

DOC NO	KAP-LEG-AG-15
REVISION NO	02
AUTHOR	SASHNI SEWLAL
APPROVED BY	LYNETTE SITHAMBARAM
APPROVAL DATE	20.10..2025

Standard Terms and Conditions for the Supply of Services and Goods to FELTEX

(Refer [Annex A](#) for full listing of applicable trading entities)

PART I

1. INTERPRETATION

In these Terms and Conditions, clause headings are for convenience and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention, -

- 1.1 an expression which denotes -
 - 1.1.1 any gender includes the other genders;
 - 1.1.2 a natural person includes an artificial or juristic person and vice versa;
 - 1.1.3 the singular includes the plural and vice versa;
- 1.2 the following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –
 - 1.2.1 "Agreement" means the agreement between the Parties as recorded in these Terms and Conditions, read with the applicable Transaction Documents;
 - 1.2.2 "Feltex" means the parties defined in Annexure A as Trading entities and BU with Plants.
 - 1.2.3 "Causal Event" means for the purposes of clause 28.2;
 - 1.2.3.1 a compromise or composition or threatened compromise or composition by the Supplier with its creditors;
 - 1.2.3.2 provisional or final liquidation of the Supplier or placement of the Supplier in judicial management, whether provisionally or finally;
 - 1.2.3.3 in circumstances where there is a cessation or a reasonable prospect of default or cessation (as the case may be) of the Supplier's normal line of business;
 - 1.2.3.4 commitment of any act or omission which would, in the case of an individual, be an act of insolvency in terms of the Insolvency Act, 1936 (as amended);
 - 1.2.3.5 disposal by the Supplier of a material portion of its undertaking or assets; or
 - 1.2.3.6 any change in the control (as defined in the Companies Act, 2008 or any replacement Act) or material change in the shareholding of the Supplier. The Causal Events set forth in sub clauses 1.2.3.4, 1.2.3.5 and 1.2.3.6 are subject to the further qualification that they shall only be considered Causal Events where Feltex, acting in good faith, considers such events to be detrimental to it for sound business reasons;
 - 1.2.4 "Confidential Information" means any information which is peculiar to Feltex or any third party, is not readily available to any other third party and/or which is by its nature or content is identifiable as confidential and/or proprietary to Feltex and/or any third party or which is provided or disclosed in confidence; and which Feltex or any person acting on its behalf may disclose or provide to the Supplier or which may come to the knowledge of the Supplier by whatsoever means. Feltex's Confidential Information shall include without limitation
 - 1.2.4.1 information relating to Feltex's strategic objectives and planning for both its existing and future business needs;
 - 1.2.4.2 information relating to Feltex's business activities, business relationships, client and supplier details, products, services and Staff;
 - 1.2.4.3 Feltex's technical, scientific, commercial, financial and market information and trade secrets;
 - 1.2.4.4 Feltex's data concerning demonstrations, processes and machinery;
 - 1.2.4.5 Intellectual Property that is proprietary to Feltex or that is proprietary to a third party and in respect of which Feltex has rights of use or possession;
 - 1.2.4.6 Feltex's plans, designs, drawings, functional and technical requirements and specifications;
 - 1.2.4.7 information concerning faults or defects in Feltex's systems, plant or equipment or the incidence of such faults or defects;
 - 1.2.4.8 agreements to which Feltex is a Party; and
 - 1.2.4.9 all methodologies, formulae and related information and trade secrets in Feltex's business and industrial processes. Confidential Information excludes information or data which:
 - 1.2.4.9.1 is lawfully in the public domain at the time of disclosure to the Supplier; or
 - 1.2.4.9.2 becomes lawfully part of the public domain by publication or otherwise, other than by breach of this Agreement; or
 - 1.2.4.9.3 subsequently becomes available to the Supplier from a source other than Feltex which is lawfully entitled without any restriction on disclosure to disclose such Confidential Information to the Supplier; or

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- 1.2.4.9.4 is disclosed pursuant to a requirement or request by operation of law, regulation or court order; provided that the onus shall at all times rest on the Supplier to establish that such information falls within such exclusions and provided further that the information disclosed in terms of these Terms and Conditions will not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in a Party's possession. Any combination of features will not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in a Party's possession but only if the combination itself and the principal of operation are in the public domain or in a Party's possession. The determination of whether information is Confidential Information shall not be affected by whether or not such information is subject to, or protected by, common law or statute related to copyright, patent, trademarks or otherwise;
- 1.2.5 "Contract Documents" means these Terms and Conditions, all Transaction Document(s) executed under these Terms and Conditions, as each may be amended from time to time and any addenda, schedules or annexes to these Terms and Conditions, and/or the Transaction Document(s);
- 1.2.6 "Deficiency" means with respect to a Deliverable:
- 1.2.6.1 any error, problem, non-conformity or defect resulting from a deviation from the documentation for such Deliverable;
- 1.2.6.2 any other error, problem, non-conformity or defect that impacts the use or performance of the Deliverable where the Deliverable is used or performs in the environment defined for its use or performance; or
- 1.2.6.3 incorrect or incomplete documentation;
- 1.2.7 "Deliverable" means any performance owed by the Supplier to Feltex in terms of this Agreement;
- 1.2.8 "Goods" means any items supplied to Feltex by the Supplier as provided for in Sections A and C;
- 1.2.9 "Indemnitee" being the Party, other than the Indemnitor, to the extent that it relies upon the indemnity of the Indemnitor in terms of these Terms and Conditions;
- 1.2.10 "Indemnitor" being either of the Parties referred to in clause 1.2.15 to the extent that it indemnifies the other in terms of these Terms and Conditions;
- 1.2.11 "Intellectual Property" means any: know-how (not in the public domain); invention (whether or not patented); design, trade mark or copyright material (whether or not registered). For the purposes of this definition, "copyright material" means any material in which copyright subsists;
- 1.2.12 "Law" means all laws, national, provincial and/or local enactments, regulatory directives, instructions, policies, codes of conduct, rules and/or orders applicable to the Goods or Services;
- 1.2.13 "Loan Equipment" means any equipment, which either Party has lent to the other, regardless as to whether such loan is regulated in terms of a Transaction Document, other than Goods loaned in terms of clause 43;
- 1.2.14 "Losses" means all losses, liabilities, damages and claims, and all costs and expenses (including legal charges on the scale as between attorney and own client, tracing and collection charges, costs of investigation, interest and penalties);
- 1.2.15 "Parties" mean the parties to the applicable transaction, being Feltex and the Supplier, and "Party" shall refer to any one of them;
- 1.2.16 "Purchase Order" means a written document issued by Feltex and delivered to the Supplier, which governs the purchase of Goods and Works by Feltex in terms of these Terms and Conditions;
- 1.2.17 "Relationship Manager" means one individual designated by each Party in writing to the other to whom all communications regarding these Terms and Conditions will be addressed. Either Party may replace such individuals from time to time on reasonable prior written notice;
- 1.2.18 "Services" means the services, functions and responsibilities, as defined in the Service Orders, rendered to Feltex by the Supplier and as they may be supplemented, enhanced, modified or replaced in accordance with the terms of these Terms and Conditions;
- 1.2.19 "Service Order" means a written document issued by Feltex and delivered to the Supplier, which governs the supply of Services to Feltex in terms of these Terms and Conditions;
- 1.2.20 "Staff" means any employee, independent contractor, agent, consultant, sub-contractor or any representative of either Feltex, the Supplier or both, as the context requires;
- 1.2.21 "Supplier" means the Party defined as such in the official Purchase Order from Feltex
- 1.2.22 "Termination/Expiration Assistance" means the provision of the Supplier of all reasonable information and assistance to Feltex to enable Feltex or a third party designated by Feltex to take over the Supplier's obligations under any Contract Document in the event of termination or expiration of this Agreement or any Transaction Document for any reason whatsoever;
- 1.2.23 "Transaction Documents" means Service Orders or Purchase Orders, executed in terms of clause 3 hereunder;
- 1.2.24 "VAT" means value-added tax in terms of the Value-added Tax Act, No. 89 of 1991; and
- 1.2.25 "Works" means any Deliverable which is in the nature of an installation, construction, assembly or similar work delivered in whole or partly in consequence of the issuance of a Purchase Order;
- 1.3 Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause 1 or elsewhere in these Terms and Conditions, shall be given effect to as if it were a substantive provision in the body of these Terms and Conditions.
- 1.4 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout these Terms and Conditions.
- 1.5 Defined terms appearing in these Terms and Conditions in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning. Where any term

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is defined within the context of any particular clause in these Terms and Conditions the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of these Terms and Conditions, notwithstanding that that term has not been defined in this interpretation clause.

- 1.6 A reference to any statutory enactment shall be construed as a reference to that enactment as at the Purchase Order Date and as amended or substituted from time to time.
- 1.7 Reference to "days" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" shall be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time. Any reference to "business hours" shall be construed as being the hours between 08h00 and 17h00 on any business day. Any reference to time shall be based upon South African Standard Time.
- 1.8 Reference to day/s, month/s or year/s shall be construed as Gregorian calendar day/s, month/s or year/s.
- 1.9 Unless specifically provided otherwise, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 1.10 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 1.11 No provision herein shall be construed against or interpreted to the disadvantage of a Party by reason of such Party having or being deemed to have structured, drafted or introduced such provision.
- 1.12 The expiration or termination of this Agreement shall not affect such of the provisions of these Terms and Conditions as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.13 The use of any expression in these Terms and Conditions covering a process available under South African law, such as winding-up, shall, if any of the Parties to these Terms and Conditions is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.
- 1.14 The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.15 Whenever any person is required to act "*as an expert and not as an arbitrator*" in terms of these Terms and Conditions, then –
 - 1.15.1 the determination of the expert shall (in the absence of error) be final and binding but subject to clause 1.15.6;
 - 1.15.2 subject to any express provision to the contrary, the expert shall determine the liability for his or its charges, which shall be paid accordingly;
 - 1.15.3 the expert shall be entitled to determine such methods and processes as he or it may, in his or its sole discretion, deem appropriate in the circumstances provided that the expert may not adopt any process which is manifestly biased, unfair or unreasonable;
 - 1.15.4 the expert shall consult with the relevant Parties (provided that the extent of the expert's consultation shall be in his or its sole discretion) prior to rendering a determination;
 - 1.15.5 having regard to the sensitivity of any Confidential Information, the expert shall be entitled to take advice from any person considered by him or it to have expert knowledge with reference to the matter in question; and
 - 1.15.6 to the extent that the decision of the expert is in manifest error, the Parties shall be entitled to appeal such decision in terms of the Arbitration Foundation of Southern Africa ("AFSA") rules for commercial arbitration.
- 1.16 Any reference in these Terms and Conditions to "these Terms and Conditions" or to any Contract Document, as the case may be, shall be a reference to these Terms and Conditions or that Contract Document, as amended, varied, novated or supplemented from time to time.
- 1.17 These Terms and Conditions incorporate the annexes hereto, which annexes shall have the same force and effect as if set out in the body of this Agreement. In this Agreement the word "clause" or "clauses" and "annex" or "annexes" refer to clauses of and annexes to this Agreement.

2. STRUCTURE OF THESE TERMS AND CONDITIONS

- 2.1 Unless otherwise agreed in writing, the provisions of these Terms and Conditions are applicable to all the Suppliers of Goods and Services to Feltex.
- 2.2 Any deviation from these Terms and Conditions must be recorded in writing and signed in order to be effective against either Party. Any Supplier terms and conditions stated upon a quotation, an invoice, a proposal or any other contractual document furnished by the Supplier to Feltex shall be of no force or effect unless specifically identified and recorded as such and signed by both Parties save for the **Supplier Quality Management Agreement (separate agreement) or the Feltex Quality Standard Requirements (Annexure C)**.
- 2.3 These Terms and Conditions shall be binding upon the Parties with effect from the Purchase Order Date.
- 2.4 These Terms and Conditions consist of three parts, namely:
 - 2.4.1 Section A. being the general terms and conditions;
 - 2.4.2 Section B. being the terms and conditions applicable to the provision of Services by the Supplier to Feltex other than labour supply services; and
 - 2.4.3 Section C. being the terms and conditions applicable to the supply of Goods by the Supplier to Feltex;
- 2.5 The provisions of Section A shall be applicable to all the Suppliers regardless of the Goods and/or Services which they may provide to Feltex. To the extent that the Supplier is engaged in, any of the categories of the supply or service provision contemplated in clauses 2.4.2 or 2.4.3 of these Terms and Conditions shall regulate such activities.

