



Bradken Standard

Tender Quotation and Sale Terms and Conditions (South Africa)

1. Except as otherwise agreed in writing, all transactions, quotations, tenders, sales, invoices, orders, offers to contract and contracts (agreement), whether written or oral, for the supply of Goods and/or Services by Bradken, shall be subject to these General terms and conditions. These terms and conditions are subject to the CPA and Credit Act when applicable.

2. DEFINITIONS

- 2.1 "Bradken" means Bradken Resources S.A. (Proprietary) Limited (Reg 2010/008130/07, VAT 4490 257229), a wholly owned subsidiary of Bradken Pty Limited, in this Agreement also referred to as the "Supplier" or "Bradken".
- 2.2 "carrier" means any transporter, whether by road, rail, sea or air, to move goods or provide services, whether contracted by Bradken or the Customer.
- 2.3 "CPA" means the Consumer Protection Act 68 of 2008.
- 2.4 "Credit Act" means the National Credit Act 34 of 2005.
- 2.5 "Customer" means the individual or juristic person who purchases goods or services from Bradken under these terms and conditions.
- 2.6 "Goods" means all goods, materials, equipment, parts, products, and any other ancillary activity provided by Bradken to the Customer.
- 1.3 "Services" means the services to be provided by Bradken to the Customer.
- 1.5 "VAT" means the Value Added Tax as defined in Value Added Tax Act No. 89 of 1991.

3. APPLICATION OF TERMS AND CONDITIONS

- 3.1 The Tender, Quotation and/or Sales Agreement, incorporating these terms and condition comprise the entire agreement between Bradken and the Customer to the subject matter hereof and supersedes all prior agreements, representations, warranties, or arrangements.
- 3.2 Unless otherwise stated, the order of precedence of the following documents shall apply:
 - a) the tender, quotation, or Sales Agreement.
 - b) these General Terms and Conditions; and
 - c) any other attached documents.
- 3.3 Any conflicting statements or special terms and conditions contained in any documentation issued by the Customer shall not be effective unless such conflicting statement or special terms and conditions have been expressly agreed to in writing by the parties.
- 3.4 Alterations or variations to the tender, quotation or Sales Agreement, these General Terms & Conditions, any attached documents, or any other related documents shall not be legally binding upon Bradken or its Customer unless agreed to in writing and signed by the duly authorised representatives of the parties.

4. TENDERS, QUOTATIONS & SALES

- 4.1 If Bradken has provided a tender or quotation for the supply of goods and/or services:
 - a) the price tendered or quoted shall apply subject to acceptance of the tender or quotation in terms of clause 3.1.
 - (b) below; and
 - b) subject to clause 3.1 (a) above, the tender or quotation shall remain open and valid for acceptance by the Customer for thirty (30) days from the date of issue thereof, provided that Bradken has not previously withdrawn it.
 - c) any tender or quotation is given on the basis that no agreement shall come into existence until Bradken despatches an acknowledgement of the order, based on the proposed tender or quotation, to the Customer.
 - d) in the event of there being any increase in Bradken's cost of production and/or delivery of goods (including but not limited to the cost of raw material, labour, transport, customs, excise, VAT or other duties, freight cost, landing charges, insurance, and rates of exchange) between the date of tender or quotation and the date of supply of such goods, Bradken shall be entitled to increase the tendered and/or quoted price of

any goods in accordance with such increase, or failing the customers agreement to such increased price, Bradken shall be entitled to cancel such agreement.

