

GENERAL TERMS AND CONDITIONS FOR SALE OF AGGREGATES

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GENERAL TERMS AND CONDITIONS FOR SALE OF AGGREGATES

1. INTRODUCTION

- 1.1 All business undertaken by SPH is strictly and exclusively subject to these General Terms and Conditions of Sale.
- 1.2 The Client, by accepting a Quotation from SPH, and/or placing any Purchase Order with SPH, and/or by accepting delivery of the Product, and/or upon signature of the credit application, acknowledges that all business thereafter (whether under that Quotation or Purchase Order or otherwise) shall be subject to these Conditions, notwithstanding any terms or conditions contained in the Client's Purchase Order or otherwise which shall be deemed to be substituted by these Conditions.
- 1.3 In the event of a conflict between these Conditions and any terms and conditions which the Client may seek to impose on the performance of the Agreement, the provisions of the Quotation and these Conditions shall take precedence and shall be applicable to the exclusion of the provisions of the Client's terms and conditions in conflict therewith.
- 1.4 Any typographical, clerical or other error or omission in any quotation, price list, acknowledgement of order, agreement of sale, invoice or other document issued by SPH shall be subject to correction without any liability on the part of SPH.

2. DEFINITIONS

The following words and phrases shall have the meanings assigned to them as set out below in these Conditions:

- 2.1 **"Agreement"** means the agreement between SPH and the Client in terms of **clause 6** below, together with these Conditions and schedules attached to the Conditions or incorporated into them by reference for the supply of the Products. Any reference to the Agreement shall include a reference to these Conditions and vice versa.
- 2.2 **"Client"** means the legal entity or person who purchases the Product from, or who enters into an Agreement with SPH for the supply of the Product;
- 2.3 **"Conditions"** means these General Terms and Conditions of Sale, and any other annexures, schedules or attachments hereto which shall form part of the Agreement between the Client and SPH;
- 2.4 **"Conditions Precedent"** means the conditions detailed in the Quotation and these Conditions to be fulfilled prior to the Agreement becoming of any force or effect;

- 2.5 **"Delivery Site"** means the delivery address where the Products shall be delivered to and/or discharged;
- 2.6 **"Delivery Note"** means a document accompanying the delivery of the Product that lists, amongst others, the description and quantity of Products delivered;
- 2.7 **"Product"** means the Product/s as specified in the Quotation, Tax Invoice and/or Agreement to be supplied by SPH to the Client;
- 2.8 **"Party/Parties"** means collectively or individually, as the case may be, SPH and the Client;
- 2.9 **"Price"** means the amount as reflected in the Quotation and/or Agreement in respect of the Product/s;
- 2.10 **"Purchase Order"** means the official written instruction or order from the Client to SPH, in any written format considered appropriate by SPH, to supply the Product, and which specifies at a minimum" (i) the Parties, (ii) description of the Products, (iii) the Price, (iv) delivery instructions, and (v) Quotation number, on which the Products are to be supplied;
- 2.11 **"Quotation"** means the Quotation or similar document prepared by SPH setting out the Products, the Price and any other terms applicable to the supply of the Products by SPH to the Client;
- 2.12 **"SPH"** means SPH Kundalila (Pty) Limited, a limited liability Company duly registered according to the laws of the Republic of South Africa, with registration number 1997/015857/07;
- 2.13 **"Tax Invoice"** means a tax invoice issued in accordance with the Value Added Tax Act No. 89 of 1991, as amended, by SPH to the Client in accordance with these Conditions;
- 2.14 **"VAT"** means the Value Added Tax charged in terms of the Value Added Tax Act No 89 of 1991, as amended.

3. INTERPRETATION

- 3.1 Words and phrases defined in these Conditions shall have the same meanings when utilised in the Purchase Order.
- 3.2 Any reference to any statute or statutory provision is a reference to that statute or statutory provision at the date of Agreement and as amended or re-enacted from time to time.
- 3.3 If any provision in this clause is a substantive

provision conferring rights or imposing obligations on the Parties, effect shall be given to it as if it were a substantive provision in the body of these Conditions.

