

H.G. MOLENAAR & CO. (PROPRIETARY) LIMITED
STANDARD TERMS AND CONDITIONS
FOR SUPPLY OF GOODS AND SERVICES

1 Definitions

1.1 In these conditions, unless the context requires otherwise:

‘Agreement’	means these terms and conditions of business;
‘Additional Items’	means any additional goods and/or service specified on the Purchase Documentation including any freight, packaging, insurance, and/or transport;
‘Buyer’	the buyer of the Goods as specified in the Purchase Documentation;
‘Confidential Information’	any confidential information or data in whatever format disclosed whether in writing, orally or by any other means by one party to the other, whether before or after the date of this Agreement including any copies records or notes of such information or data;
‘Delivery Date(s)’	the date(s) specified by HGM when any Goods are to be delivered or Services performed;
‘Goods’	the goods to be provided by HGM to the Buyer as set out in the Purchase Documentation;
‘HGM’	H.G. Molenaar & Co. (Proprietary) Limited;
‘IPR’	patents (including supplementary protection certificates), trademarks, service marks, registered designs, utility models, design rights, topography rights, copyrights, inventions, trade secrets and other confidential information, know-how, business or trade names, get-up and all other intellectual property neighbouring rights and rights of a similar or corresponding character in any part of the world (whether or not the same are registered or capable of registration) and all applications and rights to apply for or for the protection of any of the foregoing;
‘Price’	the price for the Goods and/or Services as stated in the Purchase Documentation which shall be exclusive of any sales, value added or equivalent tax (which shall at all times be the responsibility of the Buyer);
‘Project’	the project under which the goods or services are provided by HGM to the Buyer in accordance with the Purchase Documentation;
‘Purchase Documentation’	HGM’s quotation, the Buyer’s purchase order (where expressly accepted by HGM) or other document agreed in writing by HGM setting out a specification, the price and any other terms applying to the supply of the Goods and/or Services by HGM to the Buyer hereunder;
‘South Africa’	the Republic of South Africa;
‘Services’	any services to be provided by HGM to the Buyer as set out in the Purchase Documentation.

1.2 Any reference in this Agreement to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 Any reference in this Agreement to a person shall mean any person, firm or company.

1.4 The headings in this Agreement are for convenience only and shall not affect their interpretation.

2 Conditions applicable

2.1 The terms of this Agreement shall apply to all contracts for the sale and supply of Goods and/or Services by HGM to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply orally and/or under any purchase order, confirmation of order or similar document, and any such other terms and conditions are hereby expressly waived.

- 2.2 Any terms included in the Purchase Documentation shall be incorporated into this Agreement as though they were stated here and in the event of any conflict between any term of these terms and conditions and the Purchase Documentation the terms in the Purchase Documentation shall prevail.
- 2.3 Each accepted order for Goods and/or Services shall represent a separate and independent contract made on the terms of this Agreement.
- 2.4 All orders for Goods and/or Services shall be deemed to be an offer by the Buyer to purchase the Goods and/or Services pursuant to this Agreement and shall become a binding contract on the written acceptance of such offer by HGM. For the avoidance of doubt, a written or electronic acceptance by HGM of an order shall constitute an agreement in writing to deliver Products ordered.
- 2.5 Acceptance of delivery of any Goods or payment for any Goods and/or Services shall be deemed conclusive evidence of the Buyer's acceptance of the terms of this Agreement.

