

General Terms and Conditions on After Sales services and Spare Parts sales and delivery of DMG MORI SOUTH AFRICA (PY) LTD (The Company, We Us, or Supplier) to The Customer (You, it)

1. General provisions and definitions

- 1.1. The following terms and conditions including those set out in this paragraph 1 thereof shall apply to all current and future After Sales Services undertaken by the Company in relation to the repair, maintenance and other services for machine tools ("Services") as well as the delivery of spare and replacement parts ("Parts" or "Part").
- 1.2. These terms and conditions shall apply exclusively. Any contractual terms proposed or referenced by the Customer, including purchase orders, shall not be binding unless expressly agreed upon in writing by the Company. Acceptance of the Services or the request for the supply of Parts or the provision of Services by the Customer is deemed acceptance of the Terms herein by its conduct.
- 1.3. A binding contract between the Company and the Customer will only become enforceable upon receipt by the Company of the Customers written order by letter, fax or email.
- 1.4. Consumer Protection Act 1.7.1. If the Customer is a "consumer" as defined in the Consumer Protection Act 68 of 2008 ("CPA"), then, (1) Nothing in these Terms and Conditions is intended to, nor must be interpreted to, restrict, limit or avoid any rights or obligations created for either the Company or the Customer in terms of the CPA, and (2) in the event of any conflict between these Terms and Conditions and the CPA, the provisions of the CPA shall prevail to the extent of such conflict. If the Customer does not fall within the statutory definition of "consumer" under the CPA (for example, if its turnover or asset value exceeds the CPA threshold), then these Terms and Conditions shall apply in full, subject only to general South African law.

2. Customer's responsibilities

- 2.1. The Customer agrees that it shall provide to the extent necessary at its own risk and expense and as soon as reasonably possible necessary qualified engineers or staff, and, if required, tools, lifting devices as well as all materials and equipment necessary to facilitate the due performance of the Company's Services of whatsoever nature and wheresoever arising.
- 2.2. The Customer shall provide the Company's Employees with a dry and lockable room for the storage of delivery parts, tools, clothes and the Employees personal belongings. The Customer is responsible for its staff following the Supplier's lawful instructions.
- 2.3. The Company shall not be liable for any damage or loss caused by the Customer's employees, except to the extent that such damage or loss is solely due to the Company's employees following a written instruction from the Company. In that event, the Company's liability shall be limited to the amounts set out in Clause 18, provided that nothing in these Terms and Conditions will exclude or limit the Company's liability for death or personal injury caused by its gross negligence or willful misconduct, insofar as such exclusion or limitation is not permitted by South African law.
- 2.4. In the event that any of the Company's materials, tools or devices are damaged or destroyed at the Customer's worksite, other as a result of actions of the Company or its agents or employees the Customer agrees to be liable for the full cost of replacement to the Company payable in full and recoverable as a debt.
- 2.5. It is a term of any agreement between the Company and the Customer that the Customer is at all times required to comply with and apply all health and safety regulations within the workplace, the compliance with relevant safety regulations and provide appropriate working conditions. In particular, the Customer shall thoroughly clean machines to be repaired by the Company. The Customer shall fully instruct the Company's employees about specific safety regulations or hazards in its workplace.
- 2.6. If necessary, the Customer shall procure promptly that internal work authorizations, ID cards and other identification markings are supplied at its own expense.

3. Prices and terms of payment

- 3.1. Unless expressly agreed otherwise in writing, the Customer shall make payments according to the Company's schedule of prices and services in force when the Order is placed. The Customer may request a copy thereof. The Company shall be entitled to request payment in advance of the services or supply to be provided. The Company may at its discretion request payment in advance when an Order is placed and will be under no liability to deliver the same or supply services until payment is made.
- 3.2. Used parts, materials and special services, as well as costs for travelling and accommodation of the Company's staff shall be charged by the Company separately in the invoice and are payable in addition to any other charges.
- 3.3. If Services are carried out on the basis of an agreed cost, reference to such an agreed cost estimate in the invoice shall suffice.
- 3.4. If a fixed cost is not agreed and only an estimate provided by the Company, any deviations from the cost estimate shall be listed separately but notwithstanding any dispute shall be paid promptly without set-off or deduction by the Customer.
- 3.5. Unless expressly agreed otherwise in writing, prices are ex-works (Incoterms 2020), excluding costs of packaging and statutory VAT.

