



GENERAL TERMS AND CONDITIONS OF CONTRACT ORIGINBLU COMMUNICATIONS CC

IN THIS AGREEMENT THERE ARE CERTAIN CLAUSES OF SIMILAR FONT AND COLOUR TO THIS TEXT WHICH CONTAIN PROVISIONS THAT MAY HAVE THE EFFECT OF (I) LIMITING THE RISK OR LIABILITY OF ORIGINBLU OR OF ANY OTHER PERSONS AND/OR (II) MAY CONSTITUTE AN ASSUMPTION OF RISK OR LIABILITY BY THE CUSTOMER AND/OR (III) MAY IMPOSE AN OBLIGATION ON THE CUSTOMER TO INDEMNIFY ORIGINBLU OR ANY OTHER PERSON FOR ANY CAUSE AND/OR (IV) MAY BE AN ACKNOWLEDGEMENT OF ANY FACT BY YOU. THESE PROVISIONS ARE VERY IMPORTANT AND YOU MUST ENSURE THAT YOU READ THEM CAREFULLY AND THAT YOU UNDERSTAND THEM CLEARLY.

1. DEFINITIONS & INTERPRETATION

Unless such meaning is inconsistent with the context, the following terms shall, throughout this AGREEMENT, have the meanings respectively ascribed to them, namely:

- 1.1 "AGREEMENT" – means any contract or agreement arising out of the acceptance of any offer, whether the contract arises out of an offer made by ORIGINBLU and accepted by the CUSTOMER, or an offer made by the CUSTOMER and accepted by ORIGINBLU and means the terms and conditions of sale of the GOODS by ORIGINBLU to the CUSTOMER;
- 1.2 "ORIGINBLU" – means ORIGINBLU COMMUNICATIONS CC (Registration Number: 2006/128052/23)
- 1.3 "CONTRACT PRICE" – means the price of the GOODS as set out in the INVOICE;
- 1.4 "CONTRACT SPECIFICATION" – means the specification or any other description of the GOODS and/or SERVICES on the INVOICE;
- 1.5 "CPA" – means the Consumer Protection Act, 86 of 2008 (as amended);
- 1.6 "CUSTOMER" – means the person that contracts with ORIGINBLU to purchase ORIGINBLU'S GOODS and / or SERVICES;
- 1.7 "ECA" – means the Electronic Communications Act, 2005;
- 1.8 "ECT ACT" – means the Electronic Communications and Transactions Act, 2002;
- 1.9 "DESIGNATED PURPOSE" – means the purpose for which the GOODS are generally intended;
- 1.10 "GOODS" – includes services and means any work completed by ORIGINBLU or a chosen Third Party, which form part of the subject matter of the CONTRACT and include but are not limited to Web Development, Branding, Marketing Strategy, Social Media & O.R.M, Print Design, Email Branding, Email Marketing and Copywriting;
- 1.11 "INPUT MATERIAL" – means any documents, plans or other materials or specifications and any data or other information provided by the CUSTOMER in whatever format relating to the GOODS;
- 1.12 "INVOICE" – means the invoice document of ORIGINBLU, whereon an Invoice Number, full particulars of the CUSTOMER, CONTRACT PRICE, VAT amount, CONTRACT SPECIFICATION and the order of the GOODS and or SERVICES is displayed;

1.13 "OUTPUT MATERIAL" – means any documents, plans or other materials or specification and any data or other information provided by ORIGINBLU in whatever format relating to the GOODS;

1.14 "VAT" – means Value Added Tax as provided for in the Value Added tax Act, 1991.

In this AGREEMENT unless the context otherwise requires –

1.15 The singular shall import and include the plural and vice versa; 1.16 Words indicating natural persons shall import and include juristic

persons;

1.17 Clause headings are for reference only and do not affect interpretation;

1.18 Where any number of days is prescribed in this AGREEMENT,

they shall be calculated exclusive of the first day and inclusive of the last day unless the last day falls on an Saturday, Sunday or public holiday. In such day the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;

1.19 The rule of construction that this agreement shall be interpreted against the party responsible for the drafting or preparation of this agreement shall not apply. The same applies to the schedules or annexures.

2. GENERAL

2.1 All AGREEMENTS are exclusively subject to ORIGINBLU'S terms

and conditions of contract and ORIGINBLU rejects any terms and conditions of the CUSTOMER to the contrary or those which deviate from ORIGINBLU'S terms and conditions; unless it has expressly consented to their validity in writing.

2.2 It is the CUSTOMER'S responsibility to draw ORIGINBLU'S attention to the provisions of any relevant contract or specification by which the CUSTOMER is bound, failing which ORIGINBLU will accept no liability there from, and no acceptance shall be valid unless reduced to writing and signed by ORIGINBLU'S Managing Director.

2.3 The terms and conditions set out herein cancel all previous issued terms and conditions.

2.4 These terms and conditions, as re-issued or revised by ORIGINBLU from time to time, apply to all orders placed with ORIGINBLU and such orders are subject to acceptance by ORIGINBLU and shall be deemed to be accepted subject to these terms and conditions.

2.5 No qualification or condition contained in any order form, acknowledgement of order or otherwise, shall form part of the contract of sale or override these terms unless expressly agreed to in writing by the Managing Director of ORIGINBLU. No employee or agent of ORIGINBLU shall have the authority or the ability to change these terms in any manner whatsoever, except for the Managing Director of ORIGINBLU.

2.6 ORIGINBLU reserves the right to refuse an order and acceptance of all orders shall occur upon issue of ORIGINBLU'S order confirmation. Unless otherwise provided, ORIGINBLU'S order confirmation shall set out the GOODS to be delivered and services to be provided.

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2.7 All GOODS sold by ORIGINBLU are subject to availability. The prices stated in ORIGINBLU'S price lists are valid and effective only in South Africa. Prices may vary depending on the location outside of the Republic of South Africa.

