

CHANNEL CONSTRUCTION (PTY) LTD

Standard Terms and Conditions of Purchase and Subcontract

Applicable to all Purchase Orders issued to suppliers and subcontractors

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PART A - DEFINITIONS, APPLICATION AND FORMATION

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions, unless the context requires otherwise:

1.1.1 **“Applicable Law”** means all legislation, regulations, by-laws, codes, standards, licence conditions, directives and orders of any competent authority applicable to the Order, the Works or either Party, as amended or replaced from time to time;

1.1.1A **“Business Day”** means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;

1.1.1B **“Channel Group”** means Channel and each company which directly or indirectly controls, is controlled by, or is under common control with Channel, and (only where a provision of these Conditions expressly confers a benefit on them) their respective directors, officers and employees; no provision of these Conditions confers any right on any member of the Channel Group other than Channel except where expressly stated;

1.1.2 **“Authorised Signatory”** means a director of Channel, or an employee of Channel whose name appears on Channel’s schedule of authorised signatories current at the relevant time, acting within the financial limit stated in that schedule;

1.1.2A **“Channel”** means Channel Construction (Pty) Ltd, Registration Number 2004/009100/07, and includes its successors in title and permitted assigns;

1.1.3 **“Client”** means the party who has appointed Channel under the Main Contract, being any employer, principal, client or organ of state for whom Channel performs works;

1.1.4 **“Completion”** means completion of the Works in accordance with the Order, free of Defects, and includes delivery of all Documentation, and (where applicable) issue by Channel of a certificate of completion;

1.1.5 **“Conditions”** means these Standard Terms and Conditions of Purchase and Subcontract, as published on Channel’s website and applicable to the Order in accordance with clause 2.2;

1.1.6 **“Contract”** means the contract concluded between Channel and the Subcontractor/Supplier in accordance with clause 3, comprising the documents listed in clause 4;

1.1.7 **“Defect”** means any aspect of the Works which is not in accordance with the Order, the Specification, Applicable Law, or Good Industry Practice, whether patent or latent;

1.1.8 **“Defects Liability Period”** means the period stated in clause 14.1;

1.1.9 **“Documentation”** means all drawings, data books, test certificates, warranties and guarantees, operating and maintenance manuals, as-built records, quality records, material certificates, health and safety files and any other documents required by the Order, the Specification, the Main Contract or Applicable Law;

1.1.10 **“Good Industry Practice”** means the degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the same or a similar undertaking under the same or similar circumstances;

1.1.11 **“Main Contract”** means the contract between Channel and the Client under which Channel requires the Works, including its tender documents, scope of work, conditions of contract (including any NEC3 or NEC4 form), specifications, drawings and all amendments;

1.1.12 **“Order”** or **“Purchase Order”** means a purchase order issued by Channel to the Subcontractor/Supplier incorporating these Conditions, together with its annexures, schedules and any Variation Order;

1.1.13 **“Order Value”** means the total price stated in the Order, exclusive of VAT, as adjusted by Variation Orders;

1.1.13A **“Original Order Value”** means the total price stated on the face of the Order, exclusive of VAT and before any Variation Order. *Where these Conditions fix a penalty, cap, retention or other limit as a percentage, that percentage is calculated on the Original Order Value unless the provision expressly states otherwise;*

1.1.14 **“Parties”** means Channel and the Subcontractor/Supplier, and **“Party”** means either of them;

1.1.15 **“Site”** means the place at which the Works are to be performed or delivered, and includes any premises of Channel or the Client;

1.1.16 **“Specification”** means the scope of work, specifications, drawings, standards, programme and quality requirements referred to or incorporated in the Order;

1.1.17 **“Subcontractor/Supplier”** means the person, firm or company to whom the Order is addressed, whether appointed to execute works or to supply goods, materials, plant, equipment, labour or services, or any combination of them. The terms **“Subcontractor”**, **“Supplier”** and **“Subcontractor/Supplier”** are used interchangeably in the Contract and in every document forming part of it; each of them includes the others; and a reference to any one of them is a reference to the party to whom the Order is addressed, whatever the nature of the Works;

1.1.18 **“Variation Order”** means a written instruction issued and signed by an Authorised Signatory of Channel varying the Works, in the form prescribed by Channel;

1.1.19 **“VAT”** means value-added tax imposed under the Value-Added Tax Act 89 of 1991;

1.1.19A **“Warranty Period”** means the period determined under clause 14A.2;

1.1.20 **“Works”** means all goods, materials, plant, equipment, labour, services, works and deliverables to be supplied or performed by the Subcontractor/Supplier under the Order, and includes all temporary works and all Documentation.

1.2 In these Conditions: headings are for convenience only and do not affect interpretation; the singular includes the plural and vice versa; a reference to a natural person includes a juristic person and vice versa; a reference to any legislation is to that legislation as amended or replaced; “including”, “includes” and “in particular” are not words of limitation; “days” means calendar days unless “Business Days” is stated; and where a number of days is prescribed, it is reckoned exclusively of the first and inclusively of the last day.

1.2A **Where applicable.** These Conditions are drafted prospectively, to govern every kind of Order which Channel may place. A requirement of these Conditions - including any registration, licence, certificate, permit, insurance, document or compliance step - accordingly applies only where and to the extent that it is applicable to the Subcontractor/Supplier, to the nature of the Works, or to the Order in question; for example, a requirement relevant only to construction works does not apply to a pure supply of goods, and a requirement relevant only to VAT vendors does not apply to a non-vendor. Channel, acting reasonably, determines whether a requirement applies, and may call for compliance with any requirement at any time, including after acceptance of the Order; the Subcontractor/Supplier shall comply on demand, unless it demonstrates in writing why the requirement does not apply to it or to the Works. Where a requirement is inapplicable, it is not a condition of payment or performance, and its inapplicability does not affect the remainder of these Conditions.

1.3 The rule of construction that an agreement is interpreted against the party responsible for its drafting, or who proposed it, shall not apply to these Conditions.

1.4 Where these Conditions conflict with any provision of the Order, the Order prevails only if it expressly identifies the clause of these Conditions which it varies, and only to the extent stated.

1.5 Benefits in favour of the Client or the Channel Group. Any protection, warranty, indemnity or benefit expressed in favour of the Client or any member of the Channel Group is enforceable by Channel alone, and the Subcontractor/Supplier indemnifies Channel against any claim, loss or liability which Channel suffers in respect of, or in order to make good to the Client or such member, the matter so protected. No provision of these Conditions confers any direct right of enforcement on the Client or any member of the Channel Group, imposes any obligation on them, or requires their acceptance, participation or consent for any provision to take effect; these Conditions create no stipulation for the benefit of a third party (*stipulatio*

alteri). These Conditions operate entirely between Channel and the Subcontractor/Supplier.

2. APPLICATION

2.1 These Conditions apply to, and are incorporated into, every Order issued by Channel, and to all Works supplied or performed pursuant to any Order, to the exclusion of all other terms and conditions whatsoever.

2.2 These Conditions are published on Channel’s website, at the address stated on the face of the Order, and are available on request. The Conditions applicable to an Order are those reflected on Channel’s website as at the date of that Order, and Channel shall not amend or vary those Conditions in respect of that Order after issue.

2.3 By signing and returning an Order, or by commencing performance of it, the Subcontractor/Supplier acknowledges that it has been given the opportunity to read these Conditions, that it has read and understood these Conditions, and that it accepts them.

2.4 These Conditions apply to a supply of goods, a supply of services, the execution of works, the hire of plant or equipment with or without operators, the supply of labour, and any combination of them. A clause which by its nature applies only to one such category applies only to an Order of that category, and its inapplicability does not affect the remainder of these Conditions.

2.5 A request by Channel for a quotation, tender or proposal is not an offer and gives rise to no contract, no obligation to place an Order, and no liability for any cost incurred by the Subcontractor/Supplier in responding.

3. THE CONTRACT

3.1 An Order is an offer by Channel to contract with the Subcontractor/Supplier on these Conditions. It is not an acceptance of any quotation, tender, proposal or offer by the Subcontractor/Supplier, notwithstanding that it may refer to a quotation number, price or specification originating from the Subcontractor/Supplier.

3.2 An Order is valid only if signed by one or more Authorised Signatories of Channel.

3.3 A binding Contract comes into existence upon the earlier of:

3.3.1 the Subcontractor/Supplier signing the Order in the space provided and returning it to Channel; or

3.3.2 the Subcontractor/Supplier commencing performance of the Order with actual or constructive notice of the Order and these Conditions, including by manufacturing, procuring, delivering, mobilising to Site, or performing any part of the Works.

The requirement to sign and return the Order remains a mandatory administrative obligation of the Subcontractor/Supplier, but is not a condition precedent to formation where performance has commenced.

3.4 Commencement of performance constitutes unqualified acceptance of the Order on these Conditions, and the Subcontractor/Supplier shall not thereafter be entitled to contend that no contract exists, that different terms apply, or that its acceptance was qualified.

3.5 Silence or inaction on the part of the Subcontractor/Supplier does not constitute acceptance of an Order. Channel does not rely, and shall not be taken to rely, on any deemed acceptance arising from a failure to respond.

3.6 An Order lapses if it is neither signed and returned nor performed within 7 (seven) days of its date, unless Channel extends that period in writing. Channel may withdraw an Order at any time before a Contract comes into existence.

3.7 The Subcontractor/Supplier shall sign and return the Order without amendment, qualification, reservation or annexure. Any purported acceptance which is qualified, or which is accompanied by or subject to any other terms, is not an acceptance but a counter-offer, which is hereby rejected in advance and which Channel shall be under no obligation to consider or answer. Channel's failure to respond to any such purported acceptance is not, and shall not be construed as, acceptance of it.

4. PRECEDENCE OF DOCUMENTS

4.1 The Contract comprises the following documents, which in the event of ambiguity, conflict or inconsistency rank in the following descending order of precedence:

4.1.1 any written agreement varying these Conditions which complies with clause 52;

4.1.2 any Variation Order, but only to the extent of the variation it effects;

4.1.3 the face of the Order, together with its annexures and schedules;

4.1.4 these Conditions;

4.1.5 the Specification;

4.1.6 such provisions of the Main Contract as are incorporated by clause 9;

4.1.7 any Service Level Agreement concluded between the Parties, which is supplemental to and subordinate to these Conditions and which varies these Conditions only to the extent that it complies with clause 52;

4.1.8 the Subcontractor/Supplier's quotation, but only as to the description, quantity and price of the Works and any warranty or guarantee period stated or offered in it (which applies as a minimum under clause 14A.2), and to no other extent whatsoever.

4.2 For the avoidance of doubt, no Service Level Agreement, and no other document, is a condition of the coming into existence or enforceability of the Contract. The Contract is binding and enforceable from the moment described in clause 3.3, whether or not a Service Level Agreement is subsequently concluded.

5. EXCLUSION OF THE SUBCONTRACTOR/SUPPLIER'S TERMS

5.1 These Conditions apply to the exclusion of, and prevail over, any and all other terms and conditions, including any terms and conditions:

5.1.1 contained in, referred to by, attached to, endorsed upon, or delivered with any quotation, tender, proposal, pro forma, order acknowledgement, order confirmation, invoice, statement, delivery note, waybill, goods received note, packing note, consignment note, timesheet, job card, day-work sheet, credit application, credit agreement, catalogue, website, email footer or any other document or communication whatsoever emanating from the Subcontractor/Supplier;

5.1.2 which the Subcontractor/Supplier purports to incorporate by reference, including by reference to a website or to standard trading terms;

5.1.3 which the Subcontractor/Supplier asserts are its standard, general or usual terms of business, or which are said to arise by trade usage, custom, course of dealing or previous course of conduct;

5.1.4 whether such terms are delivered, referred to or asserted before, at the same time as, or after the issue of the Order or the coming into existence of the Contract.

5.2 All such terms and conditions are hereby expressly rejected and are of no force or effect, and shall not form part of the Contract, notwithstanding:

5.2.1 that Channel has not expressly objected to them;

5.2.2 that Channel has received, retained, filed, initialled or signed the document containing or referring to them;

5.2.3 that they purport to be the overriding conditions, or to prevail over the conditions of any purchaser;

5.2.4 that they purport to provide that a contract comes into existence only upon written confirmation by the Subcontractor/Supplier or by an officer of the Subcontractor/Supplier;

5.2.5 that the Works have been delivered, accepted, used or paid for; or

5.2.6 that Channel has performed any obligation under the Contract.

5.3 No signature, initial, stamp, electronic acknowledgement or acceptance by any director, employee, agent, representative or contractor of Channel on or in respect of any delivery note, waybill, goods received note, packing note, consignment note, timesheet, job card, day-work sheet, credit application, credit agreement, gate register, site register, scanning device or any similar document shall:

5.3.1 constitute acceptance of, or agreement to, any term or condition of the Subcontractor/Supplier;

5.3.2 constitute a variation of the Contract or a waiver of any right of Channel;

5.3.3 constitute an acknowledgement that the Works, or any part of them, are of the required quantity, quality or standard, or are free of Defects, or have been accepted; or

5.3.4 constitute an admission of any liability or of any indebtedness.

5.4 Any such signature is given solely for the purpose of recording physical receipt of a document or of goods, is given without prejudice to all of Channel's rights, and is given by a person who has no authority to conclude, vary or waive any contractual term.

5.5 The Subcontractor/Supplier warrants that it has drawn the contents of this clause 5 to the attention of its own personnel, and shall not permit its personnel to present any document to Channel's personnel for signature on the basis that signature will have contractual effect beyond that stated in clause 5.4.