- 3.6. If the Customer fails to make payment on the due date, the Company shall be entitled to charge the Customer interest on the overdue amount at the prime rate as published by the South African Reserve Bank plus 5% per annum, accruing from the due date until payment in full and calculated daily with monthly capitalisation.
- 3.7. Unless expressly agreed in writing otherwise, payment in full for all Services and deliveries of Parts is due within 10 days following receipt of invoice without any discount and shall be transferred electronically to the Company's bank account.
- 3.8. The Customer shall not be entitled to set-off against the Company any money alleged to be due to it from the Company of whatsoever nature and howsoever arising and Title to any parts or equipment supplied or installed by or on behalf of the Company shall not pass to the Customer until payment is received in full by the Company. In breach of payment being received in full the Company shall be entitled and shall be afforded access by the Customer to collect any parts supplied whether or not the same have been incorporated into a Machine or not upon demand.

4. Force majeure

- 4.1. If the Company cannot, for whatever reason, undertake the Supply of parts or the provision of services for reasons outside its control (direct or indirect) all expenses, in particular without limitation such expenses for fault diagnostics, shall be borne by the Customer. This provision particularly applies (without limitation) to the following circumstances which are by way of example only and not exhaustive:
 - 4.1.1. acts of God (including floods, earthquakes, or other natural disasters);
 - 4.1.2. pandemics or epidemics;
 - 4.1.3. load shedding or prolonged power outages, utilities failures, or other significant disruptions to national or regional infrastructure;
 - 4.1.4. acts or orders of governmental or regulatory authorities (including import/export restrictions);
 - 4.1.5. war, riots, civil commotion, sabotage, or acts of terrorism;
 - 4.1.6. labour disputes, strikes, lockouts, or other industrial disturbances (excluding strikes or lockouts limited to the Affected Party's own workforce); or
 - 4.1.7. shortages or delays in the supply of Parts or materials not attributable to the Affected Party's fault or negligence.
 - 4.1.8. if the alleged fault did not occur during the fault diagnostics
 - 4.1.9. if the Customer fails to meet the agreed service date,
 - 4.1.10. if the Customer terminates an order in process,
 - 4.1.11. if the Parts required cannot be obtained in due time.
- 4.2. If a Force Majeure event prevents or hinders the Company from supplying Parts or providing the Services, the Company shall:
 - 4.2.1. Promptly notify the Customer in writing of the nature, expected duration (if known), and extent of the impact of the Force Majeure event, as soon as reasonably practicable after becoming aware of it;
 - 4.2.2. Use reasonable efforts to mitigate and remove the cause(s) of the Force Majeure event and resume performance as soon as possible; and
 - 4.2.3. Not be held in breach or liable for any delay or failure in performance to the extent that such delay or failure is due to the Force Majeure event.
- 4.3. The Customer acknowledges that any costs and expenses (including, but not limited to, additional fault diagnostics or rescheduling fees) arising as a direct or indirect result of a Force Majeure event shall be borne by the Customer, except to the extent that such event is solely attributable to the gross negligence or wilful misconduct of the Company or its employees.
- 4.4. Reinstallation or Reversal of Services. If requested in writing by the Customer, and to the extent practicable, the Company shall reinstall or restore any serviced item to its original state, but only if such restoration is feasible under the circumstances of the Force Majeure event. All costs and risks associated with such reinstallation or restoration shall be borne by the Customer, unless otherwise agreed in writing.
- 4.5. Prolonged Force Majeure. If the Force Majeure event continues for a period of 90 consecutive days (or such longer period as the Parties may agree in writing):
 - 4.5.1. Either Party may terminate any affected Order or portion thereof upon written notice, without liability for such termination (save for payment of any amounts due and payable for Services or Parts already provided).
 - 4.5.2. The Parties shall negotiate in good faith on whether the Agreement can be adapted to reflect the changed circumstances, where such adaptation would allow the Services to continue on fair terms for both Parties.
- 4.6. Notification by the Customer. If the Customer is unable to perform any of its obligations under this Agreement due to a Force Majeure event, it shall similarly notify the Company in writing as soon as reasonably possible, providing sufficient detail about the event and its impact on the Customer's obligations.
- 4.7. Effect on Obligations. During the period of the Force Majeure event:
 - 4.7.1. The obligations of the Affected Party under this Agreement, to the extent they are directly affected, shall be suspended.
 - 4.7.2. The unaffected Party remains entitled to exercise its rights under this Agreement (including receiving or paying for Services or Parts that are capable of being performed despite the Force Majeure)

