

METROWATT
WEBSITE STANDARD TRADING TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1. **"Applicable Laws"** means all national, provincial, local and municipal legislation, regulations, statutes, by-laws, consents and/or other laws of any relevant governmental authority and any other instrument having the force of law as may be issued and in force from time to time relating to or connected with the activities contemplated under these Terms and Conditions and the parties applicable agreement;
- 1.2. **"Best Industry Practice"** means the exercise of such skill, diligence, prudence, foresight and judgement that would be expected from a highly skilled, experienced and reputed person engaged in the provision of services similar to the Services at a world-class level;
- 1.3. **"Confidential Information"** means all information (written, oral or electronic) disclosed by one Party to the other Party and concerning the business affairs of the disclosing party including any Data, information relating to that party's operations, processes, plans, intentions, product information, know-how, designs, trade secrets, software, market opportunities, customers;
- 1.4. **"Customer"** means a purchaser and/or reseller and/or end user of the Goods and/or Services supplied by Metrowatt;
- 1.5. **"Data"** means any data about a Party, a Party's customers, suppliers or employees, including, billing information, financial information and/or Personal Information as defined in applicable data protection legislation, including the Protection of Personal Information Act, No. 4 of 2013, as may be amended from time to time;
- 1.6. **"Days"** refers to business days and is exclusive of public holidays, Saturdays and Sundays;
- 1.7. **"domicilium citandi et executandi"** refers to the address at which the Customer agree to accept service of all notices, documents, accounts and legal process;
- 1.8. **"Goods"** and/or **"Services"** means the Goods supplied and/or Services rendered by Metrowatt to the Customer;
- 1.9. **"Intellectual Property"** means all trademarks, trade names, service marks, and trade dress, whether registered or unregistered, and all goodwill associated with such trademarks, trade names, service marks, and trade dress; patents and any designs or applications for the same; copyrights and copyrightable works (including drawings, designs, graphics, artworks, whether in physical form or in analogue or digital form, and all drafts or preliminary versions of any of the foregoing); rights protecting goodwill and reputation, know how, domain names and Universal Resource Locators (URLs); databases and database rights; graphics; schematics; marketing material and marketing data; sales and user data; topography rights; trade secrets, including confidential know-how, Confidential Information, inventions, specifications, and processes; moral rights; computer software programs (in both source and object code form, and including any programmers' or developers' notes, flow charts, memoranda and design documents); application programming interfaces; protocols; and any renewal, extension, reissue, continuation, applications and/or registrations (whether pending or not) for any of the foregoing; and all rights or forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world;
- 1.10. **"Parties"** means the Customer and Metrowatt, collectively and "Party" shall be a reference to either of them;
- 1.11. **"Personal Information"** means information relating to an identifiable, natural or juristic person, including but not limited to, information relating to race, gender, sex, marital status, nationality, ethnic or social origin, colour, sexual orientation, age, physical or mental health, religion, belief, disability, language, birth, education, identity number, telephone number, email, postal or street address, biometric information and financial, criminal or employment history as well as correspondence that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
- 1.12. **"Privacy Policy"** means Metrowatt's Privacy Policy detailed on its website and found here www.metrowatt.co.za
- 1.13. **"Metrowatt"** means Metrowatt Proprietary Limited, registration number 2007/029828/07, including its successors in title and assigns; and
- 1.14. **"Terms and Conditions"** means these standard trading Terms and Conditions, as may be updated from time to time.

2. TERMS & CONDITIONS

- 2.1. These Terms and Conditions shall govern the supply of Goods and/or the rendering of Services by Metrowatt to a Customer.
- 2.2. These Terms and Conditions will govern all transactions between Metrowatt and the Customer, not only present and future but also past, it being agreed that these Terms and Conditions shall apply retrospectively to all transactions entered into between Metrowatt and the Customer. Notwithstanding the aforesaid, any agreement entered into between the Customer and Metrowatt shall take precedence over these Terms and Conditions. Where the agreement between the Customer and Metrowatt is silent on an issue but same is addressed in these Terms and Conditions, then these Terms and Conditions shall apply.
- 2.3. In the event of a discrepancy between these Terms and Conditions and any other terms and/or conditions contained in any quotation and/or cost of credit pursuant to or in contemplation of the conclusion of an agreement with the Customer in respect the Goods and/or Services, the provisions of the quotation, cost of credit and/or the applicable agreement shall prevail over these Terms and Conditions.
- 2.4. The parties utilising the Metrowatt website and the Customer agrees to accept the Privacy Policy found here www.metrowatt.co.za which is displayed on the Metrowatt website.
- 2.5. These Terms and Conditions are read together with the Privacy Policy.
- 2.6. Metrowatt' acceptance of the Customer's order is expressly conditional upon the Customer agreeing to the provisions of these Terms and Conditions and the applicable agreement between the Parties. When the Customer places an order with Metrowatt, the Customer will be deemed to have knowledge of and have accepted the provisions of these Terms and Conditions.
- 2.7. The Customer warrants that all of the Customer information recorded in the applicable agreement is accurate, correct and complete in all respects.
- 2.8. The Customer undertakes to notify Metrowatt of any changes to such information within 10 (ten) days of such change occurring. Notwithstanding the provisions of this clause, Metrowatt will only be deemed to have received such notification once it has acknowledged receipt of such notification in writing to the Customer.
- 2.9. The Customer undertakes to notify Metrowatt in writing within 10 (ten) days of any change in ownership of the Customer or should the Customer be a juristic entity change in shareholding or members interest in excess of 20% (twenty percent) of the issued share capital or membership contribution.

