

**PANDROL**



# Terms and Conditions of Contract

PANDROL SA (PTY) LTD

**T102**  
Issue 01

**Partners in excellence**



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# Terms and Conditions

## 1. Introduction

- 1.1 Pandrol SA Proprietary Limited (the Supplier) offers certain goods for sale to persons or entities that have been authorised by the Supplier to make purchases of such goods (the Purchaser) (jointly the Parties). Each order for the goods (each, an Order), will be governed by the terms and conditions of sale in effect at the time the Order is submitted (the Terms and Conditions).
- 1.2 The Purchaser acknowledges and agrees that the Supplier will only be able to deliver any goods under these Terms and Conditions, once the Supplier has approved the Purchaser's application for credit facilities (Application), and any further conditions imposed by law have been complied with.
- 1.3 The Terms and Conditions that are current as of 1 July 2019, are set forth below.

## 2. Formation of agreement

- 2.1 Any Orders submitted by the Purchaser are offers and do not form binding contracts unless and until they have been accepted by the Supplier by issuing a written acknowledgement of the Order (Order Acknowledgement). The Supplier is under no obligation to accept or acknowledge an Order. The Supplier may, at its sole discretion, accept all or any part of an Order. The Supplier will be deemed to have accepted an Order, or part of an Order, only upon submission of the Order Acknowledgement and mere confirmation of receipt of the Order does not constitute acceptance. To the extent that the Order Acknowledgment deviates from the Order, the Order Acknowledgement constitutes a new offer and must be accepted by the Purchaser in writing within 10 days of receipt of the Order Acknowledgment.
- 2.2 The Supplier reserves the right to discontinue product lines and to make changes in goods offered at any time.
- 2.3 Each Order that is accepted by the Supplier will, together with the relevant Order Acknowledgement, Terms and Conditions, the Application, and any additional written supply agreement in place between the Supplier and Purchaser, constitute a single, separate agreement between the Supplier and the Purchaser (the Agreement).
- 2.4 These Terms and Conditions apply to the exclusion of any different or additional terms or conditions, unless expressly accepted in writing by a person authorized to represent the Supplier. The Supplier explicitly rejects the applicability of any other general terms and conditions that might otherwise apply to the Agreement, including following from any correspondence between the Parties and any terms and conditions that may be pre-printed on the Purchaser's purchase order form or other form.

## 3. Prices

- 3.1 Prices of the goods are set out in:
  - 3.1.1 the Supplier's official price list; or
  - 3.1.2 the invoice provided to the Purchaser.
  - 3.1.3 If the prices set out in 3.1.1 and 3.1.2 differ, the prices as set out in the invoice will prevail.
- 3.2 The Supplier may change its prices at any time and accordingly the Supplier will: (a) supply to the Purchaser up to date copies of all price lists for the goods from time to time, (b) give to the Purchaser notice in writing of any



alteration in such price lists and the prices so altered will apply to all goods delivered on and after the applicable date of the alteration in such price lists including outstanding Orders.

- 3.3 The prices of the goods are exclusive of taxes and deductions, delivery and any other additional costs and/or charges whatsoever. The prices are not subject to any discounts, unless otherwise agreed to between the Parties in writing.
- 3.4 Any discounts agreed to between the Parties will apply only to the actual price of the goods (net of taxes, transport costs, insurance, or any other applicable charges).

