



# **PPC TRADING TERMS**

**AGREEMENT**

**FOR**

**SUPPLY OF GOODS**



**PART A**

**AGREEMENT  
FOR  
SUPPLY OF GOODS**

## GENERAL TERMS AND CONDITIONS OF SUPPLY

In the operation of its business, PPC enters into various contractual arrangements with its trade customers. These relationships are regulated by agreements with the relevant parties and are subject to these Trade Terms and Conditions which must be considered to form an indivisible part of PPC's contractual nexus.

All parties agree to comply with all PPC policies which are made available at: <https://www.ppc.co.za/>

### 1. DEFINITIONS

- 1.1 In this document, the following terms have the meanings assigned to them below, namely –
- 1.1.1 **"Agreement"** means this agreement and the schedules (PPC Trading Terms), quotation, proof of delivery, tender document, purchase order and/or document to which these General Terms and Conditions relate, and which together form one indivisible agreement and means:
    - 1.1.1.1 the Formal Instrument of Agreement (including the Agreement Particulars);
    - 1.1.1.2 the General Conditions in this Part A ('Part A') as amended from time to time and available at [www.ppc.co.za](http://www.ppc.co.za);
    - 1.1.1.3 the Special Conditions (if any) in Part B ('Part B');
    - 1.1.1.4 the Schedules in Part C ('Part C'); andand unless otherwise agreed in writing by the Parties, the Agreement does not include tender documents or correspondence, including letters of offer or acceptance exchanged between the Parties prior to the Commencement Date of this Agreement.
  - 1.1.2 **"Agreement Particulars"** means the details specified in the Formal Instrument of Agreement;
  - 1.1.3 **"Consent"** as defined in section 1 of POPI means any voluntary, specific and informed expression of will in terms of which permission is given for the processing of Personal Information;
  - 1.1.4 **"Contracting Party"** refers generally to the party that enters into a contractual relationship with PPC to which this Agreement applies,
  - 1.1.5 **"Customer"** means the party identified as such in the Agreement Particulars, and includes any other party to such Agreement where PPC acts as a supplier of the products in question, whether the Contracting Party be defined as "Customer", "Client" or otherwise;
  - 1.1.6 **"CPA"** means the Consumer Protection Act 68 of 2008, as amended and any regulations promulgated in respect thereof;
  - 1.1.7 **"Harm"** means harm, as described in section 61(5) of the CPA;
  - 1.1.8 **"Personal Information"** means information as defined in Section 1 of POPI, relating to any person, including but not limited to: (i) information relating to the race, gender, sex, marital status, national, ethnic or social origin, colour, age, disability, language and birth of the person; (ii) information relating to the education or the medical, financial, criminal or employment history of the

person; (iii) information relating to the financial affairs of the person; (iv) credit card details and transactional data; (v) any identifying number, symbol, e-mail address, physical address, telephone number or other particular assignment to the person; (vi) correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence; (vii) the views or opinions of another individual about the person; (viii) the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person; and (ix) any other information which may be treated or defined as "personal information" in terms of any applicable Laws, including any applicable Data Protection Legislation;

1.1.9 **"POPI"** means the Protection of Personal Information Act 4 of 2013;

1.1.10 **"Processing"** as defined in section 1 of POPI means any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including -

(a) the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;

(b) dissemination by means of transmission, distribution or making available in any other form;

1.1.11 **"Protected consumer"** means a consumer as defined in section 1 of the CPA and whose annual turnover or assets value falls below the threshold contemplated in section 5 of the CPA and to whom the Act applies;

1.1.12 **"PPC"** means the PPC entity, being a member of the PPC group of companies, as specifically referred to in the Agreement Particulars which is to be read with these Standard Terms and Conditions;

1.1.13 **"Responsible Party"** as defined in section 1 of POPI means a public or private body or any other person which, alone or in conjunction with others, determines the purpose of and means for processing Personal Information;

1.1.14 **"Receiving Party"** means the Party receiving Confidential Information, being the Receiving Party as set out in this Agreement;

1.1.15 **"Underlying Agreement"** means the agreement and/or document to which these General Terms and Conditions of Supply relate.

1.2 Unless a contrary intention clearly appears, the terms used in this document shall have the meanings assigned to them in section 1, section 53 or any other section, as the case may be, of the CPA.

1.3 The provisions of POPI shall be applicable to these Standard Terms and Conditions.

## 2. PURPOSE OF SELLING CONDITIONS

2.1 These General Terms and Conditions of Supply are designed to provide certainty and uniformity across PPC's contractual relationships. They seek to regulate the terms on which PPC relies on during the course of the operation of its business. These are blanket provisions which shall govern generally any Underlying Agreement entered into by the parties to which this Agreement relates.

