



General Terms and Conditions for the Supply of Goods

Dated: 01 March 2022

1. Definitions

- 1.1. "Contract" as defined in section 2;
- 1.2. "Date of Delivery" shall mean the date stipulated in the Contract or otherwise agreed to in writing by the Parties;
- 1.3. "Defects" shall mean latent and patent Defects;
- 1.4. "Delivery" shall mean Delivery in compliance with the terms of the Contract on or before the Date of Delivery;
- 1.5. "Goods" shall mean the machinery, plant, equipment, apparatus, products, materials, labour and service to be delivered or to be provided for the work to be performed as specified;
- 1.6. "Party" shall mean Flender or the Purchaser as the context requires and "Parties" means both of them;
- 1.7. "Purchaser" shall mean the natural person or juristic entity with whom Flender has contracted with for the supply of the Goods;
- 1.8. "Flender" shall mean Flender Proprietary Limited (Reg. No. 2018/267732/07), acting on its own behalf;
- 1.9. "Special Conditions" shall mean other conditions of Flender annexed to or issued with these conditions.

2. General "Contract"

- 2.1. The scope, quantity, quality, functionality and technical specifications of any goods, equipment, documentation, software, work or services to be provided by Flender (collectively referred to as "Supplies") are exclusively defined as the case may be either in the order confirmation issued by Flender or the Contract signed by the Customer and Flender.
- 2.2. The offer letter from Flender together with these terms and conditions and those other documents expressly identified in the offer letter as forming part of the contract shall together constitute the entire agreement between the parties (the "Contract"). Any terms and conditions of the Customer shall apply only where expressly accepted in writing by Flender.

3. The Tender

- 3.1. If Flender makes a tender for the supply of goods, the tender shall be valid for a period of 60 days from the date thereof, unless withdrawn at any time within the 30 days prior to receipt of written acceptance from the Purchaser.
- 3.2. The quoted price is based upon the scope referred to in the tender. Should there be any variation in the total quantity of Goods ordered Flender reserves the right to amend the price.
- 3.3. In the event of a contradiction between the conditions of tender and these conditions, the conditions of tender shall prevail. In the event that the conditions of tender are silent on any aspect, these conditions shall prevail.

4. Modifications and Amendments

- 4.1. Any modifications and amendments to the Contract shall not be binding unless reduced to writing and signed by the Parties.
- 4.2. Notwithstanding any acceptance by Flender of any order from the Purchaser that may contain any provision inconsistent with or purporting to vary or reject any of the conditions of the Contract, such acceptance of the order or any payment/s should not be construed as acceptance by Flender of any such provision unless Flender expressly agrees in writing to such provision. Flender is only bound to the general terms and conditions of the Purchaser to the extent those general terms and conditions are in accordance with Flender's own general terms and conditions.

5. Prices

- 5.1. Unless agreed otherwise in writing, prices exclude packing, freight, insurance and any other additional charges (such as storage, inspections by third parties).
- 5.2. On any imported Goods, prices are subject to fluctuation in the applicable foreign exchange rate between time of order and time of delivery. We reserve the right to adjust our prices if the Rate of Exchange applicable on the date of order acceptance deviates from the quoted Rate of Exchange. Alternatively, we can secure Forward Cover on your behalf; the resultant cost of the difference in the quoted Rate of Exchange and the Rate of Exchange at which Forward Cover is secured will be for your account.
- 5.3. The Contract Price is exclusive of any indirect taxes (including property, license, sales, use, value added or similar tax) and/or any duties, customs or public charges related to the Contract.
- 5.4. If manufacture or Delivery of Goods are delayed or varied by an act or omission of the Purchaser, his agent, or contractor for whom the Purchaser is responsible, Flender shall notify the Purchaser of any additional costs which may be incurred as a result of such delay or variation. Such additional costs shall be for the Purchaser's account at actual costs.

