

**Name:** Terms and Conditions

**Revision:** 01

**Effective Date:** 10.10.2016



## TERMS AND CONDITIONS

### 1. DEFINITIONS:

- 1.1. In this Agreement unless the context clearly indicates a contrary intention:
- 1.2. “Customer” shall mean the person’s or entity’s name which appears on the quote, invoice/order or the application form or failing this, any person or persons at whose request or on whose behalf Synertech Innovations undertakes to supply any goods, do any business, or provide any advice or service:
- 1.3. “Loss” – includes consequential loss;
- 1.4. “Signatory” shall mean the individual (or all of them jointly and individually) who signs this agreement, the application, quote, invoice or order on behalf of the customer;
- 1.5. “Goods” – any items or services that are supplied by Synertech Innovations to the customer in terms of this agreement;
- 1.6. “Synertech Innovations” – Synertech Innovations (Pty) Ltd;
- 1.7. Clause headings are for convenience and shall not be used in its interpretation;
- 1.8. an expression which denotes:
  - 1.8.1. Any gender includes the other genders;
  - 1.8.2. A natural person includes an artificial person and vice versa; and
  - 1.8.3. The singular includes the plural and vice versa.

### 2. PREAMBLE

- 2.1. It is recorded that the only basis upon which Synertech Innovations is prepared to do business with the customer is that, notwithstanding anything in the customer’s enquiry, specification, acceptance, order or other documentation or any other documentation or discussion/s to the contrary, the terms and conditions contained herein shall constitute the sole terms of the agreement between Synertech Innovations and the customer and shall operate in respect of any and all business between the customer and Synertech Innovations.

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- 2.2. All and any business undertaken, including any advice, information or service provided whether gratuitously or not by Synertech Innovations is and shall be subject to the terms and conditions contained herein, and each term and condition shall be deemed to be incorporated in and to be a term and condition of any agreement between Synertech Innovations and the customer.
- 2.3. These terms and conditions prevail to the extent that mention of this agreement appears on the application for credit, quote or invoice or any other documentation between Synertech Innovations and the customer, and if there is no relevant credit application the customer shall be deemed to be the person to whom the quote, invoice or other document is addressed, failing which the signatory shall be deemed to be the customer and the terms and conditions of this agreement shall apply mutatis mutandis to such person.
- 2.4. Any provision that limits the liability of Synertech Innovations shall mutatis mutandis also apply to any of Synertech Innovations employees, agents or other persons for whose actions Synertech Innovations may be liable. This provision is an irrevocable stipulatio alteri in favour of those persons. Therefore any reference in those provisions to Synertech Innovations shall be regarded as also a reference to the said employees, agents or such other persons.

### **3. NO VARIATIONS OR AMENDMENTS TO TERMS AND CONDITIONS**

- 3.1. This agreement read with the application, invoice or quote as the case may be constitutes the whole agreement between the customer and Synertech Innovations relating to the subject matter hereof.
- 3.2. No amendment or consensual cancellation of this agreement or part thereof shall be binding unless recorded in a written document signed by an authorised representative of Synertech Innovations.
- 3.3. No extension of time or act or failure to act or enforce or waiver or relaxation of any of the provisions or terms of this agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this agreement, shall operate as an estoppel against Synertech Innovations in respect of its rights under this agreement nor shall it operate so as to preclude Synertech Innovations thereafter from exercising its rights strictly in accordance with this agreement. Any such written extension, waiver or relaxation or suspension which is given or made shall be restrictively construed as relating strictly to the matter in respect whereof it was made or given.