3 Price and payment

- 3.1 The Price is exclusive of value added tax, sales, and any and all other taxes that may be applicable to the Goods and/or Services and any Additional Items, and any such taxes shall be payable by the Buyer at the applicable rates. Where an advance payment is subject to sales or value added tax (or equivalent), the sales or value added tax (or equivalent) arising on the advance payment shall be payable by the Buyer with the advance payment.
- 3.2 Subject to clause 3.7, HGM shall invoice the Buyer the Price for the Goods and/or Services and Additional Items (plus any taxes referred to in clause 3.1) in accordance with the terms specified in the Purchase Documentation or, if not stated otherwise, on delivery of the Goods or the Buyer wrongfully fails to take delivery of the Goods in which event HGM shall be entitled to invoice the Buyer for the price at any time after HGM has notified the Buyer that the Goods are ready for collection or (as the case may be) HGM has tendered delivery of the Goods.
- 3.3 The Buyer shall pay all invoices submitted by HGM under this Agreement within thirty (30) days of the date of the invoice unless otherwise specified in the Purchase Documentation without any deduction of any nature (in particular but without limitation, regardless of any equity, set-off or cross claim against HGM). Time for payment shall be of the essence. HGM reserves the right to apply any moneys received by or on behalf of the Buyer towards any sums owed by or becoming due to HGM by the Buyer.
- 3.4 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to HGM, HGM shall be entitled to:
 - 3.4.1 Cancel the Contract or suspend any further deliveries to the Buyer;
 - 3.4.2 Appropriate any payment made by the Buyer to such of the Goods, Services and Additional Items (or the Goods, Services or Additional Items supplied under any contract between the Buyer and HGM) as HGM may think fit;
 - 3.4.3 Charge the Buyer interest as stated in clause 3.5 below; and/or
 - 3.4.4 Charge the Buyer all costs, fees, charges, and expenses incurred in collecting any overdue payment and interest relating thereto.
- 3.5 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 5% above Nedbank South Africa's prime rate from time to time in force and shall accrue at such a rate after as well as before any judgment.
- 3.6 Unless otherwise agreed in writing, all prices are ex-works including loading at the works but exclusive of packing and other charges. Packing will be invoiced at cost and is not returnable.
- 3.7 HGM reserves the right to increase the price of the Goods, Services and the Additional Items to meet any increase in the cost to HGM for the Goods, Services and for the Additional Items.
- 3.8 The down payments and any progress payments shall in no circumstances be repayable to the Buyer by HGM notwithstanding termination of any agreement made with respect to this Agreement for any cause (including Force Majeure) or for any other reason whatsoever.

4 The Goods and Services

- 4.1 The quantity and description of and any specifications for the Goods and any Services shall be as set out in the Purchase Documentation, but subject always to this Agreement.
- 4.2 HGM reserves the right to make any changes in the specification of the Goods and/or any Services:

- 4.2.1 to achieve conformity to any relevant statute, regulation, order or the like anywhere in the world;
or
- 4.2.2 where the Goods and/or Services are to be supplied or performed to HGM's specification, which do not materially affect their quality or performance.
- 4.3 HGM shall not be liable to the Buyer or be deemed to be in breach of the Agreement by reason of any delay in performing or any failure to perform any of HGM's obligations in relation to the Goods and/or Services if the delay or failure was due to any cause beyond HGM's reasonable control.
- 4.4 If the Goods (or any part thereof) are to be manufactured, Services provided or any process is to be applied by HGM in accordance with the specifications submitted by the Buyer, the Buyer shall indemnify HGM against all loss damages costs and expenses awarded against or incurred by HGM in connection with or paid or agreed to be paid by HGM in settlement of any claim for infringement of any patent copyright design trademark or other industrial or intellectual property rights of any other person which results from HGM's use of the Buyer's specifications. HGM shall not be under any obligation to approve any specifications and nor shall any Contract be deemed to be an approval by HGM of specification provided by the Buyer.
- 4.5 No order which has been accepted by HGM may be modified or cancelled by the Buyer except with the agreement in writing of HGM and on terms that the Buyer shall indemnify HGM in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by HGM as a result of the modification or cancellation, in the latter case such total sum in any event not to be less than ten percent (10%) of the total purchase price of the Goods and/or Services excluding any sales or value added tax (or equivalent). It is agreed that this percentage accurately covers the cost of the level of expertise, design input and tooling incurred by HGM to be able to undertake the Contract.

5 Changes to Specification and Substitution

- 5.1 No change by the Buyer to the specification of the Goods and/or Services following acceptance of an Order by HGM shall be effective without the prior written consent of HGM, which if granted shall entitle HGM to increase the Price on notice to the Buyer to reflect the additional costs incurred by HGM in supplying such Goods and/or Services.
- 5.2 Should any machinery and equipment, materials or parts (in this Section 5 hereinafter referred to as "**Equipment**") specified or required for completion of the order referred to in the Purchase Documentation be unavailable for the timely satisfaction of the obligations of HGM or in the event that alternative Equipment be considered by HGM to be more appropriate, a substitute or substitutes, deemed by HGM (in consultation and agreement with the Buyer) to be suitable for the intended purpose as understood by this Agreement will be supplied if available and shall be accepted by the Buyer.
- 5.3 In the event that HGM is unable to obtain a substitute which is suitable for unavailable Equipment, materials or parts, HGM shall forthwith advise the Buyer accordingly. In the event that, within one (1) month thereafter, there is no availability upon normal commercial terms of a proper and suitable substitute, HGM's obligation to complete performance shall be suspended until such time as the equipment, materials or parts previously unavailable for substitutes therefore as provided for above, become available.

