



**MAVERICK TRADING 1225 CC**  
(trading as Maverick Generators)

**STANDARD TERMS AND CONDITIONS**  
(for the provision of Goods and Services to Customer)  
Last updated: 15 May 2019

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## 1 INTRODUCTION

- 1.1 Maverick is in the business of generator manufacturing and providing ancillary services in respect thereof.
- 1.2 Customer wishes to appoint Maverick to supply Goods and render Services from time to time. The Parties, therefore, hereby enter into these Standard Terms and Conditions to enable Maverick to provide Goods and/or Services (as the case maybe) to Customer in terms of Purchase Orders to be concluded between the Parties subject to these Standard Terms and Conditions, as provided for herein.
- 1.3 Nothing in these Standard Terms and Conditions obligates either Party to enter into any Purchase Orders.

## 2 DEFINITIONS AND INTERPRETATION

- 2.1 For purposes of the Agreement, the following terms shall have the following meanings—
- 2.1.1 **"Affiliate"** means, with regard to either Party, any legal entity which that Party Controls, which Controls that Party, or which is under common Control with that Party, and which concludes a Purchase Order pursuant to these Standard Terms and Conditions;
- 2.1.2 **"AFSA"** means the Arbitration Foundation of Southern Africa, or its successors in title;
- 2.1.3 **"Agreement"** means the agreement between the Parties, which consists of—
- 1.1.1.1 these Standard Terms and Conditions; and
- 1.1.1.2 any Purchase Orders concluded pursuant to these Standard Terms and Conditions from time to time, and includes any schedules, annexures, exhibits and attachments thereto;
- 2.1.4 **"Business Day"** means any day other than a Saturday, Sunday or gazetted public holiday in the Republic of South Africa;
- 2.1.5 **"Business Hours"** means the hours from 08h00 to 16h30 (South African time) on Business Days;
- 2.1.6 **"Calendar Day"** means every day and includes Saturday, Sunday and a gazetted public holiday in the Republic of South Africa.
- 2.1.7 **"Change Control Procedure"** means the change control procedure referred to in clause 5;
- 2.1.8 **"Consumables"** means any and all consumable items used by Maverick in fulfilling its obligations under the Agreement;
- 2.1.9 **"Contract Year"** means, in respect of a Purchase Order, each successive 12 (twelve) calendar month period during the term of the Purchase Order, as measured from the Effective Date of such Purchase Order;
- 2.1.10 **"Control"** means owning more than 50% (fifty percent) of the issued share capital or having the legal power to direct or cause the direction of the general management and policies of the company in question;
- 2.1.11 **"CPI"** means the average year-on-year percentage change in the Consumer Price Index for all urban areas as published in the Statistical News Release compiled by Statistics South Africa (or its successor in title) for the preceding 12 (twelve) months;
- 2.1.12 **"Customer"** means the customer that has entered into these Standard Terms and Conditions and, where specified in a Purchase Order, its Affiliates;
- 2.1.13 **"Customer Material"** means all materials provided or made available by or on behalf of Customer to Maverick for purposes of the Agreement;
- 2.1.14 **"Customer Policies"** means any of Customer's policies, practices, codes of conduct and procedures including any applicable security, information technology, health, safety and environmental policies (as amended from time to time) which may be of general application to Customer's Personnel;
- 2.1.15 **"Deliverable"** means any deliverable or work product delivered by Maverick relating to the Services;
- 2.1.16 **"Effective Date"** means, in respect of each Purchase Order, the effective date stipulated in such Purchase Order, in the absence of which it shall be the Signature Date or date of acceptance of such Purchase Order, whichever is the earlier;
- 2.1.17 **"Fees"** means the fees and charges to be paid by Customer to Maverick in respect of Goods and Services provided by Maverick under Purchase Orders;
- 2.1.18 **"Goods"** means any and all goods to be provided by Maverick to Customer under Purchase Orders;
- 2.1.19 **"Maverick IP"** means any and all intellectual property that Maverick has created, acquired or otherwise has rights in and may, in connection with the performance of Maverick's obligations under the Agreement, employ, provide, modify, create or otherwise acquire rights in and includes concepts, ideas, methods, methodologies, procedures, processes, know-how, and techniques; models; templates, utilities and routines; and logic, coherence and methods of operation of systems and provision of services;
- 2.1.20 **"Maverick"** means Maverick Trading 1225 CC, the vendor that has entered into these Standard Terms and Conditions and, where specified in a Purchase Order, its Affiliates;
- 2.1.21 **"Parties"** means Maverick and Customer collectively and **"Party"** means either one of them individually, as the context requires;
- 2.1.22 **"Personnel"** means any director, employee, agent, consultant, contractor or other representative of the Parties;
- 2.1.23 **"Purchase Order"** means a goods, services or work order agreed to and signed by both the Parties, or a quotation or invoice accepted by the Parties, pursuant to these Standard Terms and Conditions describing the specific Goods or Services to be provided by Maverick to Customer, including any schedules or annexures thereto;
- 2.1.24 **"Scope Change Document"** means the scope change document referred to in clause 5;
- 2.1.25 **"Service Hours"** means the hours during which the Services will be provided by Maverick;
- 2.1.26 **"Service Levels"** means the levels (if any) according to which each Service is to be provided, as set out in the corresponding Purchase Order;
- 2.1.27 **"Services"** means any and all services to be provided by Maverick to Customer under Purchase Orders;
- 2.1.28 **"Sign"** means the handwritten signature or advanced electronic signature of the duly authorised representative of a Party and **"Signed"**, **"Signing"** and **"Signature"** shall have a corresponding meaning;
- 2.1.29 **"Signature Date"** means the date of signature of any document by the Party signing last;
- 2.1.30 **"Site"** means the physical site referred to in a Purchase Order to which Goods are to be delivered or at which Services are to be provided by Maverick for use by Customer under the Purchase Order;
- 2.1.31 **"Standard Terms and Conditions"** means these terms and conditions and includes any schedules, annexures, exhibits and attachments hereto ;
- 2.1.32 **"Third-Party Contractor"** means, in respect of any goods and services, the contractor, supplier, vendor or licensor (as the case may be) of the goods or services which is not a party to the Agreement;
- 2.1.33 **"Third-Party Contracts"** means any and all contracts in force as at the Effective Date between Customer and Third-Party Contractors, referred to in the Purchase Order;
- 2.1.34 **"Time and Materials"** means the method of billing based on actual time spent and materials used, charged at Maverick's standard time and materials fees and charges applicable from time to time; and
- 2.1.35 **"Warrant Schedule"** means the schedule setting out the warranties provided by Maverick in relation to the Goods and Services.
- 2.1.36 **"Writing"** means any mode of reproducing information or data in physical form and includes hard copy printouts, handwritten documents and fax transmissions, but excludes information or data in electronic form and **"Written"** and **"Write"** shall have a corresponding meaning.
- 2.2 Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of the Agreement.
- 2.3 Whenever a term is followed by the word "including" or "include" or "excluding" or "exclude" and specific examples, the examples shall not limit the ambit of the term.
- 2.4 References to any enactment shall be deemed to include references to the enactment as re-enacted, amended or extended from time to time.