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#### **4. QUOTATIONS**

- 4.1. Any quotation given by Synertech Innovations is not an offer by Synertech Innovations to sell the goods but constitutes an invitation by Synertech Innovations to the customer to do business with Synertech Innovations. Once the quote is signed by the customer it shall be regarded as an order by the customer open for acceptance by Synertech Innovations.
- 4.2. Synertech Innovations may accept or reject in whole or in part any order placed upon it by the customer pursuant to the quotation. Accordingly, a final contract shall only come into force between Synertech Innovations and the customer if after receipt by Synertech Innovations of the customer's order or acceptance of the quotation Synertech Innovations confirms by email or otherwise to the customer its acceptance or if Synertech Innovations supplies, or tenders to supply, the goods in question to the customer.
- 4.3. The quotation is based on rates of exchange, freight charges, insurance, railage, costs of labour and materials and other charges ruling at the date of the quotation. Any increases occurring subsequent to the date of the quotation in any of the aforesaid rates or charges, as the case may be, shall entitle Synertech Innovations to increase the amount of the quotation accordingly.

#### **5. ORDERS PLACED BY CUSTOMER**

An order placed shall be open for acceptance by Synertech Innovations for 14 days and shall upon acceptance thereof by Synertech Innovations be irrevocable by the customer.

#### **6. PURCHASE PRICE AND PAYMENT**

- 6.1. If the customer places an order without a prior quote such order is deemed to be on the basis that the prices agreed upon will be those ruling at the date of dispatch of the goods, unless otherwise expressly stated. A copy of Synertech Innovations ruling prices from time to time may be obtained from Synertech Innovations by the customer on request.
- 6.2. The customer shall be obliged to pay to Synertech Innovations in addition to the contract price -
  - 6.2.1. The amount of any tax, duty or other charge of any nature whatsoever imposed by any law, regulation or enactment of whatsoever nature which comes into force on a date after the date on which any price charged is determined;

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- 6.2.2. Any other additional costs of any nature whatsoever arising due to factors beyond the control of Synertech Innovations. In particular, but without limiting the generality of the foregoing, Synertech Innovations shall be entitled to increase the purchase price in respect of any goods in order to make provision for any increases in cost arising as a result of or during the period of any delay caused by the customer;
- 6.2.3. Any expense incurred by Synertech Innovations at the instance of the customer in modifying or otherwise altering or making additions to the design, quantities or specifications for standard goods, and any expenses arising as a result of suspension of work by Synertech Innovations due to instructions given, or a failure to give instruction by the customer; and
- 6.2.4. The cost of delivery unless specifically included.
- 6.3. The purchase price in respect of any goods sold by Synertech Innovations to the customer in terms of this agreement shall be payable –
- 6.3.1. By the customer to Synertech Innovations, at Synertech Innovations head office or at such other place as Synertech Innovations may direct from time to time;
- 6.3.2. In South African currency without deduction or set-off and free of any exchange; and
- 6.3.3. During or before the expiry of the credit period indicated in the approved application which period shall commence upon the issuing of an invoice by Synertech Innovations; or
- 6.3.4. If there is no credit period indicated, or no credit period has been approved in terms of 6.4 below, cash on order. (A payment by electronic funds transfer “EFT” that appears on Synertech Innovations bank statement before delivery shall be regarded as cash).
- 6.3.5. Synertech Innovations shall be under no obligation to render any service or execute any order or supply any item/s until the customer has paid the deposit reflected on any quote or invoice, the intention is that the agreement is suspended, at the option of Synertech Innovations, until such time as the deposit is paid.
- 6.4. After the completion of an application for credit by the customer Synertech Innovations shall at its own discretion be entitled to-
- 6.4.1. Make such enquiries as it may deem necessary to determine whether or not to grant the customer credit as applied for in the application; and

