

TERMS AND CONDITIONS OF SALE

1. JOAT Consulting (Pty) Ltd, a company with limited liability, registered in terms of the laws of the Republic of South Africa, and with company registration number 2012/010902/07, and JOAT Sales & Services (Pty) Ltd, a company with limited liability, registered in terms of the laws of the Republic of South Africa, and with company registration number 2012/010964/07 (hereinafter referred to as "JOAT") sells goods and/or provides services to the Purchaser on the following terms and conditions.
2. **Offer and acceptance:-**
 - 2.1. JOAT shall provide the Purchaser with a quotation in respect of the services to be rendered, alternatively the goods to be sold and delivered. Such quotation may set out any additional terms and conditions which are to be read in conjunction herewith, and which are binding on the parties and form part of the Agreement.
 - 2.2. JOAT does not accept any terms set out in the Purchaser's request for a quotation or purchase order that are inconsistent with, additional to, or different to the terms and conditions set out herein. Such additional terms shall not form part of the Agreement, unless they are accepted by JOAT in writing and signed by a Director.
 - 2.3. Once JOAT's quotation has been accepted by the Purchaser, alternatively upon the Purchaser making payment in terms of any quotation and/or invoice, the Purchaser is irrevocably bound to these hereto, together with any specific terms set out in the quotation, as referred to in clause 2.1 above.
3. **The goods:-**
 - 3.1. Should the Purchaser order goods of a particular brand or part number, and should JOAT be unable to provide such brand or part number, then JOAT shall inform the Purchaser in writing of the unavailability of the particular brand or part number and shall endeavour to supply the Purchaser with a suitable alternative which shall be subject to the Purchaser's written approval.
 - 3.2. JOAT undertakes to make every effort to ensure that the goods supplied will conform to specification, but JOAT gives no warranty,
 - 3.3. express or implied, in regard to material, workmanship or suitability of the goods for any particular purpose and in the event of such goods proving not to be in accordance with the said specifications, JOAT shall not be responsible for any damages whatsoever, whether direct or consequential.
4. **The services:-**
 - 4.1. JOAT agrees to provide the services set out in the quotation provided to the Purchaser, and any additional services mutually agreed between the parties in writing.
 - 4.2. JOAT undertakes to perform the services with due diligence, and in a professional manner consistent with industry standards, and in accordance with any applicable laws and regulations.
 - 4.3. JOAT endeavours to provide the services and to commence with the provision of the services on or before the date agreed between the parties, however, in the event that there is any delay in respect of the commencement, the execution or the completion of any services, whether on account of JOAT, or not, JOAT shall not be responsible to any damages suffered of whatsoever nature, whether direct or consequential, provided JOAT has advised the Purchaser of such delay within a reasonable period.
5. **Delivery and packaging of the goods:-**
 - 5.1. JOAT endeavours to deliver the goods within a reasonable time alternatively on or before the date specified for delivery, however, should there be a delay, whether on the account of JOAT or not, JOAT shall not be responsible for any damages suffered of whatsoever nature, provided JOAT has advised the Purchaser of such delay within a reasonable period.
 - 5.2. JOAT shall be entitled to make partial deliveries and the Purchaser shall be obliged to accept delivery of all goods when tendered in accordance with the Purchaser's order. If the Purchaser fails for whatever reason to accept delivery, it shall be liable for all costs, expenses, losses and/or damages incurred by JOAT in respect thereof.
 - 5.3. The Purchaser acknowledges that it shall be liable for delivery charges in the event that it required the goods to be delivered to an address nominated by the Purchaser. The cost of any requested delivery shall be as set out in the quotation provided to the Purchaser.
 - 5.4. Upon signature of a delivery note issued by JOAT, it shall be deemed that delivery of the goods has been made to the Purchaser and such delivery note shall be *prima facie* proof of its contents.
 - 5.5. Risk in and benefit of the goods shall pass to the Purchaser upon delivery. JOAT reserves ownership of the goods until same have been paid for in full. The Purchaser shall ensure that the goods are not subject to any lien or hypothec until such time as ownership has passed to the Purchaser, and in this regard, the Purchaser shall notify any landlord of premises which it occupies of JOAT's ownership of the goods.