- 4.2 If the Buyer has made an order for the supply of goods and/or services without there being a tender or quotation provided by Bradken: -
 - a) such order is subject to acceptance in writing by Bradken; and
 - b) the price of the goods and/or services will be the current ruling price of Bradken on the date of Bradken's acceptance of the order or when the goods and/or services are being supplied/delivered to the Customer, whichever is the earlier.
- 4.3 The Customer's acceptance of the price tendered, quoted or supplied and/or Bradken's acceptance of the Customer's order shall constitute a Sales Agreement between the parties, subject to these terms and conditions which form part of such an agreement; and:
 - a) no change in the specification of the goods and/or services shall bind Bradken, unless Bradken expressly agrees to the change in writing; and
 - b) if the Buyer cancels the order for the goods and/or services, the Customer will pay Bradken any loss, damage, costs, or expenses incurred in relation to the supply or proposed supply of the goods and/or services.
- 4.4 Unless otherwise expressly stated, the price of the goods and/or services exclude all freight, transportation, shipping, insurance, packing, crating, or casing, storage, handling, demurrage, delivery, export and similar charges, and all sales, goods and services, excise or other taxes, and the Customer shall pay and indemnify Bradken for those charges or taxes. If Bradken expressly agrees in writing that the price includes any of these charges or taxes, the price is subject to adjustment for increases in any of those charges or taxes after the date of the tender, quotation, or acceptance of the Customer's order.
- 4.5 The Customer shall pay all taxes, levies, duties, and assessments of every nature due and in connection with the goods supplied and shall make any and all necessary deductions and withholdings required by law and hereby indemnifies and holds harmless Bradken from any liability on account of any and all such taxes, levies, duties, assessments and deductions.
- 4.6 Bradken reserves the right to reasonably decline any order and/or to suspend delivery and/or to supply the goods or services to the Customer.

5. PAYMENT

The payment terms are as follows:

- 5.1 Unless stated otherwise in writing and signed by a representative of Bradken, the Customer shall pay for goods and/or services within thirty (30) days after the date of issue of an invoice by Bradken.
- 5.2 The Customer shall make all payments due under this Agreement in full without any deductions whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 5.3 Payment of any amount shall be deemed to have been made only when the amount has been credited to Bradken's banking account.
- 5.4 No extension of payment of any nature will be granted unless reduced to writing and signed by the duly authorized representatives of the Customer and Bradken.
- 5.5 If the Customer fails to make payments timeously, Bradken will be entitled to the following:
 - a) to withhold delivery of goods and/or services of all or any of its obligations under this Agreement until payment is made in full; and/or
 - b) if the Customer has withheld payment for goods and/or services for more than 60 (sixty) days, and the goods and/or services have not yet been delivered/rendered to the Customer, for whatever reason, Bradken will be entitled to cancel the Agreement by written notice to the Customer; or



- c) if the Customer has withheld payment for the goods and/or services for more than 60 (sixty) days and the goods and/or services have already been delivered/rendered to the Customer, Bradken will be entitled to cancel the Agreement and the Customer shall return the goods in the state in which they were delivered to the Customer, or failing, Bradken shall take possession of any goods delivered to the Customer, including goods sold or disposed of by the Customer which have not been paid in full and shall claim the full amount due to Bradken as per the invoice delivered to the Customer as damages.
- d) upon termination of the Agreement, all amounts due to Bradken shall immediately become payable, despite any other provision contained herein.
- e) all payments made by the Customer shall be appropriated towards the payment of such debts as Bradken in its sole discretion may determine. Bradken reserves the right to withdraw or amend any credit facilities granted to the Customer at any time and without prior notice.
- f) All losses, expenses, and costs (including legal fees), consequent upon the Customers' failure to pay on the due date, are payable by the Customer upon demand and is recoverable from the Customer by Bradken as a liquidated debt.
- g) Bradken has the right to cancel any discounts previously granted to the Customer, and any such forfeited discounts shall immediately become due and payable by the Customer to Bradken (over and above any other outstanding balances, interest and other charges that have accrued up to such date);
- h) without prejudice to and in addition to the other rights and remedies of Bradken, if any payment is made by the Customer after the due date, such arrear payment shall bear interest at the rate of 2% (two percent) per month, compounded monthly. Interest shall be calculated as from 30 days after notice of default was delivered, until the date of payment.
- i) until such time as the full price in respect of any goods, plus interest and other charges thereon, has been received by Bradken, ownership in such goods shall remain vested in Bradken and it shall have the right to repossess the goods at any time.
- j) the Customer shall not allow the goods supplied by Bradken to become encumbered in any manner prior to the full payment thereof and shall advise third parties of the rights of Bradken in the goods.