6. Payment

- 6.1. Payment in full shall be made by the Purchaser upon order placement, unless otherwise agreed with Flender in writing. Payment shall only be regarded as being received once Flender has beneficial use of the payment. All bank charges and commissions will be for the account of the Purchaser.
- 6.2. If Delivery is delayed by instructions or lack of instructions from the Purchaser, then payment of the full contract shall be made immediately after notification by Flender that the Goods are ready for Delivery.
- 6.3. Payments shall not be set-off against or withheld on account of any counterclaims of the Purchaser, unless same are agreed by Flender in writing.
- 6.4. Should the Purchaser delay in respect of any payment due to Flender then Flender shall have the right, in addition to all other rights and remedies to which Flender is entitled under the Contract and at law, to charge interest on the overdue amount at the rate of 3%

FLENDER

per annum in excess of the interest rate prescribed by Standard Bank of South Africa's, lending rate for overdrafts above R100 000.00 calculated from the date of invoice to the actual date of full and final payment. Any payment by the Purchaser shall be credited first against any interest so accrued and the balance of payment, if any, shall be applied in reduction of the outstanding balance of the contract price. In the event of delay in any payment due to Flender, Flender may defer manufacture or Delivery or cancel any outstanding balance of the order. Any costs incurred by Flender in the deferment of manufacture or Delivery or the cancellation of the outstanding balance of any order will be for the account of the Purchaser.

- 6.5. Flender reserves the right to demand an irrevocable and unconditional letter of credit acceptable by a South African bank as payment before Delivery is made.
- 6.6. Notwithstanding the provisions hereof, full payment shall become due immediately upon the Purchaser (being a natural person) committing any act of bankruptcy or if the Purchaser (being a juristic person) commits any act which entitles any person to apply to wind up the Purchaser or if a liquidator, administrator, controller, mortgagee in possession, receiver or like officer is appointed over part or all of the Purchaser's assets.
- 6.7. The Purchaser shall be liable to and shall reimburse Flender for all costs, including attorney and client costs, incurred by Flender in the collection of any outstanding payments, and does further hereby absolve and hold Flender blameless for any loss or damage sustained in or by reason of the collection of the said outstanding payments.

7. Reservation of Ownership

- 7.1. Notwithstanding that the risk in the Goods sold shall pass to the Purchaser as provided in clause 14.1 hereof title and property in the Goods sold shall remain with Flender until such time as full payment is made to Flender for all amounts owing by the Purchaser and so that the Purchaser's total indebtedness to Flender under the terms and conditions of sale is discharged. If any of the Goods are incorporated into or used by the Purchaser as parts, components or materials in respect of any other product of the Purchaser before payment in full has been made for the Goods then the property in the whole of the product into which the parts, components or materials have been incorporated shall be and become that of Flender and remain the property of Flender until such time as payment in full has been made by the Purchaser.
- 7.2. For the duration of reservation of ownership, the Purchaser is prohibited from giving the Goods in pledge or as security and resale shall be permissible only in the Purchaser's ordinary course of business and only on the condition that the Purchaser receives payment from its customer or retains title so that the property is transferred to Purchaser's customer only after fulfilment of Purchaser's obligation to pay Flender.
- 7.3. In cases of breach of contractual obligations by the Purchaser, including a delay of payment, Flender shall be entitled, in addition to any or all of its rights under the Contract or at law, to recover the Goods following a demand for payment. The Purchaser shall be obliged to return the Goods at its own cost, to Flender. The taking back, the assertion of the reservation of ownership or

the seizure of the Goods by Flender does not mean a termination of the Contract except if explicitly stated by Flender in writing. Flender may also, in its sole and absolute discretion, without terminating the Contract, suspend compliance with its obligations in terms of the Contract and Flender shall not be held liable for any loss or damage sustained by the Purchaser in the event that Flender suspends compliance with its obligations by reason of the Purchaser failing to remedy a breach of its contractual obligations.

- 7.4. The Purchaser acknowledges that until his total indebtedness to Flender is discharged, the Goods shall not be subject to a lien and or encumbered in any way, it holds the Goods sold as bailee of Flender and that a fiduciary relationship exists between Flender and the Purchaser.
- 7.5. In the event that the Purchaser sells the Goods to the Purchaser's customers before payment in full for the Goods has been made to Flender then the Purchaser in a position of fiduciary shall:
 - a) assign to Flender the benefit of any claim against such customer(s);
 - b) account fully to Flender for the proceeds of the sale of the Goods sold or any part thereof until the Purchaser's total indebtedness to Flender is discharged.