- 2.5 References to persons shall include natural and juristic persons and references to either Party shall include the Party's successors or permitted assigns.
- 2.6 Unless otherwise stated in the Agreement, when any number of days is prescribed in the Agreement the first day will be excluded and the last day included, unless the last calendar day falls on a calendar day that is not a Business Day, in which event the last calendar day shall be the next Business Day.
- 2.7 Expressions defined in these Standard Terms and Conditions shall bear the same meanings in Purchase Orders, unless otherwise stated therein. Where any term is defined within the context of any particular clause in the Agreement, the term so defined, unless it is clear from the clause in question that the term has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of the Agreement, notwithstanding the fact that the term has not been defined in clause 2.1 of these Standard Terms and Conditions.
- 2.8 The rule of construction that an agreement shall be interpreted against the Party responsible for its drafting or preparation shall not apply.

### **3 STATUS AND PRECEDENCE**

- 3.1 These Standard Terms and Conditions are the general terms of the relationship between Maverick and Customer. If Customer receives Goods or Services from Maverick under these Standard Terms and Conditions, the specific terms of those transactions or engagements will be contained in Purchase Orders that will incorporate these Standard Terms and Conditions (as may be amended by those Purchase Orders).
- 3.2 Except where specifically provided to the contrary in a Purchase Order, and then only to the extent so specified, each Purchase Order shall be subject to these Standard Terms and Conditions. Subject to the foregoing, insofar as any term and condition in a Purchase Order unintentionally conflicts with these Standard Terms and Conditions in respect of—
- 3.2.1 the description of Goods or Services, the terms and conditions in the Purchase Order shall prevail; or
- 3.2.2 any other matter, these Standard Terms and Conditions shall prevail.
- 3.3 Save where expressly provided to the contrary, the terms and conditions of one Purchase Order shall not apply to any other Purchase Order.
- 3.4 Insofar as the meaning of any term or condition in a schedule or annexure to a Purchase Order or any other document referred to in a Purchase Order, excluding these Standard Terms and Conditions, conflicts with the meaning of the body of the relevant Purchase Order, the meaning of the terms and conditions in the body of the relevant Purchase Order shall prevail unless expressly stated otherwise.

### **4 DURATION OF PURCHASE ORDERS**

- 4.1 Each Purchase Order will commence on its Effective Date and shall continue for the period provided therein, subject to earlier termination as provided for in these Standard Terms and Conditions.

### **5 CHANGE CONTROL**

- 5.1 During the currency of a Purchase Order, events may occur which require a change to the nature and scope of Goods and Services. No change shall be implemented unless the Parties comply with the terms of this clause 5.
- 5.2 A Party may propose a change to the nature and scope of Goods and Services by sending a Scope Change Document to the other Party detailing the desired changes.
- 5.3 Should a Scope Change Document be made by—
- 5.3.1 Customer, then Customer shall specify the reasons for that change and describe the change in sufficient detail to enable Maverick to formulate a response. Maverick shall investigate the likely impact of any proposed changes on the provision of Goods and Services and shall provide Customer with a scope change proposal; or
- 5.3.2 Maverick, then Maverick shall detail in a scope change proposal the reasons for and impact of the change, the services required to implement the change and the effect that the changes, if implemented, will have on the relevant Purchase Order.
- 5.4 Maverick's scope change proposal shall describe with a reasonable degree of specificity—
- 5.4.1 the changes to the Services or Deliverables;
- 5.4.2 any new or changed responsibilities of either Party;
- 5.4.3 a new timetable for completion of Services or Deliverables, as applicable;
- 5.4.4 any new or changed testing and acceptance procedures;
- 5.4.5 changes to the Fees previously set forth in the affected Purchase Order; and
- 5.4.6 any other items which may be agreed to by the Parties.
- 5.5 The Parties shall discuss the proposed changes and shall effect such amendments to Maverick's scope change proposal as may be agreed. The scope change proposal shall then be considered by Customer and approved or rejected in its discretion in Writing within 3 (three) Business Days. If a scope change proposal—
- 5.5.1 is accepted by Customer, the scope change proposal shall be signed off by duly authorised representatives of the Parties and incorporated into the relevant Purchase Order; or
- 5.5.2 is rejected by Customer, the Goods or Services shall continue to be provided by Maverick on the existing terms set out in the Purchase Order.
- 5.6 Neither Maverick nor Customer shall be entitled to proceed with or require the implementation of any change to a Purchase Order until the change and all matters relating to the change have been agreed in writing between the Parties. Pending sign-off, the Parties will continue to perform their obligations without taking account of the proposed changes. Neither Party shall be obliged to agree to any change proposed by the other Party but the Parties will not unreasonably delay or withhold their agreement to a proposed change.
- 5.7 It is expressly recorded that amendments to the content of the Agreement which do not directly impact the nature and scope of Goods or Services provided shall not be subject to the Change Control Procedure, but shall be executed in Writing.

### **6 PERSONNEL**

- 6.1 Customer shall allow Maverick and its Personnel such access (at all reasonable times) to the Sites as is necessary for the purposes of fulfilling its obligations under Purchase Orders.
- 6.2 Maverick shall take all reasonable steps to comply, and ensure that its Personnel comply, with Customer Policies. Customer shall notify Maverick of all Customer Policies applicable to a Purchase Order prior to the Effective Date thereof and give Maverick and the relevant Personnel reasonable written notice of any change in existing Customer Policies or the implementation of new Customer Policies during the currency thereof.
- 6.3 Maverick shall be entitled, in its discretion, to allocate and reallocate any Maverick Personnel who provide Services under a Purchase Order, provided that Maverick shall use all commercially reasonable efforts to ensure the continuity of the Services provided to Customer under the Purchase Order. The Customer undertakes to provide the other with reasonable advance notice of any changes in their respective key Personnel.
- 6.4 Unless otherwise specified in a Purchase Order, Maverick's Personnel shall at all times be subject to, and work under, the direction and control of Maverick.
- 6.5 Maverick will be exclusively responsible for taking disciplinary action against its Personnel in accordance with its own disciplinary codes and counselling procedures and shall do so when reasonably called upon by Customer in Writing.

### **7 MAVERICK OBLIGATIONS**

- 7.1 For any Services performed at Customer's facilities, Maverick shall take all reasonable steps to ensure that its Personnel observe the physical access security requirements of Customer and that they perform their duties in a manner that does not unreasonably interfere with Customer's business and operations.
- 7.2 With respect to any Services being performed by Maverick pursuant to a Purchase Order, Maverick shall participate in such status review meetings (which may be telephonic) as may be set forth in such Purchase Order or as may reasonably be requested by Customer.
- 7.3 Maverick shall at all times comply with all applicable (i) workers' compensation; (ii) compensation for occupational injuries and diseases; and (iii) occupational health and safety laws, statutes and regulations. Such requirement will include Maverick obtaining cover for all Personnel of Maverick suffering bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of the Agreement by Maverick. The agreement between Customer (or employer, as defined in the Occupational Health and Safety Act ("OHS Act")) and Maverick (or mandatory, as defined in the OHS Act) in this clause and the applicable Customer Policies constitute the agreement in writing referred to in section 37(2) of the OHS Act.