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- 6.4.2. Inform the customer of the determination made pursuant to 6.4.1 above and at any stage thereafter withdraw the credit/grant the credit without giving any reason.
- 6.5. Until a determination is made by Synertech Innovations (which Synertech Innovations is not obliged to make) as contemplated in 6.4 above any goods supplied by Synertech Innovations to the customer shall be supplied on cash on order basis only.
- 6.6. The customer has no right to withhold payment for any reason whatsoever. The customer is not entitled to set off any amount due to the customer by Synertech Innovations against any debt owed by the customer to Synertech Innovations nor shall any payment be withheld by virtue of any alleged counterclaim against Synertech Innovations by the customer.
- 6.7. The customer hereby agrees that any item handed in for repair may be sold by Synertech Innovations to defray the cost of such repair/s plus Synertech Innovations usual storage cost, if the item remains uncollected after 30 days of the repair being done.
- 6.8. Synertech Innovations shall be entitled to allocate any payment made by the customer:
- 6.8.1. to any debt it deems fit at any time or from time to time;
- 6.8.2. notwithstanding any allocation stipulated by the customer at any time; and
- 6.8.3. without limiting the generality of the foregoing, should Synertech Innovations fail to make any such allocation payments shall first be allocated to any costs or expense incurred by Synertech Innovations, then to any interest and lastly to capital.
- 6.9. All EFT payments are to be made directly to Synertech Innovations at @ Bank, Account Number @, Clearing Code @, Reference = Invoice number

## **7. RISK**

Subject to the provisions of paragraph 0 the risk of damage to or destruction of any relevant goods passes to the customer on delivery thereof by Synertech Innovations to the customer.

## **8. REPAIRS**

Any repair times given by Synertech Innovations are merely estimates and Synertech Innovations shall not be bound thereby.

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## **9. IMPORTED GOODS**

9.1. Synertech Innovations obligations hereunder shall be subject, in those cases where the goods or part thereof are to be imported, to the availability of an import permit to Synertech Innovations.

9.2. Where the goods or any part thereof are to be imported, this agreement is subject to the condition that Synertech Innovations order is accepted and confirmed by Synertech Innovations own suppliers and that delivery is made thereunder in due course.

9.3. Exchange Rate

The customer carries the risk in the deterioration in the exchange rate of the Rand (The Rand weakens against the currency quoted). The parties therefore agree:

9.3.1. That the customer shall at the customer's option take out forward cover for such period and rate and on such terms as the customer deems fit; and

9.3.2. Synertech Innovations shall be entitled to amend the price of all or any of the items quoted for if the Rand weakens (against the currency in which Synertech Innovations has ordered the items) between the date that the order is placed by Synertech Innovations and the date it is delivered to Synertech Innovations at the selling rate of Synertech Innovations bankers at that date. The increase in the costs shall be reflected on Synertech Innovations statement and/or invoice for payment. Any objection to the increase shall be delivered in writing to Synertech Innovations within 15 working days as from the date on which the invoice is sent to the customer by email and/or fax. If the customer disputes the increase in the price of the item/s the matter shall be referred to Synertech Innovations auditors who shall, as experts, determine the amount of the increase and their decision, be it higher or lower, shall be final. The customer shall be liable for the costs of the auditor if the increase in the costs according to his calculation is equal to that calculated by Synertech Innovations or if the amount of the increase so calculated is higher or if lower if the amount deviates with less than 5%.

## **10. DELIVERY**

10.1. Any delivery date indicated by Synertech Innovations shall merely be regarded as the estimated date of delivery and shall not bind Synertech Innovations to effect delivery on or near such date.

