



**HARD BRAKE SERVICE CENTRE**

**REG: 2022/218609/07**

**VAT: 4670302613**



078 260 2372



(011) 865 4111



admin@hardbrake.co.za



305 Kreupelhout Street,  
Wadeville, Johannesburg, 1428



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## **TERMS AND CONDITIONS OF SALE**

### **1. INTERPRETATION**

1.1. Any reference in these Terms and Conditions to:

- A. "Clause" shall, subject to any contrary indication, be construed as a reference to a clause hereof.
- B. "Law" shall be construed as any law (common law or customary law), statute, constitution, decree, judgment, treaty, regulation, directive, court order or any other legislative measure of government, local government, statutory or regulatory body or court.

1.2. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision of these Terms and Conditions.

1.3. Unless inconsistent with the context, any expression which denotes:

- A. Any one gender includes the other gender.
- B. A natural person included an artificial person and juristic person and *vice versa*; and
- C. The singular includes the plural and *vice versa*.

1.4. When any number of days is prescribed in these Terms and Conditions, the time period shall be determined by including the first and excluding the last day unless the day falls on a day which is not a business day, in which case the last day shall be the following business day.

1.5. Where figures are referred to in numbers and in words, should there be any conflict between the two, the words shall prevail.

1.6. Where any term is defined within the context of any particular clause in these Terms and Conditions, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning as prescribed to it for all purposes in terms of these Terms and Conditions, notwithstanding that such terms has not been defined under the definitions clause.

1.7. Any reference to a legal provision in these Terms and Conditions is to that provision as at the commencement date and as amended from time to time during the term of application of these Terms and Conditions.

1.8. In the event of ambiguity, the rule of construction in that the agreement shall be interpreted against the Party responsible for the drafting or preparation of these Terms and Conditions, shall not apply.

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- 1.9. The expiration or termination of these Terms and Conditions shall not affect the provisions of these Terms and Conditions where it is expressly provided that they will operate after the expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

## 2. DEFINITIONS

In these Terms and Conditions, the following expressions have the meanings and expressions as set forth below:

- |                                    |   |   |
|------------------------------------|---|---|
| <b>A. Agreement</b>                | - | means the terms and conditions of this agreement and all annexures thereto.   |
| <b>B. Assessment Date</b>          | - | means the date when an assessment was done, irrespective of the commencement date of the agreement.   |
| <b>C. Business day</b>             | - | means every day other than a Saturday, Sunday, and official public holiday in the Republic of South Africa.   |
| <b>D. COD</b>                      | - | means cash on delivery.   |
| <b>E. Contract Period</b>          | - | means the duration of the agreement, from the commencement date until the termination date.   |
| <b>F. Commencement Date</b>        | - | means the date when the agreement for the provision of services was signed by the customer.   |
| <b>G. Customer</b>                 | - | means the party that engaged with the service provider for the provision of services.   |
| <b>H. Force Majeure</b>            | - | means an unforeseeable event or circumstance which is beyond the control of the service provider, rendering the performance of the service provider's obligations under the agreement wholly or partially impossible. |
| <b>I. Monthly Fee</b>              | - | means the payment due and owing to the service provider for the duration of the agreement as agreed between the parties.  |
| <b>J. Parties</b>                  | - | means Jaylocap (Pty) Ltd t/a Hard Brake Service Centre and the customer.  |
| <b>K. Preventative Maintenance</b> | - | means the normal, daily general maintenance to be performed by the customer.  |

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- L. Service Provider** - means Jaylocap (Pty) Ltd t/a Hard Brake Service Centre.
- M. Termination Date** - means the date when the service provider's obligations in terms of the agreement have been fulfilled, alternatively upon the cancellation of the agreement.
- N. Vehicle(s)** - means the customer's asset which is utilised for the transportation of goods or people.
- O. Vendor** - means third parties engaged by the service provider to obtain parts or raw materials.
- P. Work** - means the services as per agreement reached between the parties which the service provider renders on behalf of the customer to their Vehicle(s)

