

**STANDARD TERMS AND CONDITIONS OF CONSULTING SERVICES OF PR
ENGINEERING AFRICA PROPRIETARY LIMITED**

1 INTERPRETATION

In these Terms and Conditions, clause headings are used for convenience only and not in its interpretation and, unless the context clearly indicates a contrary intention, -

- 1.1 a word or an expression that denotes -
 - 1.1.1 any gender, includes the other genders;
 - 1.1.2 the singular, includes the plural and *vice versa*; and
 - 1.1.3 a natural person, includes an artificial or juristic person and *vice versa*;
- 1.2 the following words and expressions have the meanings given to them below and cognate words and expressions have corresponding meanings -
 - 1.2.1 "**Applicable Laws**" - in relation to the Customer or PRE, as the case may be, includes all common law, statutes, regulations, ordinances, subordinate legislation, by-laws, directives, codes of practice, circulars, guidance or practice notices, judgments, decisions, standards and similar provisions -
 - 1.2.1.1 which are prescribed, adopted, made, published or enforced by any Relevant Authority; and
 - 1.2.1.2 compliance with which is (or was or will be, at the relevant time referred to in these Terms and Conditions) mandatory for the Customer or PRE, as the case may be;
 - 1.2.2 "**Business Day**" - any day that is not a Saturday, a Sunday or an official public holiday in South Africa;
 - 1.2.3 "**Cancellation Fee**" - the cancellation fee calculated in accordance with clause 7.5;
 - 1.2.4 "**Customer**" – the Party stipulated as such in the Purchase Order;
 - 1.2.5 "**Companies Act**" - the Companies Act No 71 of 2008, including all regulations made in respect thereof;
 - 1.2.6 "**Consulting Period**" – the time period during which PRE will render the Consulting Services to the Customer, which will be from the date stipulated in 5.3 until the date stipulated in 5.1.2, unless otherwise agreed by the Parties in writing.
 - 1.2.7 "**Consulting Services**" - the complete set of consulting services, as stipulated in the Purchase Order and including but not limited to producing the Products, which are to be performed by PRE for the Customer during the Consulting Period;
 - 1.2.8 "**Contract Price**" - the contract price payable by the Customer to PRE for the Consulting Services, as stipulated in the Purchase Order;

- 1.2.9 **"Deposit"** - the deposit stipulated in, or calculated in accordance with, the Purchase Order, which is payable by the Customer to PRE in accordance with the provisions of 5.1;
- 1.2.10 **"Insolvency Event"** - any of the following circumstances or events -
- 1.2.10.1 an order or declaration is made, steps are taken or a meeting of the directors or shareholders of the Customer is convened to consider the passing of a resolution, or a resolution is proposed or passed, for the business rescue, liquidation (whether provisional or final), winding-up or deregistration of the Customer; or
- 1.2.10.2 the Customer is unable (or admits its inability) to pay its debts generally as they fall due, or it is (or it admits to being) otherwise insolvent, or it stops, suspends or threatens to stop or suspend payment of all or a material part of its debts, or it proposes or seeks to make or makes a general assignment or any arrangement or composition with or for the benefit of its creditors, or a moratorium is agreed or declared in respect of or affecting all or a material part of its indebtedness; or
- 1.2.10.3 the Customer takes any proceeding or other step with a view to the general readjustment, rescheduling or deferral of its indebtedness (or any part thereof which it would otherwise be unable to pay when due) or proposes to take any such step; or
- 1.2.10.4 any business rescue practitioner, liquidator or the like is appointed in respect of the Customer or any material part of its assets, or the Customer requests any such appointment; or
- 1.2.10.5 the Customer is or becomes insolvent, or commits any act that would, if it were a natural person who were subject thereto, constitute an act of insolvency as described in the Insolvency Act No 24 of 1936 (as amended); or
- 1.2.10.6 the Customer or any other person takes steps to invoke business rescue proceedings in respect of the Customer; or
- 1.2.10.7 the Customer becomes subject to any of the proceedings contemplated in chapter 6 of the Companies Act, including any "**business rescue**", becomes regarded as "**financially distressed**" or subject to "**supervision**", all as defined in chapter 6 of the Companies Act;
- 1.2.11 **"Parties"** - collectively, PRE and the Customer; and "**Party**" means either of them, as the context may require;
- 1.2.12 **"Personal Information"** - has the meaning given to this term in section 1 of POPIA;
- 1.2.13 **"POPIA"** - the Protection of Personal Information Act No 4 of 2013;
- 1.2.14 **"PRE"** – PR Engineering Africa Proprietary Limited (registration number 2018/079808/07), a private company duly incorporated and registered in accordance with the laws of South Africa;