6 Delivery of the Goods and/or Services

- 6.1 Any dates quoted for delivery of the Goods and/or the provision of the Services are approximate only and HGM shall not be liable for any delay in delivery of the Goods or provision of the Services, however caused. Time for delivery shall not be of the essence of the Contract.
- 6.2 Delivery of the Goods and/or provision of the Services shall be as specified in the Purchase Documentation or where no address is specified shall be at HGM's premises. The Goods may be delivered in advance of the Delivery Date upon the giving of reasonable notice to the Buyer. The Buyer shall make all arrangements to take delivery of the Goods whenever they are tendered for delivery. The carrier shall at all times be an agent of the Buyer and not HGM.
- 6.3 Risk in the Goods shall pass to the Buyer on the Delivery Date. The Buyer shall be responsible for all costs and risks in taking the Goods from HGM's premises to the desired destination, including all expenses and risk of loss or any damages incurred in the shipment of the Goods. All claims for loss damage or delay against the carrier of the Goods must be made by the Buyer.

- 6.4 If the Buyer fails to take delivery of the Goods or fails to give HGM adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of HGM's fault) then without prejudice to any other right or remedy available to HGM, HGM may:
- 6.4.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - 6.4.2 sell the Goods at the best price readily obtainable and (after deducting the reasonable storage and selling expenses) account to the Buyer for the excess over the unpaid Price or charge the Buyer for any shortfall below the unpaid Price.
- 6.5 Where the Goods are to be delivered and/or Services provided in instalments, each delivery shall constitute a separate contract and failure by HGM to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.6 The Buyer shall in good time arrange, procure and promptly pay for all necessary import permits, licenses, customs and import duties and taxes imposed on or which may become payable upon the importation of the Goods and/or Services.
- 6.7 HGM shall not be responsible for any Goods lost or damaged in transit.

7 Title

- 7.1 Notwithstanding delivery and the passing of risk in the Goods or any other provision of this Agreement the title in the Goods and/or Services shall not pass to the Buyer until HGM has received in cleared funds payment in full of the Price of the Goods and all other Goods and/or Services agreed to be sold by HGM to the Buyer for which payment is then due.
- 7.2 Until such time as the title in the Goods and/or Services passes to the Buyer, the Buyer shall hold the Goods as HGM's fiduciary agent and shall keep the Goods separate from those of the Buyer and third parties and properly store (protected and insured and identified as HGM's property) but shall be entitled to resell or use the Goods in the ordinary course of its business.
- 7.3 Until such time as the title in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) HGM shall be entitled at any time on the happening of any of the events set out in clause 14, or if any sum due from the Buyer to HGM (whether under this Agreement or otherwise) is not paid on the due date for payment, to require the Buyer immediately to deliver up the Goods to HGM and if the Buyer fails to do so to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.4 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods and/or Services title to which remains vested in HGM but if the Buyer does so all moneys owing by the Buyer to HGM shall (without prejudice to any other right or remedy of HGM) forthwith become due and payable.
- 7.5 The Buyer agrees that HGM has the right to enter the Buyer's premises where any Goods are being held in order to recover the goods in the event of the Buyer's insolvency.

8 Intellectual Property

- 8.1 Subject to the due performance of the Buyer's obligations under this Agreement and Provided that the Buyer and its affiliates and their employees and contractors shall not disclose (directly or indirectly) Confidential Information or any part thereof to others and shall treat such Confidential Information in the manner set forth in section 11, HGM shall grant the Buyer a non-exclusive licence for the use of the Goods and/or Services on the terms of the licence agreement(s) specified in the Purchase Documentation or, where no such agreement is specified, the following provisions shall apply:
- 8.1.1 HGM shall grant the Buyer a non-exclusive, non-transferable, non-assignable worldwide licence to use the Goods and/or Services only for the application in the field specified in the Purchase Documentation and for no other purpose or purposes whatsoever;
 - 8.1.2 The Buyer shall not be permitted to sub-license use of the Goods and/or Services or any IPR in them to anyone other than its customers for use in accordance with clause 8.1.1;
 - 8.1.3 The Buyer shall not disassemble, decompile or reverse engineer the Goods and/or Services (or otherwise imitate or cause or allow to be imitated or copied any of the Manufactured Equipment or any parts thereto, or otherwise attempt to derive any economic benefit from any of the