2.8 Unless previously withdrawn, ORIGINBLU'S quotation is open for acceptance for the period stated, or if no period is stated, 30 (Thirty) calendar days. All orders must be in writing or by email and are subject to ORIGINBLU'S acceptance in writing.

2.9 The CUSTOMER must ensure that the terms of its order and any applicable INPUT MATERIAL are complete and accurate. Details and quantities listed in ORIGINBLU'S quotation have been determined from ORIGINBLU'S interpretation of INPUT MATERIAL. Should the design criteria change or other specifications be required for any reason, ORIGINBLU reserves the right to re-quote and to vary its prices.

2.10 ORIGINBLU'S quotation does not include incidental charges that may occur in transit, these charges are inclusive but not limited to customs examinations, storage, demurrage, port health stops, state VAT and police border stops. Charges incurred will be billed as per outlay.

2.11 The CUSTOMER may use the ORIGINBLU name and other brand-related items in its advertising and marketing materials or similar but only after written consent is obtained from ORIGINBLU; and only in strict accordance with ORIGINBLU'S and/or the manufacturers guidelines. This usage is valid for so long as ORIGINBLU supplies the CUSTOMER. Should ORIGINBLU cease to supply the CUSTOMER, this right ceases automatically, and the CUSTOMER must immediately cease with and usage of the ORIGINBLU name and other brand-related items in all of its advertising and marketing materials; or similar.

2.12 The CUSTOMER will treat as confidential and will not use or disclose to any person any information relating to quantities, price, or availability of any GOODS provided by ORIGINBLU to the CUSTOMER and these obligations shall survive any termination of the obligations contained in these CONDITIONS or any other contractual arrangement entered into between the CUSTOMER and ORIGINBLU.

2.13 Nothing in this AGREEMENT is intended to or must restrict, limit or avoid any rights or obligations, as the case may be, created for either of the CUSTOMER or ORIGINBLU in terms of the CPA.

2.14 The CUSTOMER consents to ORIGINBLU carrying out a credit check in respect of the CUSTOMER at any applicable credit bureau, and may make the provisions of this AGREEMENT dependant on its satisfaction with the results thereof.

3. APPLICATION OF THE CONSUMER PROTECTION ACT

3.1 If the CPA is applicable to this AGREEMENT, the provisions of the CPA will be applied and take precedence where they contradict any provision of this AGREEMENT

3.2 Whether the CPA applies to this AGREEMENT depends on whether certain values in the Customer's business (the "Threshold Values") are above or below the threshold.

3.3 The Threshold Values are the Customer's asset value or annual turnover. If either of these values exceed R 2 000 000 (Two Million) on the date the parties agree that ORIGINBLU will sell

GOODS, the CPA will not apply to this AGREEMENT.

3.4 The values measured and the threshold itself will be amended from time to time, in which case the Parties agree that the new measurements will apply to this AGREEMENT from the date of amendment.

3.5 ORIGINBLU'S duties under this AGREEMENT may vary depending on whether the CPA applies to it, and ORIGINBLU will act upon the information given by the CUSTOMER in the credit application form. Consequently:

3.5.1 The CUSTOMER warrants that any statement made to ORIGINBLU in respect of its Threshold Value is accurate.

3.5.2 If the CUSTOMER claims that all the Threshold Values are below R 2 000 000 (Two Million), or otherwise that the CPA applies to this AGREEMENT, ORIGINBLU may at its instance require the CUSTOMER to provide it with financial statements as proof thereof.

3.5.3 If the CUSTOMER misstates the Treshhold Values are below in such a way the ORIGINBLU believes that this AGREEMENT is subject to the CPA when it is not, then ORIGINBLU may retroactively apply any provisions of this AGREEMENT that were not applied as a result of this belief.

3.5.4 The CUSTOMER will be liable for any costs or damage sustained by ORIGINBLU resulting from such misstatement.

4. WEBSITE DESIGN

4.1 Whilst every endeavour will be made to ensure that the website

and any scripts or programmes are free of errors, ORIGINBLU cannot accept responsibility for any losses incurred due to malfunction of the website or any part of it.

4.2 The website, graphics and any programming code remain the property of ORIGINBLU until all outstanding accounts are paid in full.

4.3 Any scripts, applications or software (unless specifically agreed) written by ORIGINBLU remain the copyright of ORIGINBLU and may only be commercially reproduced or resold with the permission of ORIGINBLU.

4.4 The CUSTOMER agrees to make available as soon as reasonably possible to ORIGINBLU, all materials required to complete the site to the agreed standard and within the set deadline.

4.5 ORIGINBLU cannot take responsibility for any copyright infringements caused by the materials submitted by the CUSTOMER. ORIGINBLU reserves the right to refuse any material of a copyrighted nature unless adequate proof is given of the permission to use such material.

4.6 ORIGINBLU will not be liable for costs incurred, compensation or loss of earnings due to the failure to meet agreed deadlines.

4.7 ORIGINBLU will not be liable or become involved in any dispute between the CUSTOMER and their clients and cannot be held responsible for wrongdoing on the part of the CUSTOMER.

4.8 ORIGINBLU will not be liable for any costs incurred, compensation or loss of earnings due to the work being carried out on behalf of the CUSTOMER or any of the CUSTOMERS appointed agents.

4.9 A deposit of 50% is required with any project before any design work will be carried out. Once a website has been designed and completed the final balance of payment is then due in accordance with ORIGINBLU'S payment terms. There are no exceptions to this, i.e. if the CUSTOMER decides they no longer

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want the site, the deposit will be retained and the CUSTOMER will still be liable to pay for the work that has been done. Non-Payment will result in legal action being taken if necessary.

5. WEBSITE HOSTING

5.1 ORIGINBLU outsources hosting services to Phoenix.net CC (Registration Number: 2002/006001/23) ("Phoenix").

5.2 Whilst ORIGINBLU recommends Phoenix to host websites and no guarantees can be made as to the availability or interruption of this service by ORIGINBLU. ORIGINBLU cannot accept liability for losses caused by the unavailability, malfunction or interruption of Phoenix's services, or for loss of turnover, sales, revenue, profits or indirect, consequential or special loss.