- 1.2.15 **"PRE's Designated Account"** - the bank account nominated by PRE and stipulated in the Purchase Order;
- 1.2.16 **"Premises"** – the premises stipulated in the Purchase Order in relation to which the Consulting Services will be rendered;
- 1.2.17 **"Prime"** - the variable interest rate quoted from time to time by First National Bank, a division of FirstRand Bank Limited, as its prime rate, which is a nominal annual compounded monthly rate, as calculated and charged by that bank and as certified by any manager or director of that bank, whose appointment it is not necessary to prove and whose certificate evidencing such rate shall, in the absence of manifest error, be final and binding on the Parties;
- 1.2.18 **"Processing"** - has the meaning given to this term in section 1 of POPIA; and **"Process"** has a corresponding meaning;
- 1.2.19 **"Products"** – the products which may be produced pursuant to the provision of the Consulting Services during the Consulting Period at the instance of the Customer such as Feasibility Studies, Reports, and Planning Proposals, Concept and Detailed Project Designs & Drawings, Equipment Selection & Specifications, Economic Evaluation & Cost Estimation, Tender Documentation & Tender Adjudication, Engineering Project Management Testing, Commissioning & Quality Reports, Close-out and Maintenance Documentation, and/or any other products which are expressly identified in terms of the relevant Purchase Order.
- 1.2.20 **"Purchase Order"** - the written purchase order of PRE to which these Terms and Conditions apply;
- 1.2.21 **"Rand"** and **"R"** – the official currency of South Africa;
- 1.2.22 **"Relevant Authority"** - any competent court or regulatory or other authority, or any local, provincial or national governmental authority, body or department or any inter-governmental or supra-national organisation or any self-regulatory authority, body or organisation;
- 1.2.23 **"Site Inspection"** - has the meaning given to this term in 4.1;
- 1.2.24 **"South Africa"** - the Republic of South Africa;
- 1.2.25 **"Standards Act"** - National Building Regulations And Building Standards Act 103 of 1977, and any regulations made in terms thereof from time to time;
- 1.2.26 **"Terms and Conditions"** - the terms and conditions of PRE as set forth in this document, as amended or replaced from time to time by PRE in its sole discretion;
- 1.3 where any term is defined within a particular clause other than this 1, that term has the meaning given to it in that clause wherever it is used in these Terms and Conditions;

- 1.4 where any number of days is to be calculated from a particular day, that number is calculated by excluding that particular day and commencing on the next day. If the last day of the number to be so calculated falls on a day that is not a Business Day, the last day is deemed to be the next succeeding Business Day;
- 1.5 any reference to days (other than a reference to Business Days), months or years is a reference to calendar days, months or years, as the case may be;
- 1.6 the use of the words "**including**", "**includes**" or "**include**", followed by a specific example/s, does not limit the meaning of the general wording preceding the example/s and the *eiusdem generis* rule does not apply in the interpretation of that general wording or those specific example/s; and
- 1.7 the rule of interpretation which prescribes that, in the event of ambiguity, a contract is to be interpreted against the party responsible for its drafting, shall not apply in the interpretation of these Terms and Conditions.

2 **CONFLICT**

Unless stated otherwise in these Terms and Conditions, if there is any conflict between the provisions of these Terms and Conditions and the Purchase Order, the provisions of these Terms and Conditions will prevail.

3 **FEE ESTIMATES**

- 3.1 Any fee estimate provided in respect of the Consulting Services to be rendered in respect of the Premises is indicative only and not binding on PRE. PRE reserves the right to withdraw or amend a fee estimate at any time on written notice to the Customer.
- 3.2 Due to the technical nature of the Consulting Services, the Customer shall be liable for any additional direct costs in relation to or contemplated in the Consulting Services and/or the Products which arise after the provision of a fee estimate.
- 3.3 In addition, PRE reserves the right to increase the Contract Price if there are increases in the costs necessary to fulfil any Purchase Order, including material duties, levies, packing, storage and transport costs, or if the Customer requests additional changes to the Purchase Order from time to time.
- 3.4 Unless indicated to the contrary in the Purchase Order, the Contract Price will include the provision of designs up to revision three (being a detail design). Any further revisions requested by the Customer will be in addition to the Contract Price, and a new Purchase Order will have to be signed by the Customer, on terms as agreed to by the Parties.

4 **SITE INSPECTION AND ORDER**

- 4.1 Prior to providing the Customer with a Purchase Order for acceptance, PRE may conduct a technical site inspection ("**Site Inspection**") of the Premises in order to scope out the Premises for the Consulting Services.