3.4 The rule of construction that a contract be interpreted against the Party responsible for the drafting or preparation of these Conditions, shall not apply.

4. QUOTATIONS

4.1 Quotations are not binding upon SPH but merely constitute an invitation to the Client to accept the offer, subject to the contrary, by fulfilment of the Conditions Precedent, whereupon **clause 6** will take effect.

4.2 All Quotations issued by SPH are revocable and subject to change without notice, failing which a Quotation shall be open for acceptance for 30 (thirty) days or for such period as advised by SPH. The Quotation being the latest date specific to the Client's enquiry, will supersede all previous Quotations issued by SPH.

5. PURCHASE ORDERS

5.1 No Purchase Order shall be deemed to be accepted by SPH unless and until confirmed in writing by SPH and subject to **clause 6** below. SPH specifically reserves the right not to accept any Purchase Order, at its discretion and/or until an acceptable credit reference or credit check on the Client has been done.

5.2 The Purchase Order shall specify as a minimum (i) the Parties, (ii) description of the Product/s, (iii) the Price, (iv) delivery instructions, and (v) the Quotation number.

5.3 Purchase Orders shall be subject to these Conditions as reflected in **clause 1** above.

5.4 The Client must satisfy itself that the Products ordered are suitable for the purpose for which they are required.

6. MASTER AGREEMENT AND VARIATIONS

6.1 An Agreement shall be deemed to have been concluded when the Client accepts the Quotation and the Conditions Precedent have been fulfilled.

6.2 The Agreement constitutes the entire Agreement between the Parties with respect to its subject matter and supersedes all prior agreements and understandings (whether oral, in writing or any other form) between the Parties.

6.3 It is anticipated that from time to time, the Agreement may need to be varied or amended by mutual agreement between the Parties.

6.4 In such event, the Agreement shall be amended by the creation of a new and amended Agreement and/or an attachment to the Agreement stating the variation to such Agreement. Such amended Agreement and/or attachment will be added, substituted or deleted as determined in accordance with the provisions of this clause of these Conditions.

6.5 An amended Agreement and/or attachment thereto shall only be read with and form part of these Conditions when it is reduced to writing and the Parties have:

6.5.1 initialled each page of the amended Agreement and/or attachment;

6.5.2 signed in full as indicated on the amended Agreement and/or attachment;

6.5.3 indicated the date upon which the amended Agreement and/or attachment is to become effective.

6.6 In the instance of an addition or substitution of an amended Agreement, the amended Agreement and/or attachment having been properly executed in accordance with **Clause 6.5** above, the amended Agreement and/or attachment reflecting the latest date will be the Agreement which is binding on the Parties. The provisions of these Conditions to the contrary and/or all previously dated versions of an amended Agreement and/or attachment which is substituted will not be binding on the Parties henceforth.

7. PRICE

7.1 Prices quoted are for the Products as specified in the Quotation and/or Agreement and as accepted by SPH. Should the Client require any variation in such specification, SPH's ruling price for Products of such specification shall be the Price payable by the Client, providing the variation is accepted by SPH.

7.2 Unless otherwise specified in the Quotation and/or Agreement the Price excludes VAT.

7.3 The Price quoted however will be subject to the following automatic increases from time to time, when the Client is so notified by SPH, namely that the Price will be increased:

7.3.1 in accordance with Price increases generally applied by SPH. Should the amount of such increases be disputed by the Client, such amount shall be determined by a representative of the auditors of SPH, or an appointed nominee, by reference to price increases generally applied by SPH, in the making of which determination the auditors or an appointed nominee shall be deemed to be acting as experts and not as arbitrators, and which determination shall, in absence of manifest error, be final and

binding and not capable of review or appeal; and

7.3.2 in accordance with increases in cost of production, and transport, and all costs of producing and delivering the Products.

