

ESTEQ GROUP

STANDARD TERMS & CONDITIONS OF SALE

1. RECITALS

- 1.1 This Agreement is entered into and between ESTEQ GROUP, its divisions or affiliates on the one hand, and the Customer on the other, and will regulate the sale, supply and installation, as applicable, by ESTEQ GROUP of the Goods, Products or Services as stipulated in the Quotation, to the Customer, at the latter's special instance and request.
- 1.2 This Agreement will, together with the Quotation (if applicable) which is deemed to be a material part of this Agreement, regulate the entire relationship between ESTEQ GROUP and the Customer, and no other Agreement or document of whatsoever nature will be of any force or effect, unless otherwise provided for herein or so agreed in writing between the Parties.

2. DEFINITIONS

- 2.1 In this Agreement, unless the context indicates otherwise, the words and expressions below shall have the following meanings:

Affiliate means, any other juristic person that is Controlled by or is under the common Control of ESTEQ GROUP, available on request;

Agreement means this agreement and its schedule(s), including the Quotation if applicable;

Business Day means any normal business day, excluding any Saturday, Sunday or proclaimed public Holiday in the RSA;

Confidential Information of a party shall mean any information disclosed by that party to the receiving party prior to the conclusion of this agreement, in terms of this agreement or otherwise in connection with this agreement;

Control

means in relation to:

- (a) a company:
 - (i) the beneficial ownership, directly or indirectly (whether through the holding of voting shares in a chain of subsidiaries or otherwise) of more than 50% (fifty percent) of the voting shares of that company; or
 - (ii) the right, directly or indirectly, (through the holding of voting shares in a chain of subsidiaries or otherwise) to exercise more than 50% (fifty percent) of the voting rights in respect of the issued shares of that company; or
 - (iii) the power, directly or indirectly, (through the holding of voting shares in a chain of subsidiaries or otherwise) to appoint, and remove, more than 50% (fifty percent) of the board of directors of that company; or
 - (iv) the power, through appointees to the board of directors of that company, to exercise more than 50% (fifty percent) of the votes exercisable by directors of that company;
- (b) a close corporation: the beneficial ownership of more than 50% (fifty percent) of the members interests of such close corporation; or
- (c) a trust: the power of a person to:
 - (i) secure that the affairs of the trust are conducted in accordance with its wishes by virtue of any powers conferred by law, constitutional documents or other documents or arrangements regulating or relating to the trust; or
 - (ii) exercise a dominant influence over the management and/or business and/or affairs of the trust,

and the words "*Controlled*" and "*Controlling*" shall have the same meaning);

CPA

means the Consumer Protection Act, Act 68 of 2008, as amended from time to time;

Customer

means the natural or juristic person indicated in the Quotation, and whom purchases the Good, Products and / or Services from ESTEQ GROUP in terms of this Agreement;

Division

means, any other juristic person that is under the common Control of ESTEQ GROUP or in which ESTEQ GROUP has an interest, as set out in **Annexure "B"** hereto;

ESTEQ GROUP	means ESTEQ GROUP PROPRIETARY LIMITED , a private limited liability company duly incorporated under the laws of the RSA, registration number 2000/005103/07 , Tel No:012 809 9500 and includes all of its Affiliates and Divisions;
Goods / Products / Services	means the goods, products and services traded in and rendered by ESTEQ GROUP from time to time, and as indicated in the Quotation if applicable;
Licence Agreement	means the separate licence agreement that ESTEQ GROUP, its Affiliates or a Division may have with a Supplier and that the Customer may be required to enter into with the said Supplier
Parties	means the parties to this Agreement being ESTEQ GROUP on the one hand and the Customer on the other hand, and their permitted assigns and successors-in-title, or any one of them as the context may require;
Personal Information	Means personal information as defined in the Protection of Personal Information (“ PPI ”) Act, and which includes the specifications and data, technical drawings, knowhow and the like insofar as it relates to the Goods, Products and / or Services;
PO	means the Purchase Order issued by the Customer to ESTEQ GROUP, if applicable, when ordering the Goods, Products and / or Services;
Prime Rate	means the nominal annual compounded monthly prime overdraft rate of interest from time to time, publicly quoted as such by ESTEQ GROUP’s bankers, as certified by any manager of that bank whose appointment as such it shall not be necessary to prove, the contents of which certificate shall be prima facie proof of the contents thereof;
Purchase Consideration	means the consideration payable by the Customer to ESTEQ GROUP in respect of the Goods, Products and / or Services sold or rendered by EQTEQ GROUP to the Customer, and as are reflected in the Quotation or invoice issued by ESTEQ GROUP to the Customer;
Quotation	means the quotation supplied by ESTEQ Group to the Customer at the latter’s request for Goods, Products and / or Services;
Rand or R	means South African Rand, the lawful currency of the RSA;
RSA	means the Republic of South Africa;
Supplier	means, any person or juristic person who supplies and or delivers goods and / or services to ESTEQ GROUP;
VAT	means value added tax which is levied in respect of goods and services in terms of the Value Added Tax Act, 1991.