3. TRANSACTION DOCUMENT(S)

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- 3.1 Any provision of Services in terms of Section A and B of these Terms and Conditions shall be contracted for in terms of the Service Order executed hereunder. Service Orders shall be governed by these Terms and Conditions.
- 3.2 Any supply of Goods in terms of Section A and C of these Terms and Conditions shall be contracted for in terms of a Purchase Order executed hereunder. Purchase Orders shall be governed by these Terms and Conditions.
- 3.3 The terms and conditions set forth in a Transaction Document shall not be effective until such Transaction Document is executed by both Parties in accordance with these Terms and Conditions. Unless otherwise agreed between the Parties in writing, Feltex shall not be liable for any Goods and/or Works supplied or Services undertaken by the Supplier unless it is set forth in an executed Transaction Document, failing which all such Services and Goods shall be supplied at the Supplier's own risk and cost.
- 3.4 A duly executed Transaction Document may amend the terms and conditions of these Terms and Conditions only with respect to the subject matter of that Transaction Document and provided that the Transaction Document expressly identifies the clause(s) contained in these Terms and Conditions that is being amended and explicitly states that it is the intent of the Parties to amend such clause.
- 3.5 The **Supplier Quality Management Agreement (separate agreement) or the Feltex Quality Standard Requirements (Annexure C)** will be applicable for all suppliers of raw materials. In the event of conflict between this Agreement and the Supplier Quality Management Agreement, the latter will control.
- 3.6 In the event that the Supplier is required to conduct any work pursuant to the Agreement and/or Transaction Documents at any Feltex site, then the Supplier will be required to sign the Contractors Rules, Liability and Undertaking (separate agreement) prior to the commencement of such work.
- 3.7 Save as provided for in clause 3.4, 3.5 and 3.6, in the event of any conflict between the provisions of these Terms and Conditions and any other Transaction Documents, these Terms and Conditions shall apply.

PART II

Section A. General Terms and Conditions

4. THE SUPPLIER'S DUTIES

- 4.1 Without limiting and in addition to the warranties and indemnities by the Supplier in terms of clauses 13 and 15, the Supplier shall, to the extent possible and permissible, cede to Feltex the benefits of warranties and indemnities received from third party manufacturers, lessors or licensors of items supplied to Feltex under any agreements between the Supplier and such manufacturers, lessors or licensors. In order to give due and proper effect to the terms of this clause, the Supplier undertakes, as and when requested by Feltex in writing, to execute all such instruments and to do all such things as may be necessary (and to the extent that the Supplier is permitted) to effect the cession and in the event of the Supplier failing to comply promptly with any such request, the Supplier hereby irrevocably nominates, constitutes and appoints Feltex to be its agent, with power to sign all such documents and do all such acts, matters and things as may be necessary to effect the cession. If the cession contemplated in this clause 4.1 is not affected as contemplated, then the Supplier shall enforce such warranties and indemnities as reasonably directed by Feltex and at the cost of Feltex. The Supplier shall comply with all terms and conditions of agreements with such manufacturers, lessors or licensors.
- 4.2 Notwithstanding the foregoing, the Supplier acknowledges that, in all its negotiations and agreements with such manufacturers, lessors or licensors, it is obliged to apply its best endeavors to ensuring that all such warranties and indemnities are capable of cession. To the extent that this is not possible, the Parties shall co-operate to achieve an alternative arrangement acceptable to both Parties.
- 4.3 Feltex shall be entitled, by giving no less than 2 (two) business days written notice thereof to the Supplier's Relationship Manager setting out full and precise reasons, to require the Supplier to reconsider the deployment of any member of the Supplier Staff who, in its reasonable opinion, is failing to perform his duties in a satisfactory manner. The Supplier shall investigate the complaint and shall, if it is able to rectify the conduct of that member of the Supplier Staff within 2 (two) business days of its receipt of such complaint, do so, failing which it shall ensure that such Staff member is withdrawn from the provision of the Services. The foregoing notwithstanding, where in Feltex's reasonable opinion, circumstances warrant an accelerated process in terms of this clause 4.3, the time periods set out above may be adjusted.
- 4.4 The Supplier undertakes to use its best endeavors to ensure that it complies in all respects with any Laws and in terms of any guidelines in respect of corporate governance.
- 4.5 The Supplier undertakes that it shall ensure:
 - 4.5.1 that it and its Staff shall adhere to Feltex security policies of general application to Feltex Staff;
 - 4.5.2 that it and its Staff shall, while on Feltex premises, conduct themselves in a manner, which is appropriate to the context of a well-managed corporate environment and is appropriately respectful to the interests of all Staff.
- 4.6 Should Feltex at any time have reason to believe that any member of the Supplier's Staff is failing to comply with its obligations in terms of any Contract Document or with any of Feltex's policies or procedures in place from time to time, or that Staff member poses a threat or risk to Feltex, Feltex shall be entitled to deny such Staff member access to any or all of Feltex's premises and require the Supplier to withdraw such member of Staff from the Supplier's provision of Services to Feltex without delay. Within 7 (seven) days of receipt of a written request from the Supplier, Feltex shall furnish the Supplier with a written report setting forth the reasons for its demand in terms of this clause.
- 4.7 The Supplier shall procure that Staff who no longer requires a right of access to Feltex premises or any part thereof for the performance of their Services shall immediately return all access cards, security codes and any other like Feltex property to Feltex.
- 4.8 The Supplier shall undertake the Services in compliance with the requirements set forth in the Transaction Documents.
- 4.9 The Supplier undertakes to apply reasonable endeavors to immediately bring to Feltex's attention any act or omission of it or Feltex or either of their Staff, which may impact the provision of the Services or the supply of the Goods.

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- 4.10 The Supplier shall be responsible for developing and maintaining up-to-date documentation and reports required in terms of the Transaction Documents or otherwise pertaining to the Services and/or Goods provided to Feltex. The form and substance of the Documentation and/or reports (including any updates thereto), shall be specified in the applicable Transaction Document or shall be requested in writing by Feltex from time to time.
- 4.11 The Supplier shall attend, and procure the attendance of its Staff, at all meetings required in terms of the Transaction Documents or as reasonably requested by Feltex from time to time.
- 4.12 The Supplier shall be available to provide the Services and/or deliver the Goods during business hours on business days. Any change of the hours in terms of this clause must be agreed in writing by both Feltex and the Supplier. Specific timing shall be set out in the Transaction Document.

5. FELTEX'S DUTIES

- 5.1 Feltex shall grant the Supplier reasonable access to data, information, equipment and facilities, as reasonably required by the Supplier in order to perform its duties and obligations in terms of this Agreement
- 5.2 Feltex shall allow the Supplier's Staff to make reasonable use of Feltex's resources and facilities as are necessary for it to perform its duties and obligations in terms of this Agreement including a lay down area, ablution facilities, telephone and fax connection points, water and electricity supplies, and other such reasonably and necessarily required resources at the Feltex premises.
- 5.3 Feltex shall ensure that the Supplier is afforded such reasonable assistance by Feltex Staff as is reasonably required by the Supplier to effectively perform its duties and obligations in terms of this Agreement provided that adequate written notice of such requirement is given.

6. THE SUPPLIER TESTING

- 6.1 Prior to performing Services or delivering any Goods or any other Deliverable to Feltex, the Supplier shall submit to Feltex for its review and approval its pre-acceptance testing plan. The Supplier shall perform all testing required in accordance with the pre-acceptance testing plan approved in writing by Feltex.
- 6.2 If the Supplier is responsible for installation and/or implementation of any Goods or Deliverables under the applicable Transaction Document, the Supplier shall timeously implement and/or install such Goods and Deliverables and verify that the Goods or Deliverables have been properly implemented in terms of the Transaction Document or otherwise.
- 6.3 The pre-delivery testing plan shall be sufficiently rigorous to identify any Deficiencies that are reasonably discoverable.
- 6.4 The Supplier shall promptly remedy any Deficiencies identified during such pre-delivery testing and retest the Goods, Services or Deliverables in accordance with that plan to verify that the Deficiency has been successfully remedied and that there are no other Deficiencies. The Supplier shall repeat this testing and remedial process until the pre-delivery testing required under this clause 6 is accomplished without revealing any Deficiencies.

7. INSPECTION

Feltex shall be entitled to inspect the Goods and Services at the premises of the Supplier and/or its sub-contractors at all reasonable times. The Supplier shall, when requested by Feltex, make the necessary arrangements for such access by Feltex. Failure to inspect the Goods shall in no way impair Feltex's rights under the common law or that set out in this Agreement, nor is deemed to constitute acceptance by Feltex of the Goods or Services, notwithstanding Feltex's opportunity to carry out such inspection or the ease of discovery of the Deficiency.

8. ACCEPTANCE TESTING AND ACCEPTANCE (QUALITY CONTROL)

- 8.1 Prior to the date on which the Supplier is scheduled to deliver any Goods, Services or other Deliverables, the Supplier shall, develop and present to Feltex for its review and approval an appropriate set of written acceptance criteria for Feltex's use in the acceptance testing of such items.
- 8.2 The Supplier shall present to Feltex for its review and approval the acceptance criteria sufficiently in advance of its presentation to Feltex of the items so that Feltex has a reasonable period of time to review the acceptance criteria in detail, determine the adequacy of the acceptance criteria to evaluate whether they meet Feltex's requirements, and provide its comments to the Supplier.
- 8.3 If Feltex does not approve the acceptance criteria, Feltex shall as soon as is practicable notify the Supplier thereof in writing and provide the Supplier with a sufficiently detailed written description of the reasons for its decision to reject the acceptance criteria to enable the Supplier to correct the same.
- 8.4 The Supplier shall as soon as is practicable (i) revise the acceptance criteria to address Feltex's concerns, resubmit to Feltex the acceptance criteria for Feltex's review and approval; or (ii) where appropriate, furnish Feltex with a written explanation, to Feltex's satisfaction, of the adequacy of the acceptance criteria.
- 8.5 The acceptance criteria shall be fully documented by the Supplier and shall, as a minimum, ensure that:
 - 8.5.1 the items do not contain any Deficiencies;
 - 8.5.2 the items satisfy Feltex's stated business needs based upon functional and technical specifications in respect thereof as defined in the applicable Transaction Document as of the later of the Purchase Order Date of the applicable Transaction Document and the date that Feltex requests that the Supplier produce such item, or if no such specifications are stated, that the item is fit for the purpose for which it was purchased by Feltex,
 - 8.5.3 the item successfully undergone a security audit; and
 - 8.5.4 the timeframes applicable for acceptance testing by Feltex of the item.
- 8.6 The Supplier acknowledges that any Goods, other Deliverables, or any Services provided to Feltex require formal acceptance by Feltex, which can only be accomplished in accordance with this clause 8. Upon successful completion of all requirements described in clause 6 and clauses 8.1 to 8.5, the Supplier shall present the items to Feltex at the location designated by Feltex for acceptance testing.

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- 8.7 Feltex shall commence acceptance testing of the Goods or other Deliverables as soon as practical following delivery thereof.
- 8.8 Acceptance testing shall determine whether the delivered items operate in accordance with their specifications and complies with the acceptance criteria, where applicable.
- 8.9 During acceptance testing, the Supplier shall assist Feltex, to the extent necessary and reasonable, in conducting the acceptance testing and respond to any queries relating to the items within a reasonable time.
- 8.10 Without limiting clause 46, the Supplier shall be entitled at any time after a reasonable period of delivery in terms of clause 8.6, given the nature of the acceptance testing, to deliver written notice to Feltex requiring Feltex to identify any part of any item, which contains any Deficiencies, and to provide a documented example of the fault in question. Should Feltex fail to comply with any such notice within 10 (ten) days of receipt thereof, Feltex shall be deemed to have accepted the item.
- 8.11 If, during acceptance testing, Feltex discovers a Deficiency, Feltex shall promptly inform the Supplier in writing thereof. The Supplier shall, at no charge to Feltex, correct each Deficiency within 24 (twenty four) hours of receiving Feltex's notice of such Deficiency, or where it is not reasonably possible to do so, within such longer period as the Parties may agree in writing as reasonably required, provided that the Supplier shall be under no such obligation where the Deficiency arises from the grossly negligent acts, omissions or delays of Feltex.
- 8.12 Upon correction of the Deficiencies, the Supplier shall repeat the process described in clause 8.2 and resubmit the corrected item to Feltex for acceptance testing.
- 8.13 Following acceptance testing, if Feltex does not accept the item it shall give the Supplier written notice of its rejection (including a written and sufficiently detailed description of the Deficiencies in order to enable the Supplier to remedy same) and a final period of 14 (fourteen) days in which to correct the Deficiency. If the Supplier is unable to correct the Deficiency within this period, then Feltex may in its sole discretion elect to:
 - 8.13.1 Direct the Supplier to continue its efforts to make the item comply with the acceptance criteria, in which case the Supplier shall continue such efforts for the period stipulated by Feltex; or
 - 8.13.2 Accept the item with its Deficiencies, in which event the charges with respect to such Goods, Services or other Deliverable shall be equitably reduced to reflect the presence of such Deficiencies; or
 - 8.13.3 Without limiting the generality of Feltex's right to cancel or terminate this Agreement and/or any Transaction Document in terms of these Terms and Conditions, terminate the Transaction Document without liability by written notice to the Supplier, in which case the Supplier shall, at Feltex's request, refund to Feltex all amounts paid by Feltex to the Supplier in terms of the applicable Transaction Document whereupon the Supplier shall be entitled to remove the items from Feltex's premises. Such refund shall be made within 14 (fourteen) days of receiving Feltex's notice.
- 8.14 An upgrade, enhancement or modification to supported/maintained items shall be subject to acceptance testing in terms of this clause 8.