2.2 The Contracting Party and PPC agree that the Standard Terms and Conditions shall apply to any contract, whether that contract arises out of:

2.2.1 any offer made by PPC and accepted by the Contracting Party; or

- 2.2.2 any offer made by the Contracting Party and accepted by PPC, including any such offer made by the Customer in response to a quotation from PPC or credit application form as the case may be.
- 2.3 **THE CUSTOMER AND/OR CONTRACTING PARTY AND PPC AGREE THAT NO ALTERATION OR VARIATION OF THESE GENERAL TERMS AND CONDITIONS SHALL APPLY, EITHER AT THE TIME THAT THE CONTRACT IS CONCLUDED AND INCLUDED IN THE PART B, SPECIAL CONDITIONS OF THE AGREEMENT OR AT ANY TIME AFTERWARDS, UNLESS THE ALTERATION OR VARIATION IN QUESTION IS EXPRESSLY AGREED TO IN WRITING BY WAY OF AN AMENDMENT AND SIGNED BY AN AUTHORISED REPRESENTATIVE OF PPC AND THE CONTRACTING PARTY AT THE TIME IN QUESTION.**

### 3. DURATION

- 3.1 This Agreement shall commence on the Commencement Date and endure for the Term unless terminated earlier in accordance with the provisions of this Agreement.
- 3.2 If this Agreement has expired and the Parties have not expressly extended the Term, then, if the Parties continue to act as if this Agreement is in force:
- 3.2.1 this Agreement shall be deemed to have been extended on a rolling monthly basis on the same terms; and
- 3.2.2 either Party may terminate this Agreement by serving not less than 30 (thirty) days' written notice on the other Party.

### 4. PRICE

The Customer and PPC agree that:

- 4.1 Prices are quoted under the following conditions:
- 4.1.1 Pallets attract an additional refundable deposit, if applicable;
- 4.1.2 Prices exclude delivery, unless otherwise stipulated in writing, and are exclusive of Value Added Tax (VAT); and
- 4.1.3 In the case of delivery other than collection at the factory, prices are subject to adjustment in respect of any increase / decrease in the cost of delivery arising directly or indirectly from any one or more causes, including (but not limited to) in particular:
- 4.1.3.1 in the case of delivery by rail or road, any increase in the rail service provider's railage and/or transport rates and/or any other transport costs, including, but not limited to, fuel costs and e-tolling;
- 4.1.3.2 any statutes or law or regulation, by-law or notice having the effect of law.
- 4.1.4 PPC will endeavour at all times to maintain price stability and undertakes to provide a minimum of at least twenty business days written notice of its intention to review prices.
- 4.2 In the event that a discount shall apply between the Customer and PPC this discount shall be set out in Part C hereof or in the Underlying Agreement.
- 4.3 In the event that a rebate shall apply between the Customer and PPC this rebate shall be set out in Part C hereof.
- 4.4 Any rebates that are payable are based on quarterly and/or annual volumes purchased directly by the Customer and the payment of rebates is at the discretion of

- PPC and PPC reserves the right not to pay a rebate if there are any inaccuracies in any calculations at the end of the Term.
- 4.5 All product is supplied at the prices ruling on the date of despatch from the factory and not in terms of earlier quotations or prices at the date of order, irrespective of method of delivery.
  - 4.6 The Customer shall be obliged to pay to PPC any additional costs of any nature whatsoever arising due to factors beyond the control of PPC.
  - 4.7 Any expenses incurred by PPC at the instance of the Customer in modifying or otherwise altering or making additions to the quantities or specifications of the goods, and any expenses arising as a result of suspension of work by PPC due to instructions given, or a failure to give instructions by the Customer, shall be added to the price.
  - 4.8 PPC is a supplier and shall not be considered to be a contractor or sub-contractor or in any other way be bound by the terms of any other agreement or contractual document to which PPC is not directly a party.
  - 4.9 Any returns, if accepted by PPC in its sole discretion, and upon such terms as PPC may prescribe, shall be credited less a minimum of 10% (ten percent) as a handling charge, subject to the goods being in a marketable condition, which shall be determined by PPC in its sole discretion, and provided further that the Customer shall be liable for all costs of delivery to the Customer's designated site.