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

2.3 This Agreement shall be interpreted in accordance with the following principles:

- 2.3.1 a reference to a "**person**" includes a reference to an individual, partnership, company, close corporation, other body corporate, a trust, an unincorporated association or a joint venture and that person's legal representatives, successors and permitted assigns;
- 2.3.2 words importing the masculine shall include a reference to the feminine and *vice versa*;
- 2.3.3 words importing the singular shall include a reference to the plural and *vice versa*;
- 2.3.4 reference to a document includes an amendment or supplement to, or replacement or novation of that document;
- 2.3.5 any reference in this Agreement to legislation or to a statute shall be a reference to such legislation or statute as at the Signature Date and as amended, varied, re-enacted or replaced from time to time;
- 2.3.6 the headings appearing in this Agreement are for reference purposes only and shall not affect the interpretation hereof;
- 2.3.7 where numerical figures are referred to in numerals and words, if there is any conflict between the two, the words shall prevail;
- 2.3.8 if any provision is a definition and is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definitions clause (or such other clause), effect shall be given to it as if it were a substantive provision in the body of this Agreement;
- 2.3.9 in the event that the day for performance of any obligation to be performed in terms of this Agreement should fall on a day which is not a Business Day, the relevant day for performance shall be the immediately succeeding Business Day;
- 2.3.10 where any number of days is prescribed in this Agreement, that number shall be determined exclusively of the first day and inclusively of the last day, unless the last day falls on a day which is not a Business Day, in which case the last day shall be the immediately succeeding Business Day;
- 2.3.11 all monetary amounts are stated exclusive of VAT and in RSA Rand (or **R**), unless provided otherwise, and VAT is payable at the same time and in the same manner as is any other amount payable under this Agreement, where that amount is subject to VAT;
- 2.3.12 the use of the word "**including**" followed by specific examples shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific examples;
- 2.3.13 unless expressly otherwise stated, no provision of this Agreement shall constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a Party to this Agreement; and
- 2.3.14 the terms of this Agreement having been negotiated, they shall not be interpreted against the Party who procured its preparation and drafting, it being specifically agreed that the *contra proferentem* rule shall not apply.

3. SALE & PURCHASE

- 3.1 ESTEQ GROUP hereby agrees and undertakes to sell to the Customer, and the Customer hereby agrees and undertakes to purchase from ESTEQ GROUP for the Purchase Consideration and subject to the terms and conditions contained in this Agreement, the Goods, Products and / or Services as are indicated in the Quotation.

4. APPLICABILITY OF THE CPA

- 4.1 The Parties record and agree that the CPA is only applicable to Customers who is a juristic person with an asset value or annual turnover of less than R2,000,000.00 (two million rand), or such revised threshold set in terms of the CPA, from time to time.

4.2 Insofar as may be applicable, all Customers falling within the definition set out in clause 4.1 above shall be entitled to all rights, remedies and protection as provided for in the CPA.

5. QUOTATION

5.1 The Customer will, in the event to it wishes to use the Goods or Products, or avail it of the Services, or both, request ESTEQ GROUP to provide it with a Quotation in respect of the desired Goods, Products and / or Services.

5.2 Upon receipt of the request set out in 5.1, ESTEQ GROUP will obtain all required information in respect of the Goods, Products and / or Services required by the Customer, and the Customer shall ensure that it provided ESTEQ GROUP with all relevant and necessary information and documents, as well as such additional information or documents as ESTEQ GROUP may in its sole discretion require.

5.3 ESTEQ GROUP will provide the Customer with the Quotation, and such Quotation shall remain open for acceptance for a period of 30 (thirty) days, unless a different period for acceptance of the Quotation by the Customer is specified in the Quotation.

5.4 The Quotation will be subject to the following provisions:

5.4.1 All Quotations are subject to availability of Goods, Products and / or Services at the time of delivery or performance by ESTEQ GROUP;

5.4.2 All Purchase Consideration quoted therein will be in Rand;

5.4.3 All Purchase Consideration will be exclusive of VAT, and if deliverable in the RSA will be subject to VAT at the ruling rate;

5.4.4 Purchase Consideration quoted will at all times be subject to escalation in the cost of raw material, cost price of goods or products utilised in completing the Customer's order, labor costs, and the like;

5.4.5 Purchase Consideration quoted are at all times subject to fluctuations in currency exchange as determined by ESTEQ GROUP's bankers. Any variation between the quoted Purchase Consideration or rate of exchange and the actual price or rate paid by ESTEQ GROUP to its foreign supplier(s) will be for the Customer's account, and will be payable in addition to the total Purchase Consideration quoted. Bank supporting documentation will be made available on written request by the Customer. No forward cover will be purchased by ESTEQ GROUP, unless specifically requested by the Customer in writing, in which event such cover will be for the account of the Customer. All additional cost as contemplated herein will be added to the invoice provided by ESTEQ GROUP to the Customer;

5.4.6 Quotations will be subject to increase in the price of Goods, Products or Services as determined by ESTEQ GROUP from time to time, and will at all times be subject to price increase of Goods, Products or Services supplied and / or delivered by ESTEQ GROUP's Suppliers;

5.4.7 Quotations do include packaging or delivery costs, unless specifically set out to the contrary in the Quotation;

5.4.8 All Purchase Consideration quoted includes the supply of standard Good, Products and or Services only. Therefore the Quotation will not, unless otherwise agreed and indicated in writing, make provision for any systems engineering (network design, systems specifications or application suitability, etc.) and ESTEQ GROUP cannot be held liable for any costs in this regard.