8. Confidentiality

- 8.1. The parties shall use any documents, know-how, data or other information provided by the other party ("Information") exclusively for the purpose of this Contract and keep the same confidential subject to the following. The parties may disclose Information to employees of the receiving party and to third parties who reasonably need to know such Information for the purpose of the Contract provided such employees and third parties are bound by equivalent confidentiality obligations. The party disclosing Information shall be held liable for a breach of such obligations by its employees or a third party.
- 8.2. This confidentiality obligation shall not apply to Information which
 - a) is or becomes part of the public domain other than by fault of the receiving party;
 - b) is disclosed to the receiving party in good faith by a third party who is entitled to make such disclosure;
 - c) is developed independently by the receiving party without reliance on Information;
 - d) was known to the receiving party prior to its disclosure by the other party; or
 - e) is required to be disclosed by law (subject to the receiving party's obligation to notify the disclosing party in a timely manner of such requirement).
- 8.3. This confidentiality obligation shall survive the expiration or termination of this Contract.

9. Intellectual Property Rights

- 9.1. In the event of any claim or claims in respect of an infringement of any intellectual property rights, relating

FLENDER

to any part of the Goods supplied by Flender (other than a part based on a design specified by the Purchaser) Flender may in its sole and absolute discretion and at its expense either replace or modify such part with a non-infringing part or procure for the Purchaser the right to use such a part provided Flender is given the full opportunity to conduct all negotiations in respect of such claim and such claim shall not be accepted by the Purchaser without prior written consent of Flender. The Purchaser warrants that any design or instructions furnished or given by him shall not be such as to cause Flender to infringe any intellectual property rights in the execution of the order.

- 9.2. The Purchaser shall have no claim of whatsoever nature against Flender arising out of or flowing from any damages suffered by the Purchaser or its customers as a result of any intellectual property right relating to any of the Goods sold, being infringed, cancelled voided, breached or otherwise set aside or declared invalid.
- 9.3. The intellectual property rights held by Flender, its affiliates and its licensors relating to Goods tendered or supplied by Flender shall remain the absolute property of Flender and its licensors. Flender' designs and drawings shall not be reproduced or disclosed without Flender' prior written consent. The Purchaser will not, without Flender' prior written consent, copy or allow others to copy any drawings, Goods or part thereof supplied by Flender.

10. Software

- 10.1. Flender grants the Purchaser a non-exclusive, non-transferable licence to use the software and related software documentation supplied in conjunction with the Goods, only on the designated hardware of the Goods.
- 10.2. Except as stated above, the Purchaser is not granted any other right with regard to the software and the software documentation. Without limiting the foregoing, the license in particular does not include the right to modify, create derivative works, disassemble, reverse engineer, de-compile or otherwise use the software and/or software documentation.
- 10.3. All copyright and other proprietary notices and legends placed on the software supplied by Flender shall be maintained by the Purchaser.

11. Drawings and Specifications

- 11.1. Unless expressly incorporated in the tender, all descriptive and shipping specifications, drawings, dimensions and weights submitted with the tender are approximate only. In any event descriptions, illustrations and data contained in catalogues, price lists and other advertising matter are intended only to present a general idea of the work described therein and none of these shall form part of the Contract. Any performance figures given by Flender are based on Flender' experience and are such as Flender expects to obtain on test. Subject to recognised tolerances applicable to such figures, Flender shall be under no liability for damages for failure to attain such figures unless Flender specifically guaranteed them in writing. Where Flender has agreed to performance figures but fails to achieve such figures, Flender shall make good such failure as provided for in clause 15 hereof. Flender liability, if any, shall in any case be limited as provided for in clause 20 hereof.

- 11.2. All drawings, specifications, other oral and written information, samples and the like provided by Flender shall remain the property and are the copyright of Flender and shall be regarded as confidential and shall not be disclosed to a third party except with the prior written consent of Flender.

- 11.3. The Purchaser shall be responsible for and bear the cost of any alteration to the Goods arising from any discrepancy, error or omission in any drawings, specification or other information supplied or approved by him.

12. Terms of Delivery

- 12.1. Delivery terms as specified below:

- a) Where the Contract does not include installation, any period quoted for Delivery shall be reckoned from the date of receipt by Flender of a written order which is in accordance with the conditions of the Contract and which provides Flender with all the necessary technical and commercial information, drawings, permits, licenses, etc. to enable Flender to commence with the work.
- b) Where the Contract does include installation, Special Conditions for "Erection and Installation" shall apply in addition to those referred to in clause (a) above.