## 5. ORDERS

- 5.1 Any quotation given by PPC constitutes an offer to the Customer which shall be open for acceptance by the Customer for a period of 7 (seven) days after the date thereof, failing which it shall automatically lapse. No acceptance of a quotation by the Customer shall be valid unless a duplicate copy of the quotation is duly signed by the Customer and received by PPC within the aforesaid 7 (seven) day period.
- 5.2 The quotation is based on rates of exchange, freight charges, insurance, railage, costs of labour and material and other charges ruling at the date of quotation. Any variations occurring subsequent to the date of the quotation in any of the aforesaid rates or charges, as the case may be, shall entitle PPC to vary the amount of the quotation accordingly.
- 5.3 The quotation is based on the quantities, specifications and other information supplied to PPC by or on behalf of the Customer, If the Customer requires any modification or addition to any of the foregoing at any time after the quotation is given, PPC shall have the sole and absolute discretion to accept or reject such proposed modification or addition. Any proposed modification or addition by the Customer must be furnished to PPC in writing.
- 5.4 All orders placed by the Customer shall be in writing and delivered to the PPC offices or e-mailed to the relevant person/s at PPC.
- 5.5 Orders placed by the Customer shall not be binding until accepted by PPC.
- 5.6 If PPC is unable to provide and/or deliver some or all of the goods ordered by the Customer for any reason beyond PPC's control, including but not limited to lack of instruction from the Customer, stock shortage, industrial dispute or breakdown, government action, state of war, riot, pandemic, civil disturbance or any other act of God, PPC may, in its sole discretion, cancel the whole or any part of the Customer's order. In the event of such cancellation, PPC shall not be liable to the Customer for any loss, whether in contract or otherwise caused thereby.

- 5.7 The Customer accepts responsibility for safe keeping and issuing of its orders and agrees to pay for all orders which purport to be issued on its behalf and are given effect to in good faith by PPC.
- 5.8 PPC may in its sole discretion agree to the cancellation, variation or diversion of orders by the Customer. If product has already been despatched to the Customer, the Customer will reimburse PPC for any costs incurred with regard to the cancellation, variation or diversion of any orders.
- 5.9 PPC may cancel any order if the Customer is in default of its payment obligations or otherwise breaches any term of this agreement or makes any attempt of compromise, liquidation, sequestration, termination, or a judgement is recorded against the Customer or any of its principals.

## 6. DELIVERY

### 6.1 Delivery to Customer – General

- 6.1.1 Delivery in terms of orders and accepted quotations shall only be effected on payment in full or subject to credit facilities being granted to the Customer.
- 6.1.2 When bulk product is delivered the mass of the product shall be determined by the weighbridge used by PPC or the assized mass meter used by PPC. Queries in regard to weight variances must be made prior to the breaking of seals on bulk tankers.
- 6.1.3 Any claim regarding alleged shortages and quantities delivered must be lodged by the Customer with PPC in writing within 24 (twenty four) hours after delivery and confirmed in writing by endorsing delivery notes to that effect at the time of delivery, failing which the rights of the Customer in regard thereto shall be deemed to be waived.
- 6.1.4 The Customer must give PPC written notice of any claim based on the existence of any alleged defect in product within 14 (fourteen) days after delivery, failing which the rights of the Customer in regard thereto shall be deemed to be waived. Any claim in this regard shall be limited to a claim for the replacement of the defective product and PPC shall not be liable for consequential damages.
- 6.1.5 Notwithstanding clause 6.1.4, claims for shortages, breakages or water damaged product that may be made in respect of deliveries must be noted on delivery and acknowledged by the signature of a representative of the Customer and PPC respectively. Any such claim shall be processed only on PPC's acceptance thereof pursuant to the completion of PPC's investigation.
- 6.1.6 Clear and unrestricted access must be provided at the delivery point for offloading of the product. Save where otherwise stated, delivery will be deemed to have been effected when each delivery vehicle/rail truck arrives at the destination required by the Customer and is available for offloading. The rail service provider or the road transporters' records shall be *prima facie* proof of such delivery.
- 6.1.7 The Customer shall be obliged to procure that the designated site for delivery shall be easily accessible to road transport vehicles. The PPC vehicles will only leave the public road and enter the designated site if the designated site is safe and easily accessible.