- 4.8. Nothing in this Clause 4 shall excuse the Customer from its payment obligations for any Services or Parts already rendered, delivered, or installed prior to or during the Force Majeure event, except where the inability to pay directly results from a Force Majeure event impacting the Customer's banking or financial systems in a way beyond the Customer's control.

5. Travel and incidental expenses

- 5.1. Travel and incidental expenses incurred by the Company, its employees, agents, or representatives in relation to the Customer's order will be invoiced to the Customer. Charges will be based on travel time per hour and the applicable kilometer allowance. These costs will be calculated per service technician, as documented in the service report.
- 5.2. Accommodation expenses may be billed separately.
- 5.3. Expenses incurred for incoming or outgoing international air travel will be invoiced to the Customer at cost.

6. Service costs

- 6.1. The Company calculates the estimated duration of on-site Services on the basis of its schedule of prices and services which the Customer may request from the Supplier at any time.
- 6.2. Expenses incurred for any interruptions of Services or extension of agreed time limits for completion of Services not attributable to the Customer shall be borne by the Customer.
- 6.3. Upon completion of Works, or not later than upon completion of each workweek, the Customer shall approve the working hours of the Company's staff on the Company's time sheet. And in default the Service Engineer shall record that the Customer refused and or failed to sign the same and the reasons why and in the absence of fraud or manifest error the same shall be conclusive evidence of the time worked.

7. Time of performance and delay of Services

- 7.1. Time periods specified by the Company within which Services are to be carried out are based on estimates only and it is agreed that time for delivery or undertaking Service is not of the essence. The Company will however use reasonable endeavours to carry out the works in a timely manner using reasonable care and skill but shall not be liable for delays in the supply of Parts, labour or if the Customer restricts access to its premises.
- 7.2. The Customer may only request an agreement on a binding time period for Services if the extent of the works is precisely determined, and no variations occur and the Supplier is able to provide necessary Parts in time and agreement on the extent of the Customer's duties of cooperation has been achieved and, if necessary, the Customer has obtained permits of competent authorities. Subject to the above if the extent of the works is precisely determined and recorded in writing signed by Us and You, and the Company is able to provide necessary Parts, agreement on the extent of the Customer's duties of cooperation has been achieved and, if necessary, the Customer has obtained permits of competent authorities, a binding time period may be agreed in writing and signed by the Company and the Customer.
- 7.3. The Services shall commence on the day the Company and the Customer agree, and the Company's employees has free access to the Customer's site and the Customer has given written authority for the Services to commence. The clearance protocol shall state the commencement date and be signed by the Company's engineer and the Customer.
- 7.4. If the Customer requires an extension of the Services or additional Services become necessary as a result of the Company's experience on site, the time period shall be extended accordingly and no previous time for completion shall apply.
- 7.5. If the works are complete and ready for acceptance within the time period or, if a test run is scheduled, the test run is ready to commence, the time period shall be deemed met.
- 7.6. In the event of Force Majeure, labour conflicts or other events beyond the Supplier's control, the time period shall be extended accordingly and if necessary, on more than one occasion.

