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# GENERAL TERMS AND CONDITIONS OF SALE

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We welcome you to Whitehead Scientific and thank you for your interest in our various products and services.

The content on this webpage is the terms and conditions applicable to the sale of each product and/or service to you.

## **PART A – INTERPRETATION AND BINDING TERMS**

1. The following terms shall have the meaning assigned to them below, unless the context requires otherwise:

- 1.1 **“the Client”** means you;
- 1.2 **“the Company”** means Whitehead Scientific (Pty) Ltd;
- 1.3 **“Party”** or **“Parties”** means collectively, the Client and the Company and, **“Party”** shall mean either of them, as the context may require;
- 1.4 **“Purchase Agreement”** means the agreement (as more fully set out in clause 4 below), based on these terms and conditions, which is automatically created between the Client and the Company whenever the Company accepts one of the Client's Purchase Orders for the purchase of some or all product/s or service/s as specified in a quotation;
- 1.5 **“product/s”** means the products sold by the Company to you;
- 1.6 **“Product Terms and Conditions”** means the Quotation Terms and Conditions, the Purchase Order Terms and Conditions and the terms and conditions contained in Part A (*Interpretation*), Part B (*Order and Payment Terms*), Part C (*Product Terms and Conditions*) and Part E (*General Product and Service Terms and Conditions*) hereof;
- 1.7 **“Purchase Order Terms”** means the terms on your Purchase Order;
- 1.8 **“quotation”** means a written quotation issued by the Company to the Client in respect of products or services and **“Quotation Terms and Conditions”** means the terms and conditions contained in, or referred to in, the quotation, including any applicable Manufacturer Terms, whether or not they are referred to in the quotation;
- 1.9 **“service/s”** means the services offered and rendered by the Company to you;
- 1.10 **“Service Terms and Conditions”** means the Quotation Terms and Conditions, the Purchase Order Terms and the terms contained in Part A (*Interpretation*), Part B (*Order and Payment Terms*), Part D (*Service Terms and Conditions*) and Part E (*General Product and Service Terms and Conditions*) hereof;
- 1.11 **“Site”** means the location at which the Services are to be provided;
- 1.12 **“the terms and conditions”** or **“these terms and conditions”** means the Product Terms and Conditions and the Service Terms and Conditions; and
- 1.13 **“Manufacturer Terms and Conditions”** means any terms and conditions other than those contained in these terms and conditions which apply to the purchase of a product from, or the rendering of services by, the Company e.g. the Manufacturer's warranty

terms or the Manufacturer's technical manuals or instructions for use accompanying the products. All products are sold subject to the applicable Manufacturer Terms and Conditions.

- 1.14 **“Manufacturer”** shall mean the Manufacturer of the relevant product from which the Company purchased the product; or the product in terms of which the services are to be rendered;
2. Where any term is defined within the context of any particular clause in these terms and conditions, the term so defined shall bear the meaning ascribed to it for all purposes in terms of these terms and conditions, unless it is clear from the clause in question that such term has limited application to the relevant clause.
3. The Client, by ordering any:
- 3.1 products, will be deemed to have accepted the Product Terms and Conditions; and
- 3.2 services, will be deemed to have accepted the Service Terms and Conditions,
- which terms shall immediately become of full force and effect and shall constitute legally binding rights and obligations between the Company and the Client.
4. A Purchase Agreement shall automatically be created between the Company and Client in respect of each Purchase Order (for products and/or services ordered) once such Purchase Order has been accepted by the Company. The Purchase Agreement shall consist of the Product Terms and Conditions, in the event of a purchase of product/s, or the Service Terms and Conditions, in the event of a purchase of services, in force at such date.
5. The Company reserves the right to amend these terms and conditions from time to time, which shall take effect from the date upon which such amended terms are published on the Company's website. It shall be the Client's responsibility to familiarise itself with the terms and conditions in effect prior to ordering new products and/or services.

## **PART B – ORDER AND PAYMENT TERMS AND CONDITIONS (PRODUCTS AND SERVICES)**

### **6. Quotations for products and services**

- 6.1 The unit prices of all products and services quoted for by the Company are quoted exclusive of Value Added Tax (“VAT”). VAT is levied on products or services at the prevailing rate and is included as a separate line item on the quotation.
- 6.2 Any written quotation issued by the Company shall remain valid and open for acceptance for a period of 30 (thirty) days from the date of the quotation, unless specified otherwise on the quotation or in the event that an extension for acceptance of the quotation is agreed to by the Company in writing.
- 6.3 The pricing of the products or services on any quotation issued by the Company may be reviewed by the Company, after the quotation has been issued and before the order associated with the quotation is received by the Company, should there be any change in the interim to:
- 6.3.1 the quantities of the products or services being quoted for;
- 6.3.2 ruling currency exchange rates, duties, surcharges and taxes levied by the relevant authorities, transport costs and clearing agent charges applicable as at the date of provision of the quotation; and/or
- 6.3.3 supplier pricing applicable as at the date of the quotation.

- 6.4 If a quotation is issued for any product which is reflected as being in stock, such quote shall be provided subject to the condition that the product quoted for has not previously been sold to a third party prior to receipt of the order by the Company.
- 6.5 The Company is entitled to charge the Client storage costs for all goods purchased, where the Client requests the Company to withhold or postpone delivery of the product to it and the Company agrees thereto. The Client shall be charged for such storage at the prevailing storage rates charged by the Company.
- 6.6 All quotations issued shall include the Company's charges for the installation, commissioning, calibration and validation of products, where required.
- 6.7 Should any orders be placed without a quotation being obtained in advance, the invoice will be raised in accordance with the specific and current pricing agreement in existence between the Company and the Client.