5.5 Any amount quoted for installation and/or commissioning is an estimate, excluding any travelling time, waiting time, system integration, security checks, health and safety inductions or any other times not spent on site.

5.5.1 ESTEQ GROUP's standard Rate Schedule will apply in respect of such activities not included in the quotation.

5.5.2 The Rate Schedule is available on request and is revised annually in September.

5.5.3 Purchase Consideration quoted have also been based on the assumption that the site will be ready, the civil and mechanical work complete and that ESTEQ GROUP will be in apposition to commence its work without undue hindrance. If this is not the case, then ESTEQ GROUP will invoice the Customer for standing time..

5.5.4 Purchase Consideration quoted for all site work are based on normal time only (i.e.) 40 hours working week.

5.6 All time periods or dates given or set out in the Quotation in regard to delivery, installation or performance, are estimates and will in no way whatsoever be binding on ESTEQ GROUP.

5.7 In the event that ESTEQ GROUP supplies a Quotation based on the assumption that the whole or a specified part of a contract or order will be awarded to ESTEQ GROUP upon acceptance of the Quotation by the Customer, which turn out not to be the position subsequent to the issue of the Quotation, ESTEQ GROUP shall be entitled to adjust or withdraw the quotation in part or in full..

6. ACCEPTANCE AND ORDER

6.1 In the event that the Quotation supplied meets with the approval of the Customer, and the Customer wishes to use the Goods, Products and / or Services, the Customer shall accept the Quotation by:

6.1.1 providing ESTEQ GROUP with a duly signed original copy of the Quotation; or

6.1.2 providing ESTEQ GROUP with a duly authorised original PO.

6.2 Acceptance as set out in 6.1 above shall be conveyed to ESTEQ GROUP by:

6.2.1 forwarding the accepted Quotation or PO by fax to the following fax number specified in the Quotation specified in the Quotation; or

6.2.2 forwarding the accepted Quotation or PO by email to the address specified in the Quotation.

6.3 Each acceptance or order submitted by the Customer shall contain, as a minimum the following:

6.3.1 the quantity / volume of the Goods or Products required;

6.3.2 the delivery address if different from ESTEQ GROUP's Pretoria address as set out in clause 2 above, subject to an additional quotation by ESTEQ GROUP as provided for in 5.4.7 above;

6.3.3 the name, designation, telephone number and e-mail address of an appointed representative of the Customer and

6.3.4 the Customer's order number.

and such other information as may be required by ESTEQ GROUP from time to time.

6.4 This Agreement shall be deemed to have become effective on receipt of the acceptance as set out in 6.1 above by ESTEQ GROUP.

7. PERFORMANCE BY ESTEQ GROUP

7.1 ESTEQ GROUP will as soon as is reasonable possible, and as close to estimated time period or on or before estimated dates, provide the Customer with the Goods, Products and / or Services ordered.

7.2 For the sake of clarity it is agreed between the Parties that all time periods or dates given or set out in the Quotation in regard to delivery, installation or performance, are estimates and will in no way whatsoever be binding on ESTEQ GROUP.

7.3 ESTEQ GROUP shall be entitled in its sole and absolute discretion to split the delivery or performance of the Goods, Products and / or Services ordered, in the quantities and on the dates it determines, and ESTEQ Group shall be entitled to invoice each delivery or performance actually made separately.

7.4 ESTEQ GROUP shall furnish detailed written instructions as to the use of the Goods, Products and / or Services, including all potential hazards to health and safety, by not later than the delivery of the Goods, Products and / or Services.

8. PAYMENT BY THE CUSTOMER

8.1 All Goods, Products and / or Services sold and delivered in terms of this Agreement are sold and delivered on a cash against delivery basis, and the Customer agrees to the standard rates in respect of Goods, Products and / or Services as published by ESTEQ GROUP from time to time, and which are available on request.

8.2 Unless otherwise agreed to in writing by ESTEQ GROUP the Customer will make payment of the Purchase Consideration contained in the Quotation as set out therein. In the event that the Quotation does not specify the payment terms, the following will apply:

8.2.1 If the Customer is a Customer to whom credit has not been extended, the Customer will against delivery make full payment of the Purchase Consideration contained in the Quotation and any additional cost as provided for in this Agreement, plus VAT thereon if applicable;

8.2.2 If the Customer is a customer to whom credit has been extended in terms of the ESTEQ GROUP credit policy and approval, payment of the Purchase Consideration contained in the Quotation and any additional cost as provided for in this Agreement, plus VAT thereon if applicable, will be made within 30 (thirty) days of the date of the invoice.