9. DISPUTES ARISING OUT OF TESTING

Should any dispute arise out of or in connection the testing and inspections contemplated in clauses 6 to 8 (including without limitation as to whether or not there is a Deficiency, the adequacy of testing and/or any reduction in price arising out of or in connection with a Deficiency) that cannot be resolved between the Parties within 7 (seven) days of arising, that dispute shall be referred to Mediation and Arbitration in terms of this Agreement.

10. CHARGES

- 10.1 "Charges" shall mean the gross Purchase Price payable by Feltex to the Supplier as consideration for the Goods and/or Services supplied in terms of this Agreement.
- 10.2 The Charges applicable to performing Services or providing Goods under these Terms and Conditions shall be specified in the individual Transaction Documents and shall include, where applicable, all taxes (but shall exclude VAT), duties, and trade discounts but exclude any settlement discounts.
- 10.3 VAT applicable to any Charges payable is to be reflected separately in each Transaction Document. Feltex shall pay all VAT that is payable on the Charges.
- 10.4 In all instances, the Supplier shall deliver to Feltex, within 3 (three) days of a written request from the price computation as substantiated by documentary evidence. Feltex shall not be obliged to pay any Charges until the Supplier has complied with Feltex's request in terms of this clause.
- 10.5 In the absence of any special arrangements to the contrary contained in a Transaction Document, all packaging costs, including the cost of packing materials and containers of whatsoever nature shall be included in the Charges and such packing materials and containers shall upon delivery of the Goods become the property of Feltex. The Supplier shall be liable for any cost, expense, loss or damage suffered by Feltex arising out of or in connection with inadequate packing.
- 10.6 If the Services under a Transaction Document are performed on a time and materials basis, the Supplier will be compensated only for actual hours of work performed by its Staff and such compensation shall be at the rates set forth in the applicable Transaction Document and shall
 - 10.6.1 be deemed to be fully inclusive of all the Supplier's Staff costs, expenses and margins, whether current or future, for rendering the Services including without limitation all salaries paid to Staff, protective and safety clothing, mobilisation and demobilisation costs, compliance with Laws, (including but not limited to, the Supplier's contribution to a of any employee insurance and social security benefits, payroll and income taxes, levies, premiums for insurance and all other contributions and benefits and the costs to the Supplier for its Staff;
 - 10.6.2 be deemed to be inclusive of any and all costs and expenses incurred by the Supplier in establishing and maintaining a supply base/office or any other establishment;
 - 10.6.3 The Supplier shall be deemed to have satisfied itself as regards the sufficiency of its Charges for the Services or Goods as specified in a Transaction Document and all such Charges shall remain fixed for the duration of

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- the applicable Transaction Document unless otherwise specifically provided for in that Transaction Document and agreed in writing by the Parties; and
- 10.6.4 in respect of any time and materials charges levied by the Supplier in respect of work performed by its Staff, all hours for such Staff shall be recorded and authorised in strict accordance with Feltex's time and attendance system.
- 10.7 Third party expenses specifically identified in the Transaction Document shall be treated as "*Pass-Through Expenses*" in accordance with clause 10.11 to the extent that such third party expenses do not exceed the estimate therefore set forth in the Transaction Document. Unless authorised by Feltex in writing, any third party expenses not specifically identified as Pass-Through Expenses (including third party expenses in excess of the estimate set forth in Transaction Document and any expenses for which no estimate was set forth in the Transaction Document) shall be for the Supplier's account. The Supplier shall not incur any third party expense as a Pass-Through Expense without Feltex's prior written consent.
- 10.8 Unless otherwise specified in a Transaction Document, all Charges and Pass-Through Expenses set out in a Transaction Document are inclusive of any export and import tax as at the Purchase Order Date of such Transaction Document.
- 10.9 Unless otherwise agreed in writing, the Supplier will quote all prices in South African Rand.
- 10.10 Both Parties acknowledge that the Charges compensate the Supplier fully for all Services or Goods provided or supplied pursuant to such Transaction Document. Accordingly, Feltex will not be obligated to pay the Supplier any amounts in addition to those specifically described in a Transaction Document.
- 10.11 With respect to any Pass-Through Expenses, the following shall apply:
- 10.11.1 The Supplier shall arrange to receive the invoices for each Pass-Through Expense. As soon as possible following the receipt of an invoice, the Supplier shall review such invoice and determine which charges are valid, reasonable and necessary. The Supplier shall then provide Feltex with such invoice together with a written statement identifying the charges that are, and are not, valid, reasonable and necessary as well as reasons therefore. Payment shall be made directly to the third party by Feltex;
- 10.11.2 The Supplier shall not apply a margin to or otherwise mark-up or charge an administration fee for Pass-Through Expenses;
- 10.11.3 The Supplier shall use commercially reasonable efforts to minimise the cost of Goods and Services provided to Feltex on a Pass-Through Expense basis. With respect to Services or materials paid for on a Pass-Through Expense basis, Feltex reserves the right to: (a) obtain such Services or materials directly from a third party; (b) designate the third party source for such Services or materials; (c) designate the particular Services or materials (e.g., in the case of hardware, make and model) the Supplier shall obtain; (d) require the Supplier to identify and consider multiple sources for such Services or materials or to conduct a competitive procurement; and (e) review and approve the Pass-Through Expense for such Services or materials before entering into a contract for such Services or materials; and (f) materials procured on a Pass-Through Expense basis shall be acquired by the Supplier as Feltex's agent and Feltex shall have all right, title and interest in such materials.

11. ADJUSTMENT TO LONG TERM PRICES/RATES

- 11.1 Should the Goods or Services be provided continuously for a period of more than 1 (one) year, the applicable rates for the duration of the supply of those Goods and Services shall be set out in and appendix to the relevant Transaction Document. This adjustment must be in line with recognised indices and applicable raw material adjustments in the market. Failing agreement between the parties within 8 (eight) weeks from the first discussion, the matter shall be referred to Feltex's auditors for the time being who shall act as experts and not arbitrators.
- 11.2 Should Feltex obtain a bona fide written offer from a third party at the time of the proposed adjustment for the supply of a similar Good or Service at a more advantageous cost or on more advantageous terms, the Supplier will be given a chance to match the third party offer.
- 11.3 However, if the Supplier does not match the third party prices within 30 days after the date of receipt of the alternate offer notification from Feltex, the Agreement may be terminated on giving written notice as contemplated in clause 29 of this Agreement.

12. PAYMENT

- 12.1 The Supplier shall deliver original invoices and monthly statements to Feltex by the end of a calendar month in which the Charges arose. Feltex shall not be obliged to pay in terms of any invoices unless accompanied by original supporting documentation signed and approved for payment by Feltex's authorised representative.
- 12.2 Payment on invoices will be made by Feltex into a bank account nominated by the Supplier in writing no later than 30 days from month end statement less 2.5% settlement discount or 60 days net from month end statement.
- 12.3 Feltex shall not be obliged to pay any invoice or demand for payment received by Feltex more than 90 (ninety) days from the date of expiry or termination of the associated Transaction Document or the completion of performance under that Transaction Document, whichever is the earlier occurring.
- 12.4 The Supplier shall comply with all reasonable written requests by Feltex, from time to time, in connection with its invoices.
- 12.5 The Supplier shall maintain complete and accurate records of, and supporting documentation for the amounts billed to and payments made by Feltex in accordance with generally accepted accounting practices applied on a consistent basis. The Supplier agrees to provide Feltex with all information with respect to each invoice as may be reasonably requested by Feltex to verify accuracy and compliance with the provisions of these Terms and Conditions.
- 12.6 Feltex shall be entitled to set-off any amount that is to be paid by Feltex under these Terms and Conditions, against any amount that the Supplier is obliged to pay Feltex whether under these Terms and Conditions or otherwise.
- 12.7 Subject to clause 12.6, Feltex shall pay undisputed Charges when such payments are due under these Terms and Conditions. Feltex may withhold any amounts that it disputes in good faith, provided that such amount in dispute shall, failing resolution thereof by the Parties within 7 (seven) days of the dispute having arisen, be referred to dispute resolution in terms of clause 31 (Mediation and Arbitration). Any undisputed amount payable by Feltex to the Supplier shall bear

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interest at the prime lending rate charged by the Standard Bank of South Africa Limited from time to time as certified by any branch manager of such Bank whose authority it shall not be necessary to prove, from due date to date of actual payment, both days inclusive.

13. THE SUPPLIER'S WARRANTIES

- 13.1 The Supplier represents and warrants that it shall at all times:
- 13.1.1 use adequate numbers of qualified Staff with suitable training, education, experience and skill to perform the Services;
 - 13.1.2 use and adopt any standards and processes required under Transaction Documents; and
 - 13.1.3 provide the Services and Goods with promptness and diligence, in a competent manner, and in accordance with the practices and high professional standards used in well-managed operations performing services similar to the Services or supplying goods similar to the Goods.
- 13.2 The Supplier represents and warrants that it shall at all times with respect to Services for which the Supplier is compensated on a time and materials basis, use its best efforts to perform the Services in the most cost-effective manner consistent with the level of quality and performance required in terms of these Terms and Conditions and the applicable Transaction Documents.
- 13.3 The Supplier represents and warrants that it shall at all times perform its responsibilities under these Terms and Conditions and under any Transaction Documents in a manner that does not infringe, or constitute an infringement or misappropriation of, any Intellectual Property or other proprietary rights of any third party and have the rights required to meet its obligations under clause 17.
- 13.4 The Supplier represents and warrants that it shall:
- 13.4.1 be authorised to distribute, licence, support and maintain any item provided to Feltex under these Terms and Conditions;
 - 13.4.2 has all the necessary title, licences, certificates, authorisations and consents required in terms of any applicable Laws either of the Republic of South Africa or under any other applicable jurisdiction for the provision of the Goods and/or Services;
 - 13.4.3 that it shall comply with all legal requirements and with the terms and conditions of all licences, certificates, authorisations and consents required for the provision of the Goods and/or Services; and
 - 13.4.4 ensure that upon the date of delivery of any Goods, possession or use of such Goods by Feltex within the territory(ies) in which Feltex takes receipt thereof shall not breach any Law of that territory(ies) or of the territory from which the Goods were sourced.
- 13.5 The Supplier represents and warrants that it shall at all times: (i) ensure that all Goods and Services shall comply with the specifications stipulated in the applicable Transaction Document in terms of which they are supplied or procured and in the case of Goods, terms of the specifications of the original equipment manufacturer; (ii) ensure that any and all spare parts required for the maintenance of Goods shall be available to Feltex within 24 (twenty four) hours of being requested by Feltex and that it shall have access to a supply of all spare parts required for the maintenance of such Goods, for a period of 5 (five) years from the Purchase Order Date of the Transaction Document in terms of which Goods are supplied to Feltex; and (iii) all Goods developed or delivered and Services rendered by the Supplier pursuant to a Transaction Document will be free from Deficiencies and will comply in all respects with the technical and functional specifications therefore as agreed by the Parties and annexed to that Transaction Document and shall be fit for the purpose for which they were purchased by Feltex.
- 13.6 Without in any way detracting from whatever other rights and remedies Feltex may have or any other indemnities in favour of Feltex, the Supplier hereby indemnifies and holds Feltex harmless against any Losses arising out of or in connection with any breach by the Supplier of any warranty or representation in terms of this Agreement.
- 13.7 Without limiting clause 13.6, to the extent that the Supplier fails in any respect to comply with the warranties in clause 13.3, and without in any way detracting from whatever other rights and remedies Feltex may have, the Supplier shall as soon as possible at the Supplier's expense use its best efforts to secure for Feltex the right to continue using the item or replace or modify the item to avoid any infringement, provided that any such replacement or modification will not degrade the performance or quality of the affected component of the Goods or Services. In the event that the above actions cannot be accomplished by the Supplier within a reasonable period, on a best endeavors basis, then and only in such event, the Supplier shall remove the item from the Goods or Services and the Supplier's Charges shall be equitably reduced to reflect the reduction in the value of the Goods or Services to Feltex. Feltex may terminate this Agreement and/or the applicable Transaction Document without liability and without prejudice to any claims against the Supplier which Feltex may have, if the Supplier removes the item from the Goods or Services and, in Feltex's reasonable opinion, inclusion of such item in the Goods or Services is material to the value of, and benefit derived from the Goods or Services by Feltex.

14. INSURANCE

- 14.1 The Supplier shall have and maintain in force, at its own cost, sufficient insurance to the satisfaction of Feltex, to cover any Losses, which may arise out of or in connection with its obligations and liabilities under these Terms and Conditions. The Supplier shall provide on request a copy of such insurance policy to Feltex. Such insurance shall include without limitation: public liability insurance and specifically comprehensively insure all its own plant, material and equipment on an all risk basis, as well as workmen's compensation insurance as required in terms of the provision of the Compensation for Occupational Injuries and Diseases Act No 130 of 1993 as amended or any similar enactment which may replace this Act.
- 14.1.1 Should the insurers dispute in completely or in part their liability for any reason, the Supplier shall have recourse against the insurers only.
 - 14.1.2 There shall be no subrogation against Feltex, its agents or representatives under these insurances, whether mentioned herein or not, and taken out by or maintained by the Supplier.
- 14.2 The Supplier shall on demand furnish written proof of its insurer's knowledge of the above undertaking.