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- 10.2. The customer shall accept delivery whenever it is tendered and shall not be entitled to resile from the agreement nor to withhold or defer any payment nor to a reduction in price nor to any other right or remedy against Synertech Innovations (whether for losses, costs, damages, expenses, interest or otherwise) on account of delays in effecting delivery, partial delivery or non-delivery, whether occasioned by any negligent (including grossly negligent) act or omission attributable to Synertech Innovations.
- 10.3. If delivery of any particular order is to be effected in consignments, Synertech Innovations shall not be obliged to deliver any part of the order until the purchase price which is due in respect of the part of the order which has already been delivered has been paid (also refer to paragraph 18.2).
- 10.4. If the goods are to be delivered by road, the customer shall be obliged to procure that the delivery destination shall be easily accessible to road transport vehicles. Unless specifically quoted for the cost of goods does not include delivery or transport costs. The customer shall be responsible for off-loading the goods at the delivery destination at the customer's risk and costs. If the goods are to be transported by rail, the customer, at his risk, shall be responsible for collection of the goods at the railhead and the goods shall be regarded as delivered, if Synertech Innovations has agreed to deliver it at the railhead, when Synertech Innovations delivers it to the railhead to be so transported.
- 10.5. If Synertech Innovations agrees to engage a third party to transport the goods, then Synertech Innovations is hereby authorized to engage a third party of its choice on the customer's behalf and on the terms deemed fit by Synertech Innovations, at the costs and risk of the customer to collect the goods (which shall constitute delivery when it is so collected) and transport it to the Customer. The customer hereby indemnifies Synertech Innovations against any costs and claims that may arise against Synertech Innovations from such engagement.
- 10.6. The customer shall be obliged to inspect all goods upon delivery and shall endorse the delivery note as to any missing or damaged goods and the onus of proof of any missing or damaged goods shall rest on the customer. No claims for missing or damaged goods shall be valid unless the delivery note has been endorsed as aforesaid and unless, in addition, the customer notifies Synertech Innovations in writing within 3 business days of the delivery of the goods of the claim in question and specifying the goods relating to such claim.

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10.7. The customer shall be obliged to furnish all information necessary to enable delivery of the relevant goods to be effected. If the customer fails or refuses to furnish the information, delays, or fails or refuses to take delivery or fails to make payment, the goods shall notwithstanding the provisions of clause 7 be deemed to have been delivered to the customer forthwith. The customer shall be obliged to collect the relevant goods from Synertech Innovations at his risk and costs. The risk in and to the goods shall pass to the customer on the deemed date of delivery and Synertech Innovations shall, in addition to any other rights it may have, be entitled to charge the customer for the storage of the goods at a storage rate of 1% per month or portion thereof calculated on the value of the goods stored as from the date of delivery until the date it is collected by the customer and payable before collection thereof.

## **11 WARRANTIES AND LIABILITY OF SYNERTECH INNOVATIONS**

No warranties, guarantees or representations, express or implied or tacit whether by law, contract or otherwise and whether they induced the contract or not, which are not set forth in this agreement shall be binding on Synertech Innovations. The customer irrevocably waives any right (common law or otherwise) it may have to rely thereon. The goods are purchased on the basis that they are acquired voetstoots and with the exclusion of all common law and other remedies including aedilitian remedies, (without limiting the generality of the foregoing) whether as to the suitability of the goods sold for any specific purposes or otherwise.

## **12 INDEMNITY AND CONSEQUENTIAL LOSS**

12.1 The customer shall have no claim against Synertech Innovations of any nature inclusive of:

- 12.1.1 Cancellation of the order or agreement;
- 12.1.2 reduction of the purchase price;
- 12.1.3 any damage of any nature whatsoever and/or loss howsoever sustained (arising from any act or omission including grossly negligent act omission) by the customer or any such claim by any third party inclusive of any of its customers, howsoever caused including the grossly negligent acts or omissions of Synertech Innovations; or





- 12.1.4 any injury, loss or damage (direct, indirect or consequential) howsoever arising inclusive but not limited to the use of, or inability to use, the goods. Without limiting the generality of the foregoing Synertech Innovations does not warrant that the goods will be fit for the purposes for which they are to be used by the customer (notwithstanding that the use to which the customer intends to put the goods is known to Synertech Innovations).
- 12.2 Should any service or goods supplied by Synertech Innovations be in any way defective, the customer shall only be entitled, within one year of the delivery of the relevant goods, to claim the replacement or repair of goods to eliminate any such defect in workmanship or materials;
- 12.2.1 which defect must be attributable exclusively, in Synertech Innovations sole opinion, to an act or omission on the part of Synertech Innovations; and
- 12.2.2 of which defects the customer has given written notice to Synertech Innovations specifying the alleged defect, and supported by the original tax invoice within 10 days after the defect becomes known to the customer; and
- 12.2.3 Synertech Innovations shall have been given a reasonable opportunity in such notice to inspect the alleged defect.
- 12.3 Once Synertech Innovations has accepted liability as envisaged the goods must be returned by the customer to Synertech Innovations at the customer's expense. Synertech Innovations shall not be responsible for costs incurred in dismantling or fitting replacement parts or reassembling the goods. Synertech Innovations liability shall be limited to the replacement or repair of the goods or parts.
- 12.4 Synertech Innovations shall be relieved of all obligations in terms of this clause, if –
- 12.4.1 Repairs or modifications have been made by persons other than by Synertech Innovations, unless such repairs or modifications are made with the prior written consent of Synertech Innovations; or
- 12.4.2 Any goods are operated with any accessory, equipment or part not specifically supplied or approved in writing by Synertech Innovations; or
- 12.4.3 The goods shall not have been operated or maintained in accordance with Synertech Innovations or the manufacture's directives, or under normal use, or if the goods were not properly installed.