5.6 Pre-existing credit applications and trading terms. To the extent that Channel has at any time signed, or hereafter signs, any credit application, credit agreement, account application or trading terms of the Subcontractor/Supplier:

5.6.1 such document governs only the granting, operation, suspension and withdrawal of a credit facility, and the security (if any) given for it;

5.6.2 such document does not govern, and is of no force or effect in respect of, the scope, specification, quality, quantity, price, programme, delivery, variation, inspection, rejection, defects, warranties, liability, indemnity, insurance, penalties, termination, dispute resolution or jurisdiction applicable to any Order, all of which are governed exclusively by these Conditions;

5.6.3 to the extent of any conflict between such document and these Conditions in relation to any matter listed in clause 5.6.2, these Conditions prevail; and

5.6.4 no such document shall be construed as applying to future Orders by reason of any provision purporting to make it apply to every agreement between the parties, and any provision entitling the Subcontractor/Supplier to amend its terms unilaterally is of no force or effect in respect of any Order.

5.7 No employee, director, agent or representative of Channel has authority to bind Channel as surety, co-principal debtor, guarantor or indemnitor, or to cede any book debt of Channel, and the Subcontractor/Supplier shall not rely on any such purported act by Channel's personnel absent the prior written authority of a director of Channel.

5.7A The Subcontractor/Supplier shall not solicit, obtain, accept or rely upon any suretyship, guarantee, co-principal-debtor undertaking, cession of book debts or other personal security from any director, employee or representative of Channel, unless Channel's board has approved the specific transaction by prior written resolution and the security is contained in a separate instrument that complies with all applicable law. As between Channel and the Subcontractor/Supplier, the

Subcontractor/Supplier waives any claim founded on any personal security obtained in breach of this clause, and indemnifies Channel and the person concerned against all resulting loss and cost. This clause does not, of itself, determine the validity of any personal security already given, which shall be dealt with separately.

6. AUTHORITY

6.1 Only an Authorised Signatory of Channel may issue, vary, cancel or waive any provision of an Order, issue a Variation Order, accept Works, certify Completion, or bind Channel.

6.2 A list of Authorised Signatories and their financial limits is available from Channel on request. No other person, including any site agent, foreman, supervisor, engineer, storeman, buyer, expeditor or administrator, has authority to bind Channel, and the Subcontractor/Supplier shall not rely on any representation, instruction, approval or agreement by any such person.

6.3 The Subcontractor/Supplier shall satisfy itself as to the authority of any person purporting to act for Channel. Channel shall not be bound by, and shall have no liability in respect of, any act of any person acting without authority, and the Subcontractor/Supplier's reliance on any such act shall be at its sole risk.

6.4 The person signing an Order on behalf of the Subcontractor/Supplier warrants, in his or her personal capacity, that he or she has actual authority to bind the Subcontractor/Supplier. If that warranty is false, that person indemnifies Channel, as an independent principal obligation and not as a suretyship, against the direct loss, liability and reasonable enforcement cost caused to Channel by its reliance on that false warranty. This undertaking is limited to loss caused by the absence of authority (and does not, of itself, secure performance of the Subcontractor/Supplier's obligations), is a principal obligation independent of any obligation of the Subcontractor/Supplier, and is not subject to the formalities prescribed for a contract of suretyship. It is separately acknowledged and signed by that person in the acceptance block of the Order. (See further clauses 56.4 and 56.5.)

PART B - THE WORKS

7. THE SUBCONTRACTOR/SUPPLIER'S OBLIGATIONS

7.1 The Subcontractor/Supplier shall execute and complete the Works:

7.1.1 in accordance with the Order, the Specification and the Contract;

7.1.2 in accordance with all Applicable Law;

7.1.3 in accordance with Good Industry Practice;

7.1.4 with all due skill, care, diligence, expedition and efficiency;

7.1.5 by the date or dates stated in the Order; and

7.1.6 so as to enable Channel to comply with its obligations under the Main Contract.

7.2 The Subcontractor/Supplier warrants that:

7.2.1 the Works shall be fit for the purposes made known to the Subcontractor/Supplier, expressly or by implication, and for the purposes for which works of that nature are ordinarily used;

7.2.2 all goods and materials shall be new, unused, of merchantable quality, of the agreed description, and free from Defects, whether latent or patent;

7.2.3 all workmanship shall be of the highest standard consistent with Good Industry Practice;

7.2.4 the Works shall comply with all applicable SANS, ISO and other standards specified in the Order or, where none is specified, with the standard ordinarily applicable;

7.2.5 the Works shall be free of any lien, hypothec, pledge, notarial bond, reservation of ownership, attachment or other encumbrance, and the Subcontractor/Supplier shall be able to pass free and unencumbered title to Channel;

7.2.6 it has the skills, experience, resources, plant, personnel, licences, permits, registrations and financial capacity to perform the Works;

7.2.7 it has satisfied itself as to the nature and extent of the Works, the conditions at the Site, and all matters affecting its price and programme; and

7.2.8 there are no facts or circumstances known to it, or which ought reasonably to be known to it, which have not been disclosed to Channel and which would or might have influenced Channel's decision to appoint it.

7.3 The implied warranty against latent defects, and the Subcontractor/Supplier's liability for latent defects, are not excluded and may not be excluded. Any provision of any document purporting to exclude them is of no force or effect.

7.4 The Subcontractor/Supplier shall not be relieved of any obligation, and no warranty shall be diminished, by reason of any inspection, testing, approval, certification, comment or payment by Channel, the Client or any third party.

8. PROGRAMME, SITE AND CO-ORDINATION

8.1 The Subcontractor/Supplier shall submit a programme for the Works in the form and within the period required by Channel, and shall update it as required.

8.2 The Subcontractor/Supplier shall co-ordinate and co-operate with Channel, the Client, and all other contractors and subcontractors on the Site, and shall not obstruct, delay or interfere with their work. Channel may direct the sequence, timing and manner of execution of the Works.

8.3 The Subcontractor/Supplier is given no exclusive possession of the Site or any part of it, and acquires

no right of occupation, no lease, and no real right of any nature.

8.4 The Subcontractor/Supplier shall comply with all Site rules, access, induction, security, permit-to-work, environmental and health and safety requirements of Channel and the Client, and shall procure compliance by its personnel and its subcontractors.

8.5 Channel may refuse admission to, or require the immediate removal from, the Site of any person employed or engaged by the Subcontractor/Supplier, without giving reasons, and without any liability whatsoever. The Subcontractor/Supplier shall replace such person at its own cost and without delay.

8.6 The Subcontractor/Supplier shall keep the Site clean, shall remove its rubble, waste and surplus material continuously, and shall on Completion remove all its plant, equipment, materials and personnel. Failing which Channel may do so and recover the cost.

9. MAIN CONTRACT - FLOW-DOWN

9.1 The Subcontractor/Supplier acknowledges that the Works form part of works undertaken by Channel under the Main Contract, and that Channel's obligations to the Client depend on the Subcontractor/Supplier's performance.

9.2 The Main Contract provisions that flow down to the Subcontractor/Supplier are those identified in the Main Contract Particulars in, or scheduled to, the Order - namely the contract number, title, date/version, the identified flowed-down clauses or extracts, and the Client standards applicable to the Works - and only to the extent that they relate to the Works. Channel shall make those provisions (other than Channel's prices and rates) available to the Subcontractor/Supplier before acceptance. A later amendment to the Main Contract binds the Subcontractor/Supplier once notified, but no amendment that materially changes the scope, time, cost or risk of the Works alters the Order except through a Variation Order signed by an Authorised Signatory.

9.3 The Subcontractor/Supplier shall perform, observe and comply with all obligations, warranties, undertakings, standards, procedures, quality requirements, health and safety requirements, reporting requirements and programme requirements so identified and imposed on Channel under the Main Contract, to the extent that they relate to the Works, as though the Subcontractor/Supplier were named in the place of Channel.

9.4 The Subcontractor/Supplier shall indemnify Channel against all liability, loss, penalty, delay damage, deduction, claim, cost or expense which Channel incurs or suffers under or in connection with the Main Contract by reason of any act, omission, default, delay or breach of the Subcontractor/Supplier.

9.5 Where the Main Contract requires a notice, early warning, claim, submission or other communication

to be given within a period, the Subcontractor/Supplier shall give the corresponding notice to Channel within one-half of that period, and in any event within a period sufficient to enable Channel to comply timeously. Failure to do so bars the Subcontractor/Supplier's corresponding claim against Channel, and the Subcontractor/Supplier shall indemnify Channel against the loss of any corresponding entitlement against the Client.

9.6 Where the Main Contract is an NEC3 or NEC4 form, the Subcontractor/Supplier shall give an early warning to Channel immediately upon becoming aware of any matter which could increase the price, delay completion, or impair performance, and shall attend risk reduction meetings as required.

9.7 Ordinary payment for the Works under clause 18 is not conditional on Channel being paid by the Client. However, in respect of any matter arising from an act, omission or risk of the Client (and not from Channel), the Subcontractor/Supplier shall have no greater entitlement against Channel than Channel has against the Client, and a claim of that nature is payable only if, when and to the extent that Channel recovers the corresponding relief or amount from the Client, after deduction of the reasonable cost of pursuit. Channel retains control of any such claim but shall pursue it in good faith and with reasonable diligence.

10. INSTRUCTIONS, VARIATIONS AND ADDITIONAL WORK

10.1 Channel may at any time instruct a variation to the Works, including an addition, omission, substitution, alteration, change in quality, change in sequence, or change in timing. Channel may omit any part of the Works and have it performed by others, and the Subcontractor/Supplier shall have no claim for loss of profit or opportunity in respect of the omitted work.

10.2 A variation is valid and binding only if issued as a Variation Order in the prescribed form signed by an Authorised Signatory of Channel. An ordinary email, site instruction, drawing revision, meeting minute, message, verbal request or conduct does not constitute a Variation Order. A Variation Order may be delivered electronically, including as an attachment to an email, provided it is in the prescribed form and is signed (including by an agreed electronic-signature method under clause 56) by an Authorised Signatory. It is the form and signature that make a Variation Order valid, not the medium of delivery.

10.3 The Subcontractor/Supplier shall promptly execute every Variation Order and shall not be entitled to refuse, delay, suspend, or make execution conditional upon agreement of price, time or any other matter.

10.4 If the Subcontractor/Supplier considers that any instruction, drawing, direction or requirement constitutes a variation, it shall notify Channel in writing within 7 (seven) days of receiving it and before commencing the work in question. Failure to give such notice within that period, and before commencing, shall constitute a waiver of any claim

in respect of that work, and the Subcontractor/Supplier shall be deemed to have performed it within the scope of the Order at no additional cost.

10.5 No payment shall be made, and no claim of any nature shall lie, in respect of any work, goods, material, service, standing time, acceleration or cost which is not covered by the order or by a variation order. The Subcontractor/Supplier performs any such work entirely at its own risk and cost.

10.6 The Subcontractor/Supplier irrevocably waives any claim it may have against Channel in unjustified enrichment, quantum meruit, negotiorum gestio, or on any other basis outside the Contract, in respect of any work performed without a Variation Order.

10.7 The cumulative gross value of all increases to the Original Order Value under Variation Orders shall not exceed 5% (five percent) of the Original Order Value, unless Channel in its sole and absolute discretion elects otherwise in a Variation Order signed by an Authorised Signatory. Omissions or reductions do not create headroom for further increases unless a signed Variation Order expressly states otherwise. Channel may in its discretion issue a separate Order for any further work, on these Conditions.

10.8 Variations shall be valued:

10.8.1 at the rates and prices in the Order, where applicable;

10.8.2 failing which, at rates and prices derived from those in the Order;

10.8.3 failing which, at rates and prices agreed in writing between the Parties before the work is performed;

10.8.4 failing which, at such fair and reasonable rates and prices as Channel shall determine, which determination shall be binding pending resolution of any dispute under Part G.

10.9 A dispute as to the valuation of a variation does not entitle the Subcontractor/Supplier to suspend, delay or stop the Works, or to decline to execute any Variation Order. Clause 39 applies.

10.10 The Subcontractor/Supplier shall submit all supporting records, measurements, timesheets and vouchers for a variation within 14 (fourteen) days of completion of the varied work, failing which the claim is barred.

11. TITLE, RISK, MATERIALS AND PLANT

11.1 Risk in the Works remains with the Subcontractor/Supplier until Completion or, in the case of a supply of goods only, until delivery at the delivery point stated in the Order and acceptance by Channel under clause 12.

11.2 Ownership of all goods, materials, plant and equipment forming part of the Works passes to Channel, free of all encumbrances, upon the earlier of:

11.2.1 payment by Channel of any part of the price attributable to them (whether by way of deposit, advance, progress payment or otherwise); or 11.2.2 delivery to the Site or incorporation into the Works.

11.3 Passing of ownership under clause 11.2 does not pass risk, which remains with the Subcontractor/Supplier in accordance with clause 11.1.

11.4 The Subcontractor/Supplier warrants that it has, or will have when title is to pass, good and unencumbered title to all goods, materials, plant and equipment forming part of the Works, and full authority to transfer that title to Channel free of all encumbrances. Any reservation of ownership or retention of title asserted by the Subcontractor/Supplier itself is excluded and of no force or effect against Channel, to the extent contractually effective.