## 4. Delivery and Risk

- 4.1 Unless otherwise agreed in writing by the Parties, all goods will be sold to the Purchaser ex works the Supplier's premises (Incoterms 2010) (Delivery). As a result, all risk in and to the goods will pass to the Purchaser upon the goods being made available for collection by the Purchaser at the Supplier's premises. The Purchaser will accordingly, unless otherwise agreed to by the Parties in writing, be responsible for the collection of all goods from the Supplier's premises and the Supplier will have no obligation whatsoever in respect of the Delivery of the goods, save to make the goods available for collection by the Purchaser at the Supplier's premises.
- 4.2 In the event that the Parties agree that the Supplier will deliver the goods to the Purchaser's designated premises, all risk in and to the goods will pass to the Purchaser upon the goods arriving at the Purchaser's designated premises.
- 4.3 The Purchaser may, in writing, request the Supplier to engage a carrier to transport the goods for the Purchaser. The Purchaser hereby authorises the Supplier to engage a carrier of its choice on such terms and conditions as it deems fit. In the event that the Parties agree to engage with a carrier, the following additional provisions will apply:
- 4.3.1 the Supplier will not be liable for any loss suffered by the Purchaser as a result of the transportation of the goods by the carrier engaged by the Supplier at the request of the Purchaser;
- 4.3.2 if a carrier has been engaged to transport the goods as contemplated in clause 4.3, the goods will be deemed to have been duly delivered to the Purchaser when the carrier collects the goods from the Supplier. The signature of any employee or agent of the carrier which appears on the Supplier's official delivery note or waybill will constitute sufficient evidence of Delivery of the goods to the Purchaser; and
- 4.3.3 goods to be delivered remain at the Supplier's risk until such goods have been delivered in terms of clause 4.3.2.
- 4.4 If the Supplier indicates, in the Order Acknowledgement or elsewhere, that the goods will be ready for collection on a given date or at a given time; this information is an estimate only. While the Supplier will do all that it reasonably can to meet the stipulated dates and time for Delivery, the Supplier cannot be responsible for failure to perform or to deliver or delays in performance or delivery due to circumstances beyond the Supplier's control, such as Force Majeure events (as set out in clause 11);
- 4.5 If the Supplier is unable to provide the goods, the Supplier will inform the Purchaser immediately by way of notice and refund payment will be made in respect of such goods within 30 days of this notice.
- 4.6 If more than one Delivery of goods is to be made, then the provisions of this clause 4 will apply to each such Delivery.



## 5. Acceptance

- 5.1 The Purchaser will be deemed to have accepted that the goods are correct and will be deemed to have accepted that the goods and their packaging, are of suitable quality and contain no visible or otherwise immediately detectable defects, unless the Supplier receives, within 14 days, after Delivery a written notice of rejection specifying the problem.
- 5.2 In the event that the Supplier receives written notice as set out in clause 5.1, the Purchaser must return the goods to the Supplier's premises at its own cost and the Supplier will, at its sole discretion, repair, substitute or provide a refund for such goods proved to the Supplier's satisfaction to have been damaged, missing, incomplete, or not of a suitable quality.
- 5.3 If the goods are returned to the Supplier, the Supplier has a right to charge the Purchaser a handling fee of up to 10% of the purchase price of the goods.
- 5.4 The Supplier will not be liable to repair or replace the goods, or any part thereof, in the following circumstances:
- 5.4.1 where there is only a minor deviation in colour or design of the goods;
  - 5.4.2 where the goods have been manufactured on the Purchaser's instructions and specifications and such specifications have been materially complied with;
  - 5.4.3 the goods have been subjected to negligence, misuse, ignorance, accidents, alteration or modifications on the part of the Purchaser or any of its representatives, agents, sub-contractors, associates, carriers or their respective employees;
  - 5.4.4 any problems that may arise due to the use of parts and components other than the Supplier approved parts and components by the Purchaser;
  - 5.4.5 any consequential costs resulting from a failure of any component forming part of the goods;
  - 5.4.6 natural wear and tear of the goods or any of its components;
  - 5.4.7 improper installation, operation or maintenance of the goods by the Purchaser, its contractors, representatives, agents, sub-contractors, associates, carriers or subsidiaries or their respective employees;
  - 5.4.8 any defects or omissions in the technical specifications or other data and specifications provided to the Supplier by the Purchaser in respect of the goods; and
  - 5.4.9 where the goods ordered are not damaged, are complete and of suitable quality, but of improper use to the Purchaser.