8.3 The Customer agrees to make payment of all amounts due and payable in terms of this Agreement to ESTEQ GROUP, its Affiliate or Division to the account specified in the Quotation:

8.3.1 delivering in cash or by cheque delivered to the office address indicated in the Quotation; or

8.3.2 by means of an Electronic Funds Transfer to the account specified in the Quotation.

8.4 All payments made in terms of this Agreement by the Customer shall be made in cash, without any deductions or set-off, and the Customer agrees that it will not have the right to withhold payment for any reason whatsoever.

8.5 Any discount or rebate will be granted in the sole and absolute discretion of ESTEQ GROUP, such to be indicated on the invoice supplied by ESTEQ GROUP. In the event of late payment by the Customer, any discount or rebate afforded by ESTEQ GROUP will be forfeited and the full amount indicated in the invoice will immediately become due and payable.

8.6 The Customers agrees that in the event of a dispute arising in regard to the amount due and payable to ESTEQ GROUP, such an amount shall be determined and proven by a certificate issued and signed by the auditors of ESTEQ GROUP. Such certificate shall be binding on the Parties and shall be *prima facie* proof of the indebtedness of the Customer to ESTEQ GROUP. The provisions of this clause 8.6 shall supersede the provisions in this Agreement relating to Dispute Resolution

8.7 Any printout of computer evidence tendered by any party shall be admissible evidence and no party shall object to the admissibility of such evidence purely on grounds that such evidence is computer evidence or that the requirements of the Computer Evidence Act have not been met.

8.8 In the event of non or late payment, the Customer shall be liable to pay interest on the full amount due payable calculated at the Prime Rate, or at the maximum legal interest rate prescribed in terms of the National Credit Act, from the due date to date of payment, both dates inclusive.

9. RESERVATION OF OWNERSHIP

- 9.1 Notwithstanding delivery of the Goods, Products and / or Services ownership thereof will remain vested in ESTEQ GROUP until such time as the Customer has paid all amount due and payable to ESTEQ GROUP in terms of this Agreement.
- 9.2 Until such time as ownership in and to the Goods, Products and / or Services have passed to the Customer as contemplated in 9.1 above, the Customer shall:
- 9.2.1 keep the Goods and Products separately stored and properly identified as the property of ESTEQ GROUP;
 - 9.2.2 keep the Goods and Products insured against all risks; and
 - 9.2.3 not sell, alienated encumber or in any other way whatsoever dispose of the Goods or Products
- 9.3 Until such time as ownership in and to the Goods, Products and / or Services have passed to the Customer as contemplated in 9.1 above, ESTEQ GROUP shall be entitled at any time to:
- 9.3.1 by 48 (forty eight) hours written notice to the Customer require the Customer to return the Goods or Products at its own cost to ESTEQ GROUP; and
 - 9.3.2 retake possession of the Goods and / or Products and for that purpose to enter upon the premises of the Customer or any other premises where the Goods and / or Products are kept.

10. DELIVERY OF GOODS AND / OR PRODUCTS

- 10.1 Delivery of all Goods and / or Products in terms of this Agreement shall take place at the premises of ESTEQ GROUP in Pretoria, unless otherwise agreed to in writing by ESTEQ GROUP.
- 10.2 In the event that the Customer requires delivery of the Goods and / or Products to its business premises, and provided ESTEQ GROUP agrees thereto as provided for in 10.1, then ESTEQ GROUP will be entitled to appoint a third party to undertake delivery and transportation of the Goods and / or Products, such appointment to be in the sole discretion of ESTEQ GROUP.
- 10.3 The Customer shall be liable for all such costs of delivery and transportation in addition to, and simultaneously with, payment of the Purchase Consideration(s) contained in the Quotation, unless provision was made for, and such costs of delivery and transportation were included in the Quotation, in which event ESTEQ GROUP will not levy additional costs or charges in this regard.
- 10.4 Notwithstanding anything to the contrary contained herein, the risk in and to the Goods and / or Products, risk of theft, damage and / or destruction of the Goods and / or Products shall pass to the Customer on delivery thereof by ESTEQ GROUP to the Customer.
- 10.5 The Customer shall be liable to comprehensively insure the Goods and / or Products against all risks for the full replacement value thereof, and to, upon request of ESTEQ GROUP provide documentary proof that the Goods and / or Products have so been insured from the date of delivery to date of full payment due to ESTEQ GROUP.

11. RETURNS, MAINTENANCE AND CLAIMS

- 11.1 Against delivery, the Customer will inspect and test the Goods and / or Products, or in the case of services against completion thereof test same, and will within 5 (five) days of delivery advise ESTEQ GROUP if the Goods, Products and or Services does not comply with quality or quantity, or displays any faults.
- 11.2 Should the Customer fail to advise ESTEQ GROUP in writing as set out in 5.1, it will be deemed that the Goods, Products and / or Services perform to all specifications and that the quality and quantity are as provide for in the Quotation.