- 4.2 The Customer undertakes to cooperate with PRE during the Site Inspection and to provide PRE and/or its officials, employees, representatives, agents and/or contractors access to the Premises for purposes of the Site Inspection.
- 4.3 PRE shall, as soon as reasonably possible after conducting the Site Inspection, confirm in writing whether or not the Premises are suitable for the Consulting Services.
- 4.4 PRE reserves the right to refuse to provide the Consulting Services if it deems the Premises to be unsuitable for the Consulting Services.
- 4.5 Should PRE, in its sole discretion, elect to provide the Consulting Services, it shall prepare a Purchaser Order which shall be provided to the Customer for acceptance.
- 4.6 PRE may require the Customer to provide it with documentation and information in order to prepare the Purchase Order. The Customer agrees to cooperate with PRE in this regard and undertakes to provide PRE with all documentation and information required by PRE to prepare the Purchase Order.
- 4.7 If the Customer subsequently cancels or withdraws the Purchase Order after having accepted the Purchase Order, then PRE shall be entitled to retain any Deposit identified in the Consulting Services the Customer and shall furthermore be entitled to charge the Cancellation Fee, which shall be payable on demand.
- 4.8 All Purchase Orders accepted by the Customer are subject to these Terms and Conditions.

5 CONTRACT PRICE AND PAYMENT

- 5.1 Unless agreed otherwise by the Parties in the Purchase Order, the Customer shall pay the Contract Price as follows –
 - 5.1.1 the Customer shall pay to PRE the Deposit, being 40% (forty percent) of the Contract Price identified in the Purchase Order, within three Business Days of acceptance by the Customer of the Purchase Order by way of electronic funds transfer into PRE's Designated Account; and
 - 5.1.2 the balance of the Contract Price for the Consulting Services shall become due and payable as PRE completes the stages and/or deliverables as set out and agreed upon in the Purchase Order.
- 5.2 Any payment made in terms of 5.1.1 and 5.1.2 is not refundable under any circumstances.
- 5.3 A Form 2 of the Standards Act will only be issued by PRE once PRE received proof of the Deposit in 5.1.1.
- 5.4 Subject to 5.5, PRE agrees that payment of -
 - 5.4.1 the Deposit in accordance with the provisions of 5.1.1; and

- 5.4.2 the balance of the Contract Price in accordance with the provisions of 5.1.2, will constitute a due and proper discharge of the Customer's obligation to make payment in respect of the Consulting Services relating to the Premises.
- 5.5 In addition to any payments in respect of the Deposit and balance of the Contract Price as contemplated in 5.4, any further visits by PRE to the Premises, as well as any further meetings between PRE and the Customer (or its representatives), after the Purchase Order has been accepted by the Customer, whether requested by the Customer or deemed necessary by PRE to perform the Consulting Services, shall be charged to the Customer at the following rates –
- 5.5.1 Travel charges at R7/km (seven Rand per kilometre), calculated from PRE's principal place of business to the Premises or the meeting venue, as the case may be;
- 5.5.2 Time charges at R750/h (seven hundred and fifty Rand per hour), which shall apply to the time spent at the Premises, at meeting venues, and travel time.
- 5.6 Any charges in respect of the work referred to in 5.5 shall be payable by the Customer to PRE's Designated Account within 30 days of the Customer receiving the invoice in respect of such work.

6 DELIVERY

- 6.1 PRE shall use its reasonable endeavours to render the Consulting Services during the Consulting Period, on the date(s) and at the time(s) specified in the Purchase Order.
- 6.2 If PRE becomes aware of any possible or actual delay which may affect the performance of the Consulting Services, PRE shall promptly notify the Customer thereof in writing. The Customer undertakes to cooperate with PRE to find suitable alternative date(s) and time(s) for rendering of the Consulting Services. PRE shall not be liable for any costs, expenses, damages or losses of any nature whatsoever which may be incurred by the Customer as a result of any delay in the performance of the Consulting Services or delivery of the Products (irrespective of the reason therefor).
- 6.3 If for any reason the Customer is unable to receive the Consulting Services or Products when tendered by PRE, PRE shall postpone the delivery of the Consulting Services or Products until the Customer can accept delivery thereof at the Customer's instruction. In such an event, the Customer shall be liable for all reasonable costs incurred by PRE as a result of the postponement of the delivery of the Consulting Services or Products.
- 6.4 The Customer shall grant PRE (and/or its officials, employees, representatives, agents and/or contractors) access to the Premises in order to render the Consulting Services in accordance with the Purchase Order or these Terms and Conditions.
- 6.5 If PRE is prevented from rendering the Consulting Services due to any acts or omissions by the Customer for a continuous period of at least 14 (fourteen) days, PRE shall be entitled to cancel the Purchase Order and thereafter retain the Deposit and charge the Customer a Cancellation Fee.

