



GENERAL CONDITIONS OF SUPPLY OF PLANT AND MATERIAL

THE COMPANY AND THE CONTRACTOR AGREE THAT THE COMPANY WILL SUPPLY THE PLANT AND MATERIAL TO THE CONTRACTOR AT THE CUSTOMARY PRICES DETERMINED FROM TIME TO TIME BY THE COMPANY, ON THE FOLLOWING TERMS AND CONDITIONS:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

- 1.1.1 “**Agreement**” shall mean these terms and conditions and all annexures if applicable;
- 1.1.2 “**Company**” shall mean BETRAM PROPRIETARY LIMITED, registration number 1986/004256/07, a private company duly registered in accordance with the laws of the Republic of South Africa with its registered address at [9 Steenbok Street](#), Koedoespoort, Pretoria, 0186;
- 1.1.3 “**Contractor**” shall mean the party placing the Order and includes the Contractor’s successors and permitted assignees;
- 1.1.4 “**Companies Act**” shall mean the Companies Act 71 of 2008, as amended from time to time, read with the Companies Regulations 2011, promulgated thereunder;
- 1.1.5 “**Intellectual Property Rights**” includes any copyright, design rights, patents, inventions, logos, business names, service marks and trademarks, internet domain names, rights in databases, data, source codes, reports, drawings, specifications, know how, business methods and trade secrets, applications for registration, and the right to apply for registration, for any of these rights and all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;
- 1.1.6 “**Order**” shall mean an order for the Plant and Material placed on the Company by the Contractor;
- 1.1.7 “**Plant and Material**” shall mean any product provided by the Company indicated on any company forms, price lists, quotations, delivery notes, orders and invoices;
- 1.1.8 “**Party**” shall mean any one of the Parties to this Agreement. The term “**Parties**” shall have a corresponding meaning; and
- 1.1.9 “**Prime Rate**” shall mean the publicly quoted nominal rate of interest per annum charged by ABSA Bank Limited (“**the Bank**”) from time to time on unsecured overdraft facilities to its most favoured corporate clients, as certified by any general manager of the Bank, whose authority or appointment it shall not be necessary to prove, calculated on a nominal annual compounded monthly basis in arrears.
- 1.2 In this Agreement, unless the context otherwise requires:
- 1.2.1 if any provision in a definition is a substantive provision conferring rights or imposing obligations on a Party, notwithstanding that it is only in the interpretation clause, effect shall be given to it as if it were a substantive provision in the body of this Agreement;
- 1.2.2 in this Agreement a Party includes a reference to that Party’s successors in title and assigns allowed at law;
- 1.2.3 any reference in this Agreement to:
- 1.2.3.1 “**business hours**” shall be construed as being the hours between 07h30 and 17h00 on any business day. Any reference to time shall be based upon South African Standard Time;
- 1.2.3.2 “**days**” shall be construed as calendar days unless qualified by the word “**business**”, in which instance a “**business day**” will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
- 1.2.3.3 “**law**” means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative



- measure of government (including local and provincial government) statutory or regulatory body which has the force of law within the explicitly mentioned country;
- 1.2.3.4 “**person**” means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality; and
- 1.2.3.5 “**writing**” means legible writing and in English and includes any form of electronic communication contemplated in the Electronic Communications and Transactions Act, No 25 of 2002.
- 1.2.4 the words “**include**” and “**including**” means “**include without limitation**” and “**including without limitation**”. The use of the words “**include**” and “**including**” followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it;
- 1.2.5 the words “**shall**” and “**will**” and “**must**” used in the context of any obligation or restriction imposed on a Party have the same meaning;
- 1.2.6 words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement;
- 1.2.7 unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning;
- 1.2.8 a reference to any statutory enactment shall be construed as a reference to that enactment as at the commencement date of this Agreement and as amended or substituted from time to time;
- 1.2.9 unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day;
- 1.2.10 if the due date for performance of any obligation in terms of this Agreement is a day which is not a business day, then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately succeeding business day;
- 1.2.11 where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention;
- 1.2.12 the rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply;
- 1.2.13 the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.2.14 no provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a party to this Agreement;
- 1.2.15 any reference in this Agreement to “this agreement” or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time; and
- 1.2.16 in this Agreement the words “**clause**” or “**clauses**” and “**annexure**” or “**annexures**” and “**schedule**” or “**schedules**” refer to clauses and annexures or schedules to this Agreement.