## 6. Payments

- 6.1 The Supplier will issue invoices electronically to the Purchaser either by (a) email invoicing, or (b) electronic data interchange. The Purchaser will provide a valid and updated e-mail address at all times to the Supplier.
- 6.2 Unless stated otherwise on the Supplier invoice or through other written communication from an authorized Supplier representative, invoices are payable 30 days after invoice date. Payments must be made by electronic transfer, unless otherwise agreed to between the Parties, and in South African Rand unless otherwise stated on the invoice. All costs of currency conversion, if any, will be the sole responsibility of the Purchaser and will not reduce the payment due to the Supplier for the Delivered or ordered goods.
- 6.3 If any amount remains unpaid after the date on which the payment is due, the Supplier:



- 6.3.1 reserves the right to charge interest on the Purchaser's account at 24% per annum, or such other maximum South African statutory interest rate that may be prescribed from time to time; and
- 6.3.2 is entitled to cancel discounts, suspend performance and/or cancel any Orders until the date of receipt by the Supplier of full payment of any due and payable amount.
- 6.4 The interest payable on overdue payments will be reckoned from the day upon which such amount becomes overdue of the amount concerned until the date of payment, both days inclusive, and will be:
- 6.4.1 calculated on a compounded basis on the amount owing at the end of each month; and
- 6.4.2 payable on demand.
- 6.5 The Supplier will credit each payment made under this Agreement to the Purchaser on the date of receipt of the payment as follows:
- 6.5.1 firstly, to satisfy any due or unpaid interest charge (if any);
- 6.5.2 secondly, to satisfy any due or unpaid fees or charges (if any); and
- 6.5.3 thirdly, to reduce the amount of the principal debt.
- 6.6 The Purchaser agrees that if its account is not settled in full (a) within 30 days of the end of the month in which the invoice is issued or (b) an otherwise agreed, then the Supplier is entitled to:
- 6.6.1 immediately institute action against the Purchaser at the Purchaser's expense;
- 6.6.2 to cancel the Agreement and institute action to take possession of any goods purchased;
- 6.6.3 enforce any right of security of any item retained by the Supplier until all amounts owing by the Purchaser have been paid in full;
- 6.6.4 stop supply of any goods immediately;
- 6.6.5 immediately withdraw its credit approval if applicable and then all outstanding amounts will immediately become payable to the Supplier; and
- 6.6.6 exercise any other right the Supplier may be entitled in terms of this Agreement or in law.
- 6.7 The Purchaser will pay for legal expenses on the attorney-and-own client scale of an attorney and counsel incurred by the Supplier in the event of (a) a default on payment by the Purchaser including any tracing, collection or valuation fees and the like incurred as well as for (b) any costs for any form of security that the Supplier may reasonably demand.
- 6.8 The Purchaser must sign a separate suretyship agreement as security for its present and future obligations in relation to the trade credit facility. The Supplier reserves the right to suspend the supply of any goods until such signed surety is received.
- 6.9 The Supplier will at all times be entitled to set off or deduct all and any debts receivable by the Supplier from the Purchaser, whether or not due and payable and whether or not contingent, against any debts owed by the Supplier to the Purchaser, whether due and payable or not, regardless of the currency in which such debts are denominated. Debts expressed in a foreign currency will be set off at the exchange rate on the day of set-off. If possible, the Supplier will inform the Purchaser in advance that it intends to exercise its right of set-off. The Purchaser hereby waives its right to apply set-off to any of its debts receivable by the Purchaser from the Supplier against any debts owed by the Purchaser to the Supplier.



## 7. Title

7.1 Notwithstanding the Delivery of any goods supplied or delivered by the Supplier to the Purchaser, the Purchaser will not become the owner of the goods, until the Supplier has received payment of the full contract price and/or amounts payable in respect thereof under this Agreement.