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- 12.5 If repairs or replacements are effected by Synertech Innovations, only the parts actually replaced or repaired and not the complete goods shall then be subject to a new guarantee, if any, as set out above.
- 12.6 Customers who acquire goods for the purpose of on-selling those goods, whether that customer is permitted to do so or not (and nothing herein contained shall be deemed to allow the customer to on-sell goods acquired from Synertech Innovations whilst ownership vests in Synertech Innovations), shall not advertise or issue or in any other way give or make any warranties, guarantees or representations as to the goods in any form whatsoever or offer to do so, which could result in any liability being imposed upon Synertech Innovations.

### **13 HANDLING FEE ON RETURN OF GOODS**

Synertech Innovations reserves the right to levy a handling fee of 15% of the purchase price of the relevant goods on such goods returned to and accepted by Synertech Innovations. Synertech Innovations is not obliged to accept the return of any goods and this clause shall not be used to imply that Synertech Innovations shall be obliged to accept the return of any goods.

### **14 OWNERSHIP**

- 14.1 Ownership of the goods shall not pass to the customer until all amounts (including interest if any) in respect of the goods in question had been paid. The provisions hereof shall apply notwithstanding the installation of such goods in the customer's premises or the fitting thereof to any of the customer's goods or that the goods may be incorporated into or form part of other goods or change their essential character. All goods, whether fixed to immovable property or not, shall be deemed to remain movable property and be deemed to be severable without injury to either property. In so far as it may be impossible to sever the goods from any other thing the parties agree that the other property shall be deemed to have acceded to the goods supplied by Synertech Innovations and therefor becomes the ownership of Synertech Innovations.
- 14.2 Synertech Innovations reserves the right to inform the owner/landlord of the premises in which the goods are or at any time may be, of the provisions of this clause. The customer shall be obliged to advise Synertech Innovations of the name and address of the landlord of any such premises and shall promptly advise Synertech Innovations of any change.

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- 14.3 The customer shall take all such steps as may be necessary to notify interested third parties that ownership of the relevant goods has not passed from Synertech Innovations to the customer. In particular the customer shall inform the owner/landlord of the premises in which the goods are or at any time may be, of the provisions of this clause. If the customer on-sells the goods the customer shall inform the purchaser of the ownership of Synertech Innovations, in writing, failing which the customer or its representative/s may be guilty of fraud or theft. The customer shall produce written proof of such notices to Synertech Innovations on demand.

## **15 SUBSTITUTE GOODS OR PARTS**

- 15.1 Synertech Innovations shall be entitled to substitute for any goods specified in this agreement such other goods which Synertech Innovations in its sole discretion may regard as suitable substitutes therefore.
- 15.2 Synertech Innovations reserves the right to alter specifications, as conditions may warrant it, in the sole discretion of Synertech Innovations, without any prior notice.
- 15.3 Should conditions render any materials or goods required, unavailable in order to fulfil its obligations or an order, a substitution of the goods deemed by Synertech Innovations, in the sole discretion of Synertech Innovations, to be suitable for the performance of its obligations will be supplied.