- 11.3 In the event that ESTEQ GROUP has agreed with the Customer that the Goods and / or Products and / or Services are taken on an evaluation basis by the Customer, and if the Customer does not advise ESTEQ GROUP within 5 (five) days that the Goods and / or Products and / or Services meet with its evaluation criteria, it will be deemed that the Goods and / or Products and / or Services have been accepted in good order and function by the Customer, and shall ESTEQ GROUP issue an invoice for payment to the Customer.
- 11.4 New goods are guaranteed according to the manufacturer's product specific warranties only and all other guarantees, including common law guarantees are hereby specifically excluded. Services are guaranteed according to ESTEQ GROUP's specific warranties issued in writing only.
- 11.5 No claim under this Agreement shall arise unless the Customer has, within the periods set out in 11.1 and 11.3 advised ESTEQ GROUP of the alleged breach or defect occurring.
- 11.6 ESTEQ GROUP shall endeavour to within 30 (thirty) business days of receipt of the written notice by the Customer as provided for in 11.5, rectify any defect or breach of the Agreement, or extend credit to the Customer, all of which are in the sole discretion of ESTEQ GROUP. To be of force and effect, the Customer shall in the event of any claim arising in terms of this clause 11:
- 11.6.1 advise ESTEQ GROUP in writing as contemplated in this clause 11 of any defect or alleged breach;
- 11.6.2 provide ESTEQ GROUP with the invoice issue to it;
- 11.6.3 allow ESTEQ GROUP the opportunity to inspect and evaluate the Goods and / or Products and / or Services under operational conditions if so required by ESTEQ GROUP;
- 11.6.4 if so required by ESTEQ GROUP, return the defective Goods and / or Products to the business address of ESTEQ GROUP at its own cost and in the original packaging the Goods and / or Products were supplied in.
- 11.7 The Customer agrees that all guarantees and / or warranties of whatsoever nature will immediately become null and void should any Goods and / or Products be tampered with, or should the seals on Goods and / or Products be broken by anyone other than ESTEQ GROUP, or should the Goods and / or Products be operated or stored outside the Manufacturer's specifications.
- 11.8 The liability of ESTEQ GROUP in terms of this clause 11 will be limited to repair of defective Goods and / or Products, or the extension of credit as set out in 11.6, provided that if the Supplier so agrees, the Supplier may replace defective Goods and / or Products.
- 11.9 In the event of repair all repair time and costs in repair provided by ESTEQ GROUP are estimates only, and will in no way be binding on ESTEQ GROUP.
- 11.10 In the event of repairs ESTEQ undertakes to transport/ deliver the goods back to the supplier. ESTEQ GROUP will be entitled to appoint a third party to undertake delivery and transportation of the Goods and / or Products, such appointment to be in the sole discretion of ESTEQ GROUP. The risk in and to the Goods and / or Products, risk of theft, damage and / or destruction of the Goods and / or Products as well as cost remains that of the Customer.

12. REPRESENTATIONS AND LIABILITY

- 12.1 Notwithstanding anything to the contrary, the Customer acknowledges that it does not rely on any representations made by ESTEQ GROUP in regard to the Goods, Products and / or Services or any of its qualities other than those contained in this Agreement. All specifications, price lists, performance figures, advertisements, brochures and other technical data furnished by ESTEQ GROUP in respect of the Goods, Products and / or Services orally or in writing will not form part of the Agreement in any way unless agreed to in writing by ESTEQ GROUP
- 12.2 Notwithstanding anything to the contrary, the Customer agrees that neither ESTEQ nor any of its employees will be liable for any negligent or innocent misrepresentations made to the Customer, unless the Customer fall within the ambit of the protection of the CPA.
- 12.3 Under no circumstances shall ESTEQ be liable for any damage arising from any misuse or abuse of the Goods, Products and / or Services.

- 12.4 It is the sole responsibility of the Customer to determine that the Goods, Products and / or Services ordered are suitable for the purposes of intended use, and ESTEQ GROUP provides no warranty that the Goods, Products and / or Services will be fit for the Customer's intended purpose. The Customer warrants that it has satisfied itself that the Goods, Products and / or Services will be fit for every purpose for which the Customer requires it, and that it does not rely on any presentation, warranty or judgment of ESTEQ GROUP. The Customer further warrants that:
- 12.4.1 the Goods, Products and / or Services are supplied for the purposes for which it was manufactured or developed;
 - 12.4.2 the Goods, Products and / or Services will be thoroughly tested prior to operational use;
 - 12.4.3 the Goods, Products and / or Services will be used by suitably qualified staff of the Customer; and
 - 12.4.4 the Goods, Products and / or Services will be regularly services, tested, duly certified and inspected.
- 12.5 ESTEQ GROUP reserves the right at its sole discretion to provide alternative Goods, Products and / or Services to those ordered by the Customer, should equipment or parts of product manufacture be superseded, replaced or terminated.
- 12.6 The liability of ESTEQ GROUP will be limited to:
- 12.6.1 replacement of defective Goods and / or Products and / or Services; or
 - 12.6.2 the repair of defective Goods and / or Products and / or Services;
 - 12.6.3 upgrading of defective software Products as specified by the Supplier thereof.
- 12.7 ESTEQ GROUP will further only be liable in the event of :
- 12.7.1 supplying any unsafe goods;
 - 12.7.2 a product failure, defect or hazard in any goods; or
 - 12.7.3 inadequate instructions or warnings provided to the Customers pertaining to any hazard arising from or associated with the use of the goods,

irrespective of whether the harm resulted from any negligence on the part of ESTEQ GROUP.

