

## TERMS AND CONDITIONS OF MONSOON IRRIGATION AND BOREHOLES CC

### 1. Definitions:

- 1.1. **"Customer"** means the person or entity described above or to whom Monsoon sells any goods and / or services, whether the Customer signs these Terms and Conditions or any Quote, or not;
- 1.2. **"Geological Impediment"** includes natural and man-made impediments including the presence of rocks, unsuitable ground conditions, cables, municipal services or anything encountered under the surface which will affect Monsoon's ability deliver or install any Goods or render related services or which will increase the cost thereof;
- 1.3. **"Goods"** means both goods and/or services sold or supplied by Monsoon to or on behalf of the Customer as indicated on any forms, price lists, Quote, Statement of Work or invoices of Monsoon and includes boreholes, irrigation systems, pumps, water reticulation or reclamation or recycling or harvesting systems, storage tanks, electronic controllers and any other goods and/or any services offered by Monsoon from time to time and the services rendered by Monsoon to install, repair, service, maintain or upgrade any of the foregoing together with all individual components of all of the foregoing;
- 1.4. **"Monsoon"** means Monsoon Irrigation and Boreholes CC registration number 2011/102303/23;
- 1.5. **"Quote"** means the quote or quotes together with any Statement of Work issued by Monsoon and accepted or deemed to have been accepted by the Customer;
- 1.6. **"Statement of Work"** means any Statement of Work issued by Monsoon, setting out a description of how any Goods detailed in the Quote will be delivered, executed and tested, the responsibilities of the Customer, any actions of the Customer on which any actions of Monsoon are dependent, and which is accepted or deemed to have been accepted by the Customer;
- 1.7. **"Terms and Conditions"** means these terms and conditions, all annexures hereto and any additional terms contained in any Quote as read with any Statement of Work issued by Monsoon.

### 2. Terms and Conditions

- 2.1. The Customer acknowledges that all business shall be conducted on these Terms and Conditions, to the exclusion of any terms and conditions which the Customer may seek to impose, save where Monsoon expressly accepts and agrees in writing to be bound by the Customer's terms and conditions or any other terms to the exclusion of these Terms and Conditions.

### 3. Quotations and Orders

- 3.1. The Customer will be deemed and is agreed to have accepted the Quote and any Statement of Work issued by Monsoon on the earlier of either the signing the Quote and /or Statement of Work, or instructing Monsoon to proceed with the delivery of the Goods listed in the Quote and Statement of Work (whether the Quote and /or Statement of Work was signed or not).
- 3.2. Each Quote which is accepted shall constitute a separate contract between Monsoon and the Customer on these

Terms and Conditions. Acceptance or deemed of any Quote shall include acceptance of any Statement of Work relating thereto and *vice versa*.

- 3.3. All Quotes will remain valid for 7 (seven) calendar days from the date of the Quote, or until the date of issue of a new price, whichever occurs first.
- 3.4. The validity of any price contained in a Quote is subject to the availability of the Goods. Monsoon may change any Quote at any time prior to delivery to the Customer, in the event of any increase in the cost price of the Goods, including an increase due to currency fluctuations or if required to correct any error.
- 3.5. A Quotation and / or any Statement of Work may be revoked at any time by Monsoon.
- 3.6. Quotations are issued on the assumption that no Geological Impediment exists and are subject to adjustments for additional costs, materials and time resulting from the presence of Geological Impediment.
- 3.7. Where the Quote or Statement of Work states that any items are subject to final measurement:
  - 3.7.1. The price shall be an estimate only;
  - 3.7.2. The price shall be finally determined by Monsoon on completion of the works and based on actual quantities and measurement;
  - 3.7.3. Unless Monsoon has made a manifest error in measuring or quantifying the quantity, the determination of the quantity by Monsoon shall be final;
  - 3.7.4. Monsoon shall reflect the final quantities and price calculated on Monsoon's then current pricing in an additional invoice which shall be payable on presentation.

