

TERMS AND CONDITIONS

DEFINITIONS:

1. In this agreement the headings of clauses are for reference purposes only and shall not be taken into account when construing the contents hereof; the singular form includes the plural form and *vice versa*; one gender includes the other genders and *vice versa*; a natural person includes a juristic person and *vice versa*; and unless inconsistent with the content, the following words will have the meanings ascribed to them herein:
 - 1.1. **"Agreement"** means this agreement comprising of ILED's terms and conditions of business as set out herein;
 - 1.2. **"Customer"** means the person whose name appear on the Dealer Application Form as the person in whose name the Business Account will be operated in, and who entered into this agreement with ILED;
 - 1.3. **"goods"** means the equipment and/or any other items stipulated in any Tax Invoice issued to the Customer by ILED, including but not limited to the fittings, accessories, and modifications to it from time to time, and all components and replacement parts that may at any time be added to it or substituted in or on it, in terms of this agreement;
 - 1.4. **"ILED"** means ILED (Pty) Ltd (Registration number 2000/005313/07), and all of its subsidiary or affiliate companies and duly authorised representatives;
 - 1.5. **"services"** means all the services stipulated in any Tax Invoice issued to the Customer by ILED, including but not limited to repair services as well as all variations and amendments to services and repair services in terms of this agreement;
 - 1.6. **"Signatory"** means the natural person who signs this agreement.

INTERPRETATION AND APPLICATION:

2. The Customer agrees and confirms that this Agreement:
 - 2.1. will govern all future contractual relationships between the parties;
 - 2.2. is applicable to all existing debts between the parties
 - 2.3. is final and binding and is not subject to any suspensive or resolutive conditions whatsoever;
 - 2.4. supersedes all previous conditions of agreement without prejudice to any securities or guarantees held by ILED; and
 - 2.5. applies to all servants and subcontractors of ILED.
3. ILED shall at its sole and absolute discretion be entitled, after completion of the Dealer Application Form by the Customer, to:
 - 3.1. make such enquiries as it may deem necessary to evaluate the Customer's application for a Purchase Facility;
 - 3.2. determine whether or not to grant the Customer a Purchase Facility on the terms as applied for by the Customer, or on any other terms, or at all;
 - 3.3. inform the Customer of the determination made pursuant to the above;and until a determination is made by ILED as contemplated above and to the extent that ILED does not approve a Purchase Facility for the Customer, any ordered goods and/or services supplied by ILED to the Customer shall be on a cash-on-order basis only. The Customer agrees and understands that ILED is under no obligation whatsoever, purely by reason of the Customer's application or otherwise, to make a determination and/or to approve a Purchase Facility for the Customer.
4. This Agreement only becomes final and binding at the time of the acceptance by ILED (at its current business address) of a written order from the Customer. An order by the Customer may not be withdrawn until accepted or rejected by ILED. Any such order shall upon acceptance thereof by ILED be irrevocable by the Customer.
5. The Customer agrees that any contract for the supply of goods and/or services, including any variation to the said contract requested by the Customer and agreed to by ILED, is subject to this Agreement.
6. The parties agree and record that any apparent or purported or attempted exclusion, substitution or variation of any of these terms and conditions by the Customer in its purchase order or in any other way whatsoever shall have no effect on this Agreement, nor shall it amend this Agreement in any manner whatsoever, nor shall it be binding on ILED. Furthermore irrespective of the fact that ILED may have accepted a purchase order from the Customer which appears to purport or to attempt such exclusion, substitution or variation, these terms and conditions shall stand unaffected thereby as if such apparent or purported or attempted exclusion, substitution or variation was *pro non scripto*.