### **3. GENERAL**

- 3.1. No person other than a director of the Service Provider has any authority to enter into an agreement on the Service Provider's behalf on any terms or conditions other than those contained herein.
- 3.2. The agreement hereto constitutes the sole and exclusive record of the agreement between the parties relating to the subject matter hereof and no warranty, representation, undertaking, guarantee or any term or condition of whatsoever nature not contained and/or recorded herein, or amendments not specifically provided for herein, shall be binding on the parties.
- 3.3. No variation or modification of any provision of the agreement, or consent to any waiver by any of the parties, shall be of any force or effect unless confirmed in writing signed by both parties or their appointed representatives, and shall then be effective only in the specific circumstance and for the express purpose and to the extent for which made or given.
- 3.4. The Terms and Conditions and any/all documentation issued by the Service Provider and accepted by the Customer forms part of the agreement.
- 3.5. The Agreement document may be executed in any number of counterparts, any of which may be delivered by electronic means or in person and will still form one single agreement, which is not required to be signed by the Service Provider to be binding.

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#### **4. SERVICE PROVIDER'S OBLIGATIONS**

- 4.1 In return of payment, alternatively a monthly fee provided for in the Agreement, the Service Provider shall perform the work.
- 4.2 The decision as to whether the repair or replacement of any parts in the carrying out of the work, shall be at the sole and absolute discretion of the Service Provider, alternatively as per agreement between the parties.
- 4.3 The Service Provider shall provide the technical advice, diagnostics, work and parts with the degree of skill and workmanship that would be reasonably expected from an entity or person conducting the business of the Service Provider.
- 4.4 The Service Provider shall, from the commencement date to the termination date, provide a service in terms of the provisions of these Terms and Conditions and in accordance with the agreement reached between the parties and shall consist of:
  - A. Authorising servicing in accordance with the agreement reached.
  - B. Endeavor to ensure that the service be completed as expeditiously as possible and minimise any inconvenience to the Customer; and
  - C. Not amend the payment payable in terms of the agreement or require additional payments from the Customer, save in the circumstances specifically provided for in terms of the agreement or as agreed between the parties.
- 4.5 The obligations of the Service Provider in terms of the agreement shall at all relevant times be subject to the provision that the Customer is not, at any relevant time, in breach of any of its obligations in terms of the agreement.
- 4.6 The Service Provider undertakes to institute all necessary precautions to avoid or reduce delay in delivering parts, services or the Vehicle(s), but shall not be responsible for loss or damage resulting from delays in delivery occasioned by breakdown of machinery, strikes, labour disputes, war, riots, shortages of material or labour, delays of carriers or to other manufacturers, transportation accidents, regulations or order of any Government, *force majeure* or any other cause whatsoever reasonably beyond the Service Provider's control and no order may be cancelled by the Customer for such reasons.

#### **5. CUSTOMER'S OBLIGATIONS**

The Customer shall provide assistance to the Service Provider to enable the Service Provider to render it's work efficiently, and in particular shall:

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- 5.1. Warrant that the Customer is the owner of the Vehicle(s) entrusted to the Service Provider or its duly authorized representative to enter into an agreement with the Service Provider on behalf of the owner.
- 5.2. Undertake to pay the Service Provider as agreed.
- 5.3. Use the Vehicle(s) safely, legally, carefully and expertly and in accordance with the use for which the Vehicle(s) is designed.
- 5.4. Ensure that the driver of the Vehicle(s) has/have the requisite expertise, experience and physical and mental condition required to operate the Vehicle(s) with due care and attention.
- 5.5. Ensure that at all relevant times that the Vehicle(s) is roadworthy and complies with statutory provisions.
- 5.6. Inform the Service Provider within 24 (Twenty-Four) hours of any fault or breakdown of the Vehicle(s) subsequent to work being rendered.
- 5.7. Advise the Service Provider of any additional work required to be done on the Vehicle(s) other than routine servicing.
- 5.8. Ensure that the Vehicle(s) is utilised for its purpose and that the speed limits and engine speeds are not exceeded.
- 5.9. Not to overload the Vehicle(s) or to use it for any purpose for which it is not designed.
- 5.10. The Customer shall notify the Service Provider in writing at the Service Provider's stated address, of any changes in the information set out in the application for credit facilities.
- 5.11. The Customer acknowledges that failure to notify the seller of any changes as per clause 5.10 above, shall entitle the Service Provider to exercise its rights in terms of clause 10.2, and furthermore indemnifies the Service Provider against any loss or damage which may result from such change.