5.3 By entering into an agreement with ORIGINBLU for website hosting, the CUSTOMER agrees to be bound by Phoenix's terms and conditions in addition to ORIGINBLU'S terms and conditions. Please refer to Phoenix's own website for their terms and conditions (<http://www.phoenixnet.co.za>).

6. CONTRACT PRICE

6.1 Price lists issued by ORIGINBLU, from time to time, are for information purposes only and do not constitute offers for sale.

6.2 Save insofar as may be otherwise specifically agreed in writing to the contrary by ORIGINBLU, orders are accepted only at prices

and transport tariffs ruling on the date of dispatch.

6.3 Unless otherwise agreed in writing, the CONTRACT PRICE shall

exclude carriage from the warehouse.

6.4 ORIGINBLU shall retain the title to and copyrights in all offer documents; these may not be made available to third parties without ORIGINBLU'S express written consent.

6.5 The CONTRACT PRICE shall specifically exclude Value Added

Tax (VAT) and any other taxes that may be levied in respect of the GOODS. ORIGINBLU reserves its rights to effect price increases, from time to time, without notification to the CUSTOMER. The onus shall be on the CUSTOMER to remain informed of the prices of ORIGINBLU.

6.6 The CONTRACT PRICE is not subject to any discounts unless otherwise agreed in writing and signed by the Managing Director of ORIGINBLU.

6.7 Notwithstanding the stated price on the INVOICE, the CONTRACT PRICE shall, at all material times, be subject to any increase of duties, levies, taxes, transport, storage, cost of foreign currency and packing costs and ORIGINBLU shall endeavour, where reasonably possible, to inform the CUSTOMER in advance of any anticipated increases of the aforesaid. ORIGINBLU reserves its right to charge such revised prices for GOODS affected by the increase and remaining to be delivered.

6.8 ORIGINBLU reserves its right to add a reasonable charge for storage on any items which have not been collected or could not be delivered within 14 (Fourteen) days of the date on which they were available for delivery or collection, as the case may be, and in the event that this is as a result of the CUSTOMER'S conduct.

6.9 If any discount is agreed to pursuant to clause 6.6 above, it shall only be allowed if payment, in full, is received by ORIGINBLU on or before the due date and shall apply to the actual price of the GOODS themselves.

6.10 The CUSTOMER shall be liable for extra charges required as a result of its instructions, lack of instructions, the inaccuracy of any INPUT MATERIAL or any other cause attributable to the CUSTOMER.

7. TERMS OF PAYMENT

7.1 All amounts owing to ORIGINBLU, as stipulated on the INVOICE

shall be paid cash on delivery, unless ORIGINBLU agrees in writing that payment be made within 30 (Thirty) days of the date of ORIGINBLU'S statement.

7.2 ORIGINBLU may require any additional security for payments due, prior to entering into an agreement with the CUSTOMER.

7.3 ORIGINBLU shall be entitled to refuse the sale of GOODS to any

CUSTOMER, in the event of overdue amounts owing by the CUSTOMER to ORIGINBLU, or in the event that a CUSTOMER is not able to obtain/provide satisfactory guarantees/suretyships. It is specifically recorded and agreed that any late payments by a CUSTOMER shall constitute an automatic breach of the AGREEMENT entered into between ORIGINBLU and the CUSTOMER. ORIGINBLU reserves the right at any time to refuse any further sale of GOODS to the CUSTOMER on any basis until all outstanding amounts including any accrued interest on such outstanding amounts have been settled in full by such CUSTOMER.

7.4 **IT IS SPECIFICALLY RECORDED AND AGREED THAT THE CUSTOMER WAIVES ALL CLAIMS AGAINST ORIGINBLU, FOR ANY DAMAGES OR LOSSES THAT IT MAY SUFFER, AS A RESULT OF THE REFUSAL OF ORIGINBLU TO SELL GOODS TO THE CUSTOMER, IN THE EVENT OF ANY OVERDUE AMOUNTS, OR IN CONNECTION WITH ANY OTHER DISPUTE WHATSOEVER ARISING OUT OF THE NON - PAYMENT FOR GOODS.**

7.5 The CUSTOMER shall make all payments due under this AGREEMENT without any deduction whether by way of set-off, counterclaim, discount, abatement, or otherwise.

7.6 No order for GOODS, which has been accepted by ORIGINBLU, may be cancelled by the CUSTOMER except by agreement in writing by ORIGINBLU; and on terms that the CUSTOMER shall indemnify ORIGINBLU in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by ORIGINBLU as a result of cancellation.

8. DELIVERY

8.1 Time shall not be of the essence in any sale.

8.2 **WHILST EVERY EFFORT WILL BE MADE TO DISPATCH AND**

DELIVER THE GOODS WITHIN THE TIME QUOTED, ORIGINBLU DOES NOT GUARANTEE DISPATCH AND/OR DELIVERY ON ANY SPECIFIC DATE AND SHALL NOT BE LIABLE FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO ANY CONSEQUENTIAL DAMAGES THAT MAY BE SUFFERED BY THE CUSTOMER, AS A RESULT OF ANY DELAYS IN THE DELIVERY OF THE GOODS THAT MAY OCCUR, SAVE TO THE EXTENT THAT, ORIGINBLU MAY BE LIABLE FOR ANY LOSSES IN TERMS OF SECTION 47 OF THE CONSUMER PROTECTION ACT 68 OF 2008 (AS AMENDED).