QUOTATIONS:

7. Any quotation given by ILED shall not be construed under any circumstances whatsoever to be an offer by ILED to supply the goods and/or services to the Customer, but instead constitutes an invitation by ILED to the Customer to do business with ILED.
8. A quotation may be revoked at any time by ILED.
9. ILED may accept or reject in whole or in part any order placed upon it by the Customer pursuant to a quotation by ILED. Accordingly, a contract shall only come into force between ILED and the Customer, if after receipt by ILED of the Customer's order or acceptance of the quotation, ILED confirms to the Customer that such a contract has been concluded or if ILED supplies, or tender to supply, the goods in question to the Customer.
10. Any and all quotations by ILED are based on rates of exchange, freight charges, insurance, railage, costs of labour and materials and other charges ruling at the date of the quotation. Any variation occurring subsequent to the date of the quotation in any of the aforesaid rates or charges, as the case may be, will immediately effect the quotation price and shall entitle ILED to vary the amount of the quotation accordingly. If the Customer disputes the amount of the variation, any independent auditor may certify the amount of the variation, and such certificate shall be final and binding on the Customer.



11. All quoted prices are subject to the availability of goods, and are subject to correction of good faith errors by ILED.

ORDERS:

12. It is the sole responsibility of the Customer, and the Customer is obligated to determine and ensure that the goods and/or services ordered are suitable for the purposes of the intended use. No liability whatsoever shall accrue to ILED should goods be found not to be suitable for their intended purpose.

CONTRACT PRICE AND PAYMENT:

13. All prices are exclusive of Value Added Tax [VAT] and shall be for the account of the Customer, unless otherwise expressly stated, and any VAT arising in respect of any amounts due and payable by the Customer under this agreement, shall be paid by the Customer to ILED simultaneously with payment of the purchase price.
14. The Customer agrees that it shall be obliged to pay to ILED in addition to the purchase price herein:
- 14.1. the amount of any tax, duty or other charge of any nature whatsoever imposed by any law, regulation or enactment of whatsoever nature which comes into force on the date other than the date on which any price or charge is determined; and
- 14.2. any other additional costs of any nature whatsoever arising from factors beyond the control of ILED.
15. In particular, and without limiting the generality of the foregoing, ILED shall be entitled to increase the purchase price in respect of any ordered goods, to make provision for any increases in costs arising as a result of any delay whatsoever caused by the Customer.
16. The Customer agrees that any expense incurred by ILED at the instance of the Customer in modifying or otherwise altering or making additions to the design, quantities or specifications for standard goods and/or services, and any expenses or costs arising as a result of suspension of work by ILED due to instructions given by, or a failure to give instructions by, the Customer, shall be added to the purchase price in respect of the relevant goods and/or services, as the case may be.
17. ILED reserves the right, at its sole discretion, to provide alternative goods at the prevailing prices to those ordered by the Customer should such goods be unavailable, superseded, replaced, or their manufacture terminated.
18. Any Tax Invoice, whether an interim or final Tax Invoice, when signed by the Customer, will be deemed to be a certification by the Customer of the correctness of the prices reflected therein as well as that the goods and/or services ordered by the Customer has been duly delivered and that ILED has duly performed and completed its obligations under the Agreement. A signed Tax Invoice will furthermore be conclusive proof that the goods and/or services were inspected by the Customer and/or its duly authorised servants, agents or representatives, and that the Customer is satisfied that the goods and/or services conform in all respects to the quality and quantity ordered, and that the goods and/or services are free from any defects.
19. The Customer agrees that all amounts due and owing by the Customer to ILED, as evidenced by any Tax Invoice issued by ILED to the Customer in terms of this agreement, shall be payable by the Customer to ILED:
- 19.1. in cash on order; or if the Customer is a Purchase Approved Customer, within the granted purchase term, which is thirty (30) calendar days from date of invoice;
- 19.2. unconditionally and without deduction or set-off;
- 19.3. in South African Rand, or alternatively in a currency as agreed upon in writing by ILED;
- 19.4. at ILED's principal place of business, or at such other place as ILED may designate in writing from time to time.
20. The risk of any payment by cheque made by the Customer, whether dispatched through a postal service or otherwise, vests in, and remains with, the Customer, and ILED accepts no responsibility or liability whatsoever as a result of any losses or damages which may be occasioned thereby and suffered by the Customer.
21. The Customer agrees that a certificate issued by an independent auditor or any director of ILED which certifies the amount of the indebtedness of the Customer to ILED at any time, shall be binding on the parties and shall be *prima facie* proof of the amount of the Customer's indebtedness to ILED for the purpose of provisional sentence proceedings, or summary judgment proceedings, or any other proceedings by ILED against the Customer in any competent court of law, and shall be deemed to be a liquid document for the said purposes.

