

PHICOR TRADING (PTY) LIMITED

IMPORTANT NOTICE TO ALL EXISTING AND PROSPECTIVE CUSTOMERS

The attached terms and conditions shall govern all existing and future orders placed by you upon Phicor unless expressly otherwise agreed in writing, or until superseded by new terms and conditions.

STANDARD TERMS AND CONDITIONS OF SALE, TENDER AND GRANTING OF CREDIT

1. Scope and Application

- 1.1. These terms and conditions shall apply in respect of each and every contract for the sale or provision of goods and/or services and/or the undertaking of projects by Phicor, unless specifically otherwise agreed between the parties in writing.
- 1.2. The provisions of this document shall overrule any terms and conditions of contract of the customer, unless otherwise agreed between the parties in writing.
- 1.3. Phicor may agree to a specific contract on special terms set out in the quotation or tender for such contract, and in the event of any inconsistency between the provisions of these terms and conditions and any such special terms, the special terms of the specific contract shall prevail.
- 1.4. In this document, headings embodied in the clauses are for convenience and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention:-
 - 1.4.1. the singular shall include the plural and *vice versa*;
 - 1.4.2. the reference to one gender shall be capable of being construed as reference to any of the others; and
 - 1.4.3. the references to a natural person shall be capable of being construed as a reference to a juristic person and *vice versa*.
- 1.5. Unless the context of this document clearly indicates a contrary intention, the following words or phrases shall have the meaning assigned to them:-
 - 1.5.1. "the customer" means any party who purchases goods and/or services or with whom a contract is concluded;
 - 1.5.2. "goods" shall be those goods to be supplied by Phicor as specified in Phicor's quotation or in a contract;
 - 1.5.3. "services" shall be those services to be supplied by Phicor as specified in Phicor's quotation or in a contract;
 - 1.5.4. "projects" means any complete project or projects, or parts thereof, to be undertaken by Phicor and as specified in Phicor's quotation or a contract;
 - 1.5.5. "order" means a written request or instruction by the customer for the supply of the goods and/or services and/or the undertaking of projects by Phicor;
 - 1.5.6. "quotation" means a written quotation or tender by Phicor for the supply of the goods and/or services and/or the undertaking of projects;
 - 1.5.7. "contract" means any contract for the supply of goods and/or services and/or the undertaking of projects by Phicor;
 - 1.5.8. "commissioning" means such acceptance tests to be made by Phicor before the works are handed over to the customer as provided for in the quotation or the contract or, where no specific provision in the quotation or contract exists, such tests as are normally made by Phicor to certify that the works have been satisfactorily completed;
 - 1.5.9. "acceptance certificate" means a certificate evidencing that the works have been commissioned;
 - 1.5.10. "take-over date" means the date that the customer signs an acceptance certificate certifying that the works have been completed in accordance with the quotation or the contract and have been commissioned, or, where the customer fails and/or refuses to issue such a certificate through no fault of Phicor, the date upon which the works have been completed in accordance with the quotation or the contract and, in the sole opinion of Phicor, have been ready for use, or 30 (thirty) days after delivery of the works, whichever is the earlier;
 - 1.5.11. "works" means all goods, work and services to be provided by Phicor in terms of the quotation or the contract;
 - 1.5.12. "due date" means: in relation to the supply of goods, the agreed terms from the date of invoice or from the date of statement, on which date goods were supplied and such date appearing on the invoice for the first time; and in relation to the supply of non project type services, the agreed terms from the date of invoice or from the date of statement, on which date non project type services were supplied and such date appearing on the invoice for the first time; and in relation to the supply of other services and/or projects, the agreed terms after the take-over date or, where the takeover date is delayed by the customer or by

another contractor having an involvement in the project or as a result of anything else out of the control of Phicor, the agreed terms after the services and/or project have been completed and, in the sole opinion of Phicor, have been ready for use;

- 1.5.13. "the agreed terms" means the number of days credit allowed from the date of invoice or from the date of statement, either net or subject to a settlement discount as agreed to in writing by Phicor;
- 1.5.14. "retentions" means the withholding of portions of the contract price if so agreed upon between the parties, the purpose of which shall be to ensure the due fulfilment by Phicor of its obligations in terms of the quotation or the contract;
- 1.5.14.1. "delivery" unless inconsistent with, or otherwise indicated by the contents of the quotation or the contract, shall be regarded as taking place when delivery is effected to the customer's address;
- 1.5.15. "these terms and conditions" means this document;
- 1.5.16. "the OHSA" means the Occupational Health and Safety Act, No. 85 of 1993, as amended;
- 1.5.17. "the CPA" means the Consumer Protection Act, 68 of 2008, as amended;
- 1.5.18. "the NCA" means the National Credit Act, 34 of 2005, as amended;
- 1.5.19. "business day" means any day of the week excluding Saturday, Sundays and public holidays.