8. Acceptance

- 8.1. The Company will notify the Customer on the completion of the Services, or, if so agreed, a test run has been completed, and the Customer agrees that it shall be obliged to accept and pay any balance due for the completed Services thereafter. If works or parts prove defective, the Company shall use reasonable endeavours to cure the defect, unless the defect is minor and does not affect the operation of the equipment or is not attributable to the Company. The Parties agree that Acceptance of the works being complete may not be refused by reason of minor defects.
- 8.2. The parties agree that Services shall be deemed to have been accepted by the Customer, if the Customer does not reject the Services within 2 weeks upon notification of completion by the Company or uses the Machine after the date the Services have been supplied there will be deemed acceptance of the works.

9. Warranty for Services

- 9.1. Upon acceptance of the works howsoever arising, notwithstanding sections 9.4 and 18, the Company shall, to the exclusion of any further claims of the Customer, be obliged to remedy the defect provided that:
 - 9.1.1. The Customer shall give written notice of the defect to the Supplier without undue delay when it should reasonably have become aware of the same.
 - 9.1.2. The Customer shall not be entitled to request rectification, if the defect is minor or attributable to the Customer or its employees, and in particular the Company shall not be liable if the defect arises from any material provided by the Customer. The Customer shall allow reasonable time for the Supplier to remedy the defect. Replaced parts shall become property of the Supplier.
 - 9.1.3. The Company shall not be liable for any defects that arise from alterations, repairs or maintenance works of the serviced item by the Customer or third parties without the Company's prior written approval. The Customer, however, shall be entitled to remedy the defect himself or by third parties subject to notifying the Company of the works to be undertaken as soon as possible thereafter.
- 9.2. If the Company does not remedy the defect, any further liability shall be subject to section 18.
- 9.3. If the alleged defect does not result from the Company's Services, then, to the extent the defect has been remedied by the Company, the Customer shall reimburse the Company's expenses and costs accordingly.
- 9.4. The Company shall be under no liability in respect of any defects of the Services if the defect is:
 - Due to wilful damage, incorrect connections or incorrect operation;
 - Force Majeure (e.g. lightning bolts);
 - Wear and tear due to overuse of mechanical and/or electronic items, or failure to maintain in accordance with manuals; or
 - Extraordinary mechanical, chemical or atmospheric influences.

10. Maintenance, repair and overhaul at the Supplier's work-site

- 10.1. Any expenses arising from transporting the serviced item for maintenance, repair or overhaul to and from the Company's or its subcontractor's work-site shall be borne by the Customer.
- 10.2. The risk of transportation shall be borne by the Customer. At the Customer's request and cost, the Company may arrange for insurance against damages in transit by reason of theft, breakage, fire and other risks agreed in writing, but the Customer must pay for the same in advance on a full indemnity basis.
- 10.3. During Services being provided at the Company or its subcontractor's work-site, there shall be no insurance coverage; the Customer shall be responsible to maintain insurance coverage for the serviced item regarding fire, mains water, storms, machine breakage and the like, unless insurance coverage for such risks is expressly requested and paid for by the Customer.
- 10.4. If acceptance of the serviced item is delayed, the Company shall be entitled to charge the Customer for the storage of the respective item at his or his subcontractor's work-site. The Company shall be entitled to store the serviced item otherwise. Any storage shall be at the risk and costs of the Customer.

11. Delivery of spare or replacement parts with or without installation

- 11.1. The following provisions shall apply to any delivery of Parts whether or not being subject to a repair or service order with regard to delivery time, delay in delivery, warranties and passing of risk:
- 11.2. The Customer shall be responsible for the correct specification of the Part to be delivered by the Company. Whilst the Company will use reasonable care and skill, any advice of the Company on the suitability of the ordered Part shall not be binding and the Company's liability to that effect shall be excluded as the Company accepts orders for delivery of Parts without prior inspection of the machine in which the Part is to be installed.
- 11.3. The parties shall agree on the delivery time, however, time is not of the essence. The agreed delivery time shall not be binding upon the Company and if appropriate the stated delivery time shall be extended accordingly.
- 11.4. The Company will use reasonable endeavours to adhere insofar as it can to delivery time estimates and will keep the Customer reasonably informed in connection therewith but shall not be liable for failure to deliver at a stated time.
- 11.5. The risk of loss or damage will pass to the Customer upon dispatch of the Part. That shall also apply in case of partial delivery or if the Company's transports the Part to the Customer or bears the costs for the transport.