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8.3 ORIGINBLU may deliver the GOODS to the CUSTOMER'S premises or may agree to deliver the GOODS directly to any third party. The CUSTOMER agrees to accept delivery as soon as ORIGINBLU notifies the CUSTOMER that the GOODS are ready for collection or tenders delivery of the GOODS to the CUSTOMER. If ORIGINBLU has agreed to deliver the GOODS and the CUSTOMER fails to give proper delivery instructions or to accept delivery as aforesaid, it shall be liable for all costs incurred by ORIGINBLU as a result of such failure (including without limitation, storage and insurance costs), which shall become immediately due and payable on demand, but such liability shall not affect its obligation to purchase the GOODS or the right of ORIGINBLU to claim damages for breach of such obligation.

8.4 Where the GOODS are to be delivered in instalments, each delivery shall constitute a separate contract, and failure by ORIGINBLU to deliver any one or more of the instalments in accordance with these terms and conditions or any claim by the CUSTOMER in respect of any one or more instalments shall not entitle the CUSTOMER to treat the whole AGREEMENT as repudiated.

8.5 IN ACCORDANCE WITH CLAUSE 8.1, THE CUSTOMER MUST SATISFY ITSELF THAT THE DESCRIPTION OF THE GOODS SHOWN ON THE DELIVERY NOTE ARE IN FACT THE GOODS ORDERED. IF THE CUSTOMER ACCEPTS SUCH GOODS, WHETHER OR NOT THEY ARE THE GOODS ORDERED. THE CUSTOMER WILL BE LIABLE TO PAY FOR THE GOODS AND WILL HAVE NO CLAIM AGAINST ORIGINBLU.

8.6 The preferred day and the time at which the delivery is to be made as well as the rate required, are to be mutually agreed upon in advance. Should adverse weather or other site problems necessitate a change in the agreed delivery, ORIGINBLU shall advise the CUSTOMER thereof as soon as reasonably possible. The CUSTOMER shall be liable for the cost of the delivery of any GOODS already dispatched prior to notification. The CUSTOMER shall not be entitled to cancel or repudiate any order or refuse delivery as a result of such delay.

8.7 ORIGINBLU reserves the right to refuse an order after 7 (Seven) days of being lodged, where costs have escalated due to any contingencies or circumstances not within ORIGINBLU'S control.

8.8 Should the dispatch of the GOODS be delayed as a result of the CUSTOMER'S actions, the CUSTOMER shall be charged the expenses arising from such delay.

8.9 Should delivery be delayed due to Force Majeure, the delivery period shall be reasonably extended. ORIGINBLU shall notify the CUSTOMER, in due time, about the commencement and the end of such circumstances.

8.10 Should ORIGINBLU be prevented from the performance of any of its obligations as a result of Force Majeure, ORIGINBLU shall be entitled, at its option, to cancel the AGREEMENT or to suspend performance of its obligations here under and shall not be liable whatsoever for any loss or damage (consequential or otherwise), resulting from such inability to perform its obligations, cancellation or suspension.

8.11 Unless otherwise agreed in writing, delivery and passing of the risk of the GOODS to the CUSTOMER shall be deemed to have taken place at the time the GOODS have left the premises of ORIGINBLU. This shall also apply to partial deliveries or if

ORIGINBLU has agreed to provide other services, e.g. payment of the transportation costs, delivery of the GOODS.

8.12 Should dispatch be delayed or not be effected at all, due to circumstances for which ORIGINBLU is not responsible, risk shall pass to the CUSTOMER on the date on which the CUSTOMER receives advice of dispatch/delivery of GOODS.

8.13 Partial deliveries shall be permissible to the extent acceptable to the CUSTOMER.

8.14 In the event of a shortage of raw materials or component parts specified in the contract for use in the production of GOODS, ORIGINBLU shall be entitled to substitute such materials as it deems fit. All quotations are made subject to availability of the GOODS or materials at the time of receipt of the CUSTOMER'S order.

9. RETURN OF GOODS

9.1 ORIGINBLU'S policy in respect of exchanges, return and refunds depends on, inter alia, the type of GOODS and the policy of the manufacturer or supplier thereof. Where the CPA applies to the CUSTOMER and ORIGINBLU, ORIGINBLU'S policy in this regard will comply with the requirements of the CPA in relation to exchanges, returns and refunds subject to any limitations and restrictions as allowed under the CPA.

9.2 THE PRECONDITIONS OF THE WARRANTY RIGHTS (CLAIMS BASED ON DEFECTS) OF THE CUSTOMER IN TERMS OF THIS AGREEMENT, IS THAT THE CUSTOMER INSPECTS THE GOODS UPON RECEIPT WITHOUT UNDUE DELAY AND GIVES NOTICE TO ORIGINBLU OF ANY VISIBLE DEFECTS AFTER THE INSPECTION, SPECIFYING THE DEFECT. THIS SHALL ALSO APPLY TO INCORRECT DELIVERIES OR ITEMS OF INSUFFICIENT QUANTITIES BEING DELIVERED. NOTIFICATION MUST BE GIVEN IN WRITING TO ORIGINBLU WITHIN A PERIOD OF 7 (SEVEN) BUSINESS DAYS OF DELIVERY.

9.3 A PRECONDITION OF THE WARRANTY RIGHTS (CLAIMS BASED ON DEFECTS) OF THE CUSTOMER IN TERMS OF THE AGREEMENT, IS THAT THE CUSTOMER NOTIFIES ORIGINBLU IN ACCORDANCE WITH CLAUSE 7.1, WITHIN 7 (SEVEN) DAYS OF THE DISCOVERY OF ANY LATENT (HIDDEN) DEFECTS OF THE GOODS.

9.4 A PRECONDITION OF THE WARRANTY RIGHTS (CLAIMS BASED ON DEFECTS) OF THE CUSTOMER IN TERMS OF THIS AGREEMENT, IS THAT THE CUSTOMER PROMPTLY RETURNS THE DEFECTIVE GOODS TO ORIGINBLU IN THE CASE OF A DEFECT.