2. **AGREEMENT**

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- 2.1 The terms and conditions set out in this Agreement, together with any other standard terms and conditions of the Company, shall govern the purchase of the Plant and Material by the Contractor from the Company to the entire exclusion of all other terms and conditions. No terms and conditions endorsed on, delivered with or contained in the Contractor's documentation provided to the Company ("other terms") will form part of this Agreement. **THIS AGREEMENT CAN ONLY BE CHANGED, OR OTHER TERMS AGREED, IN WRITTEN CORRESPONDENCE SIGNED BY A DIRECTOR OR OTHER SENIOR OFFICER OF THE COMPANY. NO SUBSEQUENT BEHAVIOUR OF THE COMPANY, IN ACCEPTING THIS AGREEMENT FROM THE CONTRACTOR WITH PROPOSED AMENDMENTS, CAN BE TAKEN TO IMPLY ANY ACCEPTANCE BY THE COMPANY OF THOSE PROPOSED AMENDMENTS.**
- 2.2 The Contractor, by accepting any quotation from the Company, or placing any Order with the Company, acknowledges that all Plant and Material sold to the Contractor shall be subject to and governed by the terms and conditions contained in this Agreement, together with any other standard terms and conditions of the Company.
- 2.3 In the event of a conflict between the terms and conditions of this Agreement and any other terms, the terms and conditions of this Agreement shall prevail. Any conflict between the provisions of the various sections of this Agreement and any other standard terms and conditions of the Company will be resolved in accordance with the following order of precedence (in descending order of priority) as follows:
- 2.3.1 in relation to conflicts pertaining to technical and / or financial issues and / or services and / or delivery issues specific to the Plant and Material being provided, the order of precedence shall be: (a) the applicable standard terms and conditions of the Company (including the schedules attached thereto, if any), and (b) this Agreement; and
- 2.3.2 in relation to all other conflicts, the order of precedence shall be (a) this Agreement, (b) the applicable standard terms and conditions of the Company, and (c) the annexures/schedules to the foregoing documents in the same order of precedence attaching to the documents to which they are annexed.
3. **PRICE**
- 3.1 The price of any Plant and Material shall be at the price as per the Company's written quotation in respect of a specific Order, or in the absence of a written quote, shall be the Company's usual current price at the time of dispatch of the Plant and Material from the Company's premises.
- 3.2 Any price letters distributed, or advertisements placed by the Company are for guideline purposes only and shall not be binding on the Company. The Company has the right, from time to time, for any reason and without notice to the Contractor, to change the price of any Plant and Material.
- 3.3 Notwithstanding the placing of an Order by the Contractor and the acceptance thereof by the Company, the Company shall be at liberty to revise quotations or prices with or without notice to the Contractor, *inter alia*, in the event of an increase in the cost of production of the Plant and Material or currency fluctuations which occurs after the date of placing the Order.
4. **PAYMENT**
- 4.1 Any payments due by the Contractor under this Agreement shall, unless specifically agreed to in writing, be paid within 15 (fifteen) days calculated from the date of such invoice calling on the Contractor to make payment and will be made into an account specified by the Company to the Contractor in writing from time to time, free of deduction, demand, sett-off, bank charges or commission.

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- 4.2 All amounts due to by the Contractor to the Company shall be made directly to the Company. No payment made to the Company's sales representatives, employees, agents or third parties shall be regarded as proper payment to the Company until such time as the funds have been credited to the Contractor's account as cleared funds.
- 4.3 No discount or rebate granted to the Contractor shall be binding on the Company unless a manager or director of the Company has agreed to such discount or rebate in writing. **NO OTHER PERSON MAY GRANT A DISCOUNT OR REBATE ON BEHALF OF THE COMPANY.**
- 4.4 Should the Contractor fail to make any payment, or any portion thereof, timeously and in full, the Company shall be entitled at its sole discretion to withdraw or reverse any agreed discount or rebate; alternatively, to set off the amount owing by the Contractor against any rebate, credit, allowance or payment (if any) due to the Contractor by the Company.
- 4.5 **SHOULD THE CONTRACTOR'S FINANCIAL POSITION BECOME UNSATISFACTORY TO THE COMPANY, THE COMPANY SHALL BE ENTITLED TO DEMAND PAYMENT FOR ANY CONSIGNMENT IN ADVANCE AND/OR TO DEMAND SATISFACTORY SECURITY FROM THE CONTRACTOR.**
- 4.6 The Company will allocate any payments received under this Agreement firstly to costs and fees incurred by the Company, thereafter to arrear or penalty interest (if any), thereafter to interest and thereafter the balance (if any) to the principal debt due and / or owing to the Company, provided that the longest outstanding principal debt due and/or owing shall be settled first.
- 4.7 **IN ALL CASES WHERE THE CONTRACTOR USES A BANKING, ELECTRONIC OR SIMILAR METHOD OR SERVICE TO EFFECT PAYMENT, THE SUPPLIER OF SUCH SHALL BE DEEMED TO BE THE AGENT OF THE CONTRACTOR.**
- 4.8 Unless the Contractor objects to the correctness of any entry on any statement, delivery note and/or invoice within 48 (forty-eight) hours of the date of dispatch of such statement and/or invoice, the Contractor shall be deemed to have accepted that such entries are correct and that it does not dispute such entries.
- 4.9 Notwithstanding the timeous raising of a complaint or dispute of liability by the Contractor, the Contractor shall, under no circumstances whatsoever, be entitled to withhold payment in respect of the Plant and Material delivered by the Company, pending the resolution of such dispute or complaint.
- 4.10 Where the due date for payment falls on a Sunday or South African public holiday, then the amount shall be paid by the Contractor on the following business day, except if such succeeding business day falls into a subsequent month in which event the due date for payment shall be the immediately preceding business day.

5. **ORDERS**

- 5.1 Orders for the Company's Plant and Material shall be made in writing and directed to the address as may be nominated by the Company from time to time.
- 5.2 **ALL VERBAL ORDERS SHALL BE CAPABLE OF ACCEPTANCE BY THE COMPANY, BUT THE COMPANY SHALL NOT BE RESPONSIBLE FOR ANY ERRORS OR MISUNDERSTANDINGS OCCASIONED BY THE CONTRACTOR'S FAILURE TO REDUCE SUCH ORDERS TO WRITING.**
- 5.3 An Order placed with the Company by the Contractor shall constitute an irrevocable offer to purchase the Plant and Material in question and shall be capable of acceptance by the Company, at its sole discretion, which acceptance shall be evidenced by the delivery of the Plant and Material, written acceptance and/or confirmation of the Order.