12. Warranty for new Parts

- 12.1. If new Parts, upon passing of risk, i.e. payment in full by the Customer to the Company are defective, the Company shall at its discretion either remedy the defect or deliver a new Part free of defects. The Customer shall give written notice of the defect to the Company without undue delay. The Customer shall allow the Company access to carry out such replacement works. Replaced parts shall be returned to and become property of the Company.
- 12.2. The Customer shall allow reasonable time for the Company to remedy the defect or to deliver a Part free of defects.
- 12.3. Any expenses for installation and removal of the Part shall be borne by the Customer, unless the Company is liable for such expenses pursuant to section 18.
- 12.4. The Company shall not be liable for unsuitable or improper use, defective assembly, installation, or operation by the Customer or third parties, fair wear and tear, negligent handling, improper maintenance, unsuitable operating

material, defective structural work, improper foundation, chemical, electro-chemical or electronic influences, provided, these circumstances are not attributable to the Company.

- 12.5. The Company shall not be liable if the Customer or a third party modifies or repairs the Part without the Company approval being given in writing to any such modification or works.

13. Warranty for used Parts

- 13.1. Unless agreed otherwise in writing, any warranty claims relating to the delivery of used Parts shall expire after 12-months from delivery or installation whichever is earlier. The foregoing provisions shall not apply in the event of fraudulent concealment of a defect.

14. Infringement of intellectual property rights of third parties

- 14.1. If the use of the Parts is in breach of domestic intellectual property rights of third parties, the Company, at his own expense, shall either provide the Customer with the right to use the respective Part or modify the Part to the effect that the infringement of intellectual property rights no longer persists. If that is not possible under reasonable economic conditions or within a reasonable time period, both the Customer and the company shall be entitled to withdraw from the contract. Also, the Company shall indemnify and hold the Customer harmless against intellectual property right claims of third parties being acknowledged, undisputed or assessed in a legally binding judgment.
- 14.2. Subject to the provisions of section 18, the Company's foregoing obligations in the event of an infringement of intellectual property rights shall be conclusive and conditional on the following requirements: that the Customer shall notify the Company without undue delay on any intellectual property right claim made, support the Company in defending such claims to the extent reasonable and / or enable the Company to modify the delivered part to the effect that an infringement of intellectual property rights no longer persists; that the Company shall reserve the right to all defence measures in and out of court; that the alleged infringement of third parties' intellectual property rights is not due to an instruction, unauthorized modification or use of the Part contrary to the contract by the Customer.

