



GEA East Africa (Proprietary) Limited
Ware House No. 10
Saku Business Park
Nairobi
Kenya

TABLE OF CONTENTS

- 1 Customer Information Schedule
- 2 GEA East Africa (Pty) Ltd: General Terms and Conditions
- 3 Specimen Deed of Suretyship

CUSTOMER INFORMATION SCHEDULE

PART 1: CUSTOMER'S DETAILS			
Full name:	.....	
Trading as:	.....	
Type of entity (mark with X)	Private Company <input type="checkbox"/>	Close Corporation <input type="checkbox"/>	Sole Proprietor <input type="checkbox"/>
	Foreign Company <input type="checkbox"/>	Partnership <input type="checkbox"/>	Trust <input type="checkbox"/>
Registration number:	.....	
VAT number:	.....	
Contact details:	Physical address:		
			Postal Code
	Postal address:		
			Postal Code
	Telephone number		
	Email address		
PART 2: AUTHORISED REPRESENTATIVE			
Name of Authorised Representative	.....	
Designation of Authorised Representative	.....	
Contact details of Authorised Representative	Physical address:		
			Postal Code
	Postal address:		
			Postal Code
	Telephone number		
	Mobile number		
	Email address		
PART 3: REQUESTED DOCUMENTATION			
Please indicate/provide:	Is the Customer a ring-fenced company?	Y	N
	Certificate of Incorporation	.....
	Articles of Association	.....
	Official Form CR12 Report issued by the Companies Registry	.....
	Tax Compliance Certificate	.....
PART 4: ACCOUNT & PAYMENT DETAILS			
<i>(Note: Do not complete Part 4 if you will not have an account with GEA East Africa (Pty) Ltd)</i>			
Banking Details	Account Name		
	Bank		
	Branch		
	Branch Code		
	Account Number		
Estimated Monthly Spend	Ksh.....-.....		
Account Limit	Ksh.....-.....		

**GEA EAST AFRICA (PTY) LTD:
GENERAL TERMS AND CONDITIONS**

TABLE OF CONTENTS

1	DEFINITIONS	1
2	INTERPRETATION.....	1
3	GEA BUSINESS	2
4	APPLICATION OF THESE T&C	2
5	DURATION	2
6	CUSTOMER ACCOUNTS	3
7	QUOTATIONS, ORDERS & ACCEPTANCE	3
8	SUPPLY OF EQUIPMENT AND SERVICES	3
9	DESIGN, SPECIFICATIONS AND DRAWINGS	3
10	CONTRACT PRICE	4
11	PAYMENT TERMS	4
12	ADJUSTMENTS OF THE CONTRACT PRICE.....	4
13	OWNERSHIP AND RISK.....	5
14	ACCESS TO PREMISES.....	5
15	DELIVERY	5
16	INSTALLATION AND COMMISSIONING	6
17	BUILDERS' WORK.....	6
18	SITE	6
19	WARRANTIES BY GEA	6
20	LIMITATION OF LIABILITY	8
21	INSURANCE	8
22	LICENCES AND APPROVALS.....	9
23	DEFAULT EVENTS	9
24	CERTIFICATE OF INDEBTEDNESS	9
25	LEGAL COSTS.....	9
26	DISPUTE RESOLUTION	9
27	CONSEQUENCES OF TERMINATION	10
28	SECURITY	10
29	CREDITWORTHINESS	10
30	CONFIDENTIALITY	10
31	INTELLECTUAL PROPERTY	11
32	FORCE MAJEURE	12
33	DOMICILIUM AND INFORMATION	12
34	RELATIONSHIP	12
35	CESSION AND ASSIGNMENT	12
36	NO CHANGE OF CONTROL	12
37	UPDATING OF THESE T&C AND AMENDMENTS	12
38	DATA PROCESSING	12
39	GENERAL.....	13

GENERAL TERMS AND CONDITIONS

PART A: INTRODUCTION

1 DEFINITIONS

- 1.1 In this Agreement unless the context otherwise indicates –
- 1.1.1 **"Account Limit"** has the meaning given to such term in clause 6.2;
- 1.1.2 **"AFSA"** means the Arbitration Foundation of Southern Africa;
- 1.1.3 **"Agreement"** means collectively the Quotation, the Customer Information Schedule, these T&C, any Order Confirmation, the Specifications and any other written documentation issued by GEA to the Customer;
- 1.1.4 **"AIA"** has the meaning given to such term in clause 16.3;
- 1.1.5 **"Approvals"** has the meaning given to such term in clause 22.1;
- 1.1.6 **"Authorised Representative"** means the person/s specified in the Customer Information Schedule or otherwise in writing by the Customer to GEA to be the authorised representative/s of the Customer for the purposes set out in an Agreement;
- 1.1.7 **"Contract Price"** has the meaning given to such term in clause 10.1;
- 1.1.8 **"Contracting Division"** has the meaning given to such term in clause 3.2.1;
- 1.1.9 **"Customer"** means the Party whose full and further details are contained in the Customer Information Schedule or the Order Confirmation;
- 1.1.10 **"Customer Information Schedule"** means the written customer information schedule or form containing the details of the Customer, to which these T&C are attached;
- 1.1.11 **"End User"** means the party who will finally use the Equipment or benefit from the Services for a specific and intended purpose;
- 1.1.12 **"Equipment"** means the products to be sold to the Customer by GEA, being inter alia commercial and industrial refrigeration equipment and related parts, components and equipment, and including such goods as may be required for the purposes of rendering any Services;
- 1.1.13 **"GEA"** means GEA East Africa (Pty) Ltd, registration number CF/2013/112305, a private limited liability company registered under the laws of Kenya with the business address of Ware House No. 10, Saku Business Park, Nairobi, Kenya;
- 1.1.14 **"Governmental Body"** means any country, any national body, any state, province, municipality, or subdivision of any of the foregoing, any governmental department, or any agency, court, entity, commission, board, ministry, bureau, locality or authority of any of the foregoing, or any quasi-governmental or private body exercising any regulatory, taxing, importing, exporting, or other governmental or quasi-governmental function;
- 1.1.15 **"Invoice"** means a tax invoice for the Equipment sold or Services performed by GEA and issued to the Customer pursuant to an Order Confirmation;
- 1.1.16 **"Kenya"** means the Republic of Kenya;
- 1.1.17 **"Order"** means the order placed by a Customer with GEA;
- 1.1.18 **"Order Confirmation"** means the written order confirmation from GEA acknowledging receipt of the Customer's acceptance of a Quotation;
- 1.1.19 **"OHSA"** means the Occupational Health and Safety Act, No. 15 of 2007;
- 1.1.20 **"Outstanding Amount"** means, at any relevant point in time, the

amount outstanding by the Customer in respect of all Equipment sold and delivered and/or all Services rendered, and other fees, charges, costs and any other amounts owed to GEA for any purpose whatsoever levied in terms of this Agreement by GEA;

- 1.1.21 **"Party/ies"** means GEA and the Customer;
- 1.1.22 **"Prime Rate"** means the prime interest rate charged by GEA's bankers on overdrawn current accounts from time to time calculated daily and compounded monthly in arrears as certified (in the case of a dispute as to the rate so payable) by any manager of any branch of the bank whose authority, designation and appointment it shall not be necessary to prove;
- 1.1.23 **"Quotation"** means any written quotation submitted by GEA to the Customer, including for avoidance of doubt any quotation submitted via email;
- 1.1.24 **"Services"** means the services rendered or to be rendered by GEA;
- 1.1.25 **"Services & Spares Division"** has the meaning given to such term in clause 3.2.2.1;
- 1.1.26 **"Set in Operation"** has the meaning given to such term in clause 16.6;
- 1.1.27 **"South Africa"** means the Republic of South Africa;
- 1.1.28 **"Specifications"** has the meaning given to such term in clause 9.4;
- 1.1.29 **"T&C"** mean the general terms and conditions applicable to the sale of Equipment and the provision of services contained in this document, and any schedules hereto;
- 1.1.30 **"Transport Division"** has the meaning given to such term in clause 3.2.2.2; and
- 1.1.31 **"VAT"** means value-added tax in terms of the Value Added Tax Act, No. 35 of 2013, as amended.

2 INTERPRETATION

- 2.1 In this Agreement –
- 2.1.1 clause headings and the heading of these T&C are for convenience only and are not to be used in its interpretation;
- 2.1.2 an expression which denotes –
- 2.1.3 any gender includes the other gender;
- 2.1.4 a natural person includes a juristic person and *vice versa*;
- 2.1.5 the singular includes the plural and *vice versa*;
- 2.1.6 a Party includes a reference to that Party's successors in title and assigns allowed at law; and
- 2.1.7 a reference to a consecutive series of two or more clauses is deemed to be inclusive of both the first and last mentioned clauses.
- 2.2 Any reference in this Agreement to –
- 2.2.1 **"business hours"** shall be construed as being the hours between 08h30 and 16h30 on any business day. Any reference to time shall be based upon Kenyan Standard Time;
- 2.2.2 **"days"** shall be construed as calendar days unless qualified by the word "business", in which instance a **"business day"** will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of Kenya from time to time;
- 2.2.3 **"laws"** means, unless otherwise specified, all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or

regulatory judgements, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of, or instructions by any Governmental Body; and the common law, and "law" shall have a similar meaning; and

- 2.2.4 "person" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality.
- 2.3 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.
- 2.4 Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of the Agreement.
- 2.5 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 this Agreement.
- 2.6 Unless otherwise provided, defined terms appearing in this Agreement 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.
- 2.7 A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.
- 2.8 Unless specifically otherwise provided, 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.
- 2.9 If the due date for performance of any obligation in terms of this Agreement is a day which is not a business day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding business day.
- 2.10 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.
- 2.11 The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.
- 2.12 No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a Party to this Agreement.
- 2.13 The use of any expression in this Agreement covering a process available under South African or Kenyan law, as applicable, such as business rescue or winding-up, shall, if either of the Parties to this Agreement 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.
- 2.14 Any reference in this Agreement to "this Agreement" or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time.
- 2.15 In this Agreement the words "clause" or "clauses" and "annexure" or "annexures" refer to clauses of and appendices to these T&C.

3 GEA BUSINESS

- 3.1 GEA designs, sells, engineers, installs and maintains a wide variety of process technologies, equipment and components for sophisticated production processes to a wide range of clients in the food, non-food, process and marine industries, where cooling technology is an essential part of their primary process.
- 3.2 GEA's business is separated into 2 major business areas, namely –
- 3.2.1 "GEA Solutions", which provides project-related and tailored manufacturing solutions to clients operated through the contracting division ("**Contracting Division**"), which supplies

and constructs packaged and custom designed refrigeration plants; and

- 3.2.2 "GEA Equipment", which manufactures, delivers, installs and commissions custom built equipment to clients for various applications, including transport cooling systems, flow components, separation/homogenizers, dairy farming equipment, compression equipment and food processing and packaging equipment, operated through the following divisions –
- 3.2.2.1 the Services & Spares Division ("**Services & Spares Division**"), which supplies refrigeration spare parts and services refrigeration plants (mobile and fixed) as well as road, marine and rail transport refrigeration equipment and/or self-contained land based plant refrigeration units; and
- 3.2.2.2 the Transport Division ("**Transport Division**"), which supplies transport refrigeration and lift components and accessories.
- 3.3 In addition to the above, GEA also provides certain Services to clients in respect of both the GEA Solutions and GEA Equipment areas of its business.