7 CONSULTING SERVICES

- 7.1 PRE shall carry out the Consulting Services relating to the Premises. In the event that the Customer uses any third party consultant or consulting engineer to implement the Products provided by PRE, any warranty given by PRE in respect of the Consulting Services or Products shall automatically become null and void.
- 7.2 PRE shall only be responsible for any defects in the Consulting Services and the Products to the extent it has supervised the implementation thereof at the Premises. The Customer may not hold PRE liable for any defects in the works which are constructed at the Premises pursuant to the Consulting Services and Products, unless PRE has supervised and approved all aspects relating to design, project- or construction management, or performance of the system contemplated by the Products.
- 7.3 It is specifically recorded that no relationship between the Parties in terms of the Consulting Services shall be construed as a joint venture or partnership or agency relationship.
- 7.4 The Customer undertakes to cooperate with PRE during the Consulting Period and to provide PRE and/or its officials, employees, representatives, agents and/or contractors access to the Premises for purposes of rendering the Consulting Services. Failure by the Customer to cooperate with PRE, or otherwise impeding or failing to provide PRE and/or its officials, employees, representatives, agents and/or contractors with access to the Premises for a continuous period of 14 (fourteen) days, will entitle PRE to cancel the Purchaser Order, retain the Deposit and charge the Customer a Cancellation Fee which shall be payable on demand.
- 7.5 The Parties agree that in the event that PRE becomes entitled to charge the Customer a Cancellation Fee, such Cancellation Fee shall be equal to an amount calculated at 20% of the Contract Price.

8 INTELLECTUAL PROPERTY

- 8.1 PRE retains copyright and other intellectual property rights in all documents and Products drafted or prepared by PRE and in respect of all ideas, designs and material developed, designed or created by PRE, which shall remain the sole property of PRE.
- 8.2 The Customer acknowledges and agrees that it shall have no rights or licence to use such any copyright or other intellectual property pertaining to all documents Products drafted or prepared by PRE for any purposes which are not expressly contemplated in the Purchase Order, without first obtaining PRE's prior written consent, which it may refuse in its sole discretion.

9 PAYMENTS AND INTEREST

- 9.1 All payments made in terms of or arising out of the Purchase Order read with these Terms and Conditions by the Customer must be made free of the cost of the transfer of funds to PRE and without any deduction, set-off or withholding of any nature whatsoever.

- 9.2 The Customer does not have the right to adjust, defer or withhold any payment due to PRE in terms of or arising out of the Purchase Order read with these Terms and Conditions, or to obtain deferment of judgment for any of those amounts, or any execution of such judgment by reason of any counterclaim or set-off of any nature whatsoever and however arising, or by reason of any claims or actions against the Customer by a third party.
- 9.3 Unless otherwise expressly indicated, all amounts charged to the Customer in terms of the Purchase Order read with these Terms and Conditions are exclusive of value-added tax which shall be levied in terms of the Value-Added Tax Act No 89 of 1991 (as amended) and any other rates, taxes or other imposts that may be payable thereon. Any value added-tax which is required to be levied shall be paid at the rate applicable at the time of each payment and shall be paid together with the amount that is payable to PRE in terms of the Purchase Order read with these Terms and Conditions. The Customer shall receive a written tax invoice from PRE in respect of all amounts charged in terms of the Purchase Order as read with these Terms and Conditions.
- 9.4 All amounts due by the Customer to PRE in terms the Purchase Order read with these Terms and Conditions will (unless paid on due date) bear interest from the due date to the date of payment. This interest will be calculated at Prime plus 5% (five percent) and be capitalised monthly in arrears.
- 9.5 If payment is demanded from either Party of any amount in terms of or arising out of the Purchase Order read with these Terms and Conditions and such Party disputes the obligation to make payment, then that disputing Party is entitled to make the payment under protest and institute action therefor and (if successful) to recover interest thereon calculated from the date of payment on the basis referred to in 9.4.

10 WARRANTIES

- 10.1 The Customer hereby represents and warrants to PRE that -
- 10.1.1 it has -
- 10.1.1.1 the legal capacity and power to enter into and perform; and
- 10.1.1.2 taken all necessary actions (whether corporate, internal or otherwise) to authorise its entry into and the performance of its obligations in terms of, the Purchase Order and these Terms and Conditions; and
- 10.1.2 it is the registered owner of the Premises or (if it is not the registered owner of the Premises) it has obtained all the necessary approvals and consents to authorise the rendering of the Consulting Services in terms of the Premises.
- 10.2 PRE warrants in favour of the Customer that the Consulting Services and Products shall be provided in accordance with the Standards Act and shall comply with any applicable industry standards, and save for the foregoing does not give any further guarantees or warranties of any nature whatsoever in respect of the Consulting Services or Products.