- 6.1.8 Time shall not be of the essence of the contract. Accordingly PPC shall not be liable for any consequential costs or damages arising out of late delivery or the failure to deliver any product or service.
- 6.1.9 PPC reserves the right to decline to permit its vehicles to proceed to the point of delivery if it considers such access to be in conflict with reasonable conditions of safety for its employees and/or its vehicles. Where the purchaser fails to accept, or partially accepts delivery of product ordered, the cost of transport and handling charges incurred in the delivery and/or return, shall be for the Customer's account.
- 6.1.10 If the Customer fails or refuses to furnish the information necessary to enable delivery to be effected, or it fails or refuses to take delivery, the goods shall be deemed to have been delivered to the Customer upon notification by PPC to the Customer to that effect.
- 6.1.11 A delivery note or waybill (copy or original) signed by the Customer, its employee, agent or representative shall constitute *prima facie* proof, on its mere production, that the goods delivered thereunder accorded with the quality and quantity reflected on the delivery note.
- 6.1.12 In relation to the delivery of the goods, time shall not be of the essence. Accordingly PPC shall not be liable for any consequential costs or damages arising out of late delivery or the failure to deliver any product or service. Any delivery date indicated by PPC, whether in the quotation or otherwise shall merely be regarded as the estimated date of delivery and shall not bind PPC to effect delivery on or near such date.
- 6.1.13 The Customer shall be liable for all costs and losses to PPC caused by its failure or refusal to take timeous delivery of the goods from PPC. Any costs incurred in the transport, handling or storage of goods that cannot be delivered or are not accepted for delivery and any connected demurrage charges which have arisen due to PPC being unable to unload its product within a reasonable period will be for the Customer's account.
- 6.1.14 PPC's obligation to deliver the product shall in all cases be subject to the following conditions precedent:
  - 6.1.14.1 the availability to PPC of all products and services required for the manufacture of products where the products in question are manufactured by PPC;
  - 6.1.14.2 the timeous availability and receipt by PPC from its own suppliers of goods and services where the goods and/or services in question are being purchased by PPC;
  - 6.1.14.3 the timeous receipt by PPC of any instructions required by PPC from any Customer for the manufacture, purchase or supply of products.
- 6.1.15 If the delivery is to be made in instalments, then the provisions of this clause 6.1 shall apply to each instalment.
- 6.1.16 It is the obligation of the Customer to ensure that any bulk product ordered is offloaded into the correct silo or bin.
- 6.1.17 Prior to the offloading of any bulk product the Customer shall ensure that the tanker seals are in good order and that the product to be discharged is the product ordered.
- 6.1.18 All sizes, weights and other specifications given by PPC are deemed to be accurate. In the event of a discrepancy, the PPC measurements will constitute *prima facie* proof of the measurements for any delivery. PPC reserves the



right to supply products which do not exactly correspond with what it has agreed to supply provided that any differences do not make the goods unsuitable for the Customer's declared purpose.

- 6.1.19 Should a Customer require abnormal packaging this will be carried out at the Customer's cost.
- 6.1.20 Where the need arises, PPC reserves the right to supply a product conforming to the same specification (SANS 50197) from any of its factories regardless of geographic location. The Customer's selling price will not be affected due to changes in source brought about by PPC. PPC however reserves the right to re-negotiate prices where a request to change the source of supply (regardless of product) is received from the Customer.

## 6.2 Delivery to Customer by road

Unless otherwise stipulated on any quotation, orders for delivery will be by road and are subject to the following requirements:

- 6.2.1 Bulk product will be delivered and pumped into a suitable silo at a PPC-approved and accessible site. Where the silo is provided by PPC, PPC will bear the responsibility for its suitability. Where the silo is provided by the Customer, the Customer will bear the responsibility for its suitability, and shall ensure that decanting shall only occur when a duly authorised member of the Customer has identified the proper silo.
- 6.2.2 Product will be delivered to only one point at the site address indicated on the Part C and as reflected on the delivery note and scheduled transport will not be diverted without authority or instructions from PPC. Should the Customer request that the product be diverted to another site, the Customer will be responsible for any additional transport or any other costs that may be incurred.
- 6.2.3 In the case of bagged product, offloading will be done by the Customer, unless specifically agreed otherwise with PPC in writing. In the case of bulk product and offloading by compressor, offloading will be effected by PPC. The offloading and receipt of product is to be supervised by a responsible person appointed by the Customer. PPC's delivery notes shall for all purposes be deemed to be accurate in all respects and be binding on the Customer.
- 6.2.4 Should the Customer request that the product be returned to the factory the Customer will be responsible for any additional transport or any other costs that may be incurred.

## 6.3 Delivery to Customer by rail

- 6.3.1 Orders for railed product are accepted in accordance with tariffs and conditions laid down by the rail service provider.
- 6.3.2 In the case of delivery to a rail siding, delivery will take place on arrival of the consignment at the siding, and rail service provider's records will be *prima facie* proof of such delivery.
- 6.3.3 PPC's selling prices for delivery by rail include delivery to approved stations but any charges for road transport and handling, siding charges, and other ancillary rail service provider charges or levies will be for the Customer's account.
- 6.3.4 All other charges at destination are for the Customer's account.