2. Quotations

- 2.1. Where Phicor delivers a quotation, no contract between the parties shall exist until acceptance of the quotation by the customer is received in writing by Phicor, together with the official order number of the customer, unless circumstances exist which call for the immediate commencement with the works, in which event the parties shall attempt to conclude the contract as soon as is possible under the circumstances. For the sake of clarity, it is recorded that where a contract exists between Phicor and the customer the terms of such a contract shall prevail over the terms of the quotation, unless otherwise agreed in writing.
- 2.2. If the customer purports to accept any quotation subject to any qualification or to any terms other than those contained in this document and in the quotation, no contract shall come into existence and Phicor shall not be bound until it expressly binds itself in writing to those terms.
- 2.3. Any drawings or information supplied with a quotation or in terms of a contract shall not be transmitted or communicated to any person, whether natural or juristic, who is not subject to the provisions of this document, without Phicor's prior written authority. Ownership of all plans, diagrams and patterns shall remain vested in Phicor and no copies of such shall be made without Phicor's prior written consent.
- 2.4. Unless otherwise stated in a quotation or contract, data such as dates, dimensions, weights, capacities, calculations and quantities specified in a bill of quantities accompanying the quotation or forming part of the contract shall be approximate guides only and unless the correctness of such data is expressly guaranteed by Phicor, such data shall not give rise to any claim or action against Phicor. In the event of actual quantities of goods used by the supplier, or the extent of the services required, exceeding any amounts specified in any quotation, contract or bill of quantities, the customer shall pay any additional costs arising out of the use of such extra goods or services.
- 2.5. Phicor reserves the right to make any reasonable changes to the design or form of any goods ordered provided that the stated performance, quality and specification of the goods remain unaffected.
- 2.6. A quotation provided by Phicor to a customer shall remain valid, and unless withdrawn prior to acceptance, shall be capable of acceptance within the period stated therein, or where no period is stated, for a period of thirty (30) days as calculated from the date of the quotation.
- 2.7. The acceptance of any quotation must be accompanied by sufficient information in writing to enable Phicor to proceed with the execution of the order forthwith, failing which Phicor shall be entitled to amend the quoted process to cover any increases in cost incurred as a result of such delay.
- 2.8. Unless otherwise stated, budget prices are estimates only and shall not bind Phicor.

3. Limit of Contract

Phicor shall only be obliged to supply the goods and/or services as are specifically quoted for and accepted by the customer.

4. Packing

Unless otherwise specified, all prices contained in a quotation shall include packing in accordance with the standard practice of Phicor.