## 8. Cancellation and Termination

- 8.1 The Purchaser may cancel or terminate this Agreement at any time by paying an amount (Settlement Amount) equal to the aggregate of:
- 8.1.1 the unpaid balance of the outstanding amount on the Purchaser's accounts with the Supplier as at that date (Settlement Date); and
  - 8.1.2 all unpaid interest and all other fees and charges due or payable by the Purchaser in terms of this Agreement up to and including the Settlement Date.
- 8.2 The Purchaser may demand to be furnished with a statement specifying the Settlement Amount, in which event the Supplier will be obliged to provide such statements in writing within five business days of the Purchaser's request (the Settlement Statement).
- 8.3 The Settlement Statement will only be binding for the date stated and will not include any transactions effected or processed on or after this date and for which the Purchaser will also be liable.
- 8.4 The Supplier may cancel an individual Order at its discretion, with or without cause, – even if such an Order has already been acknowledged – by notifying the Purchaser of such cancellation no later than 30 days prior to the scheduled date of Delivery. The notice will be effective (a) immediately, if cancellation is for cause, or (b) 10 days after receipt, if termination is without cause. In case the Supplier has received payment for such cancelled Order, the Supplier will, at its election, either refund the payment or credit the Purchaser's account.
- 8.5 Notwithstanding the Supplier's right to cancel individual Orders as set out in clause 8.4, the Supplier may at its sole discretion terminate the business relationship with the Purchaser by notifying the Purchaser of such decision in writing no later than one month prior to the effective date of such termination. At effective date, all (partially) outstanding Orders will be cancelled. This provision is without prejudice to the Supplier's right to terminate the relationship for cause as set out in clause 8.6.
- 8.6 The Supplier may terminate the business relationship with the Purchaser in case of a breach by the Purchaser that justifies the termination of this Agreement. If the breach is curable, the Supplier will provide a 30-day period by notice in writing to remedy the breach prior to the termination. In such a case, at the Supplier's discretion, any or all outstanding Orders will be cancelled. Grounds for immediate termination for breach will include – but are not limited to – a violation of clauses 12, 13 and 16 of these Terms and Conditions.
- 8.7 The Supplier may – at its discretion – suspend the ability of the Purchaser to order new goods in case the Supplier suspects the Purchaser is in breach of these Terms and Conditions.
- 8.8 In the event, there is any default or breach of the Purchaser's obligations under these Terms and Conditions, including without limitation any failure to make any payments due under an Order, then (without prejudice to any other remedies the Supplier may have) any outstanding unpaid invoices will become immediately payable by the Purchaser and invoices which have not been submitted will be immediately payable once submitted. In addition, the Supplier may at its absolute discretion cancel or suspend further Deliveries of goods.



## 9. Transferring rights or obligations

- 9.1 The Purchaser may not transfer any of the Purchaser's rights or obligations under this Agreement to anyone else without the Supplier's prior written consent.
- 9.2 The Supplier may transfer all or some of the Supplier's rights and obligations under this Agreement to any other person without the Purchaser's consent, provided that the transfer is not to the Purchaser's detriment.

## 10. Warranty

- 10.1 The Purchaser warrants and declares that:
- 10.1.1 the Purchaser has been given an adequate opportunity to read and understand the terms and conditions of this Agreement and is aware of all the terms thereof. The Purchaser understands and accepts its risks and costs as well as its rights and obligations under this Agreement;
  - 10.1.2 the Purchaser has full power and authorisation to effect and carry out the obligations in terms of this Agreement and, if the Purchaser is a corporate entity, associate, partnership or a trust, that all necessary corporate and/or other actions were taken to authorise the execution of this Agreement and the Purchaser will provide the Supplier with the originals or certified copies of all documents confirming such authorisation;
  - 10.1.3 all the information the Purchaser provided to the Supplier in connection with the conclusion of this Agreement is true, complete and accurate and the Purchaser is not aware of any material facts or circumstances not disclosed to the Supplier and which, if disclosed, may adversely affect the decision to enter into this Agreement;
  - 10.1.4 no default event specific in clause 12 has occurred or is occurring;
  - 10.1.5 entering into this Agreement will not cause it to become over-indebted as contemplated in the National Credit Act, 2005 (NCA);
  - 10.1.6 the Purchaser has fully and truthfully answered all and any requests for information addressed to it by or on behalf of the Supplier leading up to the conclusion of this Agreement;
  - 10.1.7 the Purchaser has the necessary legal capacity to enter into this Agreement and is not subject to an administration order referred to in section 74(1) of the Magistrates' Court Act, 1944, any sequestration, liquidation or any business rescue proceeding;
  - 10.1.8 the Supplier did not make an offer to the Purchaser which would automatically have resulted in an agreement if the Purchaser had not declined the offer;
  - 10.1.9 the Supplier has not induced, harassed or forced the Purchaser to enter into this Agreement;
  - 10.1.10 this Agreement was completed in full at the time of the Purchaser signing the Agreement;
  - 10.1.11 the Purchaser is aware that, if this Agreement is or becomes subject to the NCA, the Supplier must report the relevant details required in terms of section 69(2) of the NCA to the National Credit Register or a registered credit bureau; and
  - 10.1.12 if and when its employees, agents, contractors or any party acting on its behalf enter the premises of the Supplier for whatsoever reason, such persons will adhere to and be bound by any occupational health and safety rules and regulations in place in respect of the Supplier's premises.