## **6. PAYMENT**

- 6.1 All accounts shall be paid within 30 (Thirty) days of the date of the statement, unless otherwise agreed in writing.
- 6.2 All payments are to be made at the stated address of the Service Provider in the official currency of the Republic of South Africa.

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- 6.3 All parts and services are supplied on a Cash-on-Delivery (COD) basis in the absence of prior arrangement between the parties.
- 6.4 Payments shall be made without set off, counterclaim or deduction, irrespective of the Vehicle(s)'s condition or performance.
- 6.5 No third party is authorised to accept payment on behalf of the Service Provider.
- 6.6 In the event that any amount payable in terms of the agreement reached between the parties are not paid on the due date, the Customer shall be liable for interest thereon as per the prime interest rate from time to time, from the due date of such payment until the date of final payment.

## **7. PRICE VARIATION AND QUOTATIONS**

- 7.1. The quotation is calculated with reference to the retail charges of carrying out the service (and including but not limited to, the costs of component parts, raw material, labour costs and transportation costs) and shall be subject to adjustment by the Service Provider in its sole and absolute discretion.
- 7.2. Any changes to the quotation shall be for the Customer's account.
- 7.3. Quotations are subject to alteration without prior notice to the Customer based on the rates as provided by Vendors from time to time. The Customer accepts the quotation with the understanding that quotations may vary depending on the costs of obtaining a specific part and/or material and shall be liable for the quotation as varied, on the date of delivery.
- 7.4. Quotations are valid for a period of 30 (Thirty) days from date of issuing, unless reduced to writing and signed by the director of the Service Provider.

## **8. PROTECTION OF PERSONAL INFORMATION**

Where either party requires the other party to process any personal information (as defined in the Protection of Personal Information Act No 4 of 2013 (POPIA)) belonging to that party for reasons other than obtaining information required to ensure due contractual performance, the other party agrees to:

- 8.1. Act in accordance with the valid and legitimate instructions.

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- 8.2. Use appropriate technical and organisational measures to protect the personal information against unauthorised or unlawful processing and against accidental loss, destruction, damage, theft, use or disclosure.
- 8.3. Comply with the applicable parts of POPIA and similar legislations affecting data protection in any jurisdiction where the affected party will be performing the service; and
- 8.4. Not do or omit to do anything that would cause the requesting party to be in breach of applicable data protection laws.

## **9. DELIVERY**

- 9.1. The Customer will be notified upon completion of the work and will collect the Vehicle(s) as soon as reasonably practicable, but within 7 (Seven) days from being notified to do so, unless an agreement has been made to the contrary between the parties.
- 9.2. The Service Provider is entitled to charge a reasonable storage fee for uncollected Vehicle(s) after said 7 (Seven) days and the Vehicle(s) remains uncollected.
- 9.3. The Customer acknowledges that its Vehicle(s) shall at all times be subject to the Service Provider's lien, which will only be extinguished upon receipt of full settlement of the Service Provider's account.
- 9.4. The Customer consents to a lien in favour of the Service Provider arising from unpaid storage costs.
- 9.5. The Customer acknowledged that the Service Provider is entitled to sell the customer's Vehicle(s), alternatively parts installed, which have not been collected within 30 days from date of notification.
- 9.6. The Customer is responsible for receiving and checking the parts or Vehicle(s) in the presence of the person delivering the parts or Vehicle(s).
- 9.7. In the event of shortages or damages to the parts or Vehicle(s) the delivery note must be endorsed by the Customer accordingly.
- 9.8. Delivery at the agreed place of delivery shall constitute good delivery.
- 9.9. The Service Provider does not guarantee delivery on any specified date and time and any such delivery shall be in accordance with the Service Provider's schedule of delivery, furthermore the Service Provider reserves their right as outlined in clause 4.5.