7. VAT

- 7.1 VAT is payable on certain supplies of goods and/or services.
- 7.2 Words defined in the VAT Law have the same meaning in these terms and conditions unless specifically defined in this clause.
- 7.3 All charges and amounts payable by one party to another under the tender, quotation, Sales Agreement, or any other document, are stated exclusive of VAT (unless stated otherwise).
- 7.4 For each taxable supply under or in connection with the tender, quotation and/or Sales Agreement:
 - a) Bradken will be entitled to charge the Customer for any VAT payable by Bradken in respect of the taxable supply.
 - b) the Customer must pay to Bradken the amount of VAT at the same time as the relevant charge applicable to the supply becomes payable under the tender, quotation and/or Sales Agreement.
 - c) Bradken will provide a valid tax invoice (or a valid adjustment note) to the Customer in respect of the taxable supply.

8. DELIVERY

- 8.1 Delivery shall be completed when:
 - a) the goods are off-loaded at their destination if the goods are to be transported by means of Bradken's transportation; or
 - b) when the goods are loaded if the goods are to be transported by the Customer; or
 - c) when the goods are loaded by a carrier engaged (whether by Bradken or the Customer) to transport the goods for the Customer.
 - d) the signature of any employee or agent of the Customer which appear on Bradken's official delivery note or on that of any independent carrier, will constitute prima facie evidence of delivery of goods purchased.
- 8.2 The date of delivery will be as agreed upon between the parties. If no such date is specified, delivery shall take place within a reasonable time from the date of agreement.
- 8.3 Bradken will use all reasonable endeavours to deliver the goods on or before the agreed date of delivery, but the date of delivery is subject to extension for any delay caused by strikes, lockouts, war, breakdowns, accidents, delays in transport, fire or any cause beyond the reasonable control of Bradken.
- 8.4 Bradken shall not be liable to the Customer or any other person for any claims, damages or loss which may be suffered arising out of pure economic loss; direct, indirect or consequential damages, loss of profit, legal or other professional fees or charges; a delay in the delivery of the goods, any cause whatsoever beyond the control of Bradken; and/or any failure, defect or the like in any goods or services obtained from a sub-contractor, supplier, manufacturer or any other person, it being agreed that

Bradken shall at the Customer's written request cede and assign to the Customer such rights as it may have against such sub-contractor, supplier, manufacturer or other person so as to allow the Customer to pursue a claim directly.

- 8.5 The parties may agree that delivery of the goods take place in separate instalments, in which case Bradken may separately invoice the Customer for payment for each delivery instalment. Each such delivery instalment shall be a separate and distinct agreement between the parties, and no cancellation or termination of any one agreement relating to an instalment shall entitle the Customer to repudiate or cancel any other agreement or instalment.
- 8.6 If for any reason the Customer fails to accept delivery of any goods, or Bradken is unable to deliver the goods on time because the Customer has not provided appropriate instructions, documents, licences, or authorisation:
 - a) the goods shall have been deemed to have been delivered.
 - b) any and all risk in the goods shall pass to the Customer.
 - c) Bradken may store the goods until delivery takes place, whereupon the Customer shall be liable for all related costs and expenses relating to the storage, maintenance, insurance and/or transportation of such goods.

8.7 The return of goods terms are:

- a) any goods (except goods manufactured as per clause 8.6 (g)) delivered to the Customer, in accordance with this agreement, will be accepted for return with the prior written notice to Bradken and the written acceptance of Bradken for the return of such goods.
- b) the terms for the return will be determined at the absolute discretion of Bradken.
- c) if Bradken agrees to accept any goods for return, the Customer will be liable to pay all costs and expenses in order to affect the return, including but not limited to a handling/restocking charge.
- d) the handling/restocking charge of 50% of the invoice price of the goods, transportation and any expenses incurred in respect of the original shipping carton or packaging, so that the goods may be in a condition suitable for resale.
- e) the handling/restocking fee may be varied or waived in writing at Bradken's absolute discretion.
- f) goods returned without the prior written approval of Bradken will be accepted or rejected at Bradken's absolute discretion. These goods may be returned to the Customer and/or stored at the Customer's sole expense.
- g) goods manufactured by Bradken pursuant to the specific requirements of the Buyer are non-refundable.