5. *Contract Completion, Delivery and Claims in Respect of Goods Delivered*

- 5.1. Delivery of anything to be delivered in terms of a quotation or the contract shall take place upon physical delivery thereof to the addresses referred to in clause 5.2 below, or a mutually agreed storage facility, and the date of such delivery shall be the delivery date for purposes of this contract. In the event that Phicor is ready to deliver and the customer is not ready to accept delivery at the addresses referred to in clause 5.2 below, or, where such delivered goods would be stored is not ready to accept delivery thereof, then Phicor shall store such goods on behalf of the customer in its own storage facilities and shall be entitled to claim from the customer its then prevailing storage charges therefore.
- 5.2. The addresses at which the goods and/or services shall be supplied shall be those addresses specified on the customer's order form.
- 5.3. Delivery shall include off-loading, unless otherwise agreed, in which case the customer shall arrange and pay all costs of hiring any special hoists and other lifting equipment, if necessary.
- 5.4. The customer shall ensure that Phicor is given free and unfettered access to the addresses referred to in clause 5.2 above. In the event of the customer not being able to provide such access or in the event of the customer requesting a suspension or delay in performance by Phicor, Phicor shall be entitled to claim from the customer any additional costs incurred by Phicor by virtue of such suspension or delay.
- 5.5. Where applicable, the customer shall prepare any address referred to in clause 5.2 above or where necessary shall procure that such address be prepared, in accordance with Phicor's recommended specifications as contained in the quotation and that all necessary electrical and other installations and fittings are available in accordance with those specifications.
- 5.6. Phicor shall endeavour to complete delivery in the time period specified in the quotation or the contract but shall not incur any liability of any nature whatsoever to the customer in the event of it failing to do so, unless specifically otherwise agreed in writing, the customer's sole remedy in such an event being to cancel such order or unexecuted portion thereof on ten (10) days written notice to Phicor.
- 5.7. Unless specifically otherwise agreed between Phicor and the customer, where delivery of any works in accordance with a contract is due and Phicor tenders such delivery and the customer refuses to take delivery or is not ready to accept such delivery, delivery shall be deemed to have taken place and Phicor shall have the right, without detracting from any other legal remedies it may have in law, to act as if delivery had taken place and to issue an invoice for payment, which payment shall then become due in accordance with the agreed terms, to store the works at the customer's risk and cost, and to claim whatever costs and/or damages incurred or sustained by Phicor as a result of the customer's refusal or failure to take delivery.
- 5.8. It is the duty of the customer to inspect the goods on receipt, and by signing the delivery note the customer shall be deemed to have confirmed the receipt of the goods in good order, except to the extent of any damage thereto which is endorsed on the delivery note.
- 5.9. It is agreed that after delivery to and acceptance of the goods by the customer, the customer will inspect and test the goods and that no defective goods may be returned to Phicor for credit more than ten (10) days after the delivery date, unless the customer is a consumer who is not excluded from the CPA by virtue of section 5(2)(b) of the CPA, in which event the goods have to be returned within six (6) months from the delivery date .
- 5.10. Any goods returned to Phicor due to an error in ordering by the customer will be accepted for credit solely at the discretion of Phicor and will in all cases be subject to a handling charge equal to 10% of the value of the order.
- 5.11. The goods delivered, erected or installed are deemed to be operating satisfactorily unless Phicor receives written notification to the contrary from the customer within ten (10) days after the delivery, erection or installation of the goods, as the case may be, and the customer returns same to Phicor within such period, provided that where the customer is a consumer who is not excluded from the CPA by virtue of section 5(2)(b) of the CPA, the goods have to be returned within six (6) months from the delivery date .
- 5.12. All goods returned to Phicor must be recorded on a goods returned by customer document.

6. *Prices, Payments, Credit Limits and Financial Circumstances*

- 6.1. The price for a specific contract or order shall be as reflected in the quotation, or as agreed and/or amended by the parties in writing.