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## **10. BREACH AND TERMINATION**

10.1. Should: -

- A.** The Customer fail to make payment, which is due and payable in terms of the agreement on the due date thereof, alternatively should the Customer be in breach of any of the material provisions of the agreement and after the Service Provider having given the Customer 7 (Seven) days written notice to correct such default and the Customer fails to do so; or
- B.** The Customer do any act or omission which prejudices the Service Provider and after the Service Provider having given the Customer 7 (Seven) days written notice to refrain from such act;
- C.** The Surety Holder for the Customer be placed under sequestration, liquidation or judicial management, whether provisional or final or a default judgment be entered against the Customer and the Customer fails to satisfy the judgment or to set it aside within 30 (thirty) days after such judgment being had and obtained:

The Service Provider reserves the rights as set out in clause 10.2.

10.2. Upon the happening of any events specified in clause 10.1, the Service Provider shall be entitled, without prejudice to any other right which it otherwise might have:

- A.** Suspend its obligations to provide services in terms of the agreement until the breach has been rectified by the Customer;
- B.** Cancel the agreement and without prejudice to the Customer's rights to repossess any part or product provided in terms of the agreement.
- C.** Recover from the Customer all outstanding payments, legal costs, costs and disbursements and all other costs incurred by the Service Provider, irrespective of the Court in which action may be instituted on a scale as between attorney and own client.

10.3. Should the Service Provider fail to perform their obligations in terms of the agreement, the Customer may notify the Service Provider of such failure, by giving written notice, whereafter the Service Provider shall have 30 (Thirty) days to rectify such failure. Should the Service Provider fail to comply with its obligations within this period, the Customer reserves the right to cancel the agreement in respect of the relevant service.

10.4. In the event of termination in terms of this agreement due to a breach by the Customer, the Customer shall fulfil all the contractual obligations in terms of the agreement and settle all outstanding accounts.





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10.5. A certificate under the hand of any manager of the Service Provider as to the amount of the indebtedness of the Customer to the Service Provider at any time, as to the fact that such amount is due and payable, the amount of interest accrued thereon and as to any other fact, shall be conclusive proof of the content and correctness thereof.

## **11. DISPUTE RESOLUTION**

11.1. Save to the extent expressly otherwise provided for in the Agreement, any dispute arising out of, or in connection with the agreement, shall be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa (AFSA), by a single arbitrator with expertise in the field of the dispute appointed by the foundation.

11.2. Subject to clause 10.4, the provision of this clause:

- A.** Constitutes an irrevocable consent by the parties to any proceedings in terms hereof and none of the parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause or such proceedings.
- B.** Are severable from the rest of the provisions set out in this agreement and shall remain in effect despite the termination, cancellation or invalidity of any terms and conditions for any reason whatsoever.

11.3. The receipt by any party to the Agreement of a notice calling for arbitration shall constitute the service of a process for the purpose of interruption of prescription in terms of the Prescription Act No 68 of 1969, or the corresponding provision in any replacement legislation.

11.4. Notwithstanding the arbitration provisions above, the Customer hereby agrees and consents that the Service Provider is entitled, at its sole and absolute discretion, to institute legal proceedings for the recovery of any amount due by the Customer to the Service Provider arising out of or in connection with the agreement in any Magistrates Court having jurisdiction, and notwithstanding that such claim may exceed the ordinary jurisdiction of the Magistrates Court.

11.5. Should the need arise to institute legal proceedings, the Customer agrees that they shall be liable for all fees incidental to the legal proceedings, which include but are not limited to the attorney client fees, tracing fees, disbursements and tracing fees.



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## **12. SERVICE PROVIDER'S LIABILITY AND INDEMNITY**

12.1. The Service Provider shall use all reasonable endeavours to ensure that the performance of work provided is done with reasonable care and skill and within a reasonable time. Subject to the foregoing all express or implied warranties, conditions and undertakings in respect of the performance by the Service Provider of the service are excluded.