PART B: APPLICATION AND DURATION

4 APPLICATION OF THESE T&C

- 4.1 These T&C are an integral part of all sales, supplies and services to be provided by each division of GEA (or any offers by GEA to provide any sales, supplies and services) and the T&C will apply –
- 4.1.1 to the sale and supply of all Equipment or any offers for the sale and supply of Equipment by GEA;
- 4.1.2 to the rendering of any Services or any offers for the rendering of any Services by GEA; and/or
- 4.1.3 to all payment terms applicable to the Customer, and all transactions related thereto.
- 4.2 These T&C, together with the information and the terms and conditions set out in or referred to in the Customer Information Schedule, the Quotation and the Order Confirmation and the Specifications shall collectively constitute an agreement between GEA and the Customer. In the event of a conflict between any provision of these T&C and any Quotation, any Order Confirmation, any Customer Information Schedule, or any Specifications, to the extent applicable, then the order in which the documents shall take precedence shall be –
- 4.2.1 firstly, the Customer Information Schedule;
- 4.2.2 secondly, the Order Confirmation;
- 4.2.3 thirdly, the T&C; and
- 4.2.4 lastly, the Quotation.
- 4.3 The provisions of these T&C shall override any terms or provisions provided or imposed by the Customer when purchasing or ordering Equipment or Services from GEA.
- 4.4 This Agreement shall bind the Parties from earlier of the date of signature of any Order by the Customer and the date of signature of these T&C by both Parties. Notwithstanding the foregoing, if the Customer accepts any Quotation (whether verbally or in writing), then the Customer will be deemed to have accepted these T&C, notwithstanding the fact the T&C is not signed by both Parties.

5 DURATION

- 5.1 The Agreement shall endure from the date of signature of an Order by the Customer until all the obligations of the Customer in terms of an Agreement have been fully discharged unless otherwise terminated in terms hereof.
- 5.2 The withdrawal, cancellation or termination of any particular Order shall not affect the provisions of these T&C which will remain binding on the Parties, and shall specifically continue to bind the Parties in respect of any other Orders currently in force at that time or concluded thereafter, unless otherwise agreed in writing between the Parties.

PART C: CUSTOMER ACCOUNTS

6 CUSTOMER ACCOUNTS

- 6.1 The provision to the Customer of an account facility in terms hereof shall be entirely in the discretion of GEA. In determining whether to provide a Customer with an account facility for the purposes of any Order or under any Agreement, GEA shall be entitled to require the Customer to provide any information relating to its business, financial position, creditworthiness or otherwise for consideration by GEA. In addition, GEA shall be entitled, at any time, on written notice to the Customer to withdraw any unutilised account facilities provided to the Customer.
- 6.2 The Customer shall be entitled to place Orders up to the maximum amount stipulated in writing by GEA from time to time ("**Account Limit**").
- 6.3 Subject to clauses 6.1 and 6.4, the Account Limit may be reduced by either GEA or the Customer on written notice (which shall specify the new Account Limit and when it will take effect) signed by the Authorised Representative, provided that where the Customer requests a decrease in the Account Limit, this will apply only if and to the extent that there are unutilised amounts available to the Customer unless the Customer reduces the Outstanding Amount.
- 6.4 The Account Limit may only be exceeded or increased with the prior written approval of GEA.
- 6.5 Should the Customer exceed the Account Limit at any time (irrespective of whether any Outstanding Amount may not yet be due and payable), GEA shall, at its sole discretion and without prejudice to any of its rights or remedies in terms hereof and at law, be entitled to refuse to issue an Order Confirmation.
- 6.6 The fact that the Customer receives Equipment and Services, as applicable, on account in terms of this Agreement does not mean and shall not be construed as obliging GEA to sell Equipment or render Services to the Customer, it being understood that GEA shall always in its sole discretion be entitled to refuse to sell or deliver Equipment or render Services required by the Customer.

PART D: ORDER PROCEDURE AND SUPPLY OF GOODS AND SERVICES

7 QUOTATIONS, ORDERS & ACCEPTANCE

- 7.1 Quotations will be valid for acceptance by the Customer for 30 days from the date of Quotation, unless otherwise stated in the Quotation.
- 7.2 Quotations must be accepted by the Authorised Representative in writing. Failure to provide timeous acceptance of any Quotation will result in the lapsing of a Quotation.
- 7.3 The Customer shall deliver any written acceptance of any Quotation to GEA to such physical address, fax or e-mail as may be nominated by GEA from time to time.
- 7.4 GEA shall issue an Order Confirmation as soon as practically possible after receipt of the Customer's acceptance of Quotation, provided that delivery of the Equipment shall be deemed to constitute acceptance of the Order Confirmation by GEA notwithstanding that an Order Confirmation may not have been sent to or received by the Customer.
- 7.5 Upon the issue of an Order Confirmation, GEA hereby sells to the Customer, who hereby purchases from GEA, the Equipment and/or Services as specified in the relevant Order Confirmation.
- 7.6 The Customer shall not be permitted to –
 - 7.6.1 change the Order in any manner whatsoever; and
 - 7.6.2 reschedule the delivery of the Order in any manner whatsoever, save in accordance with clause 12.2, or otherwise as agreed in writing with GEA.

8 SUPPLY OF EQUIPMENT AND SERVICES

- 8.1 GEA shall –
 - 8.1.1 supply the Equipment specified in an Order Confirmation or failing which as specified in the Quotation; and
 - 8.1.2 render the Services set out in an Order Confirmation or failing which as specified in the Quotation.

- 8.2 The Customer shall –
 - 8.2.1 as part of the Order, provide GEA with the site owner's or lessor's details, site location details, the exact location where Equipment is to be installed or Services are to be rendered, the installation dates and the contact details of the designated responsible person of the Customer or End User at the place of delivery;
 - 8.2.2 ensure that, where any Equipment is to be installed and/or Services are to be rendered at the Customer's or an End User's location, such location is ready and has been prepared for such installation of the Equipment or the provision of Services by such time and in such condition as may be required in terms of an Agreement or by GEA in writing;
 - 8.2.3 to the extent that the Services involve the installation of any Equipment, make the necessary electrical outlets available for the operation of the Equipment and ensure that all electrical requirements are met to facilitate the installation of the Equipment;
 - 8.2.4 provide all necessary materials, plant and equipment to enable GEA to supply the Equipment and render the Services, including electrical power, potable water and lighting;
 - 8.2.5 provide safe and reliable equipment to assist in the transport of any Equipment at the installation site, including (where necessary) cranes and other lifting and transport equipment, which are to be operated and maintained by the Customer's personnel;
 - 8.2.6 provide any drawings or information which GEA may require for the purposes of carrying out the installation of Equipment or the performance of the Services;
 - 8.2.7 provide any special tools required for the commissioning of the Equipment; and
 - 8.2.8 provide access to secure storage facilities for purposes of storing any plant, materials and tools provided by GEA, for the duration of the period over which the Services are rendered.
 - 8.3 Any failure by a Customer to perform its obligations in terms of this clause 8 will entitle GEA to suspend the delivery of Equipment or the provision of Services upon written notification to the Customer, stating the reasons for the delay, disruption, hindrance or obstruction to GEA's performance.
 - 8.4 Under no circumstances will GEA be responsible for the acts and/or omissions of any other contractor or person provided or made available by the Customer or for works or any equipment supplied by such persons, either by way of a deemed employer or otherwise, or for their payment, welfare, provision of safety equipment or safe means of working, or for their work, productivity or workmanship. The Customer shall be solely responsible for any failure of such persons or contractors to strictly comply with the instructions and requirements of GEA. The Customer indemnifies, defends and holds GEA harmless from any resulting claims and liability for loss or damage to any property or for personal injury or death in any way arising out of the acts or omissions of any such persons and contractors, save in each case to the extent directly caused by the gross negligence or wilful default of GEA.
- 9 DESIGN, SPECIFICATIONS AND DRAWINGS**
- 9.1 The Customer shall provide GEA with a description of Equipment or Services required.
 - 9.2 The Customer acknowledges that any drawings, illustrations, design concepts, photographs or descriptive matter contained in any Quotation is provided in good faith and shall be merely illustrative and provided to the Customer to show general style, arrangement and dimensions.
 - 9.3 Where required to do so and only after acceptance of a Quotation, GEA shall prepare (or arrange the preparation of) concept or detailed design plans, drawings or specifications for approval by the Customer. GEA shall not be obliged to commence preparation of any such documents until it is in receipt of payment of any deposit or advance payment if required in terms of clause 28.1.
 - 9.4 A copy of the detailed drawings, designs and specifications ("**Specifications**") will either be attached to the Order Confirmation or otherwise provided to the Customer.
 - 9.5 GEA shall ensure that any Equipment (and all components in such Equipment) supplied in terms of an Agreement will generally

conform to the Specifications approved by the Customer or any person nominated for this purpose by the Customer.

- 9.6 The Customer acknowledges that the Specifications are a function of the information provided to GEA by the Customer or its representatives, contractors or sub-contractors and the Customer must satisfy itself as to the accuracy of such information and the suitability of the plant and Equipment for its own particular purpose. To the extent permissible under applicable laws, any implied warranty or condition (including that the Equipment will be fit for purpose) is specifically excluded.
- 9.7 All drawings, specifications, plans, descriptions, manuals and technical literature shall be provided in the English language only.

PART E: PRICE, PAYMENT TERMS AND MODIFICATIONS

10 CONTRACT PRICE

- 10.1 The purchase price in respect of any Equipment and/or Services shall be the price as stated, or calculated in accordance with such mechanism set out in the Order Confirmation, or failing which as specified in the Quotation ("**Contract Price**").
- 10.2 The Contract Price shall, unless expressly stated otherwise in a Quotation or the Order Confirmation, exclude VAT, general sales tax, any other taxes, costs, duties, levies or any other charge imposed by any law to which the Customer is subject or by any regulatory authority exercising jurisdiction, all which shall be paid by the Customer at the prevailing rate in addition to the Contract Price. Without limiting the foregoing, the Customer agrees to pay, in addition to the Contract Price, the amount of any tax, duty or charge based upon the sale, transfer, use, ownership or possession of any Equipment, imposed by any law (South African, Kenyan or otherwise).
- 10.3 All charges relating to the packaging, transport and delivery and offloading of the Equipment (where relevant) shall be for the account of the Customer, unless such costs are expressly incorporated in the Contract Price or expressly stated to be for GEA's account in the Order Confirmation, or otherwise agreed to by GEA in writing.
- 10.4 Any and all expenses incurred by GEA at the instance of the Customer, its engineer or any other authorised person for material, designs or labour additional to those required in terms of the Specifications shall be charged for as an extra cost over and above the Contract Price.
- 10.5 All prices shall be quoted and paid in Kenyan Shillings unless stipulated otherwise in writing by GEA.