9. RISK AND PROPERTY IN GOODS

- 9.1 Risk transfers to the Customer upon delivery of the goods or when goods are being loaded from Bradken's premises (the carrier of the goods shall be taken to the agent of the customer even if engaged or paid by Bradken).
- 9.2 Ownership of the goods shall not pass to the Customer until Bradken has received payment in full (in cash or cleared funds) all sums due to it in respect of:
 - a) the goods; and
 - b) all other sums which are, or which become due to Bradken from the Customer on any account.
- 9.3 Until ownership of the goods has passed to the Customer, the Customer shall:
 - a) hold the goods on a fiduciary basis as for and on behalf of Bradken;
 - b) store the goods (at the Customer's own expense) in such a way that the goods will be separate from any goods of the Customer or a third party and readily identifiable as Bradken's property;
 - c) agrees that if the goods to which Bradken holds ownership are not held as being separately identifiable from other goods belonging to the Customer or a third party, and those goods are then incorporated as a part of Bradken's goods or vice versa, Bradken shall be entitled to sell those goods as incorporated and keep a portion of the proceeds of the sale which is equal to and does not exceed the amount outstanding for the goods before incorporation.
 - d) not destroy, deface or obscure any identifying mark or packaging on or relating to the goods;
 - e) maintain the goods in a satisfactory condition and keep them insured on Bradken's behalf for the full price against all risks to the reasonable satisfaction of Bradken. The Customer shall keep the policy of the insurance and be able to produce such a copy to Bradken on demand;
 - f) shall not be entitled to cede or encumber any of its rights or to delegate any of its obligations under this Agreement to any person(s), and/or entities without the prior written consent of Bradken;
 - g) shall, as Bradken's fiduciary hold any proceeds of any resale, disposal or other dealing with the goods or any product incorporating the goods (including sale or supply to a party other than the Customer in the ordinary course of the Customer's business) in trust for Bradken and



shall pay the proceeds into a separate fiduciary account to be held in trust for Bradken until accounted for to Bradken at the demand of Bradken;

- 9.4 Bradken has the right to call for or recover possession of the goods (for which purpose Bradken's employees or agents may enter onto the Customer's premises) and the Customer must deliver up the goods if so directed by Bradken;

10. INTELLECTUAL PROPERTY

- 10.1 The title to all intellectual property rights (patent rights, design rights, trademarks, copyright, original works and other intellectual property in any design, specification, process, method of working or other, but not limited to) in or in relation to the goods and/or services shall vest at all times with Bradken;
- 10.2 The title to all intellectual property rights (as describe in 10.1 above, but not limited to), shall vest upon its creation with Bradken.
- 10.3 Bradken only grants to the Customer an irrevocable licence to use the goods.
- 10.4 Since the goods are sold under trademark, the customer shall not be entitled to alter, modify or in any way change such goods and shall be responsible to Bradken for any loss suffered in the event of such alteration or changes being undertaken, except in the case of where the Customer refurbishes such goods, with the prior written consent of Bradken.

11. WARRANTIES

- 11.1 Where Bradken is not the manufacturer of the goods, it shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to it. Bradken warrants that the goods manufactured by it, and will, subject to Bradken's general tolerance standards (available at the Customer's request) conform to the specification for the goods expressly agreed to in writing by Bradken and shall be free from any defects in materials and/or workmanship.
- 11.2 Upon receipt of the goods, it is the obligation of the Customer to check the products for any visible defects.
- 11.3 The warranty shall constitute the sole remedy available under law to the Customer for any damage related to, or resulting from, a defective part and/or goods and/or services. The warranty is strictly limited to the repair or replacement of the parts and/or goods which are found to be defective, at the discretion of Bradken, subject to the conditions as set out in Clauses 12 and 13.
- 11.4 The warranty does not cover:
- non-defective damage caused by unreasonable use including use not in complete accordance with goods installation manual; or
 - labour charges for the removal or re-installation of replaced goods; or
 - transport cost incurred in transporting the goods to Bradken; or
 - damage caused by incorrect installation; or
 - or consequential or incidental damage to property or person.
 - goods altered, modified or in any way changed by the Customer.
- 11.5 The warranty does not cover:
- non-defective damage caused by unreasonable use including use not in complete accordance with goods installation manual; or
 - labour charges for the removal or re-installation of replaced goods; or
 - transport cost incurred in transporting the goods to Bradken; or
 - damage caused by incorrect installation; or
 - or consequential or incidental damage to property or person.
 - goods altered, modified or in any way changed by the Customer.