## **8 CUSTOMER OBLIGATIONS**

- 8.1 To enable Maverick to provide the Goods and Services, Customer agrees to provide ongoing assistance, liaison, input, support and full co-operation and shall, to the extent required by Maverick and at Customer's cost—
- 8.1.1 obtain and maintain any licences or consents necessary for Maverick to provide the Services or Goods to Customer;
- 8.1.2 provide Maverick and its Personnel with access to adequate working space and parking;
- 8.1.3 provide the Consumables reasonably required by Maverick to fulfil its obligations under Purchase Orders, unless any Consumables are agreed to be provided by Maverick under a Purchase Order;
- 8.1.4 make its Personnel available for workshops, group discussions and specific task execution as and when required according to any agreed project plans;
- 8.1.5 render all decisions and approvals required as soon as is reasonably possible;
- 8.1.6 provide a suitable infrastructure for the components or Deliverables that are to be implemented, in accordance with any specification requirements;
- 8.1.7 ensure that any infrastructure upon which the Services are dependent is not altered, upgraded or otherwise changed without giving reasonable advance notice to Maverick;
- 8.1.8 provide Maverick with reasonable access to Customer Material. Such access includes logical and physical access;
- 8.1.9 notify Maverick as soon as reasonably possible of any issues, concerns or disputes which may arise from time to time;
- 8.1.10 be responsible for the accuracy and completeness of all Customer Material;
- 8.1.11 provide electricity services, telephone services, other connectivity (including access to computer networks and the Internet) and any other services that Maverick may reasonably require in order to provide the Services or Goods at each Site;
- 8.1.12 make available sufficiently qualified and authorised Customer Personnel, with appropriate access rights and permissions; and
- 8.1.13 comply with all reasonable policies, procedures and instructions of Maverick in relation to the provision of Goods and Services.

## **9 CUSTOMER MATERIAL**

- 9.1 Ownership in all Customer Material whether under its control or not, shall continue to vest in Customer and Maverick shall not obtain any proprietary rights in Customer Material. Customer grants to Maverick (and Maverick's Third-Party Contractors as necessary) a perpetual, non-exclusive, royalty-free licence to use, reproduce and modify any Customer Material strictly for the purposes of providing the Goods and Services or as otherwise directed by Customer.
- 9.2 Privacy and protection of personal information:
- 9.2.1 General:
- 9.2.1.1 Maverick and Customer are each responsible for complying with their respective obligations under applicable privacy and protection of personal information laws.
- 9.2.2 Each Party undertakes that, to the extent that it processes personal information for the other Party, it shall establish and maintain appropriate, reasonable technical and organisational measures to prevent—
- 9.2.2.1 loss of, damage to or unauthorised destruction of such personal information; and
- 9.2.2.2 unlawful access to or processing of such personal information.
- 9.2.3 In order to give effect to clause 9.2.2, the Parties agree to take reasonable measures to—
- 9.2.3.1 identify all reasonably foreseeable internal and external risks to the personal information in its possession or under their control;
- 9.2.3.2 establish and maintain appropriate safeguards against the risks identified;
- 9.2.3.3 regularly verify that the safeguards are effectively implemented; and
- 9.2.3.4 ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.
- 9.2.4 Each Party hereby indemnifies and holds the other Party harmless from any claim, damages, penalty or fine as a result of such Party failing to comply with its obligations under this clause 9.2.
- 9.3 On termination of any Purchase Order, each Party shall return to the other Party in the form in which it was received all of the other Party's data or information provided to the Party for the purpose of the performance of the relevant Purchase Order.

## **10 CUSTOMER THIRD-PARTY CONTRACTORS**

- 10.1 Where Maverick is required under Purchase Orders to manage or liaise with Customer-appointed Third-Party Contractors pursuant to Third-Party Contracts, the following terms will apply—
- 10.1.1 Customer shall notify Maverick in writing of the applicable terms of the Third-Party Contracts insofar as they relate to or have an impact on Maverick's obligations;
- 10.1.2 Maverick shall not be required to ensure or be responsible for ensuring Customer's or the Third-Party Contractors' compliance with the terms of the Third-Party Contracts; and
- 10.1.3 Customer shall be responsible for obtaining and maintaining all necessary consents or authorities under the Third-Party Contracts (including any consents required to enable Maverick to fulfil its obligations under the Purchase Order) and shall be liable for all fees and other charges payable to any Third-Party Contractors pursuant to the Third-Party Contracts.
- 10.2 Maverick shall not be liable for any act or omission of a Third-Party Contractor, except to the extent that Maverick has directly caused such act or omission to occur.

## **11 MAVERICK WARRANTIES**

- 11.1 Maverick warrants that in relation to the Services—
- 11.1.1 Maverick shall provide the Services with promptness and diligence and in a workmanlike manner and in accordance with the practices and professional standards prevailing in Maverick's industry;
- 11.1.2 Maverick and its Personnel will possess and have the right to use—
- 11.1.2.1 knowledge and expertise sufficient to enable Maverick to provide the Goods and Services; and
- 11.1.2.2 all maintenance and other manuals, specifications, diagnostic aids and testing devices and specialised tools and equipment necessary to enable Maverick to provide the Goods and Services.
- 11.1.3 Maverick will employ a sufficient number of suitably trained Personnel to provide the Services and to achieve the Service Levels; and

- 11.1.4 Maverick will provide the Goods and Services in accordance with all applicable laws, enactments and regulations.
- 11.2 Maverick warrants further that Maverick has the legal right and full power and authority to enter into the Agreement and to exercise Maverick's rights and perform its obligations under the Agreement.
- 11.3 Maverick hereby excludes and disclaims all warranties, whether expressed or implied, statutory or otherwise, except those warranties expressly made in the Agreement, including—
- 11.3.1 any implied warranties of satisfactory quality, efficiency, no latent defects, merchantability and fitness for a particular purpose; and
- 11.3.2 all warranties in respect of third-party goods or services provided pursuant to the Agreement.
- 11.4 Maverick provides the warranties for the Goods and Services as set out in the Warranty Schedule.
- 11.5 All surveys, drawings, descriptive matter, weights, dimensions, specifications, forecasts and recommendations in any proposal, quotation, report or other document are made in good faith and on the basis of information available to Maverick at the time. No statement in any proposal, report or other document is to be deemed to be a representation, warranty, undertaking or contractual condition. Any such surveys, drawings, descriptive matter, weights, dimensions, specifications, forecasts and recommendations are subject to change by Maverick without notice to Customer.

## 12 GUARANTEE

- 12.1 Any guarantee and/or warranty provided to Customer shall not apply to:
- 12.1.1 any Goods sold on an "as inspected" or "voetstoets" basis;
- 12.1.2 repairs on second hand equipment;
- 12.1.3 any electrical or electronic components, accessories or fittings;
- 12.1.4 Goods used for purposes other than their proper intended use; and
- 12.1.5 defective Goods where the Goods have become defective pursuant to normal wear and tear, the use of incorrect parts or substances, incorrect use, repair, service or alteration of Goods other than by Maverick or its approved contractors;
- 12.2 Maverick shall not be obliged to refund, replace or repair the Goods where Customer has failed to adhere to the warranty conditions imposed by Maverick or the original manufacturer of any Goods.
- 12.3 Maverick shall not be obliged to refund, repair or replace any Goods sold to Customer unless Maverick receives Written notification from the Customer within 7 (seven) business days from which the defect became apparent. Such Written notification shall set out with sufficient particularity the nature of the defect, the date of purchase, invoice number and the serial numbers of the respective Goods in order to enable Maverick to evaluate the Customer's claim.
- 12.4 The Customer acknowledges that it waives all guarantees and warranties in respect of the Goods and Services set out in these Standard Terms and Conditions, as well as warranties provided by the manufacturer, where the Goods or Services are not serviced, maintained, installed and/or repaired by Maverick or its approved contractors. Accordingly, all installations are to be carried out by Electronic Contractors Association or Electronic Conformance Board registered electrical contractors only.