11.4A Third-party rights. Nothing in this clause purports to transfer better title than the Subcontractor/Supplier holds, or to extinguish the rights of any third party who is not a party to the Contract. Before delivery or before bringing any hired, leased, financed or retention-of-title goods, plant or equipment onto the Site, the Subcontractor/Supplier shall disclose in writing any third-party ownership, hire, lease, finance or reservation-of-title interest, and shall, where such goods or materials are to be incorporated in the Works or paid for by Channel, procure from the third-party owner a written waiver, consent or direct agreement in a form acceptable to Channel. The Subcontractor/Supplier indemnifies Channel and the Client against all claims, costs, loss and disruption arising from any undisclosed or unextinguished third-party right.

11.5 Where Channel has paid for goods or materials not yet delivered, the Subcontractor/Supplier shall clearly and separately mark, identify and store them as Channel's property, shall insure them, shall not encumber them, and shall permit Channel to inspect and remove them at any time.

11.6 Materials, plant, tools, equipment, drawings or information supplied or lent by Channel to the Subcontractor/Supplier remain the property of Channel, shall be used only for the Works, shall be kept in good condition, shall be insured by the Subcontractor/Supplier, and shall be returned on demand. The Subcontractor/Supplier bears the risk in them while in its possession or control.

12. INSPECTION, TESTING, REJECTION

12.1 Channel, the Client and their representatives may inspect, examine, test and audit the Works and the Subcontractor/Supplier's premises, processes and records at any time, on reasonable notice, including at the premises of the Subcontractor/Supplier's own suppliers. The Subcontractor/Supplier shall provide free access and reasonable facilities.

12.2 Inspection, testing, approval or the absence of any of them does not relieve the Subcontractor/Supplier of any obligation or liability, and does not constitute acceptance.

12.3 Acceptance of goods occurs only upon written acceptance by an Authorised Signatory of Channel, and not on delivery, off-loading, signature of a delivery note or goods received note, storage, or payment.

12.4 If any part of the Works is not in accordance with the Contract, Channel may (without prejudice to any other right):

12.4.1 reject it, in whole or in part, and require its removal and replacement at the Subcontractor/Supplier's cost and risk;

12.4.2 require it to be repaired, re-performed or made good at the Subcontractor/Supplier's cost;

12.4.3 accept it subject to a reduction in price determined by Channel;

12.4.4 have it repaired, replaced or re-performed by others and recover the cost from the Subcontractor/Supplier; or

12.4.5 cancel the Order in whole or in part under clause 42.

12.5 Rejected goods are held at the Subcontractor/Supplier's risk and shall be removed within 7 (seven) days of notice, failing which Channel may dispose of them and recover the cost, without liability.

12.6 Channel is not obliged to give notice of any Defect within any period, and any provision purporting to require Channel to give notice of a Defect within a specified period, failing which it loses its rights, is expressly excluded.

13. DELIVERY, COMPLETION AND DOCUMENTATION

13.1 Delivery shall be made, and the Works completed, at the place and by the date or dates stated in the Order. Time is of the essence.

13.2 Delivery shall be made to the delivery point stated in the Order unless the Order states otherwise, and includes off-loading unless the Order states otherwise.

13.3 Partial delivery, early delivery, and delivery in instalments require Channel's prior written consent. Channel may reject any over-delivery, under-delivery or early delivery.

13.4 Each delivery shall be accompanied by a delivery note quoting the Order number and sufficient detail to identify the goods, and goods shall be marked accordingly. Invoices shall be submitted in accordance with clause 18.

13.5 Completion is not achieved, and payment (including release of retention) shall not fall due, until all Documentation required by the Order, the Specification, the Main Contract or Applicable Law has been delivered to Channel in the required form. Documentation is an integral part of the Works.

13.6 The Subcontractor/Supplier shall not be entitled to any payment in respect of storage, standing time,

demurrage, waiting time or handling arising from its own delay, or from Channel's exercise of any right under the Contract.

14. DEFECTS LIABILITY

14.1 The Defects Liability Period is 12 (twelve) months, or such other period as is stated in the Order (which Channel may set having regard to the nature of the Works) or such longer period as is required under the Main Contract, beginning on Completion of the relevant section, including, where applicable, the issue by Channel of its certificate of completion. Where the Order identifies a Client acceptance or taking-over event, the period begins on the later of Completion and that event, provided that if that event does not occur within 30 (thirty) days after Completion for reasons not attributable to the Subcontractor/Supplier, the period begins on expiry of that 30 (thirty) day period. Sectional completion is treated separately, and a fresh Defects Liability Period applies to repaired or replaced work under clause 14.3.

14.2 The Subcontractor/Supplier shall, at its own cost and within the period required by Channel, make good every Defect which appears or is notified during the Defects Liability Period, including all associated costs of access, removal, re-installation, testing, re-commissioning, making good of other work, and transport.

14.3 In respect of any part of the Works repaired, replaced or re-performed, the Defects Liability Period shall run afresh for a further 12 (twelve) months from the date of making good.

14.4 If the Subcontractor/Supplier fails to make good a Defect within the period required, Channel may make it good itself or by others and recover all costs from the Subcontractor/Supplier, or deduct them under clause 21, without prejudice to any other right.

14.5 In an emergency, or where the Defect gives rise to a risk to health, safety, property, the environment, or to Channel's obligations under the Main Contract, Channel may make good the Defect immediately without notice and recover the cost.

14.6 The Defects Liability Period does not limit the Subcontractor/Supplier's liability, and Channel's rights in respect of Defects appearing after its expiry, including in respect of latent defects, are unaffected and subsist for the full period permitted by law.

14.7 Without limiting clause 14A, the Subcontractor/Supplier shall assign or cede to Channel, on demand, the benefit of all manufacturers' and suppliers' warranties and guarantees in respect of the Works. The availability of such a warranty does not limit the Subcontractor/Supplier's own liability, and any provision purporting to limit the Subcontractor/Supplier's liability to procuring the benefit of a third party's guarantee is excluded.

14A. WARRANTIES AND GUARANTEES

14A.1 Principal warranty and guarantee by the Subcontractor/Supplier itself. The Subcontractor/Supplier warrants and guarantees the

Works - every part of them, including all goods, materials, plant, equipment and components, all workmanship and installation, all services, and all design to the extent performed or provided by or for the Subcontractor/Supplier - in its own name and as a principal obligation. This warranty and guarantee is given by the Subcontractor/Supplier itself; it is in addition to, independent of, and neither conditional upon nor limited by, any warranty or guarantee of any manufacturer, original equipment manufacturer ("OEM"), importer, distributor or upstream supplier; and it binds the Subcontractor/Supplier whether or not it manufactured the goods or performed the relevant part of the Works itself. As between the Parties, the Subcontractor/Supplier stands towards Channel as if it were itself the manufacturer of every part of the Works.

14A.2 Warranty Period. The Warranty Period for the Works, or for any section or part of them, is the longest of:

14A.2.1 12 (twelve) months from Completion or, in the case of a supply of goods only, from delivery and acceptance under clause 12 or, where the Order requires commissioning, from successful commissioning;

14A.2.2 any longer period stated in the Order;

14A.2.3 any longer warranty or guarantee period which Channel is required to give the Client under the Main Contract in respect of the Works, or of the works into which they are incorporated;

14A.2.4 any longer period given by any manufacturer, OEM or upstream supplier in respect of any part of the Works; and

14A.2.5 any longer warranty or guarantee period stated or offered in the Subcontractor/Supplier's quotation or in any other document emanating from it (clause 4.1.8).

14A.3 Back-to-back with the Main Contract. The Subcontractor/Supplier acknowledges that Channel is ordinarily required to warrant and guarantee its works to the Client - typically for not less than 12 (twelve) months, and at times for longer or differently structured periods which vary from project to project - and that the protection of this clause 14A must follow those obligations of Channel. A shorter, staged or otherwise different warranty structure (for example, separate periods for workmanship and for materials) applies to an Order only if and to the extent expressly recorded on the face of the Order or in a Variation Order; failing such a record, the full Warranty Period applies to the whole of the Works, including workmanship items such as painting, coatings, linings, surface preparation and installation.

14A.4 Content of the warranty. During the Warranty Period the Subcontractor/Supplier warrants and guarantees that the Works shall remain free of Defects, shall remain in accordance with the Order, the Specification, Applicable Law and Good Industry Practice, and shall remain fit for all purposes referred to in clause 7.2.1, and that all goods, materials, plant and equipment shall continue to perform in accordance with the Specification under the conditions of use made known to, or

reasonably foreseeable by, the Subcontractor/Supplier.

14A.5 Warranty remedies. If any Defect appears, or any warranted quality or performance fails, during the Warranty Period, the Subcontractor/Supplier shall, at its own cost and at Channel's election, repair, replace, re-perform or make good the affected Works within the period required by Channel, including all associated costs of investigation, dismantling, removal, access, scaffolding, transport, reinstallation, retesting, re-commissioning and the making good of other work affected. Clauses 14.3, 14.4 and 14.5 apply to the Warranty Period as they apply to the Defects Liability Period, and a fresh Warranty Period of 12 (twelve) months applies to every part of the Works repaired, replaced or re-performed, reckoned from the date of making good.

14A.6 Manufacturers', OEM and upstream supplier warranties - in addition, never in substitution. In addition to, and not in substitution for, its own warranty and guarantee under this clause 14A, the Subcontractor/Supplier shall:

14A.6.1 obtain from every manufacturer, OEM and upstream supplier of goods, materials, plant or equipment forming part of the Works every warranty and guarantee ordinarily given for goods of that kind, on terms no less favourable than those ordinarily given, and freely transferable to Channel and the Client;

14A.6.2 deliver the warranty and guarantee documents and certificates to Channel as part of the Documentation, delivery being a condition of Completion and of payment under clauses 13.5 and 18.2; and

14A.6.3 assign or cede the benefit of every such warranty and guarantee to Channel on demand under clause 14.7 and, where the Main Contract so requires, procure that it is issued or ceded in favour of the Client.

14A.7 No dilution. The existence, cession, transfer, expiry, breach, repudiation or failure (including on insolvency of the issuer) of any manufacturer's, OEM's or upstream supplier's warranty or guarantee in no way reduces, limits, suspends or discharges the Subcontractor/Supplier's own warranty and guarantee under this clause 14A, and the Subcontractor/Supplier shall not refer Channel to any third party in answer to a warranty or guarantee claim. Any provision of any document purporting to: limit the Subcontractor/Supplier's warranty to procuring or passing on a third party's warranty; make any warranty or guarantee conditional upon payment of any amount, upon registration, or upon servicing or maintenance by approved agents (save where expressly accepted on the face of the Order); exclude labour, call-outs, transport, access or consequential making good from the warranty remedy; shorten the Warranty Period; or exclude or limit liability for latent defects - is excluded and of no force or effect, and clause 5 applies to it.

14A.8 Written warranties and guarantees on demand. Where the Order, the Main Contract or Channel requires, the Subcontractor/Supplier shall furnish its warranties and guarantees in written form - including in any form which the Client requires of

Channel under the Main Contract - duly signed by it, before final payment or the release of retention, and any failure to do so entitles Channel to withhold payment under clause 18.5 pending delivery.

14A.9 Preservation. No inspection, testing, approval, acceptance, certification, payment, use or taking over of the Works, and no expiry of the Defects Liability Period, reduces or discharges any obligation under this clause 14A. The Warranty Period runs concurrently with the Defects Liability Period under clause 14, and where they differ the longer governs. Nothing in this clause limits clause 7.3 or clause 14.6 (latent defects), and this clause 14A survives Completion, expiry, cancellation and termination of the Contract.

PART C - TIME AND MONEY

15. TIME, DELAY AND EXTENSION OF TIME

15.1 Time is of the essence in respect of every date and period stated in the Order.

15.2 The Subcontractor/Supplier shall immediately notify Channel in writing on becoming aware of any circumstance which may delay the Works, stating the cause, the anticipated delay and the mitigation proposed. Notification does not of itself give any entitlement.

15.3 The Subcontractor/Supplier shall be entitled to an extension of time only if, and only to the extent that:

15.3.1 completion is actually delayed by an act of prevention by Channel, or by an event for which Channel bears the risk under the Contract, or by an event of force majeure under clause 27; and

15.3.2 the Subcontractor/Supplier has given written notice of the claim, with full particulars and substantiation, within 7 (seven) days of becoming aware, or of when it ought reasonably to have become aware, of the event; and

15.3.3 the Subcontractor/Supplier has taken all reasonable steps to mitigate and to avoid the delay; and 15.3.4 the delay is not concurrent with any delay for which the Subcontractor/Supplier is responsible.

15.4 Failure to give notice in accordance with clause 15.3.2 within the period stated shall constitute a complete bar to the claim, and the Subcontractor/Supplier shall have no entitlement to an extension of time or to any associated cost.

15.5 An extension of time is the Subcontractor/Supplier's sole remedy for delay. The Subcontractor/Supplier shall have no claim for acceleration, prolongation, disruption, loss of productivity, standing time, escalation, overheads or loss of profit, save where expressly agreed in a Variation Order.

15.6 Channel may require the Subcontractor/Supplier to accelerate the Works to

recover delay for which the Subcontractor/Supplier is responsible, at the Subcontractor/Supplier's cost.

15.7 An extension of time granted by Channel moves the date for Completion accordingly, and no delay penalty accrues in respect of the period of the extension. The extension does not waive any penalty that had already accrued for prior delay for which the Subcontractor/Supplier is responsible, nor any other right of Channel.

