machinery and equipment or the death or injury of the Company's or its Contractor's, employees or agents at the Delivery Address, unless such loss or damage is proven to be due to the negligence of the Company or its contractors.

12.1.7. Furthermore, the Customer hereby indemnifies the Company, its agents and employees and holds them harmless against any loss, damage or liability sustained or incurred by the Customer, its employees or agents, arising from any cause whatsoever while, the Company's vehicles are on the Customer's site.

12.2. Product Usage

12.2.1. The Customer is liable for the methods adopted for the offloading, handling, placing, curing and compacting of the Product and for any lack of quality, fault or failure as a result of those methods used. This includes any lack of precautionary measures taken against weather conditions.

Initials

12.3. Product Warranties

12.3.1. The Company shall not be held liable for the occurrence of efflorescence which is a natural phenomenon that can occur in Products with a high cement content.

12.3.2. Liability for breach of the warranty as set out in Clause 11.1 and 11.2 shall only arise where the Customer has established, in addition to any other proof required by law, that:

12.3.2.1. the Product was inspected by the Customer before use;

12.3.2.2. slump tests were completed within 15 (Fifteen) minutes of the truck arriving onsite and that the slump test sample was taken after the first 15% (Fifteen Percent) of the load had been discharged.

12.3.2.3. the Product was not misused, neglected, contaminated, improperly handled, worked, processed, or altered in any way and that no foreign material, including water, was added to the Product since it was batched;

12.3.2.4. the Customer discharged and placed the concrete within a reasonable timeframe from when the Product was delivered to the Customer's site, such timeframe being no more than 3 (Three) hours from when the Product was batched;

12.3.2.5. inspection, sampling methods and interpretation of test results were done in strict compliance with applicable specifications, these being no less stringent than those prescribed by the South African Bureau of Standards and that said results were made available to the Company for inspection;

12.3.2.6. the Company was afforded every reasonable opportunity to inspect the Product or any sample taken therefrom, and to submit the Product or sample for its own examination and testing; and

12.3.2.7. the Customer verbally notified the Company within 48 (Forty-Eight) hours of its tests having revealed an alleged non-conformity with specification, provided that written notification is given by the Customer to the Company within a maximum of 35 (Thirty-Five) days from date of batching.

12.3.2.7.1. Notwithstanding the timeous raising of a complaint or dispute of liability in respect of a Product delivered or a Service rendered, the Customer shall, under no circumstances, be entitled to withhold payment for such Product or Services pending the resolution of such dispute or complaint.

12.4. Save as set out in Clause 12.6 below, the Company shall not, under any circumstances, be liable to the Customer or to any other person, for any loss of profit or other damages, whether special or general, direct or consequential, arising out of the sale of the Product or rendering of Services by the Company to the Customer, or from any other cause whatsoever. The Customer hereby indemnifies the Company against all claims of whatsoever nature that may be made against the Company arising from the use by any person of the Product or Service supplied.

12.5. Should a Customer request assistance or advice from the Company regarding the application and use of the Product, any such advice given to the Customer, by the Company or its representatives, is given in good faith and to the best of the Company's ability. Under no circumstances will the Company be liable to the Customer and/or any third party, for damages of any kind, arising from any advice given that may transpire to have been incorrect.

12.6. The Company's sole liability, if proved to be the defaulting party (the process used to ascertain where the fault lies to be agreed upon, in writing, by both Parties), in respect of a defective Product shall, in the Company's sole discretion, be to replace such Product or to refund to the Customer the Contract Price of such defective Product. The Company will not be liable for any other costs, special or general, direct or indirect, which may be incurred by the Customer in carrying out the repair or reinstatement. These include but are not limited to P&G's, time related penalties or any other such consequential costs.

Initials

13. FORCE MAJEURE

13.1. If a Party is prevented or restricted, directly or indirectly, from carrying out its obligations in this Agreement by reason of strike, lock-out, fire, explosion, floods, riot, war, accident, act of God, embargo, legislation, shortage of or a breakdown in transportation and/or production facilities, civil commotion, unrest or disturbances, cessation of labour, government interference or control, or any other reason beyond the control of that Party, the affected Party will be relieved of its obligations during the period that such event and its consequences continue to the extent that it is prevented from fulfilling its obligations.