- 12.2. Notwithstanding any specific additional agreement as mentioned in clause 12.3 below, the completion/Delivery date or period shall be extended in respect of any delay caused by the Purchaser, by industrial dispute including strikes and lockouts, circumstances such as fire, war, mobilisation, requisition, embargo, currency restrictions, insurrection, import restrictions, shortage of transport, general shortage of materials, restrictions in the use of power or by any cause beyond the reasonable control of either Flender or any of Flender' subcontractors or as provided for in these conditions.

- 12.3. All Dates of Delivery shall be treated as approximate dates only and the Purchaser shall not be entitled to cancel the Contract nor have any claim of whatsoever nature against Flender arising or flowing from delays in Delivery, howsoever caused. If agreed upon to the contrary, in writing, in advance and in the event of delay caused by reasons other than those covered in clause 12.2 hereof and if as a result of such delay the Purchaser suffers loss, the Purchaser is entitled to delay damages amounting to 0.5% of the price of that part of the Supplies, which, because of the delay, could not be put to the intended use per each completed week of delay, in which the Customer suffered loss as a result of such delay. Delay damages payable in case of delay shall be limited to 10% of the price of that part of the Supplies, which, because of the delay, could not be put to the intended use. Such payment shall be in full satisfaction of any loss suffered by the Purchaser due to such delay and shall be in lieu of any other right the Purchaser may have against Flender arising out of or in connection with the delay in Delivery.

- 12.4. Unless otherwise stated in the tender the Goods are supplied ex works and Delivery to a carrier, including loading, shall constitute Delivery to the Purchaser. The carrier's vehicle shall be of a type allowing vertical or horizontal access for loading as required by Flender. Where the Contract includes installation, Delivery shall

FLENDER

be deemed to take place upon completion of the installation.

- 12.5. If Delivery is required other than ex works, Flender may, in its sole and absolute discretion, agree to act as agent for the Purchaser in this matter and all costs for carriage and insurance will be for the Purchaser's account.
- 12.6. Claims for shortages in a Delivery shall only be accepted, if Flender is notified in writing within ten (10) days of receipt of the Goods and Flender notifies the Purchaser in writing of its acceptance of the claim/s.
- 12.7. If after a period of fourteen (14) days from the date of notification that the Goods are ready for Delivery, Delivery is delayed for any reason beyond Flender' reasonable control, Flender shall be entitled at Flender' option to arrange suitable storage at Flender' premises or elsewhere and shall take reasonable measures to protect the Purchaser's interest in the Goods. The Purchaser shall accept costs of storage, insurance, demurrage, handling and other charges at the rate of 0.5 % of the price for the Goods and any other costs Flender might incur payable monthly in arrears. Where the Contract includes installation the Purchaser shall be liable for all extra costs, including salaries and wages and travelling expenses, caused by such delay.
- 12.8. Flender reserves the right to make partial Deliveries and to separately invoice same.
- 12.9. Goods showing minor faults may not be rejected by the Purchaser.
- 12.10. Unless otherwise stated in the tender the Goods will be packed in accordance with Flender' customary standard of packing, and the cost thereof will be for the Purchaser's account. Any special packing required by the Purchaser will likewise be for the Purchaser's account.

13. Defects Liability

- 13.1. In this Contract, and subject to Clause 13.2, a defect shall mean any non-conformity of the Supplies with the express terms of this Contract resulting from circumstances existing in the Supplies at the time of the transfer of risk to the Customer ("Defects").
- 13.2. In particular, the following shall not be Defects:
 - a) normal wear and tear, non-conformity resulting from excessive strain,
 - b) non-conformity resulting from faulty or negligent handling; non-compliance with instructions or recommendations in operation or maintenance manuals and other documents;
 - c) installation, erection, modification, commissioning, or pre-commissioning, in each case not carried out by Flender,
 - d) non-reproducible software errors,
 - e) defects which do not significantly impair the use of the respective Supplies.
- 13.3. The Customer shall immediately inspect the Supplies upon delivery and shall notify Flender in writing of any Defects without undue delay. The Customer's claims in respect of defects shall be excluded for any apparent defects if the Customer has failed to do so.