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- 5.4 SHOULD THE COMPANY SUBMIT A QUOTATION TO THE CONTRACTOR FOR THE SALE OF PLANT AND MATERIAL, SUCH QUOTATION AND THE AVAILABILITY OF QUOTED ITEMS AND PRICES ARE ONLY VALID FOR A PERIOD OF 5 (FIVE) DAYS AFTER THE DATE OF EACH QUOTATION ISSUED BY THE COMPANY TO THE CONTRACTOR AND ARE SUBJECT TO CHANGE AFTER THE AFOREMENTIONED 5 (FIVE) DAY PERIOD.
- 5.5 Any acceptance by the Contractor after the aforementioned 5 (five) day period shall constitute a counteroffer by the Contractor to the Company.
- 5.6 The Company may require a deposit to be paid when an Order is placed, in such instance should the Contractor not take delivery and/or not make payment of the balance of the Order in accordance with the term and conditions of this Agreement, the Company has the right to retain such deposit.
6. **DELIVERY AND CONSTRUCTION**
- Delivery:**
- 6.1 THE COMPANY IS LIABLE FOR THE TRANSPORT OF THE PLANT AND MATERIAL TO THE NOMINATED DELIVERY ADDRESS OF THE CONTRACTOR AND FOR ANY TRANSPORT COSTS OF THE PLANT AND MATERIAL FROM THE PREMISES OF THE COMPANY TO THE NOMINATED DELIVERY ADDRESS OF THE CONTRACTOR.
- 6.2 The Contractor shall be responsible to provide the Company with the exact GPS coordinates of each nominated delivery address where the Plant and Material is to be delivered. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY ADDITIONAL COSTS THE COMPANY WILL INCUR IF THE INCORRECT DELIVERY ADDRESS INFORMATION IS PROVIDED TO THE COMPANY AND THE RISK IN SUCH PLANT AND MATERIAL SHALL IMMEDIATELY PASS TO THE CONTRACTOR AND THE CONTRACTOR SHALL BECOME LIABLE TO PAY THE COMPANY THE REASONABLE COSTS OF STORING, INSURING AND HANDLING THE PLANT AND MATERIAL, IN ADDITION TO THE PURCHASE PRICE, UNTIL DELIVERY TAKES PLACE.
- 6.3 The Plant and Material will be delivered to the nominated delivery address of the Contractor by interlink trucks. It is the responsibility of the Contractor to arrange for an allocated and suitable area for offloading of the Plant and Material at the nominated delivery address.
- 6.4 Delivery and passing of risk in the Plant and Material shall occur when the Plant and Material is offloaded at the nominated delivery address of the Contractor.
- 6.5 SIGNATURE BY THE CONTRACTOR, OR ANY EMPLOYEE OF THE CONTRACTOR, OR PERSON AT ANY ADDRESS NOMINATED BY THE CONTRACTOR, NOTWITHSTANDING THAT IT MIGHT BE INCORRECT, ON THE DELIVERY NOTE OR INVOICE SHALL BE PRIMA FACIE PROOF OF PROPER DELIVERY OF THE PLANT AND MATERIAL TO THE CONTRACTOR.
- 6.6 THE COMPANY WILL ONLY OFFLOAD THE PLANT AND MATERIAL AT THE NOMINATED DELIVERY ADDRESS OF THE CONTRACTOR IF THERE IS A REPRESENTATIVE OF THE CONTRACTOR PRESENT ON SITE WHEN DELIVERY TAKES PLACE. IF NO REPRESENTATIVE OF THE CONTRACTOR IS PRESENT OFFLOADING WILL NOT TAKE PLACE AND THE RISK IN SUCH PLANT AND MATERIAL SHALL IMMEDIATELY PASS TO THE CONTRACTOR AND THE CONTRACTOR SHALL BECOME LIABLE TO PAY THE COMPANY THE REASONABLE COSTS OF STORING, INSURING AND HANDLING THE PLANT AND MATERIAL, IN ADDITION TO THE PURCHASE PRICE, UNTIL DELIVERY TAKES PLACE. DELIVERY OF THE PLANT AND MATERIAL SHALL ONLY TAKE PLACE WHEN THE COMPANY IS COMPENSATED FOR SUCH ADDITIONAL COSTS.
- 6.7 Should the Contractor in checking the Plant and Material note a discrepancy between the delivered quantity and that of the delivery note he/she must note such difference on the delivery note and draw such note to the attention of the person delivering the Plant and Material. In the event of the Contractor failing for any reason