6.3.5 All and any demurrage charges levied by the rail service provider on PPC shall be for the Customer's account.

#### 6.4 Collection by the Customer at the factory

6.4.1 Customers shall make their own arrangements for transport, at its own risk.

6.4.2 Maximum carrying mass will be governed by the relevant statutes. Where the Customer appoints his own road transporter to collect the product at the factory, axle loading, and any overloading will be the responsibility of the Customer.

6.4.3 Where the Customer appoints his own road transporter to collect the product at the factory, PPC's responsibility for providing proof of delivery will be limited to proving that the product was accepted by the road transporter at the factory.

6.4.4 Delivery shall be deemed to take place when PPC's representative issues a delivery note signed on behalf of PPC.

6.4.5 PPC reserves the right to search any Customer's vehicles and any vehicle of a road transporter appointed by the Customer before it enters or leaves PPC's premises, and in addition reserves the right to search any of the Customer's personnel or those of any sub-contractor appointed by the Customer. It shall be the responsibility of the Customer to ensure that such persons are aware of this provision.

6.4.6 PPC further reserves the right to deny access to any Customer vehicles in the event of lapsed licences, lapsed vehicle registrations, or in the event that the vehicle is otherwise deemed not to be in road-worthy condition.

#### 6.5 Bulk cement spreading for roads

6.5.1 PPC will only perform bulk cement spreading subject to:

6.5.1.1 The spreading being performed by PPC or its representatives under the supervision and guidance of the Customer or its representatives, and at the Customer's risk;

6.5.1.2 Only tanker loads with a minimum of 22 (twenty two) metric tonnes will be supplied;

6.5.1.3 No guarantee being given as to the tolerance of the spread.

6.5.1.4 Scales and canvasses will be supplied by PPC in respect of each delivery. It is the responsibility of the Customer or its representatives to break the tanker seals and to ensure that the tanker is fully discharged;

6.5.1.5 A standing time of 30 (thirty) minutes being permitted, thereafter a standing time charge at the rate specified on any quotation will be levied.

## 7. OWNERSHIP AND RISK

7.1 Subject to clause 6, the risk in the product shall pass on delivery or collection, as applicable in the circumstances

7.2 Notwithstanding the delivery of product or the passing of risk to the Customer, ownership thereof shall remain vested in PPC until the product has been paid for in full.

## 8. PPC'S SILOS

The Customer shall enter into a separate equipment loan agreement with PPC prior to the placement of any silo or other equipment.

## 9. PAYMENT

- 9.1 Unless agreed otherwise in writing, terms are payment with order, or payment must be received by PPC before product is despatched. In the event that credit terms have otherwise been agreed between the parties, those terms shall govern payment. PPC reserves the right at its own discretion to amend or withdraw any credit facilities granted.
- 9.2 The issuing of a quotation to a Customer for the supply of any product/service does not imply an obligation on the part of PPC to grant credit facilities. In this connection it should be noted that although credit terms may be granted, the product/service required within this period could possibly exceed the agreed credit limit and the Customer must ensure that it will have sufficient resources to provide for interim payments to allow for continuity of the required rate of supply, failing which PPC shall have the right to suspend supply. Credit sales are made in strict accordance with PPC's credit terms. PPC reserves the right at its own discretion to amend or withdraw any credit facilities granted.
- 9.3 It is a condition of supply that the Customer's liability for payment becomes irrevocable against proof of delivery by signature on PPC's delivery note or on the delivery note or consignment note of any carrier acting as an agent for PPC as stated in clause 6.
- 9.4 The contract price shall be paid by the Customer-
  - 9.4.1 in South African currency free from bank and other charges;
  - 9.4.2 without any deduction or set off on presentation of invoice; and
  - 9.4.3 via EFT.

## 10. GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the law of South Africa in all respects.

## 11. JURISDICTION

- 11.1 If the Customer is a resident or carries on business in South Africa, then PPC shall be entitled to institute any proceeding against the Customer arising out of the contract, in any South African Court having jurisdiction over the Customer, even if the cause of action in question exceeds the jurisdiction of the court.
- 11.2 Subject to 11.3 if the purchaser is not a resident of and does not carry on business in South Africa, then the Customer consents and submits to the jurisdiction of the Gauteng Local Division of the High Court of South Africa, and all courts of Appeal therefrom for all purposes arising out of the contract.
- 11.3 If the Customer is a resident of or carries on business in Botswana, Swaziland, Namibia, Mozambique, Zimbabwe or Lesotho, PPC shall be entitled to institute legal proceedings against the Customer arising out of the contract in any court of such countries having jurisdiction over the Customer, provided that if a South African court

has jurisdiction over the relevant Customer, PPC shall be entitled to institute proceedings in the South African court having jurisdiction.