- 13.4. Upon such written notification, Flender shall, at its option, remedy a Defect by repair, replacement, or re-performance. Flender shall be given a reasonable period of time and opportunity to remedy the Defect. For this purpose, the Customer shall grant Flender working access to the non-conforming Supplies, shall undertake any necessary dis-assembly and re-assembly, and shall provide access to operation and maintenance data, all at no charge to Flender. Upon Flender' request, the Customer shall ensure that the title to the replaced parts/items shall pass to Flender. The Customer shall be responsible for the customs clearance in the country to where the Supplies are delivered and further transport from the places of delivery for all equipment necessary to remedy the Defect. Flender shall be obliged to reimburse the Customer for all such customs duties (if any) against documentary proof and invoice.
- 13.5. Unless otherwise agreed, the defects liability period for any part of the Supplies is 12 months. It starts at the date of transfer of risk. For replaced or repaired parts of the Supplies, the defects liability period is 6 months from the date of replacement or repair if the original defects liability period for the Supplies expires earlier. In any event, the defects liability period shall end no later than 24 months from the beginning of the original defects liability period.
- 13.6. If software is defective, Flender shall only be obliged to provide the Customer with an updated version of the software in which the Defect has been remedied when such updated version is reasonably available from Flender or, if Flender is only the licensee, from Flender' licensor. If the software has been modified or individually developed by Flender, Flender shall in addition provide the Customer with a workaround or other interim corrective solution until the provision of an updated version of the software, if such workaround or interim solution is feasible at reasonable expense and if otherwise the Customer's business operations would be substantially impeded.
- 13.7. If Flender carries out remedial work and it is ultimately not established that there was a Defect, the Customer shall pay Flender for such remedial work including error diagnosis.

14. Passing of Risk and Title

The risk shall pass to the Purchaser as follows:

- 14.1. Where the Goods supplied does not include installation, when the Goods leave the works. At the written request and expense of the Purchaser, Flender will insure Goods despatched against breakages, and damage in transit or through fire. In any event Flender' liability shall be limited to the extent of such insurance.
- 14.2. Where the Goods offered includes installation, on the day the Goods are taken over by the Purchaser. Where a trial run has been agreed upon, risk passes after this has been satisfactorily completed. This presupposes that the trial run or the taking over in the Purchaser's own plant will take place immediately following installation ready for operation. If either the trial run or taking over is delayed for more than (fourteen) 14 days, the risk for the period of delay shall be transferred to the Purchaser.
- 14.3. If despatch or Delivery is delayed at the request of the Purchaser, the risk for the period of delay will be transferred to the Purchaser from the day of readiness

FLENDER

for despatch. Flender shall affect insurance if so requested by the Purchaser in writing, at the latter's expense.

15. Warranty

- 15.1. Flender warrants for a period of twelve (12) months (unless otherwise agreed in writing by Flender) from the date of delivery that all Goods manufactured by it and sold in terms hereof, shall be free from Defects in material and workmanship under proper and normal use and service. Defects arising out of 'wear and tear' are excluded
- 15.2. Flender records that its obligations under the abovementioned warranty is limited to repairing at its option any part or parts thereof, which shall be returned to Flender within (twelve) 12 months after the Date of Delivery, for examination and which examination shall disclose to Flender' satisfaction to have been thus defective. Flender will make the repair or replacement of defective parts in terms hereof without charge for the parts and labour. Where in accordance with subclause 15.3 (a) hereof, the Purchaser has notified Flender of an alleged defect, he shall, if Flender so requires, promptly, and at his own expense and risk return the defective part(s) to the factory (as specified by Flender) free-of-charge for repair. The removal of the defective part and the installation of any repaired or replacement part shall be performed by the Purchaser at his own expense. Where any defective part(s) has been replaced, such part(s) shall become the property of Flender.
- 15.3. The provisions of the abovementioned warranty shall not be applicable if any of the following events occur:
 - a) if the Purchaser fails to report the defect in writing within seven (7) days of the alleged defect occurring; and
 - b) if the Purchaser fails to grant to Flender adequate time and opportunity to carry out all work which Flender may deem necessary;
 - c) if the Purchaser has failed to fulfil any of its obligations in terms of the Contract;
 - d) if the defect is due to fair wear and tear or to misuse of the Goods, or chemical and electrochemical influences beyond Flender' control;
 - e) such Goods have not been properly handled and used and has not been operated and maintained in accordance with instructions issued by Flender; and
 - f) such Defects are not caused by incorrect use of operating material or lubricants, faulty civil or mechanical work, unsuitable soil conditions and all other electrical influences which have not been provided for in the Contract and
 - g) if any repairs or alterations were carried out by the Purchaser or third parties.
- 15.4. The onus of proving that the warranty conditions have been complied with shall rest on the Purchaser.
- 15.5. The warranty period stated above, shall be extended by Flender by such a period as is necessary for executing the repair or replacement of a faulty part, which could not be taken into useful operation as a result of such interruption.