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- whatsoever to sign the delivery note or to make note of any discrepancies as aforesaid, the Company shall not be liable in respect of claims arising out of any discrepancies between the quantity invoiced and the quantity delivered.
- 6.8 Any delivery times quoted for delivery by the Company are estimates only and shall not entitle the Contractor to cancel any Order (or this Agreement) and / or to claim any damages for failure by the Company to deliver within such delivery times.
- 6.9 **IN THE INSTANCE THAT THE COMPANY IS UNABLE TO DELIVER THE PLANT AND MATERIAL AS A RESULT OF AN ACT OF GOD, STRIKES, FIRE, RIOT, WAR (WHETHER DECLARED OR NOT), EMBARGOES, EXPORT CONTROL, FUEL SHORTAGES, ANY POWER FAILURE AND / OR SHORTAGES, INCLUDING BUT NOT LIMITED TO LOAD SHEDDING OR ANY OTHER REASON WHATSOEVER NOT WITHIN THE REASONABLE CONTROL OF THE COMPANY, THE OBLIGATIONS OF THE COMPANY SHALL BE DEEMED TO BE SUSPENDED. THE COMPANY SHALL GIVE THE CONTRACTOR NOTICE OF SUCH FACT AS SOON AS REASONABLY POSSIBLE AND THE PARTIES SHALL NEGOTIATE IN GOOD FAITH AS TO WHEN DELIVERY IS TO OCCUR. THE COMPANY SHALL NOT BE LIABLE FOR ANY DAMAGES INCURRED AS A RESULT OF EVENTS CONTEMPLATED IN THIS CLAUSE 6.6. IN THE INSTANCE THAT THE PARTIES SHOULD FAIL TO AGREE AS TO WHEN DELIVERY IS TO OCCUR THE COMPANY SHALL BE ENTITLED TO DELIVER WITHIN A REASONABLE PERIOD OF TIME.**
- 6.10 The Parties hereby agree that the Company may, make delivery of the Plant and Material to the Contractor in instalments or in such other manner as may be agreed to by the Parties. The Contractor shall be obliged to accept delivery of each such instalment. It is specifically recorded that the Company may withhold certain key components of Plant and Material already delivered until such time as the total payment for such Plant and Material has been made by the Contractor to the Company whereafter the Company shall immediately and without further delay deliver such key components of the Plant and Material to the Contractor.
- 6.11 Where Plant and Material is delivered in instalments, the invoices relating to such separate deliveries shall be paid as if the Plant and Material was the subject of a separate Order. No payment shall be postponed or withheld by virtue of delay or non-delivery of any instalment, nor shall such non-delivery or delay of any instalment affect the balance of the Order or entitle the Contractor to cancel the Order.
- 6.12 The Company shall be entitled to withhold delivery of any undelivered instalments until all payments for any delivered instalment have been made in full.
- 6.13 **SHOULD THE CONTRACTOR FAIL TO TAKE DELIVERY OF THE PLANT AND MATERIAL PROMPTLY, OR IN ANY WAY DELAY DELIVERY OF THE PLANT AND MATERIAL, THE RISK IN SUCH PLANT AND MATERIAL SHALL IMMEDIATELY PASS TO THE CONTRACTOR AND THE CONTRACTOR SHALL BECOME LIABLE TO PAY THE COMPANY THE REASONABLE COSTS OF STORING, INSURING AND HANDLING THE PLANT AND MATERIAL, IN ADDITION TO THE PURCHASE PRICE, UNTIL DELIVERY TAKES PLACE.**
- 6.14 The Company will provide the Contractor with training, at the premises of the Company on such date and time agreed to with the Contractor at no additional charge, on how to construct the Plant and Material. Where additional training on the delivery site, where the Plant and Material was delivered is required by the Contractor, same can be arranged with the Company and will be provided by the Company at an additional cost which cost will be agreed to between the Parties prior to such additional training being provided.
- Construction:**
- 6.15 The Contractor shall be solely liable for the construction of the Plant and Material at the nominated delivery address of the Contractor.

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- 6.16 The Contractor will be provided with a construction manual which manual will set out the construction procedures to be followed by the Contractor to ensure a sustainable and well-constructed sanitation facility. The construction manual is also available on the Amalooloo App free of charge.
- 6.17 The Company may, from time to time, conduct inspections at the nominated delivery addresses where the Plant and Material was delivered to inspect the quality of workmanship of the construction and will provide feedback to the Contractor if required.
- 6.18 **THE CONTRACTOR SHALL AT ALL TIMES WHETHER DURING OR AFTER TERMINATION OR EXPIRY OF THIS AGREEMENT INDEMNIFY AND KEEP THE COMPANY INDEMNIFIED AGAINST ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES AND EXPENSES (INCLUDING ALL REASONABLE LEGAL FEES) RESULTING FROM THE CONSTRUCTION OF THE PLANT AND MATERIAL AT A NOMINATED DELIVERY ADDRESS AND HEREBY WAIVES ANY SUCH CLAIM.**
7. **OWNERSHIP AND RISK**
- 7.1 **OWNERSHIP IN ANY PLANT AND MATERIAL DELIVERED BY THE COMPANY TO THE CONTRACTOR SHALL REMAIN VESTED IN THE COMPANY UNTIL PAID FOR IN FULL, HOWEVER RISK IN AND TO THE PLANT AND MATERIAL WILL TRANSFER TO THE CONTRACTOR UPON DELIVERY TO THE CONTRACTOR AS SET OUT IN CLAUSE 6 ABOVE.**
- 7.2 **PLANT AND MATERIAL IN THE POSSESSION OF THE CONTRACTOR WHICH BEAR THE COMPANY'S NAME AND/OR TRADEMARKS AND LABELS SHALL BE DEEMED TO BE PLANT AND MATERIAL FOR WHICH PAYMENT HAS NOT BEEN MADE IN FULL, OR AT ALL.**
- 7.3 The Contractor is required to disclose to the Company the location of the Plant and Material delivered to it by the Company, of any change concerning the Contractor's residential address and/or the address of the premises in which any Plant and Material that are the subject of this Agreement are ordinarily kept and the name and the address of any other person to whom possession of the Plant and Material has been transferred. Should Contractor cause the Plant and Material to be delivered to rented premises, the Contractor shall immediately inform the landlord of such rented premises or any persons laying claim thereto of the reservation of ownership by the Company in respect of such Plant and Material.
- 7.4 **ALL COSTS RELATED TO THE RECOVERY OF THE PLANT AND MATERIAL, SHALL BE FOR THE ACCOUNT OF THE CONTRACTOR. THE CONTRACTOR SHALL AT ALL TIMES WHETHER DURING OR AFTER TERMINATION OR EXPIRY OF THIS AGREEMENT INDEMNIFY AND KEEP THE COMPANY INDEMNIFIED AGAINST ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES AND EXPENSES (INCLUDING ALL REASONABLE LEGAL FEES) INCURRED IN CONNECTION WITH THE REMOVAL OF ANY REPOSSESSED PLANT AND MATERIAL.**
8. **WARRANTIES, REPRESENTATIONS AND INDEMNITIES BY THE COMPANY**
- 8.1 **THE COMPANY, ITS EMPLOYEES AND/OR AGENTS GIVE NO WARRANTIES OR GUARANTEES, WHETHER EXPRESS, IMPLIED OR TACIT, TO THE CONTRACTOR OTHER THAN THOSE WHICH THE COMPANY IS OBLIGED TO GIVE IN LAW, SUCH AS:**
- 8.1.1 **THAT THE PLANT AND MATERIAL IS REASONABLY SUITABLE FOR THE PURPOSE FOR WHICH THEY ARE GENERALLY INTENDED;**
- 8.1.2 **THAT THE PLANT AND MATERIAL IS OF GOOD QUALITY AND IN GOOD WORKING ORDER;**
- 8.1.3 **THAT THE PLANT AND MATERIAL WILL BE USABLE AND DURABLE FOR A REASONABLE PERIOD OF TIME, HAVING REGARD TO THE USE TO WHICH THEY WOULD NORMALLY BE PUT AND TO ALL THE SURROUNDING CIRCUMSTANCES OF THEIR SUPPLY; AND**