underlying designs, specifications or any manufacturing techniques or methods with respect to the Goods and/or Services or any part or parts thereto), provided however, that in the case of decompilation, the Buyer may incidentally decompile the Goods only if it is essential so to do in order to achieve interoperability of the Goods with another software program or another piece of equipment forming an integral part of the production line with respect to which the Goods and/or Services were provided ("**Permitted Purpose**") and provided the information obtained by the Buyer during such decompilation is only used for the Permitted Purpose and is not disclosed or communicated to any third party to whom it is not necessary to disclose or communicate such information without HGM's prior written consent and is not used to create any software which is substantially similar to the Goods nor used in any manner which would be restricted by copyright.

- 8.2 Where the Goods are manufactured or Services performed to HGM's specification or part thereof, the Buyer acknowledges that HGM shall remain the sole and exclusive owner of all IPR in the Goods and/or Services and the Buyer shall make no claim whatsoever to the IPR in the Goods and/or Services.
- 8.3 Where the Goods are manufactured or Services performed exclusively to the Buyer's specification:
- 8.3.1 all of the Buyer's pre-existing IPR provided to HGM for use in the manufacture of the Goods and/or Services shall remain the sole and exclusive property of the Buyer;
- 8.3.2 all of HGM's IPR incorporated into such Goods and/or Services shall remain the sole and exclusive property of HGM; and
- 8.3.3 any IPR created or evolved in the manufacture or supply of the Goods and/or Services shall be the sole and exclusive property of HGM unless otherwise agreed in writing by HGM and the Buyer hereby assigns by way of future assignment any and all rights that it may have to such IPR to HGM and agrees to execute such deeds and documents and do such acts as may be necessary to perfect such title.
- 8.4 Where any designs or specifications have been supplied by the Buyer for manufacture by HGM or to the order of the Buyer then the Buyer:
- 8.4.1 warrants to HGM that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods and/or Services shall not infringe the rights of any third party;
- 8.4.2 hereby grants HGM a licence to use any IPR in such designs or specifications solely for the purposes of fulfilling the order from the Buyer; and
- 8.4.3 shall indemnify HGM against all loss damages costs and expenses awarded against or incurred by HGM in connection with or paid or agreed to be paid by HGM in settlement of any claim for infringement of any IPR of any other person which results from HGM's use of the Buyer's specifications or designs.
- 8.5 Save as set out in clause 8.1 the Buyer shall have no rights whatsoever to any IPR in the Goods and/or Services or otherwise as created during the performance of the Services.
- 8.6 In the event that any claim is made against the Buyer for infringement of any patent, registered design, unregistered design, registered trademark, and copyright having effect in the Republic of South Africa, European Union, any PCT country, and/or the United States of America arising directly from the use or sale by the Buyer of the Goods, HGM at its own expense shall be entitled but not obliged to conduct any ensuing litigation and negotiations for a settlement of the claim. HGM will bear the costs of any payment (either by way of a lump sum or a continuing royalty payment) made in settlement, or as a result of an award in a judgment against HGM or the Buyer in the event of litigation.
- 8.7 HGM shall be entitled to use the Buyer's name for marketing purposes to state that the Buyer is a customer of HGM but HGM shall not be entitled to reveal any confidential information of the Buyer.
- 8.8 HGM makes no representations or warranties to the Buyer except as specifically stated in section 9 below.

9 Warranties

- 9.1 HGM warrants that the Goods supplied and/or Services provided will at the time of delivery correspond to the description set out in the Purchase Documentation. All other warranties, conditions or terms relating to fitness for purpose, quality or condition of the Goods and/or Services, whether express or implied by statute or common law or otherwise are excluded to the fullest extent permitted by law. The warranties contained in this section 9 shall be the exclusive warranties, express or implied, made or given by HGM and there are no other warranties which extend beyond the description contained herein.