## 7. Acceptance of Quotations/Placing of orders

- 7.1 The Client shall accept a quotation and/or place an order, by returning to the Company a duly authorised order with the Client's official order number (hereinafter referred to as "**the Purchase Order**" in these terms and conditions).
- 7.2 No Purchase Order placed by the Client shall be deemed to have been accepted by the Company unless the Company has accepted the Purchase Order in writing or by delivery of the product, or rendering of the requested service, to the Client, and/or the issuing of an invoice to the Client for the product or service. Acceptance of a Purchase Order by the Company shall be in the Company's sole discretion.
- 7.3 Any Purchase Order received by the Company shall be accepted as accurate and complete in all respects including invoicing details, the Client's updated VAT number, the address for delivery, the Site, order number, product quantity, product specifications and pricing, and the Company shall not accept liability for any losses incurred as a result of being furnished with inaccurate or incomplete information by the Client.

## 8. Credit Facilities and Credit Clients

- 8.1 For the purposes of these terms and conditions "**cash clients**" shall mean clients who are required to pay the full quotation amount immediately when ordering products and/or services; and "**credit clients**" shall mean all clients who are not cash clients.
- 8.2 The provisions of this clause 8 apply only to credit clients.
- 8.3 The Company may, in its sole discretion and subject to such terms and conditions as it may stipulate, extend credit facilities to approved Clients.
- 8.4 In the absence of any agreed credit facilities as per 8.3, the Company will require the Client to pay in advance of delivery or will apply ad-hoc credit terms.
- 8.5 The Company shall have the right, in its sole discretion, to withdraw all credit facilities held by any Client at any time.
- 8.6 Products will only be dispatched, and services will only be rendered, to a Client provided that the Client's account is in good standing having not exceeded any credit limit that the Company has set, and there being no overdue payments outstanding. The Company shall have the right in its sole discretion to withhold or postpone delivery of any products and/or the rendering of any services to a Client, and the Company at its option, shall be entitled to require payment of any or all invoices issued in full or in part in advance of delivery of the entire undelivered balance of said products or services.

- 8.7 The Company will issue an invoice to the Client for all amounts owing in terms of the order simultaneously with delivery of the products and/or after the rendering of the services.
- 8.8 Subject to the currency laws of South Africa, payment of all invoiced amount must be made in the currency shown on the invoice.
- 8.9 Payment of the invoiced amount must be received by the Company in full, within the Client's approved payment terms by means of an electronic funds transfer ("EFT"), free of any deductions, bank charges and set-off.
- 8.10 In the event that any amount is not paid on the due date for such payment, the Company shall be entitled, without prejudice to any other rights it may have against the Client, to charge interest on such overdue and/or outstanding amounts, at the maximum interest rate allowed by the law. Interest shall be calculated from the due date for payment until the actual date on which the payment in full is received.
- 8.11 The Company reserves its right to, at any time prior to the delivery of a product, require the Client to pay a deposit in respect of its order.
- 8.12 The Client shall be obliged on request to provide proof of payment of any electronic funds transfer in respect of any invoiced amount or deposit paid to the Company as well as the associated remittance advice.

#### 9. Payment: Cash Clients

- 9.1 The provisions of this clause 9 apply only to cash clients.
- 9.2 Cash clients shall pay as a deposit the amount of any quotation in full simultaneously with placing an order for products and/or services.
- 9.3 No order for products shall be placed with the relevant supplier by the Company prior to payment of the quoted amount being deposited with the Company.
- 9.4 The Company shall issue a Tax invoice to the Client on delivery of the products to the Client.

#### 10. Manufacturer Terms and Conditions and Conditions

- 10.1 Where the Company sells a product to the Client subject to Manufacturer Terms and Conditions which entitles the Client to certain services, or the replacement of a product or parts thereof, at a reduced or nil cost to the Client (e.g. Manufacturer product/service warranties, free installation or training services), the Company shall endeavour to facilitate the Client's claim against the relevant Manufacturer. The Company shall convey to the Client the Manufacturer's confirmation of what replacement products (or parts thereof) or service fees and/costs shall be paid for by the Manufacturer based on the Manufacturer Terms and Conditions (the "**Covered Products**" and the "**Covered Services**") by way of issuing a quotation listing:
- 10.1.1 the Covered Products and/or the Covered Services quoted for at no (or reduced) cost to the Client; and
- 10.1.2 any other products (or parts thereof) or services requested by the Client (but not recognized Covered Products or Services by the Manufacturer), quoted for at full price to the Client.
- 10.2 The Company shall not be obliged to sell any products (or part thereof) or render any services at no (or reduced) cost to the Client without written confirmation from the Manufacturer that such services qualify as Covered Products or Services.

- 10.3 Special care must be taken by the Client to peruse and consider the Manufacturer Terms and Conditions which may provide for certain exclusions (for instance in the event of negligence or misuse) as well as certain conditions such as re-certification requirements.

## **PART C - PRODUCT TERMS AND CONDITIONS**

### **11. Delivery and Risk**

- 11.1 For the purposes of the Product Terms and Conditions "**delivery address**" shall mean the address nominated by the Client for the delivery of products, which address shall be deemed to be the address stipulated on the Client's Purchase Order
- 11.2 Delivery of the products shall be made by the Company to the delivery address. All transportation costs shall be for the Client's account.
- 11.3 In the case of products delivered in South Africa, the Company will, unless otherwise agreed to by the Client and the Company in writing, arrange freight and insurance against loss or damage in transit. Risk in the products will pass to the Client on delivery at the delivery address.
- 11.4 In the case of products delivered outside of South Africa, the Company may arrange and pay for the transportation of the products on behalf of the Client to the delivery address in which event the Client shall refund the said charges to the Company on demand. For the avoidance of any doubt the Client shall at all times be responsible for payment of all or any import duties and taxes levied by the local import, and other government or municipal authority. The Client shall also be responsible for any additional charges that may arise due to delays during the customs clearance procedures. Unless otherwise requested by the Client on their Purchase Order, the forwarding agent shall be nominated and appointed by the Company. Risk in the products is transferred from the Company to the Client when the products are available for offloading, which shall constitute delivery of the products regardless of the applicable shipping terms. In the event that the Client chooses to appoint an independent clearing agent, risk in the products will transfer to the Client upon handover of the documentation from the Company's forwarding agent to the Client's appointed clearing agent, which shall constitute delivery of the products regardless of the applicable shipping terms.
- 11.5 Where the products are collected from the Company's warehouse by the Client or a third party nominated by the Client, the risk in respect of the products passes to the Client when the products are collected, which shall constitute delivery of the products. For the avoidance of doubt, the products shall be deemed to have been "collected" once the Client or its representative commences loading the products. The Client shall be responsible for taking out the appropriate insurance cover in respect of said products in transit, should he chose to do so.
- 11.6 In the absence of an express written instruction from the Client on its Purchase Order as to who should receive the products, the Client agrees that a signature of any of its employees or any person purporting to represent it on the Company's delivery note or waybill, shall be sufficient proof of delivery of the products to the Client. Notwithstanding the foregoing, provided that the products are actually received by the Client, receipt thereof shall constitute valid delivery for all purposes under these Product Terms and Conditions.
- 11.7 The Company reserves the right, where appropriate, and where the products cannot be delivered as a single delivery to make more than one delivery to the Client and to raise an invoice for each such delivery separately.
- 11.8 The Company will endeavour to meet all estimated delivery times which it provides to the Client. Notwithstanding the foregoing, all such delivery times provided are of an