DELIVERY AND RISKS:

22. Unless otherwise agreed in writing by ILED, goods shall be delivered to the Customer at ILED's business premises.
23. The Customer shall be responsible for procuring and arranging the transportation of the goods from ILED's business premises to any destination required by the Customer.
24. Delivery shall be completed when the goods are handed to the Customer or its agent at ILED's business premises, and before loading commences.
25. After completion of delivery, ILED shall not be responsible for the arrival of the goods at their destination or for any loss or damage to the goods from any cause whatsoever, while in transit.
26. The risk of damage to, and risk of the destruction or theft of, any goods, passes to the Customer on delivery thereof by ILED to the Customer; provided that if the Customer fails, neglects or refuses to take delivery of the goods when tendered by ILED, then the risk therein shall pass to the Customer as soon as delivery is tendered by ILED.
27. ILED does not guarantee timeous delivery for the supply of the goods and/or services on any specified date, but it will endeavour to give delivery on the specified date.
28. Notwithstanding any other contrary provision in the contract or this Agreement, ILED's obligation to deliver the goods shall at all times be subject to the following conditions precedent:
- 28.1. the availability to ILED of all materials and supplies required for the manufacturing of the goods or their components, where the goods or components in question are being manufactured by ILED;
- 28.2. the timeous receipt by ILED from its own suppliers of the goods or their components, where the goods or components in question are being purchased by ILED.
29. Time shall not be of the essence of the contract and the specified delivery dates shall be deemed and be regarded to be approximate and estimated dates only. Under no circumstances shall the Customer be entitled to withdraw from or terminate the contract on account of any delay in delivery or have any claim of any nature whatsoever against ILED arising from any late delivery.
30. ILED shall be entitled in its sole discretion to split the delivery, installation and performance of the goods and/or services with regard to the quantities and the delivery dates as it deems fit and necessary.



31. If delivery, installation or performance of any particular order is to be effected in consignments or in stages, ILED shall not be obliged to deliver, install or perform any part of the order until the contract price, which is due in respect of that part of the order which has already been delivered, installed or performed, has been paid in full. ILED shall be entitled to invoice the Customer separately for each delivery, installation and performance actually made.
32. The Customer shall be obliged to inspect all goods upon delivery and shall endorse the delivery note, waybill or job card as to any missing or damaged goods. No claims for missing or damaged goods shall arise against, or be valid and enforceable against, ILED unless the delivery note, waybill or job card has been endorsed as aforesaid, and unless, in addition, the Customer has notified ILED in writing within one (1) business day from the delivery date of the goods in question, of the Customer's claim. The written claim must set out full details of the goods relating to such claim, as well as any alleged missing or damaged goods, failing which the claim shall not arise against, or be valid and enforceable against, ILED.
33. ILED shall at all times be entitled to tender delivery of the goods and/or services ordered by the Customer, and to invoice the Customer for such tendered goods and/or services, and the Customer shall be obliged to accept such ordered goods and/or services when so tendered by ILED. If the Customer fails, neglects or refuses to take delivery of the ordered goods when tendered by ILED, ILED shall be entitled in its sole discretion to have the ordered goods stored, and the Customer shall be obliged and liable to reimburse and pay ILED for the storage costs incurred.
34. If ILED, at the request of the Customer, agrees to engage a third party to transport the ordered goods on behalf of the Customer, ILED is hereby authorised to engage a third party on the Customer's behalf on such terms and conditions as deemed fit and necessary by ILED. The Customer indemnifies ILED against any and all claims whatsoever that may arise from the transportation of the ordered goods by a third party on behalf of and at the request of the Customer.
35. Any delivery note or waybill or job card (copy or original) signed by the Customer or an employee or agent of the Customer, shall be *prima facie* proof on its mere production that delivery was duly affected to the Customer and that the goods delivered thereunder accorded with the quantity reflected thereon and with that ordered.