13.2. Neither Party will be liable for any delay or failure in the performance of any obligations or loss or damages, either general or special, direct or consequential which the other Party may suffer due to such delay or failure, provided that written notice was given to the affected Party of any inability to perform.

13.3. The Party invoking *force majeure* must give written notice to the other Party when the event giving rise to its inability to perform has ceased.

13.4. Should such *force majeure* continue for a period of more than 90 (Ninety) days, then either Party will be entitled to cancel this contract in respect of any obligations still to be performed by that Party under the contract.

14. BREACH

14.1. The Company shall be entitled to cancel this Agreement and/or any part of this Agreement and/or any other contracts existing with the Customer, by written notice to the Customer, and claim from the Customer immediate payment of any monies due by the Customer, regardless of any earlier agreement for credit terms, if:

14.1.1. The Customer fails to pay any amount due and payable to the Company; or

14.1.2. A cheque, promissory note or other bill of exchange given to the Company in respect of any indebtedness of the Customer under this or any other contract is dishonoured; or

14.1.3. The Customer is placed under any order of provisional or final sequestration, provisional or final winding up, or provisional or final judicial management or business rescue; or

14.1.4. The Customer causes a notice of surrender of its estate to be published in terms of the Insolvency Act No. 24 of 1936, as amended; or

14.1.5. The Customer enters into any compromise with the Customer's creditors; or

14.1.6. The Customer fails to satisfy any Default Judgement granted against the Customer within 7 (Seven) days after date of Judgements; or

14.1.7. The Customer suffers any civil judgment to be taken or entered against it; or

14.1.8. The Customer passes away.

15. TECHNICAL DISPUTE PROCEDURES

15.1. In the event of a dispute arising between the Parties, the basis of which dispute is the quality, quantity or performance of the Product supplied by the Company, such dispute shall initially be referred to the Company's Operations Manager, the Company's Plant Manager and the Customer's Site Manager, who shall, within 7 (Seven) days after such referral, meet and use commercially reasonable endeavours to amicably resolve such dispute.

15.2. If the Parties have failed to resolve their dispute or difference by negotiation within 7 (Seven) days after receipt of notice of dispute, then either Party may refer the dispute or difference to the respective Chief Executive Officers or Managing Directors (as the case may be) who will meet and use commercially reasonable endeavours to amicably resolve such dispute.

Initials

15.3. If the Chief Executive Officers or Managing Directors (as the case may be) fail to resolve the dispute by negotiation within 10 (Ten) days after the date upon which the dispute or difference was referred to them, then either Party may give notice to the other Party of its intention to commence arbitration as hereinafter provided, and no arbitration in respect of this matter may be commenced unless such notice is given.

15.4. Arbitration shall be before a single Arbitrator agreed to between the Parties, or failing agreement, appointed by the then President of the Law Society of Kwazulu Natal and such person will not necessarily be a lawyer.

15.5. Unless otherwise agreed to by the Company in writing, arbitration shall be held in Pinetown, Kwazulu Natal, and conducted in the English language.

15.6. The arbitration shall be held upon such terms as the Arbitrator may decide, in which event the arbitration shall be held as informally and as expeditiously as possible, unless the Company, in its sole discretion, elects that the arbitration be determined in accordance with the summary procedure for arbitration as set out in the Rules for the Conduct of Arbitration prepared by the Association of Arbitration.

15.7. The parties irrevocably agree that the decision of any arbitration proceedings:

15.7.1. Will be binding on all of them;

15.7.2. Will forthwith be carried into effect;

15.7.3. May be made an order of any court of competent jurisdiction.

15.8. Notwithstanding any attempts at amicable settlement, negotiation or arbitration proceedings, the Parties shall continue to perform their respective obligations under this Agreement for the duration of the arbitration, provided that the Customer does not withhold payment.

15.9. Nothing in the provisions of this Clause 15 shall prevent, restrict or in any manner whatsoever interfere with either Parties' right to approach the Magisterial Court having the necessary jurisdiction for urgent interim relief.

16. DOMICILIUM AND NOTICES

16.1. The Parties choose the relevant physical address listed on the cover page of this Agreement as their *domicilium citandi et executandi* for all purposes for the giving of any notice, the payment of any sum, the serving of any process and for any other purpose arising from this Agreement.