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- 14.3 Where hazardous Goods are transported pursuant to a Transaction Document, the Supplier shall observe the requirements of South African and international agreements relating to the packing, labelling and carriage of hazardous Goods and shall obtain adequate insurance to cover any potential hazards which may be occasioned through the transportation of such Goods.
- 14.4 Feltex reserves the right to amend the terms of this clause as instructed from time to time by its insurers. Any amendments resulting from such instructions will be negotiated between the Parties, failing agreement between the Parties within 7 (seven) days of that instruction, the Supplier agrees to comply with reasonable requests of Feltex's insurers.

15. LIMITATION OF LIABILITY AND INDEMNITIES

- 15.1 Without limiting any other indemnities in favour of Feltex, Feltex shall not be liable (whether in contract or delict or otherwise) in any way whatsoever for any Losses (including consequential or special damages or loss of profits), loss of life, bodily injury or damage to or loss of products, howsoever caused or arising which may be caused to or suffered or sustained by the Supplier and/or its Staff arising out of, incidental to or in any way connected to this Agreement and the Supplier hereby indemnifies Feltex and its Staff against any such Losses of whatsoever nature made against or suffered by Feltex. Without limiting clause 16.1, the Supplier indemnifies and holds Feltex, its successors and assigns harmless against any and all Losses arising out of or in connection with:
- 15.1.1 any and all Losses arising from or in connection with any claim or action arising from the Supplier's failure to observe or perform any duties or obligations to be observed or performed on or after the Purchase Order Date by the Supplier under licenses for third party Intellectual Property or third party service contracts;
 - 15.1.2 any and all Losses arising from any claim of infringement of any third party Intellectual Property or other proprietary rights, alleged to have occurred because of Feltex's use of any Goods or other resources provided by the Supplier to Feltex, or based upon performance of the Services by the Supplier;
 - 15.1.3 any and all Losses arising from any claim arising out of the Supplier's insurance obligations pursuant to clause 14;
 - 15.1.4 any and all Losses arising from any claim or action arising from the Supplier's failure to observe or perform any duties or obligations in accordance with any law, license, certificate, authorisations and consents required for the provision of Goods and/or Services by the Supplier to Feltex;
 - 15.1.5 any and all Losses which Feltex may suffer as a result of any breach by the Supplier of the warranties in clause 13;
 - 15.1.6 any and all Losses which Feltex may suffer as a result of any breach by the Supplier of any obligation with respect to Confidential Information; and
 - 15.1.7 any and all Losses arising from or in connection with: (i) the death or bodily injury of any Staff, client, business invitee, or business visitor or other person; (ii) the damage, loss or destruction of any tangible personal property of any Staff, client, business invitee, or business visitor or other person and (iii) any claim by any Staff, client, business invitee, or business visitor or other person, except where the Losses in this clause 15.1.7 arise directly out of any willful misconduct or gross negligence of Feltex.

16. INDEMNITY PROCEDURES FOR THIRD PARTY CLAIMS AGAINST FELTEX

- 16.1 Within 72 (seventy two) hours after receipt of notice of the commencement of or of becoming aware of any threat of any civil, criminal or administrative, action or proceeding involving a claim in respect of which Feltex seeks indemnification pursuant to clause 15, Feltex will notify the Supplier of such claim in writing and advise the Supplier of its election to: (i) assume control of the defence and/or settlement of that claim; or (ii) instruct the Supplier to assume control of the defense and/or settlement of that claim; or (iii) recommend to the Supplier that such claim not be defended..
- 16.2 If Feltex, in terms of clause 16.1, recommends that any claim not be defended, the Supplier shall have the election, within 24 (hours) of Feltex's notice in terms of clause 16.1, to either:
- 16.2.1 pay the value of such claim and any other Losses to Feltex; or
 - 16.2.2 prosecute the claim, at the Supplier's expense, in which event the Supplier shall indemnify Feltex against any Losses arising out of or in connection with such defense and provisions of clause, 16.3 shall apply.
- 16.3 If the Supplier, in terms of clause 16.1, is instructed by Feltex to control the defense and/or settlement of a claim, it shall do so at its own cost and shall at all times comply with all of Feltex's reasonable instructions and required actions relating to the defense and/or settlement of such claim. Under no circumstances shall the Supplier without the prior written approval of Feltex: (i) make any admission or acknowledgement that would be binding on or prejudicial to the interests of Feltex; (ii) settle, compromise or cease to defend any such claim.
- 16.4 If Feltex, in terms of clause 16.1, assumes control of the defense and/or settlement of a claim, the Supplier acknowledges that:
- 16.4.1 Feltex shall have sole control over such defense and/or settlement;
 - 16.4.2 Feltex shall be entitled to join the Supplier to any such proceedings, in which event the Supplier shall, in consultation with Feltex, defend such proceedings at its own cost. The foregoing notwithstanding, Feltex's costs in defending and/or settling any such claim shall be for the Supplier's account.
- 16.5 The Supplier shall at all times be entitled, upon written notice to Feltex, to participate in any such proceedings (including the right to instruct its own attorneys and/or counsel). Any such participation shall be for the Supplier's account.

17. INTELLECTUAL PROPERTY RIGHTS

- 17.1 Feltex retains all right, title and interest in and to Feltex Intellectual Property.
- 17.2 Data, Literary works or other works of authorship generated in the course of performing Services, such as manuals, training materials, reports, and other Documentation, shall be owned by Feltex. Feltex shall have sole and exclusive ownership of reports generated by the Supplier in terms of this Agreement and of all Feltex data. Further, all Intellectual Property rights in such items shall be and remain the sole property of Feltex, notwithstanding termination of these Terms and Conditions

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or any Transaction Document, and the Supplier hereby assigns, without any further consideration, all right, title and interest in and to such items to Feltex.

- 17.3 The Supplier retains all right, title and interest in and to the Supplier's Intellectual Property that is used in connection with the Services and which is listed in each Transaction Document.
- 17.4 The Supplier shall not introduce into Feltex's environment any third party Intellectual Property or otherwise use such third party Intellectual Property to provide the Services without first obtaining Feltex's written consent thereto. To the extent that Feltex grants such consent, the Supplier shall be responsible for obtaining a license from the third party on behalf of Feltex and in Feltex's name, to use such third party Intellectual Property.

18. CHANGE CONTROL

- 18.1 The Supplier shall control and manage changes to the Services, to the environment in which it provides the Services, and to Goods that it maintains and supports as part of the Services, in accordance with the change control requirements of Feltex's then current change management standards and procedures and this clause 18. The Supplier shall not take any action or make any decision which may
- 18.1.1 have a material effect on Feltex or its data or equipment, or
- 18.1.2 adversely affect the performance or efficiency of, or Charges for (including third party expenses) the Services, without first (a) analysing the possible action or change and providing Feltex with a written change control report; (b) providing Feltex with a reasonable period of time to review the change control report; and (c) obtaining Feltex's prior written consent to the proposed change. Feltex may withhold its approval in its sole discretion.
- 18.2 The Supplier shall schedule changes to minimise disruption of Feltex's normal business operations.
- 18.3 Until any changes have been agreed by Feltex in writing, the Parties shall continue to perform their respective obligations in terms of these Terms and Conditions and the applicable Transaction Document.
- 18.4 Changes shall be implemented in accordance with priorities designated by Feltex and otherwise in terms of the approved change control report contemplated in clause 18.1.

19. LOAN EQUIPMENT

- 19.1 No lien over any Loan Equipment shall be established in favour of the Party in possession of such Loan Equipment.
- 19.2 The Party in possession of the Loan Equipment shall be entitled to retain such Loan Equipment for such use as shall be as agreed between the Parties (it being recorded that the Parties acknowledge that where possible such terms shall be recorded in a Transaction Document) and in terms of this clause 19. During the period of the loan, the Party in possession of the Loan Equipment shall:
- 19.2.1 take proper and diligent care of such Loan Equipment;
- 19.2.2 mark all items owned by it uniquely;
- 19.2.3 take all reasonable steps to exclude any landlord's hypothec over such Loan Equipment including giving any landlord written notice of the other's Party's ownership of such Loan Equipment; and
- 19.2.4 accept all risk in the Loan Equipment taking reasonable steps to protect the Loan Equipment from loss and/or damage and shall insure it against all risks. Both Parties shall be entitled to make reasonable inspections of the other's premises at which such Loan Equipment is located in order to establish whether the other is complying with its obligations in terms of this clause 19.
- 19.3 The Party in possession of Loan Equipment shall return such Loan Equipment to the owner on the termination of the loan period in the same condition in which it was received, fair wear and tear excepted and shall remedy to the satisfaction of the other, any damage to the Loan Equipment sustained whilst under its care; alternatively, in the event of the Loan Equipment being damaged beyond repair, shall, on written demand by the other and forthwith, replace such Loan Equipment with new equipment of the same standard, quality and specification.

20. AUDITS

- 20.1 The Supplier shall allow Feltex, its auditors (including internal audit Staff and external auditors) as Feltex may from time to time designate in writing, access at all reasonable times to any facility or part of a facility at which either the Supplier or any of its sub-contractors is providing the Services, to the Supplier Staff, and to hardware, software, data and records relating to the provision of Goods and/or Services for the purpose of performing audits and inspections of either the Supplier or any of its sub-contractors to (i) verify the accuracy of the Supplier's Charges and invoices; (ii) verify the integrity of Feltex data and examine the systems that process, store, support and transmit that data; (iii) examine the Supplier's performance of the Services or supply of the Goods and the Supplier shall provide to Feltex's auditors and inspectors such assistance and co-operation as they may reasonably require, including installing and operating audit software. Feltex shall procure that any such audit shall not disrupt unreasonably the Supplier's business operations and shall comply with the Supplier's reasonable security or confidentiality requirements.
- 20.2 Feltex or its authorized representative shall have the right to conduct a due diligence at any time during the currency of this Agreement regarding compliance with, but not limited to, the following:
- 20.2.1 the provisions of this Agreement;
- 20.2.2 all applicable Laws and procedures;
- 20.2.3 undertakings by the Supplier regarding service delivery and BBBEE (Broad Based Black Economic Empowerment) objectives.
- 20.3 The Supplier shall, as soon as possible after being requested to by Feltex, make available to Feltex the findings of any review or audit conducted by the Supplier (including internal and external auditors), to the extent such findings reflect conditions and events which have a material impact on Feltex.
- 20.4 As soon as possible after the issuance of any audit report or findings issued under clause 20.2 or 20.3 the Supplier and Feltex shall meet to review such audit report or findings and to mutually agree upon the appropriate manner, if any, in

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which to respond to the changes suggested by the audit report or findings. Failing agreement within 7 (seven) days of that meeting, the matter shall be referred to Feltex's auditors who shall act as experts and not as arbitrators.

- 20.5 The Supplier shall maintain a complete audit trail of all financial and non-financial transactions arising out of this Agreement as reasonably necessary to give effect to the provisions of this clause 20. The Supplier will maintain and provide Feltex access upon request to the records, documents and other information that make up such audit trail until the later of: (i) (3) three years after expiration or termination of these Terms and Conditions; (ii) all pending matters relating to these Terms and Conditions (e.g., disputes) are closed; or (iii) such other period as is required by applicable law.

21. REGULATORY REQUIREMENTS

The Supplier warrants that it is and will be fully cognisant of any relevant Laws or regulatory requirements and rulings of any competent authority that has jurisdiction over the provision of Goods and/or Services in terms of this Agreement as well as all applicable data privacy legislation including but not limited to The Protection of Personal Information Act 4 of 2013 (POPIA). The Supplier shall as soon as possible, identify and notify Feltex in writing of any relevant changes in any Laws, legislative enactments and/or regulatory requirements and of rulings of any competent authority that may relate to the Supplier's provision of the Goods and/or Services. The Supplier and Feltex shall co-operate to identify the impact of such changes on how the Supplier provides the Goods and/or Services. The Supplier shall be responsible for any fines and penalties arising from any non-compliance with any Laws or rulings of any competent authority relating to the delivery or use of the Goods and/or Services. The Supplier hereby indemnifies Feltex and holds Feltex harmless against any Losses suffered or sustained by Feltex pursuant to any such non-compliance by the Supplier. Feltex shall remain responsible for communications with and participation in any governmental or regulatory body having jurisdiction over Feltex, or any industry body in which Feltex participates. Feltex shall consult with the Supplier regarding such matters to the extent Feltex deems appropriate, and the Supplier shall make itself available for such consultation as reasonably required by Feltex.