11 PAYMENT TERMS

- 11.1 GEA shall issue an Invoice to the Customer for payment.
- 11.2 The Customer shall settle the Contract Price in accordance with the payment terms set out in the Order Confirmation or otherwise communicated by GEA to the Customer in writing.
- 11.3 Where no payment terms are set out in the Order Confirmation, payment shall be made by the Customer to GEA as follows –
- 11.3.1 within 30 days of the date of Invoice in the case of the Services Division;
- 11.3.2 within 14 days from the date of Invoice upon the achievement of agreed milestones, in the case of the Contracting Division; and
- 11.3.3 within 7 days of the date of instalment of the transport refrigeration and/or mechanical tail lift, in the case of the Transport Division.
- 11.4 All amounts payable to GEA shall be paid in full –
- 11.4.1 by means of deposit or electronic transfer of cleared funds in the currency of Kenya, immediately available to GEA, into such bank account which GEA may notify the Customer in writing;
- 11.4.2 without the cost of transfer of funds, bank charges or bank commission (all of which shall be borne by the Customer);
- 11.4.3 without deduction of whatsoever nature, including but not limited to set off, abatement, counterclaim or discount.
- 11.5 GEA shall have the right to submit Invoices for partial completion of deliverables subject to prior agreement between the Customer and GEA that a partial delivery can take place.

- 11.6 Where an Invoice must be certified by an engineer or other agreed certifying authority, such Invoices shall be submitted by the Customer to such engineer or certifying authority for final certification within 7 days of issue by GEA and copies of all certificates relating to their work are to be delivered to GEA immediately after they are issued, provided that no payments shall be delayed pending the certification of an Invoice by an engineer in terms of this clause 11.6.
- 11.7 Subject to clause 11.8, the Outstanding Amount shall not bear interest during the applicable payment period stipulated in clause 11.3.
- 11.8 Notwithstanding clause 11.7, GEA shall be entitled (but not obliged) to charge interest on any amount not paid on the due date for payment as stipulated in clause 11.3 at the Prime Rate plus 2% per month, or such higher interest rate as may be permitted in law, calculated from the due date for payment until the date of payment, both days inclusive.
- 11.9 All payments made by the Customer to GEA shall, unless otherwise agreed by GEA in writing, be allocated, to the extent relevant, first to interest (if any), then to costs, including all default administration charges and legal costs, and finally towards the reduction of any Outstanding Amount.

12 ADJUSTMENTS OF THE CONTRACT PRICE

12.1 Fluctuation in exchange rate

- 12.1.1 The Customer shall carry the risk of or benefit from any fluctuations in the exchange rate.
- 12.1.2 Any Contract Price quoted by GEA or stated in an Order Confirmation is based, insofar as it relates to the supply of imported Equipment, upon the exchange rate prevailing as at the date of the Quotation or the Order Confirmation, as the case may be, between Kenya and the country/ies from which such Equipment is to be imported.
- 12.1.3 GEA may from time to time offer forward cover to cover any foreign currency component of the Contract Price. The Customer shall give a written instruction to GEA to proceed with the purchase of the forward cover within 24 hours of receiving the currency quotation. Forward cover rates vary constantly and any rate given is an indication only and is not guaranteed by GEA.
- 12.1.4 If any variance occurs in the exchange rate between the Quotation or Order Confirmation and the date of actual payment of the Contract Price (or part thereof), and should any such variation result in an increase or decrease in the Contract Price to GEA, then GEA shall be entitled to increase or decrease the Contract Price by an amount equivalent to the change in exchange rate.
- 12.1.5 Written confirmation issued by GEA's principal bank or by GEA's auditors shall be proof of any calculation or matter certified by them concerning the fluctuation in exchange rate contemplated in this clause 12.1.

12.2 Variations, Extras and Adjustments

- 12.2.1 In the event that either Party wishes to vary an Order in any way (whether in respect of Equipment to be provided or the scope of Services to be performed, extras or adjustments or otherwise), it must forward a written request to the other Party detailing the nature of the proposed variation, the reasons therefor, its effect on the Contract Price and delivery or completion dates or project program.
- 12.2.2 The Parties shall agree on any variation to the Order in writing and GEA shall not be obliged to provide any Equipment or perform any Services unless agreement as to the variation of an Order has been reduced to writing and signed by GEA and the Authorised Representative on behalf of the Customer.
- 12.2.3 GEA shall be entitled to suspend any/all or part of any work or Services, pending consensus between the Parties after as to the variation of the terms of the Order.
- 12.2.4 Any variation shall be implemented by GEA on the date agreed between the Parties in writing, provided that such variation shall be implemented as soon as practically possible.
- 12.2.5 The Customer shall be solely responsible for and hereby indemnifies GEA against all costs, fees and/or expenses of whatsoever nature arising as a result of a variation to an Order

including loss of income, damage, loss (including consequential losses), claim, expense or cost of whatever nature (including costs of preparing an amended or revised Order Confirmation), which may be suffered by the Customer as a result of any delay caused by changes to an Order.

12.2.6 The Contract Price is based on the assumption that all work will be carried out during normal working hours without interruption or delay, unless otherwise stated in the Agreement. Furthermore, the Contract Price for any transaction falling within the Contracting Division or the Services and Spares Division is based on the assumption that work can be completed during one uninterrupted period at the Customer or End User's site. Any additional costs, fees and/or expenses of whatsoever nature that arise by virtue of the assumptions in this clause 12.2.6 being breached and/or inaccurate shall be for the Customer's account and may be included by GEA in a separate Invoice issued to the Customer.

12.2.7 In the event that GEA performs any work or renders any Service outside of business days or business hours or other than as provided for in the Quotation or the Order Confirmation, or it accelerates the project program or it adopts any other special measures required by the Customer then it shall be entitled to increase the Contract Price by an amount equal to the cost incurred by GEA in undertaking such measures and the Order shall be deemed to be varied accordingly without having to follow the procedure set out in clauses 12.2.1 and 12.2.2.

12.2.8 In the event of any delays occasioned by the Customer's failure to prepare the site pursuant to clause 8.2.2, any work stoppage or where uninterrupted access to the site is not provided by the Customer for any reason then GEA shall be entitled to increase the Contract Price by market related waiting time rates as well as any site re-establishment costs.

12.2.9 The Contract Price is based on, inter alia, the rate of labour, cost of Equipment, and materials, import duties, insurance, freight, harbour charges and rail charges in force at the Quotation or the Order Confirmation (where these charges are included in the Contract Price). Should there be any increase in such costs and charges between the date of Quotation or the Order Confirmation and the date such costs and charges are incurred, GEA shall be entitled to increase the Contract Price by an amount equivalent to such increase.

12.3 Substitution of materials

GEA reserves the right but at no additional charge to the Customer, and subject to all necessary approvals being obtained from the Customer, to substitute materials and items of similar standard, quality and appearance as those contained in the Order Confirmation if circumstances necessitate it.

PART F: OWNERSHIP AND RISK

13 OWNERSHIP AND RISK

13.1 Ownership in the Equipment shall pass to the Customer when the Contract Price has been paid in full and received by GEA. Accordingly, ownership in and to the Equipment shall remain with GEA until fully paid for by the Customer.

13.2 Subject to the provisions of clause 15.1.5, risk in the Equipment and Services shall pass to the Customer from delivery, as provided for in clause 15.

13.3 Where the Equipment consists of a consignment or number of identical or indistinguishable items or products sold by number, weight, measure or otherwise not individually, GEA's right to claim ownership in terms of clause 13.1 shall be for Equipment of the same or similar number, weight, measure or type sold to the Customer by GEA.

14 ACCESS TO PREMISES

14.1 GEA shall be entitled to enter on the site or the premises where the Equipment is located to exercise its rights over the Equipment not paid for or alternative goods as contemplated in clause 13.3, in the event that the Customer is in breach of any term/s of an Agreement or obligation in terms thereof.

14.2 The Customer shall exercise due care in the storage and use of the Equipment and shall not be entitled to sell, pledge or damage or in any way encumber the Equipment or permit the encumbrance thereof until it has been fully paid for.

14.3 The Customer shall in any event notify GEA in writing of the details of the premises where any Equipment is to be delivered, stored or used as well as the details of the owner or landlord of such premises, as well as any changes in the owner or landlord. In addition, if the Equipment is located on leased premises, the Customer shall forthwith notify the relevant landlord of GEA's ownership and rights to the Equipment in terms of clauses 13.1 and 14 and provide GEA with written proof of having done so.

PART G: DELIVERY, ACCEPTANCE AND INSTALLATION

15 DELIVERY

15.1 General

15.1.1 GEA shall deliver and, to the extent it is required to do so for the purposes of any work to be completed under the Contracting Division, install and commission the Equipment in accordance with the procedure in clause 16, and/or perform the Services on the approximate date and manner set out, and at the place stipulated, in the project or installation programme (if any) prepared by GEA, and otherwise in accordance with the Order Confirmation.

15.1.2 If no such address is indicated on the Order Confirmation or in the Customer Information Schedule, the Equipment and/or Services shall be delivered as follows –

15.1.2.1 for any sales or supplies under the Services & Spares Division, *ex works* at the premises of GEA;

15.1.2.2 for any sales or supplies under the Contracting Division, *ex works* at the premises of GEA; and

15.1.2.3 for any orders of the Transport Division, Equipment will be made available for collection at GEA's premises.

15.1.3 GEA undertakes to use commercially reasonable precautions to avoid any delay in the delivery, installation or commissioning (if applicable) of the Equipment. In the event that GEA anticipates a material delay in the delivery of any Equipment or the rendering of any Services, it shall inform the Customer about such delay as soon as practically possible.

15.1.4 Subject to applicable laws, the Customer shall not be entitled to levy any penalty for any delay in delivery or installation of the Equipment or the rendering of the Services and no delay of whatsoever nature howsoever arising shall give rise to a right or claim for loss, damages or cancellation of an Order or this Agreement by the Customer. Subject to applicable laws, GEA shall not be liable for any loss of income, damage, loss (including consequential losses), claim, expense or cost of whatever nature, whether general or special, direct or indirect, which may be suffered by the Customer as a result of any delay, whether due to GEA, its suppliers or the Customer.

15.1.5 Save as may be permitted under applicable laws, should the Customer fail or be unable, for whatever reason (save for a rejection of the Equipment pursuant to an inspection thereof in terms of clause 15.1.9), to accept delivery or installation of the Equipment or any part thereof, then the Customer shall be responsible for any/all costs resulting from or incidental to such delay (including holding or storage costs, insurance costs, cancellation costs for any cranes or other loading equipment, rental vehicles) and full risk in and benefit to the relevant Equipment. GEA shall furthermore be entitled in its discretion and, to the extent permissible under applicable laws, to either increase the Contract Price or demand reimbursement by the Customer of any costs that GEA has incurred due to such delay (provided the delay is not caused by GEA, its employees, agents or suppliers).

15.1.6 In the event of a delay GEA shall be entitled to store the relevant Equipment at its own premises, on the premises upon which the plant is located or at any other premises and recover the costs thereof from the Customer on demand. Where any Equipment is stored at the premises of GEA, it shall be entitled to charge (and the Customer undertakes to pay) a market related storage fee, together with any insurance or any other expenses in connection therewith.