3. ORDERS

- 3.1. Orders made by the Customer in writing or verbally shall constitute irrevocable offers to purchase the Goods and/or Services from Metrowatt and shall be capable of acceptance by Metrowatt expressly, impliedly or by Metrowatt' conduct.
- 3.2. The Customer shall bear the risk of any errors or misunderstandings arising from oral orders.
- 3.3. Any orders purported to be made by or on behalf of the Customer shall be deemed to have been made with the necessary knowledge and authorisation of the Customer, which authorisation Metrowatt need not prove, and the Customer shall be bound to any such orders.

4. ORDER VARIATIONS

- 4.1. In the event of the Customer requesting a variation to any order, and Metrowatt agreeing to such variation, the Customer shall bear the full risk and costs in respect of such variation. In particular, should Metrowatt have incurred any costs or rendered any Services in respect of the order prior to variation, then in that event, the Customer shall be liable to pay to Metrowatt any costs so incurred and shall be liable for any Services rendered prior to the variation, whether or not the Customer requires or is able to utilise any Goods already supplied or any Services already rendered.

4.2. In addition to the above, the Customer shall be liable for all additional costs in respect of the varied order.

5. RISK & OWNERSHIP

- 5.1. Risk in the Goods will pass to the Customer on the date of delivery but ownership in the Goods shall where possible, remain vested in Metrowatt, unless otherwise stated in the applicable agreement between the Parties. If the Customer delays or fails to accept delivery of the Goods to be delivered at its nominated address, the risk in such Goods shall pass to the Customer as soon as Metrowatt attempts to deliver same to the Customer.
- 5.2. While any amount is owed by the Customer to Metrowatt in respect of any Goods, the Customer shall be obliged to keep the Goods concerned free of any lien, hypothec, encumbrance and/or attachment.
- 5.3. The Customer shall take all such steps as may be necessary to notify interested third parties and inform the owner/landlord, as the case may be, where the Goods are kept, of Metrowatt's ownership of such Goods.
- 5.4. Where required, the Customer shall fully insure the Goods against loss or damage. All benefits in terms of such insurance policy shall be ceded to Metrowatt from time to time and the Customer may, if requested by Metrowatt, be required to produce evidence of such cession from time to time.
- 5.5. Metrowatt shall have the right to remove and/or recover the Goods from the Customer or any third party placed in possession of the goods through the Customer, at the Customer's expense, in the event of non-payment, and for such purpose the Customer hereby irrevocably authorises the removal and/or recovery of such goods and indemnifies Metrowatt against any and all claims, including claims for costs, whether direct, indirect or consequential, made by any person against Metrowatt and arising out of the aforesaid removal and/or recovery.