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- 8.1.4 COMPLY WITH ANY APPLICABLE STANDARDS SET UNDER THE STANDARDS ACT NO. 29 OF 1993 OR ANY OTHER APPLICABLE PUBLIC REGULATION.
- 8.2 THE COMPANY, ITS EMPLOYEES AND/OR AGENTS SHALL NOT BE LIABLE (TO THE FULLEST EXTENT PERMISSIBLE BY LAW), WHETHER IN CONTRACT OR DELICT OR OTHERWISE, FOR ANY DEFECT IN THE PLANT AND MATERIAL DELIVERED, FOR ANY INJURY (UNLESS AS A RESULT OF GROSS NEGLIGENCE, WILFUL DEFAULT OR FRAUD BY THE COMPANY OR FOR ANY DAMAGE OR LOSS RESULTING FROM SUCH DEFECT OR ANY WORK DONE IN CONNECTION THEREWITH, WHETHER THROUGH THE NEGLIGENCE (EXCLUDING GROSS NEGLIGENCE) OR OTHERWISE OF THE COMPANY.
- 8.3 THE COMPANY, ITS EMPLOYEES AND/OR AGENTS SHALL NOT BE LIABLE (TO THE FULLEST EXTENT PERMISSIBLE IN LAW) FOR ANY LOSS OR DAMAGE OF WHATSOEVER NATURE SUSTAINED BY THE CONTRACTOR OR ANY OTHER PERSON, NOR SHALL THE COMPANY BE LIABLE FOR DELICTUAL, SPECIAL, DIRECT, INDIRECT, GENERAL AND/OR CONSEQUENTIAL DAMAGES, INCLUDING (BUT NOT LIMITED TO) LOSS OF PROFITS, BUSINESS, REVENUE, GOODWILL OR ANTICIPATED SAVINGS.
- 8.4 IN THE EVENT THE COMPANY, ITS EMPLOYEES AND/OR AGENTS IS FOUND TO BE LIABLE FOR DAMAGES IN TERMS OF THIS AGREEMENT, THE EXTENT OF THE COMPANY'S LIABILITY SHALL NOT EXCEED (TO THE EXTENT PERMISSIBLE IN LAW) THE VALUE OF THE PLANT AND MATERIAL SOLD AND DELIVERED OR AN AMOUNT OF R50 000.00 (FIFTY THOUSAND RAND) WHICHEVER IS THE LOWEST.
- 8.5 The Company do not accept any responsibility whatsoever for the correctness of instructions which appear on the Plant and Material not manufactured by the Company.
9. **WARRANTIES, REPRESENTATIONS AND INDEMNITIES BY THE CONTRACTOR**
- 9.1 The Contractor makes the representations and warranties set out in this clause as at the acceptance date of this Agreement and for the duration of this Agreement and acknowledges that the Company has entered into this Agreement in reliance on these representations and warranties, each of which is material and a material representation inducing the Company to enter into this Agreement.
- 9.2 The Contractor has the power to execute and deliver this Agreement and to perform all its obligations thereunder (including, without limitation, the payment of all amounts) and all corporate and other action required to authorise its execution and its performance of such obligations, have been duly taken.
- 9.3 The Contractor is not prohibited in terms of its constitutional documents, or otherwise, from entering into this Agreement or transactions contemplated by it to which it is a party.
- 9.4 All information (as supplemented from time to time) that has been or will hereafter be made available to the Company by the Contractor or any of its representatives in connection with the transactions contemplated herein is and will at all times be complete and correct in all material respects and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not misleading in light of the circumstances under which such statements were or are made.
- 9.5 The Contractor agrees to supplement such information from time to time so that the same remains correct and acknowledges that the Company is acting in reliance on the accuracy of information supplied to it without independent verification.
- 9.6 No legal suit, action, proceeding or process or any other steps have been taken or, to the best of the Contractor's knowledge and belief, after having made all reasonable enquiries in this regard, threatened for the winding-up or liquidation (whether voluntary or involuntary, provisional or final), placing the Contractor in