#### **4. Variations**

- 4.1. Monsoon reserves the right to refuse any variations requested by the Customer and if it deems it appropriate, to vary the Quote or delivery or completion dates as a result of any variations requested by the Customer and accepted by Monsoon.
- 4.2. Variations requested by the Customer and agreed to by Monsoon shall be written unless Monsoon agrees to accept an oral variation.
- 4.3. Monsoon reserves the right to revise or change any Quote or Statement of Work in the event that any Geological Impediment is discovered.

#### **5. Price**

- 5.1. Monsoon shall issue invoices to the Customer in accordance with the amounts payable as provided in the Quote.
- 5.2. The price of the Goods shall be price as set out in Monsoon's Quote and if no price is specified or if no Quote is issued for any reason then the price of Goods supplied shall be the price on Monsoon's current price list for goods and Monsoon's usual price for services.
- 5.3. Monsoon shall have the right to change the prices of the Goods from time to time without prior notice to the Customer.
- 5.4. The Customer shall pay all value added tax and other government tax relating to the Goods. Unless the Quote provides otherwise, prices stated shall exclude VAT.

#### **6. Payment**

- 6.1. All invoices are payable on presentation.

- 6.2. All payments shall be made by the Customer to the bank account nominated in writing by Monsoon for this purpose from time to time. Monsoon will not change its bank account save by written notice signed by hand by a director of Monsoon. The Customer may not rely on any other purported notice of change of bank account details. The Customer accepts all risk of making payment into an incorrect bank account. Payment into an incorrect bank account shall not constitute payment to Monsoon.
- 6.3. All payments shall be in cash and made without deduction or set-off of any nature whatsoever. The Customer shall not be entitled to withhold all or any part of a payment by virtue of any alleged counterclaim or dispute.
- 6.4. Unless the Quote states otherwise, the amount in the Quote, adjusted as provided herein, shall be payable as to:
- 6.4.1. 60 % on acceptance of the Quote; and
- 6.4.2. The balance together with any adjustment for Variation Orders and adjustments for prices stated as being subject to final measurement or as provided herein, on confirmation by Monsoon that the work is complete.
- 6.5. Monsoon shall not be required to hand over the Goods or the site or to vacate the site until final payment is received.
- 6.6. Monsoon may suspend or withhold delivery of any Goods or further work if the Customer is at any time in breach of any obligation to Monsoon, including but not limited to the obligation to make payment of any amount.
- 6.7. Where the Customer uses internet banking, the bank shall be deemed to be the agent of the Customer.

## **7. Delivery**

- 7.1. Delivery and completion dates stated in any Quote or Statement of work are estimates only, are not binding on Monsoon and are subject to: availability of stock, delays caused by inclement weather, any actions of the Customer reflected in the Statement of Work or reasonably requested by Monsoon, Geological Impediments, strikes and any other cause not within the direct control of Monsoon.
- 7.2. Where any of the Goods are not available or Monsoon deems it appropriate, Monsoon shall be entitled to substitute such Goods with Goods of at least the same specification provided that:
- 7.2.1. Monsoon shall pass any cost saving on to the Customer; and
- 7.2.2. Monsoon shall not increase the price as a result thereof without the Customer's consent.
- 7.3. Any obligation on Monsoon to deliver any Goods is conditional on Monsoon having been able to procure the Goods and having received the Goods.
- 7.4. There shall be no obligation on Monsoon to deliver or release any Goods or undertake any work whilst the Customer is in breach of any obligation, including obligations to pay any amount to Monsoon.
- 7.5. Any delivery note (copy or original) signed by the Customer and any certificate issued by Monsoon and signed by a member or director of Monsoon, shall be *prima facie* proof that delivery was made to the Customer and that the Goods have been supplied and / or rendered.
- 7.6. The Customer agrees that delivery of Goods may be split as to the Goods ordered, the quantities ordered and the dates for delivery.
- 7.7. A third party may be engaged, by Monsoon at its discretion, for the transport and delivery of Goods purchased by the Customer.
- 7.8. If the Customer chooses to engage its own third party to transport the Goods, the Customer indemnifies Monsoon against any claims of whatsoever nature that may arise from such an agreement.