10.1.13 The Purchaser hereby indemnifies the Supplier against any and all losses suffered by the Supplier as a result of breach of the warranties listed in 10.1.

## 11. Force Majeure

11.1 The Supplier is not responsible for any delay or other suspension or deviation in the performance of the Supplier's obligations under the Order which is (in whole or in part) caused by (i) fire, flooding or other natural disasters, (ii) strikes or industrial actions or disputes, (iii) acts or omissions of governmental agencies (including customs agencies in the country of origin or destination), (iv) default of suppliers or sub-contractors (including but not limited to carriers) or (v) any change in currency laws or regulations or other adverse economic or financial developments in or relating to the Purchaser's place of business, or (vi) any circumstances outside the Supplier's reasonable control, (each a Force Majeure event or condition).

11.2 The estimated Delivery dates specified in the Order will be extended by that period of time during which the Supplier is unable to perform due to Force Majeure; provided, however, that in the event that such delay exceeds three months, the Supplier and/or the Purchaser may cancel the affected Orders by written notice, in which case the Supplier is not liable for any resulting damages.

11.3 Nothing in this clause 10.1.13 will excuse the Purchaser from its payment obligations.

## 12. Default events

12.1 The Purchaser will be in default of this Agreement if:

12.1.1 the Purchaser does not pay any amount to the Supplier under this Agreement on the due date as contemplated in 6.2;

12.1.2 the Purchaser breaches and of the terms and conditions of this Agreement or any agreement in terms of which the Purchaser provided security to the Supplier, and the Purchaser fails to remedy the breach within seven days of receiving written notice to do so;

12.1.3 any representation or warranty made in connection with this Agreement or any other documents supplied by the Purchaser is materially incorrect or false;

12.1.4 any person who furnished security to the Supplier in respect of this Agreement (eg as surety, guarantor or pledgor), commits any breach of its obligations to the Supplier in terms of that Agreement;

12.1.5 the Purchaser or any person who furnished security in respect of this Agreement;

(a) being an individual:

(i) publishes notice of the voluntary surrender of his estate or dies;

(ii) is placed under administration or commits an act of insolvency as defined in the Insolvency Act, 1936;

(iii) has any application or other proceedings brought against or in respect of him in terms of which he is sought to be sequestrated or placed curatorship, in any event whether provisionally or finally and whether voluntarily or compulsory;

(b) not being an individual:

(i) is wound up, liquidated, dissolved, deregistered, in any event whether provisionally or finally and whether voluntarily or compulsory, or passes a resolution providing for any such event;



(ii) is deemed to be unable to pay its debts;

(iii) resolves that it voluntarily begin business rescue proceedings or has business rescue proceedings commenced against it, as contemplated in section 132(1) of the Companies Act, 2008;

(iv) has a judgement of a competent court against the Purchaser or any person who has furnished security for the Purchaser for the attachment of assets or for payment of any amount is not satisfied for more than seven days after the date on which it is issued; or

(v) compromises or attempts to compromise with the Purchaser's creditors generally or defer payment of debts owing by the Purchaser to the Purchaser's creditors.

12.2 If the Purchaser is in default and this Agreement is subject to the NCA, the Supplier may:

12.2.1 give the Purchaser written notice of such default and may propose that the Purchaser refer this Agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that the Parties resolve any dispute under this Agreement or develop and agree on a plan to bring repayments up to date;

12.2.2 commence legal proceedings to enforce this Agreement including exercising its rights in terms of any of the securities and recover collection costs and default administration charges as defined in the NCA if:

(a) it has given the Purchaser notice as referred to in clause 12.2.1 or it has given notice to terminate any debt review process under section 86 of the NCA which may then be underway in respect of this Agreement;

(b) the Purchaser is and has been in default under this Agreement for at least 20 business days; and

(c) at least 10 business days have lapsed since the Supplier delivered notice contemplated in clause (a).