- 6.2. In the event of a variation or suspension of work at the instance of the customer or as a result of a lack of instruction by the customer or as a result of delay caused by *force majeure* circumstances, Phicor shall be entitled to increase the contract price by a sum of money sufficient to cover the extra expenses incurred or sustained by it as a direct or indirect consequence of such variation or suspension or delay.
- 6.3. Unless otherwise agreed, payment terms shall be either payment against invoice or statement or progress payments whichever is specified in the quotation or the contract, and if progress payments are in force payment intervals and the basis of calculation of such payments will be those as set out in the quotation or the contract.
- 6.4. Unless otherwise agreed in writing between the parties, prices shall generally be payable on the due dates reflected in the quotation or the contract, absent which shall be the dates defined in clause 1.5.13.
- 6.5. Without prejudice to any of the rights of Phicor, if any payment is not made on the due date it shall bear interest which is three percentage points above the prime interest rate charged on short term loans and facilities by Phicor's bankers as they may be from time to time, which interest shall be calculated from the date any such payment falls due until it is paid, compounded monthly in advance.
- 6.6. Phicor shall be entitled, in its sole and absolute discretion, to appropriate any payments received on account of the customer's indebtedness to any indebtedness whatsoever of the customer to Phicor.
- 6.7. In the event of the customer disputing any amounts due by it to Phicor, which dispute must be bona fide then the customer shall only be entitled to withhold payment of that amount in dispute and shall not be entitled to withhold the full payment then due by it to Phicor.
- 6.8. A certificate produced and suitably signed by Phicor, detailing the invoice numbers, invoice dates, invoice amounts due, the interest rate applicable in terms hereof and the interest payable, shall be prima facie proof of the facts stated in such a certificate and will be binding upon the customer for purposes of obtaining summary judgment against the customer.
- 6.9. Should the customer at any stage default in the observance of any of the payment terms hereof, Phicor shall be entitled to claim the full amount then owing by the customer to Phicor, notwithstanding the fact that such amount may not at the time be due and payable.
- 6.10. Phicor reserves the right to make partial deliveries against any order and the customer shall make payment in respect thereof, as stipulated in the quotation or the contract.
- 6.11. Notwithstanding any other provision herein or elsewhere included, unless otherwise specifically agreed to, the supply of all goods to the customer by Phicor shall be subject to an agreed credit limit, which is subject to the successful granting of credit insurance cover by the relevant insurer, contracted to Phicor in this regard and as such may be subject to change in accordance with any change in such insurance cover from time to time. Once the agreed credit limit is reached or exceeded (as the case may be) and notwithstanding any agreed payment terms to the contrary, Phicor shall be entitled to demand payment by the customer of such amount that will in Phicor's sole discretion be necessary to reduce the outstanding balance on the customer's account after delivery of the relevant goods to an amount less than or equal to the agreed credit limit. Phicor shall be entitled to suspend the supply and delivery of all goods to the customer until such payment is received. Phicor shall not have any liability of any nature whatsoever towards the customer as a result of any such suspended supply and delivery of the goods.

7. Ownership

- 7.1. The ownership in all goods sold, delivered or in any other way made available to the customer by Phicor shall remain vested in Phicor until the customer has made full payment of the contract price for such goods.
- 7.2. Phicor shall have the right at any time to give notice of its continued ownership in the goods to every possessor and every landlord of premises in or on which the goods are stored or may be placed or installed, whether for sale, repair, assembly or otherwise.
- 7.3. Without prejudice to any of its rights in terms of this document or the law, Phicor reserves the right to repossess goods in the event of the customer failing to make any payment on due date or at all.
- 7.4. Payment will only be acknowledged when the relevant deposit is acknowledged by Phicor's bankers as having been deposited into Phicor's bank account by Phicor or the customer.
- 7.5. It is the responsibility of the customer to ensure that payments are either deposited directly into Phicor's bank account (supported by adequate detail to identify the deposit) by due date or received at Phicor's *domicilium citandi et executandi* or physical address as identified in clause 24.1 of this document in time for Phicor to bank the monies into Phicor's bank account by due date.
- 7.6. The customer is obliged to advise Phicor in writing of any change in ownership or control of the customer including the sale of the customer's business or any part thereof, failing which the customer indemnifies and hold Phicor harmless for any loss, damage claim or expense that Phicor may incur as a result of any

change of ownership or control, including but not limited to, any loss sustained by Phicor as a result of continuing the grant of credit facilities. It was specifically recorded that the intention of Phicor is not to continue to grant credit facilities in the event of a change of ownership or control of the customer.

8. Risk

- 8.1. The risk in the goods or any portion of the works shall pass from Phicor to the customer upon delivery, or deemed delivery in accordance with clause 5.7, of the goods or relevant portions of the works to the customer or its agent.
- 8.2. In the event of any goods being repossessed by Phicor, the customer shall be liable for any damage sustained to the goods, from the time the goods were delivered by Phicor to the customer until such time the goods were repossessed by Phicor.

9. Liability for Delay and Extensions

Any times quoted for delivery are dependent upon receiving of all necessary information to enable Phicor to commence work and to proceed therewith without interruption. Whenever any delay is caused by any instructions, or the lack thereof, by the customer, or as a result of industrial dispute or *force majeure* or any other cause whatsoever beyond the reasonable control of Phicor, the time for delivery shall be extended by a reasonable period in the circumstances.