12. LIMITATION OF LIABILITY

- 12.1 Nothing in these General Terms & Conditions excludes or limits the liability of Bradken:
- for any matter which it would be illegal for Bradken to exclude or attempt to exclude its liability;
 - for fraud or fraudulent misrepresentation.
- 12.2 To the extent permitted by law Bradken's sole liability for any breach of any term is limited:-
- In the case of goods sold and supplied by Bradken, to any one of the following as determined by Bradken:-
 - The replacement of the goods or supply of equivalent goods;
 - The repair of the goods;
 - The payment of the cost of replacing the goods or acquiring equivalent goods;
 - The payment of the cost of having the goods repaired;
 - In the case of services supplied by Bradken, to any one of the following:-
 - the re-supply of the services again;
 - the payment of the cost of having the services supplied again;
- 12.3 Subject to anything contained in these General Terms & Conditions and/or supplementary documents:

- Bradken's total liability in contract, delict (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement, shall be limited to the value of this agreement.
- Bradken shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for the consequential compensation whatsoever (whatever the cause) which arise out of or in connection with this Agreement.

12.4 For the avoidance of doubt:

- The Agreement relates to the supply of goods and/or services subject to and in accordance with these General Terms & Conditions and other ancillary documents.
- It remains the Customer's responsibility to ensure the suitability of the goods and/or services for the intended use/application and the installation commissioning, use and maintenance of electrical or mechanical services are dealt with by a suitably trained appointed employee or sub-contractor to ensure all applicable standards and regulations have been complied with.

13. DEFECTIVE GOODS

Bradken shall only consider the return of defective goods on the following terms:

- Subject to clauses 11 and 13(b) below, if the goods are not in accordance with the Agreement and/or Warranty, and the Customer intends to reject the goods after delivery thereof, the Customer may do so:
 - by giving written notice of such defect to Bradken;
 - within fourteen (14) days of the delivery of the goods;
 - by affording Bradken a reasonable opportunity after receiving the notice of examining such goods and the Customer, subject to Clause 13 (b), (upon request by Bradken) returns such goods to Bradken for examination, at Bradken's cost;
 - failing to give notice and return the goods, as contemplated, shall be deemed to have been unconditionally accepted by the Customer.
- If the Customer intends to reject any goods delivered, the Customer shall both complete any inspection or testing required by it to confirm that the goods do not comply with the Agreement;
- The Customer shall not make any further use of the goods (other than to the extent reasonably necessary for the inspection and testing);
- Except as contemplated above where Bradken requests the Customer to return goods, all goods must be returned at the cost of the Customer. Goods returned for credit and accepted by Bradken will at Bradken's absolute discretion be subject to 50% of the credit claimed. If goods are not returned within 30 days of notification of the claim to Bradken, the Customer shall not be entitled to any credit.
- Bradken will not accept defective goods if:
 - the defect arises because the Customer failed to follow Bradken's oral or written instructions, commissioning use or maintenance of the goods or good trade practice; or
 - the Customer alters or repairs such goods without the written consent of Bradken.

14. DELAYS IN OR SUSPENSION OF WORK OR SUPPLY

14.1 Bradken reserves the right to:

- defer the date of delivery; or
- cancel the Agreement; or
- reduce the volume of the goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control.

14.2 Circumstances beyond the reasonable control of Bradken include but are not limited to acts of God, governmental actions, war or national emergency, natural disasters, lock-outs, strikes or cessation of labour (whether or not relating to either party's workforce), accident or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, or any other cause beyond the control of Bradken.

14.3 Where Bradken incurs any extra costs in relation to the supply of goods, directly or indirectly, as a result of any delay, interruption, suspension or alteration of any work or the supply of the goods caused by or as a consequence of any act or omission of the Customer, Bradken shall be entitled to increase the price by the amount of the extra costs incurred.

15. CUSTOMER'S INDEMNITY

The Customer must indemnify and keep indemnified Bradken, its officers, employees and agents, from and against all claims, demands, proceedings, liabilities, costs, charges and expenses suffered by the Customer and its officers, employees and agents arising as a result from



any act, neglect or fault of Bradken, its officers, employees and agents related to its obligations under this Agreement.

