

# GENERAL TERMS AND CONDITIONS OF PURCHASE

**REUTECH SOLUTIONS,  
a division of REUTECH (PTY) LTD**

Registration number 1963/005035/07

Reunert Park

628 James Crescent

Halfway House, Midrand, 1685, Gauteng

SOUTH AFRICA

PO Box 35

HALFWAY HOUSE 1685

and **[INSERT]** PTY LTD

Registration Number **[INSERT]**

1685

South Africa

e-mail:

(Herein referred to as the "Purchaser")

e-mail:

(Herein referred to as the "Supplier ")

## 1 APPLICABILITY, PRECEDENCE

- 1.1 These Terms and Conditions (as defined below) shall govern all Purchase Orders ("PO's") placed by the Purchaser on the Supplier.
- 1.2 Each PO shall constitute a separate agreement in each instance governed by these Terms and Conditions.
- 1.3 These Terms and Conditions:
  - 1.3.1 will only be amended or varied or cancelled or replaced or waived to the extent expressly agreed to in writing and signed by the authorised representatives of each Party; and
  - 1.3.2 shall overrule any terms and conditions of contract of the Supplier.
- 1.4 If there are any discrepancies or conflict between the provisions of:
  - 1.4.1 these Terms and Conditions and any annexure/s hereto, the provisions of the annexure/s shall prevail;
  - 1.4.2 annexures hereto, the annexure with the higher number shall prevail over an annexure with a lower number;
  - 1.4.3 these Terms and Conditions including annexures and any PO, the provisions of the PO shall prevail in respect of that specific PO only.

## 2 INTERPRETATION, DEFINITIONS

- 2.1 In these Terms and Conditions:
  - 2.1.1 clause headings are for reference purposes only and shall not influence the interpretation;
  - 2.1.2 reference to one gender shall include the other genders;
  - 2.1.3 reference to natural persons include juristic persons and vice versa;
  - 2.1.4 reference to the singular shall include the plural and vice versa;

- 2.1.5 if any provision in a definition is a substantive provision conferring rights or imposing obligations on a Party, effect shall be given to it as if it were a substantive provision in the body of these Terms and Conditions;
- 2.1.6 where figures are referred to in numerals and in words, if there is any conflict, the words shall prevail;
- 2.1.7 all annexures hereto shall be deemed to be incorporated herein and shall form an integral part hereof;
- 2.1.8 expressions defined in these Terms and Conditions shall bear the same meanings in annexures hereto;
- 2.1.9 reference to days, months or years shall be construed as Gregorian calendar days, months or years;
- 2.1.10 durations shall be reckoned exclusively of the first and inclusively of the last day.
- 2.2 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings:
- 2.2.1 **“Acceptance Criteria”** means the technical specifications and/or other requirements of the Goods and/or Services to be supplied by the Supplier in terms of a PO.
- 2.2.2 **“Business Day”** means any day except a Saturday, Sunday or statutory public holiday in South Africa.
- 2.2.3 **“Corrupt Act”** means any offence in respect of corruption or corrupt activities contemplated in the Prevention and Combatting of Corrupt Activities Act, 2004 of South Africa, or in any similar legislation that is applicable to the Supplier’s acts and omissions relating to a specific PO.
- 2.2.4 **“Delivery Acceptance”** means the written acceptance of the Purchaser acknowledging that the Acceptance Criteria in respect of Goods delivered and/or Services rendered by the Supplier have been met;
- 2.2.5 **“Customer”** means any customer of the Purchaser.
- 2.2.6 **“Effective Date”** means the date on which the Purchase Order is accepted by the Supplier and any suspensive conditions agreed to by the Parties have been fulfilled.
- 2.2.7 **“Goods”** means the equipment, parts, components, materials, or software sold by the Supplier to the Purchaser, as set out in a PO.
- 2.2.8 **“Non-performance”** means and includes without limitation, Customer complaint, Goods or Services which do not conform to the PO, inferior quality of work carried out or materials supplied by the Supplier.
- 2.2.9 **“OHSACT”** means the Occupational Health and Safety Act, 85 of 1993 of South Africa, or any similar legislation that is applicable to the Supplier’s acts and omissions relating to a specific PO.
- 2.2.10 **“Parties”** means the Purchaser and the Supplier and “Party” means either of them.
- 2.2.11 **“POPIA”** means the Protection of Personal Information Act, 4 of 2013 of

South Africa;

- 2.2.12 **“Purchase Order” or “PO”** means an official, written order issued by the Purchaser to the Supplier to supply Goods and/or Services.
- 2.2.13 **“Sanctioned Entity”** means a person, country or territory (and including any resident of such country or territory) appearing on a sanctions list of (i) South Africa, or the (ii) United Nations; (iii) European Union; (iv) United States of America, or (v) United Kingdom;
- 2.2.14 **“Services”** means the services, if any, sold and rendered by the Supplier to the Purchaser, either in connection with the Goods or otherwise, as set out in a PO.
- 2.2.15 **“Terms and Conditions”** means the terms and conditions contained in this document, as may be amended from time to time.