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- Business Rescue or de-registration of the Contractor or for the appointment of a liquidator or similar officer over the Contractor or over any assets of the Contractor.
- 9.7 The Contractor hereby warrants, represents and undertakes that:
- 9.7.1 the Contractor is not carrying on business recklessly, with gross negligence, with intent to defraud or fraudulent purposes;
- 9.7.2 the Contractor is not carrying on business or trading under insolvent circumstances;
- 9.7.3 that no application to court for an administration order has been made in respect of the Contractor;
- 9.7.4 the Contractor will advise the Company immediately of any facts or circumstances which cause or which are reasonably likely to cause any representation or warranty to be false or misleading in any material respect; and
- 9.7.5 the Contractor is in full compliance with all applicable laws, regulations and standard industry practices, which includes but is not limited to the protection of the environment and is not aware of any circumstances which may prevent full compliance in future.
- 9.8 **THE CONTRACTOR SHALL AT ALL TIMES WHETHER DURING OR AFTER TERMINATION OR EXPIRY OF THIS AGREEMENT INDEMNIFY AND KEEP THE COMPANY INDEMNIFIED AGAINST ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES AND EXPENSES (INCLUDING ALL REASONABLE LEGAL FEES) WHICH MAY ARISE (BECAUSE OF THIS AGREEMENT OR ANY OTHER FACILITY AND/OR THE COMPANY HAVING AN INTEREST IN THE CONTRACTOR'S ASSETS) IN RESPECT OF A BREACH OF, OR A FAILURE TO MEET ANY OF THE AFORESAID REPRESENTATIONS, WARRANTIES AND/OR UNDERTAKINGS IN THIS CLAUSE 9.**
- 9.9 The Contractor undertakes to notify the Company immediately of:
- 9.9.1 any change of address;
- 9.9.2 cessation of business; and / or
- 9.9.3 change in ownership or shareholding of the Contractor.
- 9.10 The Contractor acknowledges and accepts that, notwithstanding any sale of business interest, he/she/ they shall remain liable in full for the settlement of the debt to the Company and he/she/they undertake to inform the Company within 7 (seven) days in writing, of any such change.
- 9.11 **THE CONTRACTOR SHALL AT ALL TIMES WHETHER DURING OR AFTER TERMINATION OR EXPIRY OF THIS AGREEMENT INDEMNIFY AND KEEP THE COMPANY INDEMNIFIED AGAINST ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES AND EXPENSES (INCLUDING ALL REASONABLE LEGAL FEES) RESULTING FROM ANY ADVICE GIVEN, RECOMMENDATIONS MADE, PRODUCTS SOLD OR USED OR ARISING FROM ANY CAUSE WHATSOEVER AS ENVISAGED IN THE PRECEDING PARAGRAPHS AND HEREBY WAIVES ANY SUCH CLAIM.**
10. **EVENTS OF DEFAULT**
- 10.1 Without derogating from the rights of the Company in law or otherwise, an event of default shall occur should:
- 10.1.1 the Contractor fails to pay any amount to the Company on the due date thereof;
- 10.1.2 the Contractor fails to comply with any term or condition of this Agreement and fail to remedy that breach, if capable of remedy, within 7 (seven) days after being called to do so;
- 10.1.3 the Contractor or any person or entity that provides security for the Contractor (“Obligor”) performs any act analogous to an act of insolvency specified in the Insolvency Act, 1936 or an act as defined in Section 344 of the Companies Act, 1973, read with Schedule 5 of the Companies Act, both as amended or substituted from time to time;
- 10.1.4 any asset deemed by the Company to be a material asset of the Contractor or Obligor, be attached by any third party with a writ of execution and should the Contractor fail within 14 (fourteen) business days

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- of such attachment to take the necessary steps to have such attachment set aside and thereafter to pursue such steps with due diligence to a successful conclusion;
- 10.1.5 any judgment be granted against the Contractor or Obligor and remain unsatisfied for a period of 7 (seven) business days after date of judgment or should the Contractor fail within 7 (seven) business days of such judgment to take the necessary steps to appeal against or rescind such judgment and thereafter to pursue such appeal or rescission with due diligence to a successful conclusion;
- 10.1.6 any order of Court, whether provisional or final, and whether voluntarily or compulsorily, be granted for the winding up of the Contractor or Obligor;
- 10.1.7 the Contractor or Obligor gives notice to take steps to convene a meeting of its shareholders/directors to adopt a resolution placing it in liquidation or under business rescue in either case, whether provisionally or finally;
- 10.1.8 the Contractor or Obligor enters into a compromise, composition or arrangement with its creditors generally, or any class thereof;
- 10.1.9 any warranty or representation made by the Contractor or Obligor, which was taken into consideration, and was materially relied upon by the Company in accepting an Order from the Contractor as set out hereunder or accepting the relevant security, guarantee or suretyship as collateral, be found to be untrue or incorrect in any material respect;
- 10.1.10 the Contractor or Obligor becomes unable to conduct its normal course of business for whatsoever reason;
- 10.1.11 the Contractor repudiates this Agreement; or
- 10.1.12 If any of the following occurs in relation to the Contractor:
- 10.1.12.1 the Contractor carries on business either recklessly, with gross negligence, with the intent to defraud or for fraudulent purposes;
- 10.1.12.2 the Contractor carries on business or trades under insolvent circumstances; or
- 10.1.12.3 an application to court has been made for an administration order in respect of the Contractor.
- 10.2 If the Contractor fails to remedy such event of default (where capable of remedy) within the applicable grace period calling upon the Contractor to do so, or if the event is not capable of remedy and the Company gives notice that such event has occurred and the Company is exercising its rights pursuant hereto, then:
- 10.2.1 all the Contractor's indebtedness to the Company (actual or contingent) will be due and payable immediately irrespective of any terms or conditions otherwise applicable to such indebtedness;
- 10.2.2 the Company may demand and recover payment of all amounts so declared due or deemed to be due;
- 10.2.3 the Contractor must pay interest calculated at the then prevailing Prime Rate plus 3 (three) percentage points, calculated on the amount so due and payable (including any unpaid interest which will be capitalized) calculated from the date of demand to date of receipt of payment;
- 10.2.4 the Company may exercise any or all of its rights under any security provided by the Contractor or Obligor;
- 10.2.5 the Company may appropriate any amounts standing to the credit of any of the Contractor's accounts in the Company's books in reduction or liquidation of the amounts owing to the Company;
- 10.2.6 the Company may refuse to supply further Plant and Material to the Contractor, including any Plant and Material subject to an Order accepted by the Company but not delivered prior to the date of exercising such discretion and further that the Company shall not be held liable to the Contractor for any loss or damage which the Contractor may sustain as a result of the Company cancelling this Agreement or refusing to supply Plant and Material; and

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10.2.7 the Company may demand return of any Plant and Material not paid in which event the Contractor shall return the Plant and Material forthwith to the Company at the Contractor's own cost and expense.