15. Retention of title

- 15.1. The Company retains full legal ownership (title) in and to all accessories, Parts, or equipment (the Goods) delivered to the Customer until the Company has received full and final payment of all amounts owing (of whatsoever nature and howsoever arising) in connection with the relevant Goods or Services provided.
- 15.2. If the Customer breaches this Agreement, including (without limitation) by failing to pay any amount when due, the Company may, subject to applicable law, enter the Customer's premises to repossess the Goods. The Customer shall cooperate and permit such repossession, provided that this does not override any mandatory procedural requirements under South African law. Neither the enforcement of the retention of title nor the repossession of the Goods will constitute a withdrawal from the contract unless the Company expressly notifies the Customer to that effect in writing.
- 15.3. The Customer may only resell the Goods in the ordinary course of its business while all payments are up to date. Should the Goods be resold before full payment is received by the Company, the Customer hereby assigns to the Company all claims arising from such resale against third parties (including any claim for the purchase price), irrespective of whether the Goods have been transformed, combined, or processed in any way..
- 15.4.
- 15.5. The Customer shall provide the Company, upon the Company's request, with details of any resale of the Goods, the identity of the purchaser(s), and all pertinent information required to enforce the Company's assigned claims. Until the Company expressly revokes this right in writing, the Customer may receive payment on such assigned claims in the ordinary course of business, provided the Customer complies fully with its obligations under this Agreement and is not subject to insolvency proceedings. If the Goods are combined or incorporated with other items such that they become inseparable or form a new product, co-ownership of the resulting product (in proportion to the invoiced value of the Goods relative to the value of all combined items) shall vest in the Company, subject to the same retention-of-title principles herein.
- 15.6. If and to the extent the arrangement under this Agreement constitutes or is deemed an installment sale or a credit agreement under the National Credit Act 34 of 2005 ("NCA"), the Parties acknowledge that the provisions of the NCA (to the extent applicable) shall prevail over any conflicting terms of this Agreement. The Customer warrants that it will promptly disclose any information needed to determine whether the NCA applies. If the NCA does apply, all repossessions, enforcement, or related actions shall comply with the procedural requirements set out in the NCA and any other applicable legislation.
- 15.7. Upon the opening of insolvency proceedings against the Customer (or any analogous process), the Company shall be entitled, subject to South African insolvency law, to withdraw from the contract and/or reclaim possession of the Goods, and the Customer shall cooperate with all reasonable steps required for such reclamation.
- 15.8. Insofar as the value of the securities under this Clause 15 exceeds the secured claim by more than 20%, the Company, at its discretion, shall release or reassign an appropriate portion of these securities upon the Customer's written request.

- 15.9. Nothing in this Clause 15 is intended to override any compulsory provisions of South African law regarding insolvency, attachment, or credit agreements. If any provision herein is found to be invalid or unenforceable under such laws, that provision shall be amended or severed to the extent necessary to comply, without affecting the enforceability of the remainder of this Clause 15.

16. Processing of replacement parts

- 16.1. Prices for replacement parts are subject to the Customer transferring ownership to the Company in the property of an, repairable used part as replacement. If the used part is not received by the Company within 2 weeks after the Customer has received the replacement part from the Company, the Company shall be entitled to charge the price for a New Part. The used part shall be shipped to the Company's work-site "Carriage Insurance Paid" (CIP Incoterms 2020) or, from abroad, "Delivered Duty Paid" (DDP Incoterms 2020).
- 16.2. If a return delivery note is missing, the used part will be returned unidentified to the Customer. If the Customer refrains from specifying the defect of the returned part, an inspection fee of 500.00 EUR or equivalent amount in ZAR at the prevailing exchange rate shall be charged.

17. Return of unused spare parts

- 17.1. If the Customer orders several spare parts and, upon placing of order, he is not certain as to which spare part is suitable, the Customer shall, at his own risk and expenses, return the spare parts not required to the Company's work-site "Carriage Insurance Paid" (CIP Incoterms 2020) within 2 weeks upon completion of the repairs. The Customer has to replace the part as a result of any impairments of the returned spare part (e.g. traces of usage due to installation and/or removal) to the supplier.
- 17.2. The Company may charge the Customer a fee based on 10% of the part cost for inspection and restocking of returned spare parts, but not more than 500.00 EUR or equivalent amount in ZAR at the prevailing exchange rate per part or such other reasonable sum as the Company specifies.
- 17.3. Redemption of spare parts with a value of below 65.00 EUR or equivalent amount in ZAR at the prevailing exchange rate shall be excluded; these spare parts shall not be credited.
- 17.4. Redemption of spare parts marked as "order-specific" (indicated with !) is excluded; these spare parts shall not be credited.