### 3 ORDERS AND DELIVERY

- 3.1 The Purchaser may from time to time place Purchase Orders on the Supplier for Goods or Services. Nothing in a PO shall prevent the Purchaser from purchasing the same or similar goods and services from a third party.
- 3.2 The Purchaser may at any time terminate a PO for convenience on 30 (thirty) days' written notice to the Supplier, if the relevant contract in terms whereof Goods and/or Services are on-sold by the Purchaser to a Customer is terminated. In such event the Purchaser shall be liable to pay only for actual costs incurred by the Supplier in respect of Goods ordered or Services rendered until delivery of such notice of termination.
- 3.3 All Goods shall be supplied DDP Delivered Duty Paid at the Purchaser's premises (Incoterms 2020), and Services shall be rendered, on or before the delivery date/s stated in the relevant PO or delivery schedule. Partial delivery may only be made with the prior written approval of the Purchaser. Time is of the essence in the performance of the Supplier's obligations.
- 3.4 Subject to the Supplier's strict compliance with this clause 3, the Purchaser shall grant to the Supplier an extension of time if and to the extent that delivery is or will be delayed by the following causes:
- 3.4.1 additional Goods and/or Services are ordered under clause 4, or
- 3.4.2 any delay, impediment or prevention caused by either force majeure or the Purchaser occurs.
- 3.5 If the Supplier considers itself entitled to an extension of time, the Supplier shall give notice to the Purchaser describing the event or circumstance giving rise to the requested extension of time (in this clause referred to as the “claim”). The notice shall be given as soon as practicable, and in any event not later than 2 (two) days after the Supplier became aware, or should have become aware, of the event or circumstance.
- 3.6 Within 7 (seven) days after the Supplier sent the notice referred to in clause 3.5 or within such other period as may be proposed by the Supplier and approved by the Purchaser, the Supplier shall send to the Purchaser a fully detailed claim and revised draft delivery schedule which includes full supporting particulars of the basis and duration of the claim. If the event or circumstance giving rise to the claim has a continuing effect:
- 3.6.1 this fully detailed claim shall be considered as interim;

- 3.6.2 the Supplier shall send further interim claims at weekly intervals, giving the accumulated delay, and such further particulars as the Purchaser may reasonably require; and
- 3.6.3 the Supplier shall send a final claim within 7 (seven) days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Supplier and approved by the Purchaser.
- 3.7 Within 7 (seven) days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Purchaser, the Purchaser shall respond with approval, or with disapproval and detailed comments. It may also request further clarification or additional particulars. Should the Purchaser fail to respond within the stated time, it shall be deemed to have rejected the claim.
- 3.8 A revised delivery schedule shall only become valid and binding once approved by the Purchaser.

#### **4 SCOPE CHANGES**

In the event of the Purchaser requiring the Supplier to provide any additional Goods or Services not specified in a PO, such additional items may only be supplied once authorised by the Purchaser in a PO. In the event of any additional items being supplied without such authorisation, the Supplier –

- 4.1 will have no claim whatsoever for compensation; and
- 4.2 may not request any revision to the delivery schedule  
– in respect of such additional Goods or Services.

#### **5 PRICES**

- 5.1 The prices set out in a PO are the total amounts payable by the Purchaser to the Supplier in respect of the Goods and/or Services to be supplied in terms of such PO and include compensation for all costs of whatsoever nature to the Supplier in the supply and delivery thereof in accordance with the applicable Incoterm.
- 5.2 Except as may be otherwise agreed in relation to a specific PO, the prices shall remain fixed and firm for the duration of the PO and shall not be subject to escalation.

#### **6 PAYMENT TERMS**

- 6.1 The Supplier shall hand deliver or send by email original invoices and monthly statements to the Purchaser's *domicilium* in clause 20.
- 6.2 The invoice must contain the following minimum information:
  - 6.2.1 PO number;
  - 6.2.2 the Purchaser's address;
  - 6.2.3 The Supplier's address;
  - 6.2.4 Such additional information and substantiating documentation as the Purchaser may reasonably require from time to time.
- 6.3 Unless otherwise stated in the specific PO, the Purchaser shall pay the Supplier within 30 (thirty) days from receipt of each monthly statement, which shall be submitted by no later than the 25<sup>th</sup> of the month. Payment shall be made by electronic funds transfer into the Supplier's nominated bank account.