7.5 The Prices quoted are for deliveries and/or collection during office hours of the respective SPH site. A surcharge at SPH's then ruling rate may be made for deliveries and/or collection outside such times, should SPH agree to delivery and/or collection outside such times.

7.6 Prices are based on vehicles being unloaded immediately on arrival at the Delivery Site, unless alternatively detailed in the Quotation and/or Agreement. SPH shall be entitled to charge demurrage at prevailing rates for any period of delay.

8. INVOICING AND PAYMENT TERMS

8.1 SPH shall issue a Tax Invoice to the Client.

8.2 The amount claimed in respect of the Tax Invoice shall be due and payable prior to delivery of Product.

8.3 Where the Client is offered credit facilities, the Client shall reimburse SPH within 30 (thirty) days from date of the Tax Invoice or within the period stipulated by SPH.

8.4 Payment by the Client to SPH shall be by electronic funds transfer to the nominated bank account of SPH, the details of which are set out on the Tax Invoice in question.

8.5 Interest shall accrue at a rate of 2% (two percentum) per month, compounded monthly on all amounts due and payable in terms of a Tax Invoice but which remain unpaid 30 (thirty) days after the date of the Tax Invoice.

8.6 In case of failure or refusal by the Client to timeously pay any or all Tax Invoices rendered to the Client, SPH reserves the right to:-

8.6.1 proceed against the Client in terms of law and the costs incurred in respect thereof, shall be recovered from the Client on an Attorney and own client scale; and/or

8.6.2 suspend the supply of Products to the Client until such time as the Tax Invoice/s is/are settled; and/or

8.6.3 recover possession of the Product immediately without notice and without the necessity to first cancel the Agreement in respect of such Product.

8.7 All payments due to SPH by the Client shall be made without any set-off deduction, counter-claim and any other basis for withholding payment. Moreover, so long as the Client is in breach of any of its obligations to SPH, the Client's rights under the

Agreement shall be suspended and enforceable.

9 DELIVERY

9.1 Delivery by SPH

9.1.1 As far as reasonably possible SPH will deliver the Product to the Client at the address specified by the Client (the Delivery Site) within the timeframe as agreed upon between the Client and SPH, subject to **Clause 7.5**. However, SPH reserves the right in its sole discretion to determine the means and route of transportation in effecting any deliveries.

9.1.2 Save for deliveries envisaged in **Clauses 9.5 and 9.6**, SPH's responsibility and risk cease at the entrance to the Client's site or at the entrance to the Delivery Site, and SPH enters the Client's site and/or the Delivery Site on the clear understanding that it does so gratuitously and strictly subject to **Clauses 9.1.2.1 and 9.1.2.2 below**:

9.1.2.1 The Client shall ensure that SPH's delivery vehicles have full and free access to the desired point of discharge at the Delivery Site and that the routes to and from such point on site are safe and suitable for SPH's vehicles.

9.1.2.2 Discharge shall be made at the nearest safe accessible point to the works as may be determined by SPH's agent or employee charged with the delivery;

9.1.2.3 SPH vehicles and its contents leave the public road and enter, and remain on the Client's sites/Delivery Site, at the Client's sole risk. The Client shall indemnify SPH and its agents and employees against any loss or damage or liability sustained or incurred by the Client or any of its employees, agents, representatives or contractors arising from any occurrence during such period, howsoever such occurrence may have been caused, including negligence of SPH and its employees or agents.