16. PENALTY FOR DELAY

16.1 If the Subcontractor/Supplier fails to complete the Works, or any milestone or deliverable identified in the Order, by the date required (as extended under clause 15, if applicable), the Subcontractor/Supplier shall pay to Channel a penalty of 1% (one percent) of the value of the delayed milestone or deliverable or, where the delay affects the Works as a whole, of the Original Order Value, for each week or part of a week during which the failure continues, up to a maximum of 10% (ten percent) of the Original Order Value or, at Channel's election, of the value of the delayed milestone or deliverable.

16.2 The penalty is payable on demand, and Channel may deduct or set off the penalty against any amount due or becoming due to the Subcontractor/Supplier under this or any other contract, in accordance with clause 21.

16.3 The Parties record that the penalty stipulated in clause 16.1 is a genuine and reasonable pre-estimate of the loss and prejudice which Channel is likely to suffer as a result of delay, having regard to Channel's exposure to delay damages, penalties and loss under the Main Contract.

16.4 Channel may, at its sole election, recover either the penalty under this clause or damages at law in respect of the same delay, but not both. Channel is not required to make that election before instituting proceedings, and may make it at any time before judgment or award. This clause 16.4 is an express provision for the purposes of section 2 of the Conventional Penalties Act 15 of 1962.

16.5 Channel is not required to prove any loss in order to recover the penalty.

16.6 Any amount imposed on, deducted from, or withheld from Channel by the Client under the Main Contract as a result of the Subcontractor/Supplier's delay constitutes loss suffered by Channel and may be recovered as damages under the election in clause 16.4. Where the same act or omission gives rise both to the penalty and to a claim for damages, Channel shall elect and shall not recover both. Nothing prevents Channel recovering a penalty and damages arising from separate acts or omissions or distinct loss, provided that Channel obtains no double recovery in respect of the same loss.

16.7 Payment or deduction of the penalty does not relieve the Subcontractor/Supplier of its obligation to complete the Works, and does not limit Channel's right to cancel under clause 42.

16.8 The Subcontractor/Supplier shall not be entitled to impose any penalty, liquidated damages, interest

or charge on Channel, and any provision of any document purporting to do so is excluded.

17. PRICE

17.1 The price stated in the Order is fixed and firm, is exclusive of VAT, and is inclusive of all costs of and incidental to the Works, including labour, materials, plant, tools, consumables, transport, packaging, off-loading, insurance, duties, levies, permits, licences, testing, commissioning, Documentation, overheads, profit, and all taxes other than VAT.

17.2 The price is not subject to any escalation, adjustment, surcharge or increase whatsoever, including on account of any change in exchange rates, commodity prices, fuel prices, freight or transport costs, customs, excise or import duties, port charges, demurrage, labour costs, statutory wage determinations, raw material costs, interest rates, or any other cost, whether or not beyond the Subcontractor/Supplier's control, save only by written Variation Order.

17.3 Any provision of any document purporting to entitle the Subcontractor/Supplier to adjust the price unilaterally, or to certify an adjustment by means of a certificate of its auditors or of any other person, is expressly excluded and shall be of no force or effect.

17.4 The Subcontractor/Supplier shall not be entitled to any minimum order value, minimum quantity, take-or-pay, cancellation charge, restocking charge, storage charge or handling charge, save as expressly stated in the Order.

18. INVOICING AND PAYMENT

18.1 The Subcontractor/Supplier shall submit a valid tax invoice complying with section 20 of the Value-Added Tax Act 89 of 1991, quoting the Order number and the Subcontractor/Supplier's VAT registration number, to the invoicing address stated on the Order. Where the Subcontractor/Supplier is not a registered VAT vendor it shall say so, shall not charge VAT, and shall notify Channel immediately upon becoming liable to register.

18.2 An invoice is not valid, and payment does not fall due, unless it is accompanied by:

18.2.1 a signed delivery note or proof of delivery, or a certificate of the value of work executed approved by an Authorised Signatory;

18.2.2 all Documentation required under clause 13.5 in respect of the invoiced Works;

18.2.3 a current COIDA Letter of Good Standing under clause 29, where applicable (clause 1.2A applies);

18.2.4 where required, proof of payment of the Subcontractor/Supplier's own employees and subcontractors for the preceding period; and

18.2.5 such other supporting documentation as the Order or the Main Contract requires.

18.3 Subject to clause 18.2, Channel shall pay a valid invoice by the due date for payment as detailed in the Purchase Order, read with the statement covering it where applicable. Where neither the

Order nor an agreement in writing states the payment terms, payment falls due 30 (thirty) days after the date of the statement. The statement is the Subcontractor/Supplier's monthly statement of the valid invoices and complete supporting documentation received by Channel during a calendar month, dated no earlier than the last day of that month. Where a valid invoice and all supporting documentation have been received but Channel does not receive a statement, the statement is deemed to be dated on the last day of the month following the month of receipt, so that payment always has a determinable due date.

18.3A Staged and split payment terms. Channel may structure the payment terms on the face of the Order as stages or percentages of the price - for example a deposit, a percentage on delivery or receipt, a percentage payable once the Works are confirmed compliant or successfully commissioned, and a balance on Completion. Where the Order does so: (a) each stage falls due only when the event stated for that stage has occurred and clause 18.2 has been satisfied in respect of the amount claimed; (b) a stage tied to confirmation of compliance or to commissioning falls due only once Channel has confirmed in writing that the relevant Works are compliant or commissioned, which confirmation shall not be unreasonably withheld or delayed; (c) any deposit or advance payment remains subject to clause 20.2; (d) the statement and due-date mechanics of clause 18.3 apply to each stage; and (e) retention under clause 19, and Channel's rights of withholding and set-off under clauses 18.5 and 21, apply to every stage.

18.4 Payment does not constitute acceptance of the Works, an admission that the Works comply with the Contract, a waiver of any right, or an acknowledgement of any indebtedness, and Channel may recover any overpayment.

18.5 Channel may withhold payment of any amount which is disputed in good faith, or which relates to Works which are defective, incomplete or unsupported by the documentation required under clause 18.2, and such withholding shall not constitute a breach by Channel, and shall not entitle the Subcontractor/Supplier to suspend, stop or delay the Works, to charge interest, or to cancel.

18.6 The Subcontractor/Supplier shall submit its final invoice within 30 (thirty) days of Completion. No claim of any nature submitted more than 60 (sixty) days after Completion shall be entertained, and all such claims are barred.

18.7 Channel shall be entitled to make payment directly to the Subcontractor/Supplier's employees, subcontractors or suppliers where Channel considers it necessary to protect its interests or to avoid a lien, disruption or industrial action, and to deduct any such payment from amounts due to the Subcontractor/Supplier.

19. RETENTION

19.1 Retention at Channel's election. Channel may, in its sole discretion, elect to hold retention as security for the proper and workmanlike execution of the Works and the making good of Defects. Channel makes the election on the face of the Order, or by

written notice to the Subcontractor/Supplier on or before the first payment under the Order. Where Channel so elects, and unless the Order states other percentages, Channel may retain 10% (ten percent) of the value of each payment, up to a maximum of 5% (five percent) of the Original Order Value.

19.2 One half of the retention shall be released on Completion, and the balance on the latest of: the expiry of the Defects Liability Period; the expiry of any longer Warranty Period applicable under clause 14A.2.2 or 14A.2.3; and the making good of all Defects.

19.3 Retention monies are not held in trust, do not bear interest, and may be applied by Channel in satisfaction of any amount due by the Subcontractor/Supplier, including the cost of making good Defects and of warranty remediation under clauses 14 and 14A.

20. SECURITY AND GUARANTEES

20.1 Except for security securing an agreed advance payment or deposit, the Subcontractor/Supplier is required to furnish security only where the face of the Order specifies the security type (performance, advance-payment or retention guarantee), the amount or percentage, the approved issuer criteria, the approved form, the delivery date and the expiry or release event. No payment is conditional on security which is not specified in the Order. Any security must be in a form and from a financial institution acceptable to Channel.

20.2 Where an advance payment or deposit is to be paid, the Subcontractor/Supplier shall furnish an on-demand advance payment guarantee for the full amount before the advance is paid, unless Channel, in its sole discretion, dispenses with the requirement in writing for that Order. This security is otherwise mandatory whether or not it is separately specified in the Order.

20.3 Channel may call up any guarantee where it considers, on reasonable grounds, that the Subcontractor/Supplier is in breach, provided that any demand shall be made strictly in accordance with the terms and conditions of the relevant instrument. The autonomy of an on-demand guarantee and the recognised fraud exception are preserved; the Subcontractor/Supplier shall have no right to interdict or restrain a compliant call save on the grounds of fraud.

21. SET-OFF, DEDUCTION AND CONTRA-CHARGES

21.1 Channel may deduct, set off or recover from any amount due or becoming due to the Subcontractor/Supplier under this Order, or under any other order or contract between Channel and the Subcontractor/Supplier, any amount owing by the Subcontractor/Supplier to Channel on any account whatsoever, including penalties, damages, costs of making good, costs of completion by others, back-charges, on-charges, overpayments, and amounts for which the Subcontractor/Supplier is liable to indemnify Channel.

21.1A Where a member of the Channel Group has ceded to Channel a claim it has against the Subcontractor/Supplier, Channel becomes the creditor of that claim and may set it off against any amount owing by Channel to the Subcontractor/Supplier under this or any other order or contract between Channel and the Subcontractor/Supplier. The Subcontractor/Supplier irrevocably consents to Channel exercising set-off in respect of any such ceded claim across different orders and contracts, and waives any objection to such set-off based on the claim's origin within the Channel Group. This clause does not purport to effect any cession by, or to impose any obligation on, a member of the Channel Group that is not a party to this Contract; any such cession is a separate arrangement internal to the Channel Group.

21.2 Channel may on-charge to the Subcontractor/Supplier the cost of services, facilities, plant, materials, accommodation, water, electricity, cranes, scaffolding, security, waste removal and consumables provided by Channel at the Subcontractor/Supplier's request or for its benefit.

21.3 The Subcontractor/Supplier shall not be entitled to withhold, defer, set off or deduct any amount payable to Channel, and shall pay all amounts due to Channel in full, free of deduction, set-off or counterclaim of any nature.

21.4 A certificate signed by any director or the financial manager of Channel as to any amount owing by the Subcontractor/Supplier shall be prima facie proof of that amount for the purposes of obtaining judgment or an award, and shall not be conclusive proof, the Subcontractor/Supplier's right to dispute the amount being reserved.

22. INTEREST

22.1 Interest on any amount overdue by the Subcontractor/Supplier to Channel shall accrue at the publicly quoted prime overdraft rate of Channel's bankers plus 2% (two percent) per annum, calculated daily and compounded monthly in arrear, from due date to date of payment, both days inclusive.

22.2 The Subcontractor/Supplier shall not be entitled to charge Channel interest, finance charges, administration charges or collection charges of any nature, and any provision of any document purporting to entitle it to do so is excluded.

22.3 Nothing in this clause derogates from the *in duplum* rule.

22.4 If and to the extent that the National Credit Act 34 of 2005 applies to any amount owing by the Subcontractor/Supplier to Channel then the rate of interest under clause 22.1 shall be reduced, in respect of that amount only, to the maximum rate prescribed for incidental credit agreements under the National Credit Regulations. The Subcontractor/Supplier's attention is drawn to the fact that the rate and basis of interest are disclosed in these Conditions before the Works are supplied.

23. NO LIEN AND WAIVER OF RIGHT OF RETENTION

23.1 The Subcontractor/Supplier hereby irrevocably waives, abandons and renounces any lien, right of retention, builder's lien, enrichment lien, salvage lien, improvement lien, or right of possession of any nature which it may have or acquire, whether at common law or otherwise, over the Works, any goods or materials, the Site, any premises of Channel or the Client, or any other property of Channel or the Client, in respect of any amount claimed to be owing to it.

23.2 The Subcontractor/Supplier shall procure a corresponding waiver in writing from each of its own subcontractors and suppliers before they attend the Site or supply any goods, and shall furnish copies to Channel on demand.

23.3 The Subcontractor/Supplier shall indemnify Channel against all loss, damage, cost and expense arising from the assertion of any lien or right of retention by the Subcontractor/Supplier or by any of its subcontractors or suppliers, including the cost of any security furnished to procure its release and legal costs on the attorney and own client scale.

23.4 The Subcontractor/Supplier shall not remove, refuse to release, or withhold delivery of any goods, materials, Documentation, plant or equipment by reason of any dispute or alleged non-payment, and shall vacate the Site immediately on demand.

PART D - RISK, LIABILITY AND INSURANCE

24. INDEMNITY

24.1 The Subcontractor/Supplier indemnifies Channel, its directors, employees, agents and the Client, and holds them harmless, against all claims, demands, actions, proceedings, judgments, awards, penalties, fines, losses, damages (of whatever nature, including direct, indirect, consequential, special and punitive), liabilities, costs and expenses (including legal costs on the attorney and own client scale) arising directly or indirectly out of or in connection with:

24.1.1 any breach of the Contract by the Subcontractor/Supplier;

24.1.2 any act, omission, negligence, gross negligence, wilful misconduct, fraud or default of the Subcontractor/Supplier, its personnel, agents, subcontractors or suppliers;

24.1.3 any Defect in the Works;

24.1.4 any death of or injury to any person, or loss of or damage to any property, arising out of or in the course of the Works;

24.1.5 any claim by any employee, subcontractor or supplier of the Subcontractor/Supplier, including any claim of employment, deemed employment, unfair dismissal or unfair labour practice against Channel;

24.1.6 any breach of Applicable Law by the Subcontractor/Supplier, including any health and safety, environmental, labour, tax, competition, anti-corruption, immigration or data protection law;

24.1.7 any infringement or alleged infringement of the intellectual property rights of any third party;

24.1.8 any claim brought against Channel under the Consumer Protection Act 68 of 2008, including under section 61 of that Act, in respect of unsafe, defective, hazardous or deficient goods or services supplied by the Subcontractor/Supplier;

24.1.9 any lien or right of retention asserted contrary to clause 23; and

24.1.10 any liability, deduction or penalty suffered by Channel under the Main Contract by reason of the Subcontractor/Supplier.