- 6.4 If the Purchaser disputes an invoice or part thereof, it shall be entitled to withhold payment of any items so disputed. The disputed items shall be agreed or referred for determination in terms of the dispute resolution mechanism provided in clause 17.
- 6.5 The Purchaser shall be entitled to set off against any monies due by it to the Supplier all indebtedness of the Supplier to the Purchaser, including damages resulting from Non-performance or breach under these Terms and Conditions. If such indebtedness is not liquidated, set-off shall operate to the extent of the amount which in the written opinion of the Purchaser's auditors is the value of the claim which the Purchaser has against the Supplier, without prejudice to the rights of either Party subsequently to have the amount determined by the dispute resolution procedure in clause 17

## **7 OBLIGATIONS OF THE SUPPLIER**

- 7.1 The Supplier undertakes:
- 7.1.1 to provide the Goods and/or Services in accordance with the PO, timeously and in a manner consistent with best industry practice. The Supplier warrants that it has and shall maintain the professional ability, trained personnel and infrastructure to provide the Goods and/or Services;
  - 7.1.2 to comply with the reasonable written requests and instructions from time to time of the Purchaser's designated representative;
  - 7.1.3 to ensure that any facilities of the Purchaser or the Customer made available to the Supplier's employees are kept clean and in good order;
  - 7.1.4 not to hold its employees out as employees of the Purchaser;
  - 7.1.5 not to hold itself out to any third party to be authorised to bind the Purchaser to any contracts whatsoever;
  - 7.1.6 to conduct its employment relationships in accordance with the principles of fair practice and to comply with all applicable labour legislation;
  - 7.1.7 to procure that any sub-contractor of the Supplier is bound, mutatis mutandis, by these Terms and Conditions and the PO.
- 7.2 The Supplier shall adequately insure for all risks any of its own and, if Services are rendered also the Purchaser's, material, equipment and property regardless whether located on or off the premises at which the Goods are to be manufactured or delivered. Furthermore, if Services are rendered, the Supplier shall also insure against third party liability as well as contract works and all other risks associated with the supply of Services.
- 7.3 The Supplier shall maintain a high level of quality throughout and shall comply with ISO 9001, ISO 14001 and ISO 45001 standards, as well as site-specific quality rules as instructed by the Purchaser from time to time.
- 7.4 The Supplier warrants that it shall use only safe and effective equipment, machinery, materials and methods in supplying the Goods and rendering the Services, consistent with best industry practice and its obligations under any health and safety and environmental legislation that is applicable to the Supplier's acts and omissions relating to a specific PO .
- 7.5 South African arms control legislation requires suppliers of controlled items (as per the Wassenaar control lists) to be registered with their respective national arms control authorities and to be compliant to the regulations published as it pertains to conventional arms control and the non-proliferation of weapons of mass destruction. Delivery of controlled items by suppliers

requires a classification of control status against the control lists of the country of manufacture, specifying the relevant control list number and the relevant arms control organisation. The Supplier warrants that if the Goods fall within this category of control, this will be highlighted in the Supplier's quotation to ensure that the Purchaser is able to timeously apply the required control procedures.

## **8 EMPLOYEES AND SUB-CONTRACTORS**

- 8.1 The Supplier shall at all times employ only competent and reliable employees and agents. The Purchaser shall be at liberty to object in writing to any person employed by the Supplier in the execution of a PO, on reasonable grounds which shall be stated, and the Supplier shall immediately replace the person so objected to.
- 8.2 The Supplier shall submit in writing to the Purchaser for approval the name and details of any proposed sub-contractor, and the Supplier shall not enter into any sub-contract for the execution of a PO or any part thereof without the prior written consent of the Purchaser, which consent shall not be unreasonably withheld. The consent of the Purchaser shall not relieve the Supplier of its liability or obligations under the PO.

## **9 DESIGNATED REPRESENTATIVES**

- 9.1 The Supplier and the Purchaser shall each appoint a designated representative to liaise with the other regarding day-to-day decisions in connection with the performance of a PO. The designated representatives shall each have the power to make all such decisions as may be required from him by the other Party (except to vary these Terms and Conditions, or the terms of the PO, or any price or amount due) and the other Party shall be entitled to act upon such decisions. The Parties shall not accept instructions or requests from the other Party other than through the designated representative, and all such instructions and/or requests shall be in writing.
- 9.2 The designated representative of a Party may be changed by written notice.