9.1.3 SPH shall be entitled to elect from time to time whether to sell and/or deliver by volume or by mass:-

9.1.3.1 Mass: Should SPH elect to sell and/or deliver by mass:-

(i) conversion factors as determined by the South African Bureau of Standards shall be deemed to be acting as experts and not as arbitrators, and which determination shall, in absence of manifest error, be final and binding and not capable of review or appeal;

(ii) each load of Product will be weighed by SPH at its plant, or at a nominated weighbridge, in accordance with the Trade Metrology Act 77 of 1973 as amended or substituted, at which weighing, the Client shall be entitled to be represented at the Client's own expense. The driver of each vehicle will

be furnished with a certificate of mass of his vehicle and of the relevant load or other proof of mass of the load, which certificate or other proof shall be final and binding on the Client and SPH. Should a dispute arise in regard to the accuracy of the measuring apparatus, the Client shall have the right to request the testing thereof, which testing shall be undertaken by a competent local firm acceptable to both Parties, and in the absence of agreement, appointed by the Chairman for the time being of the Aggregate and Sand Producers Association of Southern Africa or by his delegate. Such testing shall be for SPH's account if the final assessment records that the apparatus reflected a mass deviating in excess of 5% from the true value, or otherwise for the account of the Client.

9.1.3.2 **Volume:** Should SPH elect to sell and/or deliver by volume, the Client acknowledges that the quantity of each load will be measured in its disturbed state immediately after and at the point of loading and that a certain amount of settling during transport to the point of discharge is inevitable.

9.2 **Delay and Suspension of Delivery**

9.2.1 Notwithstanding acceptance of any Quotation or anything contrary in these Conditions, SPH shall be entitled to suspend, cut back or determine deliveries, should :-

9.2.1.1 SPH be prevented or delayed from doing so for any reason beyond SPH's control including (but without prejudice to the generality of the foregoing), a force majeure event in terms of **Clause 15**; or

9.2.1.2 the Client's account be overdue for payment or SPH considers the Client's credit to be unsatisfactory; or

9.2.1.3 the Client, in SPH's opinion, unjustifiably refuses to accept, or delays delivery.

9.2.2 The Client shall not be entitled to cancel or repudiate the Agreement or refuse delivery from SPH due to late delivery. SPH accepts no responsibility for any delay in respect of delivery of the Product. It is specifically recorded that the Client will not be entitled, as a consequence of any delay or of a non-delivery, to claim damages and/or set-off payment from SPH due to such delay or non-delivery.

9.3 **Delivery Note**

9.3.1 The Client shall sign SPH's Delivery Note in respect of each delivery made unless the Client disputes that the Products delivered accord with the specification or the quantity reflected as loaded thereon, or accord with that ordered.

9.3.2 SPH's Delivery Note signed by the Client or the Client's employee or agent shall constitute proof, on its mere production that the Product loaded / off-loaded accorded with the quantity and specification

reflected thereon and with that ordered. The onus shall be on the Client to prove the contrary.

9.4 **Shortages and Discrepancies**

9.4.1 Notwithstanding anything contrary in the Agreement and subject to **Clauses 9.1, 9.5, 9.6 and 10**, any incorrect quantity and non-conformance to specification of the Products delivered must be immediately communicated to SPH and confirmed by written notice to SPH within 48 hours of the date of delivery. Should SPH not be notified accordingly, SPH will have no liability in respect of the Products delivered.

9.5 **Delivery by Client's Own Transport**

9.5.1 Should the Client elect to collect Products at any of SPH's sites, plants or quarries, the Client shall, (if applicable) pay to SPH a loading fee, being the loading fee ruling at the time of collection, or, if detailed on the Quotation and/or Agreement, such fee to be subject to automatic increases, mutatis mutandis, in accordance with **Clause 7.3**.

9.5.2 The Client will at all times and at its own cost comply with all statutory and regulatory legislation in respect of road transport, the provisions of the Mine Health and Safety Act, Act No. 29 of 1996, SPH's safety and security procedures applicable to its premises/Site and any other statutory provision, by-law, regulation, policy or procedure applicable to the Agreement (all as amended). SPH will accept no liability for non-compliance thereof by the Client, its employees or agents.

9.5.3 In addition to **Clause 9.5.2** above, the Client shall ensure that its employees and/or agents are not under the influence of alcohol, drugs or illegal substances whilst on SPH's premises/Site, nor permit the aforementioned activities on SPH's premises / site. SPH may, at its discretion and for its own account, subject the Client's vehicles, employees and/or agents to routine testing and security checks.