- 9.2 The above warranty does not extend to parts materials or equipment not directly manufactured by HGM in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to HGM. Any replacement machinery, equipment or spare parts replaced under HGM's warranty shall thereafter be warranted in accordance with any warranties issued by the suppliers thereof.
- 9.3 The warranties contained herein shall not apply to situations of abuse or negligence by the Buyer or user, or failure to operate and maintain the Goods or part thereof in accordance with the manufacturers' requirements and good operational practice
- 9.4 HGM shall perform any Services with reasonable skill and care.
- 9.5 HGM shall use its reasonable commercial endeavours to ensure that the Goods and/or Services do not infringe any third party IPR but otherwise gives no warranties whatsoever regarding the IPR in the Goods and/or Services. In the event that the Goods and/or Services are found to infringe any third party IPR HGM's liability shall be limited, at HGM's absolute discretion, to:
- 9.5.1 procuring the right for the Buyer to use the Goods and/or Services; or
- 9.5.2 replacing or amending the Goods and/or Services so that they do not infringe such IPR; or
- 9.5.3 a full refund of the fees paid in relation to such Goods and/or Services.
- 9.6 The Buyer acknowledges that software cannot be guaranteed as completely free of errors, bugs or viruses and agrees that the existence of any such errors, bugs or viruses in any software included within the Goods and/or Services shall not constitute a breach of this Agreement.
- 9.7 HGM's employees or agents are not authorised to make any representations concerning the Goods and/or Services unless confirmed by HGM in writing.
- 9.8 Both HGM and the Buyer expressly acknowledge and agree that certain automotive applications are safety critical and as such all design engineering and testing activities relating to those particular automotive applications must be carried out to appropriate standards. The ways in which the Goods and/or Services are used by the Buyer are outside of HGM's knowledge and control and, as such, HGM hereby excludes any and all liability that may arise as a result of the incorporation of the Goods and/or Services into the Buyer's or any third party products. In particular, the Buyer shall be responsible for thoroughly and comprehensively inspecting, testing and validating the Goods and/or Services prior to their use on a vehicle or for any other application unless otherwise expressly agreed by HGM in writing in the Purchase Documentation.
- 9.9 The Buyer shall indemnify and keep indemnified HGM against any and all loss, damages, costs and expenses awarded against or incurred by HGM in connection with or paid or agreed to be paid by HGM in settlement of any claim from the Buyer's customers or other users of the Buyer's equipment that incorporates the Goods and/or Services.
- 9.10 The Buyer irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation (whether or not contained in this Agreement) or for breach of any warranty not contained in this Agreement (unless such misrepresentation or warranty was made fraudulently) and/or to rescind this Agreement
- 9.11 In the event of any claim being made against the Buyer arising out of the matters referred to and in respect of which HGM may be liable under this Section 9, HGM shall be promptly notified thereof, and may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. The Buyer shall not, unless and until HGM, as appropriate, shall have failed to take over the conduct of the negotiations or litigation, make any admission which might be prejudicial thereto. The conduct by HGM of such negotiations or litigation shall be conditional upon HGM having first given to the Buyer such reasonable security as shall from time to time be required by the Buyer to cover the amount ascertained or agreed or estimated, as the case may be, of any expenses, and costs for which the Buyer may become liable. The Buyer shall, at the request of HGM, afford all available assistance for any such purpose, and shall be repaid all reasonable expenses incurred in so doing.]

10 Liability

- 10.1 Nothing in this Agreement shall limit HGM's liability for death or personal injury arising from the negligence of HGM.

- 10.2 HGM's total liability in contract, tort (including negligence) or otherwise will be limited to the sums paid by the Buyer to HGM under this Agreement whether such liability arises as a result of the breach of the warranties set out in clause 9 or otherwise.
- 10.3 HGM will not in any circumstances be liable to the Buyer in contract, tort or otherwise for any costs arising from any direct or indirect loss of opportunities, goodwill, reputation, or any costs associated with any recalls or campaigns in relation to the Buyer's (or any third party's) products or any other type of special, indirect or consequential loss (even if such loss was reasonably foreseeable or HGM had been advised of the possibility of such loss).
- 10.4 Any claim by the Buyer which is based on any defect in the quality or condition of any Goods and/or Services or their failure to correspond with HGM's specifications (whether or not delivery is refused by the Buyer) shall be notified to HGM in writing within ten (10) days after discovery of the defect or failure or the date when the defect or failure should have been discovered. If delivery is not refused, and the Buyer does not notify HGM accordingly, the Buyer shall not be entitled to reject any Goods and/or Services and HGM shall have no liability for any defect or failure and the Buyer shall be bound to pay the price as if the Goods and/or Services had been delivered in accordance with the Agreement.
- 10.5 Where any valid claim in respect of:
- 10.5.1 any Services which is based on the quality of the Services; or
 - 10.5.2 in respect of any of the Goods which is based on any defect or the quality or condition of the Goods or the failure to meet specification
- is notified to HGM in accordance with this Agreement HGM shall be entitled to rectify the performance of the Services or replace the Goods (or the part in question) free of charge or at HGM's sole discretion refund to the Buyer the price of the relevant Goods and/or the Services (or a proportionate part of the price) and HGM shall have no further liability to the Buyer in respect of such claim.
- 10.6 The parties recognise that clauses 10.1 to 10.5 are reasonable having regard to the:
- 10.6.1 unique environment of the development of complex automotive electronics;
 - 10.6.2 totality of the commercial arrangements between the parties including the amounts payable to HGM;
 - 10.6.3 fact that if HGM were to accept additional or more extensive liability HGM would require a higher Price to be paid to reflect the associated risks; and
 - 10.6.4 availability of the relevant insurance cover for the parties.
- 9.7 The entire liability of HGM under or in connection with the Contract shall not exceed the maximum payable in respect of such claim under HGM's product liability insurance.