## 13 CUSTOMER WARRANTIES

- Customer warrants that—
- 13.1 it has not been induced to enter into the Agreement by any prior representations, warranties or guarantees (whether oral or in writing), except as expressly contained in the Agreement;
- 13.2 by entering into a Purchase Order Customer is not acting in breach of any other agreement to which Customer is a party;
- 13.3 if Maverick Personnel are required to use property owned or operated by Customer, all necessary consents have been obtained in advance; and
- 13.4 the use of Customer Material by Maverick does not and will not infringe the intellectual property rights of any other person, and Customer hereby indemnifies and holds Maverick harmless from any claim for damages by any third party as a result of the breach of these warranties.

## 14 FEES AND PAYMENT

- 14.1 In consideration for the Goods and Services, Customer shall be liable for and shall pay the Fees.
- 14.2 All invoices, including those in respect of Goods and Services provided on a Time and Materials basis, shall be paid by Customer within 30 (thirty) calendar days of the date of Maverick's invoice, unless otherwise specified in a purchase order.
- 14.3 Unless otherwise specified in a Purchase Order, the Fees exclude all taxes (including value-added tax and other taxes levied in any jurisdiction, but excluding taxes based on the income of Maverick), duties (including stamp duties), tariffs, rates, levies and other governmental charges or expenses payable in respect of the Goods or Services, all of which shall be payable by Customer in addition to the Fees.
- 14.4 Where payment of any amount due is not made on the due date, Maverick shall be entitled to—
- 14.4.1 charge interest on the outstanding amount at the prime overdraft rate (percent, per annum) charged by Maverick's then-current bankers from time to time, as evidenced by any manager of the bank, whose authority it shall not be necessary to prove. Interest shall be calculated from the due date of payment to the date of actual payment, both days inclusive, compounded calendar monthly in arrears and Customer agrees and undertakes to pay on demand the penalty interest, which it hereby accepts as fair and reasonable; and
- 14.4.2 without prejudice to any other right or remedy it may have, remove any Goods supplied by Maverick or halt the provision of any Services as Maverick (in its sole discretion) chooses until all payments in arrears have been paid in full.
- 14.5 All amounts due and payable by Customer shall be paid to Maverick in the currency specified in the relevant Purchase Order, in the absence of which in South African Rands, without deduction or set-off for any reason at an address and in a manner specified by Maverick in writing from time to time. Customer shall not be entitled to withhold payment of any amounts payable to Maverick to satisfy any claim of Customer arising from the Agreement or any other agreement.
- 14.6 Where a Purchase Order provides for the annual escalation of the Fees payable thereunder, the Fees shall automatically be escalated by 10% (ten percent) effective as of the commencement of each Contract Year.
- 14.7 Customer accepts that—
- 14.7.1 all deposits paid to Maverick are non-refundable;
- 14.7.2 it shall collect all completed Goods in terms of a Purchase Order within 30 (thirty) calendar days of being notified of completion thereof by Maverick, failing which, Maverick shall be entitled to sell such Goods in order to defray any costs incurred pursuant to Customer's failure to collect the completed Goods; and
- 14.7.3 all Fees quoted are subject to:
- 14.7.3.1 availability;
- 14.7.3.2 fluctuation in pricing from Maverick's suppliers; and
- 14.7.3.3 exchange rates,
- and should any changes in respect of clauses 14.7.3.1, 14.7.3.2 or 14.7.3.3 result in Maverick incurring additional costs in respect of any Goods or Services prior to delivery, Maverick shall be entitled to increase the Fees payable by the Customer by an amount equivalent to the additional costs incurred by Maverick forthwith.
- 14.8 Customer shall reimburse Maverick for all expenses incurred by Maverick or Maverick's Personnel in fulfilling Maverick's obligations under the Agreement, provided same are authorised by Customer in Writing. Expenses include travelling, subsistence, goods and services

purchased on Customer's behalf, communications, stationery, report and presentation material. Travelling and subsistence expenses will be billed in accordance with Maverick's standard policies from time to time.

- 14.9 If Maverick suspends the provision of the Services, removes any Goods supplied by Maverick as provided for in clause 14.4.2 above or places any Goods into storage following non-payment by Customer, Customer shall pay to Maverick the costs incurred by Maverick (including redeployment, travel, storage and associated expenses) in remobilising Maverick's Personnel affected by the Agreement and recommencing the provision of the Services, re-installing or storing the Goods.
- 14.10 If at any time the direct costs of performing Maverick's obligations under the Agreement are increased as a result of a change in any South African law applicable to the Services, then Maverick will notify Customer of such increase and the increase shall become effective within 30 (thirty) days of such notice.

## 15 EXCUSABLE DELAYS

- 15.1 Where—
- 15.1.1 Customer does not provide access to a person, place or thing timeously; changes a decision which Customer has previously communicated to Maverick; does not reply to a communication from Maverick within the required (or reasonable) period; unreasonably withholds an acceptance or consent; commits a breach of the Agreement which is not otherwise categorised as an Excusable Delay; any bona fide dispute arises between the parties; or
- 15.1.2 Maverick's performance is affected by an event of force majeure; or the failure of a third-party supplier or service provider,
- 15.1.3 this shall constitute an "Excusable Delay".
- 15.2 Either Party shall notify the other of an event which has occurred or is anticipated and which—
- 15.2.1 the notifying Party believes is or may be an Excusable Delay; and
- 15.2.2 occurred no more than 14 (fourteen) calendar days previously.
- 15.3 Maverick's performance shall be extended on a reasonable basis in proportion to the prejudice caused by the Excusable Delay, provided that the extension is at least equal to the number of days of the Excusable Delay. Maverick may charge for any additional hours required to execute the Services on a Time and Materials Basis.
- 15.4 Proposals for Excusable Delay:
- 15.4.1 Should an Excusable Delay arise, Maverick may submit proposals for different ways of dealing with the Excusable Delay. Maverick shall submit proposals to Customer which may set out a variety of methods for dealing with the Excusable Delay which Maverick considers practical.
- 15.4.2 Proposals for addressing Excusable Delays shall include proposed changes to the scope of work, prices, loss of income due to the Excusable Delay and any delay to the date of performance assessed by Maverick.
- 15.4.3 Customer shall reply to Maverick within 5 (five) Business Days of the submission of Maverick's proposal—
- 15.4.3.1 accepting the proposal;
- 15.4.3.2 requiring a revised proposal, in which event, Customer shall provide Maverick with reasons for doing so. Maverick shall submit the revised proposal within 10 (ten) Business Days of being required to do so; or
- 15.4.3.3 notifying Maverick that the proposal shall not be accepted and that a revised proposal is not required. In such event, a dispute will be deemed to exist between the Parties to be resolved under clause 24.
- 15.5 Assessing Excusable Delays:
- 15.5.1 The changes to the prices must be assessed with regard to the effect of the Excusable Delay on—
- 15.5.1.1 the fee for the work already done, and
- 15.5.1.2 the forecast fee for the work not yet done.
- 15.5.2 A delay in performance is assessed as the length of time that, due to an Excusable Delay, planned performance is later than originally indicated.
- 15.5.3 Maverick shall include in Maverick's proposal for a change to the scope proposed rates for its Personnel and Goods.
- 15.6 Maverick shall implement each accepted proposal in accordance with the proposal's terms.
- 15.7 If an amount would have been payable to Maverick by Customer had it not been for an Excusable Delay as set out in clause 15.1.1, Customer shall pay Maverick the amount, notwithstanding the fact that any milestone has been adjusted.