22. BLACK ECONOMIC EMPOWERMENT

The Supplier shall comply with all Broad Based Black Economic Empowerment (BBBEE) laws and will make reasonable endeavours to meet the BBBEE requirements of a minimum of level three grading and the Supplier agrees to provide Feltex with a valid BBBEE verification certificate at the inception of this Agreement and will ensure that updated certificates will be submitted to Feltex as and when the current certificate expires. The Supplier acknowledges that it is required to make certain commitments to Feltex with regard to BBBEE. Where applicable, these commitments must be available to Feltex upon request. Any such commitments shall be in writing and shall form part of the Terms and Conditions binding upon the Supplier. Any failure to comply with such commitments is a material breach of these Terms and Conditions.

23. SAFETY, HEALTH AND THE ENVIRONMENT

The Supplier Shall at all times for the duration of these Terms and Conditions ensure that it complies with all relevant occupational health and safety legislation, including the Occupational Health and Safety Act No. 85 of 1993 as well as all relevant environmental legislation. It shall be incumbent upon the Supplier to ensure that every member of its Staff shall undergo medical examinations as required by Feltex from time to time.

24. LABOUR RELATIONS

- 24.1 The Supplier warrants to Feltex that it complies with and shall continue to comply with all relevant labour legislation and shall comply with any legislation which may come into being during the currency of this Agreement, including without limitation, where applicable:
- 24.1.1 Labour Relations Act No. 66 of 1995, as amended;
 - 24.1.2 Basic Conditions of Employment Act No. 7 of 1997, as amended;
 - 24.1.3 Employment Equity Act No. 55 of 1998;
 - 24.1.4 Skills Development Act No. 97 of 1998;
 - 24.1.5 Skills Development Levies Act, No. 9 of 1999;
 - 24.1.6 Occupational Health and Safety Act, No. 85 of 1993;
 - 24.1.7 Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993;
 - 24.1.8 Unemployment Insurance Act, No. 63 of 2001;
 - 24.1.9 Unemployment Insurance Contributions Act, No. 4 of 2002.
- 24.2 Where the Supplier provides Services to Feltex at any of Feltex's premises, the Supplier shall give preference to local labour and shall, in the recruitment of any category of Staff first determine, to the satisfaction of Feltex, that no similar category is available locally and shall liaise with local interest groups in determining the availability of labour.
- 24.3 The Supplier shall use its best endeavors to maintain sound labour relations and to prevent industrial action. The Supplier shall notify Feltex in writing immediately on any threat of industrial action arising and shall, in the event of industrial action, comply with Feltex's reasonable instructions in respect of the implementation and co-ordination of contingency plans, press liaison and evacuation of the Supplier's Staff from Feltex's premises.
- 24.4 Participation by the Staff of the Supplier in industrial action, whether legal or protected in terms of any labour legislation or not, will not absolve the Supplier of any of its obligations in terms of this Agreement.

25. CONFLICT OF INTEREST

- 25.1 The Supplier undertakes that it shall not engage in practices or pursue interests which are in conflict with the interests of Feltex and which could result in financial damage or loss being suffered by Feltex or Feltex's reputation being harmed.
- 25.2 Conflict of interest will exist when the Supplier has an interest in, or derives some benefits from, transactions to which Feltex is a Party, whether directly or indirectly. It also includes instances where there is a reasonable possibility, in Feltex's opinion, of such conflict occurring.
- 25.3 All conflicts of interest must be disclosed to Feltex in writing immediately on the conflict arising.

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25.4 The Supplier shall inform its Staff of the contents of this clause 25 and shall ensure their adherence thereto.

26. DOCUMENTATION

All documents, correspondence and drawings arising out of or in connection with the Goods or the Services shall be in the English language. Advance copies in the original language may be sent to Feltex provided that the Supplier delivers a translated version to Feltex as soon as practically possible thereafter.

27. CONFIDENTIALITY

- 27.1 The Supplier acknowledges the confidential and proprietary nature of the Confidential Information of Feltex and, where applicable, third party proprietors of such information, and that Feltex and/or third party proprietors may suffer irreparable harm or loss in the event of such information being disclosed or used otherwise than in accordance with these Terms and Conditions.
- 27.2 The Supplier agrees and undertakes:
- 27.2.1 that disclosure of Confidential Information to the Supplier, in any manner, does not confer any rights of whatsoever nature in or to such Confidential Information on the Supplier;
- 27.2.2 to use its best endeavors to protect the confidentiality of the Confidential Information;
- 27.2.3 except as permitted by these Terms and Conditions or otherwise in writing by Feltex, not to disclose, publish, exploit or use any Confidential Information in any manner, for any reason or purpose whatsoever without the prior written consent of Feltex and provided that in the event of the Confidential Information being proprietary to a third party, it shall also be incumbent on the Supplier to obtain the consent of such third party in addition to Feltex;
- 27.2.4 to restrict the dissemination of the Confidential Information to only those Staff who are actively involved in the supply of the Goods and/or Services for which use of Confidential Information is authorised and then only on a "need to know" basis and provided that the Supplier shall procure that such Staff adhere to the provisions of this clause 27 *mutatis mutandis*;
- 27.2.5 without limiting clause 27.2.4, to take all practical steps, both before and after disclosure, to impress upon the Staff who are given access to Confidential Information the confidential and proprietary nature thereof.
- 27.3 The Supplier shall, within (seven) days of receipt of a written notice by Feltex return to Feltex and/or destroy, at its own cost, any Confidential Information and furnish a written statement to the effect that upon such return, it has not retained in its possession or under its control, either directly or indirectly, any such Confidential Information or material.
- 27.4 The Supplier may retain Confidential Information to the extent required by, and for the duration of, any Services performed for Feltex in terms of agreements between the Parties, if Feltex has not waived performance of such Services and subject to the right of Feltex to recover the Confidential Information at any time in terms of this clause 27.
- 27.5 The Supplier shall procure that the Supplier Staff who have access to Confidential Information, give a written undertaking in favour of Feltex concerning the Confidential Information on substantially the same terms and conditions contained within these Terms and Conditions ("the Undertaking"). Feltex shall be entitled to deny a Supplier Staff member access to its premises or prevent such Staff member conducting any work in relation to the Goods and/or Services requiring such disclosure of Confidential Information should Feltex not be in receipt of the Undertaking. A failure to obtain the Undertaking shall in no way detract from the Supplier's obligations in terms of this Agreement.
- 27.6 The Parties record that this clause 27 shall not be applicable where the Supplier discloses Confidential Information to attorneys or auditors, provided that such disclosure is reasonably required by the Supplier for the purposes of conducting its business activities.
- 27.7 Nothing contained in these Terms and Conditions will restrict either Party from the use of any generic ideas, concepts, know-how, or techniques developed or learned by such Party in the course of performing any Services or providing any Goods in terms of this Agreement, provided that in doing so such Party does not disclose Feltex's Confidential Information to third parties or infringe the Intellectual Property rights of the other Party or third parties who have licensed or provided materials to the other Party.

28. CANCELLATION

- 28.1 If the Supplier breaches any provision this Agreement and fails to remedy such breach within 14 (fourteen) days or such period as may be provided for in the relevant Transaction Document, of notice from Feltex calling it to do so, Feltex shall be entitled, in addition to and without prejudice to any other rights and remedies that it may have in terms of any of the Contract Documents, to cancel any or all of the Contract Documents or claim specific performance of the Supplier's obligations.
- 28.2 If
- 28.2.1 a Causal Event occurs in respect of the Supplier or
- 28.2.2 the Supplier fails to adhere to any Law or breaches any term or condition of any license, authorisation or consent required for the provision of the Goods and/or the Services and which failure or breach Feltex, in its sole discretion, considers to be detrimental to Feltex; then Feltex shall be entitled, but not obliged, to immediately cancel any or all of the Contract Documents on written notice to the Supplier, in which event such cancellation shall be without any liability and without prejudice to any claims which Feltex may have for damages against the Supplier.
- 28.3 Should the Supplier fail to fulfil any of its BEE obligations contemplated in Clause 22 above or it is established that the Supplier has made any misrepresentations arising out of or in connection with its tender submissions, where applicable, or fails to continue to comply with any agreed BEE commitments that were in already in place, Feltex shall be entitled to cancel any or all of the Contract Documents, immediately on written notice to the Supplier, in which event such cancellation shall be without any liability and without prejudice to any claims which Feltex may have for damages against the Supplier.

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In the event of such cancellation arising out of a misrepresentation contemplated in this clause 28.3, Feltex shall be entitled to re-tender the Service or appoint the tenderer with the next highest number of points in the tender evaluation.

29. TERMINATION BY FELTEX ON NOTICE

Feltex may terminate these Terms and Conditions and/or any or all Contract Documents on 30 (thirty) days written notice to the Supplier to that effect. If a purported termination or cancellation in terms of any other clause of these Terms and Conditions is determined by a competent authority not to be a valid termination or cancellation in terms of that clause, then, on expiry of 30 (thirty) days after any notice of termination or cancellation given by Feltex to the Supplier, it shall be deemed to be a termination by Notice in terms of this clause 29.

30. TERMINATION/EXPIRATION ASSISTANCE

30.1 At expiration or termination of these Terms and Conditions and/or any or all of the Contract Documents, the Supplier shall, at the request of Feltex, make itself available to provide Termination/Expiration Assistance. The Termination/Expiration Assistance to be provided by the Supplier in the case of termination or expiration of a Transaction Document will include the Termination/Expiration Assistance described in such Transaction Document.

30.2 If these Terms and Conditions or any Contract Document(s) or part thereof expires, or if these Terms and Conditions or any Contract Document(s) or part thereof is terminated other than pursuant to clause 29, Termination/Expiration Assistance will be provided at no additional cost to Feltex. If the agreement or any Transaction Document(s) is terminated by Feltex in terms of clause 29 and Feltex elects to have the Supplier provide Termination/Expiration Assistance, the Supplier shall be entitled to charge on a reasonable and necessary labour time and materials basis at hourly rates as agreed between the Parties, for the Termination/Expiration Assistance. If this Agreement is terminated or cancelled for any other reason, the Supplier shall provide the Termination/Expiration Assistance at its own cost.

31. MEDIATION AND ARBITRATION

31.1 Feltex shall be entitled to demand that any dispute arising between the Parties in regard to –

31.1.1 the interpretation of; or

31.1.2 the effect of; or

31.1.3 the carrying out of; or

31.1.4 any other matter arising directly or indirectly out of the Contract Documents ("Dispute"); shall be referred to a mediator agreed upon between the Parties, upon written notice by any Party. In which event the provisions of this clause 31 shall apply.

31.2 If the Parties are unable, either to agree on a mediator or to resolve the Dispute by way of mediation, within 2 (two) days of the Dispute having been raised in writing, then the Dispute shall be submitted to and decided by arbitration. Save as set out herein, the arbitration shall be conducted in Durban in accordance with the AFSA rules and regulations in force from time to time.

31.3 Should AFSA, as an institution, not be operating at that time or not be accepting requests for arbitration for any reason, then the arbitration shall be conducted in accordance with the AFSA rules for commercial arbitration (as last applied by AFSA).

31.4 The Parties to the Dispute shall jointly nominate the arbitrator, provided that if the Parties to the Dispute are unable to agree either on the category in which the Dispute falls (in terms of clause 31.5) or the identity of the arbitrator, within 4 (four) business days of the nomination having been called for in writing, then the arbitrator shall be nominated by the chairperson of AFSA or any other person entitled to do so on behalf of AFSA.

31.5 If the dispute shall-

31.5.1 be of a legal nature, then the arbitrator shall be senior counsel having not less than 10 (ten) years' experience; or

31.5.2 be of an accounting nature, then the arbitrator shall be a senior partner of any of the international firms of accountants practising in South Africa, who in determining such dispute shall be entitled to dispense with or minimise the rules so that the hearing of the matter may be expedited.

31.6 The provisions of this clause shall not preclude a party from approaching any court of competent authority for an interdict or other injunctive relief of an urgent nature.

31.7 Without derogating from the a foregoing, if within 20 (twenty) business days or such longer period as agreed between the Parties in writing, of written notice by a Party raising the dispute:

31.7.1 the arbitrator has not been agreed or appointed in terms of contemplated above; or

31.7.2 the issues comprising the dispute have not been defined; or

31.7.3 any other matter, of any nature whatsoever, relating to the Dispute or the arbitration, shall not be finally agreed, thereby preventing proceedings in terms of the arbitration from being instituted,

31.7.4 Feltex shall be entitled to disregard the provisions of this clause and instead institute proceedings out of the Kwazulu-Natal High Court, Durban.

31.8 Any arbitration in terms of this clause may be conducted *in camera* and the Parties shall treat as confidential, details of the dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.

31.9 This clause will continue to be binding on the Parties notwithstanding any termination or cancellation of any or all of the Contract Documents.

31.10 The Parties agree that the written demand by a Party to the Dispute in terms of clause 31.1 that the dispute or difference be submitted to mediation is to be deemed a legal process for interrupting extinctive prescription in terms of the Prescription Act, 1969.