24.2 These indemnities apply notwithstanding any contributory negligence on the part of Channel, save to the extent that the loss is caused by the wilful misconduct of Channel, and are not limited by any insurance maintained or required to be maintained by the Subcontractor/Supplier.

24.3 The indemnities in this clause survive completion, expiry or cancellation of the Contract.

25. LIABILITY OF CHANNEL

25.1 Channel's total aggregate liability to the Subcontractor/Supplier arising out of or in connection with the Contract, whether in contract, delict, statute or otherwise, shall not exceed 100% of the Original Order Value, exclusive of VAT - this being a fixed and stable cap that is not reduced by any amount withheld, set off, disputed or unpaid. This cap does not apply to the Subcontractor/Supplier's liability, which is dealt with in clause 25.4, nor to any liability of Channel for wilful misconduct or for death or personal injury to the extent such limitation is not permitted by law.

25.2 Channel shall not be liable to the Subcontractor/Supplier for any indirect, special or consequential loss, or for any loss of profit, loss of revenue, loss of contract, loss of opportunity, loss of production, loss of use, loss of goodwill, or wasted expenditure, in any circumstances whatsoever, whether or not foreseeable and whether or not Channel was advised of the possibility of such loss.

25.3 Channel shall not be liable for any loss or damage caused by the negligence of Channel, its directors, employees or agents, save that nothing in these Conditions excludes or limits liability for wilful misconduct, or for death or personal injury to the extent that such exclusion is not permitted by law.

25.4 The Subcontractor/Supplier's liability to Channel is not limited or capped in any respect, and any provision of any document purporting to limit, cap or exclude the Subcontractor/Supplier's liability, or to exclude its liability for consequential loss, for latent defects, or for its own negligence, is expressly excluded and of no force or effect.

25.5 Channel gives no warranty or representation as to the quantity, continuity or value of work which may be ordered, as to the accuracy or completeness

of any information, drawing, survey or data provided, or as to the conditions at the Site. The Subcontractor/Supplier relies on its own investigations.

25.6 The Subcontractor/Supplier shall have no claim against Channel arising from the termination, suspension, variation or expiry of the Main Contract, save as expressly provided in clause 41.

26. INSURANCE

26.1 The Subcontractor/Supplier shall, at its own cost, effect and maintain with reputable insurers registered in South Africa, from the date of the Order until the expiry of the Defects Liability Period:

26.1.1 Public liability insurance for not less than R10,000,000 (ten million Rand) per event, or such other amount as the Order specifies having regard to the scope and value of the Works, the number of events being unlimited, covering death, injury and damage to property, and noting Channel and the Client as additional insured parties in respect of the Works;

26.1.2 Contract works / erection all risks insurance, where applicable, for the full reinstatement value of the Works;

26.1.3 Motor vehicle insurance, including passenger liability, for all vehicles brought onto the Site;

26.1.4 Insurance of its own plant, equipment, tools and materials, for their full value;

26.1.5 Goods in transit insurance, where applicable;

26.1.6 Employer's liability / COIDA cover as required by Applicable Law;

26.1.7 Professional indemnity insurance, where the Works include design or professional services, for not less than R5,000,000 (five million Rand) per claim, or such other amount as the Order specifies having regard to the scope and value of the Works; and

26.1.8 such further insurance as Channel or the Main Contract requires.

26.2 Each policy shall contain a cross-liability clause and a waiver of subrogation in favour of Channel and the Client, and shall be primary to any insurance held by Channel.

26.3 The Subcontractor/Supplier shall furnish certificates of insurance before commencing the Works and thereafter on demand, and shall notify Channel immediately of any cancellation, lapse or material change.

26.4 The Subcontractor/Supplier bears all deductibles, excesses and first amounts payable, save to the extent that the claim arises from the wilful misconduct of Channel.

26.5 Failure to insure does not limit the Subcontractor/Supplier's liability. If the Subcontractor/Supplier fails to insure, Channel may effect the insurance and recover the premium under clause 21, or cancel under clause 42.

27. FORCE MAJEURE

27.1 Neither Party shall be liable for a failure to perform (other than a failure to pay money) caused by an event beyond its reasonable control which it could not have foreseen, prevented or avoided by the exercise of reasonable diligence, including act of God, war, insurrection, riot, declared national state of disaster, or epidemic declared as such by a competent authority.

27.2 The following are not events of force majeure: strike, lock-out, go-slow or other industrial action affecting the Subcontractor/Supplier, its subcontractors or suppliers; inclement weather other than of an exceptional and unforeseeable severity; shortage or unavailability of labour, materials, plant or transport; failure or default of the Subcontractor/Supplier's own subcontractors or suppliers; financial difficulty, insolvency or lack of funds; fluctuation in exchange rates, prices or interest rates; load-shedding, power interruption or water interruption; theft, vandalism or criminal conduct; and community unrest or business forum disruption, unless in each case Channel determines otherwise in writing.

27.3 The affected Party shall give written notice within 5 (five) days, with particulars, and shall mitigate. Failure to give notice within that period bars any claim for relief.

27.4 Relief is limited to an extension of time. No cost, loss or expense is recoverable in respect of an event of force majeure.

27.5 If an event of force majeure continues for more than 30 (thirty) days, Channel may cancel the Order without liability save for payment for Works properly executed to the date of cancellation.

PART E - COMPLIANCE

28. HEALTH AND SAFETY

28.1 The Subcontractor/Supplier is appointed as, and accepts appointment as, a mandatary of Channel in terms of section 37(2) of the Occupational Health and Safety Act 85 of 1993, and shall enter into the written agreement in the form of Annexure A to these Conditions before commencing the Works. The Contract shall in any event constitute the written agreement contemplated by section 37(2).

28.2 The Subcontractor/Supplier shall comply, and procure compliance by its personnel and its subcontractors, with the Occupational Health and Safety Act 85 of 1993, the Construction Regulations, the Mine Health and Safety Act 29 of 1996 where applicable, all other applicable health and safety legislation, and the health and safety requirements of Channel, the Client and the Main Contract.

28.3 The Subcontractor/Supplier shall, before commencing the Works, furnish to Channel everything which Channel is required to obtain from a contractor under regulation 7 of the Construction Regulations, 2014, and in particular shall:

28.3.1 submit a health and safety plan acceptable to Channel;

28.3.2 establish and maintain a health and safety file and make it available on demand;

28.3.3 make all appointments required by law in writing, and furnish copies;

28.3.4 conduct and record risk assessments;

28.3.5 ensure that all personnel are medically fit, competent, trained and inducted, and hold the required certificates of competence; and

28.3.6 provide all necessary personal protective equipment at its own cost.

28.4 The Subcontractor/Supplier shall report every incident, injury, near-miss and dangerous occurrence to Channel immediately and in writing, and shall not make any statement or admission to any authority, insurer or third party without Channel's prior written consent, save as required by law.

28.5 Channel may suspend the Works immediately, without notice and without liability, where in its opinion a health, safety or environmental risk exists, and any resulting delay and cost shall be for the Subcontractor/Supplier's account.

28.6 A failure by the Subcontractor/Supplier to comply with this clause 28 constitutes a material breach entitling Channel to cancel immediately under clause 42.

28.7 The Subcontractor/Supplier warrants that its right to stop work in circumstances of serious and imminent danger, and the rights of its employees under the Occupational Health and Safety Act 85 of 1993, are not limited by clause 39, and clause 39 shall be read accordingly.

29. COIDA

29.1 The Subcontractor/Supplier warrants and undertakes that it is and shall remain registered as an employer with the Compensation Fund (or with a licensed compensation insurer) in terms of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 ("COIDA"), in respect of all its employees engaged in the Works, and that it has paid and shall pay all assessments due, as required by section 89(1)(a) of COIDA.

29.2 The Subcontractor/Supplier acknowledges that, in terms of section 89(1)(b) of COIDA, if it fails to register or to pay any assessment, its employees engaged in the Works are deemed to be the employees of Channel and Channel becomes liable to pay the assessments in respect of them. The Subcontractor/Supplier accordingly accepts that its default creates a direct statutory liability for Channel.

29.3 The Subcontractor/Supplier shall furnish a valid Letter of Good Standing before commencing the Works, and a renewed Letter of Good Standing before each expiry, as required of Channel by regulation 7(1)(c)(iv) of the Construction Regulations, 2014. Failing which Channel may withhold payment, deny or revoke access to the Site,

and suspend the Works, in each case without liability and without extending any date for Completion.

29.4 Channel may recover from the Subcontractor/Supplier, and may set off against any amount owing to the Subcontractor/Supplier, any assessment, compensation, penalty or interest which Channel pays or becomes liable to pay by reason of the Subcontractor/Supplier's default, as contemplated in sections 89(2) and 89(3) of COIDA and in clause 21 of these Conditions.

29.5 The Subcontractor/Supplier indemnifies Channel against all liability, assessment, compensation, penalty, interest and cost incurred by Channel under COIDA in respect of any employee of the Subcontractor/Supplier or of any of its own subcontractors. The Subcontractor/Supplier acknowledges that the Compensation Commissioner may recover from either Channel or the Subcontractor/Supplier and may recover any shortfall from the other, and that this indemnity does not remove Channel's primary exposure.

29.6 This clause 29 and the indemnity in clause 29.5 survive for not less than 3 (three) years after Completion, that being the period within which a claim may be brought under COIDA as amended.

30. CIDB REGISTRATION

30.1 Where the Works constitute construction works, the Subcontractor/Supplier warrants that it is registered with the Construction Industry Development Board in terms of the Construction Industry Development Board Act 38 of 2000, in the appropriate class of construction works and in a grading designation sufficient for the construction-works portion of the Order (see clause 30.3), and that its registration is valid and in good standing.

30.2 The requirement in clause 30.1 is a contractual requirement of Channel, imposed independently of any statutory obligation, and the Subcontractor/Supplier may not resist it on the ground that it is not itself obliged to register. The Subcontractor/Supplier further acknowledges that:

30.2.1 in terms of section 18(1) of that Act, a contractor may not undertake, carry out or complete any construction works or portion thereof for public sector contracts awarded in terms of competitive tender or quotation unless registered with the Board and holding a valid registration certificate;

30.2.2 in terms of section 18(2), doing so while unregistered is an offence carrying a fine not exceeding 10% (ten percent) of the value of the contract so carried out;

30.2.3 in terms of section 18(3), the Board may serve written notice requiring a contractor to cease public sector construction work; and

30.2.4 the Works may form part of a public sector construction works contract, and the Client may require registration of all subcontractors as a condition of the Main Contract.

30.3 The grading designation held by the Subcontractor/Supplier must be sufficient for the value of the construction-works portion of the Order (and not necessarily the whole Order Value, where

the Order also includes goods, professional services or other non-construction components), assessed against the grading values prescribed under regulation 17 of the Construction Industry Development Regulations, 2004 as amended. The Order shall, where applicable, state the class of construction works, the required grading designation, and the value of the construction-works portion. The Subcontractor/Supplier shall hold valid registration at award and throughout performance.

30.4 The Subcontractor/Supplier shall notify Channel immediately in writing if its registration lapses, is suspended, is downgraded, is subject to any investigation or notice from the Board, or is otherwise affected.

30.5 Breach of this clause is a material breach entitling Channel to cancel immediately under clause 42, and the Subcontractor/Supplier indemnifies Channel against all loss, fines, penalties, deductions and liability arising from its non-registration, lapsed registration or insufficient grading, including any liability of Channel or of the Client under the Construction Industry Development Regulations, 2004.

31. LABOUR AND INDEPENDENT CONTRACTOR STATUS

31.1 The Subcontractor/Supplier is an independent contractor. Nothing in the Contract creates a partnership, joint venture, agency, employment or temporary employment service relationship between the Parties.

31.2 The Subcontractor/Supplier is the sole employer of its personnel, and is solely responsible for their remuneration, statutory deductions, PAYE, UIF, SDL, bargaining council levies, leave pay, provident fund contributions, and all other employment obligations.

31.3 The Subcontractor/Supplier warrants compliance with the Labour Relations Act 66 of 1995, the Basic Conditions of Employment Act 75 of 1997, the Employment Equity Act 55 of 1998, the National Minimum Wage Act 9 of 2018, the Immigration Act 13 of 2002, and any applicable bargaining council collective agreement, and shall furnish proof on demand.

31.4 The Subcontractor/Supplier indemnifies Channel against any claim that any of its personnel is or was an employee of Channel, including any claim under sections 197, 198, 198A, 198B or 198D of the Labour Relations Act 66 of 1995, and against all costs of defending any such claim.

31.5 The Subcontractor/Supplier shall not engage any person who is not lawfully entitled to work in South Africa.

31.6 Neither Party shall, during the Contract and for 12 (twelve) months thereafter, solicit or employ any employee of the other who was engaged in connection with the Works, without the other's prior written consent. This clause 31.6 does not apply to a response to a bona fide public advertisement not directed at such employees.