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5.6. JOAT reserves the right to select the manner in which goods are packaged. In the event that the Purchaser has a specific requirement for certain packaging, this may be subject to additional charges which shall be quoted to the Purchaser, for their consideration and acceptance.

5.7. In the event that the Purchaser delays delivery of the goods purchased for any reason whatsoever, JOAT shall be entitled to charge the Purchaser reasonable storage costs on account of such delay.

6. Payment:-

6.1. Upon confirmation of the quotation, JOAT shall render an invoice to the Purchaser. All invoices are payable on presentation. JOAT may, in its sole discretion, grant the Purchaser deferred payment terms. Should the Purchaser be advised in writing by JOAT that deferred payment terms have been granted, then all invoices are payable within 14 (fourteen) days of presentation of an invoice or upon delivery of goods, whichever occurs first in time.

6.2. In the event of the Purchaser not effecting payment of the invoice on due date, then interest shall accrue on all overdue amounts at a rate equal to the prime rate plus 2% per annum. The prime rate shall be determined as the publicly quoted prime rate of Standard Bank Group Limited from time to time. Interest shall accrue daily from the date payment was due until the date payment is received by JOAT.

6.3. Payment of all amounts by the Purchaser to JOAT shall be made without setoff, deduction or retention into JOAT's nominated bank account or in cash to JOAT.

6.4. In the event of the Purchaser not paying any one invoice as and when same becomes due, then JOAT shall be entitled to claim immediate payment of all other invoices, irrespective of the date on which the goods were delivered, and irrespective of whether those invoices are due and payable, at that time.

6.5. In the event that JOAT has allowed the Purchaser a discount on the purchase price and the Purchaser failing to pay the invoice on or before the due date, then JOAT shall be entitled to revoke such discount.

6.6. A certificate signed by a manager of JOAT, whose authority need not be proved, shall be *prima facie* proof of the Purchaser's indebtedness to JOAT.

6.7. Should any payment made by the Purchaser to JOAT be dishonoured by the financial institution utilised by the Purchaser, and in the event that JOAT incurs any charges in respect of such, then JOAT will be entitled to recover any such costs incurred from the Purchaser.

7. Pricing:-

The parties acknowledge that the price of the goods is dependent on the exchange rate. Should the Rand depreciate from the value thereof at the time that a quotation is provided to the Purchaser, JOAT shall be entitled to increase the price of the goods in proportion with the additional costs to be incurred by JOAT as a result of the depreciation in the value of the Rand.

8. Cancellation of orders and return of goods:-

8.1. Where an order is placed by the Purchaser for goods which are ordered specifically for the Purchaser and are not kept in stock, and in the event of any cancellation of such order by the Purchaser, the Purchaser will be liable for payment in respect of such goods in full.

8.2. Where the Purchaser places an order for goods that are ordinarily kept in stock, the Purchaser may cancel their order within 10 (ten) days of placing such order, however, JOAT shall be entitled to retain a reasonable cancellation penalty, as determined in JOAT's sole discretion. In the event that the Purchaser cancels such an order after 10 (days) of placing such order then such order becomes unconditional and irrevocable and the Purchaser shall be liable for all costs and expenses incurred by JOAT in fulfilling such order.

8.3. Any claim in respect of alleged short-supply or defective goods shall be made by JOAT in writing within 7 (seven) days of receipt or delivery of the goods and such claim shall clearly identify the goods by reference number, by order number, delivery note number and invoice number and if applicable, shall clearly set out the nature of the claim.

8.4. If a claim is not lodged in writing with the aforesaid details within the 7 (seven) day period stipulated above, the goods shall be deemed to be free of defect and in accordance with the order placed by the Purchaser and delivered by JOAT.

8.5. Where the Purchaser confirms an order for the provision of services, and cancels such order subsequent to the confirmation hereof, the Purchaser shall be liable for any costs incurred by JOAT as a result of the cancellation of such order, including but not limited to any goods ordered on behalf of the Purchaser, the costs associated with the time expended in the commencement of rendering the services, and the costs associated with any resources procured by JOAT in order to execute the services.