## **10 WARRANTY**

- 10.1 The Supplier warrants all Goods and Services for a period of 12 (twelve) months from Delivery Acceptance.
- 10.2 Any defect that manifests itself during the warranty period shall be rectified by the Supplier by replacement, or at the election of the Purchaser, by repair. The costs of dis- and re-assembly, removal from and return to site, shipping to and from the Supplier's premises, rectification and/or replacement, shall be for the Supplier's account.
- 10.3 The warranty in clause 10.1 does not limit or affect the Supplier's warranty in respect of any latent defect in the Goods, which latent defect liability period is for a period of 5 (five) years following Delivery Acceptance. If the Supplier at any time during the latent defect liability period becomes aware of any defect that occurs in more than 0,5% of items that are the same as or similar to the Goods, or is of a recurring nature, it shall immediately notify the Purchaser accordingly in writing.
- 10.4 The Supplier shall rectify any defect within 14 (fourteen) days of notification thereof by the Purchaser, or within such other period as may be agreed in writing.
- 10.5 This clause 10 is severable from the rest of the PO and shall survive expiry or termination for any reason whatsoever of a PO.

## **11 ACCESS TO SITES, AUDIT PROCEDURES**

- 11.1 The Supplier hereby grants to the Purchaser, its employees and agents permission to enter any premises at which the Goods are to be manufactured or delivered or Services are to be rendered between the hours of 08:00 and 17:00 on any Business Day solely for the purposes of the PO and always subject to the security and safety rules pertaining to such access.
- 11.2 The Supplier shall on 24 (twenty four) hours' notice allow the Purchaser's quality assurance representative, internal and external auditors reasonable access to its premises, invoicing and payment records, quality records, and any related documentation for the purpose of assessment and audit. The Purchaser may periodically perform random spot checks.
- 11.3 Within 14 (fourteen) days following the provision to the Supplier of the written findings of an audit, the Supplier will provide to the Purchaser, and the Customer where applicable, a plan to address shortcomings attributable to the Supplier raised in such audit findings.

## **12 DELAY AND LIQUIDATED DAMAGES**

- 12.1 Should the Supplier become aware that a delivery date or any other requirement in a PO is unlikely to be met for whatsoever reason, the Supplier shall:
  - 12.1.1 immediately notify the Purchaser in writing and as soon as possible thereafter provide detailed reasons for such delay or failure;
  - 12.1.2 inform the Purchaser of the expected duration of such delay or failure; and
  - 12.1.3 use its best endeavours to minimise such delay.
- 12.2 Notwithstanding any other provisions of a PO, in the event of the Supplier failing to deliver the Goods or Services on or before the delivery date/s reflected in the PO or latest delivery schedule approved by the Purchaser, The Purchaser shall, except for a delay due to reasons of *force majeure*, be entitled to levy liquidated damages in the amount of 0,75% (zero comma seven five percent) of the PO value for each Business Day of delay up to a maximum amount of 15% (fifteen percent) of the PO value. The Purchaser may for each delay elect to claim its damages in lieu of the liquidated damages stipulated in this clause.
- 12.3 Liquidated damages paid pursuant to this clause 12 shall not relieve the Supplier from its obligations to provide the Goods or Services, or from any other obligations under the PO.
- 12.4 Once the maximum liquidated damages stated in clause 12.2 has been reached, this constitutes a material breach of contract.

## **13 INTELLECTUAL PROPERTY**

- 13.1 Supplier's intellectual property:
  - 13.1.1 If and to the extent that the Goods or Services contain or are based on patent, know-how, designs or specifications of the Supplier and its licensors, the Supplier retains all intellectual property rights to, and in respect of the Services or Goods as well as all related parts, drawings, specifications, manuals, documents and data. In such event the Supplier hereby grants to the Purchaser a perpetual, transferable, royalty-free license to use, integrate and re-sell the Goods or Services for the purposes for which the Goods or Services have been supplied to it.
  - 13.1.2 Except as expressly provided in clause 13.1.1, the Purchaser shall not have any right directly or indirectly to copy, reverse engineer or manufacture the Goods, or to license,

lease, dispose of, distribute, disclose or otherwise exploit any intellectual property whatsoever of the Supplier and its licensors, or any part thereof, or allow others to do so.