11. DISPUTE RESOLUTION

11.1 Should any dispute, disagreement or claim arise between the Parties ("the Dispute") concerning this Agreement (including its terms and/or the rectification hereof, its termination and/or cancellation) and such Dispute cannot be resolved between the Parties within 15 (fifteen) days after the Dispute arose, then the Dispute shall be submitted to arbitration for resolution in accordance with the rules of the Arbitration Foundation of South Africa ("AFSA") by an arbitrator or arbitrators appointed by AFSA and utilising such expedited proceedings as may be available in terms of such rules.

11.2 The Parties hereby irrevocably agrees that the decision of the arbitrator in the arbitration proceedings shall be final and binding on the Parties and will be carried into effect.

11.3 Unless otherwise agreed in writing by the Parties, any arbitration in terms of this clause 11 shall be held in Pretoria.

11.4 Nothing in this clause 11 shall prevent any Party from seeking relief on an urgent or interlocutory basis with any competent court having jurisdiction.

11.5 For the purposes of this clause 11 and for the purposes of having any award made by the arbitrator/s being made an order of court, the Parties hereby submit to the jurisdiction of the North Gauteng High Court.

11.6 Notwithstanding anything to the contrary contained in this Agreement and/or in law and/or in the AFSA rules, the powers of the arbitrator(s) referred to in this clause 11 shall include the power to amend the provisions of this Agreement and to impose contractual terms on the Parties in relation to the Dispute in circumstances where Agreement specifically makes provision for such amendment or imposition and such relief is requested by a Party, if any.

12. NOTICES

12.1 Any notice or other document to be served under this Agreement to a Party may be to be served at its nominated address.

12.2 The nominated address of the Contractor shall be the address of the Contractor specified in the Order.

12.3 For the Company, the nominated address shall be as follows:

Steenbok Street
Koedoespoort
Pretoria
0186
email: lumar@betram.co.za

Attention: Lumar Fourie

12.4 A Party shall be entitled from time to time, by written notice to the other, to vary its *domicilium* address to any other address within the Republic of South Africa, which is not a post office box.

12.5 All notices given in terms of this Agreement shall be in writing and any notice given by one Party to the other (the addressee) which:

12.5.1 is delivered by hand during the normal business hours at the addressee's *domicilium* shall be deemed to have been received by the addressee at the time of delivery; or

12.5.2 is sent by email to the addressee's email number shall be deemed to have been received by the addressee on the 1st (first) business day after the date of transmission thereof.



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12.6 Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from the other including by way of email transmission shall be adequate written notice or communication to such Party.

13. **CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS**

13.1 To the full extent reasonably possible, each Party agrees and undertakes to and in favour of the other:

13.1.1 not to disclose any of the terms and conditions contained in this Agreement to any third party; and

13.1.2 not to utilise or disclose to any third party any trade secrets or confidential information of the other of them, which trade secrets or confidential information is not in the public domain, disclosed or made available to it under and by virtue of this Agreement and/or during the course of the implementation thereof, other than as may be necessary for the fulfilment of its duties, functions and obligations under this Agreement.

13.2 The Parties acknowledge their respective obligations to comply with the substantive provisions of the Protection of Personal Information Act, 4 of 2013 (“**POPI**”).

13.3 Where any Party receives any personal information as defined in POPI it shall ensure that it fully complies with the provisions of the Act and only deal with the personal information to fulfil its obligations under this Agreement. The personal information received shall not be further processed or disclosed without the consent of the disclosing party.

13.4 Each Party therefore understands and agrees, notwithstanding any contrary provision in any other agreement between the Parties, that each Party retains its full rights to pursue legal or equitable remedies in the event of any breach or threatened breach of the provisions dealing with POPI, and may prevent the other Party, any of its agents or subcontractors, or any third party who has received records from that Party from violating this Agreement by any legal means available. Each Party further understands that violation of the provisions dealing with POPI may subject that Party to applicable legal penalties, including those provided under POPI.

13.5 Within thirty (30) days after the termination of this Agreement, for whatever reason, the receiving party of either Party’s personal information shall return same or at the discretion of the disclosing party of such personal information, destroy such personal information, and shall not retain copies, samples or excerpts thereof.

13.6 In cases where the disclosing party has elected for the personal information to be destroyed, as provided for above, the receiving party shall, within 10 (ten) days of receiving the instruction to destroy the personal information, send an affidavit confirming the destruction of personal information.

13.7 All Intellectual Property rights belonging to a Party prior to the commencement date of this Agreement shall remain vested in that Party.

13.8 All Intellectual Property Rights developed or created in the delivery of the Plant and Material shall remain vested in the Company. The Contractor shall accordingly assign all such Intellectual Property Rights to the Company upon written request by the Company.

13.9 None of the Intellectual Property Rights in the Company’s trademarks and brands shall be used by the Contractor for any purpose without the Company’s prior written consent.

13.10 Where there are modifications to pre-existing material which are inseparable from the pre-existing material, then the Party which owns the pre-existing material will own the modifications.

14. **CESSION AND ASSIGNMENT**

A Party shall not be entitled to assign, cede or delegate any of its rights and/or obligations in terms of this

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Agreement to any other person without the prior written consent of the other Party being obtained, provided that such consent shall not be unreasonably withheld or delayed in the event that such assignment, cession and delegation is to an affiliate of a Party.