11 INDEMNITIES, LIMITATION AND EXCLUSION OF LIABILITY

- 11.1 PRE shall not be liable for any indirect, incidental or consequential damages incurred or suffered by the Customer or any third party, arising out of or relating to the Consulting Services or the Products. PRE does not warrant or represent that the Consulting Services or the Products are fit any other use or purpose other than for the intended use or for any specific purpose expressly conveyed by the Customer in writing.
- 11.2 The Customer may not give warranties or guarantees to a third party in respect of the Consulting Service or Products other than those agreed to in writing by PRE.
- 11.3 PRE shall not indemnify the Customer or any third party for any losses, damages or expenses relating to or arising out of the Consulting Services or the Products, except for any losses or damages due to death, injury or damage to property which are directly attributable to the gross negligence or wilful intent of PRE or its employees.
- 11.4 PRE does not give or imply (nor will it at any time after the acceptance of a Purchase Order give or imply) any guarantee or warranty with respect to the quality or the suitability of the Consulting Services and/or Products other than those expressly given in writing by PRE, and PRE shall not (nor will it at any time after the acceptance of a Purchase Order) be bound to any representation, warranty or undertaking that has not been given by PRE in writing to the Customer regarding the quality or suitability of the Consulting Services.
- 11.5 PRE is not liable for, and the Customer hereby indemnifies PRE against, any actual or contingent claims (including claims for consequential, incidental or special damages), costs (including attorney costs on the scale as between an attorney and his own client), damages, expenses, judgments, liabilities, losses (including claims for loss of profit, goodwill or business) or penalties of any nature whatsoever which PRE, the Customer or any third party may incur, suffer or sustain as a result of or in connection with -
- 11.5.1 the due and proper performance by PRE of any of PRE's obligations in terms of the Purchase Order or these Terms and Conditions; or
- 11.5.2 the failure by PRE to perform its obligations in terms of the Purchase Order or these Terms and Conditions as a result of any circumstance, event, fact, matter, occurrence or thing that is beyond PRE's reasonable control.
- 11.6 To the fullest extent permitted by Applicable Law, the Customer assumes responsibility for all personal injury and property damage resulting from the handling, possession, use, implementation of the Products and hereby waives all claims against PRE in this regard.
- 11.7 Notwithstanding anything to the contrary in the Purchase Order or these Terms and Conditions, the Customer cannot bring or make any claim for breach of the Purchase Order or these Terms and Conditions, or for any other causes of action pertaining to the Consulting Services or Product, against PRE after the expiry of one year following the end of the Consulting Period.

- 11.8 The Customer undertakes that it shall not bring or pursue any claim against PRE arising out of or in connection with any of the causes of action contemplated in 11.5 to 11.7 (both inclusive).
- 11.9 Without prejudice to any of the other provisions contained in this clause 11, the maximum aggregate liability of PRE to the Customer in relation to the Consulting Services and Products, for any one or more causes of action, whether as a result of breach of contract, delict or for any other reason whatsoever, shall be limited to the lesser of:
- 11.9.1 twice the Contract Price as charged and actually received by PRE; or
- 11.9.2 the amount paid to PRE in terms of any professional indemnity insurance maintained by PRE.
- 11.10 Unless otherwise agreed to in writing by PRE, PRE shall have no liability arising from or in connection with the Consulting Services or Products to any person ("**Third Party**") other than the Customer. If, notwithstanding what is stated in this 11.10, PRE is held liable to any Third Party, any liability to the Customer referred to in 11.9 shall be reduced by an amount equal to the amount for which PRE are liable to the Third Party.

12 CERTIFICATE

A certificate signed by a manager of PRE (whose authority, status and appointment it is not necessary to prove) as to the existence and amount of any costs, expenses, fees, interest or other amount payable by the Customer in terms of the Purchase Order read with these Terms and Conditions, the fact that any such amount is due and payable or any other fact relating to any such amount shall, in the absence of a manifest error, -

- 12.1 constitute *prima facie* proof of its contents and of the correctness thereof for all intents and purposes; and
- 12.2 be valid as a liquid document for purposes of any provisional sentence, summary judgment or other proceedings instituted by PRE against the Customer.