9.5 Notwithstanding clause, 9.1, in the event that GOODS are delivered in error to the CUSTOMER, the GOODS will only be considered for return by ORIGINBLU provided that the GOODS are returned undamaged, have not been tampered with or defaced in any way. The GOODS are to be returned in their original packaging with all warranty cards, manuals and accessories.

9.6 Notwithstanding clause 9.4 above, where GOODS are made in accordance to the CUSTOMER'S specifications, GOODS may only be repaired and not refunded.

9.7 Where the CUSTOMER has instructed ORIGINBLU to deliver the GOODS to a third party, the actions to be taken by the CUSTOMER pursuant to clauses 9.1, 9.2 and 9.3 shall be taken

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by such Third Party on behalf of the CUSTOMER as the CUSTOMER'S agent for this purpose.

9.8 In the event that the CUSTOMER and/or third party complies with clauses 9.1, 9.2 and 9.4, and ORIGINBLU is satisfied that the GOODS are defective or do not conform to the specification or other description of the GOODS on the invoice, then ORIGINBLU will, at ORIGINBLU'S election, replace such quantity of GOODS with an equal quantity of GOODS or refund the applicable portion of the purchase price to the CUSTOMER against return of the defective portion of the GOODS.

9.9 Except insofar as any statute provides to the contrary, the undertakings contained in the preceding paragraphs of this clause are given in lieu of and to the exclusion of all conditions, warranties and representations whether express or implied, by statute or otherwise, as to the quality of the GOODS or their fitness for any particular purpose or otherwise; and ORIGINBLU shall have no liability in respect of the GOODS save as provided in clause 9.8.

9.10 ORIGINBLU shall not be liable for any loss or damage sustained by the CUSTOMER by reason of any Force Majeure.

9.11 In order to enable ORIGINBLU to perform all rework and replace all parts ORIGINBLU deems necessary, the CUSTOMER, upon consultation with ORIGINBLU, shall allow enough time and afford sufficient opportunity to ORIGINBLU to remedy the defects. SHOULD THE CUSTOMER FAIL TO DO SO, ORIGINBLU SHALL BE RELEASED FROM ANY LIABILITY OR CONSEQUENCES ARISING THERE FROM. Only in urgent cases involving endangering of the operational safety and/or to prevent unreasonably serious damage - in which case the CUSTOMER shall notify ORIGINBLU immediately - shall the CUSTOMER be entitled to either remedy the defect itself or have such defect remedied by third parties and to demand compensation from ORIGINBLU for the expenses incurred.

9.12 SHOULD THERE BE AN ALLEGATION THAT ANY GOODS ARE UNSAFE, INSUFFICIENT AND/OR DEFECTIVE; ORIGINBLU SHALL NOT BE LIABLE FOR ANY HARM CAUSED WHERE SUCH ALLEGED UNSAFE CHARACTERISTIC, FAILURE, DEFECT OR HAZARD DID NOT EXIST IN THE GOODS AT THE TIME AT WHICH THEY WERE SUPPLIED TO THE CUSTOMER BY ORIGINBLU. THEREFORE IF NO SUCH NOTIFICATION IS RECEIVED IN TERMS OF CLAUSE 9.1 ABOVE, IT WILL BE REGARDED AS PRIMA FACIE PROOF THAT NO DEFECTS WERE PRESENT AT THE TIME OF DELIVERY AND THAT THE GOODS WERE DELIVERED IN ACCORDANCE WITH THE AGREEMENT.

9.13 The CUSTOMER may not however return to ORIGINBLU any GOODS for any reason whatsoever unless:-

9.13.1 the PARTIES have agreed in writing to such return and to the conditions of such return;

9.13.2 the GOODS are being returned in accordance with the provisions of clauses 9.1, 9.2 and 9.3 above;

9.13.3 the GOODS were intended to satisfy a particular purpose communicated to ORIGINBLU prior to the PURCHASE thereof and have been found not to satisfy the purpose for which they were intended, within 10 (ten) business days of delivery and ORIGINBLU has been notified of this within that time period;

9.13.4 the CUSTOMER is exercising its right to cool-off in terms of section 16 CPA.

10. REPRESENTATION AND WARRANTIES

10.1 For a period of 6 months unless otherwise expressly stated by

ORIGINBLU, from the date of the CUSTOMER'S receipt of the GOODS sold hereunder, ORIGINBLU warrants that the GOODS supplied in terms of the AGREEMENT shall be of ORIGINBLU'S standard quality and are reasonably suitable for their DESIGNATED PURPOSE. In the event that defects are discovered in the GOODS supplied that were present at the time of DELIVERY, ORIGINBLU shall at its own discretion either remedy the defect or supply defect free replacement GOODS.

10.2 Any representations or warranties made or given by or on behalf of ORIGINBLU, prior to ORIGINBLU'S acceptance of an order and not contained in ORIGINBLU'S written quotation or in these terms and conditions are hereby expressly excluded.

10.3 The CUSTOMER bears the burden of proof that any defects discovered in the GOODS pursuant to clause 10.1 were in fact present at the time of DELIVERY. In this regard the notification in clause 9.1, 9.2 and 9.3 shall be prima facie proof as to whether the GOODS were defective at the time of DELIVERY.

10.4 Should defects be found without notification in terms of clause 9.1, 9.2 or 9.3 above, the CUSTOMER shall bear the burden of proving that the defects were caused as a result of the use for the DESIGNATED PURPOSE, that the GOODS were used according to the instructions; and that any prescribed maintenance work and tests have been carried out by a qualified person.

10.5 ORIGINBLU makes no other warranty of any kind, express or implied, including without limitation, any warranty of merchantability, or non-infringement. ORIGINBLU specifically makes no warranties with respect to any services or compliance with laws, regulations, standards and/or conventions including those related to the environment or to the packaging, labelling and/or transport of hazardous GOODS. No warranty shall apply to shipping damage, damage caused by improper installation, GOODS that have been modified or altered in any way, damage caused by corrosion, abrasion, or severe temperatures, or GOODS that have been subjected to improper maintenance, abuse, misuse, abnormal usage, or accident.