15.1.7 Notwithstanding anything to the contrary herein contained and without prejudice to GEA's rights at law and in terms of any Agreement, GEA shall be entitled in its discretion to withhold delivery of any Equipment ordered should any Outstanding Amount due and payable to GEA in terms of any Order be in

arrears.

- 15.1.8 The Customer shall be obliged to take delivery of the Equipment or Services when tendered, unless such Equipment or Services is defective or does not conform to the order in a material proportion.
- 15.1.9 The Customer shall have the right to examine any Equipment tendered for delivery and to conduct a preliminary inspection in respect of the quality, specifications and quantity of the Equipment.
- 15.1.10 The Customer shall be deemed to have accepted delivery on the date and time when the Customer communicates acceptance to GEA.
- 15.1.11 Notwithstanding clause 15.1.10, any delivery note or certificate of conformance signed by any person accepting the Equipment on behalf of the Customer shall be *prima facie* proof that –
 - 15.1.11.1 the Equipment was delivered timeously;
 - 15.1.11.2 the Equipment or Services were of the type and quality contemplated in the Order or materially conform to the Specifications or the Order Confirmation (whichever is applicable);
 - 15.1.11.3 the Equipment was delivered in the ordered quantities; and
 - 15.1.11.4 the Equipment delivered was in good order and condition and free of any and all patent and latent defects.

16 INSTALLATION AND COMMISSIONING

- 16.1 For the purposes of installations of Equipment under the Contracting Division, GEA may install and commission any Equipment and prepare an installation and commissioning plan, if requested to do so by the Customer, in accordance with the procedure in this clause 16.
- 16.2 Where the Order Confirmation provides for installation services to be provided by GEA, such services will only cover the installation of Equipment to already prepared panels of the vehicle body or cold room. Any preparatory work (including without limitation, the making of holes into which Equipment will fit and suitable strengthening of panels) and in the case of warehouse refrigeration units, the supply and installation of the necessary electrical cables and isolaters, is not included in the Contract Price unless expressly agreed to in writing by GEA.
- 16.3 GEA will thereafter arrange for an inspector registered with the Approved Inspection Authority (or an equivalent or successor body) ("**AIA**") to conduct pressure tests on the Equipment and, to the extent such AIA is satisfied with the results of such tests, will issue written notice to GEA and/or the Customer to this effect.
- 16.4 GEA will thereafter commence and undertake commissioning tests on the Equipment, provided that no such commissioning tests shall commence unless the Customer has loaded the Equipment in accordance with the required procedures and operating instructions provided by GEA.
- 16.5 The Customer shall be obliged to ensure that at all times during the installation and commissioning process –
 - 16.5.1 all utilities at the site location where the installation and/or commissioning tests is/are conducted conform strictly to the requirements of an Agreement;
 - 16.5.2 all upstream and downstream equipment and services required for the operation of the Equipment not installed or supplied by GEA are in good working order and operate properly;
 - 16.5.3 the Authorised Representative or such other representative of the Customer agreed to by GEA in writing is present to supervise the installation and/or commissioning of the Equipment, and to provide any such assistance as may be reasonably requested by GEA; and
 - 16.5.4 the installation site is operating such that, during the commissioning and testing of the Equipment, the conditions under which the Equipment will ordinarily be operated are simulated to allow GEA to effectively commission the Equipment, provided that the costs of ensuring such operating conditions will be for the Customer's account.
- 16.6 After commissioning tests are successfully completed, GEA shall as soon as practically possible hand over to the Customer –

- 16.6.1 the installed Equipment to the Customer;
 - 16.6.2 all operation and maintenance manuals or plans for the Equipment; and
 - 16.6.3 the applicable completion certificates and beneficial handover certificates indicating that the Equipment is operating satisfactorily and the Customer shall have beneficial use of the Equipment,
- from which date the plant shall be deemed to be finally commissioned and the Equipment shall be deemed to be operational ("**Set In Operation**"). From the date on which the Equipment is Set In Operation, the Customer shall be entitled to load and operate the Equipment in accordance with the instructions (if any) of GEA.
- 16.7 GEA shall not be liable for any loss of product, loss of income or profit or any other damage, loss, claim, cost or expense whatsoever which the Customer or any of its employees, contractors, sub-contractors, agents or officers may suffer during the installation or commissioning phase, regardless of the cause thereof.

17 BUILDERS' WORK

- 17.1 Where any Order includes the erection of a plant, the Customer shall arrange, bear any and all costs of and generally be responsible for all builders' work (including foundation blocks, channels, cable trenches, access holes through walls and making good thereof), unless otherwise agreed in writing.
 - 17.2 Where any Order involves a marine installation, the Customer shall arrange, bear any and all costs of and generally be responsible for all builders' work (including foundations of machinery, cutting and drilling holes in bulkheads for fittings, cooling water lines and cooling water stop valves, cable supports and engine room ventilation), unless otherwise agreed in writing.
- ## 18 SITE
- 18.1 The Customer shall provide toilet facilities, electrical power, portable water and lighting during the duration of any installation period, as well as lockable accommodation space for the storage of plant, materials and tools.
 - 18.2 The Customer shall ensure GEA, its employees, contractors, sub-contractors and agents are given full, free and uninterrupted access to the premises and/or the plant, subject to any reasonable safety and security policies in place (provided that GEA is informed thereof in writing prior to entering the site).
 - 18.3 The Customer shall furthermore ensure that the plant is in a fit state to receive an ordered item of Equipment in accordance with the notifications of GEA. Without limiting the generality of the foregoing, the Customer shall ensure that the site complies with OHSA and the regulations issued thereunder.

PART H: WARRANTIES, INDEMNIFICATION AND LIMITATION OF LIABILITY

19 WARRANTIES BY GEA

- 19.1 **General**
GEA gives the following warranties and representations to and in favour of the Customer –
 - 19.1.1 in respect of any Equipment supplied by GEA, such Equipment –
 - 19.1.1.1 will be new, unless the Customer has ordered second hand or refurbished Equipment or parts; and
 - 19.1.1.2 will generally conform with the Specifications (if applicable); and will be free from defects in materials or workmanship;
 - 19.1.2 in respect of any Services performed by GEA, such Services shall be of a professional standard and shall be rendered with due care, skill and diligence, and in accordance with the general undertakings reflected in the Order Confirmation,

subject to the remaining provisions of this clause 19.
- 19.1.3 Save for any implied warranty or condition not precluded in terms of clause 9.6, the warranties set forth in this clause 19 constitute the only warranties with respect to the Equipment and Services. GEA makes no other warranties or representations of any kind, whether express or implied, with respect to the Equipment or Services, whether as to quality, description, fitness for a

particular purpose or any other matter.

19.1.4 Without diminishing its obligations and responsibilities pursuant to any other provision of this Agreement, GEA will, to the extent possible and as far as GEA is legally able to do so, assign in favour of the Customer the benefits of any such warranties as given to GEA by any third person in relation to the Equipment or any component thereof.

19.2 Limitation on Period of Warranties

19.2.1 Unless otherwise specified in the Order Confirmation, the warranties provided in clause 19.1 shall be limited as follows –

19.2.1.1 in respect of any Equipment supplied under the Contracting Division, the warranty shall be for a period of 12 months from the date upon which the Equipment is Set In Operation or 15 months from the date of delivery, whichever occurs earliest;

19.2.1.2 in respect of any Equipment supplied under the Transport Division, the warranty shall be for a period of 12 months from the Equipment is Set in Operation or, subject to clause 19.3.2, for a period of 24 months for specific transport refrigeration Equipment as set out in the Quotation;

19.2.1.3 in the case of marine installations, for a period of 6 months from the date upon which the Equipment is Set In Operation or 9 months from the date of final commissioning in accordance with clause 16.4, whichever occurs earliest; and

19.2.1.4 compressors shall be warranted free from defects or workmanship for a period of time stipulated in a Quotation or an Order Confirmation, subject to a maximum of 5,000 operating hours, based upon normal operating conditions, provided that all quoted capacities shall be subject to a deviation of +5% and -5% performance in relation to such warranty period and, accordingly, should a compressor manifest a defect prior to the warranty period stipulated in a Quotation or an Order Confirmation but nevertheless have been in operation for a period equal to or longer than that represented by the -5% deviation quotient, there shall be no breach of warranty constituted by the manifestation of such defect; and

19.2.1.5 in the case of a service repair or Equipment overhaul on used equipment undertaken by GEA, for a period of 3 months from the time the serviced parts or Equipment is/are Set In Operation.

19.2.2 Where GEA performs maintenance, overhaul or repair Services, either on Equipment supplied by GEA or any other products, materials or equipment, the warranty shall be for a period of 3 months commencing from the date of rendering the Services or, if applicable, the date of delivery of any Equipment being maintained, overhauled or repaired.

19.3 Limitation on Claims under Warranties

19.3.1 GEA shall not be liable for claims arising from a breach of warranty in the event of any one or more of the following circumstances occurring –

19.3.1.1 the Equipment has undergone fair wear and tear;

19.3.1.2 the Equipment has not been stored or handled in accordance with normal storage and handling conditions;

19.3.1.3 the Equipment has not been utilised under normal operating conditions;

19.3.1.4 the Equipment or the fitting of any part of the Equipment has not been transported, lifted, assembled, installed, operated or maintained by suitably qualified and experienced personnel and in accordance with the manufacturer's instructions, the operating manuals in respect of the Equipment and/or any applicable law;

19.3.1.5 the Customer has used any Equipment, spare parts or components in any manner whatsoever that do not conform with the Specifications, if applicable, and/or where the Customer has used any non-original spare parts;

19.3.1.6 if the fitting of the part concerned has been effected contrary to instructions given by GEA;

19.3.1.7 if repairs have been done to or alterations made to the Equipment or any part thereof by the Customer or any third

party without the consent of GEA or otherwise than by an appropriately qualified person in accordance with the manufacturers' instructions;

19.3.1.8 the Equipment has been subject to misuse by the Customer or the End User in accordance with any information, services, personnel, equipment or other items supplied by or for Customer or the End User, or have been subjected to conditions for which the Equipment was not designed;

19.3.1.9 the Equipment is damaged at any time due to operator error;

19.3.1.10 the Equipment is damaged at any time due to a failure of upstream or downstream equipment or any other equipment forming part of the manufacturing process of the Customer or used by the Customer in the operation of the Equipment;

19.3.1.11 the Customer has used, applied or incorporated any corrosive or abrasive substances in its manufacturing process or operation of the Equipment generally;

19.3.1.12 the Customer prevents GEA from performing any commissioning tests in accordance with clause 16 where GEA has expressly advised the Customer that such commissioning tests will be necessary and/or failure to permit GEA to supervise the installation of the Equipment generally; and/or

19.3.1.13 where the defects in the Equipment have been caused by, or the quality of the Equipment has been affected by, the negligence or fault of the Customer, the Customer's premises or any third party.