OWNERSHIP:

36. Ownership of the ordered goods shall not pass to the Customer until the purchase price in respect of the goods in question has been paid. The provisions hereof shall apply notwithstanding the installation of such goods in the Customer's premises or the accession thereof to any of the Customer's property (whether movable or immovable) or that the goods may have been incorporated into or form part of other goods or changed their essential character. All goods, whether fixed to immovable property or not, shall be deemed to remain movable property and severable from such immovable property.
37. The Customer shall take all such steps as may be necessary to notify interested third parties that ownership of the relevant goods has not passed from ILED to the Customer. In particular the Customer shall inform the owner/landlord of the premises in which the goods are, or at any time may be, of the provisions of this clause. The Customer shall produce written proof of such notices to ILED on demand.
38. The Customer shall, prior to taking delivery of the goods and until the entire contract price and all other amounts due to ILED in terms of this agreement have been paid in full, insure the goods, at its own expense, against risk of loss, damage, destruction and hereby cedes, assigns and makes over unto and in favour of ILED all of its rights, title and interest in and to the policy of insurance and the proceeds thereof to ILED as security for the Customer's obligations to ILED. The Customer shall procure that ILED's interest in the relevant policies of insurance is duly noted and shall furthermore attend to punctually pay and renew all premiums accruing to such policies and deliver proof of such payment or renewal when required to do so by ILED. In the event of the Customer failing or refusing to make payment at such premiums as aforesaid, ILED shall be entitled, without notice to the Customer to make payment of such premiums, at such rate as may be required, and shall thereafter be entitled to recover and reclaim any amounts so expended on behalf of the Customer, who remains liable for the payment thereof, from the Customer.
39. The Customer hereby agrees and irrevocably authorises ILED to enter its premises to repossess any goods delivered in the event that the Customer is in default of any payment pertaining to the goods in question, or in breach of any of the provisions of this agreement, and the Customer indemnifies ILED completely against any damage of whatsoever nature, howsoever and by whomsoever caused in relation to the removal of the repossessed goods.
40. The Customer is not entitled to sell or dispose of any unpaid goods without the prior written consent of ILED. The Customer shall furthermore not allow the goods to become encumbered in any manner whatsoever prior to the full payment thereof and shall advise third parties of the rights of ILED in the goods.

RETURN OF GOODS:

41. ILED reserves the right to levy a handling fee of thirty percent (30%) of the contract price of the relevant goods on such goods returned to and accepted by ILED. ILED is not obliged to accept the return of any goods and this clause shall not be used to imply that ILED shall be obliged to accept the return of any goods.
42. All goods taken on a demonstration, evaluation or rental/loan basis by the Customer and not returned within the period as specified by ILED, shall be deemed to have been sold to the Customer and no credit will be passed by ILED to the Customer.
43. All goods accepted by ILED for return, must be returned in the original condition, in the original packaging and with all accessories and manuals intact.
44. All goods returned damaged or in a non-resalable condition are deemed to have been sold and no credit will be passed by ILED.

WARRANTIES AND GUARANTEES:

45. No warranties, guarantees or representations, express or implied or tacit whether by law, contract or otherwise, and whether they induced the contract or not, which are not set forth in this agreement, shall be binding on ILED and the Customer irrevocably waives any right (common law or otherwise) it may have in this regard, and the Customer acknowledge that the goods are purchased on the basis that the goods are taken voetstoots and with the exclusion of all common law remedies and all other remedies whatsoever.
46. New goods are guaranteed according to the Manufacturer's product specific warranties only and all other guarantees, including common law guarantees and otherwise, are hereby specifically excluded. Services carry no guarantee whatsoever.
47. To the extent that the manufacturer's warranty applies to goods (if any), ILED's liability shall be limited to accepting the goods for a manufacturer's warranty claim and ILED shall be deemed to do so as agent on behalf of the Customer and ILED shall not be liable for any loss, damage, destruction, theft howsoever or by whomsoever caused. ILED may require the Customer to make available the goods



to ILED or its nominee for inspection at a time and place to be determined by ILED or its nominee. The Customer must, in writing, specify the alleged defect of the goods. In addition, for any claim to be valid, the goods must be supported by the original Tax Invoice and returned by the Customer to ILED at the Customer's expense, packaged in their original undamaged packaging material.