15.6. In the case of Goods not manufactured by Flender, the Purchaser is exclusively entitled to the benefits and guarantees given by Flender's subcontractors or suppliers.

15.7. Flender warrants that the Goods comply with the Occupational Health and Safety Act (OHSA) requirements for certain electrical products as specified in SABS 0142. Upon request authorisation certificates can be provided to the Purchaser. By accepting Delivery, the Purchaser hereby accepts that in terms of Section 10 (4) of the OHSA, the Goods, when properly used, will comply with prescribed requirements and will be safe and without risks to health.

15.8. Save as otherwise contained herein, no guarantees, representations or warranties of any nature whatsoever have been given by Flender or any other person purporting to act on behalf of Flender.

16. Transfer of Contract Rights

16.1. Flender shall be entitled to cede, assign and transfer any or all its rights and obligations in terms of this Contract to any other person and by concluding this Contract the Purchaser gives its consent to any such cession or assignment. The Purchaser shall not be entitled to cede, assign and transfer any of its rights and obligations in terms hereof without the prior written consent of Flender.

17. Cancellation

17.1. A Contract may be cancelled, varied or suspended only by notice in writing and only if Flender accepts such notice in writing. In the event of such cancellation, variation or suspension the Purchaser shall compensate Flender for any costs or loss incurred including but not limited to loss of profit.

17.2. Notwithstanding anything hereinbefore contained, should the Purchaser breach any of the terms and conditions of the Contract (whether material or not) and fail to remedy such breach within 10 days of despatch of written notice requiring it to do so or should a provisional order of sequestration or liquidation or should default judgement be obtained against the Purchaser, Flender shall have the right, notwithstanding any previous waiver, to claim payment of the full balance then owing by the Purchaser or to cancel the Contract, retain all monies paid, take possession of all Goods delivered without prejudice to any claim for damages.

17.3. Notwithstanding anything to the contrary, Flender has the right to terminate this Contract at any stage for any reason whatsoever by providing (thirty) 30 days written notice to the Purchaser without incurring liability for compensation for damages.

18. Legal Interpretation, Venue

18.1. The construction and interpretation of this Contract and all rights and obligations flowing therefrom or arising out of breach thereof shall be in accordance with the law in the Republic of South Africa and the Parties hereby consent to the jurisdiction of the Witwatersrand Local Division of the High Court of South Africa or any other Court having jurisdiction, in regard to any dispute that may arise out of or flow from this Contract.

FLENDER

19. Invalid Conditions; Other Terms and Conditions

- 19.1. In the event of one or more clauses of these conditions or any included in the Flender' tender for the supply of goods being held by a court of law to be legally invalid or unenforceable, the remainder of such conditions shall be in no way affected.
- 19.2. Goods will be accepted for credit only by prior written agreement or to the extent that they have been wrongly or over supplied. Returned Goods shall be delivered to Flender free of charge, in good order and condition, unused and in the original packaging, accompanied by a despatch note stating the original invoice number, date of supply and reason for return. Except where Goods have been wrongly or over supplied, a charge as determined by Flender will be made for handling costs. Goods made or imported to special order cannot be returned or credited unless they are not to specifications or otherwise not in accordance with any expressed or implied terms of the Contract.

20. Liability

- 20.1. Flender, its directors or any of its employees, agents or servants, shall not be liable whether in contract, delict or otherwise arising from any cause whatsoever, whether occasioned by negligence or otherwise, for any injury, damage or loss, for any indirect or consequential damage or loss including but not limited to loss of production, loss of revenue, loss of profit, finance, expenses, loss of information or data, loss of use or cost of replacement, arising out of or in connection with this Contract, the Goods supplied pursuant hereto including any Defects therein or anything connected herewith or any other work related hereto.
- 20.2. Notwithstanding the above, in the event that Flender is found to be liable for direct damages, Flender shall not be liable to the Purchaser for loss or damage to Purchaser's property for any event in excess of the Purchaser's insurance deductibles or 10% (ten percent) of the contract price of the Goods, in such event Flender shall be liable for the lesser of the two.
- 20.3. Flender' aggregate liability as defined in 20.1, to the Purchaser howsoever arising under or in connection with the Contract shall not exceed 100% (one hundred percent) of the contract price of the Goods.