9.5.4 SPH may at its discretion and at no cost or obligation to SPH, forthwith remove from and/or prevent entry to its premises/site any of the Client's employees and/or agents contravening the required legislation, statutory provisions, by-laws, regulations, policies or procedures applicable to the Agreement.

9.5.5 All risk in and to the Products shall pass to the Client on loading of the Product at SPH's site, plant or quarry and delivery shall be deemed to take place on such loading.

9.5.6 Alleged shortages or discrepancies shall, without detraction from the provisions of this **Clause 9.5.5**, be notified to SPH before loading/off-loading of Product at the Delivery Site, and the Product shall not be loaded/off loaded until SPH has had an opportunity of verifying the alleged shortage or

discrepancy, unless notified otherwise by SPH to the contrary.

9.6 **Delivery by Rail**

Without detracting from the provisions of **Clause 9.1.3**, should it become necessary, or should SPH elect so to do, any or all deliveries will be affected by South African Transport Services, in which case the following additional provisions shall apply:-

- 9.6.1 SPH shall use its best endeavours to arrange the necessary railway trucks, but shall not be liable should it not be possible to do so due to unavailability or shortage of trucks, or for any other reason;
- 9.6.2 Notwithstanding anything to the contrary herein contained, the Client shall be responsible for offloading and stockpiling at the receiving siding, and for transfer from such siding to the Client's stipulated delivery point;
- 9.6.3 Deliveries shall be to the Client's siding, or to the siding closest to the Client's stipulated delivery point;
- 9.6.4 The Price quoted by SPH shall be for the Product, transporting thereof to the most convenient despatch siding, stockpiling at such siding if necessary, loading into railway trucks, and any other cost as outlined in the Quotation and/or the Agreement;
- 9.6.5 All costs of rail transportation, demurrage, cost of offloading, stockpiling at the receiving siding, and transport from the receiving siding to the Client's stipulated delivery point, and all and any other costs of and incidental to or consequent to rail delivery shall be for the Client's account, and shall be settled directly by the Client with the South African Transport Services. Should the Client fail to pay such cost, SPH shall be entitled but not obliged to pay same and to recover same from the Client forthwith, together with the interest at the highest overdraft rate charged by SPH's nominated bank, from date of disbursement to date of recovery;
- 9.6.6 All other provisions of these Conditions shall apply mutatis mutandis.

10. **WARRANTY**

- 10.1 Notwithstanding anything to the contrary in this **Clause 10**, the Product size and quality cannot be guaranteed where the Product is screened by using piano wire as a product deck.
- 10.2 Sampling and testing of the Product will be upon request of the Client, at an additional fee. The Product delivered shall comply with the size and specification as detailed on the Delivery Note in accordance with the Quotation/Agreement as

accepted by the Client, and failing any specification shall be run of production. Liability for breach of this warranty shall only arise where the Client establishes that (in addition to any other proof ordinarily required in law) :