12.3 If the Purchaser is in default of this Agreement and this Agreement is not subject to the NCA, the Supplier may exercise its rights, as may be permissible in law and without prejudice to any of the Supplier's other rights, which include any one or more of the following:

12.3.1 suspending the delivery and provision of goods;

12.3.2 demanding immediate payment of overdue amounts;

12.3.3 terminating this Agreement; and

12.3.4 enforcing any security furnished in respect of the Agreement.

12.4 The Purchaser will be liable for all legal costs, as may be permissible in law, in recovering any amount that the Purchaser owes the Supplier.

12.5 A certificate signed by a manager of the Supplier, specifying the amount owing by the Purchaser and further stating that such amount is due, owing, and payable by the Purchaser, will be sufficient prima facie proof of the amount thereof and of the fact that such amount is so due, owing and payable for the purpose of obtaining provisional sentence or other judgment against the Purchaser in any competent court. It will not be necessary to prove the appointment of the person signing any such certificate.



## 13. Intellectual Property Rights

- 13.1 The Supplier reserves all intellectual property rights in its goods (including, without limitation, trademarks, copyrights, domain names, patents, design rights, neighbouring rights and data base rights) and its trade names. The Purchaser undertakes not to use, register or make available to any third party such intellectual property rights without the Supplier's explicit prior written approval.
- 13.2 In the event of any third-party claim against the Purchaser for infringement of intellectual property rights arising directly from the use or sale of the goods by the Purchaser, the Supplier may at its own expense conduct any ensuing litigation and all negotiations for a settlement of the claim. The Supplier will bear the costs of any payment (either by way of a lump sum or a continuing royalty payment) to be made in settlement or as a result of an award in a judgment against the Supplier in the event of litigation.
- 13.3 The benefit of clause 13.2 is granted to the Purchaser by the Supplier only in the event that the Purchaser (i) gives the Supplier prompt notice in writing of any such claim being made or action threatened or brought against it, (ii) takes reasonable steps to mitigate any losses or damages incurred as a result of the claim, (iii) makes no admission of liability or takes any other action in connection therewith, (iv) permits the Supplier to handle the claim pursuant to clause 13.2, and (v) will (at the Supplier's expense, to the extent reasonable) give all reasonable information, cooperation and assistance to the Supplier in relation to the handling of the claim. In addition, if it is made a condition of any settlement made by the Supplier, or judgment awarded against the Purchaser, the Purchaser will return or destroy, as applicable, all infringing goods still under its control subject to a refund by the Supplier of any price already paid for such goods.
- 13.4 The Purchaser will not:
- 13.4.1 make any modification to the goods or their packaging;
  - 13.4.2 use any of the Supplier trademarks in conjunction with any other trademark;
  - 13.4.3 use any of the Supplier trademarks except precisely in the form in which it is registered;
  - 13.4.4 use any of the Supplier trademarks as part of a business or trade name in the conduct of any portion of the Purchaser's business;
  - 13.4.5 use any of the Supplier trademarks in any way that might prejudice the distinctiveness or validity of the trademarks or the goodwill of the Supplier and/or its affiliates therein, or authorize any third party to do the same;
  - 13.4.6 use in connection with the goods any trademarks other than the Supplier trademarks without obtaining the prior written consent of the Supplier;
  - 13.4.7 operate a web site that includes in its URL any Supplier trademark, or any similar trademark or trade name that could be misleading to consumers;
  - 13.4.8 use any Supplier trademark on a web site without prior written approval from the Supplier.
- 13.5 The Supplier will be entitled to cancel any and all Orders in case of an (alleged) infringement by the Purchaser of the Supplier's intellectual property rights, including similar claims with respect to know how, unfair competition etc.