- 7.9. The Customer shall accept delivery at any reasonable time during business hours and shall not be entitled to rescind from any contract for any Goods nor to withhold or defer any payment nor to a reduction in price nor to any other rights against Monsoon nor to recover any damages whether for direct, indirect or consequential losses, costs, damages, expenses, interest or otherwise on account of delays in effecting delivery, partial delivery or non-delivery for any reason.
- 7.10. There shall be no obligation on Monsoon to effect delivery of Goods in a piecemeal fashion and Monsoon shall only be required to arrange delivery to the Customer once all Goods are available for delivery.

**8. Interest**

- 8.1. The Customer shall be liable to pay interest on any overdue amount at the rate of 5% above the Prime Overdraft rate quoted by The Standard Bank of South Africa Limited, Sandton branch, from time to time. Such rate shall be proven by a certificate signed by a manager of The Standard Bank of South Africa Limited, Sandton branch and shall be sufficient proof of such fact for the purposes of judgement, including provisional sentence and summary judgement, proof of claims against insolvent and deceased estates or otherwise. If the Customer disputes the correctness of such certificate, the Customer shall bear the onus of proving the contrary. It shall not be necessary to prove in such a certificate the appointment or capacity of the person signing such certificate.
- 8.2. Interest shall be payable on demand.

**9. Risk and Ownership**

- 9.1. All risk in and to the Goods, but not ownership, shall pass to the Customer on delivery thereof to the Customer or the Customer's nominated representative.
- 9.2. Ownership of the Goods shall not pass to the Customer until the purchase price (including interest if any) in respect of the Goods has been paid in full. The provisions hereof shall apply notwithstanding the installation of such Goods in the Customer's premises or accession thereof to any of the Customer's Goods or that the Goods may be incorporated into or form part of other Goods or change their essential character. All Goods, whether fixed to immovable property or not, shall be deemed to be severable without injury to either property.

**10. Returned Goods**

- 10.1. The Customer agrees that there is no obligation on Monsoon to accept return of Goods.
- 10.2. Monsoon may require payment of a handling fee of up to 15 % if it agrees to accept return of any Goods. Any Goods returned as aforesaid will not be accepted unless they are returned with the packaging in good condition, unopened, unused and together with all components delivered with the Goods.

**11. Cables and Services**

- 11.1. The Customer warrants that it has pointed out to Monsoon: the presence and location of all Geological Impediments. Monsoon will be entitled to accept that where these or any of these have not been pointed out, that they are not present.
- 11.2. The Customer warrants that the information furnished by the Customer to Monsoon prior to Monsoon preparing the Quote and Statement of Work and executing its obligations to the Customer, is both true and correct and acknowledges that such information shall be used and relied upon by Monsoon.

**12. Customers Obligations and Loss to Monsoon**

- 12.1. The Customer shall be responsible for:
- 12.1.1. Arranging access to the premises at which Monsoon is required to effect any delivery or installation of

Goods;

- 12.1.2. Procuring any licences or permissions or consents from any body corporate or home owners association or municipality or statutory authority, required to sink or use a borehole, store water or to install or use any irrigation system or other Goods;
  - 12.1.3. Procuring adequate municipal supplies of water and electricity where applicable;
  - 12.1.4. Attending to any actions and making any arrangements which are the responsibility of the Customer as stated in the Statement of Work;
  - 12.1.5. Pointing out all Geological Impediments;
  - 12.1.6. Replacing and restoring paving disturbed by the installation back to its original state;
  - 12.1.7. Ensuring that all agents of and service providers employed by the Customer complete their activities such as not to cause delays to Monsoon or damage to any Goods or works installed by Monsoon;
  - 12.1.8. supplying and installing on time as agreed with Monsoon any equipment or items to be supplied or arranged by the Customer;
  - 12.1.9. Undertaking any actions reasonably requested by Monsoon so as to enable Monsoon to comply with their obligations to the Customer;
  - 12.1.10. The costs of repairing or replacing any Goods damaged by the Customer or any agent or contractor of the Customer;
  - 12.1.11. Ensuring that water that is used or consumed is safe for consumption or use and that any treatment that is required to allow safe use or consumption is effected such as to render the water safe and suitable for use, prior to any use. Further the Customer shall conduct regular tests using accredited laboratories to monitor water quality and ensure that unsafe water is not used or consumed;
  - 12.1.12. The consequences of any decision to follow, or not follow, any diviners, laboratory, engineers or other experts report. Where any tests, opinions or reports are arranged by Monsoon, these are arranged by Monsoon on behalf of the Customer and are reports, tests and opinions of the Customers agent. Monsoon shall have no liability for any inaccuracy or error in or for any reliance, or failure to rely on any such test, report or opinion.
  - 12.1.13. The costs of any water or electricity used or consumed in installing or testing any Goods installed or supplied by Monsoon.
- 12.2. Where any actions of Monsoon require the prior compliance of the Customer with any of the foregoing, Monsoon shall be excused from any performance pending compliance by the Customer.
- 12.3. Where any act or omission of the Customer causes any cost increase or loss to Monsoon, including but not limited to payment of additional wages, holding costs, standing costs, re-establishment costs, penalties or payments to sub- contractors, then Monsoon shall be entitled to invoice and recover from the Customer all such increases and losses and the Customer indemnifies Monsoon accordingly.