10. Performance, Inspection and Tests

- 10.1. Any performance figures given by Phicor are based upon Phicor's experience and are such as Phicor expects to obtain on testing at its premises. Phicor accepts no liability for damage or failure to attain such figures unless specifically guaranteed performance figures subject to the recognized tolerance applicable to such figures have been given, in which event Phicor's liability shall be limited to the amount specifically so agreed with the customer prior to the acceptance of the order. The customer bears the sole responsibility should the performance of the works that were supplied be in accordance with the customer's specification and requirements but are nevertheless found not to be performing in accordance with what is required there from.
- 10.2. Phicor's works are carefully inspected and, where practicable, submitted to standard tests at Phicor's factories and/or warehouses before dispatch. If tests other than those specified in the quotation or tests in the presence of the customer's representative are required, these will be charged for in accordance with Phicor's standard tariffs then in force. In the event of any delay on the part of the customer to attend such tests after three (3) days' notice in advance of the tests being concluded, the tests will proceed in the absence of the customer and shall be deemed to have been made in its presence.

11. Warranty

- 11.1. Phicor warrants that the goods supplied by it will be safe, free from defects in materials, parts, design and workmanship, that they will be reasonably suitable for the purposes they are generally intended for, and that the goods will operate fault-free and safely under normal operating conditions for a reasonable period after delivery, which the customer hereby specifically agrees shall be for a period not in excess of 12 (twelve) months after delivery of the goods to it.
- 11.2. Phicor will repair or replace at its own cost any goods that don't comply with the warranties contained in clause 11.1 above or which fail within the agreed warranty period. Any repaired or replaced goods shall be subject to a further 3 (three) month warranty period.
- 11.3. Phicor shall have no liability in terms of the warranties contained in clause 11.1 above in the event that:
- 11.3.1 the characteristic, failure, defect or hazard that is alleged to be in breach of the warranties did not exist at the time of supply;
- 11.3.2 the goods have been altered or tampered with by the customer without the approval of Phicor;
- 11.3.3 the goods have been used under wrong operating conditions or for purposes not intended or have been abused by the customer;
- 11.3.4 the customer has failed to properly take care of and maintain the goods; or
- 11.3.5 the customer has failed to comply with any usage – and/or operating instructions provided by Phicor in respect of the goods.

- 11.4. Phicor's liability in terms of the warranties provided by it shall under no circumstances exceed the invoiced selling price of the goods.
- 11.5. The warranties contained in this clause 11 are the sole and entire warranties applicable to the goods and no other warranties, express or implied by conduct or common law, shall apply.

12. Limitation of Liability

- 12.1. Phicor's sole obligations and responsibilities to the customer in relation to the goods shall be in terms of the warranties as set out in clause 11, and furthermore, insofar as the relevant transaction is subject to the provisions of section 61 of the CPA, to indemnify the customer against and to hold the customer harmless from, any harm arising from the death or personal injury suffered by the customer, and from the loss of or physical damage to property belonging to the customer, caused by the goods supplied by Phicor, subject to the limitations and/ or exclusions and/or effects of sub-sections 61(4) and 61(6) of the CPA.
- 12.2. Phicor shall under no circumstances be liable towards the customer for any other losses, damages or harm of whatsoever nature, irrespective of whether such losses, damages or harm may have been caused by the fault of the supplier provided Phicor is not guilty of gross negligence.
- 12.3. Phicor's total cumulative liability to the customer shall under no circumstance exceed the greater of the value of items for which Phicor may be held liable in terms of the warranties referred to above together with the liabilities provided for in clause 12.1, and the invoiced selling price of the goods, provided that Phicor shall under no circumstances be liable for any indirect or consequential damage, including but not limited to loss of income, loss of revenue, loss of profits and any other economic loss, except to the extent caused by its gross negligence.
- 12.4. The customer, by accepting the goods subject to the terms and conditions contained herein, acknowledges that the contents of this clause 12, including the limitations contained herein, have been specifically pointed out by Phicor and drawn to the attention of the customer, that the customer has read it and that it fully understands and appreciates the implications of this clause 12, that it had sufficient time to consider the acceptability of this clause 12 before it entered into the transaction of purchase with Phicor, and that notwithstanding the provisions of this clause 12 it freely and voluntarily decided to proceed with the transaction to which this clause 12 applies.