15. **LEGAL PROCEEDINGS**

- 15.1 The Contractor agrees and accepts that the Company shall be entitled, in its sole discretion, but not compelled or obliged to institute any legal proceedings, which may arise from or in connection with this Agreement, all costs and disbursements incurred by the Company, including legal costs on an attorney and own client basis in collecting arrears accounts from the Contractor, shall be for the account of the Contractor.
- 15.2 A certificate issued and signed by any director or manager of the Company, whose authority need not be proved, in respect of any indebtedness of the Contractor to the Company; or in respect of any other fact including (but not limited to) the fact that the Plant and Material was sold and delivered/rendered, shall be prima facie evidence of the Contractor's indebtedness to the Company.
- 15.3 The Contractor's address stated in clause 12.2 above, shall be recognised as the Contractor's *domicilium citandi et executandi* for the service of any court documents resulting from this Agreement. The Contractor's physical, email and / or postal addresses as per this Agreement will be deemed to be the Contractor's service addresses for all other documents resulting from or in terms of this Agreement.
- 15.4 It will not be necessary for the Company to prove that the documents referred to in clause 15.3 above were received by the Contractor. In the event of the Contractor not receiving any of the documents in clause 15.3 above, the Contractor must timeously acquire a duplicate from the Company, failing which it will be accepted that said documents were received by the Contractor.
- 15.5 All amounts due to the Company shall be deemed to be a liquid amount for the purposes of provisional sentence or summary judgment.
- 15.6 Termination of this Agreement for any cause whatsoever shall not release a Party from any liability which at the time of termination has already accrued to the other Party or which thereafter may accrue in respect of any act or omission prior to such termination.
- 15.7 Except as expressly provided for in this Agreement, the rights and remedies contained herein are cumulative and are not exclusive of any other rights or remedies provided in law or otherwise.
- 15.8 **THE CONTRACTOR RENOUNCES THE BENEFITS OF THE LEGAL EXCEPTIONS: NON CAUSA DEBITI (AN EXCEPTION TAKEN TO THE EFFECT THAT THERE IS NO CAUSE FOR THE OBLIGATION AND RENUNCIATION PLACES THE ONUS ON THE CONTRACTOR TO PROVE THAT A DEBT DOES NOT EXIST); NON NUMERATE PERCUNIA (AN EXCEPTION WHICH MAY BE TAKEN BY THE CONTRACTOR ON THE GROUND THAT THE AMOUNT THEREOF WAS NOT PAID OVER) AND ERRORE CALCULI (A REVISION OF ACCOUNTS AND ERRORS OF CALCULATION AND NO VALUES RECEIVED).**

16. **CHANGE IN LAW**

In the event of any material change in the law applicable to this Agreement or its implementation, the Parties shall, on the basis of their respective declared good faith intention to implement this Agreement for the duration hereof, discuss with each other as to the impact of such event(s) and seek to agree such amendments to this Agreement as may be necessitated thereby and so as to account for the such inconsistency but so as to as nearly as possible preserve the commercial balance between them. In the event of the failure of such discussions, the provisions of clause 11 shall apply.

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17. **CONFLICT OF INTEREST**

Neither of the Parties nor any of their respective representatives, employees, agents or subcontractors shall give to, or receive from the other, any of its affiliates or any representatives, employees, agents or subcontractors of the other any benefit, commission, fee, rebate, or any gift or entertainment of value in connection with this Agreement.

18. **SUBCONTRACTING**

The Parties may subcontract any of its obligations under this Agreement to any third party, provided that in doing so it shall not in any way be relieved of any of its obligations in terms of this Agreement and shall not be entitled to any greater protection in law than it otherwise would have been entitled to have such subcontracting not been affected.

19. **NON-PARTNERSHIP**

Nothing in this Agreement shall be construed as creating a partnership or joint venture of any kind between the Parties or as constituting neither Parties as the agent of the other for any purpose whatsoever. Neither of the Parties shall have the authority to bind the other or to contract in the name of or create a liability against the other in any way or for any purpose.

20. **WHOLE AGREEMENT**

This Agreement constitutes the whole agreement between the Parties as to its subject matter and no agreement, representations or warranties between the Parties other than those set out herein are binding on the Parties.

21. **VARIATION**

No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives.

22. **FURTHER ASSURANCE**

The Parties shall co-operate with each other and execute and deliver to other of them such other instruments and documents and take such other actions as may be reasonably requested of the Parties from time to time in order to carry out, evidence and confirm its rights and the intended purpose of this Agreement.

23. **SEVERABILITY OF INVALID PROVISIONS**

If any provision of this Agreement is declared to be invalid, the other provisions shall not thereby be affected or impaired and shall continue to be of full force and effect. In such event, the Parties shall, in good

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faith to negotiate valid substitute provisions for the provision so declared to be invalid that will as nearly as possible preserve the commercial balance between them. In the event of the failure of such discussions, the provisions of clause 11 shall apply.

24. **RELAXATION**

No latitude, lenience, extension of time or other indulgence which may be given or allowed by a Party to the other in respect of the performance of any obligation hereunder or enforcement of any right arising from this Agreement or in law and no single or partial exercise of any right by a party shall under any circumstances be construed to be an implied consent by such Party or operate as a waiver or a novation of, or otherwise affect any of that Party's rights in terms of or arising from this Agreement or in law or estop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

25. **RIGHTS OF THIRD PARTIES**

The provisions of this Agreement are intended solely for the benefit of the Parties and their respective successors and it is not the intention of the Parties to confer any rights upon third parties.

26. **COUNTERPARTS**

This Agreement may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

27. **COSTS**

Each Party shall bear its own costs relating to the negotiation, drafting and execution of this Agreement and attendances incidental thereto.

28. **JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa and shall be subject to the exclusive jurisdiction of the Courts of the Republic of South Africa.