19.3.2 For purposes of the Transport Division, the warranty in this clause 19 does not extend to the replacement of oil, lubricants, injectors, drive belts, glow plugs, water hoses and/or any item that has undergone fair wear and tear that may be serviced by GEA. For specific transport refrigeration Equipment set out in the Quotation, a 24 month warranty will apply, provided that the Equipment is serviced between the 10th and 14th month after being operated and this service takes place at the premises of GEA, or the premises of one of GEA's authorised sub-agents. The aforementioned inspection is mandatory to activate the warranty for the second year after going into service and shall be provided free of charge to the Customer at GEA's workshop, unless the Customer requests GEA to complete it at their premises, in which event the Customer shall pay all GEA's travelling, accommodation and other expenses and an hourly labour rate shall be levied.

19.3.3 GEA shall not be liable for any loss or damage, including any loss or damages described in clause 20.1.1 caused by or resulting from any breach of warranty or any defect covered by clause 19.3.

19.3.4 Should the Customer breach these T&C or any Order then GEA shall be entitled, in its sole discretion, either to cancel or to suspend the warranties contained herein for so long as the Customer remains in breach, provided that such cancellation or suspension shall not be deemed to prejudice any other rights in law or under these T&C which GEA is entitled to.

19.3.5 Notwithstanding any alleged non-fulfilment by GEA of any of its warranty obligations in terms of this clause 19, the Customer shall not be released from any of its obligations (including its payment obligations) in terms of these T&C, any Order and/or any Order Confirmation.

19.4 GEA's Obligations on Breach of Warranty

19.4.1 In the event of a breach of warranty during the applicable warranty period specified in clause 19.2, GEA shall –

19.4.1.1 in the case of a defect in Equipment, be obliged to repair any defective Equipment (or parts thereof); and

19.4.1.2 in the case of a defect in Services, be obliged to re-perform its obligations in respect of the relevant part of the Services that are defective.

19.4.2 The Customer's remedies contemplated in clause 19.4.1 shall be the Customer's sole and exclusive remedies in respect of any breach by GEA of any warranty given to the Customer in terms of the Agreement.

19.4.3 GEA shall bear the costs of any parts or labour in repairing any defective Equipment within the applicable warranty period specified in clause 19.2.

- 19.4.4 For purposes of the Transport Division, all repairs shall be undertaken at GEA's premises unless otherwise agreed in writing by GEA. All charges incurred in transporting any Equipment from the Customer or the End User's premises to GEA's premises will be borne by the Customer.
- 19.4.5 All costs of GEA in repairing any defective Equipment outside of the applicable warranty period specified in clause 19.2 and any costs incidental thereto shall be the responsibility of the Customer unless expressly stated to the contrary in terms of these T&C or otherwise in writing. Without limiting the generality of the foregoing, the Customer shall bear all travelling (including car rental), accommodation and other expenses incurred by GEA in connection with any repair contemplated in this clause 19.4.5.
- 19.4.6 Any labour costs for repairs performed outside of normal working hours or in an area other than GEA's premises, shall, irrespective of whether such repairs are required to be made within the warranty periods contemplated in clause 19.2 or not, be the responsibility of the Customer.
- 19.4.7 GEA's liability for any claim based on a breach of warranty (or for any other claim based on any defect in Equipment that GEA supplies to the Customer) shall under no circumstances exceed the replacement value of the Equipment shown to be defective, or at GEA's option, reimbursement of the Contract Price and deposit (if any) received by it.
- 19.5 Notification of Defects**
- 19.5.1 The Customer shall notify GEA in writing of any defect and shall provide full details of the nature of the defect, within 7 days after such defect is discovered by the Customer or after the Customer has received notification by an End User of a defect.
- 19.5.2 The Customer shall immediately take steps to mitigate any losses caused by any defective Equipment or any Equipment which forms the subject matter of a warranty claim, and the Customer shall not in any way deal with such Equipment save as may be agreed between the Parties in writing. The Parties will endeavour to agree in good faith as to how to deal with the Equipment in question and discharge any payments due in respect thereof.
- 19.5.3 GEA shall not be responsible for the efficacy of any design of Equipment or plant where such design has not been prepared by GEA. Where GEA has undertaken the design GEA shall rectify, free of charge to the Customer, any fault in such design where it becomes apparent within 6 months from the date that the Customer or End User is granted beneficial use, provided that –
- 19.5.3.1 GEA shall be entitled to perform all tests, examinations, procedures and/or operations necessary to ascertain whether the Equipment is performing to the agreed standard and/or whether the performance of the Equipment has been affected by a design flaw on the part of GEA; and
- 19.5.3.2 the Customer's sole remedy in the event that the performance of any Equipment has been materially adversely impacted due to a flaw in GEA's design of such Equipment shall be to require GEA to effect the necessary repairs and/or modifications to the Equipment or the underlying engineering thereof. Such rectification may include remediation implemented via a remote access solution (e.g., via an IoT edge device or IoT gateway). Customer also grants GEA the right to use any remote access capability installed by or for GEA in relation to the installed Equipment at the site for investigating and rectifying defects. Should Customer disable or otherwise restrict, hinder or prevent GEA from remotely accessing the site or related installed equipment at the site, GEA's ability to perform its warranty obligations may be impaired or delayed; any investigation or resolution of defects by GEA may be incomplete or inaccurate; GEA may incur additional costs in connection with the investigation and/or the rectification of a defect (including the incurrance of travel costs), which GEA will be entitled to recover from Customer; GEA's warranty obligations will be void insofar as GEA's ability to discharge such obligations are materially impaired.
- 19.5.4 GEA shall have no liability for any form of defect, latent or otherwise, for which it received written notification after the expiry of the time periods set out in clause 19.2.1, notwithstanding whether a defect materialised within the such period or not.

20 LIMITATION OF LIABILITY

- 20.1 Notwithstanding anything to the contrary in these T&C or in any Agreement, neither GEA nor any of its employees, directors, officers, agents, contractors or sub-contractors shall be liable for any losses, damages, charges, expenses, costs or any other claims of whatsoever nature howsoever arising. Without in way limiting the generality of the foregoing, GEA shall not be liable for any of the following –
- 20.1.1 any indirect and consequential damages, or loss of profits of any nature (which, for the avoidance of doubt, shall include any loss of opportunity, whether in respect of production or contracts with customers, loss of the use of Equipment or facility, standby costs, loss of or damage to feed, raw materials, utilities or products, plant downtime or delays, loss of goodwill, liquidated damages or penalties imposed on the Customer by End Users or third parties, any recall costs, any damages, fines or penalties payable by the Customer, or otherwise for any financial or economic losses or damages, and in each case irrespective of whether the losses or damages in question are deemed to be direct, consequential, indirect or otherwise) howsoever caused or arising and whether or not within the contemplation of the Parties at the date on which an Order is placed or an Agreement is concluded or at any other time;
- 20.1.2 subject to applicable laws, any delay in delivery, installation or commissioning of any Equipment;
- 20.1.3 any damage to or destruction of or theft of property of the Customer or the End User whilst in the care and custody of GEA or whilst in possession of GEA or its employees, contractors or sub-contractors (including any vehicles driven or stored by GEA);
- 20.1.4 any damage to or destruction of or theft of Equipment whilst stored at the Customer or End User's premises;
- 20.1.5 any damage to or destruction of Equipment whilst loading and off-loading, whether at the Customer or GEA's premises; or
- 20.1.6 any non-suitability of the Equipment.
- 20.2 All forms of liability arising from or in connection with any material used in the manufacture of the Equipment or goods or components thereof not manufactured by GEA, are excluded.
- 20.3 The Customer hereby indemnifies GEA and holds it harmless against any and all liability, loss, damage or claim of whatsoever nature suffered by either the Customer, the End User or any third party in relation to the Services, the Equipment and the installation or use thereof and/or arising from the provisions of this Agreement.
- 20.4 Where refrigerant or oils are provided by the Customer or the End User for use by GEA, GEA shall under no circumstances be liable for the loss of any refrigerant or oil from such Customer's or the End User's plant or equipment unless such loss is attributable to a grossly negligent act or omission on the part of GEA.
- 20.5 All property of the Customer or property supplied to the Customer but subject to any reservation of ownership in favour of GEA is left, stored on/at or transported to GEA shall be so left, stored or transported at the Customer's risk. The Customer is advised to obtain and maintain suitable insurance policies adequately covering the risk of any damage to property stored or left at GEA's premises.
- 20.6 Notwithstanding anything to the contrary in an Agreement, GEA's maximum aggregate liability to the Customer under or in connection with an Agreement and howsoever arising shall in no case exceed, in the aggregate, the value of the amounts actually paid by the Customer and received by GEA in terms of an Agreement.
- 21 INSURANCE**
- The Customer hereby acknowledges that it is aware that –
- 21.1 GEA maintains workers' compensation and employer's liability insurance only in respect of its own employees in a form and amount as required by applicable laws; and
- 21.2 GEA's insurance policies do not cover any –
- 21.2.1 injury to or death of any person other than GEA's employees, or any damage to or destruction or theft of any property other than GEA's property or any other losses which may be suffered by the

Customer, its directors, officers, employees, agents or contractors or sub-contractors or by third parties;

- 21.2.2 loss, theft, damage, destruction or any harm or risk whatsoever that may occur to any object, spare part or component of any Equipment of whatsoever nature whilst in the possession of GEA for repair or any other purposes; and/or
- 21.2.3 loss, harm, injury or death that may occur to any person other than GEA's employees, if the services of GEA are performed on property of Customer or third parties.

PART I: REGULATORY APPROVALS

22 LICENCES AND APPROVALS

- 22.1 The Customer shall, or shall ensure that the End User, obtains any and all licences, authorities, consents and approvals as are required by any law for the importation, exportation, transportation, delivery, installation, commissioning, construction and/or use of the Equipment or performance of the Services ("**Approvals**"), including without limitation obtain any licences required under OHSA.
- 22.2 GEA shall at all times be entitled, without being obliged, on behalf of and as agent of the Customer or the End User, to lodge and pursue all necessary applications with authorities with relevant jurisdiction in order to obtain the Approvals, at the Customer's cost. The Customer shall be obliged to reimburse any costs of GEA in so doing.
- 22.3 The Customer indemnifies and holds GEA harmless, against any claims, damages, costs, liabilities or losses suffered by GEA as a result of any delay in obtaining any Approvals, any failure to obtain, maintain and/or otherwise comply with the Approvals.