48. The merit of each warranty claim will be investigated by the manufacturer (or its nominee) of the goods with whom the warranty rests. Repair of the goods or replacement of the goods, with another product which performs substantially the same as the goods is in no way guaranteed, but based on the validity and merit of the claim as determined by the manufacturer (or its nominee) of the goods. ILED will not be liable for any repudiation of any warranty claim by the manufacturer (or its nominee).
49. The parties agree that ILED shall have no liability in respect of any injury, loss or damage (direct, indirect or consequential) arising out of the use of, or inability to use, the goods and whether or not occasioned by ILED's negligence or any act or omission on its part. Without limiting the aforesaid ILED does not warrant that the goods will be fit for the purposes for which they are to be used by the Customer (notwithstanding that the use to which the Customer intends to put the goods is known to ILED). For the purposes hereof, any reference to ILED shall include its servants, agents, contractors or any other person for whose acts or omissions ILED may be liable in law. This also constitutes a *stipulatio alteri* in favour of such persons the benefits of which may be accepted by them at any time.
50. ILED shall be relieved of all obligations in terms of this clause, in the event that:
 - 50.1. the Customer has failed, for any reason whatsoever, to pay the full amount due to ILED in respect of the goods concerned; or
 - 50.2. repairs or modifications have been made by persons other than the manufacturer (or its nominee) of the goods, unless such repairs or modifications are made with the prior written consent of the manufacturer (or its nominee) of the goods; or
 - 50.3. any goods are operated with any accessory, equipment or part not specifically supplied or approved in writing by the manufacturer (or its nominee); or
 - 50.4. the goods have not been operated or maintained in accordance with the manufacturer's instructions, or if the goods have not been properly installed; or
 - 50.5. spare parts and consumable parts other than those recommended for use by the manufacturer of the goods are fitted, attached or used in or on the goods.
51. Under no circumstances shall ILED be liable for any damages arising from any misuse, abuse or neglect of the goods and/or services by the Customer and/or any other person.
52. The manufacturer (or its nominee) shall be under no liability in respect of:
 - 52.1. any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the manufacturer's instructions (whether oral or in writing), improper use outside the manufacturer's specifications, damage to the goods caused by improper maintenance, service or repair by untrained personnel or technicians, and unauthorised alterations or modifications of the goods; or
 - 52.2. parts, materials or equipment which are accepted in the industry to have a limited life expectancy; or parts, materials or equipment, which need to be replaced at specified and published service intervals ("consumable parts").
53. Notwithstanding anything to the contrary in this agreement, ILED shall not be liable to the Customer by reason of any representation or implied warranty, condition or other term or any duty at common law, or under the express terms of this agreement, for any consequential loss or damage (whether for loss of profit or otherwise and whether occasioned by the negligence of ILED or its employees or agents or otherwise) arising out of or in connection with any act or omission of ILED relating to the supply of the goods and/or services, their resale by the Customer or use by any third party.

REPAIRS:

54. Any repair times and repair costs given by ILED to the Customer are merely estimates and are not binding on ILED. ILED shall not be liable for any loss or damage of whatsoever nature which the Customer may suffer as a result of any unforeseen costs and/or delayed repairs.
55. In the event that a Customer refuses to accept the quotation for the repair of goods that are not covered by a manufacturer's warranty, a quotation fee will be charged by ILED and the Customer shall be liable to pay such quotation fee to ILED.
56. ILED shall have the right of retention and lawful lien over goods submitted for repairs until such time as the Customer effects payment for the repairs and /or quotation fee in full.
57. Any item delivered to ILED shall serve as a pledge in favour of ILED for present and past debts and ILED shall be entitled to retain or realize such pledges, as it deems expedient at the value as determined by any sworn valuator. The sworn or realised value of pledged goods will be offset against the Customer's debts and any excess balance will be paid to the Customer.
58. Any item handed in for repair may be sold by ILED to defray the cost of such repairs if the item remains uncollected for a period of thirty (30) days after the repairs have been completed.