13. Relief from Duties under the OHSA

- 13.1. The customer undertakes to take such steps as are sufficient, necessary and reasonably practicable in order to ensure that the goods supplied in terms of a quotation or contract, will be safe and without risks to health when properly used, and will comply with the requirements of section 10 of the OHSA and herewith releases Phicor from any duties imposed on Phicor by section 10 of the Act.
- 13.2. Phicor shall under no circumstances assume any liability for any health and safety hazards arising out of the misuse or abuse of the products manufactured, sold, imported or supplied by Phicor.

14. Duties under the CPA

In the event that the customer will not be the end user of the goods and will on-supply the goods to third party users, the following shall apply:

- 14.1. The customer is familiar with the provisions of the CPA insofar as the supply of goods or services to "consumers", as defined in the CPA, is concerned, and the customer hereby agrees to comply with all the provisions of the CPA insofar as they relate to such "consumers".
- 14.2. Without detracting from the generality of the provisions of clause 14.1, the customer hereby undertakes with specific reference to sections 49 and 58 of the CPA, to provide "consumers" with all such notices as may be required in terms of the aforesaid sections 49 and 58, and to provide same in the manner and format prescribed by the CPA.
- 14.3. The customer hereby indemnifies and agrees to hold Phicor harmless from, any claims, losses or liability made against, suffered by or established by any third party end user against Phicor, based upon or founded in the failure by the customer to comply with the provisions of the aforesaid sections 49 and 58.

15. Acceptance Certificates

- 15.1. At the delivery of goods and/or the completion of the works or phases thereof the customer shall be required to sign an acceptance certificate in accordance with the provisions of this clause.

- 15.2. The acceptance certificate shall state in clear terms to what portion of any work performed by Phicor the certificate relates, and shall state clearly the matters set out in clause 15.3 hereunder. The acceptance certificate shall be signed and dated by the authorized representative of the customer.
- 15.3. In the event that the works form part of a phase of a bigger project which is dependant upon any work and/or services to be performed by a third party, the customer shall not be entitled to refuse or delay the signing of an acceptance certificate relating to Phicor's works, and shall be obliged to sign an acceptance certificate stating that although that phase is not completed, Phicor's works have been completed to the satisfaction of the customer. Should in such an event any testing of anything provided by Phicor be required but could only be done after the completion of a phase, the acceptance certificate so given shall state that it is subject to and dependant on the results of any such tests undertaken after the completion of the phase.
16. Retentions
- No retentions shall apply to any contract unless specifically agreed between the parties in writing and the customer shall under no circumstances be entitled to retain any portions of the contract price.
17. General Price Variation
- 17.1. Any price quoted is subject to adjustment in accordance with the provisions of this clause.
- 17.2. Unless otherwise stated in Phicor's quotation or the contract the amount of all duties, taxes or other charges applicable to the works shall be borne by the customer.
- 17.3. Quoted prices are based on the cost of material, transport, exchange rates and labour ruling at the date of Phicor's quotation and, unless otherwise stated, if between that date and the date of delivery variations occur in these costs, then quoted prices shall be amended to provide for these variations, the detail of which will be written into Phicor's quotation or the contract. Such variations shall be reasonable.
18. Penalties
- 18.1. Phicor shall not be liable for the payment of penalties unless specifically so agreed between the parties in writing.
- 18.2. Where penalties are agreed between the parties, the amount of penalties shall be calculated on the value of the outstanding portion of the works only.
19. Law To Apply
- This agreement shall be governed by and construed in accordance with South African law.
20. Breach
- 20.1. This agreement shall be deemed to be breached by any party if that party is placed into liquidation in terms of the Insolvency Laws operating in the Republic of South Africa, or in the case of any judicial management of that party or compromise by that party with its creditors, and may under such circumstances immediately be terminated by the one party by registered letter sent to the other party informing it of the termination of the agreement.
- 20.2. Should either party commit a breach of any provision of this agreement and fail to remedy such breach within fourteen (14) days of receiving written notice from the other party requiring it to do so, then the party aggrieved by such breach shall be entitled, without prejudice to its other rights at law, to claim specific performance of all the defaulting party's obligations, whether or not such obligations would otherwise have fallen due for performance or to claim cancellation of this contract, in either event without prejudice to its right to claim damages, and who shall be entitled to claim payment of any legal costs incurred from the other party on an attorney and client scale.
21. Force Majeure
- 21.1. Neither party will be liable to the other for any failure, delay or default in the performance of its obligations under this agreement, if and to the extent that such failure, delay or default is caused by *force majeure* including, (without detracting from any other events covered by the rules and principles relating to vis