### **13. Disclosure**

- 13.1. The Customer acknowledges that although Monsoon will endeavour to minimise the impact:
  - 13.1.1. Where boreholes are dug, that there can be and is no guarantee at all: that water will be found (notwithstanding any diviners or other experts reports), as to the quantity or quality of the water, the

sustainability of any supply, the depth at which it may be found, whether the water will be potable or useable either without filtration or at all. Additionally water that is found may be impacted by ground water levels, other boreholes that are sunk, rainfall, drought, legislation and other circumstances that are beyond Monsoon's control;

- 13.1.2. Some of the activities that Monsoon may undertake cause dust that could damage electronic and electrical equipment and as such closing of windows and covering electronic and electrical equipment is required to reduce the risk of damage.
- 13.1.3. Installation of irrigation systems requires digging of trenches (generally to 50 cm in depth) which may disturb paving, flower beds and the like;
- 13.1.4. The disturbing and replanting of plants, flowers, grass and the like may impact adversely on or cause the loss thereof;
- 13.1.5. The replacing of paving will not include compacting (unless the Quote or Statement of Work expressly provide therefor) and there may be some settling and slight subsidence of replaced paving;
- 13.1.6. Where the Customer has a borehole or acquires a borehole or stores water, the quality and quantity of the water may change and the borehole may cease to produce water temporarily or permanently;
- 13.1.7. The Goods supplied by Monsoon must be used, serviced, maintained and operated as specified by the manufacturers. The Customer shall be responsible for the foregoing;
- 13.1.8. The inability to see under the ground does mean that there is risk that municipal services, water pipes, electrical and data cables, alarm and CCTV cables and such items may be encountered or damaged (particularly if they were not pointed out to Monsoon at the time of Monsoon issuing the Quote or Statement of Work); and
- 13.1.9. The operation of any irrigation or other system by Monsoon is the responsibility of the Customer. The Customer is required to operate and maintain the Goods and equipment as per the manufacturer's operation manuals and as advised by Monsoon and in compliance with prevailing legislation (including municipal by-laws).

#### **14. Monsoon Not Responsible For**

- 14.1. Monsoon shall not be responsible for:
  - 14.1.1. Any damage caused by any drilling rigs including damage to trees, paving, damage caused by dust, damage to any services, pipes or cables encountered by the drilling rig;
  - 14.1.2. Any damage arising from large subsurface rocks or any other subsurface condition or Geological Impediment;
  - 14.1.3. Any failure of any Goods to operate as specified by the manufacturer or required by the Customer or at all, caused by: any failure or defect in any equipment or components or infrastructure or other items supplied by the Customer; or arising as a result of insufficient water pressure, inadequate water supply, water quality, problems with the power supply, operator error; or any act or omission or adjustments or changes effected by the Customer, failure to service, operate or maintain the Goods as specified by the manufacturer, or anything which was not supplied by Monsoon;
  - 14.1.4. Any inaccuracy in any yield tests, water quality test or any other study or test obtained or conducted by Monsoon;