indicative nature only and the Company cannot always guarantee the availability of products.

## 12. Returns and Cancellations of orders

- 12.1 Products may only be returned for credit by the Client if authorised in writing in advance of such return by the Company in its sole discretion, and on such further terms and conditions as stipulated by the Company at the time.
- 12.2 The Company shall be entitled, in its sole discretion, to charge a handling fee of 15% (fifteen percent) of the quoted price of the product returned to the Company for crediting, unless the parties agree to an alternative handling fee.
- 12.3 The Company reserves the right to stipulate the terms and conditions of the return and at its discretion may determine that the all costs associated with returning such products to the Company, including insurance where required by the Client, shall be for the account of the Client. For the avoidance of any doubt, risk in the products, including the risk of loss or damage, will pass to the Company on delivery.
- 12.4 A credit note shall only be issued by the Company in respect of the return of the products after the Company has satisfied itself that the products were handled and/or stored and/or used and/or transported as prescribed in terms of the Product Terms and Conditions.
- 12.5 Subject to receipt of authorisation by the Company in terms of 12.1, products should be returned, wherever possible:
  - 12.5.1 with both contents and all packaging as far as possible in their original condition;
  - 12.5.2 securely wrapped; and
  - 12.5.3 together with the Company's delivery slip.
- 12.6 The Company shall be entitled to refuse the return of any unwanted products which have been ordered by the Client in error.
- 12.7 In the event that the Client cancels an order for a non-stocked item, then the Company shall be entitled to:
  - 12.7.1 retain as liquidated damages, any deposit paid by the Client, or
  - 12.7.2 charge the Client a penalty fee in lieu of damages that have been suffered by the Company as a result of the cancelled order, including an administration fee.

## 13. Delivery and acceptance of products/orders

- 13.1 For the purposes of this Part C:
  - 13.1.1 "**Business Hours**" shall mean 08h00 to 17h00 South African time, Monday to Friday (unless such day is a South African public holiday); and
  - 13.1.2 "**the inspection period**" shall mean the first 16 (sixteen) Business Hours immediately following actual delivery;
- 13.2 In instances where damage in transit occurs before the risk in the products has passed to the Client, the Company shall accept responsibility for such loss or damage in transit provided that it has been given written notice of such loss or damage within the inspection period or within what would have been the inspection period in the event of successful delivery on the intended delivery date (in which case the inspection period shall be

reckoned by using the last Business Hour of the intended date of delivery as the first hour following delivery).

- 13.3 Immediately upon delivery of the products ordered by the Client, the Client shall be obliged to inspect the products and the Purchase Order and, where applicable, notify the Company in writing of any shortages, defects or damages to the products/order within the inspection period.
- 13.4 Should the Client fail to notify the Company of any such shortage, defect or damages to the products/order during the inspection period, the order shall be deemed to have been delivered in good order and to have been accepted by the Client.
- 13.5 Should the Client notify the Company in writing of any shortage, defect or damages to the products/order within the inspection period, the Company shall be liable to make-up, replace or repair the shortages, defects or damages in the products/order provided that:
  - 13.5.1 the Client makes the products available for inspection by the Company or its duly appointed representative during Business Hours for such periods of time as required by the Company; and
  - 13.5.2 the Client holds the products under the appropriate specified storage conditions until such time as the Company's written notification of the outcome of the Company's investigation; and
  - 13.5.3 the shortage, defect or damages arose during delivery of the products by the Company and before the risk in the products/order passed to the Client, as set out more fully in 13.2 and these terms and conditions.
- 13.6 The written notice required in terms of 13.3 and 13.5 shall include the following
  - 13.6.1 confirmation of the delivery date and time;
  - 13.6.2 confirmation of the product code, lot number or serial number;
  - 13.6.3 description of the storage conditions under which the products were stored and will continue to be stored until such time as the Company has by written notice confirmed that it has completed its investigation;
  - 13.6.4 confirmation of who had access to the products, who had any interaction with the products and their reason for doing so;
  - 13.6.5 description of the alleged shortage, defect or damage to the products; and
  - 13.6.6 provision of any other information which may be relevant to the cause and extent of the alleged damage to the products, including photos indicating alleged shortage, defect or damage.

#### **14. Product warranties**

- 14.1 The Client shall be solely responsible for establishing the suitability of any product for the use contemplated by the Client.
- 14.2 Unless the Client receives written authorisation from the Company, the Client may not resell the products to third parties. Where the re-sale of products has been authorised by the Company in its sole discretion, the Client undertakes to provide the Company with the full contact and delivery address details of the end-user and a description of the use that the product is intended for. Where a Client intends to re-sell a product, the Client also confirms that it will take all reasonable steps to ensure that it is familiar and fully compliant with the provisions of the UK anti-bribery Act and the US Foreign Corrupt Practises Act.