32. B-BBEE, LOCAL CONTENT AND SUPPLIER DEVELOPMENT

32.1 The Subcontractor/Supplier shall furnish a valid B-BBEE certificate or sworn affidavit on request, and shall notify Channel immediately of any change in its B-BBEE status level or ownership.

32.2 The Subcontractor/Supplier warrants that the B-BBEE status level, ownership status and any designated-group status on the basis of which it was appointed are accurate, and undertakes to maintain that status for the duration of the Works. A material adverse change in that status which prejudices Channel's own scorecard or preferential-procurement commitments is a material breach.

32.3 The Subcontractor/Supplier warrants that it has not engaged and will not engage in fronting as contemplated in the Broad-Based Black Economic Empowerment Act 53 of 2003, and indemnifies Channel against any loss, penalty, points-deduction or disqualification arising from a breach of this warranty.

32.4 Preferential procurement and supplier development flow-down. Where the Main Contract or the Client's preferential procurement policy imposes on Channel any specific goal, commitment or condition relating to the Works - including subcontracting of a minimum percentage of the value of the works to designated groups, local content, local production and localisation thresholds, enterprise and supplier development, skills and technology transfer, or community or regional participation - the Subcontractor/Supplier shall:

32.4.1 perform and deliver the portion of that commitment attributable to the Works, and maintain any qualifying status on which the commitment depends;

32.4.2 where the Subcontractor/Supplier has itself been engaged to satisfy such a commitment (for example as a designated-group subcontractor or a supplier-development beneficiary), not further subcontract or dispose of that scope in a manner that defeats the commitment, and remain compliant with it;

32.4.3 furnish, in the form and within the time Channel requires, all evidence, certificates, reports and records which Channel needs to demonstrate compliance to the Client or to any verification agency, and to enable Channel's monitoring and reporting under the Client's applicable enterprise and supplier-development and contract-management requirements; and

32.4.4 indemnify Channel against all loss, penalty, points-deduction, deduction, disqualification, damages or liability which Channel suffers under or in connection with the Main Contract as a result of the Subcontractor/Supplier's failure to comply with this clause 32.

32.5 A failure by the Subcontractor/Supplier to meet a commitment under clause 32.4 which exposes Channel to a penalty, deduction or loss of preference under the Main Contract is a material breach

entitling Channel to cancel under clause 42, without prejudice to the indemnity in clause 32.4.4.

33. ANTI-BRIBERY AND ETHICS

33.1 The Subcontractor/Supplier warrants that neither it nor any of its personnel, agents or associates has offered, given, solicited or accepted any gift, inducement, commission, gratification or advantage in connection with the award or performance of the Order.

33.2 The Subcontractor/Supplier shall comply with the Prevention and Combating of Corrupt Activities Act 12 of 2004, the Financial Intelligence Centre Act 38 of 2001, the Competition Act 89 of 1998, and all applicable anti-bribery and anti-money-laundering laws, and shall not engage in collusive tendering, bid rigging or price fixing.

33.3 The Subcontractor/Supplier shall disclose to Channel in writing any conflict of interest, and any relationship between its shareholders, directors or personnel and any director, employee or agent of Channel or of the Client.

33.4 The Subcontractor/Supplier shall, on demand, complete and submit any declaration of interest required by Channel or the Client, including the National Treasury SBD4 declaration of interest form, and shall comply with the CIDB Code of Conduct for all Parties engaged in Construction Procurement, and with any code of conduct, supplier code, ethics policy or anti-fraud and corruption policy of the Client applicable to the Works.

33.5 The Subcontractor/Supplier acknowledges the duty imposed by section 34 of the Prevention and Combating of Corrupt Activities Act 12 of 2004 on a person holding a position of authority who knows or ought reasonably to have known or suspected that another person has committed an offence under Part 1, 2, 3 or 4 of Chapter 2 of that Act, or theft, fraud, extortion, forgery or uttering a forged document, involving an amount of R100,000 or more, to report that knowledge or suspicion to a police official in the Directorate for Priority Crime Investigation. The Subcontractor/Supplier shall simultaneously notify Channel in writing of any such report which relates in any way to the Works, the Order, the Main Contract, the Client, or any personnel of Channel.

33.6 Breach of this clause 33 is a material breach entitling Channel to cancel immediately and without notice, to recover all loss, and to report the matter to the relevant authorities. Channel shall be entitled to recover from the Subcontractor/Supplier the amount of any gratification given or received.

34. ENVIRONMENT

34.1 The Subcontractor/Supplier shall comply with the National Environmental Management Act 107 of 1998 and all other applicable environmental legislation, all environmental authorisations, and the environmental management plan applicable to the Site, and shall indemnify Channel against all loss, fines, penalties, directives and remediation costs arising from its breach.

34A. CONSUMER PROTECTION (CPA)

34A.1 To the extent that the Consumer Protection Act 68 of 2008 ("CPA") applies to any supply of goods or services by the Subcontractor/Supplier, the Subcontractor/Supplier warrants that such goods and services comply with the CPA, including the right to safe, good-quality goods (section 55) and the implied warranty of quality (section 56), and that all marketing, pricing and disclosure comply with the CPA.

34A.2 The Subcontractor/Supplier indemnifies Channel, and holds Channel harmless, against any claim, loss, harm or liability arising under section 61 of the CPA (liability for damage caused by goods) in respect of unsafe, defective, hazardous or failing goods or services supplied by the Subcontractor/Supplier, whether the claim is brought against Channel by the Client, an end consumer or any other person in the supply chain. This clause reinforces, and does not limit, clause 24.1.8.

34A.3 The Parties record that this Contract is a transaction between juristic persons in the ordinary course of business, that Channel is the customer, and that the CPA does not regulate the terms Channel imposes on the Subcontractor/Supplier as supplier. Where, exceptionally, Channel supplies or on-charges any goods, plant, materials, accommodation or services to the Subcontractor/Supplier, and the Subcontractor/Supplier is a juristic person below the threshold determined under section 5(2)(b) of the CPA, the Parties shall in good faith agree any adjustment required for CPA compliance in respect of that supply only, without affecting the remainder of the Contract.

35. DATA PROTECTION (POPIA)

35.1 Each Party shall comply with the Protection of Personal Information Act 4 of 2013 ("POPIA") in respect of all personal information processed in connection with the Contract. The Subcontractor/Supplier acknowledges Channel's privacy notice / POPIA statement published on Channel's website, and shall comply with it to the extent applicable to the Works.

35.2 Where the Subcontractor/Supplier processes personal information on behalf of Channel, it does so as an "operator" as defined in POPIA, and the Parties agree, for the purposes of section 21 of POPIA, that the Subcontractor/Supplier shall:

35.2.1 process such personal information only on the documented instructions of Channel and for no other purpose;

35.2.2 treat such personal information as confidential and ensure that persons authorised to process it are bound by a duty of confidentiality;

35.2.3 secure the integrity and confidentiality of such personal information by taking appropriate, reasonable technical and organisational measures as required by section 19 of POPIA;

35.2.4 notify Channel immediately, and in any event within 24 hours, where there are reasonable grounds to believe that the personal information has been accessed or acquired by any unauthorised person, and assist Channel to comply with its notification obligations under section 22;

35.2.5 not engage any sub-operator without Channel's prior written authorisation and equivalent written terms;

35.2.6 assist Channel with data-subject requests, security-compromise notifications and Information Regulator engagements; and

35.2.7 return or securely delete or de-identify all such personal information on termination or on Channel's request.

35.3 The Subcontractor/Supplier shall not transfer any personal information outside the Republic of South Africa unless Channel has approved the transfer in writing and the transfer independently satisfies section 72 of POPIA. Channel's consent alone is not a lawful basis for a trans-border transfer.

35.4 The Subcontractor/Supplier indemnifies Channel against all loss, fines and administrative penalties arising from the Subcontractor/Supplier's breach of POPIA.

35A. ACCESS TO INFORMATION (PAIA)

35A.1 The Subcontractor/Supplier acknowledges that Channel is subject to the Promotion of Access to Information Act 2 of 2000 ("PAIA") and that Channel's PAIA manual is published on Channel's website. The Subcontractor/Supplier shall acquaint itself with that manual to the extent relevant to the Works.

35A.2 The Subcontractor/Supplier shall, on request and without delay, provide Channel with any record, information or assistance reasonably required to enable Channel to respond to a request for access to information under PAIA, or to any request or investigation by the Information Regulator or the Client, within the statutory time periods.

35A.3 Where the Subcontractor/Supplier considers that a record is confidential or commercially sensitive and should be protected from disclosure under Chapter 4 of Part 3 of PAIA (third-party information), it shall identify that record and the basis of the objection promptly on request, it being recorded that the final decision on disclosure rests with Channel as the responsible body acting in accordance with PAIA.

35A.4 Nothing in clause 36 (Confidentiality and Non-Circumvention) prevents either Party from making a disclosure required by PAIA, POPIA or any other Applicable Law, or by an order of court or a competent authority.

36. CONFIDENTIALITY AND NON-CIRCUMVENTION

36.1 **Confidential Information.** In this clause, "**Confidential Information**" means all

information, in whatever form, of or concerning Channel, the Channel Group or the Client which is disclosed to, or acquired by, the Subcontractor/Supplier in connection with the Order, the Works, the Main Contract or any negotiation preceding them - including prices, rates, margins, costings, quotations, tenders, drawings, designs, specifications, methods, processes, know-how, trade secrets, software, business and financial information, and the identity of, and Channel's dealings with, the Client and Channel's other clients, suppliers and subcontractors - together with the existence and terms of the Order and of the Main Contract, whether or not marked or described as confidential. All such information is presumed to be Confidential Information unless the Subcontractor/Supplier proves that it is in the public domain otherwise than through a breach of this clause 36 or of any other duty of confidence.

36.2 Confidentiality and restricted use. The Subcontractor/Supplier shall keep all Confidential Information strictly confidential; shall use it solely for the performance of the Contract and for no other purpose whatsoever; shall not disclose it to any person other than those of its personnel and subcontractors who require it for the Works and who are bound in writing to obligations no less strict than this clause 36; shall not copy or reproduce it beyond what the Works require; and shall not decompile, disassemble, reverse-engineer or analyse any product, design, method, document or pricing model embodying it.

36.3 Responsibility for others. The Subcontractor/Supplier is liable for any use or disclosure of Confidential Information by its personnel, agents, subcontractors and suppliers as if that use or disclosure were its own.

36.4 Return and destruction. On demand, and in any event on Completion or on the cancellation or termination of the Contract, the Subcontractor/Supplier shall return to Channel or, at Channel's election, destroy or permanently delete - and certify in writing that it has done so - all Confidential Information and every document, record and copy embodying it, save only to the extent that retention is required by Applicable Law.

36.5 Publicity. The Subcontractor/Supplier shall not make any public announcement, press release, social media post, advertisement, case study or reference to Channel, the Channel Group, the Client, the Works or the Main Contract, and shall not use Channel's or the Client's name, logo or trade marks, without Channel's prior written consent.

36.6 Non-circumvention. The Subcontractor/Supplier acknowledges that its introduction to the Client, and the knowledge it acquires of the Client, the Main Contract, the Works and Channel's pricing, margins and methods, are proprietary interests of Channel which this clause protects, and that the restraint in this clause 36.6 is reasonable in scope and duration. During the currency of any Order, and for 24 (twenty-four) months after Completion of the last of the Works performed for Channel, the Subcontractor/Supplier shall not, directly or indirectly, use any Confidential Information, or any introduction to or dealing with the Client arising from the Works, to:

36.6.1 solicit, approach, quote to, tender to, contract with or perform work for the Client, in relation to the Main Contract or to works of the kind comprised in the Works, in circumvention or displacement of Channel; or

36.6.2 divert to itself or to any third party, intercept, or accept any business or business opportunity of Channel.

36.7 What non-circumvention does not prevent. Clause 36.6 does not prevent the Subcontractor/Supplier from responding to a genuinely independent public tender, or from continuing to serve a client which it demonstrates it served before the introduction or disclosure concerned, provided in each case that it makes no use of Confidential Information.

36.8 Remedies. The Subcontractor/Supplier acknowledges that damages would not be an adequate remedy for a breach or threatened breach of this clause 36, and consents to the granting of an interdict and to specific performance, in addition to damages. Channel may approach a court directly in respect of any breach of this clause 36 (clause 46.1.4). A breach of this clause 36 is a material breach entitling Channel to cancel immediately under clause 42.

36.9 Compelled disclosure. A disclosure required by Applicable Law, by a court or competent authority, or by PAIA or POPIA (clause 35A.4), is not a breach of this clause, provided that the Subcontractor/Supplier, where lawful, gives Channel prompt written notice before disclosing and discloses only the minimum required.

36.10 Duration. This clause 36 survives for 5 (five) years after Completion, cancellation or termination of the Contract - indefinitely in respect of trade secrets - and the non-circumvention undertaking survives for the period stated in clause 36.6.

37. INTELLECTUAL PROPERTY

37.1 In this clause, "Background IP" means intellectual property owned by a Party before the Order or developed independently of the Works, and "Project IP" means intellectual property created by the Subcontractor/Supplier in the course of and for the purposes of the Works. Each Party retains its Background IP.

37.1A The Subcontractor/Supplier hereby assigns to Channel all right, title and interest in the Project IP, including copyright in future works as and when it comes into existence, and shall execute all further documents reasonably required to perfect that assignment. The Parties intend that the Subcontractor/Supplier's signature on the Order satisfies the writing-and-signature requirement of section 22(3) of the Copyright Act 98 of 1978 in respect of the assignment of copyright, and the Subcontractor/Supplier shall give all further written assurances required.