6. PAYMENT

- 6.1. The Customer shall effect payment to Metrowatt via electronic funds transfer in cleared funds in accordance with the terms stipulated in the applicable signed agreement with Metrowatt and/or as indicated on the applicable invoice provided by Metrowatt to Customer, unless Metrowatt has granted the Customer credit facilities.
- 6.2. In the event that the agreement between Customer and Metrowatt and/or the invoice issued by Metrowatt to Customer do not contain specific payment terms, the Customer shall effect payment to Metrowatt on presentation of invoice.
- 6.3. In the event that Metrowatt has granted the Customer credit facilities, the Customer shall effect payment to Metrowatt within 30 (thirty) days from the date of Metrowatt's invoice, provided that, Metrowatt may, in its sole and absolute discretion, extend payment terms to the Customer to a maximum of 60 (sixty) days from date of Metrowatt's invoice.
- 6.4. No discounts may be claimed or taken, under any circumstances, unless Metrowatt has agreed to such discount in writing and the Customer shall have effected payment within the payment period allowed for such discount.
- 6.5. The Customer shall be liable to pay Metrowatt any taxes and/or levies applicable to the Goods at the then prevailing rate. If any payments due to Metrowatt are subject to withholding tax, the Customer shall pay Metrowatt an additional amount so that Metrowatt receives the full payment that is due to it.
- 6.6. Unless otherwise expressly agreed in writing, all payments are to be in South African Rand.
- 6.7. The Customer carries any risk associated with or arising from the method elected to effect payment to Metrowatt.
- 6.8. The Customer shall not be entitled, for any cause whatsoever, to withhold, deduct from or defer any amount due by it to Metrowatt. All payments shall be free of exchange and set off. However, Metrowatt shall be entitled, at its sole discretion, to set off any amounts that it owes to the Customer against any amounts that the Customer owes to Metrowatt and such set off shall be effective as soon as Metrowatt notifies the Customer in writing of the set off.
- 6.9. Metrowatt may appropriate and/or apply all payments from the Customer to any amounts as it in its sole and absolute discretion deems fit, whether or not such amounts were outstanding as at the date of such payment or if such amount only became outstanding thereafter. Payments shall, in the sole and absolute discretion of Metrowatt, be applied first toward interest, costs (if any) and then toward capital.
- 6.10. Metrowatt reserves the right to levy interest at the maximum rate permitted by law on all overdue accounts.
- 6.11. The Customer must notify Metrowatt of any error in any invoice and/or statement submitted to it by Metrowatt within 10 (ten) days (unless otherwise stated in the applicable agreement) from the date of the invoice and/or statement concerned, failing which the invoice and/or statement will be deemed to be free of any errors.

7. PRICES

- 7.1. Unless Metrowatt provides the Customer with a pro-forma quotation, written or verbal, the price of Metrowatt's Goods and/or Services will be Metrowatt's official list price in place at the date order of the Goods and/or the date of rendering the Services, subject to clause 7.2 below.
- 7.2. Metrowatt reserves the right, prior to delivery of the Goods and/or rendering the Services, to vary any quoted price by adding thereto the increased costs to it of any Goods and/or Services. In this regard, the Customer acknowledges that various factors may be taken into account in determining pricing, including but not limited to, the urgency with which the Goods and/or Services are required, the time of delivery, the availability and/or exclusivity of the Goods ordered and/or Services required as well as third party service providers.
- 7.3. Where prices are based upon a currency other than the South African Rand, any fluctuations in the exchange rate of such currency against the Rand between the date of the Customer's order and the date of Metrowatt's invoice shall be passed on to the Customer who shall be liable for payment thereof.

8. CREDIT

- 8.1. In the event that the Customer has entered into a credit arrangement with Metrowatt the following clauses are applicable.
- 8.2. CREDIT FACILITIES
- 8.3. The Customer acknowledges that the granting of credit facilities to it and/or the increase or decrease of such facility is at the sole discretion of Metrowatt.
- 8.4. Metrowatt reserves the right to suspend or withdraw the Customer's credit facilities at any time including, but not limited to, circumstances where the Customer is in default under the agreement.
- 8.5. Any credit limit granted to the Customer shall not be deemed to be a limit of the Customer's indebtedness to Metrowatt.
- 8.6. INCREASE OR DECREASE OF CREDIT LIMIT
- 8.7. The Customer authorises Metrowatt to automatically increase the Customer's credit limit in Metrowatt's sole and unfettered discretion, however subject to a determination being made by Metrowatt as to the financial means, prospects and obligations of the Customer. Metrowatt shall be entitled to decrease the Customer's credit limit in Metrowatt's sole and unfettered discretion.
- 8.8. Should the Customer wish to increase its credit limit, a fresh credit application will need to be submitted to Metrowatt, in the prescribed form.
- 8.9. The Customer undertakes to fully and truthfully answer any requests for information and/or documentation made by Metrowatt as part of the assessment required above within 5 (five) days of receipt of such a request.

9. DELIVERY OF GOODS AND SERVICES

- 9.1. The date of delivery of the Goods and/or Services will be deemed to be the date when the Goods and/or Services are delivered to the Customer's nominated delivery address or the date on which Metrowatt notifies the Customer that the Goods are available for collection. Any third party who accepts delivery or who collects the Goods from Metrowatt will be deemed to be the Customer's agent and it shall not be necessary for Metrowatt to prove the authority of such person, who shall be deemed to have been duly authorised for such purpose.