major), casus fortuitus, acts of God, strikes, lock-out, fire, riot, flood, drought, state of emergency), inability to secure power or materials or supplies, embargoes, export control, international restrictions, shortage of transport facilities, any order of any international authority, any requirements of any authority or other competent local authority, war (whether declared or not), civil disturbance, any circumstances beyond its reasonable control, Court order, or failures, shortages, interruptions or fluctuations in electrical power, water supply or communications (collectively, "Circumstances of *Force Majeure*").

- 21.2. On the occurrence of any Circumstances of *Force Majeure*, the party disabled thereby shall;
- 22.2.1 as soon as reasonably possible, notify the other party thereof by whichever means available and if possible thereafter, confirm the notification in writing;
- 22.2.2 be released from further performance or observance of its obligations so affected for so long as such Circumstances of *Force Majeure* prevail;
- 22.2.3 continue to endeavour to re-commence performance or observance whenever and to whatever extent reasonably possible without delay; and
- 22.2.4 co-operate with the other party in implementing such contingency measures as the other party may reasonably require, until the Circumstances of *Force Majeure* cease.
- 21.3. Should the Circumstances of *Force Majeure* continue or be likely to continue for any unreasonable long time, having regard to the nature of the affected obligation or obligations and the surrounding circumstances, then either party shall be entitled to terminate this agreement by giving written notice to the other party to that effect, subject to any other provisions contained in this agreement dealing with rights and obligations arising from termination, including but not limited to the payment of cancellation fees.

22. Dispute Resolution

- 22.1. In the event of a dispute between the parties remaining unresolved after reasonable attempts have been made to remedy the situation concerned, either party may refer the dispute to an independent third party to determine the dispute. The independent third party ("the expert") shall sit as an expert and not as an arbitrator.
- 22.2. The expert shall be entitled to engage the services of any other person/s whom the expert in his sole and absolute discretion considers has particular knowledge or expertise relating to the matter/s in dispute.
- 22.3. The expert shall be, if the matter in dispute is:
- 22.3.1. primarily an accounting matter, the nominee of the Chairman for the time being of the Port Elizabeth Regional Association of the South African Institute of Chartered Accountants;
- 22.3.2. primarily a legal matter, a practising Attorney or Advocate of at least ten (10) years standing nominated by the Chairman for the time being of the Port Elizabeth Attorneys (Side Bar) Association;
- 22.3.3. any other matter, the nominee of the Chairman for the time being of the Port Elizabeth Attorneys Association;
- 22.3.4. The foregoing notwithstanding, if the parties agree upon the appointment of an expert, the person agreed shall act as an expert.
- 22.4. The expert shall not be bound to follow the general principles of law, but may decide the matter submitted to him according to what he considers just and equitable in the circumstances, regard being had to the principles of natural justice and, therefore, the strict rules of law need not be observed or taken into account by the expert in arriving at his decision.
- 22.5. Any hearing by the expert shall be at such venue or venues in Port Elizabeth as shall be selected by him.
- 22.6. In the absence of written agreement by the parties to the dispute, the expert shall be vested with entire discretion as to the procedure and manner to be followed in arriving at his decision.
- 22.7. The expert shall be entitled to direct who shall bear the costs of such proceedings, regard being had to the validity of the case presented by either party to the dispute, it being within the discretion of the expert to make such order as he feels just in the circumstances.
- 22.8. The parties shall use their best endeavours to procure that the decision of the expert shall be given within fourteen (14) days, or as soon thereafter as possible after it has been demanded.
- 22.9. The expert's decision shall be final and binding upon the parties affected thereby, shall be carried into effect and may be made an Order of any competent Court at the instance of any of the parties.
- 22.10. This clause constitutes an irrevocable consent by the parties hereto to the proceedings in terms hereof and none of the parties shall be entitled to withdraw therefrom or to claim at any such proceedings that it shall not be bound by this clause.

- 22.11. If a party shall fail to make representations to the expert, the expert, after having afforded such party reasonable opportunity to make such representations, shall be permitted to deliberate and decide upon the dispute in the absence of such representations.
- 22.12. This clause is severable from the rest of this Contract and shall remain in effect even if this Contract is terminated for any reason.