## **16 DOCUMENTATION**

All specifications, descriptive matter, drawings and other documents furnished by or to Synertech Innovations do not form part of the contract and may not be relied upon, unless they are agreed in writing by Synertech Innovations to form part of this contract or order. All descriptive matter, specifications, drawings and particulars given by Synertech Innovations which form part of the contract or order are approximate only and Synertech Innovations cannot be held responsible for loss, damages, increases in expenditure or material to be used or any other claim, due to discrepancies therein.



## **17 INSURANCE**

Synertech Innovations shall have the option to require the customer, at the customer's expense, by notice at any time before ownership passes to insure the goods and thereafter keep the goods insured until such time as the goods have been paid for in full. Such insurance shall be taken with such insurers as may be approved by Synertech Innovations in writing, for such amount and on such terms as may be approved by Synertech Innovations in writing. The insurance policy shall record the interest of both Synertech Innovations and the customer. The customer hereby cedes or shall, if so required by Synertech Innovations, cede to Synertech Innovations all its rights in terms of such insurance policy.

## **18 BREACH**

18.1 If the customer breaches any of the terms or conditions hereof or any other agreement with Synertech Innovations or fails to pay any amount payable by it on due date or commits any act of insolvency or endeavours to compromise generally with its creditors or does or causes to be done anything which may prejudice Synertech Innovations rights hereunder or at all, or allows any judgement against it to remain unsatisfied for 7 days or is placed into provisional or final liquidation or if any step is taken under the business rescue provisions of the Companies Act (71 of 2008) or the provisional or final sequestration of the customer or surety or if the customer or any of its shareholders or members or surety commits any act of insolvency, Synertech Innovations shall have the right, without prejudice to any other right which it may have against the customer, to -

18.1.1 Treat as immediately due and payable all or any outstanding amount/s which would otherwise become due and payable later and to claim such amounts as well as any other amounts outstanding, including interest, and to cease performance of its obligations hereunder as well as under any other contract with the customer until the customer has remedied the breach or paid the full amount outstanding and provided security to the satisfaction of Synertech Innovations for future payments and/or cancel any credit facility; and/or

18.1.2 Cancel this agreement and retake possession of any of the goods sold; and/or

18.1.3 Retain any amount paid as rowkoop and/or as liquidated damages and/or as a genuine pre-estimation of the damages that Synertech Innovations has suffered as a result of the breach by the customer; and/or

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- 18.1.4 Claim damages and any loss suffered as a result of the breach by the customer of the terms of this agreement; and/or
- 18.1.5 Claim all costs (irrespective of whether legal action has been instituted or not) incurred by Synertech Innovations in the recovery of any amounts or the enforcement of any rights which it has in terms of this agreement or otherwise, including costs on an attorney and own client scale on the tariff set out in Rule 70 of the High Court Rules plus 50% inclusive of where no action has been instituted or action has been instituted in any lower court and the full costs of counsel on brief whether incurred prior to or during the institution of legal proceedings or if judgment has been granted, in connection with the satisfaction or enforcement of such judgment, plus collection commission at 10% on all payments received on overdue accounts until the full amount has been paid.
- 18.2 Synertech Innovations shall not be obliged to comply with its obligations hereunder in any respect whatsoever for so long as the customer is indebted to Synertech Innovations in any amount in respect of any cause whatsoever or fails to comply with any obligation to Synertech Innovations, whether arising out of this contract or otherwise. In particular, without limiting the generality of the a foregoing, if any amount reflected on an invoice had not been paid in full, irrespective of whether it is still not due and payable at that date, Synertech Innovations shall not be under any obligation to supply any goods ordered until all prior invoices outstanding and not paid, had been paid (See also paragraph 10.3).
- 18.3 No claim under this contract will arise against Synertech Innovations unless the customer has properly paid all outstanding amounts whether due or not and, given 30 days written notice to Synertech Innovations sent by prepaid registered post to rectify any defect or breach of contract which notice must clearly describe the defect complained of so as to enable Synertech Innovations to ascertain with sufficient certainty its liability or not.
- 18.4 The customer agrees that the amount due and payable to Synertech Innovations shall be determined and proven by a certificate issued by Synertech Innovations and signed by or on its behalf by any director, manager or by any person duly authorized by Synertech Innovations, which authority needs not be proven. Such certificate shall be binding and shall be prima facie proof of the indebtedness of the customer.
- 18.5 The customer hereby agrees that Synertech Innovations shall not be required to furnish security in terms of rule 62 of the Magistrate's Court Rules and hereby waives compliance by Synertech Innovations of the said provisions.