13.2 Purchaser's intellectual property:

13.2.1 If and to the extent that the Goods or Services contain or are based on patent, know-how, designs or specifications of or provided by the Purchaser and its licensors, the Purchaser retains all intellectual property rights to, and in respect of the Services or Goods and all related parts, drawings, specifications, manuals, documents and data. In such event the Purchaser hereby grants to the Supplier a temporary, non-transferable, royalty-free license to manufacture the Goods solely for the purposes of a PO. The Supplier shall use all such items solely for the performance of a PO and not for any other purpose whatsoever.

13.2.2 Except as expressly provided in clause 13.2.1, the Supplier shall not have any right directly or indirectly to copy, reverse engineer or manufacture the Goods, or to license, lease, dispose of, distribute, disclose or otherwise exploit any intellectual property whatsoever of the Purchaser and its licensors, or any part thereof, or allow others to do so.

13.3 Should a Party (the "licensed Party") become aware of any threatened or actual infringement of any patent, design, copyright or other intellectual property of the other Party (the "owning Party"), then the licensed Party shall forthwith inform the owning Party accordingly and shall provide such cooperation and assistance as the owning Party may reasonably require in the enforcement of its rights against any person.

13.4 In the event of any claim being proved by a third party in respect of an infringement of any intellectual property rights relating to any part of the Goods (other than a part based on a design or instructions furnished by the licensed Party), the owning Party shall at its expense and on election by the licensed Party either replace or modify such part with a non-infringing part or procure the right for the licensed Party to use such a part, provided that the owning Party is given full opportunity to conduct all negotiations in respect of such claim. Such claim shall not be acknowledged or settled by the licensed Party without prior written consent of the owning Party.

13.5 Nothing contained in these Terms and Conditions or a PO shall grant any rights or licence whatsoever in any trademark or trade name of either Party to the other Party.

## 14 CONFIDENTIALITY

14.1 Confidential information includes, without limitation:

14.1.1 information relating to the Goods and Services;

14.1.2 the products, intellectual property, know-how, methods and techniques employed by a Party; and

14.1.3 financial and commercial information regarding a PO, or a Party in relation to its obligations pursuant to a PO.

14.2 Each Party shall not (and shall take all reasonable steps to ensure that its employees and agents shall not) for the duration of a PO, or at any time after the expiration or termination of a PO for any reason, disclose to any person (other than to its professional advisers strictly on a need to know basis, or in compliance with a court order) or otherwise make use of any confidential information of the other Party.



14.3 Nothing in this clause 14 shall restrict the rights of either Party to use such information or documents for the purposes of legal enforcement of a PO in accordance with its terms.

## **15 DATA PROTECTION**

15.1 In performing its obligations under these Terms and Conditions or a PO, each Party shall comply with the provisions of prevailing privacy and data protection legislation governing the collection, use and processing of personal information as defined in the relevant legislation (hereinafter "Personal Information");

15.2 To the extent that the Supplier acts as an "Operator" as defined in POPIA, the Supplier shall:

15.2.1 comply with the provisions of prevailing privacy and data protection legislation governing the collection, use and processing of personal information as defined in the relevant legislation (hereinafter "Personal Information");

15.2.2 not process Personal Information for any purpose other than to perform its obligations under these Terms and Conditions or a PO;

15.2.3 only act on the instructions of the Purchaser in collecting, processing and utilising the Personal Information;

15.2.4 not disclose or otherwise make available the Personal Information to any third party other than authorised staff or sub-contractors who require access to such Personal Information strictly on a need to know basis, in order for the Supplier to carry out its obligations pursuant to these Terms and Conditions or a PO and ensure that such staff and any other persons that have access to the Personal Information are bound by appropriate and legally binding confidentiality and non-use obligations in relation to the Personal Information;

15.2.5 take appropriate, reasonable technical and organisational measures to ensure that the integrity and confidentiality of the Personal Information in its possession or under its control is secure and that such Personal Information is protected against accidental loss, destruction, damage, unlawful access or processing;

15.2.6 immediately notify the Purchaser in case of possible infringement of the applicable data protection legislation, the terms of this clause or other irregularities in relation to Personal Information; and

15.2.7 at the election of the Purchaser, return or destroy the Personal Information once it is no longer required for the purposes of performing obligations under these Terms and Conditions or a PO or any directly related purpose.

## **16 BREACH AND INSOLVENCY**

16.1 Should either Party fail to remedy any Non-performance or other breach of contract within 14 (fourteen) days of a written request by the other Party to do so, then in such event the aggrieved Party may, without prejudice to any of its rights in terms of these Terms and Conditions and the PO, or in law, cancel the affected PO by written notice with immediate effect, with or without claiming damages.