12.2. Notwithstanding anything to the contrary in the agreement:

- A.** The Customer shall have no claim of whatsoever nature against the Service Provider in the event that it is deprived of the use of the Vehicle(s) and shall be obliged to fulfil payment obligation on the due date; and
- B.** The Service Provider shall not be liable to the Customer or any other person for any loss of profits, direct or indirect damages, or any other consequential loss or damages arising from any cause whatsoever. The Customer hereby indemnifies the Service Provider and holds them harmless against any claim which may be made against the Service Provider in respect of any matter for which the liability of the Service Provider is excluded in terms hereof.
- C.** The Service Provider will not be obliged to arrange a loan Vehicle(s) in respect of the Vehicle(s) where services are provided.
- D.** The Customer shall have no claim against the Service Provider for any loss or damage to any property left in or upon the Vehicle(s) for any reason whatsoever, or the Vehicle(s) itself, when the Vehicle(s) is in the possession and care of the Service Provider for any purpose under the agreement.
- E.** The Service Provider reserves the right to request additional personal guarantees or security from the Customer should circumstances necessitate.
- F.** The Service Provider reserves the right to impose such additional conditions as per clause 12.2(E), for security or terms of payment as it deems fit and shall be entitled at any time without notice to the Customer, to terminate any credits facilities which it may have granted to the Customer and is not obligated to furnish the Customer with any reason for foregoing.
- G.** In the event of the Customer electing not to accept the technical advice given by the Service Provider, the services rendered and parts provided by the Service Provider is at the Customer's sole and absolute risk and the Customer waives any/all rights to hold the Service Provider liable for any damage or loss suffered by the Customer and/or Third Party.
- H.** The Service Provider's liability in terms of the work done is limited to the parts provided and work rendered.

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### **13. SURETY**

13.1 In the event of the purchaser being a Company or a Close Corporation (Juristic Person), then the signatory hereto binds themselves as surety and co-principal debtor in solidum with the Customer for the due, proper and functional fulfilment of all and any obligations which the Customer may have to the Service Provider.

13.2 This Suretyship shall be unlimited notwithstanding the fact that the amount due by the Customer exceeds its declared maximum credit facility required.

### **14. WARRANTIES**

14.1 If any of the work and/or parts are covered by a warranty given by a Vendor, then such warranty is subject to specific terms and conditions as per the manufacturer or supplier in addition to these terms and conditions.

14.2 If a Vendor gives a warranty, such warranty will run concurrently with any warranty given by the Service Provider and any statutory warranty.

14.3 If the work to be rendered and/or parts to be provided are covered by an existing third party warranty or other maintenance - and/or service plan, it is the Customer's responsibility to make arrangements for payment of the Service Provider and shall remain liable to the Service Provider until the account has been settled.

14.4 Unless expressly agreed to the contrary in writing, no warranty given by the Service Provider shall be valid for a period in excess of 6 months, alternatively 20 000km (Twenty Thousand) travel distance from date of completion of the work in relation to fitment of parts or faulty workmanship.

14.5 In the absence of full specifications or incomplete specifications submitted with the order by the Customer, parts to the standard and specification of the Service Provider will be supplied.

14.6 Where parts are manufactured or supplied by the Service Provider to the Customer in accordance with the written specifications and/or drawings of the Customer, the Customer accepts responsibility for the sustainability or workability of such part manufactured or services rendered and indemnifies the Service Provider of any damage or loss sustained.

14.7 In the event where advice, recommendations or opinions are presented by representatives of the Service Provider, to the Customer, it is recorded that such advice, recommendations or opinions are expressed in good faith and shall not constitute warranties and shall not give rise to any claim against the Service Provider for such advice, recommendation or opinion provided to the Customer.

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14.8 Descriptions, illustrations, and examples of parts and services contained in any catalogue, brochure, advertisement, or price list are intended only as general information and do not constitute warranties and do not form part of any estimate or agreement or part of these conditions.

14.9 No warranty given by the Service Provider will cover abuse, excessive or abnormal use, use contrary to any manufacturer's specifications or normal wear and tear.

14.10 The Service Provider's liability arising from any warranty shall be limited to the reasonable costs of fixing or replacing the defective work and/or parts.

## **15. RISK AND OWNERSHIP**

15.1 Possession of the Customer's Vehicle(s) is taken by the Service Provider strictly subject to the provisions of this agreement.