10.6 THE CUSTOMER WARRANTS THAT IT SHALL FULLY COMPLY WITH ALL LABEL DIRECTIONS FOR THE HANDLING, STORAGE, POSSESSION OR USE OF THE GOODS SOLD HEREUNDER AND THE CUSTOMER AGREES THAT IT SHALL INDEMNIFY AND HOLD ORIGINBLU HARMLESS FROM ALL CLAIMS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) OF PERSONAL INJURY OR PROPERTY DAMAGE, RESULTING FROM ANY NEGLIGENCE, RECKLESSNESS OR WILFUL MISCONDUCT ON THE PART OF THE CUSTOMER OR FROM ANY FAILURE OF THE CUSTOMER TO COMPLY WITH THE TERMS OF THIS WARRANTY.

10.7 Specifications, illustrations and the like remain the property of ORIGINBLU and may only be used for the purpose specified in the AGREEMENT and must be returned upon the request of ORIGINBLU.

10.8 NO LIABILITY FOR DAMAGES WILL BE ATTRIBUTED TO ORIGINBLU RESULTING FROM UNSUITABLE OR IMPROPER USE, IMPROPER ASSEMBLY AND IMPROPER COMMISSIONING OR HANDLING BY THE CUSTOMER OR BY THIRD PARTIES, NORMAL WEAR AND TEAR OR

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PREMATURE EROSION DUE TO THE NATURE OF THE MATERIAL OR THE KIND OF ITS USE, IMPROPER OR NEGLIGENT HANDLING OR STORAGE, IMPROPER MAINTENANCE, DEFECTIVE CONSTRUCTION WORKS, UNSUITABLE BUILDING GROUND, CHEMICAL, ELECTRO- CHEMICAL OR ELECTRICAL INFLUENCES UNLESS ORIGINBLU IS RESPONSIBLE FOR SUCH INFLUENCES.

11. RESERVATION OF OWNERSHIP

11.1 Notwithstanding delivery of any goods and the passing of risk,

ownership and title to the GOODS, shall not pass until the CONTRACT PRICE has been paid in full. Until the date of transfer of ownership, the customer will not do or omit to do anything, which may adversely affect ORIGINBLU'S proprietary rights in and to the GOODS. Without limiting the generality of the foregoing, the CUSTOMER shall notify its Landlord (if applicable) that the GOODS are owned by the ORIGINBLU.

11.2 ORIGINBLU reserves the right of ownership, copyright and exploitation rights for all estimates, and other documents and information in physical and non-physical form, in particular in digital form, provided to the CUSTOMER. Documents of a confidential nature must not be made available to third parties without ORIGINBLU'S prior written consent. Should the CUSTOMER not place an order with ORIGINBLU or cancel the AGREEMENT, the CUSTOMER shall return the documents immediately upon ORIGINBLU'S request. Information provided in non-physical form – in particular digital form - shall be deleted by the CUSTOMER and their deletion shall be confirmed in writing to ORIGINBLU.

11.3 ORIGINBLU shall retain title to the GOODS until full payment of all amounts owed for whatever legal reason including future amounts owed or contingent amounts owed, also from contracts concluded at the same time or at a later point of time. This shall also apply in case payments are made for specifically denominated amounts owed.

11.4 ORIGINBLU may elect without detracting from other remedies which may be available to it, to continue with or cancel the AGREEMENT, and cancel the sale of any further GOODS to the CUSTOMER and to rely on the provisions of this clause to repossess those GOODS sold and delivered by ORIGINBLU to the CUSTOMER or to claim specific performance of all the CUSTOMER'S obligations whether or not such obligations would otherwise have fallen due for performance, in either event, without prejudice to ORIGINBLU'S rights to claim damages.

11.5 In the event that the CUSTOMER acts contrary to the terms of the CONTRACT in any way or defaults in payment, the CUSTOMER shall deliver the GOODS to ORIGINBLU upon receipt of notice by the CUSTOMER from ORIGINBLU, without undue delay. ORIGINBLU shall be entitled to institute action to recover the CONTRACT PRICE, notwithstanding the fact that ownership in the GOODS has not passed to the CUSTOMER.

11.6 The CUSTOMER herewith assigns the amounts owed to it from the resale of the GOODS subject to reservation of ownership of ORIGINBLU. Such amounts owed shall serve ORIGINBLU as a security to the same extent as the GOODS under reservation of ownership. If the CUSTOMER sells the GOODS subject to reservation of ownership together with the GOODS not sold to it by ORIGINBLU, the CUSTOMER shall assign the amounts owed to it from the resale, to ORIGINBLU only in such amounts as corresponds to the resale value of the GOODS delivered by ORIGINBLU.

11.7 The CUSTOMER shall be entitled to collect the amounts due to it

from the resale of the GOODS until revoked by ORIGINBLU. ORIGINBLU may revoke such entitlement at any time. The CUSTOMER shall not assign the amounts owed to it – this shall also apply to the sale of accounts receivable to factoring banks - without ORIGINBLU's prior written permission. Upon ORIGINBLU'S request, the CUSTOMER shall be obliged to notify its own customers of such assignment, unless ORIGINBLU itself decides to do so, and to provide the information and documents required for collection by ORIGINBLU.

12. SPECIFICATIONS

12.1 All descriptive and shipping specifications, estimates, drawings

and particulars of weights and dimensions supplied by ORIGINBLU are approximate only, unless otherwise expressly stated/specified by ORIGINBLU, and the descriptions and illustrations contained in its catalogues, price lists and other marketing materials are intended merely to present a general idea of the GOODS described therein, unless otherwise expressly stated by ORIGINBLU. ORIGINBLU reserves its right to change its marketing materials from time to time without notice to the CUSTOMER.

12.2 ORIGINBLU may correct any typographical or other errors or omissions in any marketing materials, quotation, written acknowledgement of the CUSTOMER'S order, or other document relating to the provision of the GOODS without any liability to the CUSTOMER.