- 14.3 THE COMPANY IS AN AUTHORISED DISTRIBUTOR OF THE PRODUCTS. THE COMPANY DID NOT MANUFACTURE THE PRODUCTS AND IS NOT AN AGENT OF THE MANUFACTURER. THE ONLY PRODUCT WARRANTIES OFFERED ARE THOSE OFFERED BY THE MANUFACTURER ("**MANUFACTURER WARRANTIES**").
- 14.4 It is the Client's responsibility to obtain copies of, and familiarise itself with, the terms of the Manufacturer Warranties in force at the relevant time. Where the Company provides copies of (or hyperlinks to) Manufacturer Warranties it shall do so merely to assist the Client and it shall remain the sole responsibility of the Client to ensure that it is in possession of all updated terms relevant to Manufacturer Warranties.
- 14.5 The Company will use its best endeavours to ensure that the products are supplied in working order and compliant with all applicable specifications from the Manufacturer. In this regard the Company shall also assist the Client with warranty claims against the Manufacturer to such an extent as the Company has legal standing and, in the exercise of its sole discretion in this regard, deems it appropriate to do so.

## 15. Product defects

- 15.1 Where the Company has sold a product to the Client subject to a Manufacturer Warranty which entitles the Client to the repair or replacement of a product or parts thereof ("**Covered Products**") in the event of certain defects ("**Covered Defects**"), the Company shall assist the Client in bringing its claims against the Manufacturer as more fully set out in 14.5 and provided that:
- 15.1.1 the Client has notified the Company in writing within 16 (sixteen) Business Hours after discovering that a product is defective;
  - 15.1.2 the Client makes the product, and any scientific evidence used to deduce that the product may be defective, available for inspection by the Company or its duly appointed representative during Business Hours for such periods of time required by the Company;
  - 15.1.3 the Client holds the products under the appropriate specified storage conditions until such time as the Company has delivered a written notification of the outcome of its investigation;
  - 15.1.4 the products have been subject to normal use (including storage and transit where applicable) in a manner which is consistent with the specification, functionality and service standards described in the relevant products manual or operating guidelines;
  - 15.1.5 reasonable care has been taken of the products and it has been subjected to reasonable wear and tear only;
  - 15.1.6 the products have not been subjected to improper use or unapproved chemicals or samples;
  - 15.1.7 the fault has not been caused or contributed to by wilfully or negligently caused damage, or any accident, or being in environmental conditions harmful to the product or by third party software or hardware which have not been supplied by the Company and/or the relevant manufacturer;
  - 15.1.8 the defective product or part had not been previously modified or repaired by any third party;
  - 15.1.9 only software approved by the manufacturer has been used; and

- 15.1.10 the Client has not removed or replaced the computer controlling the product (if applicable) with another computer or has made, or attempted to make, any software or hardware upgrades to the operating system of such controlling computer;
  - 15.1.11 the Client provides the Company with such information as requested, relevant to the claim, within a reasonable time; and
  - 15.1.12 the Company, after its investigation as contemplated above, and within its sole discretion finds that the product is a Covered Product, that the defect is a Covered Defect, and that the Client complied with all of the Manufacturer Warranty terms.
- 15.2 Notwithstanding any provisions to the contrary in these terms and conditions, the Company may at any time and in its sole discretion cease to assist the Client with its warranty claim.
- 15.3 The written notice required in terms of 15.1.1 shall include the following:
- 15.3.1 confirmation of the delivery date and time;
  - 15.3.2 confirmation of the product code, lot/batch number or serial number
  - 15.3.3 description of the storage conditions under which the products were stored and will continue to be stored until such time as the Company has by written notice confirmed that it has completed its investigation;
  - 15.3.4 confirmation of who had access to the products, who had any interaction with the products and their reason for doing so;
  - 15.3.5 description of the alleged product defect; and
  - 15.3.6 provision of all information which may be relevant to the cause and extent of the alleged product defect, including supporting documentation, data and photographs (where applicable) indicating the alleged defect.

## **16. Installation and servicing of instruments**

- 16.1 Products which are instruments requiring no other installation or training intervention other than connection to an electrical power source will be delivered by the Company or its carrier for installation by the Client.
- 16.2 The Company shall provide installation services and/or training services, subject to its Service Terms and Conditions, where Manufacturer Terms and Conditions require same and as will be indicated on your quotation. This is more fully set out in the Service Terms and Conditions.

## **17. Reservation of ownership**

- 17.1 Ownership of all products sold remains vested in the Company until the date on which the invoiced amount has been paid in full.
- 17.2 It is recorded that the Client shall maintain records of all model and/or serial numbers of products as proof of identification. The Client shall not tamper with or remove any model and/or serial numbers from any products supplied.
- 17.3 The Client shall notify in writing any landlord of premises where such instruments are stored and/or operated of the Company's interest and rights with regard to the products which are the property of the Company.

## **PART D - SERVICE TERMS AND CONDITIONS**

### **18. Services offered**

- 18.1 The Company undertakes to render various services relative to the products sold, including installation, repair, preventative maintenance, calibration, re- certification, and relocation services as well as application support, instrument decommissioning, and instrument training.
- 18.2 All services rendered by the Company are subject to the Service Terms and Conditions.

### **19. Purchase and payment of Services**

- 19.1 The services which may be rendered will differ at any given time due to various factors and will depend on the nature of the relevant product.
- 19.2 The Company shall provide the Client on request with a written quotation for services requested as provided for in Part B (Order and Payment Terms).
- 19.3 The Client shall accept a quotation by way of delivery of a Purchase Order to the Company, and the Company shall, within its sole discretion, accept the Purchase Order, as provided for in Part B.
- 19.4 As consideration for the services to be rendered by the Company to the Client, the Client shall make payment of the amount as set out in Invoice as further regulated in Part B. Such amount shall include fees payable for services rendered as well as all reasonable expenses incurred by the Company in the performance of the services (including by way of example travel, accommodation, and parts/materials expenses), save if it is expressly indicated on the quotation that such expenses may be charged at a later stage.