9. Warranties:-

9.1. In the event that goods have been supplied to the Purchaser, the warranty in respect of such goods shall be that of the supplier of such goods to JOAT, which warranty terms shall be confirmed upon placement of an order.

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- 9.2. In the event that JOAT effects any repairs to goods, the warranty period for repaired or refurbished parts repaired by JOAT is 90 (ninety) days from the date of delivery to the Purchaser by JOAT.
- 9.3. In the event that services are rendered, JOAT warrants that its services shall, at the time of performance, materially conform to the agreed requirements, and shall be performed in a professional and workmanlike manner, free from material defects in workmanship
- 9.4. In the event that goods have been sold and delivered, if any item of goods fails during the applicable warranty period and such failure is due to a breach of the warranties provided by the supplier (a "Failed Good"), the Purchaser shall be responsible for returning the Failed Good or components thereof to JOAT, including all costs associated with the return of the Failed Good or components to JOAT.
- 9.5. JOAT shall then investigate the claimed failure, and if indeed it is in agreement with such claim, it shall lodge a claim with the supplier on the Purchaser's behalf.
- 9.6. If the Purchaser does not return the Failed Good or components as requested by JOAT, then JOAT may invoice the Purchaser for any replacement goods and/or components provided to the Purchaser.
- 9.7. If JOAT determines that the returned good is not a Failed Good, the Purchaser shall pay and/or reimburse JOAT for all expenses incurred by JOAT in the examination of the returned good.
- 9.8. JOAT shall not be liable for any rejection of a claim by a supplier in terms of such supplier's warranty, or for any delays in the processing and assessment of such claim.
- 9.9. In the event that services have been rendered, the Purchaser's remedy under the warranty for services shall be, at JOAT's sole cost and expense, for JOAT to correct or re-perform any defective or non-conforming services to assure compliance with the agreed requirements.
- 9.10. JOAT assumes no liability for costs or expenses associated with lost revenue or with the removal or installation of equipment.
- 9.11. JOAT HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE OR USE, WITH REGARD TO THE PERFORMANCE, USE OR ACCURACY OF THE GOODS AND/OR SERVICES.
10. **Limitation of Liability:-**
- 10.1. JOAT's cumulative liability for all causes of action arising under, out of, or in relation to this Agreement,
- its negotiation, performance, breach, or termination (collectively "Cause of Action") will not exceed the total amount actually paid by the Purchaser to JOAT in the 12 (twelve) months prior to the filing of the relevant dispute.
- 10.2. JOAT will not be liable for any:-
- 10.2.1. indirect, consequential, and incidental damages;
- 10.2.2. loss of profits or loss of revenue whether direct, indirect or consequential;
- 10.2.3. manual meter read costs and expenses.
- 10.3. The foregoing limitations are applicable whether the Cause of Action is in delict (including negligence), contract, product liability, in terms of any applicable legislation, or otherwise.
11. **Data Protection:-**
- 11.1. The following provisions shall apply with this clause 11:-
- 11.1.1. "Data Protection Law" means all applicable law relating to data protection, privacy and security when processing Data under the Agreement. This includes without limitation applicable international, regional, federal or national data protection, privacy, export or data security directives (e.g. directives of the European Union), laws, statutes, regulations, rulings, decisions and other binding restrictions of, or by, any judicial or administrative body, whether domestic, foreign or international, including the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002) and the Protection of Personal Information Act, 2013 (Act No. 4 of 2013); and
- 11.1.2. "Personal Data" means any data, including personal information as defined in the Protection of Personal Information Act, 2013 (Act No. 4 of 2013), the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), Personal Data and/or any equivalent legislation of the jurisdictions(s).
- 11.2. The Purchaser hereby acknowledges that JOAT will be required to collect and process Personal Data to perform the services and/or supply the goods in terms hereof.
- 11.3. In respect any Personal Data that JOAT has access to in

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order to provide the goods, and/or services, JOAT warrants that JOAT's Processing is carried out in accordance with Data Protection Law.