## 14. Limitation of Liability

- 14.1 The Supplier will not be liable for losses sustained by the Purchaser in connection with third party claims or legal actions or for any costs, damages, legal fees, interests and/or other liabilities sustained by the Purchaser



in connection therewith, including but not limited to lost profits, costs of procuring of substitute goods, loss of goodwill, business, contracts, anticipated savings and/or loss of data or system use, in each case whether direct or indirect or general or special or consequential.

- 14.2 The Supplier's liability to the Purchaser will in any case be limited to the amount invoiced for the goods in relation to the Order that gave rise to the liability, irrespective of the legal basis for such liability, and will furthermore be limited to direct losses only.
- 14.3 Notwithstanding any other provisions to the contrary in the Agreement, the Supplier will not be liable for any loss of any nature arising from the Purchaser providing incorrect product specifications to the Supplier for the manufacture and supply of the goods.
- 14.4 The limitations of liability set forth in clauses 14.1 and 14.2 will not apply in case damage resulted from gross negligence or wilful misconduct of the Supplier's senior management or where liability cannot be excluded or limited under applicable product liability law or other mandatory laws.
- 14.5 Each party expressly acknowledges its duty to mitigate any damages that it may incur or suffer in relation to the performance and/or breach of the Order by the other party.

## 15. Personal information

- 15.1 During the interaction between the Supplier and the Purchaser, the Supplier may collect and process the Purchaser's personal information (as defined in the Protection of Personal Information Act, 2013). In certain circumstances, the Purchaser's submission of its personal information may be necessary for the Purchaser to purchase goods, use the Supplier's services, or access the Supplier's Website.
- 15.2 All personal information provided by the Purchaser to the Supplier is given voluntarily. However, if the data requested is withheld, the Supplier may be unable to open an account for the Purchaser.
- 15.3 By concluding this Agreement, the Purchaser agrees that:
- 15.3.1 the Supplier may process the data for purposes of establishing the purchaser's credit rating;
- 15.3.2 the Supplier may collect the data from, and disclose the data to, credit control companies, banks and other institutions involved in rating credit;
- 15.3.3 the Supplier may carry out reference checks with third parties to determine the Purchaser's creditworthiness and may collect the data from, and disclose the data to, those third parties for this purpose; and
- 15.3.4 the Supplier will not be responsible for any loss resulting from the good faith disclosure of any of the data to such third parties.
- 15.4 The Purchaser must be authorised to provide any personal information of third parties to the Supplier. In doing so, the Purchaser indemnifies the Supplier against any losses by or claims made against it as a result of the Purchaser not having the required authorisation.
- 15.5 The Purchaser must ensure that all information provided to the Supplier is correct and updated from time to time and when necessary.

## 16. Anti-bribery and corruption

- 16.1 The Supplier has a legal duty to verify the identity of all its Purchasers and, in the case of a corporate Purchaser, to establish their beneficial owners, by obtaining satisfactory evidence of identity. The precise nature



of the evidence required will vary according to the circumstances, including the nature of the Purchaser's organisation or trading vehicle.

- 16.2 The Supplier will set out the requirements of the information and documents required in order to process the Application.
- 16.3 The Purchaser warrants that it is not in breach of any South African or international money-laundering, bribery or corruption laws and that neither it, nor any of its controlling entities up to the ultimate beneficial interest holder are listed on any local or international sanction list.
- 16.4 The Purchaser acknowledges that breach of the warranty in clause 16.3 will allow the Supplier to terminate the relationship with the Purchaser with immediate effect and cancel any existing or outstanding orders.
- 16.5 The Purchaser will indemnify the Supplier against any loss, cost, damages, expense or liability arising from, or in connection with, breach of the provisions of this clause 16.