### **20. Scope of services**

- 20.1 The scope of the services to be rendered shall be as set out in the quotation.
- 20.2 Should the scope of services, as set out in the quotation, require amendment an additional or new quotation will be issued by the Company and accepted by the Client by delivery of a Purchase Order.

### **21. Appointment**

- 21.1 The Client hereby appoints the Company to render the services listed by the Company in the quotation furnished to the Client in terms of the Purchase Agreement.

### **22. Manner in which the services are to be rendered**

- 22.1 The Company undertakes to:
- 22.1.1 render the services with reasonable care, skill and diligence and in a lawful, professional and competent manner according to good industry practice; and
- 22.1.2 devote the necessary time and attention to rendering the services.

### **23. Obligations of the Client and facilities to be provided**

- 23.1 The Client undertakes to:
- 23.1.1 remunerate the Company for its services rendered in accordance with these terms and conditions;

- 23.1.2 co-operate with the Company at all times for the purpose of facilitating timely and efficient delivery of the services, including the furnishing of all of the information needed by the Company in order for it to provide the services;
  - 23.1.3 immediately inform the Company in the event that the Client considers that any information or material submitted by or on behalf of the Client is false, misleading, or in any way contrary to any applicable law;
  - 23.1.4 grant the Company (or any person authorised by the Company) access (physically and/or electronically) to the Site, as is reasonably required in the provision of the services provided that such right of access shall only be used for the purposes of rendering the services;
  - 23.1.5 grant the Company (or any person authorised by the Company) access to the such hardware and software, as is reasonably required in the provision of the services provided that such right of access shall only be used for the purposes of rendering the services;
  - 23.1.6 keep record of network configurations and any specialised information pertaining to any software used and make such relevant parts of the information available to the Company on request;
  - 23.1.7 protect the integrity of data from viruses by installing and configuring adequate virus protection software strictly in line with the Manufacturer's specified guidelines;
  - 23.1.8 ensure that Windows updates are configured strictly in line with the Manufacturer's guidelines;
  - 23.1.9 provide the Company with network access for remote diagnostics as and when reasonably required and as further described in 27, subject to the Client's security policies;
  - 23.1.10 make available on request, the relevant part of records of the product, network and database configurations and other specialised information that pertain to any services to be rendered; and
  - 23.1.11 provide the Company with reasonable on-Site assistance in the form of a technical liaison, as needed, and ensure that such Client liaison is present when the Company renders the services.
- 23.2 Access granted to the Company in terms of this clause shall be subject to the Client's security requirements, provided that these requirements or any amendments thereto are provided to the Company by the Client.

#### **24. Decontamination and site inspection**

- 24.1 Services will only be rendered on products or other equipment which have been decontaminated of radioactive, biological, chemical, toxic or other dangerous materials or substances. The Company reserves the right to request an accurate and complete certificate of decontamination which shall be submitted before any services shall commence. Notwithstanding the aforementioned, the Company does not carry out installation, repair, maintenance or relocation services in or above biosafety level 3 laboratories.
- 24.2 The Company reserves the right to carry out a Site inspection, for which a fee may be charged, before any relocation services are quoted for or agreed to. The Site inspections are to ascertain the suitability of the Site and the safety risk to the Company's employees involved with the relocation. Transport to and from the Site inspection, as well as any risk in such inspection to the Company's employees, shall be the risk of the Company.

## 25. Time periods for performance

- 25.1 Each quotation shall contain an estimated date and time for the rendering of the services and the Company will use commercially reasonable efforts to meet such performance dates. Should a quotation not contain an estimated date and time for the performance of the services then such date and time shall be as agreed to between the parties.
- 25.2 Notwithstanding anything to the contrary in the Purchase Agreement, the performance dates and/or times recorded on the quotation shall serve only as a guide, and shall be subject to the Client providing information required by the Company in sufficient detail to enable the Company to render the services.

## 26. Service times

- 26.1 Standard service hours are Monday to Friday, from 08h00 – 17h00, excluding public holidays and excluding the week between the 24<sup>th</sup> December and 2<sup>nd</sup> January. Services outside of these hours are provided on a discretionary basis.

## 27. Methods of rendering services

- 27.1 Depending on the services requested technical and application support may be rendered on-Site, by email or phone or by remote connection to the relevant equipment.
- 27.2 Should the Client request services for which remote monitoring is available or required, please note that the following applies:
  - 27.2.1 remote monitoring using TeamViewer can only be provided on windows based systems;
  - 27.2.2 it is the responsibility of the Client to provide the network point, access to the network and authorisation on the fire wall / proxy server;
  - 27.2.3 should the Client not be allowed to use TeamViewer then it is the Client's responsibility to provide a "workaround"; and
  - 27.2.4 it is the Client's responsibility to install and manage anti-virus packages on its products and other equipment, in line with the Manufacturer's guidelines and accordingly all risk in the Company connecting thereto through TeamViewer for the purposes of rendering the services will be at the risk of the Client.
- 27.3 The implementation of TeamViewer works as follows:
  - 27.3.1 a TeamViewer quick support module is created for each product or other equipment which the Company has to connect to in order to render the services;
  - 27.3.2 the module has a unique ID with a default password and is installed on the platform;
  - 27.3.3 the modules do not run a service in the background and are only activated when a remote session is needed; and
  - 27.3.4 once activated the engineer accesses the platform using the unique ID and password.