- 15.1 As previously stated in these General Terms & Conditions, Bradken will not be liable to the Customer for any direct, indirect or consequential loss or damage under this Agreement.
- 15.2 The maximum sum, for which Bradken may be liable to the Customer, its officers, employees and agent shall be limited to the value of this Agreement.
- 16. SUBCONTRACTING**
- Unless otherwise agreed in writing Bradken may, without the Customer's consent, engage subcontractors to carry out the whole or any part of supply or manufacture of the goods.
- 17. DEFAULT, INSOLVENCY AND TERMINATION**
- 17.1 Save for the conditions contained in clauses 4 and 9 herein, if the Customer defaults in making due payment to Bradken of any monies owing, Bradken shall be entitled to recover payment for the goods notwithstanding the fact that ownership thereof has not passed to the Customer.
- 17.2 If the Customer:
- is a natural person or partnership and commits an act of insolvency as contained in section 8 of the Insolvency Act 24 of 1936;
 - commences with insolvency or possible insolvency proceedings;
 - is a Company and enters into liquidation (whether voluntary or compulsory) except in circumstances of a solvent voluntary liquidation for the purpose of reconstruction or amalgamation;
 - a resolution is passed or a petition presented to Court for the winding-up or for the granting of an administration order of the Customer;
 - the Company is deemed to be financially distressed and a resolution is passed to proceed with business rescue proceedings or where a written notice to such an extent is sent to Bradken, as contemplated in the Companies Act, 71 of 2008;
 - as a natural person, partnership or Company makes any voluntary or official arrangement with its creditors;
 - any third party takes possession of, or enforces right over, any of the Customer's property or assets under any form of security;
 - stops or threatens to stop carrying on business;
 - suffers any process equivalent to any of these, in any other jurisdiction;
 - cause Bradken to reasonably believe that any of the events mentioned above is about to occur and Bradken notifies the Customer accordingly, then -
 - all monies payable by the Customer to Bradken shall at Bradken's election become immediately due and payable notwithstanding that the due date for payment of any of the monies shall not have expired;
 - Bradken may suspend performance of, or cancel, or suspend and then at any subsequent time cancel, the Agreement without any liability to the Customer if it is in breach of these terms, or if the Customer's business fails.
- 17.3 Any right of cancellation or suspension under this section is additional to any rights available to Bradken under the law of any relevant jurisdiction.
- 17.4 Bradken may, without affecting Bradken's other rights:
- refuse, suspend or withhold any further supply of the goods;
 - enter upon (personally or by its employees or agents) with the deemed permission of the Customer, any premises in the possession or control of the Customer and use reasonable force for the purposes of retaking possession of any of the goods (title to which has not passed to the Customer), in which case the sale of those goods shall be taken to be terminated and Bradken shall have no liability to the Customer whether for trespass, negligence, payment of damages or compensation or otherwise;
 - terminate any credit arrangement with the Buyer, by notice in writing to the Customer (in which case outstanding amounts will become immediately due and payable);
 - retain any deposit paid by the Customer for the goods; or
 - if payment in addition to a deposit has been made by the Customer in respect of any of the goods, the sale of which is terminated, appropriate that payment to any other debts of the Buyer to Bradken or damages incurred by Bradken as a result of the termination of the sale.
- 18. GOVERNING LAW AND JURISDICTION**
- Unless otherwise stated, the Tender, Quotation and or Sales Agreement, including the General Term & Conditions, shall be governed by and construed in accordance with the laws of South Africa and the parties submit to the exclusive jurisdiction of the courts of South Africa.
- 19. NON-WAIVER**

No waiver of delay on the part of Bradken in exercising any of its rights under this Agreement, shall be construed as constituting a waiver of any such rights.