## 16 IDLE TIME

- 16.1 Should Customer fail to provide any information or resources (including key Personnel) which it is required to provide under any Purchase Order on the due date therefor and persists in such failure for a period in excess of 5 (five) Business Days (or such longer period as Maverick may agree to in writing) after such due date, such failure shall constitute a material breach of the Purchase Order. In addition to any remedies which Maverick may have in terms of the Agreement—
- 16.1.1 Customer shall pay Maverick for all Idle Time occasioned by such failure. For these purposes, "Idle Time" shall be the aggregate time of all Maverick Personnel assigned to provide the Goods or Services in terms of the Purchase Order, calculated on an eight-hour-a-day, five-day-a-week basis, between the date on which Customer fails to comply with its obligations and the date on which Customer finally complies with its obligations, or the date on which Maverick terminates the Purchase Order in question in accordance with these Standard Terms and Conditions (whichever is the sooner); and
- 16.1.2 without derogating from the provisions of clause 16.1.1, should Customer fail to comply with its obligations within the above 5 (five) Business Day period (or such longer period as Maverick may agree to in writing), Maverick may reassign its assigned Personnel to other projects, in which event, should Maverick elect not to terminate the Purchase Order in question, Maverick will recommence the provision of the Goods or Services as soon as it is able to do so.
- 16.2 Customer acknowledges that its failure under this clause 16 will result in an Excusable Delay for purposes of clause 15 above.

## 17 INTELLECTUAL PROPERTY

- 17.1 All right, title and ownership of any methodologies, products or materials developed by or for Maverick or Customer independently and outside of the Agreement and provided during the course of the Agreement ("**Existing Material**") shall remain the sole property of the Party providing the Existing Material.
- 17.2 All right, title and interest, including all rights under all copyright, patent and other intellectual property laws, in and to any Deliverables shall, unless agreed to the contrary in any Purchase Order, vest in Maverick.
- 17.3 Maverick has created, acquired or otherwise obtained rights in the Maverick IP and, notwithstanding anything contained in the Agreement, as between the Parties Maverick will own all right, title and interest, including all rights under all copyright, patent and other intellectual property laws, in and to the Maverick IP.
- 17.4 To the extent that Maverick utilises any Maverick IP in connection with Maverick's performance under a Purchase Order, the Maverick IP shall remain the property of Maverick and Customer shall acquire no right or interest therein, provided that, to the extent that any Maverick IP is contained in any Deliverable, Maverick grants to Customer a personal, non-exclusive licence to use such Maverick IP strictly in connection with such Deliverable.
- 17.5 Unless otherwise agreed to in Writing, with respect to any development, adaptation, enhancement, modification, adjustment or other change to any Maverick IP which may be developed by Maverick ("**Derivative Works**"), Maverick shall be the owner of all such Derivative Works.

## 18 CONFIDENTIAL INFORMATION

- 18.1 Each Party (“**Receiving Party**”) must treat and hold as confidential all information which it may receive from the other Party (“**Disclosing Party**”) or which becomes known to it during the currency of the Agreement.
- 18.2 The confidential information of the Disclosing Party shall include—
- 18.2.1 all material and documentation, including the information contained therein;
- 18.2.2 all information relating to—
- 18.2.2.1 the Disclosing Party’s past, present and future research and development; and
- 18.2.2.2 the Disclosing Party’s business activities, pricing, products, services, customers, as well as the Disclosing Party’s technical knowledge and trade secrets; and
- 18.2.3 the terms of the Agreement.
- 18.3 The Receiving Party agrees that in order to protect the proprietary interests of the Disclosing Party in the Disclosing Party’s confidential information—
- 18.3.1 it shall only use the confidential information for the purposes of complying with its obligations under the Agreement;
- 18.3.2 it shall only make the confidential information available to those of the Receiving Party’s Personnel who are actively involved in the execution of the Receiving Party’s obligations under the Agreement and then only on a “need to know” basis;
- 18.3.3 it shall initiate internal security procedures reasonably acceptable to the Disclosing Party to prevent unauthorised disclosure and will take all practical steps to impress upon those Personnel who need to be given access to confidential information, its secret and confidential nature;
- 18.3.4 subject to the right to make the confidential information available to its Personnel under clause 18.3.1, it shall not at any time use any confidential information of the Disclosing Party or directly or indirectly disclose any confidential information of the Disclosing Party to third parties; and
- 18.3.5 all written instructions, drawings, notes, memoranda and records of whatever nature relating to the confidential information of the Disclosing Party which have or shall come into the possession of the Receiving Party and its Personnel, shall be and shall at all times remain the sole and absolute property of the Disclosing Party and shall promptly be handed over to the Disclosing Party when no longer required for the purposes of a Purchase Order.
- 18.4 On termination or expiry of a Purchase Order, the Parties will deliver to each other or, at the other Party’s option, destroy all originals and copies of confidential information in their possession.
- 18.5 These obligations shall not apply to any information which—
- 18.5.1 is lawfully in the public domain at the time of disclosure;
- 18.5.2 subsequently and lawfully becomes part of the public domain by publication or otherwise;
- 18.5.3 subsequently becomes available to the Receiving Party from a source other than the Disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose the confidential information; or
- 18.5.4 is disclosed pursuant to a requirement or request by operation of law, regulation or court order.
- 18.6 The Receiving Party hereby indemnifies the Disclosing Party against any loss or damage which the Disclosing Party may suffer as a result of a breach of this clause by the Receiving Party or the Receiving Party’s Personnel.
- 18.7 This clause is severable from the remainder of the Agreement and shall remain valid and binding on the Parties, notwithstanding any termination, for a period of 5 (five) years after the effective date of termination.

## **19 NON-SOLICITATION**

- 19.1 Customer shall not, during the currency of any Purchase Order, or for a period of 12 (twelve) calendar months following termination thereof, directly or indirectly (including through an intermediary or other third party) solicit, offer employment to, employ or contract in any manner (including as employee, consultant, or contractor) with any Personnel of Maverick unless otherwise agreed by Maverick in Writing.
- 19.2 In the event that Customer breaches clause 19.1 above, Customer shall pay Maverick a recruitment fee equal to the gross annual package (annualised if necessary and including any quantifiable bonuses or incentives) paid by Maverick to the Personnel concerned. Such amount shall be payable within 30 (thirty) calendar days of commencement of such person’s appointment with Customer and shall be without prejudice to any claim which Maverick may have in terms of the Agreement or in law.