13. COPYRIGHT AND TRADEMARKS

- 13.1 The copyright in and to any software programme developed by ESTEQ GROUP (or any of its licensors) remains vested in ESTEQ GROUP (or its licensors) and the Customer may not copy, sell, alienate, dispose of, pledge, cede, lease or transfer the software programme or any rights in the software programme to any third party, without the prior written permission of ESTEQ GROUP, which permission may be granted or refused in the sole and absolute discretion of ESTEQ GROUP.
- 13.2 All supply of software and software licences are subject to the Conditions of Supply of Software and Software Licences, which are available on request.
- 13.3 The Customer acknowledges all copyrights and shall not duplicate copyrighted material . Should the Customer breach this clause 13, then ESTEQ GROUP (or any of its licensors) shall be entitled to render and invoice, due and payable immediately, for the full prevailing Purchase Consideration in respect of such software and software licences.
- 13.4 If any Goods and / or Products and / or Services supplied by ESTEQ GROUP are subject to registered trademarks, the Customer undertakes and warrants that it shall not in any manner whatsoever infringe upon such registered trademarks.
- 13.5 The Customer herewith indemnifies and holds harmless ESTEQ GROUP against any claims, costs and expenses arising out of the infringement of copyright, patent, trade mark or design rights, howsoever arising out of the customer's use of the Goods and / or Product and / or Services..

14. LICENCE AGREEMENTS, MAINTENANCE AGREEMENTS AND SUPPLY AGREEMENTS

- 14.1 In the event that ESTEQ GROUP supplying any licensed Goods and / or Products and / or Services, including software contemplated in 13, then the Customer will be required to conclude and enter into the applicable Licence Agreement with ESTEQ GROUP or the Licence Holder, as the case may be.
- 14.2 In the event that ESTEQ GROUP agrees with the Customer to provide ongoing maintenance and support of whatsoever nature, whether in respect of Goods or Products or Services supplied in terms hereof, such maintenance will be subject to the conclusion and execution of the applicable Maintenance Agreement simultaneously herewith.
- 14.3 In the event that ESTEQ GROUP agrees with the Customer to supply Goods or Products or Services on an ongoing basis, the supply of such supply Goods or Products or Services will be subject to the conclusion and execution of the applicable Supply Agreement simultaneously herewith.
- 14.4 In the event of any conflict between the terms of this Agreement and any concluded and executed Licence Agreement, Maintenance Agreement and / or Supply Agreement, the provisions of the applicable Licence Agreement, Maintenance Agreement and / or Supply Agreement shall prevail.

15. DEFAULT AND BREACH

- 15.1 Should the Customer commit a breach of any of the provisions of this Agreement and fail to remedy that breach within 10 (ten) Business Days after receipt from ESTEQ GROUP of written notice calling upon it so to do, then ESTEQ GROUP will be entitled, in addition to and without prejudice to any right it may have as a result of that breach, either to:
- 15.1.1 enforce specific performance of the terms of this Agreement; or
- 15.1.2 cancel this Agreement and recover such damages as it may have sustained.
- 15.2 In addition ESTEQ GROUP shall have the right, notwithstanding anything to the contrary contained herein to:
- 15.2.1 suspend the Customer's credit approval with immediate effect and without notice;
- 15.2.2 take repossession of any and all Goods and / or Products delivered, as provided for in 9.3.
- 15.3 ESTEQ GROUP's remedies in this clause 15 shall not be exhaustive and shall be in addition and without prejudice to any others it may have under or in consequence of this Agreement or the common law.

16. DISPUTE RESOLUTION

- 16.1 Except where this Agreement expressly provides for an alternative dispute resolution mechanism, should a dispute occur between the Parties in regard to any matter arising out of this Agreement or its interpretation or their respective rights and obligations under this Agreement or its cancellation or any matter arising out of its cancellation, the Parties agree that:
- 16.1.1 if the dispute relates to any matter in respect of which a specific dispute resolution procedure is set out in this Agreement, the procedure set out in the relevant clause of this agreement shall be followed; or
- 16.1.2 if the dispute relates to any other matter, it shall be referred to the managing director (or, if no such position exists, its equivalent designation) of each of the Parties concerned, or in the case of a natural person, such person, for resolution who shall endeavour to resolve that dispute in good faith and with due willingness and intention to determine a solution.