11 Confidentiality

- 11.1 This Agreement and the Purchase Documentation have been prepared by HGM for the sole use of the Buyer. They contain descriptions of the technical aspects of design, costs, equipment selection, and other know-how belonging to HGM. It is understood that the material contained herein and attached hereto as part of Agreement and all that follows are the exclusive property of HGM and is received on a confidential basis and will not be disclosed to anyone outside those directly associated with the matters connected with this Agreement.
- 11.2 Unless agreed by HGM in writing any existing confidentiality arrangements between the Buyer and HGM shall remain in full force and effect.
- 11.3 Each of the Buyer and HGM undertakes in relation to any and all Confidential Information received by it from the other in relation to or in the performance of this Agreement:
- 11.3.1 to hold such Confidential Information in strict confidence and shall exercise in relation thereto no lesser security measures and degree of care than those which it applies to its own confidential information which each party warrants to the other party as providing adequate protection against unauthorised disclosure, copying or use;
 - 11.3.2 not to use the Confidential Information for any purpose other than the performance of this Agreement;
- 11.4 The restrictions in this clause 11 shall not apply to any information which:

- 11.4.1 is or becomes generally available to the public or enters the public domain other than as a result of the unauthorised disclosure by the receiving party;
- 11.4.2 is available to or in the possession of the receiving party free of any restriction as to its use or disclosure prior to its being furnished by the other party provided that the source of such information is not subject to any agreement or other duties relating to confidentiality in respect of that information;
- 11.4.3 otherwise becomes lawfully available to the receiving party otherwise than from the other party pursuant to this Agreement provided that the source of such information is not in breach of any obligation relating to confidentiality in respect of such information.
- 11.5 The Buyer will execute any confidentiality or licensing agreement provided or required by any of the equipment vendors supplying HGM as part of the Goods, and pay any required royalties.
- 11.6 The Buyer hereby acknowledges that this Agreement and any technology, drawings and know-how already supplied by HGM up to and including the date hereof or shown to the Buyer or its employees or agents shall constitute Confidential Information.
- 11.7 The drawings, studies, technical information and patents supplied by HGM under this Agreement and/or the Project's documentation or any other agreement or in the provision by HGM of any other technical advice or assistance shall remain the exclusive property of HGM (as the Buyer hereby acknowledges) and shall not without the prior written consent of HGM be copied or communicated to third parties other than those who shall require information to perform works directly connected with the Goods and/or Services and any related engineering
- 11.8 Notwithstanding the aforesaid, the Buyer agrees on behalf of itself and its affiliates that it will keep all technical and commercial information designated as confidential by HGM strictly secret and confidential and not (directly or indirectly) disclose or impart to any person, firm, company or body any such information without the prior written permission of HGM.

12 Export Terms

- 12.1 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods and/or Services into the country of destination and for the payment of all duties on them.
- 12.2 The Buyer acknowledges that HGM shall comply with all export control regulations of any national authorities, including, but without limitation, the authorities in South Africa, the United Kingdom, in the European Community and in the United States of America. In order to conduct export control checks, the Buyer, upon request by HGM, shall provide HGM with all reasonable and necessary information pertaining to the ultimate customer and the end use of the Goods and/or Services, as well as any existing export control restrictions regarding the Goods and/or Services, all of which shall be treated as the Buyer's confidential Information and at all times retained in strict confidence by HGM notwithstanding termination of the Contract.
- 12.3 HGM will not perform deliveries, orders and other obligations under the Contract if that performance is hindered by the applicable export laws and regulations of any national authorities, including, without limitation, the authorities of South Africa, the United Kingdom, the European Community, the United States of America or of any other countries.
- 12.4 In the event that the Goods (or any of them) cannot be delivered due to clause 12.3 above, HGM shall be entitled to make the Goods (or any of them) available for collection at HGM's premises and payment therefore shall immediately become due and payable in full.