16.2. Each of the parties shall be entitled from time to time, by written notice to the others, to vary its *domicilium* to any other physical address within the borders of the Republic of South Africa.

16.3. Any notice to be given to either Party in terms of this Agreement shall only be valid and effective if given in writing.

16.4. Any notice shall be sent by pre-paid registered post, registered email, or delivered by hand. This notice shall be deemed to have been received within 10 (Ten) days from date of postage and email on the first business day after the day on which it has been sent.

17. APPLICABLE LAW AND JURISDICTION

17.1. This Agreement shall be interpreted and governed in all respects by the laws of the Republic of South Africa.

17.2. Save in respect of disputes to which Clause 15 applies, the Customer hereby consents, in terms of Section 45 of the Magistrate's Court Act No. 32 of 1944, as amended, to the jurisdiction of the Magistrate's Court in Pinetown, Kwazulu Natal, Republic of South Africa, having territorial jurisdiction in respect of any action instituted against the Customer by the Company for the recovery of monies or for legal action in terms hereof. It shall nevertheless be entirely within the discretion of the Company as to whether to proceed against the Customer in such Magistrate's Court or any other court having jurisdiction.

Initials

18. LEGAL COSTS

18.1. Unless otherwise specified, all costs in connection with the negotiation, preparation, execution and performance of this Agreement (and any documents referred to in it) shall be borne by the Party that incurred the costs.

18.2. In the event of the Company or its agents instructing attorneys to recover any amounts due by the Customer or to enforce the Company's rights in terms of this Agreement, irrespective of whether legal proceedings or proceedings of any other nature are instituted or not, the Customer hereby agrees to pay the legal costs and disbursements incurred by the Company on a scale as between attorney and own client, including collection commission and tracing charges.

18.3. In the event of the Company or its agent instructing a Debt Collector to recover any amounts due from the Customer, the Customer agrees to pay collection commission in accordance with the Debt Collectors Act (Act. 114 of 1998).

19. CESSION AND ASSIGNMENT

19.1. The Customer shall not cede, assign or transfer any of its rights or obligations or any portion thereof without first having obtained in writing, the express consent of the Company.

20. WHOLE AGREEMENT

20.1. This Agreement and the additional terms and conditions as set out the credit application (if applicable), is the whole agreement between the Parties and supersedes any arrangements, understanding or previous agreement between them relating to the subject matter covered by this Agreement.

20.2. No variation, alteration, deletion of or addition to these terms and conditions will be binding upon the Parties unless it is stipulated in writing and agreed to by both Parties.

20.2.1. In the event of there being a discrepancy between any of the terms and conditions set out herein and any condition or stipulation in the Customer's order, then, unless such conditions or stipulations are specifically accepted in writing by the Company, then such stipulations or conditions shall be disregarded, and the terms and conditions set out herein shall apply.

21. INDULGENCE

21.1. No relaxation or indulgence granted to the Customer by the Company, at any time, shall be deemed to be a waiver of any of the Company'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 Company.

22. SEVERABILITY AND FAIRNESS

22.1. In the event that any provision of this Agreement is invalid, unlawful or enforceable, such provision shall be severable from the remaining terms and conditions, which shall continue to be valid and enforceable.

22.2. The Customer acknowledges and agrees that this Agreement is not unfair or unjust in view of the credit being extended (where applicable) by the Company to the Customer.

Initials

23. AMENDMENT

23.1. This Agreement may only be amended, modified or consensually cancelled and supplemented, by written agreement by the Parties. No course of dealing will be deemed effectively to modify, amend, cancel or discharge any part of this Agreement or any rights or obligations of either Party under or by reason of this Agreement.

24. FINANCIAL CENTRE INTELLIGENCE ACT

24.1. The Customer acknowledges that Section 29(1) of the Financial Centre Intelligence Act, No. 38 of 2001 (FICA) requires that businesses report to the statutory Centre any suspicious or unusual transaction or series of transactions and, in particular, where the Company has received, or is about to receive, the proceeds of suspected unlawful activities in payment of the Customer's indebtedness to the Company.

24.2. The Customer indemnifies the Company against any claim whatsoever against the Company for any damage for harm suffered by the Customer or a third party arising from any action taken by the Company in discharging its obligations in terms of FICA.