- 16.2 If the managing directors (or persons of the equivalent designation) are unable to resolve the dispute in accordance with clause 16.1.2 within 21 (twenty one) days of having declared a dispute, the matter shall be referred to and decided by arbitration in accordance with clause 16.3.
- 16.3 Arbitration between the Parties shall be subject to the following terms and conditions:
- 16.3.1 there shall be 1 (one) arbitrator who shall be, if the question in issue is:
- 16.3.1.1 primarily an accounting matter, an independent chartered accountant of not less than 15 (fifteen) years' standing;
- 16.3.1.2 primarily a legal matter, a practising attorney or advocate of not less than 15 (fifteen) years' standing;
- 16.3.1.3 primarily a technical matter, a suitably qualified person; and
- 16.3.1.4 any other matter, a suitably qualified person;
- 16.3.2 the appointment of the arbitrator shall be agreed upon between the Parties, but failing agreement between them within a period of 10 (ten) Business Days after the arbitration has been demanded, any of the Parties shall be entitled to request the chairperson for the time being of the Arbitration Foundation of South Africa to make the appointment and, in making his appointment, to have regard to the nature of the dispute;
- 16.3.3 subject to the other provisions of this clause 16, each arbitration shall be submitted to and determined by arbitration in accordance with the Commercial Arbitration Rules of the Arbitration Foundation of South Africa (as amended) and the costs of any such arbitration shall be determined by the arbitrator as part of his or her finding;
- 16.3.4 the decision of the arbitrator shall be final and binding on the Parties, and may be made an order of any Court of competent jurisdiction. Each of the Parties hereby submits itself to the jurisdiction of the North Gauteng High Court should either other Party wish to make the arbitrator's decision an order of that court.
- 16.4 This clause 16:
- 16.4.1 is severable from the rest of this Agreement and shall, notwithstanding the termination, cancellation, invalidity or alleged invalidity of this Agreement or any part of it for any reason, remain in full force and effect; and
- 16.4.2 constitutes an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw therefrom or to claim in any such proceedings that it is not bound by this clause 16.
- 16.5 The Parties agree that the written demand by a Party to the dispute in terms of this clause 16 that the dispute be submitted to arbitration, is to be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act, 1969.
- 16.6 The provisions of this clause 16 will not preclude any Party from access to a competent division of the High Court of South Africa for urgent and/or interim relief pending the outcome of an arbitration in terms hereof or in respect of arbitration proceedings in terms hereof.
- 16.7 Notwithstanding the provisions of this clause 16, the Parties agree that in the event of a breach of the terms of this Agreement, the Party aggrieved by such breach will be entitled to seek and obtain urgent interdictory relief in respect of such breach. To this end the Parties agree to the jurisdiction of the North Gauteng High Court, Pretoria.

17. CONFIDENTIALITY

- 17.1 Without the prior written consent of the other Parties, each Party will, and will procure that their direct and indirect subsidiaries, keep confidential and will not disclose to any person:
- 17.1.1 the details of this Agreement, as well as the details of all the transactions or agreements contemplated in this Agreement;

17.1.2 all information relating to the business, the operations, affairs, assets and liabilities of the Parties; and

17.1.3 all information relating to the business, the operations, affairs, assets and liabilities of any Party,

(together "**the Confidential Information**").

17.2 The Parties each respectively agree (in respect of itself and on behalf of its direct and indirect subsidiaries) to keep all Confidential Information confidential and to disclose it only to their respective officers, directors, employees, consultants and professional advisors who:

17.2.1 have a need to know (and then only to the extent that each such person has a need to know);

17.2.2 are aware that the Confidential Information should be kept confidential;

17.2.3 are aware of the disclosing party's undertaking in relation to such information in terms of this Agreement; and

17.2.4 have been directed by the disclosing party to keep the Confidential Information confidential and have undertaken to keep the Confidential Information confidential.

17.3 The obligations of the Parties in relation to the maintenance and non-disclosure of Confidential Information in terms of this Agreement do not extend to information that:

17.3.1 is disclosed to the receiving party in terms of this Agreement but at the time of such disclosure such information is known to be in the lawful possession or control of that party and not subject to an obligation of confidentiality;

17.3.2 is or becomes public knowledge, otherwise than pursuant to a breach of this Agreement by the party who disclosed such Confidential Information; and

17.3.3 is required by the provisions of this Agreement any law, statute or regulation, or during any court or arbitration proceedings, or by the rules or regulations of any recognised stock exchange to be disclosed and the party required to make the disclosure has limited, as far as reasonably possible, the extent of such disclosure and has consulted with the other Parties prior to making such disclosure.

17.4 The obligation contained in this clause 17.4 shall endure, even after the termination of this Agreement, without limit in point of time except and until such Confidential Information falls within any of the provisions of clause 17.3.1 to 17.3.3.

17.5 Should a Party be requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation demand or similar legal process) to disclose any Confidential Information to any third party, the Party concerned shall immediately notify the other Parties thereof in order that the other Parties may in their discretion and at their cost raise any applicable objections, seek an appropriate protective order or waive compliance with the provisions of this Agreement, or consent thereto.

18. PERSONAL INFORMATION

18.1 The Customer hereby consent to the storage and use by the ESTEQ GROUP of the personal information that it has provided to ESTEQ GROUP for establishing its credit rating.

18.2 The Customer also consents to ESTEQ GROUP disclosing such information to credit control companies, banks and other institutions involved in rating credit.

18.3 The Customer agrees that ESTEQ GROUP will not be held liable for the *bona fide* disclosure of any of this information to such a third party and that no further specific consent need to be obtained for the transfer of such information to a specific third party.