## 28. Warranties

- 28.1 Subject to the exception in 28.3 below and the limitations upon its liability in clause 37 of these terms and conditions, the Company warrants that:
- 28.1.1 it has the necessary skills, experience and qualifications to undertake the services;
  - 28.1.2 it will provide the services efficiently with reasonable care and skill and in accordance with the best practice prevailing in the relevant industry from time to time; and
  - 28.1.3 for a period of 90 days commencing on the date on which a spare part has been installed by the Company, such spare part shall be free from defects under normal use. This warranty shall lapse if the Client at any point during this 90 day period does not comply with the terms of use of the Manufacturer of the specific spare part. It shall be the Client's own responsibility to obtain these terms of use although the Company shall on request endeavour to obtain such terms on behalf of the Client.
- 28.2 The Client shall give notice to the Company in writing as soon as the Client is reasonably able, upon becoming aware of a breach of warranty by the Company.
- 28.3 The Company does not warrant that:
- 28.3.1 any programming of computer software undertaken by the Company in terms of the Purchase Agreement will render the operation of such computer software error-free or uninterrupted; and
  - 28.3.2 the spare part replacement or repair undertaken by the Company will not result in the requirement for additional replacement parts or repairs (and thus additional time needed) if the repair cannot be completed without a sequential process of error elimination being undertaken;

## 29. Insurance

- 29.1 The insurance of products or other equipment sent to the Company for repair or calibration or for the purposes of the performance of other services ("**the service products**") is the responsibility of the Client. Such insurance should be applicable to the service products:
- 29.1.1 for the duration of the period in which it is in the possession or control of the Company; and
  - 29.1.2 whilst it is being transported from and/or to the Company by the Client or by another third party arranged by the Client or the Company.
- 29.2 For the avoidance of doubt, neither the risk nor the ownership in the service products shall at any point pass to the Company and the Company shall not be liable for any loss of or damage to service products in its possession.
- 29.3 In the event that the Client requests the Company to render the re-location services (for which the Client will be invoiced), the risk in the service product/s shall pass to the Company once it has collected the service product/s and left the Site until such time as it has re-installed and/or delivered the service products to the new Site. Written confirmation of the Company's specific insurance cover will be communicated to and acknowledged by the Client.

## 30. Sub-contractors

- 30.1 The Company reserves the right to retain or contract third parties (including the Manufacturer) of its choosing to provide service and support hereunder ("**sub-contractors**").

### 31. Proprietary items

- 31.1 In the course of performance hereunder, the Company may use products, materials, tools, formats, templates and methodologies that is the property of its supplier or the Manufacturer or of other third parties ("**proprietary items**").
- 31.2 The Client shall have, or obtain no rights in any proprietary items (or in any modifications or enhancements to them) other than (i) extent the Proprietary Items are incorporated into the product, to use them as part of the product for purposes of Client's internal business only, or (ii) pursuant to the Suppliers standard license for such proprietary items or, in the case of proprietary items owned by third parties, pursuant to the terms acceptable to the applicable third party.
- 31.3 If proprietary items are made available to the Client under the provisions of clause 31.2, they will be made available on the basis of "sold as is" and all express or implied warranties of any kind in relation to those proprietary items are excluded.
- 31.4 If proprietary items are made available in accordance with clause 31.2, those proprietary items shall be subject only to the applicable terms of the applicable license and all other warranties, express or implied, are excluded.

### 32. Repair services and loaner equipment

- 32.1 For the purposes of this clause "**loaner components**" means any equipment or equipment parts owned or leased by the Company and used by the Company to replace a service product, or a service product component, on a temporary basis.
- 32.2 The Company reserves the right to provide repair services and support by any method in its sole discretion, including but not limited to, remote instruction via telephone, Internet or email, mailing replacement parts or test equipment to the Client, exchanging the Client's component equipment with loaner components while repairs are being made, and deploying personnel for on-Site services.
- 32.3 The Company shall determine in its sole discretion whether and when any personnel or replacement parts or equipment are to be sent to the Client.
- 32.4 All service product components which are replaced by new or loaner components during the performance of the services will become the property of the Company on removal.
- 32.5 The Company may choose to provide, in its sole discretion, loaner components to the Client to substitute a component of the service product while the repair service is being provided.
- 32.6 The Company will be responsible for all costs and risk associated with the delivery of such loaner components to the Client's Site, save if the Company included such costs in the quotation (whether itemised or not).
- 32.7 Loaner components shall remain the sole property of the Company, and shall be returned immediately on demand. The Client's use of loaner components shall be subject to the Company's and the Manufacturer of the loaner component's applicable terms and conditions. It shall be the Client's own responsibility to obtain these terms of use although the Company shall on request endeavour to obtain such terms on behalf of the Client.

## PART E – GENERAL PRODUCT AND SERVICE TERMS

### 33. Intellectual Property Rights

- 33.1 For the purposes of this clause “**Intellectual Property**” means all copyright, rights in business names, trade marks, trade names, service marks, patents, designs and/or inventions as well as all rights to source codes, trade secrets, confidential information, know-how and all other rights of a similar character (regardless of whether such rights are registered and/or capable of registration) and all applications and rights to apply for protection of any of the same.
- 33.2 All right, title and interest in and to all Intellectual Property relating to any products owned by the parties, their vendors and/or suppliers (including the Manufacturer), and the software used to implement such products, shall at all times remain the sole property of such parties, their vendors or suppliers (including the Manufacturer).
- 33.3 Further to the above is it specifically recorded that the Manufacturer’s right, title and interest in and to all Intellectual Property relating to any product manufactured by it (including the software used to implement such product) remains as set out and reserved in the Manufacturer’s terms applicable to such product.

### 34. Supersession of Purchase Agreement

- 34.1 If the terms and conditions of any agreement in terms of which the Company is entitled to render certain services to Clients (including an agreement between the Company and the Manufacturer) are amended or renegotiated, and such amendments or renegotiations necessitate, in the Company’s sole discretion, amendment to an existing Purchase Agreement, the Parties shall negotiate such amendment in good faith. If the Parties are unable to agree on any amendments within 30 (thirty) calendar days from the date on which the Company requested the Client to commence negotiations regarding such amendments, the Company may terminate such Purchase Agreement on a further 30 (thirty) calendar days’ written notice to the Client. The Client shall have no claim of whatever nature against the Company arising from such termination.