25. PROTECTION OF PERSONAL INFORMATION ACT, 2013

25.1. The Customer acknowledges that, when requesting a quotation or completing an Application for Credit, the Company will require certain Personal Information as defined in the Protection of Personal Information Act, 2013 ("POPI") from the Customer.

25.2. The Customer agrees that the Company requires such Personal Information for purposes of:

25.2.1. Creating a database of Customers;

25.2.2. Processing the Customer's credit application (if applicable), including verifying the Customer's credit record;

25.2.3. Monitoring the Customer's adherence with the terms of the Application for Credit (if applicable), or with the terms of this Agreement;

25.2.4. Providing a written quotation to the Customer;

25.2.5. Processing the Customer's order and effecting delivery of the Product to the Customer.

25.3. By requesting a quotation, applying for credit (if applicable), or placing an order, the Customer consents to:

25.3.1. The Company processing the Customer's Personal Information for the purposes set out above, as applicable;

25.3.2. The Company's use of third party credit bureaus or any other Operator, as defined in POPI, to process the Customer's Personal Information, which processing will be in line with the purpose for which it was collected.

25.4. The Customer's failure to supply the Personal Information requested by the Company will result in the relevant credit application being denied or the Company being unable to process the Customer's quotation or order.

25.5. The Customer will have the right to:

25.5.1. Access any Personal Information pertaining to it that the Company has in its possession;

25.5.2. Correct any such Personal Information that becomes outdated or is incorrect for whatsoever reason;

25.5.3. Request the destruction or deletion of its Personal Information by the Company;

25.5.4. Be informed by the Company in the event that its Personal Information has been accessed or acquired by an unauthorised person;

25.5.5. Object to the processing of its Personal Information by the Company on any reasonable grounds. On receipt of such objection, the Company will no longer process the Customer's Personal Information, which will result in the relevant credit application being denied (if applicable), and the Company being unable to process the Customer's quotation or orders;

25.5.6. Object to the processing of its Personal Information at any time for purposes of direct marketing;

25.5.7. Submit a complaint to the Regulator regarding an alleged interference with the protection of the Customer's Personal Information or to submit a complaint to the Regulator in respect of a determination of an adjudicator as provided for in POPI;

25.5.8. Institute civil proceedings regarding the alleged interference with the protection of its Personal Information as provided for in POPI.

26. USE OF CUSTOMER'S INFORMATION

26.1. The Customer warrants and guarantees that all information supplied to the Company in the Application for Credit (where applicable) and in terms of this Agreement is true and correct.

26.2. The Customer agrees to timeously inform the Company should there be any change of whatsoever nature in any of its information, including its physical address as previously supplied.

26.3. As and when necessary, the Customer consents to the Company obtaining and/or disclosing the Customer's information to the Company as follows:

26.3.1. To credit grantors, credit bureaux, banks and/or other financial institutions to ascertain information relating to the Customer's creditworthiness (before acceptance of this Agreement) and for fraud prevention purposes in order to process any payment transactions necessary for and relative to this Agreement;

26.3.2. To attorneys and/or debt collection agencies in the event that the Customer is in breach of this Agreement;

26.3.3. To the Company's employees, agents or trade partners and/or consultants and or service providers but only to the extent necessary and in order to allow the supply of the Goods and/or provision of the Services;

26.3.4. For purposes of the Company publishing a directory containing the name, address, details and contact numbers of its Customers;

26.4. The Company will not disclose the Customer's information to any other person or institution other than as stated under Clause 26.3, or if the Company is compelled to do so, in terms of law and/or a court of law. The Company hereby undertakes that it will only disclose such information as is required in terms of any law and or a court of law.

The rest of this page has been left intentionally bank.

Initials

THUS DONE AND SIGNED AT _____ on this _____ day of _____ 20____

_____

THE COMPANY

Name: DOUGLAS BROWN

I acknowledge that I am duly authorised to sign this Agreement and that the information contained herein is accurate and complete in all respects at date of signature

IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:

1. Signature: _____

   Name: _____

2. Signature: _____

   Name: _____

THUS DONE AND SIGNED AT _____ on this _____ day of _____ 20____

_____

THE CUSTOMER

Name: _____

I acknowledge that I am duly authorised to sign this Agreement and that the information contained herein is accurate and complete in all respects at date of signature

IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:

1. Signature: _____

   Name: _____

2. Signature: _____

   Name: _____

Initials