## 17. Confidentiality

- 17.1 The Purchaser acknowledges that it may have access to information owned or controlled by the Supplier or the Supplier's affiliates, disclosure of which would cause substantial or irreparable harm to the Supplier (Confidential Information). Confidential Information includes the Supplier's marketing plans, information regarding future releases of the Supplier good, and any other non-public material disclosed to the Purchaser or to which the Purchaser gains access. The Purchaser will protect the Supplier's Confidential Information by using the same degree of care with respect to such information that it would exercise with its own confidential information or trade secrets, but in any event no less than reasonable care. The Purchaser will make Confidential Information available only to those employees of the Purchaser who need to know the information in connection with the Purchaser's business, and will not disclose Confidential Information to any third party.
- 17.2 The Purchaser will immediately notify the Supplier in writing if it receives a request from any third party for an interview or statement about the Supplier or the Supplier goods. The Purchaser will not answer questions or give statements about its relationship with the Supplier or discuss the Supplier goods under circumstances where the Purchaser knows or has reason to believe that the purpose of the request is to create content for publication in film, television, radio, print or online media, including blogging. The Purchaser will not hold itself out as a representative of the Supplier in any interview or statement, whether or not it is recorded, and whether or not it is intended for such publication.
- 17.3 If the Purchaser chooses to submit to the Supplier or share with the Supplier any business plans, product or marketing ideas, or other materials, the Purchaser agrees that:
- 17.3.1 the Supplier is not subject to any restrictions in using such materials; the Purchaser hereby grants to the Supplier an irrevocable license to use such materials, without compensation to the Purchaser; and
- 17.3.2 the Supplier is under no obligation to use such plans, ideas, or other materials, or to commercially exploit them in any territory.

## 18. Changes to the Terms and Conditions

- 18.1 The Supplier may change these Terms and Conditions from time to time by making available a new version of the Terms and Conditions to the Purchaser, either by providing the new version to the Purchaser directly, or by publishing the new version the Supplier's website. The Purchaser acknowledges and agrees that any changes to the Terms and Conditions will become effective immediately unless indicated by the Supplier otherwise.



## 19. Applicable Law and Jurisdiction

- 19.1 The relationship between the parties, including the Agreement, will be governed in all respects by the laws of The Republic of South Africa. Applicability of the Convention on Contracts for the International Sale of Goods is excluded.
- 19.2 In terms of section 45 of the Magistrates' Court Act, 1944, the Purchaser consents to the jurisdiction of any Magistrate's Court in the area which the Purchaser resides or works, notwithstanding the amount involved. This does not prevent the Supplier from bringing legal proceedings in a High Court that has jurisdiction.

## 20. Addresses for notices

- 20.1 Any notice, consent, approval or other communication in connection with the Agreement (Notice) will be in writing in English.
- 20.2 Addresses
- 20.2.1 The Purchaser chooses its physical address and email address as set out in the Application as the address to which any Notice must be sent.
- 20.2.2 The Supplier chooses Cnr Diesel & Furnace Roads, Isando, 1601, South Africa and d.lincoln@pandrol.co.za as the address to which any Notice must be sent.
- 20.3 Effective on receipt
- 20.3.1 Any Notice takes effect when received by the recipient (or on any later date specified in the Notice) and, unless the contrary is proved, is deemed to be received:
- (i) on the day of delivery, if delivered by hand to a responsible person at the recipient's physical address. If delivery is not on a business day, or is after ordinary business hours on a business day, the Notice is deemed to be received on the business day after the date of delivery; and
  - (ii) on the first business day after the date of transmission, if sent by email to the recipient's email address.
- 20.3.2 Despite anything to the contrary in this Agreement, a Notice actually received by the Purchaser or Supplier is effective even though it was not sent, or delivered, or sent and delivered to its address.
- 20.4 Service of legal process
- 20.4.1 Each of the Purchaser or Supplier chooses its physical address referred to in clause 20.2 as its address at which legal process and other documents in legal proceedings in connection with this Agreement may be served (domicilium citandi et executandi).
- 20.4.2 The Purchaser or Supplier may by Notice to the other party change its address at which legal process and other documents in legal proceedings in connection with this Agreement may be served to another physical address in South Africa.

## 21. Indulgence

- 21.1 No indulgence, latitude or extension of time which the Supplier may allow the Purchaser will be regarded to be a waiver of rights by the Supplier or a novation of the Purchaser's liabilities under this Agreement.



## 22. Severability

22.1 If any term or condition of this Agreement becomes unenforceable for any reason whatsoever, that term or condition is severable from and will not affect the validity of any other term or condition in this Agreement.

## 23. Whole agreement

23.1 The terms and conditions of this Agreement may not be amended, changed or cancelled unless it is reduced to writing and signed by both parties.

# PANDROL

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