12.3 Any advice or recommendation given by ORIGINBLU or its employees or agents to the CUSTOMER or its employees or agents as to the storage, application or use of the GOODS, which is not confirmed in writing by ORIGINBLU is followed or acted upon entirely at the CUSTOMER'S own risk, and accordingly ORIGINBLU shall not be liable for any such advice or recommendation which is not so confirmed.

13. BREACH

13.1 In the event that the CUSTOMER:

13.1.1 breaches any condition contained in these conditions and

failing to pay any amount due and payable on due date, and having failed to rectify such breach or outstanding payment within 10 (Ten) days of having been requested to do so in writing by ORIGINBLU;

13.1.2 suffers any civil judgment to be taken, or any attachment of a debt, seizure or detriment by third parties, or entered against it, causing a notice of surrender of its estate to be published in terms of the Insolvency Act 24 of 1936 (as amended);

13.1.3 the CUSTOMER dying or ceasing to exist;

13.1.4 the CUSTOMER'S estate being placed under an order of

provisional or final winding up, or business rescue as the case may be, then, and in that event, ORIGINBLU shall, without retracting from other remedies which may be available to it, be entitled to cancel this AGREEMENT and cancel the sale of any GOODS to the CUSTOMER without notice to the CUSTOMER and to rely on the provisions of this clause to repossess those GOODS sold and delivered by ORIGINBLU to the CUSTOMER or to claim specific performance of all the CUSTOMER'S obligations whether or not such obligations

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would otherwise have fallen due for performance, in either event, without prejudice to ORIGINBLU'S rights to claim damages.

13.2 ORIGINBLU shall be entitled to withdraw from the contract in case of any of clauses 13.1.1 to 13.1.4 occurring and to request the immediate return of the GOODS delivered pursuant to clause 4 herein.

13.3 The CUSTOMER shall notify ORIGINBLU immediately in case of any of clauses 13.1.1 to 13.1.4 occurring and shall provide ORIGINBLU with all information and documents required for ORIGINBLU'S assertion of its rights. The CUSTOMER shall be liable to ORIGINBLU for the judicial and extra-judicial costs of any necessary action pursuant to third-party action against execution.

14. REMEDIES

The CUSTOMER'S exclusive remedy for shortage of the GOODS, damaged or defective GOODS (whether or not occurring as a result of ORIGINBLU'S alleged negligence) or any other cause of action arising out of the contract, including breach of warranty, is expressly limited to replacement of non-conforming GOODS or payment of an amount not exceeding the purchase price of the GOODS for which damages are claimed, at ORIGINBLU'S discretion. The CUSTOMER shall have no right to set-off, to withhold payment or to make a reduction in price. The CUSTOMER'S remedy of replacement or refund is available only if non-conformance was not caused by the CUSTOMER or by accident, fire or other hazard.

15. LIMITATION OF LIABILITY

15.1 IN ADDITION TO ANY OTHER SPECIFIC EXCLUSIONS OF LIABILITY HEREIN AND UNLESS OTHERWISE EXPRESSLY STATED HEREIN, THE PARTIES AGREE THAT THE CUSTOMER SHALL HAVE NO CLAIM AGAINST THE COMPANY FOR ANY LOSS OR DAMAGE OF ANY NATURE, OCCASIONED BY ANY DEFECT IN ANY GOODS SUPPLIED, OR ANY FAILURE, SAVE TO THE EXTENT THAT SUCH LOSS OR DAMAGE IS CONTEMPLATED IN SECTION 61 OF THE CPA.

15.2 IN NO EVENT SHALL ORIGINBLU, ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING PUNITIVE DAMAGES OR ATTORNEYS' FEES, WHETHER THESE ARE FORESEEABLE OR UNFORESEEABLE CLAIMS OF THE CUSTOMER OR ITS CLIENTS.

15.3 THESE CLAIMS STIPULATED IN CLAUSE 12.1 ABOVE, INCLUDE BUT ARE NOT LIMITED TO, CLAIMS FOR LOSS OF BUSINESS, GOODWILL, PROFITS, LOSS OF MONEY OR USE OF GOODS OR IMPAIRMENT OF OTHER ASSETS, ARISING OUT OF BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, IN DELICT OR OTHERWISE, IN CONNECTION WITH OR ARISING OUT OF THE CONTRACT, EXCEPT IN THE CASE OF PERSONAL INJURY OR PROPERTY DAMAGE - WHERE AND ONLY TO THE EXTENT THAT APPLICABLE LAW REQUIRES SUCH LIABILITY.

15.4 TO THE EXTENT THAT THE CUSTOMER INCORPORATES OR CAUSES OTHERS TO INCORPORATE THE GOODS IN ITS OWN GOODS OR THE GOODS OF ANY THIRD PARTY, ORIGINBLU SHALL NOT BE LIABLE FOR THIRD PARTY CLAIMS FOR INFRINGEMENT OF LETTERS, PATENTS, REGISTERED DESIGN, TRADEMARK OR COPYRIGHT RESULTING FROM SUCH INCORPORATION AND BASED UPON THE USE OF THE GOODS OR THE MANUFACTURE, USE, SALE OR OFFER FOR SALE OF ANY GOODS CONTAINING SUCH GOODS, EXCEPT AS SUCH LIABILITY FOR THIRD PARTY CLAIMS FOR INFRINGEMENT IS EXPRESSLY REQUIRED BY APPLICABLE LAW AND NOT WAIVABLE BY THE CUSTOMER. THE CUSTOMER ASSUMES RESPONSIBILITY FOR ALL PERSONAL INJURY AND PROPERTY DAMAGE RESULTING FROM HANDLING, POSSESSION, USE, RESALE OR DISPOSAL OF THE GOODS.