31.11 Performance by the Supplier in terms this Agreement shall continue during mediation/arbitration proceedings unless Feltex demands the suspension thereof in writing.

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31.12 To the extent that any dispute referred to determination in terms of this clause 31 involves the withholding of payment of any amount otherwise due in terms of this Agreement by either Party, the withholding Party shall deposit the amount of the withheld payment into escrow and, if any part of the withheld amount is found properly due to the other Party, any capital award plus interest accruing in escrow in the same ratio as the capital award, shall be paid to that Party.

32. NOTICES AND DOMICILIUM

32.1 The Parties hereto select as their respective *domicilia citandi et executandi* the following addresses or such other address or facsimile number as may be substituted by notice given as herein required:

32.1.1 **Feltex:**
Physical **291 Paisley Road
Jacobs
4052**
Postal **P O Box 13330
Jacobs
4026**
Email **markb@feltex.co.za**

32.1.2 **The Supplier: The address and contact details appearing in the official Purchase Order from Feltex.**

32.2 All notices, requests, demands, and determinations in terms of this Agreement (other than routine operational communications), shall be valid and effective only if in writing and if delivered by hand, or sent by prepaid registered mail or electronic mail. Notices, requests, demands and determinations sent by electronic mail and received prior to 13h00 (thirteen hours) on a business day shall be deemed duly given on such business day; notices, requests, demands and determinations sent by electronic mail and received at other times shall be deemed duly given on the first business day following the date that such electronic mail is sent. A notice, request, demand and determination sent by prepaid registered mail shall be deemed to have been received 5 (five) days after posting if addressed within the Republic of South Africa to an address within the Republic of South Africa. Notwithstanding the above, any notice given in writing in English, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause. The Parties record that whilst they may correspond via electronic mail during the currency of this Agreement for operational reasons, no amendment of or variation to this Agreement may be given or concluded via electronic mail.

32.3 Either Party hereto shall be entitled to change its domicilium from time to time, provided that any new domicilium selected by it shall be an address other than a box number in the Republic of South Africa, and any such change shall only be effective upon receipt of notice in writing by the other Party of such change.

33. VIS MAIOR AND CASUS FORTUITUS

33.1 Failure on the part of a Party ("Affected Party") to perform in terms of or comply with the provisions of this Agreement, shall not be deemed to be a breach of this Agreement by the Affected Party, insofar as such failure is directly caused by an event or circumstance of *vis maior* (i.e. any superior force, power or agency which cannot be resisted or controlled by an ordinary individual – including acts of nature and acts of man) or is due to *casus fortuitus* (i.e. an inevitable event that is something exceptional, extraordinary or unforeseen and which human foresight cannot be expected to anticipate or to reasonably foresee, or if it can be foreseen, it cannot be avoided by the exercise of reasonable care or caution), including:

33.1.1 acts of God; war, hostilities, riots, civil or military insurrection and like political disturbances; natural disasters such as earthquakes, fires, floods and storms; acts or omissions by Governments (central, federal, regional, provincial, local, municipal) and state organs/public authorities; terrorism or sabotage; denial of the use of railway or other means of public transport,

33.1.2 provided that inconvenience, hardship, discomfort, strikes, lock-outs and the mere shortage of labour, materials or utilities shall not constitute *vis maior* or *casus fortuitus*, unless caused by events or circumstances which themselves are *vis maior* or *casus fortuitus*.

33.2 If the Affected Party is by reason of *vis maior* or *casus fortuitus* prevented from fulfilling its obligations under the Contract Documents, the Affected Party shall immediately notify the other Party in writing thereof. Such notice shall stipulate:

33.2.1 the cause, nature and extent of the event or circumstances;

33.2.2 the expected duration of the circumstances or event; and

33.2.3 the extent to which the performance of the Affected Party will be affected.

33.3 The Parties shall then promptly confer within 5 (five) days with a view to dealing with the matter in a cost-effective basis.

33.4 To the extent that the Affected Party is prevented to perform its obligations in terms of this Agreement, due to *vis maior* or *casus fortuitus*, the Affected Party shall for the duration of *vis maior* or *casus fortuitus* be temporarily excused from its liability to perform such obligations – provided, always, that the Affected Party shall not be so excused or discharged from its obligations if its non-performance is due to the fault, negligence or wilful act/omission of the Affected Party.

33.5 The Affected Party shall within 5 (five) days of its notice to the other Party in terms of clause 33.2 having regard to all the relevant factors, submit in good faith alternative proposals to the other Party as to how the event or circumstances can be overcome. Such proposals shall be in sufficient detail to enable the other Party to technically and financially assess the alternatives and to decide whether any of the alternatives are acceptable to the other Party. Should the other Party, in its sole discretion, not accept any of the alternative proposals, the other Party may terminate the Contract Documents, by giving the Affected Party written notice without this termination giving rise to any claim for damages, compensation or loss of any nature against the Affected Party or the other Party.

33.6 Until the other Party has made its decision referred to in clause 33.5 above and if the other Party has decided not to terminate this Agreement or the applicable Contract Document, as aforesaid, the following provisions shall apply:

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- 33.6.1 the Affected Party shall make every effort to mitigate the effect on the other Party of its failure or omission to perform fully;
- 33.6.2 the Affected Party shall keep the other Party fully informed about the situation.
- 33.7 To the extent that the Affected Party is prevented by *vis major* or *casus fortuitus* to comply fully with its obligations in terms of any of the Contract Documents, the other Party shall not have any claim for damages, compensation or loss of any nature against the Affected Party – provided, always, that the other Party shall have a claim for damages or other lawful remedy against the Affected Party in the event that the non-performance by the Affected Party is due to the fault, negligence or wilful act/omission of the Affected Party.
- 33.8 In the event that the period of *vis major* or *casus fortuitus* exceeds an uninterrupted period of 120 (hundred and twenty) days, either Party may terminate this Agreement and/or any or all of the Contract Documents.

34. SUPPLIER CODE OF CONDUCT

The Supplier acknowledges and agrees to comply with Feltex's Supplier Code of Conduct (Code) which is located on its website www.feltex.co.za. This Code sets out the principles and expectations of Feltex as to how existing and new Suppliers of Goods and Services to Feltex including their affiliates, representatives and employees, are to conduct business with Feltex and sets out the minimum standards to be complied with. Feltex regards any contravention of this Code by a Supplier as a serious matter which could result in the termination of the business relationship and possibly the institution of civil or criminal proceedings.

35. GENERAL

- 35.1 This Agreement shall be binding on the Parties hereto and their respective successors and assigns. The Supplier shall not be entitled to assign or otherwise transfer the benefit or burden of all or any part of this Agreement without the prior written consent of Feltex. Feltex shall be entitled to cede, assign or transfer its rights and obligations under this Agreement to any entity within the KAP group of companies, subject to notification of Supplier.
- 35.2 The Supplier may not delegate or sub-contract its obligations under this Agreement without the prior approval of Feltex. Subject to the Supplier binding itself to Feltex as surety for and co-principal debtor with any person to whom the Supplier intends delegating or sub-contracting its obligations under this Agreement, Feltex shall not unreasonably withhold its approval of such delegation or sub-contracting, as the case may be. The Supplier shall be Feltex's sole point of contact regarding the Services, including with respect to payment.
- 35.3 The Supplier shall include in its contracts with its sub-contractors, provisions substantially similar to clauses 17 (Intellectual Property Rights), 22 (Black Economic Empowerment) and 27 (Confidentiality).
- 35.4 Should any of the terms and conditions of this Agreement and Contract Documents be held to be invalid, unlawful or unenforceable, such terms and conditions shall be severable from the remaining terms and conditions, which shall continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the Parties agree to negotiate in good faith an amendment to remove the invalidity.
- 35.5 No change, waiver or discharge of the terms and conditions of this Agreement shall be valid unless in writing and signed by an authorised representative of the Party against which such change, waiver or discharge is sought to be enforced, and any such change, waiver or discharge will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party hereto in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 35.6 Except where expressly provided as being in the sole discretion of a Party, where agreement, approval, acceptance, consent, or similar action by either Party is required under this Agreement, such action shall not be unreasonably delayed or withheld. An approval, acceptance, consent or similar action by a Party (including of a plan or deliverable) under any of the Contract Documents shall not relieve the other Party from responsibility for complying with the requirements of this Agreement, nor shall it be construed as a waiver of any rights under this Agreement, except as and to the extent otherwise expressly provided in such approval or consent.
- 35.7 This Agreement will be governed by and construed in accordance with the law of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such law.
- 35.8 This Agreement constitutes the whole of the agreement between the Parties relating to the subject matter hereof and save as otherwise provided herein no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the Parties hereto or their duly authorised representatives.
- 35.9 Except as provided in clause 3.4, 3.5 and 3.6, in the event of a conflict between the documents comprising the Contract Documents, such conflict shall be resolved in accordance with the order of precedence (in descending order of priority) as follows:
- 35.9.1 these Terms and Conditions;
- 35.9.2 a Transaction Document,
- 35.9.3 the annexes and/or schedules to these Terms and Conditions; and
- 35.9.4 any annexes and/or schedules to a Transaction Document.
- 35.10 The Parties warrant and acknowledge that the relationship between them is not in the nature of a partnership or employment and that neither Party is in any manner entitled to make or enter into binding agreements of any nature on behalf of the other Party.
- 35.11 Unless otherwise provided for in this Agreement, this Agreement is entered into solely between, and may be enforced only by, Feltex and the Supplier; and these Terms and Conditions shall not be deemed to create any rights in favour of third parties, including the suppliers and clients of a Party, or to create any obligations of a Party to any such third parties.

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- 35.12 Any provision of these Terms and Conditions, which contemplates performance or observance subsequent to any termination or expiration of the applicable Contract Documents, shall survive any termination or expiration of the applicable Contract Documents and continue in full force and effect.
- 35.13 The Supplier acknowledges and agrees that Feltex may use or process personal information provided by the Supplier for the purposes that was indicated when such information was provided. Feltex's privacy policy which sets out the way in which it handles personal information is located on its website www.feltex.co.za.
- 35.14 Each Party agrees that, in its respective dealings with the other Party under or in connection with this Agreement, it shall act in good faith.
- 35.15 Each Party shall bear and pay its own costs of or incidental to the drafting, preparation and execution of any of the Contract Documents.

Section B. Provision of Services

36. SERVICES

- 36.1 The Supplier will provide the Services to Feltex in terms of these Terms and Conditions and the applicable Service Order.
- 36.2 Notwithstanding that the Supplier is not in breach of any of its obligations, Feltex shall be entitled to, at its election, require that the Supplier ceases to perform any or all of the Services and that Feltex may perform itself or retain third parties to perform all or any part of the Services provided that Feltex shall: (i) by written notice to the Supplier, advise the Supplier of such election and (ii) pay the Supplier for Services in terms of existing Contract Documents for their continued duration in terms of applicable Service Order. In this regard:
- 36.2.1 the Supplier shall co-operate with Feltex or third parties performing the Services in terms of this clause, and comply with all reasonable requests in connection therewith;
- 36.2.2 where third parties require access to any of the Supplier's information or records, the Supplier shall allow those third parties access to that information, provided that where such information is Confidential Information, the Supplier shall be entitled to require that such third parties deliver a written undertaking on substantially the same terms as the Undertaking contemplated in clause 27; and
- 36.2.3 without limiting the generality of the Supplier's obligation to perform the Services in terms of any Contract Documents, the Supplier shall as soon as is practicable notify Feltex if an act or omission of third party contemplated in this clause 36.2, that may prevent or delay the Supplier's provision of the Services. Should the Supplier's failure to meet any service level be a direct result of such third party's act or omission, the failure by the Supplier shall not constitute Deficiency by the Supplier, provided that the Supplier shall bear the onus of proving that the Suppliers failure was as a direct result of the third parties act or omission.
- 36.3 Where the date for the provision of the Services has been specified in the Service Order, Feltex may on reasonable written notice to the Supplier suspend the provision of the Services for such time or times and/or in such manner as Feltex may consider necessary. During any period in which the Services are suspended, the Supplier shall comply with all reasonable requests of Feltex and properly maintain and secure any fruits of the Services already provided. The reasonable and necessary cost (if any) in giving effect to Feltex's instructions or amendments in terms of this clause shall be paid by Feltex to the Supplier provided that:
- 36.3.1 the suspension or amendment is not otherwise provided for in the Service Order;
- 36.3.2 the Supplier shall not be entitled to recover any such costs unless it has given notice in writing to Feltex of its intention to claim within 7 (seven) days of Feltex's order or instruction.
- 36.4 If the progress of the Services or any part thereof is suspended in terms of this clause for more than 90 (ninety) days, the Supplier may, on expiry of such 90 (ninety) days, serve a written notice on Feltex requiring permission, within 28 (twenty eight) days from receipt thereof, to proceed with the provision of the suspended Services. If Feltex does not grant the Supplier the permission to proceed with the Services, the Supplier may terminate the Service Order and claim all costs incurred to the date of that termination.
- 36.5 Except as otherwise expressly provided in these Terms and Conditions, the Supplier shall be responsible for providing the facilities, Staff and other resources as necessary for the Supplier to provide the Services in accordance with the service levels.