21. Wassenaar Arrangement

- 21.1. This Contract is fully conditional upon the Goods end use being in South Africa. Should the Goods be destined for export or re-export then:
- a) Flender shall be notified in writing in each case and
 - b) Goods shall only be exported or re-exported if there are no impediments regarding export from South Africa imposed by South African, German or United States export regulations.
- 21.2. Any breach or alleged breach of this condition gives Flender the right to immediately suspend, postpone or cancel, at its sole discretion, the order or any undelivered portion thereof.

22. Bankruptcy, Liquidation

- 22.1. If the Purchaser

- a) being a person, dies or commits an act of bankruptcy or
- b) being a company, takes or shall have taken against it any action for the winding up of the company or the placing of the company under official management or receivership other than for purposes of reconstruction or if a receiver, manager, controller, liquidator, administrator, mortgagee in possession or like officer is appointed over part or all of the Purchaser's assets:

- 22.2. Then Flender, at its option and without prejudice to any other rights it may have under the Contract or in Law, shall give notice in writing to the Purchaser and after fourteen (14) days from such notice may, unless otherwise provided by law,

- a) terminate the Contract or suspend manufacture or Delivery of any Goods then outstanding
- b) retain any security given or moneys paid by the Purchaser and apply this against the assessed loss and damages incurred by Flender in the performance of the Contract.

23. Insurance

- 23.1. The Purchaser is obliged to procure and maintain for the duration of the Contract, the insurance as determined by Flender from time to time.
- 23.2. The Purchaser is obliged to note Flender' interest on each insurance policy.
- 23.3. The Purchaser shall upon written request from Flender, provide Flender with satisfactory documentary proof of the insurance procured, payment of required premiums and where applicable proof of renewals.

24. Anti-corruption

- 24.1. The Parties shall not be entitled to claim or receive any benefits or rewards, other than specifically provided for in this Contract.
- 24.2. The Parties confirm that they or any of their employees, associates or agents have not given or received any benefit of any nature whatsoever, nor shall they give any benefit of any nature whatsoever, which can be construed as an unlawful inducement to enter into this Contract or any other agreement emanating from this Contract and that they have ensured that all anti-corruption laws, internal processes and anti-corruption preventative measures have been complied with, prior to signature of this Contract. The Parties will further ensure that all such anti-corruption laws, internal processes and anti-corruption preventative measures which may apply to either Party under any law or company policy will continue to be complied with for the duration hereof.

25. Indulgence

- 25.1. No act of relaxation, indulgence or grace on the part of Flender shall in any way operate as or be deemed to be a waiver by Flender of any of its rights in terms of the Contract or a novation thereof.

26. Arbitration Clause

- 26.1. If the Parties are unable to resolve any dispute arising from the Contract by means of joint co-operation or discussion between the individuals directly involved in the execution of the Contract within 7 (seven) days after a dispute arises or such extended time period as the Parties may in writing allow, then such dispute shall be submitted to the senior managers of the Parties immediately who will endeavour to resolve this dispute within 30 (thirty) days after it was referred to them. Should the dispute not be resolved in the aforesaid manner or within the timeframes specified, then unless the Parties otherwise agree in writing prior to the expiration of the aforesaid 30 (thirty) day period, it shall be resolved by way of mediation, the process of which shall be agreed upon by the Parties at that time. If the Parties fail to resolve the dispute by mediation, the dispute shall be finally be resolved by referring it to arbitration.
- 26.2. Apart from urgent and interim relief which either Party is at liberty to pursue in an appropriate court of law, all disputes arising in the connection with this Contract which have not been resolved through mediation, if arbitrable in law, shall be finally settled under the Rules of the Arbitration Foundation of Southern Africa ("AFSA") by an arbitrator appointed in accordance with the said rules. The arbitration shall be conducted in Johannesburg and may be made an order of an appropriate court of law. The language of the arbitration shall be English. The arbitration shall be conducted on an expedited basis and the contents any determination made thereafter shall be kept confidential. The arbitration award shall be final and binding on both parties and either party may proceed to make the arbitration award an order of court.