- 10.2.1 sampling and testing of specimens and the interpretation of test results were done in strict compliance with the specifications, therefor no less stringent than those as prescribed by the South African Bureau of Standards at that time and taking into consideration advance production;
- 10.2.2 within 48 (forty-eight) hours of such results becoming available, SPH were notified thereof, furnished with a certified, full and uncensored copy thereof as well as any report which may have accompanied same;
- 10.2.3 the Client notified SPH in writing within 48 (forty eight) hours of delivery of an alleged nonconformity with specifications and SPH were afforded every reasonable opportunity immediately on demand to inspect the sample and submit same to its own examination and testing and that immediate remedial measures were taken to SPH's satisfaction;
- 10.2.4 the Product has not been abused, misused, neglected, contaminated, improperly handled, damaged or altered in any way.
- 10.3 Should, notwithstanding all the provisions of **Clause 10.2** above having been satisfied, a dispute still exists as to compliance with specification, SPH shall be entitled, at its discretion, to nominate an expert (who shall act as such and not as an arbitrator) to finally determine such dispute, **subject to Clause 16**.
- 10.4 **Liability for Breach of Warranty**
- 10.4.1 Notwithstanding **Clauses 10.2 and 10.3** above and subject to **Clause 11.2**, SPH's liability for breach of the foregoing warranty, shall be limited to the cost of removal of the offending Product and replacement thereof, provided that if the breach could reasonably have been determined by examination on delivery, SPH's liability shall be limited to the delivery of a fresh load of Product. Where the Client transported the Product, SPH's liability for breach of the foregoing warranty shall be limited to the supply of a fresh load of Product, providing the Client returns the offending Product to SPH at its own cost.
- 10.4.2 The above replacement provision in terms of this **Clause 10.4** (which shall constitute the Client's sole remedy to the exclusion of all others, including cancellation or specific performance or damages as aforesaid) does not extend to products not quarried or manufactured by SPH in respect of which no warranty or undertaking whatsoever is given. The Client shall, however, be entitled to the benefit of

any warranties given to SPH in respect thereof and which SPH is able to cede.

10.4.3 The warranty set forth in this **Clause 10** is in lieu of all other warranties, guarantees or representations, expressed or implied, which but for this provision, may have been applicable in favour of the Client, all of which are expressly excluded, particularly, but without prejudice to the generality of the foregoing, any representation that the Product is fit for any particular purpose.

10.4.4 SPH supplies in accordance with the specifications reflected in the Quotation / Agreement, and the onus of establishing whether such specification is fit for the intended purpose rests entirely on the Client, failing which the Client will have no claim against SPH where the Product is not fit for the intended purpose.

11. LIMITATION OF LIABILITY

11.1 Save as outlined in **Clause 10.4** above, neither SPH, its personnel and /or its agents shall in any way, be liable to the Client for any claim, loss, damage or expense resulting from, relating to, or arising out of SPH's performance of the Agreement.

11.2 Notwithstanding anything to the contrary contained in these Conditions and/or the Agreement, SPH shall not be liable to the Client for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever.

11.3 The limitation contemplated in this **Clause 11** shall apply even where such a loss was reasonably foreseeable by SPH, its personnel and /or agents.

11.4 Without prejudice to any rights and obligations the Client may have in terms of these Conditions or the Agreement, the Client shall :-

11.4.1 indemnify and keep SPH its personnel and /or agents indemnified against all claims, (of whatsoever nature which may or may not result in any loss or damages being suffered by SPH, its personnel and/or agents) or prosecutions which may be brought against the Client or in which SPH, its personnel and /or agents may be involved as a consequence of or relating to the supply of the Product and the provision of the Agreement. This indemnity will include (but not be restricted to) all costs, (including legal costs on the scale as between attorney and own client), damages and other expenses incurred by SPH, its personnel and/or agents in contesting such claim or prosecution brought against the Client and/or SPH, its personnel and/or agents; and

11.4.2 be liable for all costs arising from damage to SPH's property or other, injury and/or death to persons caused by the Client, its personnel, agents, officers or contractors and/or vehicles whilst on SPH's

premises/sites and/or in connection with the sale or use of the Product and/or provision of the Agreement, whether or not such damage to property, injury and/or death to persons is caused within the boundaries of the areas owned, leased or occupied by SPH, or outside of such boundaries, and the Client shall indemnify SPH against any claim, or claims of whatsoever nature which may be made against it in respect of such damage, loss, injury and/or death.

12. OWNERSHIP IN THE PRODUCT

12.1 Notwithstanding the delivery of the Product, ownership will not pass to the Client until SPH has received payment in full in respect of the Product.

13. CONFIDENTIALITY

13.1 Each Party agrees to keep in the strictest confidence the terms and conditions of the Agreement and all information relating to or acquired by it as a consequence of the Agreement, in particular financial information and information relating to Prices. Each Party agrees that it will not publish, communicate, divulge, disclose or use any information contemplated in the foregoing, without the prior written consent of the other Party, except as expressly provided herein or in an agreement provided for herein or any disclosure which is required to be made by law.