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18.6 Synertech Innovations shall have the right to institute any action in either the relevant Magistrate's Court or the High Court at its sole discretion.

## **19 DOMICILIUM AND NOTICES**

19.1 The parties choose domicilium citandi et executandi ("domicilium") for the purposes of the giving of any notice, the payment of any sum (unless otherwise specified herein), the serving of any process and for any other purpose arising from this agreement at their addresses and telefacsimile numbers or any of them if more than one supplied as set out in the application, quote or invoice as the case may be..

19.2 Each of the parties shall be entitled from time to time, by written notice to the other, to vary its domicilium to any other address which is not a post office box or poste restante.

19.3 Any notice given by any party to any other ("the addressee") shall be in writing and if-

19.3.1 Delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being, shall be presumed to have been received by the addressee at the time of delivery;

19.3.2 Posted by prepaid registered post to the addressee at the addressee's domicilium for the time being, shall be presumed to have been received by the addressee on the fourth day after the date of posting;

19.3.3 Transmitted by facsimile and addressed to the addressee at the addressee's facsimile address for the time being, shall be presumed, to have been received by the addressee on the first business day after the date of transmission.

## **20 NO CESSION**

The customer shall not be entitled to cede or assign any rights and/or obligations which it may have in terms of this agreement to any third party.

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## **21 SECURITY FOR OBLIGATIONS**

Synertech Innovations reserves the right to require satisfactory security from the customer for the due performance by the customer of any of the customer's obligations hereunder including but not limited to the payment of the purchase price. If Synertech Innovations so requires, the customer shall deliver to Synertech Innovations prior to Synertech Innovations complying with any of its obligations hereunder, confirmed irrevocable letters of credit by financial institutions acceptable to Synertech Innovations. If such security or guarantees or letters of credit are not furnished within 7 days after any such request, Synertech Innovations shall be entitled to suspend any performance by Synertech Innovations pending compliance or to withdraw from the contract in whole or in part.

## **22 SURETYSHIP AND WARRANTY OF AUTHORITY**

22.1 The signatory, by his signature hereto, binds himself in favour of Synertech Innovations, its successors in title and assigns as surety for and co-principal debtor in solidum with the customer for the due and punctual performance by the customer of all its obligations to Synertech Innovations in terms of this agreement.

22.2 The suretyship in 23.1 shall remain of full force and effect notwithstanding-

22.2.1 Any amendment/s to this agreement and/or any other agreement for the time being subsisting between the parties;

22.2.2 Any indulgence, concession, leniency or extension of time which may be shown or given by Synertech Innovations to the customer.

22.3 The signatory hereby renounces the benefits of the legal exceptions "non causa debiti", "errore calculi", and "excussio", "de doubus vel pluribus reis debendi", "no value received" and "revision of accounts", with the meaning and effect of all of which he declares himself to be fully acquainted.

22.4 The signatory warrants, as a material warranty on which Synertech Innovations relies on in entering into this agreement, that he is duly authorized to represent and bind the customer to this agreement, and that he and the customer have read and understood each term and condition of this agreement and accepts them as binding on him and the customer.

22.5 The signatory and the customer hereby warrant that the signatory to any quote, tax invoice, delivery note or other documentation is, or shall be deemed to be, duly authorised to bind the customer in respect of the relevant transaction and that any person in the employ of the customer shall be regarded as having the authority to give receipts for delivery of any goods.