### 35. Breach

- 35.1 In the event that:
- 35.1.1 the Client breaches any of these terms and conditions (including failing to pay an amount due and payable by it to the Company) and fails to make good the specified default after having been given 7 (seven) days written notice of same; or
  - 35.1.2 the Client has judgment taken against it and fails to satisfy or apply to have same set aside within 7 (seven) calendar days of becoming aware thereof; or
  - 35.1.3 the Client commits an act of insolvency within the ambit of Section 8 of the Insolvency Act, No 24 of 1936 or causes a notice of surrender of his estate to be published in terms of the Insolvency Act No 23 of 1936 (as amended), and/or the Client suffers its estate being placed under provisional or final sequestration, liquidation or in business rescue proceedings, and/or a special resolution is passed for the winding up of the Client or a board resolution is passed for placing the Client in business rescue;
- then the full amount of the Clients’ indebtedness to the Company shall immediately become due, owing and payable and the Company shall be entitled, without prejudice to any other rights that it may have either in terms hereof or in law to:
- 35.1.4 suspend performance of any of its obligations (including the suspension of further delivery to the Client) under these Terms and Conditions or any other

agreement until such time as payment is received and/or the breach in questions is remedied; and/or

- 35.1.5 enforce payment in full of the balance of the invoiced amount then outstanding together with any accrued interest and all other costs payable and/or
- 35.1.6 cancel the Purchase Order and claim damages from the Client.
- 35.2 An aggrieved Party may only cancel the Purchase Agreement if the breach is material and is not capable of being remedied by payment of money or, if it is capable of remedy by payment of money, if the defaulting Party fails to make payment within the time period provided in 35.1.1.
- 35.3 No claim may be instituted against the Company arising from the terms of the Purchase Agreement or performance by the Parties in terms thereof unless dispute resolution proceedings are instituted in terms of the Purchase Agreement by the Client within 1 (one) year of such purported cause of action arising.

### 36. Force majeure and limitation

- 36.1 Neither Party shall have any claim against the other Party for any delay or failure of the other Party to carry out any of its obligations under the Purchase Agreement arising from or attributable to acts of God, fire, flood, tornado, earthquake, hurricane, lightning, sabotage, actual or threatened acts of war, terrorism, any action taken by a government or regulatory authority, civil disturbance or insurrection, labour action or unrest (including labour shortages or disputes), failure or delay in delivery by the Company's suppliers or subcontractors, fire, flood, tornado, earthquake, hurricane, lightning, sabotage, or any other cause whatsoever beyond the control of the other Party ("**force majeure event**").
- 36.2 The performance of the obligations of the other Party shall, subject to clause 36.3, be suspended for the duration of the *force majeure* event, which shall be deemed to commence only upon the date of written notice by the other Party to the Party giving notice. Upon cessation of the *force majeure* event, the Purchase Agreement shall again become fully operative and the other Party shall immediately resume its performance.
- 36.3 If the suspension of performance continues for more than 60 (sixty) consecutive calendar days, then either Party may summarily terminate the Purchase Agreement by written notice to the other Party, prior to the cessation of the *force majeure* event.
- 36.4 If, in these circumstances, the Company has already partly performed its obligations, it shall be entitled to payment for the part already invoiced and delivered or the part which can be invoiced and delivered and the Client shall be obliged to pay such invoices as if it were a separate contract.

### 37. Limitation of liability

- 37.1 The following provisions set out the Company's liability (including any liability for the acts and omissions of its employees, agents, sub-contractors) in respect of:
  - 37.1.1 any breach of its contractual obligations arising under the Purchase Agreement as set out in 35 (*Breach*); or
  - 37.1.2 any representations, statements, acts or omissions arising under or in connection with the Purchase Agreement.
- 37.2 Any act or omission on the part of the Company or its employees, agents, sub-contractors falling within the above shall for purposes of this clause hereinafter be referred to as a "**Limitation of Liability Event**".

- 37.3 Notwithstanding anything to the contrary in the Purchase Agreement, any claim by the Client against the Company howsoever arising (including the Company's entire liability in respect of a Limitation of Liability Event) shall in the aggregate be limited to the amount payable or paid by the Client to the Company in terms of the relevant Purchase Agreement. In any event, notwithstanding anything to the contrary in the Purchase Agreement, the Company will not be liable to the Client for loss of profits, goodwill or any type of special indirect or consequential loss, howsoever arising, whether or not caused by its employees, agents and/or contractors, and regardless of form or cause of action, and whether or not such loss was reasonably foreseeable or the Company had been advised of the possibility of the Client incurring same.
- 37.4 The limitation of liability stated above shall apply regardless of the number of Limitation of Liability Events that arise under or in connection with a Purchase Agreement.
- 37.5 The Company shall not be liable or responsible for the quality of information which already exists in the Client's existing software and systems and which might be transferred into any new software and systems provided as part of the services.

### 38. Compliance with Laws and regulations

- 38.1 It shall be the Client's responsibility to be familiar with the regulations that might be concerned with the installation, storage use or disposal of the products or operation of the equipment ordered. The Company shall not be held responsible for any penalties or restrictions which might arise from a contravention of any regulatory obligation by the Client.

### 39. Cession or assignment

- 39.1 The Client shall not be entitled to cede, assign or delegate any of its rights and/or obligations which it may have in terms of the Purchase Agreement to any third party, without the prior written consent of the Company.

### 40. The Whitehead Scientific brand

- 40.1 Nothing contained in the Purchase Agreement shall be construed as granting to the Client any licence or other right with respect to the Whitehead Scientific brand.
- 40.2 The Client acknowledges that the Whitehead Scientific brand shall remain the sole and exclusive property of the Company and the Client shall in no way dispute the Company's rights thereto and shall not in any way make use of the Whitehead Scientific brand without the prior written consent of the Company in each instance.
- 40.3 The Client hereby undertakes to and in favour of the Company not to do anything or omit to do anything which may negatively affect the reputation and credibility of the Whitehead Scientific brand and/or the goodwill of the Company.

### 41. Conflicting provisions

- 41.1 In the event that a Client concludes a further agreement in writing with the Company in respect of the rendering of services ("**the Additional Service Agreement**"), then, in the event of a conflict (be it expressed, implied or tacit) between the provisions of the Additional Service Agreement and the Purchase Agreement, the provisions of the Additional Service Agreement shall prevail over the provisions of the Purchase Agreement to the extent of the conflict.
- 41.2 All references in this Part E to the "**Purchase Agreement**" shall be a reference to the Purchase Agreement read together with the Additional Service Agreement (if applicable).