PART J: BREACH AND DISPUTE RESOLUTION

23 DEFAULT EVENTS

- 23.1 In the event that –
- 23.1.1 the Customer fails to pay punctually any amount due and payable to GEA and fails to remedy such default within 5 business days from the date of dispatch by GEA of written notice to that effect;
- 23.1.2 the Customer commits any other breach of any of the terms of these T&C or any Agreement and fails to remedy such default within 10 business days from the date of dispatch by GEA of written notification to that effect;
- 23.1.3 a default judgement is entered the Customer and it fails, within 20 business days after such entry of judgement, to satisfy or take steps to rescind the same;
- 23.1.4 the Customer compromises or attempts to compromise any debt with any of its creditors or commits any other act of insolvency (as contemplated under the provisions of the Kenyan Insolvency Act, No. 18 of 2015);
- 23.1.5 the Customer is wound up or liquidated (whether provisionally or finally), or its members pass a resolution to liquidate or wind up the company (other than for the purposes of internal reorganisation), or commit any act of insolvency or enters into business rescue proceedings;
- 23.1.6 the Customer is sequestrated or placed under administration (whether provisionally or finally), or a voluntary surrender order or receivership; or
- 23.1.7 the Customer permits any lien, hypothec, notarial bond, pledge, other security, or interest or encumbrance to be created over the Equipment, or abandons any Equipment or relinquishes possession of any Equipment, or allows any Equipment to be seized under any legal process issued against the Customer prior to the discharging all of its obligations arising from any Agreement,
- then without prejudice to any other rights that it may have at law or under any Agreement, GEA shall be entitled to –
- 23.1.8 accelerate payment of any Outstanding Amount;
- 23.1.9 suspend or terminate any Order or the payment of a Customer account (granted in terms of clause 6) or the provision of Equipment and/or Services to the Customer; or
- 23.1.10 cancel any Agreement or claim specific performance in terms of

that Agreement for any obligation owed by the Customer to GEA in terms of these T&C; and

- 23.1.11 claim damages from the Customer.
- 23.2 If GEA cancels or purports to cancel any Agreement then, notwithstanding anything to the contrary herein, the Outstanding Amount shall immediately be due and payable by the Customer to GEA.
- 23.3 In the event that this Agreement is accompanied by a suretyship, the Customer shall be deemed to be in default if the surety under the suretyship commits an event of default as contemplated in clause 23.1, it being acknowledged that the surety is also a co-principal debtor of the Customer in favour of GEA.

24 CERTIFICATE OF INDEBTEDNESS

A certificate signed by any director or manager (whose appointment, authority or qualification need not be proved) for the time being of GEA shall be –

- 24.1 *prima facie* proof of the quantum of the Outstanding Amount; and
- 24.2 valid, together herewith, for any purpose and as a liquid document (alternatively as proof of a liquidated amount) in any Court or forum of competent jurisdiction for the purpose of obtaining provisional sentence, summary judgment or any other judgement against the Customer,

and the Customer acknowledges its indebtedness in respect of any amount so certified.

25 LEGAL COSTS

In the event of a default by the Customer under any Agreement, the Customer will be liable for all legal costs, which will include but not be limited to –

- 25.1 legal costs on the scale as to attorney and own client, including all cost of an advocate instructed by the attorney;
- 25.2 collection charges and tracing fees;
- 25.3 VAT added thereon; and
- 25.4 where appropriate, the cost of an arbitration, including the costs of the arbitrator/s,

and to the extent permissible in law, the Customer waives any right to taxation of any costs.

26 DISPUTE RESOLUTION

- 26.1 Any dispute arising from this agreement shall be settled by arbitration in accordance with the commercial rules issued by AFSA. The place of arbitration shall be Cape Town or Johannesburg, South Africa, or such other location as may be nominated by GEA in writing. The language to be used in the arbitral proceedings shall be English.
- 26.2 The arbitration shall be held before a single arbitrator.
- 26.3 The arbitrator shall –
- 26.3.1 if the matter is primarily an accounting matter, an independent accountant with no less than 15 years standing agreed upon amongst the Parties;
- 26.3.2 if the matter is primarily a legal matter, a practising senior counsel with no less than 15 years standing agreed upon amongst the Parties;
- 26.3.3 if the matter is any other matter, an independent person agreed upon amongst the Parties.
- 26.4 If the Parties cannot agree upon a particular arbitrator within 7 business days after the arbitration has been demanded, the nomination shall be made by the chairperson of the Johannesburg Bar Council or the Cape Bar Council or such other appropriate body of advocates (depending on place of arbitration nominated by GEA in terms of clause 26.1) or his nominee.
- 26.5 The Parties irrevocably agree that the submission to arbitration in terms of this clause is subject to the Parties' rights of appeal set out hereunder.
- 26.6 Any Party may appeal the decision of the arbitrator within a period of 21 days after the arbitrator's ruling has been handed down by giving written notice to that effect to the other Party. The appeal

shall be dealt with in accordance with the rules of AFSA by a panel of 3 arbitrators appointed by AFSA.

- 26.7 The decision of the arbitrator shall be final and binding on the Parties after the expiry of the period of 21 days from the date of the arbitrator's ruling if no appeal has been lodged by a Party. A decision which becomes final and binding in terms of this clause may be made an order of Court at the instance of any Party.
- 26.8 Nothing herein contained shall be deemed to prevent or prohibit any Party from applying to the appropriate Court for urgent relief.
- 26.9 The provisions of this clause will continue to be binding on the Parties notwithstanding any termination or cancellation of any Order.

27 CONSEQUENCES OF TERMINATION

Notwithstanding anything to the contrary herein contained, subject to any applicable laws, and without prejudice to any of GEA's rights in terms hereof or at law, in the event of the Customer cancelling any Order, or repudiating any of its obligations in terms of an Agreement, GEA shall, to the extent that it has performed any part of an Agreement or incurred any costs relating thereto, be entitled to recover the Contract Price of the Equipment or the cost of any Services, as if the Order has not been cancelled and to claim as pre-estimated liquidated damages any and all cancellation fees and/or penalties which GEA may have to pay to its suppliers as a result of the aforesaid cancellation or repudiation together with the cost of all insurance, duties and levies and all other costs relating to the procurement of the Equipment as well as losses and damages incurred on disposal of the Equipment.

PART K: GENERAL

28 SECURITY

- 28.1 GEA shall be entitled from time to time in its sole discretion to require that the Customer provide suitable and adequate security to GEA as security for payment of the Contract Price or any account facility. Security shall be in a form substance acceptable to GEA, including without limitation, an advance deposit, a suretyship (in substantially the form attached to these T&C as Annexure A) or bank guarantee for an amount determined by GEA. Any amount that is prepaid will be deducted from the amount specified as due on issue of an Invoice.
- 28.2 The Customer undertakes to comply with any such security requirements of GEA, within 15 business days after request therefore (or such earlier or later period specified by GEA). GEA shall be entitled to suspend any work or delivery of any Equipment or terminate any Order if such security is not provided.
- 28.3 Where GEA requires a deed of suretyship be provided on behalf of the Customer as security for the obligations of the Customer, then this Agreement shall be read together with such deed of suretyship.

29 CREDITWORTHINESS

The Customer agrees that GEA may –

- 29.1 make inquiries to confirm any information provided by the Customer for the purposes of approving a Customer account facility as contemplated in clause 6.1;
- 29.2 seek information from any credit bureau when assessing the Customer's application and at any time during the existence of these T&C; or
- 29.3 disclose the existence of the Customer's account (if any) to any credit bureau, share positive and negative information about the Customer and its compliance under any Agreement with any such credit bureau.

30 CONFIDENTIALITY; SOFTWARE; TECHNICAL DATA AND SMART EQUIPMENT

- 30.1 The Customer shall at all times and shall ensure that all its employees treat the business processes, confidential information, all transactions resulting from any Agreement and the T&C as confidential and undertake not to disclose to any third party any such information except insofar as such disclosure is authorised in writing by GEA or is ordered by a Court of law, or is otherwise essential for application in judicial action.
- 30.2 The foregoing provisions do not apply to information which is –
 - 30.2.1 publicly known or becomes publicly known through no

unauthorised act of the recipient party;

- 30.2.2 rightfully received by the recipient party from a third party;
- 30.2.3 required to be disclosed pursuant to a requirement of a governmental agency or any applicable law; or
- 30.2.4 is disclosed by GEA to a third party for the purposes of allowing such third party to conduct a due diligence investigation into the affairs of GEA,

so long as the Party required to release the information provides the disclosing party with prior notice of such disclosure, publicly disclosed with the disclosing party's prior written consent.

The following information is excluded, however, and not considered Confidential Information (without prejudice to any existing copyright protection): the sale of the Equipment from GEA to Purchaser and (except as may be otherwise separately agreed in writing) any offer of GEA (however excluding price and other commercial provisions), the Equipment and/or processes supplied by GEA, operating manuals, training documents(s) and product brochures and delivery and/or acceptance certificates. Further, nothing herein shall limit Purchaser to sell the Equipment together with any documentation related to the Equipment (other than Confidential Information) to third parties.

- 30.2.5 This clause applies insofar as any software, programming, control system or automation of any kind (collectively "Software") are included in the GEA's Equipment or Services. Software also includes all enhancements, upgrades and related documentation that GEA may make available in its sole discretion. Upon receipt of the full Contract Price and subject to Purchaser's compliance with its obligations under this clause, GEA grants Purchaser a non-exclusive and (except as stated expressly below) a non-transferable license to use the Software solely for operating the Equipment for the purposes and within the requirements stated in GEA's Offer. Except as stated below, GEA warrants for a period of one year after the date (whichever is earlier) the Software is shipped or otherwise first made available to Purchaser ("Software Warranty Period") that the Software, when properly installed and used in conformity with the Contract, will function substantially in accordance with the software specifications (if any) stated in GEA's Offer. GEA does not warrant that the Software is free from what could be categorized as "bugs" or is otherwise error-free or meets Purchaser's or any third parties' data protection or IT security requirements. If Purchaser discovers a nonconformity with the warranty and provides GEA promptly with a detailed written notice of the nonconformity within the Software Warranty Period (including a description of the nonconformity and complete information about its discovery), GEA will use commercially reasonable efforts to substantially correct the nonconformity by, at its option, one of the following: (i) providing a suitable fix, patch or workaround which may include a future revision of the Software; (ii) making available to Purchaser instructions for modifying the Software or indicating a reasonable way for avoiding the effect of the nonconformity; or (iii) making available at GEA's facility corrected or replacement Software. GEA will have no obligation under the warranty stated in this clause in case of improper installation of the Software or any modification or configuration of the Software not authorized in writing by GEA nor shall it have any responsibility for any non-conformities arising from Purchaser supplied software or interfacing; in each such case, Purchaser shall defend and hold GEA harmless for any resulting loss, injury or damage. In respect of any Software that is acquired by GEA from third parties, GEA's obligation will be limited to transferring to Purchaser any warranty rights obtained by GEA in respect of that Software and the non-conformity. Except as may be stated expressly in this clause, the Software is sold as is. GEA has no obligation to provide any maintenance, enhancements or upgrades. As between the Parties, GEA retains all copyright, trademarks, patents and other intellectual property rights in the Software and all information other than Purchaser generated information that may be used or transmitted via or processed by the Software. The Software may not be sold or otherwise transferred or given to any third party without the prior written consent of GEA and prior written agreement between GEA and the third party, except that the Software (and the license granted herein) may be transferred to persons who have acquired the Equipment without obtaining GEA's prior consent. Purchaser shall not reverse engineer, modify or decompile the Software or in any other manner attempt to locate or identify the source code.

To the extent permitted by law, Purchaser's rights and remedies in respect of the Software are stated exclusively above.