11.4. Without limiting JOAT's obligation to comply with the Data Protection Law, JOAT, in its capacity as a processor of Personal Data, will:-

11.4.1. Process Personal Data only as necessary in order to perform the services, or provide the goods to the Purchaser;

11.4.2. Take all reasonable steps to ensure the reliability of employees having access to Personal Data and ensure that persons authorised to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

11.4.3. Implement technical and organisational security measures necessary to protect Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access and against all other unlawful forms of processing.

11.5. JOAT will notify the Purchaser without undue delay, and in any event within 1 (one) business day upon becoming aware of an actual or reasonably suspected Personal Data breach.

12. Confidential Information:-

12.1. Each Party ("the Receiving Party") must treat and hold as confidential all confidential information which it may receive from the other Party ("the Disclosing Party") or which becomes known to it during the currency of this Agreement.

12.2. The Receiving Party agrees that in order to protect the proprietary interests of the Disclosing Party in its confidential information:-

12.2.1. it will only make the confidential information available to those of its staff who are actively involved in the execution of its obligations under this Agreement and then only on a "need to know" basis;

12.2.2. it will initiate internal security procedures reasonably acceptable to the Disclosing Party to prevent unauthorised disclosure and will take all practical steps to impress upon those staff who need to be given access to confidential information, the secret and confidential nature thereof;

12.2.3. subject to the right to make the confidential information available to their staff under the above sub-clause 12.2.1, they will not at any time, whether during this Agreement or thereafter, either use any confidential information of the Disclosing Party or directly or indirectly disclose any confidential information of the Disclosing Party to third parties; and

12.2.4. all written instructions, drawings, notes, memoranda and records of whatever nature relating to the confidential information of the Disclosing Party which have or will come into the possession of the Receiving Party and its staff, will be, and will at all times remain, the sole and absolute property of such Party and shall promptly be handed over to such Party when no longer required for the purposes of this Agreement.

12.3. Upon termination or expiry of this Agreement, the parties will deliver to each other or, at each Party's option, destroy all originals and copies of confidential information in their possession.

12.4. The foregoing obligations shall not apply to any information which:-

12.4.1. is lawfully in the public domain at the time of disclosure; or

12.4.2. subsequently and lawfully becomes part of the public domain by publication or otherwise; or

12.4.3. subsequently becomes available to the Receiving Party from a source other than the Disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose such confidential information; or

12.4.4. is disclosed pursuant to a requirement or request by operation of law, regulation or court order.

12.5. The Receiving Party hereby indemnifies the Disclosing Party against any loss or damage which the Disclosing Party may suffer because of a breach of this clause 12 by the Receiving Party or its employees.

12.6. This clause is severable from the remainder of the Agreement and shall remain valid and binding upon the Parties, notwithstanding any termination thereof, for a period of 3 (three) years after the effective date of termination.