13 Non-Solicitation

- 12.1 The Buyer shall not at any time solicit or entice away, or attempt to solicit or entice away, from HGM or engage or employ any person employed or contracted by HGM in the performance of the Services or procure that such a person be engaged or employed by any other business which competes with any business carried on by HGM at such time.

14 Termination

Without prejudice to any right or remedy HGM may have against the Buyer, HGM shall be entitled to terminate this Agreement and any licence of IPR granted in accordance with clause 8.1 (save that any sub-licence already granted to the Buyer's customers shall remain unaffected) on the happening of any of the following events:

- 14.1 the Buyer's breach or non-performance of this Agreement, provided, where the breach is capable of remedy, the Buyer has been notified of the breach and has not rectified it to HGM's reasonable satisfaction within twenty one (21) days of receipt of such notice;
- 14.2 if the Buyer fails to pay any sums owing to HGM in relation to the supply of Goods or Services after a period of thirty (30) days from the date the sum was due;
- 14.3 if the Buyer shall have any distress or execution levied upon its goods or effects;
- 14.4 on the commencement of the winding up or bankruptcy of the Buyer or on the appointment of a receiver, liquidator, administrative receiver or administrator of the Buyer's assets (or any analogous procedure under the laws of any country) or on the Buyer becoming or being declared insolvent, or convening a meeting of or proposing to make any arrangement or composition with its creditors or ceasing to carry on substantially all of its business at any time; or
- 14.5 on the Buyer assigning or attempting to assign its rights or obligations under this Agreement without the prior consent of HGM.

15 Force Majeure

- 14.1 Save for any moneys due to HGM, neither party will be liable to the other party for non-performance or delay in performance of any of its obligations under this Agreement due to causes reasonably beyond its control including without limitation fire, flood, strikes, government regulation, war (whether or not declared), terrorism, civil commotion and riots. Upon the occurrence of such force majeure event the affected party will immediately notify the other party with as much detail as possible and will promptly inform the other party of any further developments. If such force majeure event continues for a period of three (3) months or more the unaffected party shall be entitled to terminate this Agreement immediately upon notice to the affected party. In the event that the Agreement is not so terminated, immediately after the force majeure event is removed, the affected party will proceed with the performance of such obligation with all due speed and shall, if so requested by the other party, discuss in good faith the implementation of a revised schedule for the performance of such obligations.

16 Notices

- 16.1 Any notice required or authorised to be given by either party under this Agreement to the other party shall be given in the English language and be deemed to have been given only if given in writing in the English language and delivered by hand or first class post to the other party at the following address:-

HGM: The Managing Director
Jan van Riebeeck Drive
Paarl 7646
Western Cape
Republic of South Africa
Facsimile: +27-21-868-2209

Buyer: At the address specified in the Purchase Documentation.

- 16.2 Either party, by notice to the other, may designate from time to time a different address in South Africa to which notices shall be sent.
- 16.3 Notices may not be given by e-mail or text (SMS) messaging.

17 Third Party Rights

- 17.1 No term of this Agreement is intended for the benefit of any third party, and the parties do not intend that any term of this Agreement should be enforceable by a third party.

18 Entire Agreement

- 18.1 This Agreement (together with any documents referred to herein) contains the entire agreement and understanding of the parties and supersedes all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of this Agreement.
- 18.2 Each of the parties acknowledges and agrees that it does not enter into this Agreement and the documents referred to herein on the basis of, and does not rely, and has not relied upon, any statement or representation (whether negligent or innocent) or warranty or other provisions (in any case whether oral, written, express or implied) made, given or agreed to by any person (whether a party to this Agreement or not) except those expressly set out or referred to in this Agreement and the documents referred to herein and the only remedy or remedies available in respect of any misrepresentation or untrue statement made

to it shall be a claim for breach of contract under this Agreement; and this clause 18 shall not apply to any statement, representation or warranty made fraudulently or to any provision of this Agreement which was induced by, or otherwise entered into as a result of, fraud, for which the remedies shall be those available under the law governing this Agreement.