37.1B To the extent lawful, the Subcontractor/Supplier waives, and shall procure the waiver by its personnel of, any moral rights in the Project IP as against Channel and the Client.

37.2 To the extent any Background IP of the Subcontractor/Supplier is incorporated in or necessary for the use, operation, maintenance or repair of the Works, the Subcontractor/Supplier grants Channel and the Client an irrevocable, perpetual, worldwide, royalty-free, transferable and sub-licensable licence to use, copy, modify, maintain and exploit it for the project and the Works.

37.2A The Subcontractor/Supplier shall disclose and obtain Channel's approval of any third-party or open-source materials incorporated in a deliverable, and shall secure for Channel and the Client sufficient rights to use them for the Works.

37.3 The Subcontractor/Supplier warrants that the Works do not infringe any third-party intellectual property right and indemnifies Channel accordingly.

37.4 All drawings, specifications and information supplied by Channel remain Channel's property, shall be used only for the Works, and shall be returned on demand.

38. RECORDS AND AUDIT

38.1 The Subcontractor/Supplier shall keep full and accurate records relating to the Works for the longer of 7 (seven) years after final Completion, the period required by the Main Contract or any Applicable Law, and the final resolution of any claim, audit, investigation or litigation hold, and shall permit Channel, the Client, their auditors and any regulator to inspect and audit them on reasonable notice. The Subcontractor/Supplier shall not destroy any record subject to a litigation hold, claim, audit or investigation of which it is aware. Personal information shall be retained only for so long as a lawful purpose or obligation justifies, and shall then be securely deleted or de-identified in accordance with clause 35.

38.2 The Subcontractor/Supplier shall provide all information and access reasonably required by Channel to comply with the Main Contract or with any request or investigation by any competent authority.

PART F - DEFAULT, SUSPENSION AND TERMINATION

39. NO RIGHT TO SUSPEND OR STOP THE WORKS

39.1 The Subcontractor/Supplier shall not, in any circumstances, and notwithstanding any dispute, disagreement, claim, negotiation, non-payment, alleged non-payment, alleged breach by Channel, or pending or ongoing dispute resolution proceedings of any nature:

39.1.1 suspend, stop, slow down, reduce, interrupt or cease the Works or any part of them;

39.1.2 reduce its resources, personnel, plant or rate of progress; 39.1.3 demobilise or remove any plant, equipment, materials or personnel from the Site;

39.1.4 withhold or delay delivery of any goods, materials, Documentation or deliverable;

39.1.5 refuse or delay to execute any Variation Order or instruction; or

39.1.6 exercise or purport to exercise any lien or right of retention.

39.2 The Subcontractor/Supplier shall continue to perform the Works diligently and without interruption pending the resolution of any dispute, and any determination or certificate of Channel shall be given effect to pending resolution.

39.3 Any act contrary to clause 39.1 constitutes a material breach, entitling Channel, without prejudice to any other right:

39.3.1 to obtain an urgent interdict compelling performance or restraining the breach, and the Subcontractor/Supplier consents to the granting of such relief and acknowledges that damages would not be an adequate remedy;

39.3.2 to take the whole or any part of the Works out of the Subcontractor/Supplier's hands and complete it itself or by others, and to recover the full cost of doing so from the Subcontractor/Supplier;

39.3.3 to recover the penalty under clause 16; 39.3.4 to cancel the Order under clause 42; and

39.3.5 to recover all damages suffered.

39.4 Clause 39.1 does not apply, and nothing in these Conditions requires the Subcontractor/Supplier to work or to keep any person at work:

39.4.1 in circumstances of serious and imminent danger to health or safety; or

39.4.2 where to do so would contravene Applicable Law, or would require the waiver of a right which cannot lawfully be waived.

39.5 The Subcontractor/Supplier's sole remedy in respect of any matter in dispute is the dispute resolution procedure in Part G. The Subcontractor/Supplier has no right of suspension, retention or cancellation on account of non-payment, and any such right at common law is hereby excluded to the fullest extent permitted by law. This clause 39.5 does not exclude the Subcontractor/Supplier's limited right to cancel under clause 42.4 (Channel's own uncured material breach after 30 (thirty) days' notice); provided that, as recorded in clause 42.4, no amount disputed by Channel in good faith, or validly withheld or set off under the Order, constitutes a material payment breach, and the Subcontractor/Supplier shall continue to perform under this clause 39 during the remedy period.

40. CHANNEL'S RIGHT TO SUSPEND

40.1 Channel may suspend the Works, in whole or in part, at any time and for any reason, by written notice.

40.2 On suspension the Subcontractor/Supplier shall protect and secure the Works and mitigate all cost.

40.3 Where a suspension is not attributable to the Subcontractor/Supplier's default and continues for more than 30 (thirty) days, the Subcontractor/Supplier shall be entitled to an extension of time, and to its reasonable, direct and properly substantiated standing costs only, excluding loss of profit, overheads, opportunity and any consequential loss.

41. TERMINATION FOR CONVENIENCE

41.1 Channel may cancel an Order in whole or in part at any time, for any reason or for no reason, on written notice.

41.2 On such cancellation the Subcontractor/Supplier shall be entitled to payment of:

41.2.1 the value of the Works properly executed and accepted to the date of cancellation, at Order rates; and

41.2.2 the reasonable, direct, unavoidable and properly substantiated costs of demobilisation and of materials properly ordered which cannot be cancelled or returned, provided that such materials become the property of Channel;

and to nothing else. The Subcontractor/Supplier shall have no claim for loss of profit, loss of opportunity, overheads, anticipated profit, or any consequential loss whatsoever.

41.3 The Subcontractor/Supplier shall mitigate all costs and shall cancel or reduce its own orders and commitments.

41.4 Payment under this clause is in full and final settlement of all claims arising from the cancellation.

42. TERMINATION FOR DEFAULT

42.1 Channel may cancel an Order immediately, by written notice and without prior notice to remedy, if the Subcontractor/Supplier:

42.1.1 commits a material breach, including a breach of clause 23, 28, 30, 33, 36 or 39; 42.1.2 fails to commence, or abandons, suspends or fails to proceed with the Works with due diligence;

42.1.3 fails to remedy a breach within 7 (seven) days of written notice requiring it to do so;

42.1.4 accrues the maximum penalty under clause 16.1;

42.1.5 fails to maintain any registration, licence, permit or insurance required by the Contract;

42.1.6 is placed under provisional or final liquidation, business rescue, sequestration, curatorship or judicial management, commits an act of insolvency, compromises with its creditors, ceases or threatens to cease trading, or has a judgment taken against it which remains unsatisfied for 10 (ten) days;

42.1.7 undergoes a change of control without Channel's prior written consent;

42.1.8 breaches any other contract with Channel or with any company in the Channel group; or

42.1.9 does anything which in Channel's reasonable opinion may prejudice Channel, the Client, the Main Contract or Channel's reputation.

42.2 On cancellation under this clause Channel may:

42.2.1 take possession of the Site and the Works, and exercise a temporary, non-transferable licence to use the Subcontractor/Supplier-owned plant, equipment and materials already on the Site, without payment, to the extent reasonably necessary to make the Site safe and to complete the Works - such licence being subject to any disclosed third-party rights, and Channel shall inventory and record the condition of the items, preserve and insure them, shall not sell or encumber them, and shall return them promptly when no longer reasonably required. Nothing in this clause authorises Channel to take or use any item owned by a third party, or to resort to unlawful self-help; where possession is disputed, Channel shall use judicial or agreed process;

42.2.2 complete the Works itself or by others, and recover the full additional cost of doing so;

42.2.3 withhold all further payment until the Works are complete and the full cost to Channel is ascertained, and thereafter pay only such balance (if any) as remains;

42.2.4 require the Subcontractor/Supplier to cede to Channel the benefit of any of its subcontracts, supply agreements, warranties and guarantees; and

42.2.5 recover all damages, penalties and costs.

42.3 Cancellation is without prejudice to any accrued right, and to Channel's right to recover damages, subject to the election and no-double-recovery rule in clause 16.4 and 16.6 where the same act or omission is involved.

42.4 The Subcontractor/Supplier may not suspend, stop or cancel the Contract, and any purported suspension or cancellation shall itself constitute a repudiation, save that the Subcontractor/Supplier may cancel only where Channel commits a material breach and fails to remedy it within 30 (thirty) days of written notice requiring remedy. For this purpose no amount that is disputed by Channel in good faith, or validly withheld or set off under the Order, constitutes a material payment breach, and the Subcontractor/Supplier shall in any event continue to perform in accordance with clause 39 during the remedy period.

PART G - DISPUTE RESOLUTION

43. NOTIFICATION OF CLAIMS AND TIME BAR

43.1 The Subcontractor/Supplier shall give Channel written notice of any claim of any nature, with full particulars and substantiation, within 14 (fourteen) days of the date on which it became aware, or ought reasonably to have become aware, of the event or circumstance giving rise to it.

43.2 Failure to give notice in accordance with clause 43.1, within the period stated, shall constitute a complete bar to the claim, which shall be deemed to have been waived and extinguished.

43.3 Nothing in this clause extends any period of prescription, and nothing in this clause is intended to have the effect of extending any period prescribed by the Prescription Act 68 of 1969.

44. DISPUTE NOTICE AND NEGOTIATION

44.1 A Party wishing to declare a dispute shall give the other a written Dispute Notice identifying the dispute and the relief sought.

44.2 Within 10 (ten) Business Days of a Dispute Notice, senior executives of the Parties with authority to settle shall meet and attempt in good faith to resolve the dispute.

44.3 If the dispute is not resolved within 15 (fifteen) Business Days of the Dispute Notice, either Party may refer it to arbitration under clause 45.

45. ARBITRATION

45.1 Subject only to clause 46, any dispute arising out of or in connection with the Contract, including as to its existence, validity, interpretation, implementation, breach, termination or rectification, shall be finally resolved by arbitration in accordance with this clause. Clause 47 does not create any general right to litigate a dispute otherwise required to be arbitrated; it governs only the forum for proceedings that are permitted by clause 46 or that the arbitration agreement cannot lawfully exclude.

45.2 The arbitration shall be:

45.2.1 held in Durban, KwaZulu-Natal;

45.2.2 conducted in English; 45.2.3 conducted in accordance with the Arbitration Act 42 of 1965, and administered under the Rules for the Conduct of Arbitrations of the Association of Arbitrators (Southern Africa) NPC (the Standard Procedure Rules) current at the date of the Dispute Notice, provided that where the amount in dispute does not exceed R1,000,000 (one million Rand) the Association's Summary Procedure Rules shall apply;

45.2.4 before a single arbitrator agreed between the Parties within 5 (five) Business Days of the referral, failing which appointed on the application of either

Party by the Chairperson for the time being of the Association of Arbitrators (Southern Africa) NPC;

45.2.5 held in private and in confidence, and neither Party shall disclose any information relating to the arbitration or its outcome save as required by law or for the enforcement of the award.

45.3 The arbitrator shall have the power to determine his or her own jurisdiction, to grant interim relief, to determine questions of law, and to award costs on the attorney and own client scale.

45.4 The award shall be final and binding, shall not be subject to appeal, and may be made an order of any court of competent jurisdiction in terms of section 31 of the Arbitration Act 42 of 1965.

45.5 Compliance with clause 44 and referral to arbitration under this clause 45 are conditions precedent to the institution of any proceedings in any court, save in respect of a matter falling within clause 46.

45.6 This clause 45 is severable from the remainder of the Contract and remains binding and enforceable notwithstanding the termination, cancellation, invalidity or unenforceability of the Contract or of any other provision of it.

46. MATTERS EXCLUDED FROM ARBITRATION

46.1 Notwithstanding clause 45, Channel shall be entitled, at its sole election, to institute proceedings in any court of competent jurisdiction, and shall not be obliged to refer the matter to arbitration, in respect of:

46.1.1 any claim for urgent or interim relief, including an interdict, an order for specific performance, an attachment, or an order compelling performance under clause 39;

46.1.2 any claim for payment of a liquidated or liquid amount, or an amount which is not disputed on reasonable and bona fide grounds, including by way of provisional sentence or summary judgment;

46.1.3 the enforcement of any arbitration award;

46.1.4 any claim arising from a breach of clauses 23, 33, 36 or 37; and

46.1.5 any proceedings necessary to join the Subcontractor/Supplier to proceedings between Channel and the Client, or between Channel and any other subcontractor, arising from substantially the same facts.

46.2 Either Party may approach a court for urgent interim relief pending the outcome of arbitration, and such approach shall not constitute a breach of clause 45 or a waiver of the arbitration agreement.

46.3 Channel's election to proceed in court under this clause in respect of one matter does not affect the application of clause 45 to any other matter.

47. CONSENT TO JURISDICTION

47.0 This clause applies only to court proceedings expressly permitted by clause 46, to proceedings to enforce or review an arbitral award, and to any proceeding which the arbitration agreement cannot lawfully exclude. It does not create a general election to bypass arbitration under clause 45.

47.1 In respect of any such proceeding, the Subcontractor/Supplier hereby consents, in terms of section 45(1) of the Magistrates' Courts Act 32 of 1944, to the jurisdiction of the Magistrates' Court for the district of Durban, KwaZulu-Natal, notwithstanding that the amount in issue or the value of the matter in dispute exceeds the jurisdiction of that Court in terms of section 29(1) of that Act, to the extent permitted by sections 45 and 46 of that Act.