- 14.1.5. Any change in water quality, quantity or pressure in any municipal supply or borehole;
- 14.1.6. Any consequences arising from the use or consumption of water which is not fit or safe for use or consumption;
- 14.1.7. Any damage to any Goods or loss of performance caused by any act or omission of the Customer or any agent of the Customer;
- 14.1.8. Any loss, harm or damage caused by any failure of any borehole, water storage or irrigation system, including any harm to or loss of plants, grass, trees, bushes, crops or animals.
- 14.1.9. Any failure to find water of any quality, any quantity or at any depth, or at all;
- 14.1.10. Any borehole running dry;
- 14.1.11. Any loss, harm, injury or death caused by any Goods supplied by Monsoon or the use or abuse thereof. The Customer assumes all such risk and agrees that to the fullest extent allowable in law that Monsoon shall have no liability as a result of any of the foregoing;
- 14.1.12. Any consequences, damages (direct, indirect, consequential or other), harm or loss caused by any of the events mentioned in clause 13 or 14 or any act or omission of Monsoon or their employees or agents, even if they acted negligently.

14.2. Save as provided in clause 16 the Customer shall have no claim against Monsoon at all against arising from or caused by:

- 14.2.1. any suspension or withholding of any Goods or delivery or work in terms of this Agreement;
- 14.2.2. any failure of any borehole, irrigation system or other Goods;
- 14.3. any actions of Monsoon pursuant to any right(s) in terms of this Agreement.

## **15. Sub-Contracting**

15.1. Monsoon reserves the right, without notice, to sub-contract or outsource any obligations to the Customer provided that doing so shall not excuse Monsoon from complying with any obligations to the Customer.

## **16. Warranties**

16.1. Subject to clause 16.4, in respect of any labour or work undertaken by Monsoon:

16.1.1. Monsoon warrants its labour and services for a period of 6 months from date of delivery or rendering of the labour or work and during this time will, re-do at its cost any defective workmanship;

16.2. Subject to clause 16.4, in respect of any pumps, sprinklers, rain harvesting tanks, storage tanks, electrical components, electrical works and any controllers:

16.2.1. Monsoon will assist the Customer to facilitate the repair or replacement of any failed Goods for repair or replacement in terms of and as the original manufacturer's warranty provides. Monsoon supplies Goods with the manufacturer's warranty only and provides no additional warranty in respect thereof;

16.3. Subject to clause 16.4, in respect of any Goods, other than those mentioned separately above:

16.3.1. Monsoon warrants the Goods for a period of 12 months from delivery or installation, whichever is the earlier, and will at its election repair or replace any Goods that fail as a result of any manufacturing or labour defect within that time.

16.4. In all circumstances Monsoon shall have no liability where any Goods fail as a result of abuse, failure to use or

service the Goods as required by the manufacturer, unauthorised repairs or services by any entity other than Monsoon or the manufacturer, operation contrary to the manufacturer's recommendations and specifications, lightning, electrical surges, fire, floods, insect damage or any circumstances excluded by the manufacturer in any manufacturer's warranty.

- 16.5. Save as provided above. Monsoon excludes to the fullest extent possible all warranties and liability for the failure of any Goods or any consequences thereof.
- 16.6. No warranties or undertakings given prior to or during the course of delivering or installing any Goods or rendering any services will be binding unless contained herein, in any Statement of Work or other writing expressly providing therefor and in all cases signed by the Parties.
- 16.7. Services carry no guarantee.

**17. Special Terms**

17.1. The following special terms are agreed between the Parties:

- 17.1.1. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

17.2. In the event of any conflict between any of the special terms in clause 17.1 and any other terms, the provisions of clause 17.1 shall prevail to the extent of the conflict.

**18. Breach**

18.1. If the Customer:

- 18.1.1. breaches any of the Terms and Conditions,;
- 18.1.2. fails to pay any amount payable by it on the due date;
- 18.1.3. is placed into provisional or final sequestration (or, in the case of an individual customer) if his estate is voluntarily surrendered;
- 18.1.4. is placed under judicial management or business rescue;

then all amounts due to Monsoon shall become immediately payable and Monsoon shall have the right, without prejudice to any other rights which it may have against the Customer in law, to elect to claim specific performance or to cancel this agreement and in all cases to recover any damages, costs on the attorney and client scale and all amounts then due to Monsoon.