- 30.2.6 GEA annually publicly discloses its audited greenhouse gas emissions according to the Corporate Value Chain (Scope 3) Accounting and Reporting Standard ("GHG protocol"). In order to increase the accuracy of its reporting on the use phase of its sold products (Scope 3.11 greenhouse gas emissions), GEA is interested in its customers' specific energy grid mix. Thus, Customer shall disclose towards GEA the specific energy grid mix, i.e. the share of renewable energy used to power the specific sold product, to the extent such information is collected and tracked. Customer shall provide the required information and shall agree, that GEA may utilize this information in an aggregated form for its annual sustainability reporting and auditing. Apart from that, this information will be kept confidential.
- 30.2.7 Where GEA's supply includes a Connected Product or a Related Service or where GEA later provides (in agreement with Customer) a Connected Product or Related Service in relation to the supply, GEA Group Companies each have a perpetual, world-wide, irrevocable, non-exclusive, transferable, sub-licensable and royalty-free right to generate, collect, process, analyse, store, aggregate, and otherwise use Technical Data transmitted to the GEA Cloud from the Connected Product or the Related Service for one or more of the following purposes: providing the supply; discharging GEA's warranty and other obligations under the Contract; troubleshooting, monitoring, improving the function of and further developing the supply, related installed equipment at the site, the Connected Product and/or Related Services; providing Customer with product support and information on the supply and related installed equipment at the site; establishing benchmarks and optimization potentials and optimizing the supply and related installed equipment at the site; developing, designing, engineering, manufacturing, supplying, automating, improving, updating, monitoring and/or servicing equipment, software, cloud-based solutions, processes and services; creating and modifying algorithms, statistical analyses and artificial intelligence solutions; optimizing project execution and similar capabilities; supporting the marketing and sales efforts; and generating and using for commercial purposes any Derived Data, including with the aim of making such Derived Data available to third parties; and other similar purposes. GEA shall exclusively have all rights, title and interest in and to all Derived Data, provided that GEA may use any Derived Data provided to it via a Connected Product or a Related Service for operating and maintaining the supply and auxiliary equipment at the site.
- 30.2.8 Customer will transmit to the GEA Cloud such Technical Data as is needed or appropriate for GEA to discharge its warranty and other obligations under this Contract. Further, upon a GEA Group Company's written request, Purchaser will undertake such measures as may be reasonably required to enable such company's secure access to the Equipment and its Technical Data and to provide at its discretion updates to the installed automation, software and control systems. Purchaser will enable GEA to connect, or if agreed Purchaser will connect, the Equipment (or a portion thereof) during its installation or (if requested by a GEA Group Company) at a later point of time to GEA's cloud and/or IT environment or other similar solution. Purchaser will ensure that the internet or other connection to the IoT edge device or IoT gateway is fully accessible to GEA remotely and at site and the connection meets such requirements (e.g., configuration, security, etc.) that may be issued by GEA from time to time or which are recommended or required by applicable regulations or standards. Nothing in these Terms obligates GEA to provide digital solutions; Purchaser acknowledges that GEA may offer from time to time during the Warranty Period and thereafter pursuant to separate written agreement digital solutions for the Equipment. This clause does not result in any warranty or other similar obligation being given or undertaken by GEA in respect of any Technical Data or Derived Data. GEA may, in its discretion, delete any stored Technical Data at any time, provided such deletion will be in accordance with applicable laws. Except to the extent required by applicable law, nothing in these Terms requires GEA to provide any access to Technical Data or make such data available where doing so i) would result in disclosure of GEA's trade secrets; ii) could undermine the security or safety of the supply; or iii) would result in the disclosure of data relating to the testing of new products, substances or processes that are not yet

placed on the market.

- 30.2.9 As used in these Terms, "GEA Group Companies" means GEA and its affiliated companies; "Connected Product" means a physical product at the site that via a component (e.g., an IoT edge device or IoT gateway), operating system or other means obtains, generates or collects Technical Data and communicates, or is able to communicate, the Technical Data via a physical connection, an electronic communications service or on-device access (e.g., via an IoT edge device or IoT gateway included in GEA's Equipment or Services or previously or later installed at the site) to GEA's cloud and/or IT environment or other similar solution; "Related Service" means a digital service, including software or a cloud-based solution, that enables a GEA Group Company or a third party acting on its behalf to obtain, generate and/or collect Technical Data where the service is connected to the Equipment or equipment installed at the site in such a way that its absence would prevent the Connected Product from performing one or more of its functions or which adds to, monitors, updates, optimizes, modifies or adapts the functions of the Equipment or related installed equipment; "Technical Data" means raw product data generated by the use of a Connected Product or Related Service, including relevant metadata that make the raw data usable, including without limitation data regarding the condition, operation, efficiency, productivity, availability, maintenance, status, malfunction and/or optimization of the Connected Product; "Derived Data" means i) all data or information that is derived by the GEA Group Companies (or third parties acting on their behalf) from Technical Data, including without limitation statistical or other analysis and data derived by means of algorithms or application of proprietary software; ii) all data or information that is derived by means of sensor fusion or other similar means or methods; and iii) all data where the Technical Data is aggregated together with other data (provided such aggregated data does not allow for identification of the Technical Data collected under this Contact or allow a third party to derive such data from an aggregated data set). Technical Data does not include any Derived Data.

31 INTELLECTUAL PROPERTY

- 31.1 The ownership of the copyright in any material and/or documents produced during the course of an Agreement by GEA shall vest in and remain vested in GEA. The Customer hereby waives in favour of GEA any moral, residuary or reversionary rights, which may accrue to the Customer in any such material or documents.
- 31.2 The Customer shall not decompile, disassemble, reverse engineer or otherwise modify, adapt, alter or vary the whole or any part of the intellectual property produced by GEA during the course of an Agreement.
- 31.3 The Customer shall have a non-exclusive, non-transferable and royalty free license to use the intellectual property rights pertaining to the Equipment and/or the Services, to the extent applicable, and any intellectual property provided by GEA for the sole purpose of operating and maintaining the Equipment and strictly for the application and use set out in an Agreement, subject at all times to, provided that –
 - 31.3.1 the Customer shall have no such rights contemplated in clause 31.3 to any intellectual property rights in the Equipment that are proprietary to third parties, without the prior written consent of GEA;
 - 31.3.2 the Customer shall be obliged to maintain the confidentiality in any intellectual property provided or produced during the course of an Agreement, including such intellectual property relating to the Equipment; and
 - 31.3.3 GEA has received payment in full of the Contract Price.
- 31.4 GEA shall not be liable to the Customer for the infringement of any intellectual property rights unless GEA's design of any Equipment is found by a court of final decision against GEA to infringe on the intellectual property rights of a third party, provided that GEA shall have no such obligation if the claim is based on or relates to –
 - 31.4.1 the interconnection, combination or use of the Equipment with equipment, services, systems or software not supplied by GEA;
 - 31.4.2 specifications, including designs and instructions, prepared by the Customer or third parties on its behalf;
 - 31.4.3 modification of the Equipment or Services without GEA's prior

written consent;

- 31.4.4 the use of the Equipment or Services as part of the Customer's process, including any product thereby produced or processed;
 - 31.4.5 any intellectual property registered or issued outside the country where GEA has its registered offices; or
 - 31.4.6 any intellectual property owned or acquired by the Customer or by any affiliate of the Customer.
- 31.5 In the event that any one or more of the exceptions listed in clause 31.4 apply/ies, the Customer shall be fully responsible for such claim and pay any costs incurred by GEA in the defence thereof (including costs on an attorney and own client scale).

32 FORCE MAJEURE

32.1 Notwithstanding anything to the contrary herein contained, GEA shall not be liable to the Customer in respect of the non-performance of any of its obligations if and to the extent that such non-performance is as a result of or has been caused by force majeure, which shall mean any event beyond the reasonable control of GEA or which could not reasonably have been foreseen by it, and shall include, but not be limited to, –

- 32.1.1 inability to secure or procure labour and/or Equipment (including due to a breach by any supplier of Equipment), if applicable, despite GEA having taken all reasonable steps to procure same;
- 32.1.2 any act of God, war, terrorism, strike, lockout or other labour dispute, fire, explosion, flood, drought, hurricane, typhoon, rain, storm, rough seas, earthquake, wind or any existing or new legislation, general power failures, breakdown of telecommunication networks or computers, political intervention, imposition of sanctions, riot, insurrection, civil commotion, embargoes, epidemics, quarantine or any governmental barring directive or order;
- 32.1.3 any delay in obtaining any regulatory or other permit or approval or a delay or inability by GEA or its sub-contractors to obtain any work permit or visa through no fault of their own; or
- 32.1.4 any other cause beyond the reasonable control of GEA, (a "Force Majeure Event").

32.2 If the Force Majeure Event is of such a nature that it would not result in impossibility of performance of GEA's obligations under an Agreement, but would delay the performance thereof, GEA shall be entitled to such extension of time in which to perform that obligation as may be reasonable in the circumstances, taking into account the interests of both Parties; provided that if such Force Majeure Event persists for a period in excess of 90 days, the Customer shall be entitled to terminate this Agreement upon notice to the GEA, but shall not be entitled to recover any damages which it may suffer as a result of such premature termination.

32.3 If the Force Majeure Event is of such a nature that it would result in impossibility of performance of GEA's obligations under an Agreement, the Customer shall be entitled on receipt of notice from GEA of the Force Majeure Event to terminate this Agreement upon 90 days' written notice to GEA but shall not be entitled, on receipt of notice of the Force Majeure Event, to recover any damages which it may suffer as a result of such premature termination.

33 DOMICILIUM AND INFORMATION

- 33.1 The Customer hereby chooses as its *domicilium citandi et executandi* for all purposes under or arising from any Agreement the physical address set out in the Customer Information Schedule or failing which, in the Order Confirmation.
- 33.2 Any notices delivered by hand shall be deemed to have been received on the date of delivery and any notices sent by facsimile or email shall be deemed to have been received on the date of transmission, provided that the transmission or receipt report does not indicate otherwise.
- 33.3 Any Party shall notify the other Party in writing on 10 business days' notice of a change of address, provided that no address may be changed to a post office box or *poste restante*.
- 33.4 Notwithstanding the above, any notice given in writing, 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

34 RELATIONSHIP

- 34.1 Nothing in this Agreement constitutes either Party as the agent, principal, representative or partner of the other, and no Party shall be entitled to hold out to any third party that the relationship between the Parties is that of a partnership, joint venture or the like.
- 34.2 Neither Party is granted, unless otherwise specially authorised in writing, any right or authority to assume or create any obligation or responsibility, express or implied, in and on behalf or in the name of the other Party or to bind the other Party in any manner or thing whatsoever.
- 34.3 These T&C do not prohibit the Parties in any way whatsoever from conducting their normal business activities regarding any of their Equipment(s) worldwide and does not create any form of exclusivity between the Parties.

35 CESSION AND ASSIGNMENT

The Customer shall not, without the written consent of GEA, be entitled to cede, assign or delegate any of its rights and/or obligations in terms of or arising from these T&C to any third party without the prior written consent of the other GEA first being obtained.