## 12. DOMICILIUM AND NOTICES

- 12.1 The Parties hereto choose domicilia citandi et executandi for all purposes of and in connection with this Agreement as may be set out in the Agreement Particulars.
- 12.2 Any Party hereto shall be entitled to change its domicilium from time to time, provided that any new domicilium selected by it shall be a street address and any such change shall only be effective upon receipt of notice in writing by the other Parties of such change.
- 12.3 All notices, demands, communications or payments intended for any Party shall be made or given in writing at such Party's domicilium for the time being. A notice sent by one Party to another Party shall be deemed to be received:
- 12.3.1 on the date of delivery, if delivered by hand;
  - 12.3.2 on the fourth day after posting, if sent by prepaid registered mail;
  - 12.3.3 on the day after emailing, if sent by email transmission.
- 12.4 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen domicilium citandi et executandi.

## 13. FORCE MAJEURE

- 13.1 If PPC is prevented or restricted directly or indirectly from carrying out any of its obligations under this agreement by any cause beyond the reasonable control of PPC, including but not restricted to war, civil commotion, riot, insurrection, strikes, lockouts, pandemic or epidemic, fire, explosion, flood, earthquake, bad weather, acts of God and acts of State, PPC shall be relieved of such obligations during the period that such cause continues, whether directly or indirectly.
- 13.2 Should the force majeure continue for a period in excess of 1 (one) month, PPC shall be entitled to terminate the agreement in its sole and absolute discretion.

## 14. SUSPENSION OF PPC'S OBLIGATIONS

- 14.1 Where any amount is owed by the Customer to PPC by any cause whatever, whether under the contract or not, is not paid on due date, then without prejudice to any other right which it may have PPC may-
- 14.1.1 require that all amounts then owed to it by the Customer from any cause whatsoever, shall immediately become due and payable;
  - 14.1.2 until the payment is made, suspend the carrying out of any of its uncompleted obligations to the Customer from any cause whatsoever;

- 14.1.3 terminate any credit facilities granted to the Customer, under the contract or not.

## 15. BREACH

- 15.1 In the event of either party ("the defaulting party") to this agreement breaching any term or clause hereof, the other party ("the aggrieved party") may call upon the defaulting party by way of written notice, to remedy its breach within a period of 7 (seven) days from the date of receipt of such notice, failing which the aggrieved party shall be entitled to cancel the agreement and seek whatever recourse it deems necessary, including but not limited to, a claim for damages.
- 15.2 Where PPC is the defaulting party, the aggrieved party shall not be entitled to cancel this agreement for any breach by the defaulting party unless such breach is a material breach going to the root of this agreement and is incapable of being remedied by payment in money or, if it is capable of being remedied by payment in money, the defaulting party fails to pay the amount concerned within 14 (fourteen) calendar days after such amount has finally been determined.
- 15.3 In the event that the CPA applies, the defaulting party shall have 20 (twenty) business days from receipt of written notice to rectify the breach.

## 16. CANCELLATION

- 16.1 Notwithstanding the provisions of this Agreement, PPC may cancel the contract or uncompleted part of it with immediate effect if the Customer-
  - 16.1.1 being an individual, dies or is provisionally or finally sequestrated or surrenders his estate; or
  - 16.1.2 being a partnership, the partnership is terminated; or
  - 16.1.3 being a company or close corporation is placed under provisional or final order of liquidation or judicial management; or
  - 16.1.4 compromises or attempts to compromise generally with any of its creditors; or
  - 16.1.5 commits a criminal act, is involved in criminal activity, or commits an act of fraud.
- 16.2 PPC's rights in terms of clause 16.1 above shall not be exhaustive and shall be in addition to any other rights it may have whether under the agreement or otherwise.
- 16.3 Upon termination of the contract for any reason whatever:
  - 16.3.1 all amounts then owed by the Customer to PPC, in terms of the contract, shall become due and payable forthwith;
  - 16.3.2 PPC may retake possession of any product in respect of which ownership has not passed.
- 16.4 Notwithstanding anything contained in this Agreement, PPC is unilaterally entitled to terminate any agreement to which it is a party on 30 (thirty) calendar days' written notice, without prejudice to PPC and without charge.