13. Intellectual Property:-

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- 13.1. For the purposes of this clause, "intellectual property" means any patents and patent applications, inventions, whether patentable or not, trade marks, service marks, trade dress, copyrights, trade secrets, know-how, data rights, database rights, specifications, drawings, designs, mask work rights, and other intellectual property rights as may exist now or hereinafter, and all renewals and extensions thereof, regardless of whether any such rights arise under the laws of the Republic of South Africa, or any other country or jurisdiction, and any registrations or applications thereof and all goodwill pertinent thereto.
- 13.2. No intellectual property is assigned to the Purchaser, and JOAT shall own all intellectual property used or created in the course of performing its duties and responsibilities in terms hereof.
- 13.3. In the event that any interest in and to such intellectual property does not automatically vest in JOAT, and instead vests in the Purchaser, the Purchaser hereby assigns to JOAT all right, title and interest that the Purchaser may have in and to such intellectual property.
- 13.4. The Purchaser agrees not to reverse engineer any goods purchased or services provided in terms hereof.
14. **Domicilium:-**
- 14.1. JOAT hereby selects its *domicilium citandi et executandi* for all purposes in terms of this Agreement and/or any claim arising pursuant hereto as follows:-
- 14.1.1. **JOAT:-**
- Physical Address:-**
- Unit 20, Alexander Park
Westmead
Pinetown
Kwa-Zulu Natal
- Postal Address:-**
- Postnet Suite 23
Private Bag X4
Kloof
3640
- E-Mail:**
mary-anne.dupreez@joat.co.za
- 14.2. The Purchaser's chosen *domicilium citandi et executandi* shall be the address and e-mail address provided to JOAT for the purposes of the preparation of any quotation and/or invoice.
- 14.3. Any notice addressed to a party shall be in writing and shall be delivered by hand at such party's physical address or sent by prepaid registered post to such party's postal address or shall be transmitted by e-mail to such parties e-mail address.
- 14.4. Any notice shall be deemed to have been given:-
- 14.4.1. if delivered by hand during the normal business hours of the addressee at the addressee's *domicilium* for the time being, on the date of delivery;
- 14.4.2. if posted by pre-paid registered post from an address within the Republic of South Africa to the addressee at the addressee's *domicilium* for the time being, 7 (seven) days after the date of posting thereof;
- 14.4.3. if transmitted by e-mail to the addressee's chosen *domicilium* for the time being, on the date of transmission.
- 14.5. Either Party may, by written notice to the other Party, change any of the addresses at which, or the designated person for whose attention those notices or other communications are to be given. If the address nominated herein is changed to another address which is not a physical address in the Republic of South Africa, then the original address shall remain the *domicilium citandi et executandi* of the relevant Party until it nominates a new physical address within the Republic of South Africa in writing, to be its new *domicilium citandi et executandi*.
15. **Force Majeure:-**
- 15.1. Neither Party shall be liable for any failure to fulfil its obligations under this Agreement if and to the extent such failure is caused by any circumstances beyond its reasonable control and not of its making, including but not limited to flood, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions or acts of God.
- 15.2. Should any event of *force majeure* arise, the affected Party shall notify the other Party without delay and the Parties shall meet within 7 (seven) days of such notice to negotiate in good faith alternative methods of fulfilling its obligation. In addition, JOAT shall continue to provide and the Purchaser shall continue to pay for those goods and/or services not affected by the event of *force majeure*.
- 15.3. Should either Party be unable to fulfil a material part of its obligations for a period in excess of 60 (sixty) consecutive days due to circumstances of *force*

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majeure, the other Party may at its sole discretion cancel any order placed forthwith by written notice.

16. General:-

- 16.1. The Purchaser acknowledges that it has apprised himself/herself/itself of the provisions of the Consumer Protection Act 68 of 2008 before accepting these conditions, and fully understands his/her/its rights in terms thereof in so far as same may be applicable.
- 16.2. No relaxation or indulgence granted by JOAT to the Purchaser shall be deemed to be or interpreted as a waiver of any of JOAT's rights in terms hereof.
- 16.3. No amendment, variation or consensual cancellation hereof shall be of any force or effect unless reduced to writing and signed by a duly authorised representative of the Purchaser, and a duly authorised representative of JOAT.
- 16.4. Should JOAT be obliged to take legal action to enforce its rights in terms hereof, the Purchaser agrees and consents to the jurisdiction of the Magistrates Court, irrespective of the quantum of the claim involved. The Purchaser's consent to the Magistrate's Court jurisdiction does not preclude JOAT from proceeding to enforce its rights in any other court of competent jurisdiction.
- 16.5. In the event that any of the clauses herein are declared unenforceable, the Purchaser agrees that each offending provision shall be severable from the remainder of these terms and conditions, which shall remain valid and binding between the parties.
- 16.6. In the event of JOAT being forced to take legal action to enforce its rights in terms hereof, then the Purchaser shall be liable for JOAT's costs on the attorney/client scale.
- 16.7. The Agreement shall be governed and interpreted in accordance with the laws of the Republic of South Africa.
- 16.8. The Purchaser acknowledges that he/she/it has read the conditions herein contained.

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