CANCELLATION:

59. Any order is subject to cancellation by ILED due to impossibility to perform which results from *force majeure* or any cause whatsoever beyond the control of ILED, including but not limited to the following instances namely war, riots, states of emergency, strikes, lockouts, labour disputes, fires, floods, droughts, or due to the inability to secure goods, parts, materials, labour, power, or any other occurrence with a similar nature.
60. Any order is subject to cancellation by ILED if the Customer breaches any of the terms of this Agreement or makes any attempt of compromise, liquidation, sequestration, termination or if judgment is recorded against the Customer or any of its principals.
61. Upon the occurrence of any of the abovementioned events which entitles ILED to cancel the transaction, ILED shall have the right to, but not be obliged to cancel the transaction; and in the event that ILED elects to cancel the transaction, then and in such event (without limiting the generality of *force majeure*):
 - 61.1. the Customer agrees and acknowledge that ILED will immediately and unconditionally be released from any obligation whatsoever to render performance of its contractual obligations or any remaining part thereof; and
 - 61.2. the Customer furthermore indemnifies ILED against, and releases ILED from, any contractual damages or penalty claims of any nature whatsoever.

BREACH:

62. In the event that the Customer:
 - 62.1. fails to pay any amount payable by the Customer to ILED on the due date thereof; or



- 62.2. breaches any of the terms and conditions of this Agreement, all of which are considered material and binding upon the Customer; or
- 62.3. commits any act of insolvency, or being a natural person, assign, surrender or attempt to assign or surrender its estate; or
- 62.4. compromises with any of its creditors or endeavour or attempt to do so; or
- 62.5. allows any judgment against it to remain unsatisfied for a period of seven (7) days; or
- 62.6. is sequestered, or placed under judicial management or is liquidated (whether provisionally or finally); or
- 62.7. does or causes to be done anything which might prejudice ILED's rights under this Agreement;
- then and in that event ILED shall be entitled, at its sole discretion and without prejudice to any other right in terms of this Agreement or in law which ILED may have against the Customer, to:
- 62.8. immediately revoke any Purchase Facility (should the Customer be a Purchase Approved Customer) and all amounts then owing by the Customer shall become immediately due and payable to ILED;
- 62.9. claim specific performance from the Customer, which shall include, but not be limited to, immediate payment by the Customer of all amounts owing to ILED, whether or not such amounts have already become due and payable, failing which ILED shall be entitled to obtain provisional sentence or summary judgment against the Customer;
- 62.10. immediately cancel the contract with the Customer, to retake possession of any and all of the delivered goods from the Customer, and to claim any and all damages suffered by ILED as a result of the Customer's aforementioned actions;
- 62.11. immediately cease or suspend supply of any ordered goods and/or services to the Customer, and the Customer shall not be entitled to withhold, or reduce, full payment of any amounts owing to ILED solely based on the ceasing or suspending of supply by ILED.
63. In the event of cancellation, the Customer shall be liable to pay (a) the difference between the selling price and the value of the goods at the time of repossession and (b) all other costs incurred in the repossession of the goods. The value of the repossessed or the retained pledged goods shall be deemed to be the value placed on them by any sworn valuator after such repossession, and such valuation shall be conclusive proof of the said value. If the goods are not recovered for any reason whatsoever, the value shall be deemed to be nil.
64. No claim under this Agreement shall arise against ILED unless the Customer has, within two (2) days of the alleged defect or breach occurring, given ILED thirty (30) days written notice by prepaid registered mail to rectify any defect or breach of Agreement, provided that, if the defect or breach is one which is not reasonably capable of being remedied within the said period of thirty (30) days, then ILED shall be allowed such additional period as is reasonably required to remedy such defect or breach.
65. The Customer agrees that the amount of any indebtedness by the Customer to ILED shall be determined and proven by a certificate issued by ILED and signed on its behalf by the credit manager or any director of ILED. Such certificate shall be binding upon the Customer, and shall be *prima facie* proof of the indebtedness of the Customer to ILED, and shall be valid as a liquid document in any competent court of law for the purposes of obtaining provisional sentence or summary judgment or other judgment proceedings against it, and the Customer acknowledges its indebtedness in respect of any amount so certified.