## 17. WARRANTIES

- 17.1 No warranties or representations, express or implied or tacit, which are not set forth in this agreement shall be binding on PPC.
- 17.2 PPC warrants that at the time of any sale, unless otherwise stipulated on any quotation, the product will comply with the relevant specifications of the South African

- Bureau of Standards ("SABS"), or another applicable standard, but gives no other warranties, expressed or implied, and makes no other representations.
- 17.3 No warranty is given by PPC with regard to colour consistency of product.
- 17.4 If the product is required for a special purpose communicated to PPC no warranty is given that the product will be suitable for that purpose. The Customer will be deemed to have satisfied himself as to the suitability of the product ordered, by virtue of the fact that he has placed the order.
- 17.5 PPC shall not be liable under any circumstances whatsoever for any damages, loss of profit, demurrage, whether direct or indirect, consequential or otherwise alleged to be sustained by the Customer as a result of or attributed to:
- 17.5.1 product supplied by PPC being defective or incorrectly used and/or used in conjunction with materials not supplied by PPC;
- 17.5.2 any delay in the manufacture or delivery of the product in acts or omissions or negligence (gross or otherwise) of any of PPC's employees or agents or servants or any other person for whose acts or omissions PPC is liable.
- 17.6 In the event that any product does not comply with any of PPC's warranty undertakings it shall replace the product, if reasonably practicable, as soon as reasonably possible after the defect has been brought to its attention, subject to clause 5.
- 17.7 The warranty given by PPC in clause 17.2 is given in lieu of any common law liability, and accordingly all and any liability for the following is hereby excluded:
- 17.7.1 warranties implied by law in respect of latent defects; or
- 17.7.2 the fitness of the products for the Customer's purpose (in respect of which the Customer must satisfy itself); or
- 17.7.3 any loss or injury arising from the supply of the products, including any loss attributable to any negligent act of PPC or its servants or agents; or
- 17.7.4 any representations or warranties as to the goods given by any of PPC's servants or agents.
- 17.8 The onus shall be on the Customer to ensure, by examination before acceptance that the goods delivered are within the agreed specification.

## 18. INDEMNITY

- 18.1 The parties acknowledge that in terms of section 61 of CPA, the producer, importer, distributor, retailer, and/or supplier, may be jointly and severally liable for any Harm caused wholly or partly as a consequence of—
- 18.1.1 supplying unsafe goods;
- 18.1.2 a products failure, defect or hazard in any goods; or
- 18.1.3 inadequate instructions or warning provided to the consumer pertaining to any hazard arising from or associated with the use of any goods, irrespective of whether the Harm resulted from any negligence on the part of the producer, importer, distributor, retailer or supplier, as the case may be.
- 18.2 In respect of 18.1 above, each party ("indemnifying party") hereby indemnifies and holds harmless the other party from and against any and all claims, actions, liabilities, damages, costs and expenses asserted against, imposed upon or incurred by such other party as a result of or arising out of any Harm alleged or proven by a consumer himself or herself, or other person contemplated in section 4(1) of the CPA, to the extent that such Harm is attributable to the conduct of the indemnifying party or any contravention by the indemnifying party of any applicable law.

- 18.3 It is recorded that signature of this document by a Customer is without prejudice to any rights or defences which PPC may have under and in terms of the CPA or at law in respect of any claims made or brought against it by the Customer and/or any Protected consumer or purchaser of any goods supplied by PPC.

## **19. PROTECTION OF PERSONAL INFORMATION**

In the course of the Contracting Party's dealings with PPC, PPC will obtain Personal Information of the Contracting Party and the Contracting Party undertakes to do the following:

- 19.1 The Contracting Party consents to PPC collecting, recording and thereby processing its Personal Information as reflected on PPC's quotation forms, invoices and any other annexures reflecting the Contracting Party's Personal Information, to give effect to these Standard Terms and Conditions and any Agreement, and consents to such information being safeguarded by PPC for this purpose.
- 19.2 The Contracting Party hereby consents to PPC collecting and processing the Contracting Party's Personal Information for the aforementioned purposes.
- 19.3 The Contracting Party acknowledges that PPC may need to share Personal Information to third parties to perform functions on PPC's behalf or to provide services to PPC. Such service providers do not collect, use or disclose the Personal Information for any purpose other than to perform such functions or to provide services to PPC or as otherwise required by law. The Contracting Party hereby consents to such disclosure.
- 19.4 PPC will take all reasonably practicable steps to ensure that the Contracting Party's Personal Information is kept secure and confidential and retained and processed only in accordance with the provisions of and subject to the conditions set out in POPI. is not distributed to unauthorised third parties.