## **20 INTELLECTUAL PROPERTY INFRINGEMENT**

- 20.1 Customer will defend itself against any claims made by an unaffiliated third party that any Goods or Services infringe its patent, design, copyright or trade mark and will pay the amount of any resulting adverse final judgment (or settlement to which Maverick consents). Customer shall promptly notify Maverick of the claim in writing and Maverick shall have sole control over its defence or settlement.
- 20.2 Should any third party succeed in its claim for the infringement of any intellectual property rights, Maverick shall, at Maverick’s discretion and within 30 (thirty) calendar days of the infringing item having been found to so infringe—
- 20.2.1 obtain for Customer the right to continue using the infringing item or the parts which constitute the infringement;
- 20.2.2 replace the infringing item or the parts which constitute the infringement with another product which does not infringe and which in all respects operates substantially in accordance with its specifications;
- 20.2.3 alter the infringing item in such a way as to render it non-infringing while still in all respects operating substantially in accordance with its specifications; or, failing all of the above,
- 20.2.4 withdraw the infringing item and refund to Customer all Fees paid by Customer to Maverick under the relevant Purchase Order with regard to the infringing item in the preceding 12 (twelve) calendar month period.
- 20.3 Maverick shall not be liable for any claim which arises out of goods or services selected by Customer and which are procured by Customer from third parties.
- 20.4 This clause 20 shall survive termination of the Agreement.

## **21 LIMITATION OF LIABILITY**

- 21.1 To the extent permitted by applicable law, regardless of the form (whether in contract, delict or any other legal theory) in which any legal action may be brought, unless otherwise agreed in a Purchase Order, each Party’s maximum liability for direct damages for anything giving rise to any legal action shall be an amount equal to the total Fees payable by Customer to Maverick in respect of the Purchase Order. This maximum amount shall be an aggregate amount for all claims arising out of the Purchase Order during its currency.
- 21.2 To the extent permitted by applicable law, in no event shall either Party or its Personnel be liable for any indirect, incidental, special or consequential damages or losses (whether foreseeable or unforeseeable) of any kind (including loss of profits, loss of goodwill, damages relating to lost or damaged data or software, loss of use, damages relating to downtime or costs of substitute products) arising from the Agreement.
- 21.3 The limitations contained in this clause 21 shall not apply to (i) any breach by a Party of the other Party’s proprietary or confidential information or intellectual property; (ii) a party’s indemnification obligations under the Agreement; (iii) any loss of or damage to any property or injury to or death of any person which arises from a Party’s negligence; or (iv) damages arising from a Party’s wilful misconduct (including theft, fraud or other criminal act).
- 21.4 Neither Party shall be liable to the other for any loss or damage of whatsoever nature suffered by the defaulting Party arising out of or in connection with any breach of the Agreement by the defaulting Party or any act, misrepresentation, error or omission made by or on behalf of the defaulting Party or its Personnel.

21.5 Maverick shall not be liable for any claim which arises out of goods or services selected by Customer and which are procured by Customer from third parties.

21.6 This clause 21 shall survive termination of the Agreement.

## **22 BREACH AND TERMINATION**

22.1 Should either Party (“Defaulting Party”)—

22.1.1 commit a material breach of a Purchase Order and fail to remedy the breach within 7 (seven) calendar days of having been called on in Writing by the other Party to do so;

22.1.2 fail to pay any invoice that is more than 30 (thirty) calendar days outstanding and is not the subject of a bona fide dispute between the Parties;

22.1.3 effect or attempt to effect a compromise or composition with its creditors;

22.1.4 be provisionally or finally liquidated, be placed under judicial management or receivership, commence business rescue proceedings or the equivalent of any of the foregoing; or

22.1.5 cease to carry on its business in the ordinary course,

22.1.6 then the other Party who signed the relevant Purchase Order (“Innocent Party”) may, in its discretion and without prejudice to its rights in the Agreement or in law, terminate the specific Purchase Order to which the event relates on written notice to the Defaulting Party.

22.2 Should the Defaulting Party undergo a change of Control without the prior written consent of the Innocent Party, then the Innocent Party may terminate the Agreement and/or any Purchase Order by giving at least 15 (fifteen) calendar days’ prior Written notice to the Defaulting Party specifying the date as of which such termination will be effective. The Innocent Party’s rights to terminate under this clause 22.2 shall only be exercisable for the period of 60 (sixty) calendar days immediately following the date on which it becomes aware of the actual change in Control of the Defaulting Party, provided that such 60 (sixty) calendar day period shall not apply (and there will, accordingly, be no time limit on the Innocent Party’s right to terminate as aforesaid) should a change of Control result in the Control of the Defaulting Party vesting (directly or indirectly) in a competitor of the Innocent Party.

22.3 Should any licence, permit, certificate, consent, exemption or other legal requirement of a material nature without which Maverick is unable effectively to provide Services under a Purchase Order expire, terminate, not be renewed or be withdrawn or refused for any reason whatsoever, then Maverick may terminate such Purchase Order upon 14 (fourteen) calendar days’ Written notice to Customer.

22.4 Any termination pursuant to this clause 22 shall be without prejudice to any claim which either Party may have in respect of any prior breach of the Agreement by the other Party.

## **23 EFFECT OF TERMINATION**

23.1 On termination of any Purchase Order for any reason, all amounts due to Maverick for Services rendered or Goods ordered prior to termination shall become due and payable even if they have not yet been invoiced. The amounts may not be withheld for any reason, unless the arbitrator directs otherwise.

23.2 On termination, cancellation or expiry of any Purchase Order—

23.2.1 the provision of all Services under the Purchase Order shall forthwith cease and Maverick shall vacate the Site, unless Maverick is required to render additional services on-Site under a separate Purchase Order; and

23.2.2 each Party will deliver to the other Party, or at the other Party’s option destroy (and procure the delivery or destruction by Third-Party Contractors of) all originals and copies of confidential information and proprietary materials in its or their possession or under its or their control.

23.3 The expiry or termination of a Purchase Order shall not affect the enforceability of the terms which are intended to operate after such expiry or termination.

## **24 DISPUTE RESOLUTION**

24.1 The Parties shall try, in good faith, to solve amicably, and by mutual agreement, any dispute which may arise between them with respect to the Agreement in any way they deem appropriate.

24.2 This dispute resolution is only applicable to a technical dispute. This dispute resolution clause shall not apply to a dispute in relation to quantum or outstanding invoices or monies due and owing.

24.3 A technical dispute which arises between the Parties which cannot be resolved as contemplated in clause 24.1 above shall, in the first instance, be referred to an authorised representative of each Party, which will use its best endeavours in good faith to resolve the dispute amicably within 2 (two) Business Days of the dispute having been referred.

24.4 A dispute between the Parties of a technical nature (which includes a dispute relating to acceptance testing or commissioning of any Deliverable, concerning the interpretation of any specifications or requirements or relating to the functions or capabilities of the Services) shall be referred to an independent technical expert having appropriate expertise with respect to the dispute (“**Technical Expert**”).

24.5 The Accountant and the Technical Expert shall be appointed by agreement or, failing agreement, within 3 (three) Business Days by Maverick. The Accountant and Technical Expert shall act as experts and not as arbitrators. The Accountant and Technical Expert will be requested to give their decision as soon as practicable but no later than 5 (five) Business Days after the dispute is referred. The decision of the Accountant and the Technical Expert shall (in the absence of clerical or manifest error) be final and binding on the Parties. The outstanding payment, as determined by the Accountant, shall be paid by the Party as determined by the Accountant, on demand by the other Party. The fees and all associated costs of the Accountant and the Technical Expert shall be borne by the unsuccessful Party.