16.2 In the event that a Party

16.2.1 commits an act of insolvency;

- 16.2.2 is placed under a provisional or final winding-up, or is subject to business rescue proceedings;
- 16.2.3 suffers that its credit rating is downgraded or its credit facilities withdrawn or rejected by any financial institution or credit bureau, or
- 16.2.4 fails to satisfy or take steps to have set aside any judgment taken against it within 20 (twenty) days after such judgment has come to its notice;

then the other Party may terminate any outstanding PO on written notice with immediate effect.

- 16.3 Nothing in this clause 16 shall prevent a Party from claiming specific performance or damages for any breach, or from terminating the affected PO or all outstanding PO's by written notice with immediate effect for any material breach of contract.

## **17 DISPUTE RESOLUTION AND GOVERNING LAW**

- 17.1 In the event of any disagreement or claim ("dispute") arising out of or relating to a PO or these Terms and Conditions (including without limitation, as to its existence or validity), the senior executives of the Parties or their delegates designated in writing shall endeavour to settle the dispute through bona fide negotiations within 14 (fourteen) days of the dispute being referred to them by written notice from either Party.
- 17.2 Should the dispute not be settled by the means and within the timeframe stated above (including due to a failure of the persons to meet or to negotiate), then either Party may refer the dispute for final decision by arbitration in accordance with the latest UNCITRAL arbitration rules (<https://uncitral.un.org/en/texts/arbitration>), by one or more arbitrator/s appointed in accordance with the rules.
- 17.3 Unless otherwise agreed in writing the appointing authority shall be the Association of Arbitrators (Southern Africa) NPC (<https://www.arbitrators.co.za>) and the arbitration shall be held in Pretoria in the Republic of South Africa and conducted in the English language. Only the Parties and their legal representatives or persons agreed to shall attend the arbitration proceedings.
- 17.4 The decision of the arbitrator/s may be made an order of court. For these purposes and those of clause 18 the Parties irrevocably submit to the non-exclusive jurisdiction of the North Gauteng Division of the High Court of South Africa, Pretoria.
- 17.5 These Terms and Conditions and each PO shall in all respects be governed by the law of South Africa, without regard to its conflict of law provisions. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980 shall be excluded.
- 17.6 This clause 17 is severable from the rest of these Terms and Conditions and shall survive the expiry or termination for whatsoever reason of the relevant PO.

## **18 URGENT RELIEF**

The provisions of clause 17 shall not preclude any Party from access to a competent court of law for urgent or interim relief in the form of an interdict, including a mandatory interdict; or an order for specific performance.

## **19 LIMITATION OF LIABILITY AND INDEMNITY**

- 19.1 Neither Party shall be liable to the other for any loss of profit, loss of use, interruption or reduction of operation, loss of data (including the recovery thereof), loss of production, loss of contracts or for any indirect or consequential damage that may be suffered by the other even if advised of the possibility of such damages and regardless of the form in which any action is brought.
- 19.2 Nothing contained in clause 19.1 above shall limit either Party's liability to the other in respect of:
- 19.2.1 death or injury of any person, or damage to property;
  - 19.2.2 infringement of intellectual property rights, including a breach of the provisions of clause 13;
  - 19.2.3 a penalty for late delivery levied by the Customer on the Purchaser, resulting from a delay caused by the Supplier;
  - 19.2.4 breach of confidentiality; and
  - 19.2.5 intentional, fraudulent or criminal acts.
- 19.3 Subject to clauses 19.1 and 19.2 above, each Party (the "indemnifying Party") agrees to defend, indemnify and hold the other Party, its directors, employees, agents and related parties (each an "indemnified person") harmless from any claim, damage, cost, liability and expense including reasonable attorney's fees caused by, relating to or arising from:
- 19.3.1 the acts or omissions of the indemnifying Party, its directors, employees or agents;
  - 19.3.2 any alleged libel, defamation, slander, invasion of privacy or any similar delict, or breach of any contractual right of a third party, or infringement of any intellectual property right of a third party including rights under patents, trademarks, copyright, trade secret, or confidentiality obligations, or rights of privacy and publicity resulting from, relating to or arising out of the acts or omissions of the indemnifying Party, except to the extent that such claim relates to or arises out of any act or omission of the indemnified person, or any material furnished by the indemnified person.
- 19.4 The Parties will co-operate in the defence of any matter arising from an indemnity under clause 19.3.2. A Party has the right to participate in the conduct of the defence with legal counsel chosen by it.