19. DOMICILIUM CITANDI ET EXECUTANDI

- 19.1 ESTEQ GROUP chooses the address set out alongside its name in clause 2 above, and the Customer chooses the address set out in the Quotation, as their *domicilium citandi et executandi* at which all notices, legal processes and other communications must be delivered for the purposes of this Agreement.
- 19.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax.
- 19.3 Any party may by notice to any other party change the physical address chosen as its *domicilium citandi et executandi vis-à-vis* that party to another physical address in South Africa or its telefax number: Provided that the change shall become effective *vis-à-vis* that addressee on the 5TH (FIFTH) business day from the deemed receipt of the notice by the addressee.
- 19.4 Any notice to a party may be:
- 19.4.1 hand delivered, in which case it will be deemed to be received on the day of delivery provided delivery took place on a Business Day, failing which it will be deemed to be received on the first following business day; or
 - 19.4.2 mailed by pre-paid registered post, in which case it will be deemed to be received on the 7TH (seventh) Business Day after date of posting, unless the contrary is proved; or
 - 19.4.3 transmitted by telefax, in which case it will be deemed to be received on the day it was transmitted provided it was sent on a business day, failing which it will be deemed to be received on the first following business day;
 - 19.4.4 transmitted by e-mail, in which case it will be deemed to be received on the day it was transmitted provided it was sent on a business day, failing which it will be deemed to be received on the first following business day.
- 19.5 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

21. MISCELLANEOUS

- 21.1 Jurisdiction
- For the purposes of all or any proceedings arising from or in connection with this Agreement, the Parties hereby consent to the jurisdiction of the Magistrate's Court otherwise having jurisdiction under Section 28 of the Magistrate's Court Act of 1944, as amended, notwithstanding that such proceedings are otherwise beyond its jurisdiction. This clause shall accordingly be deemed to constitute the required written consent conferring jurisdiction upon the said Court pursuant to the provisions of Section 45 of the Magistrate's Court Act of 1944, as amended. Notwithstanding the foregoing, the Supplier shall have the right (at the Supplier's sole option and discretion) to institute proceedings in any other competent Court which might otherwise have jurisdiction.
- 21.2 Relaxation
- No leniency, indulgence or extension of time granted by any of the parties to one or more of the other, shall in any way effect any of the such party's rights in terms of this Agreement or operate as a waiver of such rights.
- 21.3 Whole Agreement
- This Agreement constitutes the whole Agreement between ESTEQ GROUP and the Customer as to the subject-matter hereof, and no representations, warranties or the like (other than those specifically recorded herein) have been given by any of the parties to the other such to induce the other to conclude this Agreement.
- 21.4 Variation

Standard Terms & Conditions

Esteq Group

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

21.5 Costs

In the event of ESTEQ GROUP having to institute any further legal action or take any legal steps of whatsoever nature against the Customer in order to enforce due and proper compliance with any of the terms and/or conditions of this Agreement, ESTEQ GROUP shall be entitled to recover from the Customer and the Surety (if applicable) jointly and severally, all fees and expenses and disbursements charged by the attorneys instructed by ESTEQ GROUP to act for it on the scale applicable to charges which an attorney may charge against ESTEQ GROUP on the scale as between an attorney and his own client, including any collection commission at 10% of each instalment paid in redemption of the amounts which are or may become due and payable to ESTEQ GROUP in terms hereof.

21.6 Invalidity

In the event of the invalidity of any part or portion of this Agreement, such invalidity shall not in any manner whatsoever affect the validity or enforceability of any other part or provision of this Agreement.

21.7 Training Terms and conditions

21.7.1 You will receive a booking confirmation via e-mail upon receipt of your online registration.

21.7.2 By registering online for a training course you confirm that you will be attending the course and will be held liable for the payment of the attendance fee. Any cancellations will only be accepted if done in accordance with the following cancellation policy:

21.7.2.1 Cancellations received in writing up to 8 working days before the course date will be subject to a 15% administration fee.

21.7.2.2 Cancellations received in writing up to 7 working days of the course date will be subject to a 50% administration fee.

21.7.2.3 Delegate no-shows will be liable for the full attendance fee.

21.7.3 We require payment prior to attendance. Please submit your proof of payment to debtors@esteq.com or fax it to 086 645 3685 before the start of the course.

21.7.4 It is the responsibility of the attendee to ensure he/she has obtained the necessary permission to attend the training course from his/her employer and provide ESTEQ with the billing details of his/her company. The attendee remains personally liable for payment of the training course in case of non-payment from his/her employer.

21.7.5 In order to qualify for the nominated group discount, four or more delegates must be submitted on the same registration.

21.7.6 Substitutions of delegates to the registered event are welcome and may be made without incurring administration fees. Notification of substitutions should be provided to s.kruger@esteq.com to facilitate the registration process.

21.7.7 In the event of unforeseen circumstances, ESTEQ reserves the right to change the programme content, the speakers, the venue or the date of the course. You will be notified in writing no less than 5 working days prior to an event.