24.6 Should the Parties be unable to agree on whether a dispute is technical or not within 5 (five) Business Days, or if they are unable to resolve a dispute despite their good faith efforts, then the dispute will be finally resolved in accordance with the Rules of AFSA, by an arbitrator or arbitrators appointed by it.

24.7 Either Party may demand that a dispute be referred to arbitration by giving Written notice to that effect to the other Party.

24.8 Nothing in the Agreement shall preclude either Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction.

24.9 The arbitration referred to in clause 24.6 shall be held—

24.9.1 at Johannesburg in the English language; and

24.9.2 immediately and with a view to its being completed within 21 (twenty-one) Business days after it is demanded.

24.10 The Parties irrevocably agree that the submission of any dispute to arbitration is subject to the Parties’ rights of appeal. Either Party may appeal the arbitration ruling by giving Written notice to the other Party to the arbitration within 20 (twenty) calendar days of the ruling being handed down. The appeal shall be dealt with in accordance with the rules of AFSA by a panel of 3 (three) arbitrators appointed by AFSA.

24.11 The Parties irrevocably agree that on expiry of the 20 (twenty) Business day period for appeal or the handing down of the ruling of the appeal panel, as the case may be, as contemplated in clause 24.10, the decision in arbitration proceedings—

24.11.1 shall be final and binding on the Parties;

24.11.2 shall be carried into effect; and

24.11.3 may be made an order of any court of competent jurisdiction.

24.12 The costs of any reference to arbitration will be borne by the unsuccessful Party, unless otherwise determined by the Parties or the



arbitrator, irrespective of which Party referred the dispute to arbitration.

- 24.13 This clause 24 is severable from the rest of the Agreement and shall remain valid and binding on the Parties notwithstanding any termination of any Purchase Order.
- 24.14 Maverick retains the right to institute collection proceedings in a court of law of competent jurisdiction for matters involving outstanding payment.

## **25 NOTICES AND DOMICILE**

- 25.1 All notices, authorisations and requests given or made in connection with a Purchase Order must be sent, hand, pre-paid registered post or facsimile to the addresses and numbers set out in the relevant Purchase Order, with an advance copy via e-mail as a courtesy. By providing such contact information, each Party consents to its use for purposes of administering the relevant Purchase Order by the other Party.
- 25.2 The Parties record that, whilst they may correspond via e-mail during the currency of the Agreement for operational reasons, no formal notice required in terms of the Agreement, nor any amendment or variation to the Agreement may be given or concluded via e-mail.
- 25.3 Each Party chooses as *domicilium citandi et executandi* (its domicile for the purpose of being served summons and execution levied) for all purposes under a Purchase Order the physical address specified for the Party as set out in the relevant Purchase Order.
- 25.4 Each Party may by giving written notice to the other Party, change the addresses and numbers set out in the relevant Purchase Order to any addresses and numbers in the Republic of South Africa, provided that the change shall only take effect 14 (fourteen) Business Days after delivery of the written notice.
- 25.5 Notice shall be deemed to have been given—
- 25.5.1 if delivered by hand to a responsible person during Business Hours to the designated physical address, on the date of delivery;
- 25.5.2 if sent by pre-paid registered post in a correctly addressed envelope to the designated postal address, on the 7th (seventh) Business Day after the date of posting; or
- 25.5.3 if sent by fax to the designated fax number, on the 1st (first) Business Day following the date of successful transmission.
- 25.6 If a notice or communication is actually received by a Party, adequate notice or communication shall have been given.

## **26 FORCE MAJEURE**

- 26.1 Neither Party shall be liable for any failure to fulfil its obligations under the Agreement if and to the extent such failure is caused by any circumstances beyond its reasonable control, including flood, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions or acts of God. For the avoidance of doubt, the Customer's obligation to pay shall not be affected by force majeure.
- 26.2 Should any event of force majeure arise, the affected Party shall notify the other Party without delay and the Parties shall meet within 7 (seven) Business days of the notice to negotiate in good faith alternative methods of fulfilling its obligations under a Purchase Order, if any. In addition, Maverick shall continue to provide and Customer shall continue to pay for those Goods and Services not affected by the event of force majeure.
- 26.3 Should either Party be unable to fulfil a material part of its obligations under a Purchase Order for a period in excess of 60 (sixty) Business days due to circumstances or force majeure, the other Party may at its sole discretion cancel the relevant Purchase Order forthwith by Written notice.

## **27 ASSIGNMENT AND SUBCONTRACTING**

- 27.1 Neither Party shall be entitled to cede, assign, delegate or otherwise transfer the benefit or burden of all or any part of the Agreement without the prior Written consent of the other Party, which consent shall not be unreasonably withheld or delayed.
- 27.2 Notwithstanding the terms of clause 27.1, it is expressly recorded that Maverick shall be entitled to cede and assign all rights and obligations under the Agreement to an Affiliate without the prior written consent of Customer, provided that Maverick shall notify Customer within a reasonable time of the event occurring.
- 27.3 Maverick may sub-contract or delegate its obligations under the Agreement to Third-Party Contractors, provided that Maverick shall remain liable for performance of such Third-Party Contractors. Maverick shall not be required to disclose the terms (including payment terms) of any sub-contract entered into with respect to Maverick's obligations under the Agreement.

## **28 RELATIONSHIP AND DUTY OF GOOD FAITH**

- 28.1 Notwithstanding anything to the contrary contained in the Agreement, whether express or implied, each Party enters into the Agreement as an independent contractor. The Agreement does not create any other relationship, including employment, partnership, agency, trust or joint venture relationship. The relationship between Customer and Maverick and its Personnel shall not be deemed to be one of employer/employee.
- 28.2 Unless otherwise agreed in Writing, nothing in the Agreement shall be construed as constituting a temporary employment service as contemplated in section 198 of the Labour Relations Act, 1995. Maverick acknowledges, and waives any claims in relation thereto, that Maverick and its Personnel are not entitled to any benefits offered by Customer to its employees and that Customer is not responsible to Maverick or any of its Personnel in respect of remuneration, superannuation, annual leave, sick leave, long service leave, public holidays, redundancy payments or any other similar benefits under any law or industrial instrument. Maverick indemnifies the Customer against any claims brought against Customer by any third party, including any of Maverick's Personnel, to the extent that such claims directly arise out of a breach of the Agreement or any applicable labour legislation by Maverick.
- 28.3 Nothing in the Agreement shall be construed as creating a partnership between the Parties and neither Party shall have any authority to incur any liability on behalf of the other or to pledge the credit of the other Party. Without limiting the generality of the foregoing, when any Maverick Personnel is required to act in an executive capacity on behalf of Customer, Maverick cannot accept responsibility for his omissions or acts and Customer shall, therefore, indemnify Maverick against all costs, claims, damages and expenses which may arise in connection with such act.
- 28.4 The Parties shall at all times owe each other a duty of good faith and shall, in all dealings with each other and in respect of the Services act according to such standard.