## **20 NOTICES AND DOMICILIUM**

- 20.1 For the purposes of giving of legal notices and the serving of legal process, the Parties choose their respective physical addresses as set out on the first page of these Terms and Conditions.
- 20.2 Any notice addressed to a Party shall be in writing and delivered by hand during office hours to its physical address, or sent by e-mail.
- 20.3 Any notice shall be deemed to be received (unless the contrary is proved):
- 20.3.1 if hand delivered, on the day of delivery; or
  - 20.3.2 if sent by email during business hours, on the date of posting. Any email sent after business hours or on a day which is not a Business Day will be deemed to have been received on the following Business Day.
- 20.4 A Party may by written notice to the other Party change its address to another address which is not exclusively a post office box or poste restante. The change will become effective on the 5th (fifth) day following deemed receipt of the notice.

20.5 Any notice actually received by a Party will be deemed to have been given validly, even though the notice had not been delivered to an address referred to in this clause.

## **21 COMPLIANCE WITH LAWS AND ANTI-CORRUPTION**

21.1 Each Party warrants that it shall for the duration of each PO:

21.1.1 in all matters arising from or relating to the fulfilment of these Term and Conditions or a PO conform at its own expense with all laws and legislation relevant thereto; and

21.1.2 ensure that it has in place and will maintain in place, all the necessary licenses, certificates, authorisations, permits, type approvals and consents that are required in terms of any applicable law to fulfil its obligations under these Term and Conditions or a PO.

21.2 The Parties shall not be entitled to claim or receive any benefits or rewards, other than specifically provided for in these Term and Conditions or a PO. The Supplier warrants that neither it, nor any of its shareholders, employees, directors, or agents, nor any "related" person (as defined in the Companies Act, 71 of 2008 of South Africa) to any of them, has given or will give any gift, monetary or otherwise, to any shareholder, employee, director, or agent of the Purchaser or of a Customer, or to any person related to any of them.

21.3 Each Party warrants that neither it, nor any of its shareholders, employees, directors, or agents have committed, or admitted to, or have been convicted of, any Corrupt Act and that it has ensured that all anti-corruption laws, internal processes and anti-corruption preventative measures have been complied with, prior to signature of these Term and Conditions or issue of a PO and will continue to be complied with for the duration hereof.

21.4 Each Party warrants to the other Party that neither it nor any of its employees, directors, agents, or related parties will during the term of each PO enter into any transaction that results in, or is likely to result in, a Sanctioned Entity gaining access (regardless whether during or at any time after the termination of these Term and Conditions or a PO) to any product developed or manufactured by, or any intellectual property or confidential information of the other Party. Each Party (indemnifying Party) indemnifies the other Party against any breach of this clause by the indemnifying Party, its employees, directors, agents, or related parties.

21.5 Failure by a Party to comply with this clause 21 constitutes a material breach of contract.

## **22 GENERAL**

22.1 Restriction Clause

The Supplier shall not interfere with a Customer who is in the process of buying from or involved in negotiations with the Purchaser for the supply of Goods or Services or similar goods or services. The Supplier shall forthwith inform the Purchaser in writing when a Customer requests a quotation directly from the Supplier.

22.2 Modifications

Any modification proposed by the Supplier to the specifications of the Goods or Service is subject to the prior written approval of the Purchaser.

22.3 Validity and Severability

If any provision of these Terms and Conditions or a PO is found or held to be invalid or unenforceable, the validity of all the other provisions will not be affected thereby and the Parties

agree to meet and review the matter and if any valid and enforceable means is reasonably available to achieve the same objective as the invalid or unenforceable provision, to adopt such means by way of variation of these Terms and Conditions or the relevant PO.

#### 22.4 Contra Proferentem

The rule of construction that in the event of any uncertainty in any provision in any agreement, such agreement shall, in construing/interpreting the uncertainty, be construed or interpreted against the drafter of such agreement, shall not be applicable to these Terms and Conditions.

#### 22.5 Variation

No variation of or addition to of these Terms and Conditions or the relevant PO will be of any force or effect unless reduced to writing and signed by the Parties.

#### 22.6 Waiver

No waiver on the part of a Party of any rights arising from a breach of any provision of these Terms and Conditions or the relevant PO will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.