### 42. Confidentiality

- 42.1 Each Party hereby undertakes to the other Party, for the continuance of the Purchase Agreement and for a period of 2 (two) years from the expiry or termination thereof, as the case may be:
- 42.1.1 to keep confidential all information whether written (including information contained in electronic format) or oral concerning the business and affairs of the other party that it obtains or receives from the other party or any third party (“**the Information**”);
  - 42.1.2 not without the other party’s written consent to disclose the Information in whole or in part to any person save its employees, agents and/or consultants involved in the execution of the Purchase Agreement, and who have a need to know the Information;
  - 42.1.3 to use the Information solely in connection with the implementation and execution of the Purchase Agreement and not for its own benefit or that of any third party; and
  - 42.1.4 to keep confidential the terms and conditions the Purchase Agreement.
- 42.2 The provisions of clause 42.1 shall not apply to the whole or any part of the Information which is:
- 42.2.1 already known to the recipient without obligation of confidence;
  - 42.2.2 independently developed by the recipient;
  - 42.2.3 publicly available without breach of the Purchase Agreement;
  - 42.2.4 lawfully received from a third party
  - 42.2.5 released for disclosure by the disclosing party with its written consent; or
  - 42.2.6 required to be disclosed in response to a valid order of court or other governmental agency or if disclosure thereof is otherwise required by law.
- 42.3 If a party is obliged to divulge Information in terms of clause 42.2.6 it shall, provided that circumstances permit the time to do so, forthwith and before releasing the Information, inform the other party of the obligation.
- 42.4 Each party undertakes to the other to make all its relevant employees, agents and consultants aware of the confidentiality of the Information and the provisions of this clause and to take all such steps as shall from time to time be necessary to ensure compliance by its employees, agents and consultants with the provisions of this clause.
- 42.5 Notwithstanding clause 42.1, the Company will be entitled to disclose the fact that the Client is a client of the Company. However, the Company shall not be entitled to disclose any other details of or related to the Purchase Agreement without the prior consent of the Client, which consent will not be unreasonably withheld. The Company reserves the right to list the client within its database of clients for monitoring and reference.
- 42.6 For the avoidance of doubt, no provision of this Purchase Agreement should be construed in such a way that the disclosing party is deemed to have granted its consent to the receiving party to disclose the whole or any part of the Information in the event that the receiving party receives a request for the whole or any part of the Information in terms of the provisions of the Promotion to Access to Information Act, No 2 of 2000, as amended (the “Act”). The receiving party shall be obliged to notify the disclosing party immediately when it receives such a request to enable the disclosing party to object and approach a court of competent jurisdiction if necessary, to protect its interests.

#### 43. Settlement of disputes

- 43.1 Save for any dispute which relates to the failure by the Client to pay an invoice issued by the Company, any other dispute or difference arising from any order placed by a Client shall be determined by submitting the dispute to the Managing Director (or equivalent) of each of the Company and the Client for resolution by informal mediation. In the event that a mediated outcome is not achieved within 14 (fourteen) days, the dispute shall be referred to arbitration and the Arbitration Act of 1965 shall apply. The Parties shall agree on the identity of an arbitrator within 5 (five) days of the dispute being submitted and failing agreement between them the arbitrator shall be appointed by the President for the time-being of the Cape Law Society.

#### 44. Certificate of indebtedness

- 44.1 The Client hereby agrees and acknowledges that for all purposes whatsoever, including the purpose of any action or claim by the Company against the Client, whether for provisional sentence, summary judgement, arbitration or otherwise, a certificate signed by a director (whose authority it shall not be necessary to prove) certifying or purporting to certify that an amount is owing by the Client to the Company, shall be sufficient and satisfactory *prima facie* proof of the correctness of the amount and the facts therein contained.

#### 45. Legal Proceedings and jurisdiction

- 45.1 If it becomes necessary for the Company to institute legal proceedings (including arbitration proceedings in terms of 43 above) against the Client in order to enforce any of its rights, either in terms of the Purchase Agreement or at common law, the Client shall be liable to pay all legal costs, including collection, commission and tracing fees incurred by the Company.
- 45.2 The Parties consent to the exclusive jurisdiction of the High Court of South Africa having the necessary jurisdiction.

#### 46. Domicilium

- 46.1 The Company hereby elects as its *domicilium citandi et executandi*, at which it will accept service of any process or notice: **Unit 9 & 10 Van Biljon Office Park, Winelands Close, Stikland, 7530, Cape Town, South Africa.**
- 46.2 The Client hereby elects as its *domicilium citandi et executandi* at which it will accept service of any process or notice in terms of these terms and conditions, the address specified on the Tax invoice addressed to the Client in terms of the Purchase Agreement.

#### 47. General

- 47.1 By ordering the products and/or services, the Client shall be deemed to have accepted and agreed to be bound by these terms and conditions which shall immediately be of full force and effect and shall constitute legally binding rights and obligations between the Company and the Client not capable of consensual cancellation, alteration, addition or amendment, save unless reduced to writing and signed by the Company and the Client or if amended as provided for in clause 34 above.
- 47.2 These terms and conditions shall be governed by and construed in terms of the laws of the Republic of South Africa.
- 47.3 Should any provision of these terms and conditions be rendered void, unlawful or unenforceable in any respect under any law it shall be severable from these terms and conditions and the validity, legality and enforceability of the remaining provisions, shall not in any way be affected or impaired thereby.

- 47.4 Any indulgence or extension of the time for the fulfilment of any term or condition or other lenience granted by the Company to the Client shall not be construed as a waiver or variation of any of the Company's rights or remedies.
- 47.5 These terms and conditions supersede and replace all prior commitments, understandings and agreements, whether oral or written, between the Parties with regard to subject matter hereof and accordingly these terms and conditions constitute the sole record of the agreement between the Parties in relation to the subject matter hereof. No Party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded in these terms and conditions.