23. Domicilium

- 23.1. The parties choose as *domicilium citandi et executandi* and for the delivery of all notices arising out of this agreement or its termination or cancellation, the addresses set out below:
- 24.1.1 Phicor at the physical address that appears on Phicor's official letterheads and/or statements;
- 24.1.2 the customer at the physical address specified in the application for credit facilities or any contract concluded between the parties.
- 23.2. Either party shall be entitled from time to time, by written notice to the other, to vary its *domicilium* to any other address within the Republic of South Africa which is not a post office box or *poste restante*.
- 23.3. Any notice given and any payment made by any party to any other ("the addressee") which:
- 24.3.1 is delivered by hand during normal business hours of the addressee at the addressee's *domicilium* shall be deemed, until the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;
- 24.3.2 is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's *domicilium* shall be deemed, until the contrary is proved by the addressee, to have been received on the seventh day after the date of posting;
- 24.3.3 is sent by facsimile shall be deemed, until the contrary is proved by the addressee, to have been received within one (1) hour of transmission where it is transmitted during business hours of the receiving instrument and at noon on the following business day (excluding Saturdays) where it is transmitted outside such business hours.
- 23.4. No provision of this domicilium clause shall be taken as affecting the validity of any notice which is actually received by any party, whether at its *domicilium* or not and whether delivered in terms of the express provisions of this domicilium clause or not and any notice which is actually received by any party shall be deemed to be notice validly given.

24. Cancellation Of Orders

Notwithstanding anything contained in this agreement, where the customer seeks to cancel any order placed on Phicor for any reason whatsoever, excluding breach of the agreement on the part of Phicor, then, subject to Phicor agreeing to such cancellation in writing, the customer shall be liable towards Phicor for a cancellation fee equivalent to the higher of 10% (ten percent) of the value of the cancelled order or the actual cost incurred by Phicor in the procurement of materials and/or goods as well as for other expenses necessarily incurred in connection with the execution or planned execution of the order.

25. Required Standards and Principles of Ethical Business Conduct

The parties shall adhere to the highest levels of lawful, ethical and responsible business conduct.

26. General

- 26.1. No alteration of, variation of, or addition to this agreement shall be of any force or effect unless reduced to writing and signed by the parties or their duly authorized representatives.
- 26.2. Subject to clause 26.1 above, this document contains the sole and entire record of the agreement between the parties. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein or otherwise created by operation of law.
- 26.3. No indulgence, leniency or extension of time which either party ("the grantor") may grant or show to the other, shall in any way prejudice the grantor or preclude the grantor from exercising any of its rights in the future.
- 26.4. Neither party may cede its rights or delegate its obligations in terms of this agreement without the prior written approval of the other party.

- 26.5. Any person who signs any credit application form or order or document on behalf of the customer warrants that he/she is authorized thereto by the customer.
- 26.6. These Standard Terms and Conditions of Sale, Tender and Granting of Credit Facilities form part of the application for credit facilities and the signatory or signatories thereto acknowledge that they have read, agreed and irrevocably accept and understand the Standard Terms and Conditions of Sale, Tender and Granting of Credit Facilities.
- 26.7. Phicor shall be required to issue letters of demand and institute legal proceedings as required in terms of its credit insurance policy and this fact shall be highlighted in all relevant correspondence to the customer or his authorized representative.
- 26.8. In the event of an order being placed on the official order form of the customer, the customer shall be precluded from denying the validity of such order, notwithstanding the fact that such order may have been signed by a person not authorized to do so.
- 26.9. The customer hereby authorizes Phicor, subject to the provisions of the NCA and the regulations issued subsequent thereto, to transmit any details contained in this document (including personal details if applicable), as well as any information relating to its performance in meeting its obligations in terms of any agreement and/or transaction concluded between it and Phicor, to any credit bureau registered in terms of the NCA. The customer furthermore hereby acknowledges and agrees that such credit bureau may, in the normal course of its business, share any such information with any of its customers and other credit providers registered in terms of the NCA, for the Prescribed Purposes (as defined in terms of the Regulations published in Government Gazette No. 8477, Notice 28864).