19 Waiver

19.1 Failure or neglect by HGM to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of HGM's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice HGM's rights to take subsequent action.

20 Severability

20.1 In the event that any of these terms, conditions or provisions or anything in the Purchase Documentation shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent such term, condition or provision shall to that extent be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

21 Assignment and Sub-Contracting

21.1 The Buyer shall not assign or otherwise transfer the benefit or the burden of this Agreement or any of its rights and obligations either in whole or in part without the prior written consent of HGM.

21.2 HGM shall be entitled to assign the benefit and/or the burden of this Agreement at any time on notice to the Buyer.

21.3 HGM reserves the right to subcontract the performance of some or all of its obligations under this Agreement.

22 Law and Jurisdiction

22.1 The validity of this Agreement and any of the terms or provisions as well as the rights and duties of the Parties hereunder shall be governed by the laws of South Africa, without reference to any conflict of law or choice of law principles thereof.

22.2 In the event that any dispute or difference arises out of or in connection with this Agreement (a "**Dispute**") the aggrieved Party shall set out full details of the Dispute and that Party's proposed means of resolving the Dispute in writing to the others (a "**Dispute Notice**") as soon as possible after the occurrence of the Dispute

22.3 A director (or equivalent senior representative) of each of the Buyer and HGM shall meet, either in person or via a telephone conference, within fourteen (14) days of receiving the Dispute Notice to attempt to settle the Dispute by negotiation

22.4 In the event that the Parties have failed to settle the dispute by way of negotiation in accordance with clause 22.3 within seven (7) days of a meeting or either party refuses to attend the negotiation meeting within the time limit the parties will attempt to settle the Dispute by mediation.

22.5 To initiate a mediation either party must give notice in writing (a "**Mediation Notice**") to the other party requesting a mediation in accordance with clause 22.4

22.6 The mediation must start no later than twenty-eight (28) days after the date of the Mediation Notice.

22.7 Neither party may commence arbitration proceedings in relation to any Dispute until they have attempted to settle the Dispute by mediation and that mediation has terminated.

22.8 In the event that any mediation is terminated the Dispute shall be determined in accordance with the Arbitration Foundation of South Africa ("**AFSA**") by a single arbitrator to be agreed between the parties, or failing agreement within fourteen (14) days after either party has given to the other a written request to concur in the appointment of an arbitrator, to be appointed by the AFSA. Any arbitration shall take place in Cape Town, Western Cape, South Africa, and any judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

22.9 Performance of the Project shall continue during arbitration proceedings unless the Buyer shall order the suspension thereof or of any part thereof, and if any such suspension shall be ordered the reasonable expenses of HGM occasioned by such suspension shall be added to the Price. No payments due or payable by the Buyer shall be withheld on account of any dispute, mediation, pending reference to or during arbitration.

- 22.10 All alternate dispute resolution matters referred to in this section 22 shall be kept confidential to the fullest extent possible.
- 22.11 Nothing aforesaid in this section 22 shall (and shall not be construed so as to) limit the right of HGM to take proceedings against the Buyer in any court of competent jurisdiction outside South Africa nor shall the initiation of arbitration or the taking of proceedings in South Africa as aforesaid preclude the taking of proceedings in any other jurisdiction (whether concurrently or not) outside South Africa if and to the extent permitted by applicable law in the event that HGM is advised by its legal counsel that such proceedings should be taken outside South Africa. In such event, the Buyer consents to submit to the jurisdiction such court of competent jurisdiction.
- 22.12 The Buyer shall pay and reimburse to HGM, on demand, all costs, fees and expenses (including legal fees on the attorney and own client scale, fees and expenses of advisers and other out-of-pocket expenses and any VAT or other similar tax thereon) incurred by HGM in connection with the preservation or enforcement (unless and to the extent of a contrary costs order made by any court of competent jurisdiction) of HGM's rights in terms of this agreement.
- 22.13 Time shall be of the essence for all payments due to HGM. No dispute with HGM, act of force majeure, howsoever defined, shall be a reason to withhold any moneys due to HGM. Non-payment on due date of any moneys owing to HGM shall constitute an immediate and material breach of this Agreement.
- 22.14 All communications between the parties and any proceedings of any nature shall be conducted in the English language.