27. Reservation Clause

- 27.1. Flender' obligation to fulfil this Contract is subject to the proviso that the fulfillment is not prevented by any impediments arising out of national and international foreign trade and customs requirements or any embargos or other sanctions. The Purchaser shall not be entitled to hold Flender liable for any loss or damage arising out of Flender being prevented from fulfilling its obligations under the Contract.

28. Force Majeure

- 28.1. A "Force Majeure Event" means any event which is beyond the reasonable control of a party or its subcontractors, which could not have been prevented by good industry practice and which results in a party (the "Affected Party") being unable to perform or being delayed in performing in whole or in part its obligations under this Contract. Force Majeure Events include, among others, acts of war, riot, civil commotion, terrorism, natural disaster, epidemic, strikes, lock-outs, attacks on Flender' IT systems (e.g. virus attacks, hacker attacks), non-issuance of licences, permits or approvals or any other act or failure to act by any public authority, or embargos or any other trade sanctions.
- 28.2. If a Force Majeure Event occurs, the Affected Party will be deemed not to be in breach of its obligations under the Contract for so long as and to the extent necessary to overcome the effects of the Force Majeure Event.
- 28.3. The Affected Party shall notify the other party as soon as reasonably practicable of the Force Majeure Event and of its affected obligations.

- 28.4. If one or more Force Majeure Events and their effect lasts for a period of 180 days in aggregate either party may terminate the Contract by giving to the other a written notice of termination with regard to the part of the Supplies not yet delivered. With regard to the part of the Supplies not delivered, Flender shall be entitled to reimbursement from the Customer of its unavoidable costs related to such termination.

29. Data Privacy

- 29.1. During the course of the relationship between the parties, the Supplier shall disclose certain personal data (i.e. data which shall include, but not be limited to, all data which can be used to identify a person or a company) to the Customer ("Personal Data").
- 29.2. The Personal Data shall be used solely for the purposes of the Supplier supplying the Customer with products and/or services. The Personal Data may be disclosed to employees of Flender or to an associated or subsidiary company of Flender for a reasonable and lawful purpose.
- 29.3. The Supplier consents to such transfer of information.
- 29.4. Further information on the Flender Data Privacy Policies may be accessed at the following link: <https://www.flender.com/en/PrivacyPolicy>.

30. Export Control & Customs

- 30.1. If Purchaser transfers goods (hardware and/ or software and/ or technology as well as corresponding documentation, regardless of the mode of provision) delivered by Flender or works and services (including all kinds of technical support) performed by Flender to a third party worldwide, Purchaser shall comply with all applicable national and international (re-) export control regulations. In any event Purchaser shall comply with the (re-) export control regulations of the Federal Republic of Germany, of the European Union and of the United States of America and national law. In the event of a conflict, national law shall prevail.
- 30.2. If required to conduct export control checks, Purchaser, upon request by Flender, shall promptly provide Flender with all information pertaining to particular end customer, destination and intended use of goods, works and services provided by Flender, as well as any export control restrictions existing.
- 30.3. Purchaser shall indemnify and hold harmless Flender from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with export control regulations by Purchaser, and Purchaser shall compensate Flender for all losses and expenses resulting thereof, unless such noncompliance was not caused by fault of the Purchaser. This provision does not imply a change in burden of proof.



31. Export Control Declaration To Customers

- 31.1. "We hereby certify that Flender has taken all the measures necessary to comply with the relevant provisions of German, European and U.S. American (re-) export control laws and has established the required processes. These also cover any person-related and country-related embargo regulations based on statutory provisions and applicable to Flender.
- 31.2. All the substantial legal requirements and any internal restrictions above and beyond these are substantiated in the Internal Control Program Export Control (ICP).
- 31.3. Every order continues to be checked against the criteria of the applicable lists of goods and against the final disposition and designated purpose of the goods, independent of the country of destination. If required, appropriate licenses are obtained prior to supply and any legal prohibitions or other legal restrictions applying to Flender are strictly observed.
- 31.4. This declaration applies to the whole of Flender and we ask you not to make any further individual enquiries at the different company locations."