15.5 ANY ACTION BY THE CUSTOMER FOR BREACH OF THIS AGREEMENT, BY ORIGINBLU OR ANY OTHER CAUSES OF ACTION OF THE CUSTOMER EXPRESSLY ALLOWED UNDER THE CONTRACT, MUST BE COMMENCED WITHIN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

15.6 THE CUSTOMER INDEMNIFIES AND HOLDS HARMLESS AND DEFENDS ORIGINBLU, IN THE EVENT THAT THE GOODS ARE NOT INSTALLED IN ACCORDANCE WITH INSTRUCTIONS, IN A PROPER MANNER AND NOT BY THOSE PERSONS HAVING THE APPROPRIATE QUALIFICATIONS AND EXPERIENCE TO ERECT AND DISMANTLE THE GOODS IN ACCORDANCE WITH ANY INSTRUCTIONS GIVEN OUT ORIGINBLU.

16. SURETY

THE PERSON WHO SIGNS THIS AGREEMENT ("THE SIGNATORY") DOES HEREBY INTERPOSE AND BIND HIMSELF IN FAVOUR OF THE COMPANY, AS SURETY FOR AND CO-PRINCIPAL DEBTOR IN WHOLE WITH THE CUSTOMER, FOR THE DUE PAYMENT OVER EVERY SUM OF MONEY, WHICH THE CUSTOMER OWES TO THE COMPANY IN RESPECT OF THIS AGREEMENT. THE SIGNATORY HEREBY RENOUNCES THE BENEFITS OF THE LEGAL EXCEPTIONS OF EXCUSION, DIVISION, CESSION OF ACCOUNT, NO VALUE RECEIVED, AND REVISION OF ACCOUNTS, THE MEANING WHEREOF THE SIGNATORY DECLARES HIMSELF TO BE FULLY ACQUAINTED.

SURETY : _____

17. CERTIFICATE OF INDEBTEDNESS

A certificate under the hand of the Financial Controller of ORIGINBLU as to the existence and the amount of the CUSTOMER'S indebtedness to BS ORIGINBLU, as well as the amount of interest accrued thereon, and as to any other fact, matter or thing relating to the CUSTOMER'S indebtedness to ORIGINBLU, shall be accepted as sufficient (prima facie) proof of the contents and correctness thereof, and of the amount of the CUSTOMER'S indebtedness for the purpose of provisional sentence or summary judgment or any other proceedings against the CUSTOMER, in any competent Court, and shall be valid and constitute a liquid document for such purposes. Furthermore, it

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shall not be necessary to prove the appointment of the person signing such a certificate and it shall be deemed to be sufficient particularity for the purpose of any action or any other proceeding instituted by ORIGINBLU against the CUSTOMER.

18. JURISDICTION & LEGAL ACTION

18.1 The parties do hereby consent that the Magistrate's Court shall

have jurisdiction to determine any action or proceedings which may arise under or in connection with this AGREEMENT.

18.2 This AGREEMENT, as well as the relationship between ORIGINBLU and the CUSTOMER is governed by the Law of the Republic of South Africa.

18.3 In the event of ORIGINBLU instructing attorneys in regard to any

breach of the CUSTOMER of the conditions of this AGREEMENT, then the CUSTOMER shall pay all the costs on the scale between Attorney and Client, including any costs incidental to such action instituted against the CUSTOMER.

19. NOTICE AND DOMICILIA

19.1 Any notices to be given to the parties in terms of this AGREEMENT, shall be in writing and delivered by hand during ordinary business hours or posted by pre-paid registered post to the addresses mentioned hereunder, which addresses the parties choose as their domicilium citandi et executandi for all purposes arising out of this agreement.

19.2 ORIGINBLU: 15 Cathrine Road, MISA Office Park, Suite 303, Northcliff ext. 3

19.3 The CUSTOMER: The address as given by the CUSTOMER in writing to ORIGINBLU or such other address within the Republic of South Africa as either party may choose by written notice to the other.

20. NON VARIATION & SEVERABILITY

20.1 This AGREEMENT constitutes the entire agreement between the

parties and no representation by either of the parties or their agents, whether made prior or subsequent to the signing of this AGREEMENT, shall be binding on either of the parties unless done in writing and signed by both parties hereto.

20.2 If any of the provisions of this AGREEMENT are held to be invalid, the validity of the remainder of this AGREEMENT shall not be affected and the rights and obligations of the parties shall be construed and enforced as if this AGREEMENT did not contain the invalid term and to that end the provisions of this AGREEMENT and the application thereof are hereby declared to be severable.

20.3 No variation, alteration or consensual cancellation of this AGREEMENT, or any of the terms thereof, shall be of any force or effect, unless done in writing and signed by the parties hereto.

20.4 No waiver or abandonment by either party of any of its rights in terms of this AGREEMENT shall be binding on that party, unless such waiver or abandonment is in writing and signed by the waiving party.

20.5 No indulgence, extension of time, relaxation or latitude which any party may show, grant or allow to another shall constitute a waiver by a party of any such party's rights and such party shall not hereby be prejudiced or estopped from exercising any of its rights against any party which may have arisen in the past or which might arise in the future. Unless the context indicates

otherwise, the rights and obligations of any party arising from this

AGREEMENT shall devolve upon and bind its successors-in-title. 20.6 The parties agree that they will do all things and sign all documents necessary to give effect to the terms of this AGREEMENT and to all transactions deriving there from.

SIGNED AT _____ BY THE CUSTOMER ON
THIS ____ DAY OF _____ 2016

THE CUSTOMER CONFIRMS THAT HE/SHE/IT HAS READ AND UNDERSTANDS THE CONTENTS OF THIS DOCUMENT AND UNDERSTANDS THAT HE/SHE/IT IS BOUND BY THESE TERMS AND CONDITIONS.

Signature: _____

Name: _____

Designation: _____

Surety: _____

IN PERSONAL CAPACITY AS SURETY IN TERMS OF
CLAUSE 15

Signature: _____

Name: _____

Designation: _____