13 PERSONAL INFORMATION AND MARKETING

- 13.1 The Customer acknowledges and expressly consents to PRE Processing its Personal Information for purposes of processing the Purchase Order, concluding these Terms and Conditions and for purposes of rendering the Consulting Services.
- 13.2 PRE undertakes that it shall Process the Personal Information of the Customer received pursuant to the Purchase Order in accordance with the conditions for lawful Processing of Personal Information set out in the POPIA.
- 13.3 The Customer has the right to access its Personal Information held with PRE. PRE agrees to grant the Customer such access during normal office hours within a reasonable time after the receipt of a written request for this access.
- 13.4 The Customer acknowledges and expressly consents to PRE taking photographs and/or videos, whether by way of drone footage or otherwise, of the Products and Consulting Services rendered in terms of the Premises and using those

photographs and/or videos for marketing purposes, including publishing those photographs and/or videos on PRE's website.

14 CONFIDENTIALITY

- 14.1 For the purposes of this 14, "**Confidential Information**" of either Party means any information or document disclosed by that Party to the Receiving Party prior to the acceptance of the Purchase Order and/or these Terms and Conditions, in terms of the Purchase Order and/or these Terms and Conditions or otherwise in connection with the Purchase Order which by its nature is proprietary and confidential to that Party or which information or document is designated by such Party in writing as being confidential whether received before, during or after the Purchase Order.
- 14.2 Notwithstanding the cancellation of a Purchase Order, neither Party ("**Receiving Party**") shall (at any time after the acceptance of the Purchase Order) disclose to any person or use in any manner whatsoever the other Party's Confidential Information or the existence and contents of the Purchase Order and/or these Terms and Conditions, provided that -
- 14.2.1 either Party may disclose the existence and contents of the Purchase Order and/or these Terms and Conditions to the extent required by any rules of any stock exchange by which that Party (or any of its affiliates) is bound;
- 14.2.2 either Party may disclose the existence and contents of the Purchase Order and/or these Terms and Conditions to the extent required to provide the Consulting Services or to provide or implement the Products contained in the Purchase Order and/or these Terms and Conditions;
- 14.2.3 the Receiving Party may disclose the other Party's Confidential Information and the existence and contents the Purchase Order and/or these Terms and Conditions -
- 14.2.3.1 to the extent required by law (other than in terms of a contractual obligation of the Receiving Party);
- 14.2.3.2 to and permit the use thereof by its employees, representatives and professional advisors to the extent strictly necessary for the purpose of implementing or enforcing the Purchase Order and/or these Terms and Conditions or obtaining professional advice or conducting its business, it being specifically agreed that any disclosure or use by any such employee, representative or advisor of that confidential or other information for any other purpose will constitute a breach of this 14 by the Receiving Party; and
- 14.2.4 the provisions of this 14 do not apply to any Confidential Information of either Party that -
- 14.2.4.1 is or becomes generally available to the public other than as a result of a breach by a Receiving Party of its obligations in terms of this 14;
- 14.2.4.2 is also received by a Receiving Party from a third party who did not acquire that Confidential Information subject to any duty of confidentiality in favour of the other Party; or

14.2.5 was known to a Receiving Party prior to receiving it from the other Party.

15 **FORCE MAJEURE**

15.1 An "**Event of Force Majeure**" means any circumstance or event whatsoever which is not within the reasonable control of the Affected Party, including *vis major*, *casus fortuitus*, any act of God, strike, theft, fire, pandemic, explosion, riot, insurrection or other civil disorder, war (whether or not declared) or military operations, international restrictions, any act or requirement of any international authority, any act or requirement of any state or government or other competent local authority and any court order.

15.2 If either Party ("**Affected Party**") is prevented from fulfilling any of its obligations in terms of the Purchase Order or these Terms and Conditions as a result of an Event of *Force Majeure*, then -

15.2.1 those obligations will be deemed to have been suspended to the extent that (and for so long as) the Affected Party is so prevented from fulfilling them, and the corresponding obligations of the other Party ("**Unaffected Party**") will be suspended to the corresponding extent; and

15.2.2 the Affected Party shall promptly notify the Unaffected Party in writing of that Event of *Force Majeure*, and such written notice must include an estimation of the approximate period for which the suspension in terms of 15.2.1 will endure. Such estimate is not binding on the Affected Party.

15.3 If the Affected Party partially or completely ceases to be prevented from fulfilling its obligations as a result of the Event of *Force Majeure*, the Affected Party must promptly give written notice to the Unaffected Party of that cessation, and the Affected Party shall (as soon as possible) fulfil its obligations that were previously suspended, provided that, if and to the extent that fulfilment is no longer possible or the Unaffected Party has given written notice that it no longer requires that fulfilment, the Affected Party will not be obliged to fulfil its suspended obligations and the Unaffected Party will not be obliged to fulfil its corresponding obligations.