## **29 NON-EXCLUSIVITY**

- 29.1 Nothing in the Agreement shall be construed as precluding or limiting in any way the right of Maverick to provide goods or services of any kind or nature whatsoever to any person or entity as Maverick in its sole discretion deems appropriate. Maverick may employ, modify, disclose, and otherwise exploit Maverick's intellectual property (including providing services or creating programming or materials for other customers or itself, providing services which are competitive with any Deliverables), irrespective of their similarity to the Deliverables, subject to the Parties' confidentiality obligations.

## **30 GENERAL**

- 30.1 The Agreement constitutes the entire agreement between the Parties in respect of the subject matter of the Agreement.
- 30.2 No amendment or modification to the Agreement shall be effective unless in Writing and Signed by authorised signatories of both Customer and Maverick.
- 30.3 No granting of time or forbearance shall be, or be deemed to be, a waiver of any term of the Agreement and no waiver of any breach shall operate as a waiver of any continuing or subsequent breach.
- 30.4 If the whole or any part of a term of the Agreement is void or voidable by either Party or unenforceable or illegal, the whole or that part (as the case may be) of that term, shall be severed, and the remainder of the Agreement shall have full force and effect, provided the severance does not alter the nature of the Agreement between the Parties.

- 30.5 The Agreement shall be governed and construed according to the laws of the Republic of South Africa and Customer agrees to submit to the exclusive jurisdiction of the South African courts.
- 30.6 Each Party shall be responsible for its own legal and other costs relating to the drafting and negotiation of the Agreement.
- 30.7 Neither Party will make or issue any formal or informal announcement or statement to the press in connection with the Agreement, without the prior written consent of the other Party.
- 30.8 Customer hereby consents to the use by Maverick of Customer's name and a general description of the Goods or Services provided by Maverick under the Purchase Orders in any proposals, marketing material or other similar documents which Maverick may issue or submit from time to time.
- 30.9 The Agreement may be executed in any number of counterparts, each of which will be an original, and such counterpart together will constitute one and the same instrument. Execution may be effected by delivery of facsimiles of Signature pages (and the Parties will follow such delivery by prompt delivery of originals of such pages).

**WARRANTY SCHEDULE****1 LIMITED WARRANTY**

- 1.1 The limited warranty for each generator will cover the parts and labour required to repair the generator. The travel to site will be for the customer's account as is set out below. The warranty commences from the date upon which the unit leaves Maverick's premises.
- 1.2 The warranty is dependent on the RPM rating and fuel type of the generator (the RPM and fuel type of the generator is available on request) as follows:
- 1.2.1 Fuel type: Diesel – operating speed 1500rpm: 12 months or 1000 hours of operation, whichever may occur first;
- 1.2.2 Fuel Type: Petrol –operating speed 3000rpm: 6 months or 500 hours of operation, whichever may occur first;
- 1.2.3 Electrical switchgear: 12 Months or 1000 hours of operation, whichever occurs first.
- 1.3 The warranty is further dependent on all requirements being met in terms of this Warranty Schedule.
- 1.4 For warranty claims, travel within 100 kilometres from the premises of Maverick will be covered by our warranty, further travel will be charged per kilometre travelled to Site and back to Maverick's premises.
- 1.5 Notwithstanding the provisions of this Agreement, in the event that a generator requires to be returned to the Maverick's premises, for servicing or repairs that cannot reasonably be carried out at the customer's site, the costs of transportation and rigging to the required workshop/s and back to the customer will be charged to the customer at the prevailing Time and Materials rate, irrespective of whether the repairs are undertaken under warranty or not.
- 1.6 Non-warranty repairs will be charged for at the relevant per kilometre rate and at the relevant Time and Materials rate.

**2 REQUIREMENTS**

- 2.1 Installation must be carried out by a qualified electrician and a certificate of compliance (COC) and proof of surge protection provided to Maverick by Customer.
- 2.2 Notwithstanding anything else in this Agreement or this Warranty Schedule, in respect of petrol generators, Customer is required to deliver the generator to Maverick's workshop for repairs under a warranty claim.
- 2.3 Customer's generator must be serviced as per the service schedule supplied in the engine owner's manual. Maintenance of the generator is imperative and is the responsibility of Customer.
- 2.4 Only genuine parts can be used for servicing and repairs to the generator, by qualified and approved service personnel, approved by Maverick, whilst the generator is under warranty.
- 2.5 Proof of purchase and maintenance must be provided to Maverick in order to log a warranty claim.
- 2.6 The generator must, in the sole discretion of Maverick, be installed in a well-ventilated area with sufficient space for correct airflow to provide adequate cooling for the unit.
- 2.7 The generator should be started and run at least once per month in order to keep the engine well lubricated and battery charged.
- 2.8 Personnel require access to all sides of the generator. Customer must ensure that the technician has the access to the generator required in order to avoid additional labour charges or rescheduling of call outs at Customer's expense. Should Personnel be dispatched and the fault is deemed to not be covered by the warranty, a call out fee will be charged. Any repairs carried out will be charged for at the applicable Time and Materials rate.

**3 WHAT IS COVERED**

- 3.1 The warranty covers the generator and switchgear, subject to the provisions of clause 3.3.
- 3.2 The warranty covers the canopy of the generator subject to the condition that any damage caused by the environment (such as rust in coastal areas) and/or physical damage to the canopy.
- 3.3 Automatic change over Switches ("ATS") and manual change over switches must be installed with surge protection on the mains incoming feed in order for the warranty to be valid. Fluctuations on the mains incoming feed are erratic and can cause damage to Customer's equipment and electrical appliances. Switchgear must be sized according to the generator not the mains, unless otherwise specified by the client at the time of the order.
- 3.4 Faulty batteries have a 12-month limited warranty.
- 3.5 In order for Customer's warranty to remain valid the generator care as set out in this Warranty Schedule needs to be conformed with.

**4 WHAT IS NOT COVERED**

- 4.1 The warranty does not cover negligence or wilful damage to the generator or switchgear.
- 4.2 Consistent overloading of the generator places additional strain on the generator outside of normal operating conditions and can cause the generator to malfunction and is not covered by warranty.
- 4.3 Should the generator or transfer switch be connected incorrectly and this causes damage to the generator in any way, this is not covered by warranty.
- 4.4 The warranty further does not cover:
- 4.4.1 Flat batteries;
- 4.4.2 No fuel or airlocks from running out of fuel;
- 4.4.3 electrical breaker down / off;
- 4.4.4 Electrical Installation issues (Including ATS, manual switch or communications cable);
- 4.4.5 Emergency stop button pushed in;
- 4.4.6 Overloading of the generator;
- 4.4.7 Glazing of the engine caused by running the unit with insufficient load. Generator engines are designed to run on a continuous load consisting of a minimum of 50% of the rated output of the engine. Running a unit with a load of below 50% will cause engine damage;
- 4.4.8 Imbalanced phases (3-phase installations);
- 4.4.9 Lightning damage;
- 4.4.10 Damage caused by power surges on the utility feed; or
- 4.4.11 Damage caused by incorrect operation of the unit.

**5 SERVICE SCHEDULE**

Unit Size: 15kVA to 100kVA First Service – 100 hours or 12 months Thereafter every 250 hours of operation or 12 months	Unit size: 100kVA to 2000kVA First service – 250 hours Thereafter every 250 hours of operation or 12 months
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