14. CANCELLATION / RETURNS POLICY

14.1 The Client may not cancel the Agreement and/or the Purchase Order after receipt by SPH, except with the written consent of SPH and on the terms that the Client shall indemnify SPH against all losses incurred by the Client, SPH and any third party as a result of such cancellation.

14.2 The Client may not return the Products to SPH unless specified to the contrary in the Agreement.

14.3 Should SPH accept return of any of its Products (which it is not obliged to do), the cost for SPH doing so, plus such charge as SPH may then determine, shall be payable by the Client and the mere raising of such an amount on the Client's account or demand upon the Client, therefore shall constitute proof that such amounts are lawfully due to SPH in terms hereof and the onus shall be on the Client to prove the contrary.

14.4 Notwithstanding the cancellation of the Agreement for any reason whatsoever, but save as may be stipulated otherwise in these Conditions, the Client agrees that any outstanding obligations in terms hereof shall survive any cancellation as contemplated in the Agreement and the Client shall continue to be bound by the terms of the Agreement until all the obligations have been fulfilled.

14.5 SPH reserves the right to cancel the Agreement at its discretion, unless specified to the contrary in these Conditions.

14.6 Such stipulation in terms of this **Clause 14** shall not affect any recourse which a Party may have in terms of law.

15. FORCE MAJEURE

15.1 Save as otherwise provided for herein, SPH shall be discharged from obligations in terms of the Agreement as read with these Conditions and released from all liability in respect thereof whether for damages or otherwise during such time that SPH is prevented from fulfilling its obligations in terms of the Agreement as a consequence of an event of force majeure.

15.2 For purposes of the interpretation of these Conditions, save where the contrary is specified in these Conditions, an event of force majeure shall include but not be limited to, Acts of God, war, strikes, riots, lockouts, fire, explosion, accident, shortage or a breakdown in transportation facilities, civil unrest, plant breakdown, unavailability of Product, weather conditions, fuel, interference by civil or military authorities, compliance with Governmental, Provincial or Municipal laws, regulations, requests or policies, inability to secure Governmental, Provincial or Municipal permission, or any other event or circumstance beyond the reasonable control of SPH.

15.3 It shall be incumbent upon SPH to immediately notify the Client in writing of any inability to fulfil contractual obligations contemplated by the Agreement as a consequence of an event of force majeure.

15.4 Subject to the provisions of **Clause 15.2** above, or as may be specifically negotiated between the Parties, if by virtue of the provisions hereof, SPH is excused from the performance of its obligations under the Agreement for a continuous period of one (1) month, then either Party may, at any time after the expiry of the one (1) month period and provided such performance is still excused, terminate the Agreement forthwith in writing to the other Party.

16. DISPUTE RESOLUTION AND ARBITRATION

16.1 Notwithstanding anything contrary in the Agreement and/or Conditions, any dispute of whatsoever nature which arises out of or in connection with the Agreement, including any dispute as to the validity, existence, enforceability, interpretation, application, implementation, breach, termination or cancellation of the Agreement and/or as to the Parties' rights and/or obligations in terms of the Agreement ("Dispute"), shall, if so required by either Party by giving written notice to the other, be submitted and

(referred by no later than 3 [three] business days after the Dispute has arisen) to the respective Chief Executive Officers or their nominees (who must be an Executive Director) of the Parties, for their consideration, discussion and resolution.

16.2 Should the Chief Executive Officers of the Parties fail to resolve such Dispute or, should either Party dispute the resolution of the Dispute reached by the Chief Executive Officers (which notification shall be given by the disagreeing Party by no later than 3 (three) business days after such Dispute has been resolved), such Dispute shall be submitted and referred to Arbitration in terms of **Clause 16.4** for resolution.