**19. Liability**

- 19.1. Under no circumstances will Monsoon be liable for any consequential or indirect damages or loss of profit or for any other damages, delictual or otherwise, of whatsoever nature howsoever arising or for any damage arising from any misuse or abuse of the Goods.
- 19.2. The Customer shall have no claim of any nature whatsoever whether for damages, a remission of the purchase



price, cancellation or otherwise, against Monsoon, its servants or agents.

- 19.3. Any liability arising from the supply of Goods is restricted to the cost of repair or replacement of faulty Goods or granting of a credit, at the sole discretion of Monsoon.

**20. Warranties and Indemnity**

- 20.1. No warranty, guarantee or representation whether express, implied or tacit, not set forth in these Terms and Conditions shall be binding on Monsoon. The Exclusion of warranties is subject at all times to the laws of the Republic of South Africa including the Consumer Protection Act 68 of 2008.
- 20.2. All guarantees are immediately null and void should any Goods be tampered with or should the Goods be operated outside the manufacturer's specifications, or due to negligence of the Customer, vandalism of the Customer or any third party, or from earthworks and excavations, or should any repairs or modifications be made to the Goods by any party other than as authorised in writing by Monsoon or where any Goods were operated with any accessory, equipment or part not specifically supplied or approved in writing by Monsoon, or the Goods were not operated or serviced or maintained in accordance with the instructions of Monsoon, or the Customer utilises or treats the Goods in any manner which in the reasonable opinion of Monsoon has the prejudicial effect on the Goods or the warranty applicable to such Goods.
- 20.3. No warranties whether express or implied shall apply, other than those provided in this contract. Monsoon specifically disclaims the implied warranty of merchantability and fitness for a particular purpose. No representation or warranty, including but not limited to statements of capacity, suitability for use or performance made by Monsoon or employees of Monsoon shall be considered to be a warranty by Monsoon. Any such statements made shall not give rise to any liability or whatsoever nature on the part of Monsoon, its employees, subcontractors or subsidiaries.
- 20.4. Guarantees and warranties do not apply to any defects or insufficiencies resulting from decrease in water main static pressure, changes to landscaping and changes to plant growth of the Customer's garden.
- 20.5. The Customer, by his/her/ its signature hereto, indemnifies, and holds harmless, Monsoon against any claim made by any third party to whom the Customer has supplied any Goods bought by the Customer from Monsoon for any loss or damage, whether direct, indirect or consequential and whether claimed under the law of contract, delict or otherwise sustained by such third party, its servants, agents, contractors or any other person engaged or employed by the third party arising from or in connection with any defect, latent or otherwise, out of any negligent act on the part of Monsoon or arising from any unsafe product characteristics, defects, failure or hazard caused by the Goods.
- 20.6. Goods are manufactured for standard domestic use, and are not intended for use in critical safety systems.
- 20.7. The Customer warrants that it has and will have all permissions, consents, licences and authorities for any Goods it instructs Monsoon to supply and in doing so Monsoon will not be breaching any by-law, statute or rights of any third party. The Customer shall be solely responsible for ensuring any compliance with all by-laws, statutes and restrictions on having, operating or using any Goods supplied or delivered or installed by Monsoon.
- 20.8. The Customer hereby indemnifies and holds harmless Monsoon against any damages, loss, harm or claim against or suffered by Monsoon as a result of any breach of any terms of this Agreement by the Customer or arising from any act or omission of Monsoon in complying with any obligation to the Customer or arising from the Customer's failure to comply with any law.

**21. Domicilium**

The Customer chooses *domicilium citandi et executandi* ("domicilium") for the purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purpose arising from these Terms and Conditions the address and telefacsimile numbers set out in the signatory clause below.

**22. Force Majeure**

Any order placed by the Customer on Monsoon is subject to cancellation by Monsoon due to any *force majeure* from any cause beyond the control of Monsoon, including without restricting the generality of the foregoing, inability to secure the Goods, skills to render any services, labour, power, materials or supplies, or by reason of an act of God, war, civil disturbances, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation.