20. COMMUNICATIONS AND NOTICES

- 20.1 All communications and/or notices between the parties in relation to this Agreement shall be in writing and delivered by hand or sent by registered post or by fax or e-mail
- in the case of communications to Bradken, all communications should be addressed to its registered office or such changed address as shall be notified to the Customer by Bradken;
 - in the case of communications to the Customer, all communications shall be addressed to the registered office of the addressee (if it is a Company) or to any address of the Customer as set out in any documentation which forms part of the Agreement or such address as shall be notified to Bradken by the Customer.
- 20.2 Any communication and/or notice to a Party shall be deemed to have been received -
- if delivered by hand to a responsible person during ordinary business hours, on the day of delivery; or
 - if sent by registered post, 10 (ten) days (excluding Saturdays, Sundays and public holidays, after the communication and/or notice was posted and as recorded by a postal office (unless there is evidence to the contrary that it was delivered on a different day); or
 - if sent by telefax on a working day, at the time recorded by the telefax receiver (unless there is evidence to the contrary that it was delivered on a different date or at a different time); or
 - if sent by e-mail to its chosen e-mail address, at the time recorded by the sender (unless there is evidence to the contrary that it was delivered on a different date or at a different time).
- 20.3 Notwithstanding anything to the contrary herein contained a written notice or communication (including telefax or e-mail) actually received by the person named in the notice on behalf of a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen domicile citandi et executandi.
- 20.4 The parties consent to the despatch or transmission of all necessary communications in terms of the Electronic Communications Act and Transaction, Act 25 of 2002 or subsequently enacted relevant legislation.
- 21. ANTI-CORRUPTION COMPLIANCE**
- 21.1 Neither Bradken and/or the Customer, nor any of their affiliates shall take any actions in furtherance of an offer for example, by way of (but not limited to):
- payment of monies; or
 - a promise to pay monies; or
 - authorisation of any payment; or
 - giving of money; or
 - giving anything else of value; to
 - Any person who engages in services for national or local governments;
 - Any person who engages in services for an agency or organization affiliated with a government entity;
 - Any person who engages in services for a public enterprise or state-owned entity;
 - Any person who engages in public services for an international public organization;
 - Any political party, party official, or candidate for political office; or
 - Any person authorized by a government entity to exercise a public function;
- (together "Public Officers") or to any person other than a Public Officer while knowing (or where Bradken and/or the Customer and/or its affiliates ought reasonably to know) that all or some portion of the money or value was or will be offered, given or promised to a Public Officer for the purposes of obtaining or retaining business or securing any improper advantage or influencing official action.
- 21.2 No part of the payments received by the Bradken from the Customer will be used for any purpose which would cause a violation of laws, including, without limitation, the anti-bribery laws of any country or jurisdiction, by Bradken.
- 21.3 The parties agree that they will conduct their business in compliance with laws, including, without limitation, the anti-bribery laws of any country or jurisdiction.
- 21.4 Furthermore, the parties undertake not to participate in other forms of misconduct, including, but not limited to:
- fraud;
 - collusion; and
 - coercion in connection with any transaction or matter associated with its relationship.

21.5 In addition to all other rights and remedies herein, if either of the parties is found or reasonably suspected to be in breach of any of the foregoing compliance provisions, the remaining party shall have the right to cancel the Agreement immediately, unconditionally and without penalty, upon serving the Supplier a written notice of cancellation.

22. DISCLOSURE OF INFORMATION

The Customer consents that Bradken may, to the extent permitted by law, receive or disclose personal and/or Company information, documents, detailed call records, credit profile information and/or any credit information from or to:

- any credit providers, credit bureau or credit reporting agencies;
- any law enforcement agencies that require the information for the prevention or investigation of criminal activities;
- any of the Company's related entities, suppliers, agents, professional advisors for marketing purposes, subject to the Customer's right to restrict receipt of unwanted marketing material or other rights in terms of the Consumer Protection Act, 2008, where applicable;
- despite any of the afore-going, Bradken shall be entitled to utilize the Customer's information for any lawful purpose including but not limited to tracing and/or collection purposes.

23. IMPORT AND EXPORT CONTROL

23.1 The Customer also represents and warrants that it shall not sell, export, dispose of, license, rent, transfer, disclose or otherwise provide the goods (including software and/or technology relating thereto) to any third party whether directly or indirectly with knowledge or reason to know that the third party or any other party will engage in the activities described above. The Customer shall obtain these same representations and warranties from any third party to whom it sells, exports, disposes of, licenses, rents, transfers, discloses or otherwise provides the goods (including software and/or technology relating thereto).

23.2 The Customer alone holds liability, in the capacity of reseller/exporter of the goods covered by this Agreement, as regards compliance with its obligations relating to the applicable export control laws and regulations, restrictions and other rules, orders, embargoes and sanctions, and undertakes to compensate and defend Bradken as regards any claims or proceedings instigated by authorities or third parties on the grounds of breaches of the provisions of these clauses.