18. Company's liability and limitation of liability

- 18.1. If the Company is responsible for a damage to parts of the serviced item, the Company, at its discretion acting reasonably and at its own costs, shall repair the part or deliver a new part. The Company's liability shall be limited to the price agreed for the Services or Parts. Apart from that, section 18.3 shall apply.
- 18.2. In the event that – due to the Company's responsibility for omitted or faulty execution of advice given before or after the contract, or breach of other non-fundamental contractual obligations, in particular instructions on the operation and maintenance of the serviced item or delivered Parts – the Customer cannot use the Services or delivered Parts as agreed upon, the following provisions, subject to Clause 18.5, to the exclusion of any further claims of the Customer, shall apply.
- 18.3. In respect of all claims for damages other than direct damage to the delivered Parts or the Services themselves, the Company shall not be liable to the Customer or any third party for any consequential, indirect, or special damages. For the purposes of this Agreement, "consequential, indirect, or special damages" shall include, but not be limited to, loss of profit, loss of revenue, loss of production, loss of business, downtime costs, loss of goodwill, or any similar form of economic loss, whether foreseeable or not, and regardless of whether such damages arise from breach of contract, delict (including negligence), strict liability, or otherwise. This exclusion of consequential, indirect, or special damages is subject to Clause 18.5 (CPA Compliance and Non-Excludable Liabilities) or any other clause that precludes limiting liability for gross negligence or willful misconduct resulting in personal injury or death, and it does not override any non-waivable rights under the Consumer Protection Act, to the extent that the CPA applies.
- 18.4. The Company further shall only be liable in damages (excluding consequential loss) in the event of negligence of the Company.
- 18.5. The above limitations shall not apply in cases of damages to life, body or health, or any explicit guarantee.
- 18.6. Consumer Protection Act
- 18.6.1. If the Customer is a "consumer" as defined in the Consumer Protection Act 68 of 2008 ("CPA"), nothing in these Terms and Conditions (including Clause 18) is intended to, nor must be understood to, unlawfully restrict, limit, or avoid any rights or obligations created by the CPA.
- 18.6.2. To the extent that the CPA is applicable and any provision of this Clause 18 is found to be inconsistent with the CPA or is deemed an "unfair, unreasonable or unjust contract term" under Section 48 of the CPA, such provision shall be limited or altered to the extent necessary to comply with the CPA while retaining, as far as possible, the Parties' original intent.

18.6.3. If the Customer is not a “consumer” under the CPA (e.g., the Customer’s turnover or asset value exceeds the threshold in the CPA), then this Clause 18 applies in full and without modification, subject to any non-excludable provisions of South African law.

19. Applicable law and jurisdiction; personal data

- 19.1. This Agreement, and any dispute or claim arising out of or relating to it, shall be governed in all respects by the laws of the Republic of South Africa.
- 19.2. Arbitration
- 19.2.1. Any dispute, controversy, or claim arising out of or in connection with this Agreement (including its existence, interpretation, application, breach, termination, or invalidity) shall first be referred to arbitration.
- 19.2.2. The arbitration shall be conducted in South Africa, in accordance with the provisions of the Arbitration Act 42 of 1965 (as amended), or any successor legislation.
- 19.2.3. Appointment of Arbitrator. The arbitrator shall be appointed by the Company, provided that the person appointed is: (i) a practicing attorney or advocate of at least ten (10) years’ standing, (ii) a retired judge, or (iii) a suitably qualified professional with relevant experience in the subject matter of the dispute.
- 19.2.4. The seat (or place) of the arbitration shall be Johannesburg, unless otherwise agreed in writing by the Parties. The language of the arbitration shall be English.
- 19.2.5. The arbitration award shall be final and binding on the Parties, and may be made an order of any competent court having jurisdiction.
- 19.3. Subject to Clause 19.2, the Parties agree that the High Court of South Africa (or any division thereof having jurisdiction) shall have exclusive jurisdiction to hear any application to enforce or review the arbitrator’s award or any urgent or interim relief if necessary.
- 19.4. Unless otherwise directed by the arbitrator, the costs of the arbitration (including the arbitrator’s fees) shall be borne by the Parties equally, provided that the arbitrator may make a different award as to costs based on the merits of the dispute and the conduct of the Parties.