LIMITATION OF LIABILITY:

66. The Customer shall have no claim of any nature whatsoever for damages, a remission of the purchase price, cancellation or otherwise, against ILED, its servants, agents or other persons on whose behalf ILED would be liable, in respect of any loss or damage sustained by the Customer of any nature whatsoever or any damage caused to the assets of the Customer or assets kept on the premises by any third parties or in regard to the Customer's business or sustained by any of its customers, howsoever caused including any negligent (whether innocent or gross) acts or omissions of ILED, its servants, agents or others for whom it may be liable in law. This provision constitutes a *stipulatio alteri* in favour of such persons, the benefits of which may be accepted by them at any time.
67. Under no circumstances whatsoever, including but not limited to, as a result of its negligent (whether innocent or gross) acts or omissions, or those of ILED's servants, agents or contractors or other persons for whom it may be liable in law, shall ILED be liable for any consequential loss or damages sustained by the Customer. This provision constitutes a *stipulatio alteri* in favour of such persons, the benefits of which may be accepted by them at any time.
68. The Customer acknowledges that it does not rely on any representations whatsoever made by ILED in regard to the goods and/or services or any of its qualities leading up to this Agreement other than those contained in this Agreement. All specifications, price lists, performance figures, advertisements, brochures and other technical data furnished by ILED in respect of the goods and/or services, whether orally or in writing, will not form part of this Agreement in any way unless agreed to in writing by ILED.

CO-DEBTORSHIP, SURETYSHIP AND WARRANT OF AUTHORITY:

69. The signatory, by his signature hereto, binds himself in favour of ILED, its successors-in-title and assigns as surety and co-principal debtor *in solidum* with the Customer for the due and punctual performance by the Customer of all its obligations to ILED in terms of this Agreement.
70. The suretyship referred to above, shall remain of full force and effect notwithstanding:
- 70.1. any indulgence, concession, leniency or extension of time which may be shown or afforded by ILED to the Customer;
- 70.2. any amendment(s) to this Agreement and/or other agreement for the time being subsisting between the sureties.
71. The signatory hereby renounces the benefits of the legal exceptions *non causa debiti, errore calculi, excussion division, de duobus vel pluribus reis debendi*, no value received and/or revision of accounts, with the meaning and effect of all of which he/she declares himself/herself to be fully acquainted with.
72. The signatory warrants, as a material warranty which the signatory relies on in entering into this agreement, that he/she is duly authorised to represent and bind the Customer to this Agreement, and that he/she has read and understood each term and condition of this Agreement and accepts them as binding on him/her and the Customer.
73. The signatory and the Customer hereby warrant that the signatory, to any tax invoice, delivery note or other documentation of ILED to the Customer, is duly authorised to bind the Customer in respect of the relevant transaction.
74. The signatory is bound, *mutatis mutandis*, by the provisions of this Agreement as if he/she is the Customer, particularly but without limitation thereto, insofar as the Agreement provides for proof of facts, costs of proceedings, service of process, limitations of defences and jurisdiction.



SECURITY FOR OBLIGATIONS:

75. ILED reserves the right to require satisfactory security, including but not limited to a payment guarantee issued by a registered financial service provider, from the Customer for the due and punctual performance of any and all of the Customer's obligations hereunder. If ILED, at any time, including but not limited to any time prior to the acceptance of any order, so requires, the Customer shall deliver to ILED such security within seven (7) days from demand by ILED, failing which ILED shall be entitled to withdraw from this Agreement in whole or in part.

INTELLECTUAL PROPERTY RIGHTS:

76. The Customer acknowledges all intellectual property rights attached to the goods and/or services, and the Customer irrevocably undertakes not to duplicate or infringe on any of the said intellectual property rights.
77. The Customer irrevocably undertakes to indemnify ILED against any claims, costs and expenses arising out of the infringement by the Customer of any copyright, patent, trade mark or design in the goods and/or services supplied by ILED to the Customer.
78. Any attempted or actual infringement of the said intellectual property rights by the Customer shall cause any and all amounts owing by the Customer to ILED, to be immediately due and payable to ILED.