ADDITIONAL TERMS AND CONDITIONS FOR MANUFACTURE

24. MANUFACTURED GOODS

Where the Goods are to be manufactured by Bradken to a specification prepared by or on behalf of the Customer ("Manufactured Goods"), clauses 24 to 28 shall, subject to the rest of the General Terms & Conditions, specifically apply.

25. PRICE FOR MANUFACTURED GOODS

Unless otherwise agreed upon in writing by the parties, the price for Manufactured Goods may be unilaterally adjusted by Bradken:

- in accordance with the price variation formula provided by Bradken to the Customer with the Tender, Quotation or Order; and
- for increases in the cost of labour after the date of the Tender, Quotation or acceptance of the Order; and
- any increases as contemplated in clauses 3.1(d), 3.4 and 14.3 of these General Terms & Conditions.

26. CUSTOMER'S PATTERNS

Where any patterns or core boxes are provided by or on behalf of the Customer for use by Bradken to produce Manufactured Goods ("Customer's Patterns"):

- despite clause 12, Bradken shall have no responsibility and will not be liable for any non-conformity of the Customer's Patterns to any drawings or specifications for the Manufactured Goods and the Customer irrevocably releases Bradken from any claims in relation to such non-conformity;
- the Customer must satisfy itself as to and ensure that the Customer's Patterns meet the requirements of Bradken;
- the Customer acknowledges that Bradken will not insure the Customer's Patterns and despite clause 12 Bradken shall have no liability (whether in contract, delict or otherwise) to the Customer for or in connection with any loss of or damage to the Customer's Patterns or any other goods or materials in Bradken's possession in connection with the Manufactured Goods; and
- the Customer agrees to pay Bradken, in addition to the price payable for the Manufactured Goods any costs incurred by Bradken in storing the Customer's Patterns or carrying out repairs or alterations to the Customer's Patterns.

27. INSPECTION AND TESTING

Where Manufactured Goods are required to be tested or inspected by Bradken prior to supply to the Customer, the Customer shall pay the costs of that testing (including the cost of obtaining certificates) or inspection in addition to the price for the Manufactured Goods, and the results of tests

(including as to weight, size, quantity or composition of Manufactured Goods) and inspections shall be final and binding on the Customer.

28. CUSTOMER'S INFORMATION

Where the Customer has provided to Bradken any design, specification, process, method of working, or any other information in connection with the Manufactured Goods ("Customer's Information"):

- Bradken shall be under no obligation to check or confirm the conformity, accuracy or adequacy of the Customer's Information;
- the Customer grants Bradken an irrevocable licence to use all copyright, design right or other intellectual property in the Customer's Information for any purpose connected with the Manufactured Goods;
- the Customer indemnifies Bradken, its officers, agents and employees against all claims, demands, actions, costs (including legal costs on a full indemnity basis), charges, expenses, loss, damages or other liability arising out of or in connection with any claim against Bradken in connection with the use of the Customer's Information (including for infringement of any intellectual property rights); and
- despite clause 12, Bradken shall have no liability to the Customer whether in contract, delict or otherwise) in connection with any error, omission or inaccuracy in the Customer's Information.

29. GENERAL

29.1 A reference to a particular law is a reference to it as it is in force for the time being, taking into account any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

29.2 Unless the context clearly indicates otherwise, references to one gender shall include the other two genders, the singular includes the plural and vice versa, and all terms shall apply equally to natural persons, juristic persons and other associations.

29.3 Clause headings are for reference purposes only and shall not affect the interpretation of those clauses.

29.4 The Customer shall not disclose any information provided by Bradken to any third party without the prior written consent of Bradken. The parties agree that this obligation shall survive termination or expiration of the Agreement.

29.5 In the event that the whole or any part or parts of any clause in these General Terms & Conditions is found to be unenforceable by a Court of competent jurisdiction then such clause or part thereof shall be to that extent severed from these terms and conditions without effect to the validity and enforceability of the remainder of these terms and conditions.

29.6 Bradken maintains best practice standards for protection of the environment and occupational health and safety. The Customer must also maintain best practice in those areas and will on Bradken's request disclose and demonstrate to Bradken its policies in that respect.

29.7 A statement in writing signed by any director, secretary, administration manager or credit manager of Bradken stating the balance of the monies due to Bradken by the Customer shall be prima facie evidence of the amount of indebtedness of the Customer to Bradken at the date of such statement.