47.2 This consent is given now, as a present and operative consent, and is not an undertaking to give consent at any future time.

47.3 This consent is for the benefit of Channel and is not exclusive. Channel shall be entitled, at its sole election, to institute any proceeding in any other court of competent jurisdiction, including the High Court of South Africa, KwaZulu-Natal Division, Durban, and the Subcontractor/Supplier consents to the jurisdiction of that Court. Nothing in this clause obliges Channel to proceed in the Magistrates' Court, or confers on the Subcontractor/Supplier any right to require that it do so.

47.4 Any consent to Magistrates' Court jurisdiction operates only to the extent permitted by sections 45 and 46 of the Magistrates' Courts Act 32 of 1944. The court selected for any proceeding must have jurisdiction over the parties, the monetary value and the relief claimed at the time the proceeding is instituted. The Subcontractor/Supplier acknowledges that certain matters - including a claim for specific performance without an alternative claim for payment of damages (subject to the exceptions in section 46) - fall beyond the jurisdiction of the Magistrates' Court, and that Channel may bring any such matter in the High Court.

47.5 The Subcontractor/Supplier shall institute any proceeding which it is permitted to institute only in the courts identified in this clause, and in no other forum.

48. GOVERNING LAW

48.1 The Contract is governed by and construed in accordance with the law of the Republic of South Africa, without regard to any conflict of laws rules.

48.2 The United Nations Convention on Contracts for the International Sale of Goods does not apply.

PART H - GENERAL

49. CESSION, ASSIGNMENT AND SUBCONTRACTING

49.1 The Subcontractor/Supplier shall not cede, assign, delegate, transfer, encumber, factor or otherwise dispose of any of its rights or obligations under the Contract, including any right to claim payment, without Channel's prior written consent, which may be withheld in Channel's sole discretion.

49.2 The Subcontractor/Supplier shall not subcontract the whole or any part of the Works without Channel's prior written consent. Consent does not relieve the Subcontractor/Supplier of any obligation or liability, and the Subcontractor/Supplier remains fully liable for the acts, omissions, defaults and compliance of its subcontractors and suppliers as if they were its own.

49.3 The Subcontractor/Supplier shall procure that each of its subcontractors and suppliers is bound by terms no less onerous than these Conditions, including clauses 23, 28, 29, 30, 33, 36 and 39.

49.4 Channel may cede and assign any of its rights under the Contract, in whole or in part, to any member of the Channel Group, to the Client, or to any successor in title, without the Subcontractor/Supplier's consent, and the Subcontractor/Supplier consents in advance to any such cession. Channel may also delegate or transfer any of its obligations to any member of the Channel Group, or to any successor in title, that assumes them, and the Subcontractor/Supplier consents in advance to such delegation or transfer and, to the extent the transferee assumes those obligations, to the corresponding release of Channel. No cession, delegation or transfer under this clause requires the acceptance or participation of any person who is not a party in order to bind the Subcontractor/Supplier.

50. NOTICES AND DOMICILIUM

50.1 Channel chooses as its *domicilium citandi et executandi* the address stated on the face of the Order. The Subcontractor/Supplier chooses as its *domicilium citandi et executandi* the address stated on the face of the Order or, failing that, its registered office.

50.2 A notice shall be in writing and shall be deemed to have been received: on delivery, if delivered by hand during business hours; on the 7th (seventh) day after posting, if sent by prepaid registered post; and on the 1st (first) Business Day after despatch, if sent by email to the address stated on the Order, unless the sender receives an automated non-delivery notification.

50.3 A Party may change its *domicilium* to another physical address in South Africa on 14 (fourteen) days' written notice.

50.4 Notwithstanding anything to the contrary, a notice actually received by a Party shall be valid notwithstanding that it was not given in accordance with this clause.

51. ENTIRE AGREEMENT

51.1 The Contract constitutes the entire agreement between the Parties in relation to its subject matter and supersedes all prior agreements, negotiations, representations, warranties, understandings, quotations, tenders, correspondence and course of dealing, whether written or oral, and whether preceding or following the issue of the Order.

51.2 Neither Party has relied on any representation, warranty or undertaking not expressly set out in the Contract, and each Party waives any claim for innocent or negligent misrepresentation, save that nothing excludes liability for fraud.

52. NON-VARIATION

52.1 No variation, addition, amendment, novation, consensual cancellation of, or agreement in substitution for, the Contract or any provision of it - including this clause 52 - shall be of any force or effect unless it is reduced to writing and signed by a duly authorised Signatory of Channel and by a duly authorised representative of the Subcontractor/Supplier. This clause does not apply to a Variation Order issued by Channel under clause 10, which is valid when issued in the prescribed form and signed by an Authorised Signatory of Channel alone, the Subcontractor/Supplier's acceptance of the Order constituting its agreement to execute Variation Orders so issued.

52.2 No variation shall be valid or binding unless it expressly identifies the clause or clauses of these Conditions which it varies, and states the extent of the variation.

52.3 Channel is under no obligation to agree to any variation, and may withhold agreement in its sole and absolute discretion, for any reason or for no reason.

52.4 No variation shall be effected, and no term shall be introduced or excluded, by conduct, by course of dealing, by tacit agreement, by trade usage, by acquiescence, by the delivery, acceptance, signature, retention or payment of any document, or by the performance or acceptance of performance.

53. NO WAIVER, NO ESTOPPEL

53.1 No relaxation, indulgence, extension of time, forbearance or failure to enforce any provision of the Contract shall constitute a waiver of any right, a novation, or a variation, shall not preclude the exercise of that or any other right at any time, and shall not be capable of founding an estoppel.

53.2 A waiver is effective only if in writing, signed by the waiving Party, and only in respect of the specific instance and purpose for which it is given.

53.3 The rights of Channel under the Contract are cumulative and in addition to any rights at law, and the exercise of one does not preclude the exercise of any other.

54. SEVERABILITY

54.1 Each provision of these Conditions is severable. If any provision is or becomes invalid, unenforceable or unlawful, it shall be severed and the remainder shall continue in full force and effect.

54.2 Where a provision would be valid and enforceable if some part of it were deleted or its scope, duration or extent reduced, it shall apply with such modification as is necessary to make it valid and enforceable while giving effect, as far as possible, to the Parties' intention.

55. COSTS

55.1 Should Channel instruct attorneys to enforce any right, or in consequence of any breach by the Subcontractor/Supplier, the Subcontractor/Supplier shall pay all costs incurred by Channel on the attorney and own client scale, including collection commission, tracing fees, counsel's fees and disbursements, whether or not proceedings are instituted.

55.2 Each Party bears its own costs of negotiating and concluding the Contract.

56. SIGNATURE, COUNTERPARTS AND ELECTRONIC EXECUTION (ECTA)

56.1 The Parties agree that the Contract may be concluded, incorporated by reference, signed and transmitted by electronic means in accordance with the Electronic Communications and Transactions Act 25 of 2002 ("ECTA"). The incorporation of these Conditions by reference on the face of the Order, and their publication at the address stated on the Order, are intended to satisfy section 11(3) of ECTA (incorporation of information by reference into a data message).

56.2 An Order may be signed in counterparts, each of which is an original and all of which together constitute one instrument.

56.3 An Order signed and transmitted by email, scanned copy, portable document format (PDF), photograph, or electronic signature is valid and binding, and constitutes a data message and an electronic signature for the purposes of the Electronic Communications and Transactions Act 25 of 2002 ("ECTA").

56.4 Wherever these Conditions or an Order require a signature, that requirement is satisfied by an electronic signature, the Parties expressly agreeing, for the purposes of section 13(3) of ECTA, that an electronic signature is an acceptable method of signature between them. Neither Party shall dispute the validity, enforceability or admissibility of the Contract on the ground that it was concluded, signed or transmitted electronically, and each Party waives any such objection.

56.5 Clauses 56.2, 56.3 and 56.4 do not apply to any contract of suretyship. Where any personal or third-party security is required, it shall be given as an

independent guarantee or indemnity creating a principal obligation (as contemplated in clauses 6.4 and 20), which is not subject to the formalities prescribed for a suretyship. If any instrument is nonetheless intended or found to operate as a suretyship, it shall be valid only if signed in manuscript (wet ink) or by means of an advanced electronic signature as defined in ECTA, and the Subcontractor/Supplier acknowledges that a suretyship signed by an ordinary electronic signature is, in terms of section 13(1) of ECTA read with section 6 of the General Law Amendment Act 50 of 1956, of no force or effect. Channel does not rely, and shall not be taken to rely, on any electronically-signed suretyship.

57. SURVIVAL

57.1 Clauses 5, 6.4, 7.2, 9.4, 14, 14A, 16, 21, 22, 23, 24, 25, 29.4, 29.5, 29.6, 30.5, 31.4, 32.2, 33, 34A, 35, 35A, 36, 37, 38, 43, 44, 45, 46, 47, 48, 51, 52, 53, 54 and 55, and any other provision which by its nature is intended to survive, shall survive the completion, expiry, cancellation or termination of the Contract.

58. WHOLE AGREEMENT ACKNOWLEDGEMENT

58.1 The Subcontractor/Supplier acknowledges that it has read and understood these Conditions, that it has had the opportunity to obtain independent legal advice, that it accepts these Conditions freely and voluntarily, and that it has not been induced to accept them by any representation not contained in the Contract.

ANNEXURE A

AGREEMENT WITH A MANDATARY IN TERMS OF SECTION 37(2) OF THE OCCUPATIONAL HEALTH AND SAFETY ACT 85 OF 1993

To be signed and returned with the Purchase Order. This Annexure forms part of the Contract.

Entered into between **CHANNEL CONSTRUCTION (PTY) LTD** (Registration Number 2004/009100/07) ("Channel") and _____ (Registration Number _____) ("the Mandatary").

In respect of: Purchase Order Number _____ dated _____

Site / Project: _____

1. 1. The Mandatary is appointed as a mandatary of Channel for the purposes of section 37(2) of the Occupational Health and Safety Act 85 of 1993 ("the Act") in respect of the work described in the Purchase Order.
2. 2. The Mandatary **agrees and undertakes** that:
 - 2.1 it shall comply with, and shall ensure that its employees, subcontractors, agents and any other person under its control comply with, all provisions of the Act, the Regulations promulgated under it (including the Construction Regulations), and all other applicable health and safety legislation;
 - 2.2 it accepts that it is an **employer in its own right** in respect of its employees, and that it bears full responsibility for their health and safety;
 - 2.3 it shall comply with all health and safety requirements, standards, procedures, specifications and instructions of Channel, of the Client, and of the Main Contract;
 - 2.4 it shall make, in writing, all appointments required by the Act and the Regulations, and shall furnish copies to Channel;
 - 2.5 it shall prepare, submit and implement a health and safety plan, conduct and record risk assessments, and maintain a health and safety file available for inspection at all times;
 - 2.6 it shall ensure that all its employees are medically fit, competent, trained, inducted and in possession of the required certificates of competence, and are provided with and use appropriate personal protective equipment;
 - 2.7 it is registered with the Compensation Fund or a licensed compensation insurer in terms of the Compensation for Occupational Injuries and Diseases Act 130 of 1993, that its assessments are paid up to date, and that it shall furnish a valid Letter of Good Standing before commencing work and on renewal;
 - 2.8 where applicable, it is registered with the Construction Industry Development Board in the appropriate class and grading designation;
 - 2.9 it shall report to Channel **immediately and in writing** every incident, injury, occupational disease, near-miss and dangerous occurrence, and shall report to the Department of Employment and Labour as required by law;
 - 2.10 it shall permit Channel and the Client to audit and inspect its health and safety performance, and shall comply with any instruction to suspend work on health and safety grounds; and
 - 2.11 it shall indemnify Channel against all loss, damage, claim, fine, penalty, administrative sanction and cost (including legal costs on the attorney and own client scale) arising from its breach of this Annexure, of the Act, or of any Regulation.
3. Nothing in this Annexure relieves the Mandatary of any duty imposed on it by the Act, and the arrangements recorded here are those contemplated by section 37(2) of the Act.
4. This Annexure is supplemental to, and does not derogate from, clause 28 of the Conditions.

SIGNED for and on behalf of the MANDATARY:

Signature: _____ Name: _____

Capacity: _____ Date: _____

(who warrants authority to sign)

SIGNED for and on behalf of CHANNEL CONSTRUCTION (PTY) LTD:

Signature: _____ Name: _____

Capacity: _____ Date: _____

ANNEXURE B - COMPLIANCE DOCUMENTS REQUIRED BEFORE COMMENCEMENT

#	Document	Required
1	Signed Purchase Order	Always
2	Signed Annexure A (OHSA s37(2) mandatory agreement)	Always
3	COIDA Letter of Good Standing (valid)	Where applicable (clause 1.2A)
4	CIDB registration certificate (correct class and grade)	Construction works
5	Company registration documents (CIPC); director/authorised-signatory identity verification	Always (identity documents collected only to the minimum extent needed to verify authority and CIPC records, and processed in accordance with POPIA)
6	VAT registration certificate	VAT vendors
7	SARS Tax Compliance Status PIN	Always
8	B-BBEE certificate or sworn affidavit	Always
9	Certificates of insurance (clause 26)	Always
10	Health and safety plan and file	Site work
11	Letters of appointment under OHSA / Construction Regulations	Site work
12	Certificates of competence for operators and plant	Where applicable
13	Load test and inspection certificates for lifting equipment	Crane / lifting
14	Banking details on company letterhead, verified	Always
15	Signed waivers of lien from the Subcontractor/Supplier's own subcontractors	Where applicable