**23. Security for Obligations**

Monsoon reserves the right to require satisfactory security from the Customer for the due performance of any of the Customer's obligation hereunder including but not limited to the payment of the purchase price. If Monsoon so requires, the Customer shall deliver to Monsoon prior to Monsoon complying with any of its obligations hereunder, such suretyships or other security requested on terms reasonably satisfactory to Monsoon.

**24. Costs**

The Customer shall be liable for all costs incurred by Monsoon in the recovery of any amounts due to it by the Customer from time to time or the enforcement of any rights which it has hereunder against the Customer, including collection charges and costs, on an attorney and own client scale and costs of counsel whether incurred prior to or during the institution of legal proceedings or if judgment has been granted, in connection with the satisfaction or enforcement of such judgment.

**25. General**

25.1. Monsoon reserves the right in its sole discretion to vary or amend these Terms and Conditions from time to time and any such amended or varied terms and conditions shall be binding on the Customer from the time that the Customer is notified thereof.

25.2. Save as provided in 25.1, no amendment and/or alteration and/or variation and/or deletion and/or addition and/or cancellation of these Terms and Conditions (including this clause) or any Quote or Statement of Work, or contract for the sale or supply of an Goods, whether consensual or unilateral or bilateral shall be of any force and effect unless reduced to writing and signed by a Member of Monsoon. No agreement, whether consensual or unilateral or bilateral, purporting or obligate Monsoon to sign a written agreement to amend, alter, vary, delete, add or cancel these terms and conditions and no settlement of any disputes arising under these Terms and Conditions shall be of any force and effect unless reduced to writing and signed by a member of Monsoon. These Terms and Conditions constitute the whole and entire agreement on the matters dealt with herein.

25.3. No extension of time, waiver, indulgence or relaxation or suspension of any of the provisions or terms of these Terms and Conditions that Monsoon may grant the Customer shall prejudice or be deemed to be a waiver of any of the rights of Monsoon in terms of these Terms and Conditions unless reduced to writing and signed by a member of Monsoon. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly constructed as relating strictly to the matter in respect whereof it was made or given.

25.4. Under no circumstances will Monsoon be estopped from exercising any of its rights in terms of these Terms and Conditions.

- 25.5. All provisions of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision of this Agreement which is or becomes unenforceable in any jurisdiction in which it applies or in which its enforcement is sought, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, only to the extent that it is so unenforceable, be treated as *pro non scripto* and that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the Parties, and the remaining portions shall remain in full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.
- 25.6. The Customer shall not cede its rights nor assign its obligations under these terms and conditions.
- 25.7. Monsoon shall at any time in its sole discretion be entitled to cede all or any of its rights in terms of this terms and conditions to any third party without prior notice to the Customer.
- 25.8. The Parties shall act as independent contracting Parties for all purposes under these Terms and Conditions. Nothing contained herein shall be deemed to constitute either Party as a representative of the other Party, or both Parties as joint venturers or partners for any purpose. Save as expressly stated herein to the contrary, neither Party will have the authority to speak for, represent or obligate the other Party in any way without the prior written approval of the other Party, unless this Agreement provides otherwise.
- 25.9. The Parties shall take all steps required to ensure that all personal information is safeguarded and treated as prescribed in the Protection of Personal Information Act ("POPI") and that the provisions of POPI are strictly adhered to.
- 25.10. The Customer shall, at all times, comply strictly with all applicable laws, by-laws, rules, any rules of common law, statute or regulation or other subordinate legislation having the force of law and comply with all applicable legislation in force from time to time in the Republic of South Africa. The Customer shall be responsible for securing any permissions, consents, licences or approvals for any work or services or Goods Monsoon are instructed to supply, deliver or install.

**26. Applicable Law and Jurisdiction**

- 26.1. The provisions of these General Terms and Conditions will be interpreted and implemented in accordance with the laws of the Republic of South Africa to which the Customer, by its signature hereto, agrees to be bound.
- 26.2. Monsoon shall have the right to institute any legal proceedings in either the relevant Magistrate's Court or the relevant High Court, in its sole discretion and the Customer consents to the jurisdiction of either or both such courts for such purpose.