## **20. CONFIDENTIALITY AND NON-DISCLOSURE**

- 20.1 The parties acknowledge that the details of this Agreement and any communication between the Parties arising out of or in connection with this Agreement, are strictly confidential and undertake not to disclose the same to any third party (whether before or after the termination of this Agreement for any reason whatsoever and notwithstanding any other provision of this Agreement) without the approval of the other Party who shall have the right to grant or refuse such consent in its absolute discretion.
- 20.2 To the extent that this Agreement and the related documents contain proprietary and confidential information belonging to PPC, the Contracting Party commits not to disclose any such information contained herein except in the context of its business dealings with PPC and any of PPC's group companies.
- 20.3 The Contracting Party agrees to inform present and future employees who view or have access to such confidential information of its confidential nature.
- 20.4 The Contracting Party agrees to instruct each of its employees that they must not disclose any information concerning this Agreement and the related documents to others except to the extent that such matters are generally known to, and available for use by, the public or the industry within which the Contracting Party operates. The Contracting Party agrees not to duplicate or distribute or permit others to duplicate or distribute any material contained herein without PPC's express written consent.

- 20.5 PPC retains all title, ownership and intellectual property rights to both the material and trademarks contained herein, including all supporting documentation, files, marketing material, and multimedia (where appropriate).

## **21. PROTECTED CONSUMERS**

- 21.1 To the extent that the Customer is a Protected consumer –
- 21.1.1 clauses 5.9, 15 and 16.1 shall be read in conjunction with the provisions of section 14 of the CPA;
  - 21.1.2 the period referred to in clause 6.1.4 shall be 6 (six) months;
  - 21.1.3 clauses 6.1.5, 6.1.10 and 6.1.17 shall not apply insofar as they contravene section 19 of the CPA;
  - 21.1.4 clauses 6.1.11 and 9.4.2 shall not apply insofar as they contravene section 48 of the CPA;
  - 21.1.5 clause 6.2.4 shall not apply insofar as they contravene sections 55 and 56 of the CPA;
  - 21.1.6 clause 6 shall be read in conjunction with section 19 of the CPA;
  - 21.1.7 clauses 17.5, 17.7 and 18 shall not apply.

## **22. NO AGENCY OR PARTNERSHIP**

The Parties agree that this Agreement does not found a partnership, agency or employment Agreement between them. There are no joint and several liabilities on the part of either Party and each Party shall be liable for those obligations provided for in this Agreement. Neither Party shall bind the other Party or represent that their relationship is a partnership or other legal entity.

## **23. PROHIBITION OF CESSION AND ASSIGNMENT**

The Contracting Party shall not be entitled to cede or assign any of its rights, or delegate any of its obligations hereunder without the prior written consent of PPC first being obtained.

## **24. INTERPRETATION**

- 24.1 In this agreement, unless the context requires otherwise –
- 24.1.1 words importing any one gender shall include the other two genders;
  - 24.1.2 the singular shall include the plural and vice versa;
  - 24.1.3 a reference to natural persons shall include created entities and vice versa.
- 24.2 In these conditions, the headings have been inserted for convenience only and shall not be used for nor assist or affect their interpretation.

## **25. GENERAL**

- 25.1 This Agreement, read with the Underlying Agreement documents referred to therein, contains the entire agreement between the parties, and may be executed on one or more separate counterparts, each of which when so executed shall be deemed an



original, but all the counterparts shall together constitute one and the same instrument.

- 25.2 No party shall have any claim or right of action arising from any undertaking, representation or warranty not included in this document.
- 25.3 No failure by a party to enforce any provision of these conditions shall constitute a waiver of such provision or affect in any way a party's right to require performance of any such provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself.
- 25.4 The Customer warrants that it is acting as a principal and not as an agent for an undisclosed principal.
- 25.5 These Standard Terms and Conditions shall override any conflicting terms and conditions which the Contracting Party purports to impose and in the event of any conflict these Standard Terms and Conditions shall prevail.
- 25.6 These General Terms and Conditions of Supply shall override any conflicting terms and conditions which the Customer purports to impose and in the event of any conflict these General Terms and Conditions of Supply shall prevail.
- 25.7 Should any provision in these Standard Terms and Conditions be found to be in contravention with the CPA, such provision shall be deemed to be severable from these Standard Terms and Conditions.
- 25.8 No alteration or variation of these terms and conditions or this agreement, or any part thereof, shall apply unless the alterations or variation in question is expressly agreed to in writing and signed by an authorised representative of PPC.