15.4 If an Event of *Force Majeure* continues for more than 30 days after the date of the notice referred to in 15.2.2 and notice of cessation in terms of 15.3 has not been given, then the Unaffected Party is entitled (but not obliged) to cancel the Purchase Order by giving not less than 10 days written notice to the Affected Party to that effect, provided that any such notice of termination will be deemed not to have been given if a notice of cessation in terms of 15.3 is received by the Unaffected Party prior to the expiry of that 10-day period.

16 **BREACH**

16.1 If PRE breaches any provision of the Purchase Order or these Terms and Conditions and fails to remedy that breach within 30 days after receiving written notice requiring the remedy of such breach from the Customer, then (to the fullest extent permitted by Applicable Law) the Customer's exclusive remedies are to –

- 16.1.1 claim immediate specific performance of all of PRE's obligations then due for performance; or
- 16.1.2 or to cancel.
- 16.2 If the Customer -
 - 16.2.1 breaches any provision of the Purchase Order or these Terms and Conditions and fails to remedy that breach within seven days after receiving written notice from PRE requiring that remedy from PRE; or
 - 16.2.2 initiates, commits or undergoes an Insolvency Event,

then PRE shall be entitled, without prejudice to its other rights under these Terms and Conditions or at law (including any right to claim damages), to –
 - 16.2.3 cancel the Purchase Order and charge the Customer the Cancellation Fee which shall thereupon become immediately due and payable; or
 - 16.2.4 claim immediate specific performance of all of the Customer's obligations and/or suspend rendering of the Consulting Services until the Customer has performed its obligations in full.

17 **DOMICILIUM AND NOTICES**

- 17.1 The Parties choose *domicilium citandi et executandi* ("**Domicilium**") for all purposes relating to these Terms and Conditions, including the giving of any notice, the payment of any sum and the serving of any process, as follows -
 - 17.1.1 PRE
 - physical - Building A2, Unit 4A
Devonbosch Lifestyle Estate,
Bottelary Road, Cape Town
 - email - jaco@engpr.com /
paul@engpr.com
 - 17.1.2 the Customer – the physical *Domicilium* and e-mail *Domicilium* nominated by the Customer in the Purchase Order.
- 17.2 Either Party is entitled from time to time by giving written notice to the other to vary its physical *Domicilium* to any other physical address (not being a post office box or *poste restante*) in South Africa and to vary its e-mail *Domicilium* to any other e-mail address.
- 17.3 Any notice given or payment made by either Party to the other ("**Addressee**") which is delivered by hand between the hours of 09:00 and 17:00 on any Business Day to the Addressee's physical *Domicilium* for the time being will be deemed to have been received by the Addressee at the time of delivery.
- 17.4 Any notice given by either Party to the other which is successfully transmitted by e-mail to the Addressee's e-mail *Domicilium* for the time being will be deemed (unless the contrary is proved by the Addressee) to have been received by the

Addressee on the date of successful transmission thereof or, if that date is not a Business Day, on the next succeeding Business Day.

- 17.5 This 17 does not operate so as to invalidate the giving or receipt of any written notice which is actually received by the Addressee other than by a method referred to in this 17.
- 17.6 Any notice in terms of or in connection with these Terms and Conditions is valid and effective only if it is in writing and if it is received (or deemed to have been received) by the Addressee.

18 DISPUTES

- 18.1 Any dispute will be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa ("**AFSA**") before one arbitrator, chosen by agreement between the Parties or, failing such agreement within seven days after the date of request for his appointment, appointed by AFSA on the request of either Party.
- 18.2 Each Party -
- 18.2.1 expressly consents to any arbitration in terms of the aforesaid rules being conducted as a matter of urgency in accordance with the Expedited Rules; and
- 18.2.2 irrevocably authorises the other Party to apply, on behalf of both Parties, in writing, to the secretariat of AFSA in terms of article 23 of the aforesaid rules for any such arbitration to be conducted on an urgent basis.
- 18.3 Any award or order that may be made by the arbitrator -
- 18.3.1 is final and binding on the Parties in the absence of clerical or manifest error;
- 18.3.2 must be carried into effect by the Parties; and
- 18.3.3 may be made an order of any competent court by either of the Parties.
- 18.4 The arbitration will be held at a venue in Cape Town and in accordance with formalities and/or procedures determined by the arbitrator and may be held in an informal and summary manner on the basis that it is not necessary to observe or carry out the usual formalities or procedures, pleadings and/or discovery, or the strict rules of evidence.
- 18.5 For the purposes having any award or order made by the arbitrator being made an order of court, each of the Parties hereby consents and submits itself to the non-exclusive jurisdiction of the High Court of South Africa (Western Cape Division, Cape Town).
- 18.6 The hearing of the arbitration will be held *in camera*. Save to the extent strictly necessary for the purposes of the arbitration, including but not limited to any court proceedings related thereto in 18.5 or to the award being made an order of court, neither Party shall disclose or permit to be disclosed to any person any information concerning the arbitration or the award (including all process, communications,

documents or evidence submitted or made available in connection with the arbitration).