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- 22.6 The signatory shall be bound by the provisions of this agreement as if he was the customer, mutatis mutandis, particularly, but without limitation thereto, insofar as the agreement provides for proof of facts, costs of proceedings, services of process, limitations of defences and jurisdiction

## **23 SEVERABILITY**

- 23.1 Each provision and paragraph and clause (or part thereof) in this agreement is severable the one from the other and if any provision, paragraph or clause (or part thereof) is found by any competent court to be defective or unenforceable for any reason whatever, such provision, paragraph or clause (or part thereof) shall be regarded as severable from the rest of this agreement and the remaining provisions, paragraphs or clauses shall be of full force and effect and continue to be of full force and effect.
- 23.2 Since each party has been free to secure independent legal advice, the rule of construction that clauses must be interpreted against the party principally responsible for drafting (*contra proferentem rule*), does not apply

## **24 FORCE MAJEURE**

This agreement, and any order, is subject to cancellation by Synertech Innovations due to force majeure or from any other cause beyond the control of Synertech Innovations, including, without restricting the generality of the foregoing, inability to secure labour, power, materials or any other supplies, or by reason of an act of God, war, civil disturbances, riot, state of emergency, strike, lockout, or any labour disputes, fire, flood, drought or legislation. If Synertech Innovations has partially performed the Customer shall be liable for payment thereof.

## **25 CESSION**

- 25.1 The customer hereby irrevocable cedes, assigns and transfers, makes over unto and in favour of Synertech Innovations, all the customer's right title and interest in and to its claims against its debtors both present and future and from whatsoever cause arising, as security for all or any of the amounts which the customer may now or at any time in the future owe to Synertech Innovations.



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- 25.2 The customer irrevocably and in rem suam authorises Synertech Innovations in its absolute discretion to claim from all or any of the customer's debtors the whole or any portion of the indebtedness from any one or more of them, to give a valid receipt or discharge for such indebtedness, to take any action in its name in any court of competent jurisdiction and proceed in execution thereunder against all or any of the said debtors, to cede, transfer, negotiate, pledge or otherwise deal with all or any of the said debtors, to exchange promissory notes, cheques, agreements, documents of title or any other security held by the customer or supplier.
- 25.3 The security created by the cession shall be a continuing one, notwithstanding any fluctuation in the amount of indebtedness of the customer to Synertech Innovations.
- 25.4 The customer hereby undertakes on demand, to furnish Synertech Innovations with such written information concerning its debtors as well as any other documents that may be necessary to enforce the rights of Synertech Innovations in terms hereof and as may be required by Synertech Innovations, to enable Synertech Innovations to give effect to the provisions of this clause and to enforce the rights of the customer against the said debtors.

## **26 FURNISHING OF INFORMATION BY CUSTOMER**

The customer shall forthwith after the conclusion of the contract, furnish Synertech Innovations with all information reasonably required by Synertech Innovations to enable it to comply with its obligations.

## **27 RECEIPT OF DOCUMENTS, CHEQUES ETC**

Notwithstanding any other provision herein, no notices, cheques, cash or other documents sent to Synertech Innovations through the post shall be deemed to have been received unless and until actually received by Synertech Innovations.

## **28 INTEREST**

Should the customer fail to make payment of any amount due in terms of this agreement or of any quote/order on due date the customer shall pay interest to Synertech Innovations at the rate of 2% per month as from the date that the customer placed the order until date of payment both days inclusive.

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## **29 CUSTOMER'S ASSET VALUE AND ANNUAL TURNOVER**

The customer and its representative warrant to Synertech Innovations that the customer's asset value and its annual turnover exceeds the thresholds published in terms of Section 6 of the Consumer Protection Act (68 of 2008) and in terms of Section 4(1) and Section 7 of the National Credit Act (Act 35 of 2005), The customers current turnover and asset value as determined in terms of the said Acts exceed R2 000 000.00 (Two Million Rand).