37. COMPLIANCE BY THE SUPPLIER

- 37.1 The Supplier hereby warrants to Feltex that the Supplier is registered as an employer with and/or in terms of:
- 37.1.1 Receiver of Revenue;
- 37.1.2 Compensation Commission;
- 37.1.3 Unemployment Insurance Fund;
- 37.1.4 All and any applicable Bargaining Councils;
- 37.1.5 Skills Development;
- 37.1.6 Employment Equity Registry;
- 37.1.7 Regional Services Council;
- 37.1.8 any other authority having authority over the Supplier and with which it is required to be registered in terms of any law, regulation or policy.
- 37.2 The Supplier shall comply with all requirements, prescribed formalities, submit all prescribed returns and make all payments as may be required by in the Acts, and authorities set out in clause 37.1 above.
- 37.3 The Supplier undertakes, at all times, to comply with the provisions of any collective agreements which may be binding upon or become binding upon the Supplier and/or its Staff and/or Feltex.
- 37.4 The Supplier shall provide Feltex with copies of certificates of registration and/or prescribed forms or returns relating to each one of the items in 37.1 above, if requested to do so by Feltex.

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- 37.5 The Supplier shall submit to Feltex proof of payment of all liabilities and obligations pursuant to legislation including, but not limited to, the Income Tax Act, if requested to do so by Feltex.
- 37.6 Where applicable, the Supplier shall provide proof of its registration with the South African Revenue Services as a labour broker within 5 (five) days of the date of a formal request from Feltex. The Supplier shall be responsible for any tax obligations in relation to such Services.

38. SUPPORT AND MAINTENANCE SERVICES

Where the Supplier provides a Service to Feltex relating to support or maintenance ("*Support Services*"), the following terms shall, unless otherwise agreed in writing in a Service Order, apply to such Services:

- 38.1 In providing Support Services, the Supplier shall use its best endeavors to ensure that the supported/maintained items function as reasonably required by Feltex; and to maintain the supported/maintained items in such a manner as to ensure the supported/maintained items' continued compliance with their specifications and/or for the purpose for which Feltex obtained such items.
- 38.2 The manner in which the Supplier shall provide the Support Services shall be specified in the Service Order relating to such Services.
- 38.3 Service Order relating to support Services shall, where applicable, record the hours of Service, the manner in which the Support Services will be provided, including method for determining the severity of Feltex's support and/or maintenance requests from time to time ("*Support Requests*") and/or the urgency with which the Support Requests are resolved by the Supplier, the escalation procedures applicable to the Support Requests and any service levels applicable to the performance of the Support Services.
- 38.4 In the performance of Support Services, the Supplier will continuously and consistently use its best endeavors to avoid a recurrence of Support Requests of the same nature, including without limitation:
- 38.4.1 identifying the nature and cause of each Support Request and advising Feltex of the same and irrespective of the source;
- 38.4.2 recommending and, if requested to do so by Feltex, implementing appropriate methods for resolving the source of the Support Request;
- 38.4.3 advising Feltex on future avoidance; and
- 38.4.4 undertaking any necessary preventative measures to minimise recurrence of the Support Request.
- 38.5 The Supplier shall, at its expense, supply all materials or other resources necessary for the provision of the Services, should the Services be provided at Feltex's premises and the facilities contemplated in clauses 5.1 and 5.2., which will be made available to the Supplier in accordance with these Terms and Conditions.
- 38.6 Should any supported/maintained items be removed by the Supplier to be repaired at the Supplier's premises, the risk in such supported/maintained items shall vest in the Supplier as from the time of removal thereof from Feltex's premises until their return by the Supplier to Feltex's premises, and the Supplier indemnifies Feltex against any Losses arising out of or in connection with this clause 38.6.
- 38.7 Any spare or replacement parts or components supplied in the performance of the Support Services, shall accede to the supported/maintained items upon installation thereof and shall become the property of the owner of the supported/maintained items. Unless otherwise agreed by Feltex in writing, all spare or replacement parts or components supplied under this Agreement in respect of supported/maintained items:
- 38.7.1 if still under warranty, shall be as supplied by the manufacturer of that item, in terms of that warranty program and shall be used by the Supplier in accordance with the manufacturer's specifications, and
- 38.7.2 if not under warranty, shall be either new or refurbished to Feltex's approval.

39. DEVELOPMENT SERVICES

Where the Supplier provides a Service to Feltex in any way relating to development, the scope of any Services to be undertaken by the Supplier relating to the development shall be outlined in a written project plan and in the functional and technical specifications which shall be annexed to the Service Order relating to the development of the Services and which shall form part of the Service Order.

40. SERVICE LEVELS

- 40.1 The Supplier shall comply with all service levels (whether quantitative or qualitative) whether in terms of these Terms and Conditions or the Service Order ("*Service Level*").
- 40.2 The Supplier shall ensure that the Services (including all workmanship) and all products, materials, documentation, tools and equipment used or required for the rendering of the Services, comply with Feltex's quality assurance and other requirements which shall be communicated to the Supplier from time to time.
- 40.3 The Supplier acknowledges that in the provision of all Services time is of the essence and shall provide the Services promptly, diligently and courteously and in a manner that would be expected of a well-managed professional operation performing services similar to the Services.
- 40.4 The Supplier acknowledges that any failure to meet a Service Level will have a material adverse impact on the business and operations of Feltex and the agrees to pay the penalties set out in the Service Order in respect of each such failure, without prejudice to any other remedies Feltex may have at law.
- 40.5 Feltex shall be entitled to set-off any penalty imposed by it in terms of clause 40.4 against any amount owing in terms of the Supplier's invoice for the month following the month in which the penalty is imposed.
- 40.6 If the Supplier fails to meet any Service Level, the Supplier shall
- 40.6.1 investigate and report on the causes of the failure;
- 40.6.2 promptly correct the failure and thereafter maintain Service Levels;

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40.6.3 advise Feltex in writing, to the extent requested by Feltex, of the status of remedial efforts being undertaken with respect to such failure; and

40.6.4 take appropriate preventive measures so that the failure does not recur.

40.7 The Supplier shall be responsible for monitoring and measuring its performance of the Services against the Service Levels. Feltex is entitled to reasonable access to all data in the Supplier's possession relating to Service Levels and Suppliers compliance therewith.

Section C. Supply of Goods

41. SUPPLY

41.1 The Supplier shall supply the Goods to Feltex in terms of this Agreement.

41.2 Prior to supplying any Goods or Works in terms of this Agreement, the Supplier shall furnish Feltex with a detailed written quotation upon which shall be stated an all-inclusive price (exclusive of VAT, but inclusive of all labour and material costs, all fixed costs, packing costs, delivery and installation costs all third party labour and materials costs, any additional taxation items, any import/export duties, any currency fluctuations and any other cost whatsoever) for such Goods and Works and where applicable, the technical specifications and/or plans of the Goods or Works and the period for which such quotation shall be open for acceptance by Feltex. Save as provided herein, no other terms and conditions stated upon such quotation shall be binding upon either Party. Where a written quotation does not state a date of expiry, it shall be open for acceptance by Feltex for a period of 90 (ninety) days following its receipt by Feltex.

41.3 Notwithstanding acceptance of a written quotation, the supply of any Goods or Works to Feltex shall be subject to the condition precedent that the Parties conclude a Purchase Order for the supply of such Goods in accordance with these Terms and Conditions.

41.4 As soon as reasonably practical after the acceptance of the quote contemplated in clause 41.2, the Parties shall sign a Purchase Order.

42. SUPPLY LISTS

42.1 The Parties may, at Feltex's election, from time to time agree approved supply lists, including where appropriate, technical specifications and plans, functional specifications and pricing. Such approved supply list shall constitute a Contract Document.

42.2 Unless otherwise agreed, Feltex shall not be liable to the Supplier for the payment for any Goods not procured and, supplied in terms of the approved supply list and the Purchase Order.

43. LEASE OF GOODS

Unless otherwise agreed in a Purchase Order, where the Supplier leases Goods to Feltex, the following provisions shall apply:

43.1 any Goods leased to Feltex by the Supplier shall be listed in a schedule to be annexed to the Purchase Order in terms of which such Goods are leased. Such schedule shall contain the following information regarding each of the Goods leased:

43.1.1 a detailed description of the Goods, where reasonably possible, including an asset identification number or serial number;

43.1.2 the total monthly rental payable in respect of each of the Goods, excluding VAT; and

43.1.3 the useful life of the Goods expressed in months and measured from the 1st (first) day of the month immediately following the month in which such Goods are accepted by Feltex (*"the Useful Life"*).

43.2 each of the Goods listed in such schedule shall be leased independently for its Useful Life and the monthly rental specified in such schedule and otherwise in terms of this Agreement.

43.3 Any lease contemplated in this clause 43 shall, in addition to and without limiting the provisions of these Terms and Conditions, be on the following terms: Feltex shall:

43.3.1 at all times keep the Goods under its control and shall take reasonable care in the use of the Goods;

43.3.2 only use the Goods for the purpose for which they were leased by Feltex;

43.3.3 use its reasonable endeavors to ensure that the Services performed in respect of such Goods are in compliance with the reasonable specifications for such Goods as provided by the Supplier and/or the original equipment manufacturer thereof in writing;

43.3.4 at its own expense take reasonable steps to keep the Goods free from attachment, hypothec or other legal charge or process and shall not without the prior written consent of the Supplier sell, let, loan, pledge, transfer or otherwise encumber the Goods in any way or permit any lien to arise in respect of the Goods;

43.3.5 take reasonable steps to ensure that all restrictions on the use of the Goods that are imposed by any law are observed by Feltex and its Staff; and

43.3.6 not modify the Goods otherwise than in accordance with the provisions of these Terms and Conditions or with the consent of the Supplier. The Supplier shall deliver the Goods on the date agreed in the Purchase order, maintain the Goods in good working order and condition and otherwise comply with the Purchase Order and Schedule.

43.4 Any such lease shall terminate:

43.4.1 at the end of the Useful Life;

43.4.2 on termination or cancellation of this Agreement;

43.4.3 on termination of the Purchase Order in terms of which the Goods were leased;

43.4.4 on 5 (five days) written notice from Feltex, to the effect that Feltex, in its sole discretion determines that any lease Goods are no longer fit for the purpose for which they were leased by Feltex; or

43.4.5 by written agreement between the Parties; whichever is earlier.

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On termination or cancellation of any lease, the Supplier shall immediately update the schedule in order to give effect to any such termination. moreover, shall as soon as reasonably possible remove all Goods subject to the termination in terms of such lease from Feltex's premises.

44. LICENSED GOODS

- 44.1 Where the Supplier grants Feltex a license to use any Goods, such license shall, unless otherwise agreed in writing and recorded in the Purchase Order, be granted on the basis that Feltex shall receive a non-exclusive, non-transferable license to use and deploy the Goods.
- 44.2 Feltex shall be entitled to make and maintain back-up copies of Goods, which are in the nature of software for operational security purposes and may make such number of copies of part or all of the software as is strictly necessary for such purposes. Back-up copies may be used whenever the software is rendered unusable or inoperable, provided the Supplier shall be notified of such an event.

45. RISK AND OWNERSHIP IN GOODS

- 45.1 Subject to clause 8 (Acceptance Testing and Acceptance) and clause 38.5, the risk in Goods or Works to be provided in terms of a Purchase Order shall remain with the Supplier until delivery of such Goods or Works has been affected and the Goods or Works have been received by Feltex or performed by the Supplier or its agent specified in the Purchase Order at the point of delivery or performance stated in such Purchase Order.
- 45.2 The title to the Goods or Works, free of all liens or encumbrances, shall pass to Feltex at the earlier of:
 - 45.2.1 delivery of the Goods or Works to Feltex or its agent specified in the applicable Purchase Order, or
 - 45.2.2 payment or part payment therefore.
- 45.3 Delivery of Goods or Works to Feltex shall be in terms of the Purchase Order and in the absence of such agreement, the Supplier shall deliver the Goods to the delivery point designated by Feltex in writing, which Goods shall be deemed delivered upon signature of the Supplier's delivery note by Feltex, subject to clause 8.