18.7 If the arbitrator's charges and any other costs have to be paid before the arbitrator has made his award in respect of those charges and costs, the Parties shall bear and pay those charges and costs in equal shares, pending any determination as to liability therefor by the arbitrator, provided that the Parties are obliged to reimburse each other the amount of any such charges and costs in accordance with (and as soon as reasonably possible after) any determination as to their liability therefor is made by the arbitrator.

18.8 This 18 is severable from the rest of these Terms and Conditions and will remain in full force and effect notwithstanding the invalidity, cancellation or termination of the Purchase Order for any reason whatsoever.

19 SUB-CONTRACTING

PRE is entitled to subcontract any of its obligations under the Purchase Order as read with these Terms and Conditions to any other qualified person, provided that PRE shall continue to remain primarily responsible to the Customer in terms of the Purchase Order as read with these Terms and Conditions for the due and proper discharge by such other person of the duties and obligations assigned by PRE to such other person.

20 CESSION, DELEGATION AND ASSIGNMENT

20.1 The Customer is not entitled to cede, delegate or otherwise assign or transfer any of its rights, obligations or interest in, under or in terms of the Purchase Order or these Terms and Conditions to any third party without the prior written consent of PRE.

20.2 PRE is entitled to cede, delegate or otherwise assign or transfer any of its rights, obligations or interest in, under or in terms of the Purchase Order or these Terms and Conditions to any third party without the prior written consent of the Customer.

21 GOVERNING LAW

The Purchase Order and these Terms and Conditions shall, in all respects (including its existence, validity, interpretation, implementation, breach, termination and enforcement), be governed by the laws of South Africa.

22 SEVERABILITY

All provisions of the Purchase Order and these Terms and Conditions are (notwithstanding the manner in which they have been grouped together or linked grammatically) severable from each other. Any provision of the Purchase Order or these Terms and Conditions which is or becomes unenforceable (whether due to illegality, invalidity, unlawfulness or voidness for any other reason whatsoever) will (only to the extent that it is so unenforceable) be treated as *pro non scripto* and the remaining provisions of the Purchase Order or these Terms and Conditions will remain of full force and effect. The Parties declare that it is their intention that the Purchase Order or these Terms and Conditions would have been executed without that unenforceable provision if they were aware of that unenforceability at the time of the execution hereof.

23 GENERAL

- 23.1 These Terms and Conditions read together with the Purchase Order constitutes the sole record of the agreement between the Parties in relation to the subject matter hereof. It is specifically recorded for the sake of clarity that any terms and conditions of the Customer are excluded, unless otherwise agreed by the Parties in writing. Neither Party is or will be bound by any express, tacit or implied promise, representation, term, warranty or the like not recorded in these Terms and Conditions or the Purchase Order. These Terms and Conditions accordingly replace and supersede all prior commitments, representations or undertakings (whether oral or written) between the Parties in respect of the subject matter hereof.
- 23.2 No addition to, variation, novation or agreed cancellation of any provision of these Terms and Conditions or the Purchase Order is or will be binding on the Parties unless reduced to writing and signed by or on behalf of the Parties.
- 23.3 For the purposes of these Terms and Conditions, -
- 23.3.1 no data message (as defined in the Electronic Communications and Transactions Act No 25 of 2002 (as amended) ("**ECTA**")), other than an e-mail, constitutes writing; and
- 23.3.2 no electronic signature or advanced electronic signature (as defined in ECTA) constitutes a signature, except for the purposes of varying any date referred to in these Terms and Conditions or the Purchase Order or giving any approval or consent in terms of these Terms and Conditions.
- 23.4 No indulgence or extension of time which either Party ("**Grantor**") may grant to the other, nor any election or failure by the Grantor to enforce (whether completely or partially) or delay the enforcement of any of its existing or future rights will constitute a waiver of or (whether by estoppel or otherwise) limit any of the existing or future rights of the Grantor in terms hereof, save in the event and to the extent that the Grantor has signed a written document expressly waiving or limiting that right.
- 23.5 Without prejudice to any other provision of the Purchase Order or these Terms and Conditions, any successor-in-title, including any business rescue practitioner, liquidator or trustee, of either Party will be bound by these Terms and Conditions.
- 23.6 The signature by either Party of a counterpart of these Terms and Conditions and/or the Purchase Order is as effective as if that Party had signed the same document as the other Party.
- 23.7 PRE reserves the right to, in its discretion and at any time, amend these Terms and Conditions with immediate effect.