15.2 The Service Provider does not assume or accept any risk until the Customer has delivered the Vehicle(s) to the Service Provider's regular business premises.

15.3 The Customer authorises the Service Provider, at their own risk, to submit the Vehicle(s) to a test drive for the purposes of testing or diagnostics and shall not hold the Service Provider liable for any loss or damage sustained to the Vehicle(s) as a result thereof.

15.4 Although all reasonable care will be taken with the Customer's Vehicle(s) in the Service Provider's possession, the Customer acknowledges that the Service Provider shall not be liable for any loss or damage sustained by the Customer due to theft, *force majeure* or any other cause.

15.5 Risk in the parts or Vehicle(s) provided by the Service Provider in terms of this agreement shall pass on delivery from the Service Provider to the Customer and the safe custody of the parts or Vehicle(s) shall be the Customer's responsibility until full settlement of the account due and payable.

15.6 The parts sold, remain vested in the Service Provider until the purchase price, any overdue interest and any other costs have been paid in full.

15.7 All parts, whether fixed to immovable property or to other parts shall be deemed to be moveable property and severable without damage to such property or other parts.

15.8 The Service Provider reserves the right to inform the Customer or the owner of the immovable property to which any parts are fixed to its claim to ownership without there being any obligation on the Service Provider to do so.



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## 16. CLAIMS

- 16.1 Parts may only be returned by the Customer with prior approval of any director or branch manager of the Service Provider.
- 16.2 The return of parts will only be accepted when the parts are proved to be defective and where such defect is attributable to faulty workmanship by the Service Provider and/or faulty raw material or parts.
- 16.3 It shall be in the Service Provider's sole and absolute discretion as to whether to determine the parts supplied or workmanship rendered are defective or not and such a decision shall be final and binding upon the parties hereto.
- 16.4 The liability of the Service Provider in respect of the parts returned will be limited, at the Service Provider's discretion to either;
- A. Replace the defective parts entirely free of charge;
  - B. Make a price adjustment in respect of the defective parts, or
  - C. Contribute towards the labour costs of removing the defective parts.
- 16.5 In the absence of any claim or endorsement as required in terms of clause 9.7, the Customer shall be deemed to have received and accepted the Vehicle (s) and/or parts in good order and in full compliance with the agreement.
- 16.6 The Service Provider is not responsible for any loss of profit, consequential loss, damage or other charges however arising, either from defective raw materials or workmanship or any breakdown of the parts sold or late delivery thereof, the Service Provider's liability at all times being limited to that set out in clause 16.4 hereof.

## 17. APPLICABLE LAW

- 17.1. The parties shall duly comply with all applicable laws, regulations, and directives and shall obtain and maintain all such licences, approvals and consents as may be necessary for the proper performance and observance of their obligations in terms of the agreement. In the performance of its obligations in terms of the agreement, the Customer shall not do anything, which may cause the Service Provider to contravene any legislation.
- 17.2. The agreement shall be interpreted and by subject to the applicable laws of the Republic of South Africa, as amended from time to time.



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## 18. SEVERABILITY

Each clause and/or term and/or provision of the Agreement is severable from the rest of the Agreement, and should such clause, term, or provision be found to be unenforceable or unlawful, it will no detract nor affect the validity of the remainder of the agreement or the enforceability thereof.

## 19. DOMICILIUM

19.1. The Customer hereby chooses as their *domicilium citandi et executandi* (domicilium) for all purposes arising out of or in connection with this agreement, the Customer's address as set out in the agreement where all notices and or processes may be validly delivered by hand or served upon the Customer. The Customer may change their domicilium to another within the borders of the Republic of South Africa by written notice delivered by hand or through email to the Service Provider.

19.2. The Customer shall notify the Service Provider in writing should there be a change in the Customer's address within 7 (Seven) days of such change.

## 20. CREDIT CLEARANCE

The parties hereby consent to a Business and Principal Credit clearance check through Transunion ITC or any other recognised Credit Buro.

## 21. ACCEPTANCE

The Customer herewith agrees that they have reviewed the terms and conditions of the Agreement and is familiar with the contents thereof and accordingly accepts it.

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