16.3 Failing resolution in terms of this **Clause 16**, either of the Parties may submit, by written notice to the other Party, the Dispute for arbitration to the Arbitration Foundation of South Africa (AFSA) in terms of AFSA's arbitration rules then in place, it being recorded that the Parties request AFSA to appoint a retired Judge of the High Court of South Africa as the arbitrator.

16.4 Such arbitration in terms of **Clause 16.3** shall be conducted informally and summarily so as to dispose of the disputes expeditiously, economically, confidently, and in a business-like, efficient and practical manner, and to that end, the provisions of the Arbitration Act No. 42 of 1965, as amended (or any other law applicable), shall apply.

16.5 The Arbitrator shall determine the dispute and deal with the substantial merits of the dispute with the minimum of legal formalities.

16.6 SPH shall be entitled to nominate an Engineer to sit jointly with the Arbitrator and to assist him in matters of a technical nature.

16.7 These provisions shall not in any way be construed or given effect to in such a way as to prejudice to any degree whatsoever the rights and benefits secured to SPH by these Conditions and Agreement.

17. NOTICES, DOMICILIA CITANDI ET EXECUTANDI

17.1 All notices, consents, demands or communications intended for SPH or the Client, as the case may be, shall be made or given at such Party's Domicilium Citandi Executandi as detailed hereunder :-

17.1.1 In terms of SPH – the address as indicated in the Agreement. The Client acknowledges that any notice which it may give to SPH hereafter shall be deemed not to have been given to and received by SPH unless it is delivered to a director of SPH at the indicated address.

17.1.2 In terms of the Client - the address to which the accounts are usually sent or as indicated in the Agreement.

17.2 Any notice or other communication under these Conditions shall only be valid and effective if in writing. Handwritten or typewritten fax and e-mail messages are permitted. Nothing in this clause shall affect the right of any Party to serve process in any manner permitted or required by law.

17.3 A Party may by notice to the other Party change its notice details set out in the Agreement, provided that such change in details is in writing, served on the other Party who shall acknowledge receipt thereof by signing such notice amending its notice details.

18. GENERAL

18.1 These Conditions and the Agreement constitute the whole and only agreement between the Parties relating to the subject matter in question.

18.2 No amendment, variation or consensual cancellation of these Conditions and the Agreement, including an amendment to this **Clause 18.2** and no settlement of any disputes arising under these Conditions and the Agreement, shall be binding unless recorded in writing and signed by the Parties.

18.3 No extension of time or waiver or relaxation of any of the provisions of these Conditions and Agreement shall operate as an estoppel against any Party in respect of its rights under these Conditions and the Agreement, nor shall it operate to preclude such Party from exercising its rights strictly in accordance with these Conditions and the Agreement.

18.4 In the event that any of the terms of these Conditions and the Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms of these Conditions and the Agreement, which will continue to be valid and enforceable, in as far as the context and material nature of the terms so severed, permit.

18.5 These Conditions and the Agreement shall be governed, construed and interpreted in accordance with the laws of the Republic of South Africa.

18.6 Any legal proceedings arising out of the Agreement will be governed by the law of the Republic of South Africa and adjudged in the relevant South African Court.

18.7 The Parties nevertheless agree to the jurisdiction of the Magistrates Court for the adjudication of any dispute that may arise from the Agreement and Conditions.

18.8 All expenses and costs which SPH may incur in enforcing or protecting its rights against the Client, whether hereunder or otherwise, including but not limited to costs arising from sampling, examining, testing and obtaining reports on Products, legal

costs arising from such legal proceedings, collection, tracing charges, and legal fees on an attorney and client basis, shall be borne by the Client.

18.9 The Client shall not cede, assign or transfer its rights and obligations in terms of these Conditions or in terms of the Agreement (or any part thereof or any benefits or obligations thereof) to any other person except with the prior written consent of SPH which consent shall not be unreasonably withheld. This provision shall not apply to SPH, who shall be entitled to assign, cede or transfer the Agreement at its discretion.