46. RETURN OF DEFECTIVE DELIVERABLES:

- 46.1 If at any time post acceptance (in terms of clause 8) of Goods or Works by Feltex, Feltex shall give notice in writing that it is dissatisfied with any materials, equipment and workmanship, or with any part or parts of the Goods or Works, the Supplier shall immediately proceed to correct, alter, reconstruct or remove and replace such part or parts of the Goods or Works, and, whether the Goods or Works have been completed or are in the course of execution when objection is intimated. Such correction, alterations, reconstruction, or removal and replacement shall be executed at the cost of the Supplier, and no extension of the date for completion shall be granted due to Feltex making good such a compliant.
- 46.2 Should the Supplier unduly delay or refuse the making good of any defects or deficiencies in terms of this clause 46, Feltex shall have the right to employ at any time and pay other persons to have the defects or deficiencies rectified, and all expenses consequent thereon and incidental thereto shall be borne by the Supplier, and shall be recovered from it by Feltex, or may be deducted from any monies due or that may become due to the Supplier and Feltex shall not be liable for any Losses that may arise out of or in connection with any materials rejected and removed by it, or which the Supplier may claim to have sustained by reason of the actions of Feltex under this clause 46.
- 46.3 Should any Goods be delivered to Feltex, which are in Feltex's opinion, in a damaged or substandard condition, Feltex shall be entitled to return such Goods to the Supplier, at the Supplier's cost, in which event the Supplier shall, as soon as possible, at Feltex's election, either refund or procure the refund to Feltex of the full amount paid by Feltex in respect thereof or replace or procure the replacement of such Goods with the equivalent Goods, delivered in a condition acceptable to Feltex. In the event that, by reason of the contractual relationship between Feltex and the third party supplier of the defective Goods, or by reason of the contractual relationship between the Supplier and the third party supplier of such Goods, the Supplier is prevented from refunding or procuring the refund of the amount payable in respect of the Goods, the Supplier shall replace or procure the replacement of such Goods.

47. PACKAGING

Unless otherwise specified in a Purchase Order, the cost of packing materials and containers of whatsoever nature used in connection with the Goods shall be included in the purchase price and such packing materials and containers shall upon delivery of the Goods become the property of Feltex. The Supplier shall be liable for any loss or damage due to inadequate packing.

48. HAZARDOUS GOODS

Hazardous Goods must be marked by the Supplier with international danger symbols and the name of the material must be displayed in English.

49. WORKS

- 49.1 Save as otherwise provided for in this clause 49 and where applicable, the Supplier shall comply with the provisions of Part B of these Terms and Conditions when rendering the Works.
- 49.2 The Works to be performed by the Supplier shall be set out in the Purchase Order and shall specify the commencement and completion dates or such other arrangements as may be agreed by the Parties in this regard.
- 49.3 Within 7 (seven) days after the acceptance by Feltex of a Purchase Order relating to Works, unless otherwise agreed in writing by Feltex, the Supplier shall submit for Feltex's approval a detailed programme setting out the stages in which such Works will be provided. Feltex shall be entitled to reasonably modify that programme in writing ("*the Approved Programme*"). The approval by Feltex of such a programme shall not constitute a waiver of any of the Suppliers obligations in terms of this Agreement. Feltex shall be entitled to reasonably revise the Approved Programme from time to time.
- 49.4 The Approved Programme shall form part of the Purchase Order to which it relates.

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- 49.5 The Supplier shall not deviate from the Purchase Order or Approved Programme without the prior written consent of Feltex, which consent shall not be unreasonably withheld.
- 49.6 Notwithstanding the Approved Programme, the Supplier shall comply with all reasonable written requests from Feltex from time to time.
- 49.7 The Supplier shall keep Feltex fully informed in advance of all details of the Supplier's intended procedures in the performance of its obligations in terms of any such Purchase Order.
- 49.8 The Supplier shall be deemed to have satisfied itself as to all the conditions and circumstances affecting such a Purchase Order and the provision of the Works as described in the Purchase Order and as to the general conditions and circumstances at the site at which the Works are to be provided, and to have calculated its prices accordingly so as to incorporate all current and future costs to the Supplier. The Supplier shall not be entitled to any adjustment to the purchase price in the Purchase Order.
- 49.9 The Supplier shall be responsible for any discrepancies, errors or omissions in any designs and in any drawings or data supplied by it or its sub-contractor, whether such designs, drawings or data were approved by Feltex or not. The Supplier shall be liable for any extra costs reasonably incurred due to any alterations in or additions to the Works arising out of or in connection with such discrepancies, errors or omissions or otherwise
- 49.10 Without prejudice to any other remedies Feltex may have in law, if the Supplier fails to complete the Works and all extra or additional Works which Feltex and the Supplier may have agreed upon, on or before the prescribed date or any extension thereof to which the Supplier may be entitled under a Purchase Order, it shall pay to Feltex by way of a penalty, a sum of money equal to 1% of the Purchase Order price for each week or part thereof from the prescribed date to the date on which the Works, and all extra or additional Works, if any, are completed in terms of this Agreement, provided that such penalty shall not exceed 5% of the Purchase Order price. Feltex shall be entitled to set that penalty off against any amount owing to the Supplier.
- 49.11 Where a Purchase Order entails preparation by the Supplier of designs and details of any Work to be supplied, it shall submit all necessary documentation giving full details, dimensions and particulars, together with all relevant information (including erection or operating instructions, if any) to Feltex for its written approval, prior to commencing the Works, Feltex shall be entitled to make reasonable amendments prior to approval. (*"The Approved Design Sheet"*) The Supplier shall not deviate from the Approved Design Sheet without the prior written consent of Feltex. The Supplier shall deliver to Feltex a copy of the Approved Design Sheet. The Supplier shall be liable for any error, omission or Deficiency in any Approved Design Sheet and indemnifies Feltex against and for any loss, damage, cost or expense arising out of such error, omission or Deficiency, notwithstanding that such Approved Design Sheet may have been reviewed and/or approved by Feltex, provided always that such error, omission or Deficiency does not arise directly out of materially incorrect drawings or inaccurate information furnished to the Supplier by Feltex.
- 49.12 Within 10 (ten) days of any amendment of the Purchase Order and/or Approved Programme and/or Approved Design Sheet by Feltex or by the Supplier where agreed to in writing by Feltex, the Supplier shall deliver to Feltex a detailed description of any price changes or, additional time required for the provision of Works as a result of such change, including supporting calculations. Any price changes shall be in accordance with the pricing structure of the Purchase Order and shall clearly state whether there has been an increase, decrease or no change in the Price under that Purchase Order.
- 49.13 The Supplier shall not perform in terms of any amendments contemplated in clause 49.11 until Feltex has approved in writing the pricing for the change and any adjustment in the time for the provision of the Works, or has expressly authorised the Supplier in writing to perform the change prior to such approval by Feltex. Upon receiving such written approval from Feltex or such written authorisation to perform from Feltex, the Supplier shall adhere to the amended Purchase Order, Approved Programme or Approved Design Sheet as the case may be. The Supplier shall not suspend performance of a Purchase Order during the review and negotiations of any change, except as may be directed by Feltex in writing.
- 49.14 Should the Supplier comply with any oral requests by Feltex, any costs incurred by the Supplier to perform in terms of such oral requests shall be for the Supplier's account, and the Supplier waives any and all rights to claim from Feltex any costs or expenses arising out of or in connection with therewith.
- 49.15 The Supplier shall give Feltex written notice within 7 (seven) days after the happening of any event (other than as contemplated in clause 49.11) which the Supplier believes may justify an increase in the Purchase Order price or a delay in the scheduled time for performance. Within 14 (fourteen) days after the happening of such event, the Supplier shall supply Feltex with a statement supporting the Supplier's allegation, which statement shall include the Supplier's detailed estimate of the change in Purchase Order Price and scheduled time occasioned thereby. Feltex shall not be liable for, and the Supplier hereby waives, any claim or potential claim of the Supplier of which the Supplier knew or should have known and which was not reported by the Supplier in accordance with the provision of this clause. The Supplier agrees to continue provision of the Works during the time any claim of the Supplier hereunder is pending. Feltex shall not be bound to any adjustments in the Purchase Order price or scheduled time for the Supplier's claim unless expressly agreed to by Feltex in writing. No claims hereunder by the Supplier shall be allowed if notified after final payment under a Purchase Order.

50. BREACH OF WARRANTY AND MAINTENANCE

- 50.1 Where Feltex agrees in writing that any breach of a warranty can be remedied by maintenance work on the Goods, the Supplier shall carry out such maintenance including work necessary to remedy defects or Deficiencies or as reasonably requested by Feltex as soon as possible at its own cost.
- 50.2 In any other case, and without prejudice to any other remedies Feltex may be lawfully entitled to, the Supplier shall remedy any breach of warranty in respect of the Goods by correction or replacement, at its own cost and expense, promptly upon receipt of notice of such breach from Feltex.

51. SPECIFIC WARRANTIES

- 51.1 In addition to the warranties set out in clause 13 (Supplier's Warranties), the Supplier warrants that:

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- 51.1.1 all Goods (including without limitation the components thereof) the Works (including without limitation all materials, plant, equipment, workmanship arising out of or in connection therewith) shall comply with the Purchase Order and any applicable Laws, including without limitation any industry code or standard and any other provisions of this Agreement and shall be fit for the purpose for which they were purchased by Feltex; and
- 51.1.2 all documentation including without limitation all designs, plans, programmes or specifications for any Goods or Works and any associated technical information and any other documents, records or information provided to Feltex arising out of or in connection with the Goods and/or the Works is complete, true and accurate in all respects and complies with the Purchase Order and any applicable law and/or industry code or standard.

52. SUPPLY OF MINOR GOODS AND RECURRENT MINOR GOODS

- 52.1 For the purposes of this clause 52 "*Minor Goods*" shall mean Goods of a consumable nature and minimal value such as stationery, foodstuff and similar items.
- 52.2 The provisions of Section C, other than this clause, shall not be applicable to Minor Goods. The following provisions shall be applicable to Minor Goods:
- 52.2.1 prior to supplying any Minor Goods in terms of these Terms and Conditions, the Supplier shall furnish Feltex with a detailed written quotation upon which shall be stated an all inclusive price (as contemplated in clause 42.2, other than the price shall include VAT) for such Minor Goods and the details as to the date until which such quotation shall be open for acceptance by Feltex. Save as provided herein, no other terms and conditions stated upon such quotation shall be binding upon either Party.
- 52.2.2 The Parties may from time to time agree that certain Minor Goods may be supplied on a recurrent basis upon an agreed price per item set out in the Purchase Order authorising such supply. Any requisition for Minor Goods specified in that Purchase Order, shall be supplied under and in terms of that Purchase Order without approval of a quotation or the execution of a specific additional Purchase Order authorising the supply in each instance.

STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES AND GOODS TO FELTEX
(www.feltex.co.za version)

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ANNEXURE A – TRADING ENTITIES OF FELTEX

Trading entities BUs with plants- Feltex Division					
LEGAL ENTITY NAME	BUSINESS UNIT	PLANT	LEGAL AND TRADING NAME	REGISTRATION	
				NUMBER	VAT NUMBER
Feltex (Pty) Ltd	Feltex Trim	Feltex Trim Durban	Feltex (Pty) Ltd t/a Feltex Trim	1957/001891/07	4130219829
		Feltex Trim Thermofelts	Feltex (Pty) Ltd t/a Feltex Trim Durban		
		Feltex Trim Fine Needling	Feltex (Pty) Ltd t/a Feltex Trim Thermofelts		
		Feltex Trim Rosslyn	Feltex (Pty) Ltd t/a Feltex Trim Fine Needling		
		Feltex Trim Silverton	Feltex (Pty) Ltd t/a Feltex Trim Rosslyn		
Feltex (Pty) Ltd	Feltex Trim	Feltex Trim East London	Feltex (Pty) Ltd t/a Feltex Trim Silverton	1957/001891/07	4130219829
		Feltex Trim Loose Lay Mats	Feltex (Pty) Ltd t/a Feltex Trim East London		
		Feltex Trim Gqeberha	Feltex (Pty) Ltd t/a Feltex Trim Loose Lay Mats		
		Feltex Trim Head Office	Feltex (Pty) Ltd t/a Feltex Trim Gqeberha		
		Feltex Trim Prospecton	Feltex (Pty) Ltd t/a Feltex Trim Head Office		
Feltex (Pty) Ltd	Feltex Trim	Feltex Trim Tufting	Feltex (Pty) Ltd t/a Feltex Trim Prospecton	1957/001891/07	4130219829
		Feltex Group Services	Feltex (Pty) Ltd t/a Feltex Trim Tufting		
		Feltex Foam	Feltex (Pty) Ltd t/a Feltex Group Services		
		Maxe	Feltex (Pty) Ltd t/a Feltex Foam		
			Maxe a division of Feltex (Pty) Ltd		
Feltex Fehrer (Pty) Ltd	Feltex Fehrer	Feltex Fehrer Durban	Feltex Fehrer (Pty) Ltd t/a Feltex Fehrer	1947/025764/07	4680196054
		Feltex Fehrer Rosslyn	Feltex Fehrer (Pty) Ltd t/a Feltex Fehrer Durban		
		Feltex Fehrer East London	Feltex Fehrer (Pty) Ltd t/a Feltex Fehrer Rosslyn		
		Feltex Fehrer Gqeberha	Feltex Fehrer (Pty) Ltd t/a Feltex Fehrer East London		
		Feltex Fehrer Head Office	Feltex Fehrer (Pty) Ltd t/a Feltex Fehrer Gqeberha		
Connacher Natal (Pty) Ltd	Connacher		Feltex Fehrer (Pty) Ltd t/a Feltex Fehrer Head Office	1990/007083/07	4400112142