DOMICILIUM:

79. The Customer chooses *domicilium citandi et executandi* ("domicilium") for all purposes under this Agreement, whether in respect of the serving of any process, notices, documents or communications of whatsoever nature, the Customer's business address recorded herein above in the Dealer Application Form.
80. Any notice or communication required or permitted to be given in terms of this Agreement shall only be valid and effective if it is in writing, but it shall be competent to give notice by telefax.
81. Any party may by written notice to any other party change the physical address chosen as its *domicilium citandi et executandi vis-à-vis* that party to another physical address or its telefax number, provided that the change shall become effective *vis-à-vis* that addressee on the seventh (7th) business day from the deemed receipt of the notice by the addressee.
82. Any notice or process given by a party to any other party ("the addressee") shall be in writing and if:
- 82.1. delivered by hand during the normal business hours of the addressee at the addressee's domicilium shall be deemed to have been received by the addressee on the day of delivery;
- 82.2. posted by prepaid registered mail to the addressee at the addressee's domicilium shall be deemed to have been received by the addressee on the fourth (4th) day after the date of mailing;
- 82.3. transmitted by facsimile to the addressee's facsimile address shall be deemed to have been received by the addressee on the same day as the date of transmission.
83. No notices, cheques, cash or other documents sent to ILED through the postal service shall be deemed to have been received unless and until actually received by ILED.
84. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its domicilium.
85. The Customer undertakes to inform ILED in writing within seven (7) days of any change of Director, Member, Shareholder, Owner or Partner of the Customer, or change in the domicilium address, or within fourteen (14) days prior to selling or alienating the Customer's business; and failure to do so will constitute a material breach of this Agreement by the Customer. Upon receipt of such written notification, ILED reserves the right, at its sole discretion, to withdraw any purchase facility advanced to the Customer.

GENERAL:

86. This Agreement constitutes the entire agreement between the Customer and ILED; and supercedes all prior verbal or written agreements or undertakings or representations by or between the parties regarding the subject matter of this Agreement.
87. No indulgence, leniency or extension of time which ILED may afford the Customer, shall in any way whatsoever prejudice ILED, or preclude ILED from exercising any of its rights under this Agreement, or be construed as a waiver by ILED of any right. In particular, and under no circumstances, shall ILED be estopped from exercising any of its rights under this Agreement.
88. No amendment, consensual cancellation or other variation of this Agreement shall be valid and binding on ILED unless recorded in writing and signed by a duly authorised representative of ILED.
89. The Customer acknowledges that, in entering into this Agreement, the Customer does not do so on the basis of, and does not rely on, any representation, warranty or other provisions except as expressly contained herein, and all conditions, warranties, or other terms implied by statute or common law, are hereby excluded to the fullest extent permitted by law.
90. The Customer confirms that it is an independent contractor, and that this Agreement does not create a partnership, a joint venture, a principal-agent relationship, or an employer-employee relationship between the Customer and ILED.
91. The Customer irrevocably consents to ILED conducting a credit profile on the Customer and its representatives at any credit bureau.
92. The Customer consents to ILED instituting any proceedings arising out of this Agreement in any Magistrate's Court having jurisdiction over the Customer, irrespective of the amount of the claim. Notwithstanding the foregoing, ILED shall be entitled at its option to proceed against the Customer in any other competent court. The Customer shall be liable to ILED for all legal expenses incurred by ILED on an attorney and client scale.
93. The Customer agrees that ILED will not be required to furnish security in terms of the Rules of the High Courts or the Magistrate's Courts.
94. Any printout of computer evidence tendered by any party shall be admissible evidence and no party shall object to the admissibility of such evidence purely on grounds that such evidence is computer evidence or that the requirements of any legislation pertaining thereto have not been met.
95. All the provisions of this agreement shall be severable and no provision shall be affected by the invalidity of any other provision of this agreement.
96. This agreement shall be governed by the laws of the Republic of South Africa.