36 NO CHANGE OF CONTROL

- 36.1 If the Customer is an unlisted company or a close corporation, no shares or membership interest therein, as the case may be, shall be transferred from its shareholders or members, nor may any shares or membership interests be allotted to any person other than existing shareholders or members without GEA's prior written consent, save in the case of a transfer of shares or membership interests which will leave control of the customer with the original shareholder/s or member/s, or of a transfer of shares or membership interests to a deceased shareholder or member's heirs, as the case may be.
- 36.2 If the Customer is a trust, there may be no change in the trustees or beneficiaries of such trust without GEA's prior written consent, save in the case where such change will leave control of the trust with the original trustees.

37 UPDATING OF THESE T&C AND AMENDMENTS

GEA reserves the right to change or update portions of or the whole of these T&C from time to time. Changes or updates to the T&C will be communicated in writing to the Customer and will become effective from such date, unless otherwise stated by GEA.

38 DATA PROCESSING

- 38.1 The Customer agrees that GEA will collect, receive, record, organise, collate, store, update, modify, retrieve, alter, process and/or use personal data and other data disclosed by the Customer in the course of the business relationship with GEA for the purpose of –
 - 38.1.1 managing and performing in terms of an Agreement (which includes the creation and processing of Invoices);
 - 38.1.2 advertising and/or offering further goods and services to the Customer; and/or
 - 38.1.3 managing the business relationship with the Customer through a customer relationship management system.
- 38.2 The Customer's personal data collected by GEA may include the following data –
 - 38.2.1 any information contained in the Customer Information Schedule;
 - 38.2.2 categories and details of persons being employed or retained by the Customer including the name, title, company, function within the company, business contact details (phone- and fax-number, email-address, mail address) of such persons;
 - 38.2.3 a history of the Customer's orders;
 - 38.2.4 a history of issues pertaining to a Customer (for example, warranty claims or disputes); and
 - 38.2.5 any other information that is disclosed to GEA by the Customer during the course of the business relationship between the Parties.
- 38.3 Within the limitation of the above described purpose, GEA is entitled to collect, process and use the above described data by itself and/or through the use of affiliates or other external

subcontractors.

38.4 The Customer shall ensure that GEA is able to use the above described data for the above described purposes and, if necessary, shall provide all consents required by GEA for such data collection and purposes pursuant to any law.

39 GENERAL

39.1 GEA shall be entitled to assume –

39.1.1 the authenticity of, and to act in reliance upon, any document or signature appearing to it to be authentic (including but not limiting any written acceptance of a Quotation, any written acceptance of a delivery and any written instruction to undertake extraordinary measures); and

39.1.2 the authority of, and to act in reliance upon, the instruction or acceptance of/by any person appearing to it to be authorised.

39.2 The Customer –

39.2.1 warrants that it has full capacity and authority, and has obtained all the necessary approvals to enter into and perform its obligations under this Agreement;

39.2.2 the Agreement, Customer Identification Schedule and/or any other documents that have been signed for and on behalf of the Customer is executed by a duly authorised representative of the Customer;

39.2.3 authorises GEA to complete any documents required to comply with any law, should GEA be required to import, export or clear any Equipment through customs;

39.2.4 shall provide GEA with all accurate and complete documents, payments and information necessary for customs clearance;

39.2.5 shall be bound by and warrants the accuracy of all documents and information furnished to GEA for any reason whatsoever (including but not limiting any information to assess the Customer's creditworthiness, for purposes of any customs clearance or any other information)

39.3 Save as expressly contemplated in these T&C, these T&C and any

Agreement shall be governed by and construed and interpreted in accordance with the law of South Africa. Subject to clause 26, the Parties hereby consent to the jurisdiction of each of the High Court of South Africa, Western Cape Division, Cape Town and the High Court of South Africa, Gauteng Local Division, Johannesburg for any dispute between them arising out of an Agreement.

39.4 The Customer acknowledges that at the time of signing any Order Confirmation, Customer Information Schedule or any other document relating to the relationship between the Parties, the said document was completed fully and the particulars set forth therein are true and correct.

39.5 If any provisions of these T&C are found to be unlawful, unenforceable or invalid, it shall be deemed to be separate and severable from the remaining provisions of these T&C and to the extent that same is unlawful, unenforceable or invalid, be deemed to be *pro non scripto*.

39.6 No extension of time or other indulgences granted by GEA to the Customer in respect of its obligations will constitute a waiver or novation of or otherwise affect any of its rights to enforce strict compliance with the terms of any Agreement.

39.7 Subject to clause 12.2.2, no alteration, consensual cancellation, novation or variation of, or addition to this Agreement and no waiver of any right arising from any Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives.

39.8 An Agreement shall constitute the whole agreement between the Parties and no Party shall be bound by any undertakings, representations, warranties and promises or the like not recorded therein.

39.9 It is not required for these T&C to be valid and enforceable that the Customer or GEA shall have its signature of these T&C verified by a witness.

39.10 These T&C may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the last counterpart signature.

SIGNED aton thisday of20.....

 Authorisation (signature)

 (State name and capacity of signatory)

APPROVED BY GEA EAST AFRICA (PTY) LTD

SIGNED aton thisday of20.....

 Authorisation (signature)

 (State name and capacity of signatory)

SPECIMEN DEED OF SURETYSHIP

I, the undersigned,

.....
Identity Number:

do hereby bind myself jointly and severally and *in solidum* as surety and co-principal debtor to

GEA EAST AFRICA PROPRIETARY LIMITED
Registration Number: CF2013/112305
(the "**Company**")

for the due and proper payment on demand of all sums of money which

.....
Registration Number:

(the "**Debtor**")

may now and from time to time hereafter owe or be indebted in to the Company and the successors and assigns of the Company arising from or out of or in terms of the Agreement to which this suretyship is annexed, or any renewal, amendment, breach or cancellation of such Agreement or any purchase order resulting from such Agreement.

All admissions and acknowledgements of indebtedness by the Debtor shall be binding on me; that the Company shall be at liberty, without affecting the right of the Company hereunder, to release securities and to give time to or compound or make any other arrangements with the Debtor or other person or persons, company or companies aforesaid without reference to or approval of me, and that in the event of liquidation, judicial managements, insolvency or compromise, no such liquidation, judicial management, insolvency or compromise and no dividend/s or payment/s which the Company may receive from the Debtor or any other person or persons, company or companies, or from me, shall prejudice the rights of the Company to recover from me to the full extent of this Suretyship any sum which after the receipt of such dividend/s or payment/s may remain owing by the Debtor including any damages suffered by the Company arising from the premature cancellation of the Agreement by a provisional trustee or provisional liquidator in terms of the Insolvency Act, No. 18 of 2015, as amended from time to time or any substitute legislation therefore. In the event of any liquidation, judicial management or sequestration of the Debtor I bind myself not to file any claim against the Debtor in competition with the Company.

AND I hereby renounce the benefit of the legal exceptions *ordinis seu excussionis et divisionis, non causa debiti, non numerata pecuniae and errore calculi* and revision of accounts with the force and effect of which I/we acknowledge myself to be fully acquainted and I agree and declare that this suretyship is to be in addition and without prejudice to any other suretyship/s and security/ies now or hereafter to be held by the Company and that it shall remain in force as a continuing security notwithstanding any intermediate settlement of account.

AND I hereby agree that notwithstanding any part payment by me or on my behalf, I shall have no right to any cession or action in respect of such part payment and shall not be entitled to take any action against the Debtor or against any other surety for the Debtor in respect thereof unless and until indebtedness of the Debtor to the Company shall have been discharged in full.

AND I hereby agree that any liability incurred by me hereunder shall not be reduced by any claim or counter-claim of whatsoever nature by the Debtor against the Company.

FOR the purpose of any action against me hereunder for provisional sentence or otherwise, a certificate by a representative of the Company, whose authority or competence the Company need not prove, as to the amount owing by the Debtor and to the effect that the due date of payment of such amount has arrived shall be sufficient and satisfactory proof of the facts therein stated until the contrary shall have been proved.

AND I choose *domicilium citandi et executandi* for all purposes herein at ;

and all notices required to be given to me in terms hereof shall be considered duly given if posted to me to the said address.

THIS suretyship by me shall remain of full force and effect for as long as the Debtor is indebted to or under any obligation or commitment to the Company and I shall not be entitled to withdraw or cancel this suretyship unless and until all indebtedness, commitments and obligations of the Debtor to the Company shall have been fully discharged, and then only upon the expiry of 14 days' notice in writing be given by me to the Company.

Signed on this _____ day of _____ 20__ at _____

I declare that my marriage status is as follows:

- unmarried
- out of community of property (Antenuptial Contract)
- in community of property (if yes, spouse has to complete the following).

I _____ (full name),
Identity number _____ hereby consent in terms of
Section 12 of the Kenyan Matrimonial Property Act, No, 49 of 2013) to _____ entering into this suretyship.

Signed on this _____ day of _____ 20__ at _____

AS WITNESSES:

SPECIAL EXPORT CONTROL REGULATIONS

Export control requirements applicable for recipients (“Purchaser”) of any goods and/or services (including software, if any) provided by or received directly or indirectly from any company, legal entity or permanent establishment (“Contractor”) belonging to or being directly or indirectly controlled by GEA Group AG registered in Düsseldorf, Germany (“GEA”):

Contractor’s ultimate parent company, GEA, is seated in Germany and therefore all group companies of GEA shall, to the widest extent permitted by the applicable laws, adhere to all Export Control Regulations in force in Germany including without limitation all Export Control Regulations enacted by the European Union including but not limited to Council Regulation (EU) Nos 833/2014 and 765/2006. It is therefore agreed that Purchaser shall, but only with respect to the Scope of Supply/Work to be provided by Contractor and only to the extent permitted by the applicable law, comply with the Export Control Regulations in force in Germany regardless whether they are deemed applicable to Purchaser under international law.

Therefore, the following provisions shall be accepted by Purchaser and shall supersede and be substituted for all conflicting provisions agreed elsewhere:

1. If Purchaser acquires from Contractor goods or technologies listed in Annexes XI, XX, XXXV or XL of Council Regulation (EU) No 833/2014, or any other Annexes that are or may become applicable to the Export Control Regulations specified above, Purchaser shall not sell, export or re-export, directly or indirectly, such goods to the Russian Federation or for use in the Russian Federation and if Purchaser acquires from Contractor goods or technologies listed in Annexes XVI, XVII, XVIII or XXX of Council Regulation (EU) No 765/2006 or any other Annexes that are or may become applicable to the Export Control Regulations specified above, Purchaser shall not sell, export or re-export, directly or indirectly, such goods to Belarus or for use in Belarus;
2. Purchaser shall undertake its best efforts to ensure that the purpose of item 1 is not frustrated by any third parties further down the commercial chain, including by possible resellers;
3. Purchaser shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purposes of item 1;
4. Any violation of items 1, 2 or 3 shall constitute a material breach of an essential element of the Contract, and Contractor shall be entitled to seek appropriate remedies, including, but not limited to termination of the Contract; and
5. Purchaser shall immediately inform Contractor about any problems in applying items 1, 2 or 3 including any relevant activities by third parties that could frustrate the purpose of item 1. Purchaser shall make available to Contractor information concerning compliance with the obligations under items 1, 2 and 3 within two weeks of the simple request of such information.

Any breach of the foregoing obligations shall constitute an Export Control Event.