#### 22.7 Force Majeure

22.7.1 Failure to comply with any of the terms and conditions of these Terms and Conditions or a PO if occasioned by or resulting from an act of nature or public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil strife, riot, strike, blockade, embargo, sanctions, epidemic, act of any government or other authority, compliance with government orders, demands or regulations (including without limitation in respect of any permit, licence or authorisation), as well as shortages, interruptions, fluctuations or the unavailability of electrical power, water supply or means of communication or any circumstances of like or different nature beyond the reasonable control of the Party so failing ("Force Majeure"), will not be deemed to be a breach of these Terms and Conditions or a PO, nor will it subject either Party to any liability to the other.

22.7.2 Should a Party's performance of an obligation become temporarily impossible owing to Force Majeure, that Party shall:

22.7.2.1 as soon as reasonably possible after the Force Majeure sets in notify the other Party in writing of the incidence of Force Majeure;

22.7.2.2 be released from performance of the affected obligation for so long as the Force Majeure prevails;

22.7.2.3 use its best endeavours to recommence performance of the affected obligation, to whatever extent reasonably possible, without delay; and

22.7.2.4 co-operate with the other Party in implementing such contingency measures as the other Party may reasonably require.

22.8 Should the circumstances of Force Majeure continue for longer than 30 (thirty) days, the Party not invoking Force Majeure shall be entitled to terminate the relevant PO, with immediate effect by written notice.

#### 22.9 Cession and Delegation

A Party cannot validly cede any right or delegate any obligation arising under these Terms and Conditions or a PO without the prior written consent of the other Party, which consent shall not

be unreasonably withheld. Notwithstanding the above, the Purchaser may by written notice to the Supplier cede and delegate (assign) a PO to any other company controlled by Reunert Limited, a South African public company with registration number 1913/004355/06.

#### 22.10 Warranties

No Party has given any warranty or made any representation to the other Party, other than as expressly set out in these Terms and Conditions or a PO.

#### 22.11 No Agency

The Supplier is an independent contractor to the Purchaser and nothing in these Terms and Conditions or a PO constitutes a relationship of employment, agency, joint venture or partnership between the Parties. A Party shall not hold itself out as being an agent or partner of the other Party, or as being in a joint venture with the other Party. A Party shall not assume or create or attempt to assume or create directly or indirectly any obligation on behalf of or in the name of the other Party.

#### 22.12 Co-operation and Support

Each Party undertakes at all times to use commercially reasonable efforts to co-operate, to perform all such actions and take such steps and to procure the cooperation, the performance of all such actions and taking of all such steps as may be open to it and necessary for and incidental to the putting into effect and maintenance of the provisions of these Terms and Conditions or a PO.

#### 22.13 Non Solicitation

A Party shall not without the prior written consent of the other Party, either during, or within 12 (twelve) months after termination or cancellation of a PO for whatsoever reason, engage, employ or otherwise solicit for employment, whether directly or indirectly, any person who during the currency of the PO was engaged in the performance thereof as an employee, or temporary employee of the other Party, or of the other Party's suppliers. A Party in breach of this clause shall pay to the aggrieved Party as liquidated damages an amount equal to the gross annual salary as calculated immediately prior to the breach (including any commissions and other payments) of the person so engaged, employed or solicited. The aggrieved Party may in each instance elect whether to claim the penalty set out in this clause, or its damages.

#### 22.14 Inclusion of electronic documents and signature

Any reference in these Terms and Conditions or a PO to "writing" or "signed" shall include any form of electronic communication, or electronic signature.

#### 22.15 Entire Agreement

The terms contained in these Terms and Conditions and the PO constitute the entire agreement between the Parties with respect to the subject matter thereof, superseding all contemporaneous oral agreements and prior oral and written quotations, communications, agreements, and understanding of the Parties. The Purchaser shall not be bound by terms additional to or different from those in these Terms and Conditions that may appear in the Supplier's quotations, acknowledgements, invoices or in any other communications unless such terms are expressly agreed to in writing and signed by the Purchaser.

#### 22.16 Costs

Each Party shall bear its own legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of each PO and these Terms and Conditions. Any legal costs incurred by a Party arising out of or in connection with a breach by the other Party,

shall be borne by the Party in breach on a scale as between attorney and client.

**23 SIGNATURES**

- 23.1 The Parties record that it is not required for these Terms and Conditions to be valid and enforceable that a Party shall have its signature of these Terms and Conditions verified by a witness.
- 23.2 These Terms and Conditions may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.
- 23.3 Signed by the authorised signatories of the Parties, each signatory warranting his/her authority hereto.

For: <b>SUPPLIER</b>	For: <b>REUTECH SOLUTIONS, a division of REUTECH (PTY) LTD</b>
(signature)	(signature)
(name, position)	(name, position)
Signed at (place) on this (date)	Signed at (place) on this (date)