- 9.2. The Customer warrants that the signatory to any tax invoice, delivery note or any other documentation of Metrowatt made out in the name of the Customer is duly authorised to bind the Customer in relation to the transaction and shall also constitute prima facie proof of the proper delivery of the Goods and/or Services to the Customer.
- 9.3. Metrowatt will endeavour to deliver the Goods and/or render the Services to the Customer within a reasonable period. The Customer shall not be entitled to cancel any order by reason of any delay and Metrowatt shall not be liable for any damages for failure to timeously effect delivery of the Goods and/or Services for any reason.
- 10. DISCREPANCIES**
- 10.1. The Customer must inspect the Goods on delivery. Unless the Customer notifies Metrowatt, on delivery, that the Goods delivered are defective, short delivered, damaged or not in accordance with the order, Metrowatt shall not be liable for any of the aforesaid discrepancies, provided that the aforesaid notice shall not constitute an admission of the discrepancy.
- 10.2. Once Metrowatt has satisfied itself of the validity of the Customer's complaint, it will determine, in its absolute discretion, the manner in which it resolves such complaint, in accordance with all applicable legislation at that time.
- 11. RETURNS**
- 11.1. Except where Goods and/or Services are supplied with a manufactures warranty and/or otherwise provided for in writing by Metrowatt, the Goods and/or Services sold or rendered by Metrowatt are sold or rendered *voetstoots* and are not returnable save with the written consent of Metrowatt.
- 11.2. Should Metrowatt in its absolute discretion elect to accept return of any Goods, it will furnish the Customer with written notification and the Goods must be immediately returned to Metrowatt with the corresponding invoice, undamaged, clean and saleable. The risk in the Goods shall remain with the Customer until the Goods are received by Metrowatt.
- 11.3. Metrowatt reserves the right to levy a handling fee in respect of any such returned Goods and/or Services.
- 12. NO WARRANTIES**
- 12.1. The Customer acknowledges that Metrowatt does not manufacture the Goods and accordingly makes no warranties of whatsoever nature, whether express or implied, in respect of the Goods, whether relating to their marketability, quality and/or fitness for any particular use or purpose. The Customer accordingly indemnifies Metrowatt and holds it harmless against all claims of whatsoever nature and howsoever arising, which may be brought against Metrowatt by any person arising out of the use of the Goods.
- 12.2. Any recommendations or assistance provided by Metrowatt concerning the use of the Goods shall not be construed as a representation or warranty of any kind and such information is accepted by the Customer at the Customer's own risk and without any obligation or liability to Metrowatt.
- 13. LIMITATION OF LIABILITY AND INDEMNITY**
- 13.1. Metrowatt will not be liable for any direct, indirect, consequential, special or delictual loss or damage of any nature and howsoever arising which may be suffered by the Customer or any third party as a result of or in connection with any transaction contemplated between the Parties.
- 13.2. Notwithstanding 13.1 above, should Metrowatt be found to be liable at any stage, the Customer agrees that such liability, if any, will not exceed the total price paid or due to be paid by the Customer for the Goods and/or Services that form the subject matter of such claim.
- 13.3. The above exclusions and limitations of liability shall apply regardless of how the loss or damage may be caused and whether based in contract, delict or otherwise.
- 13.4. The Customer hereby indemnifies Metrowatt for and holds it harmless against any claim, damage, loss, cost or expense of whatever nature made against the Customer by any third party arising from or associated with the Goods supplied and/or Services rendered by Metrowatt to the Customer, the Customer's or a third party's use of the Goods and/or Services, the Customer's representations given to third parties in respect of the Goods and/or Services or any other matter for which Metrowatt would not be liable to the Customer under these Terms and Conditions and the applicable agreement between the Parties.
- 13.5. If any Goods and/or Services are to be supplied in accordance with specifications or other instructions furnished by the Customer, the Customer shall not have any claim of any nature whatsoever against Metrowatt for any loss or damage sustained by the Customer or any third party as a result of any error, discrepancy or defect in those specifications and/or other instructions, or if the Goods in question are not suitable for the purpose for which they are required, whether that purpose was known to Metrowatt or not.
- 13.6. The Customer hereby waives any rights which it may have in terms of the Consumer Protection Act 68 of 2008 and shall not have any claim of any nature whatsoever against Metrowatt if the Goods and/or Services in question are not suitable for the purpose for which they are required, whether that purpose was known to Metrowatt or not.
- 13.7. Notwithstanding the above, Metrowatt does not exclude or limit its liability, if any, for any matter for which it would be illegal for Metrowatt to do so.
- 14. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIAL INFORMATION**
- 14.1. Metrowatt is the owner of all intellectual property rights, and/or the holder of applicable licenses, in respect of the Goods and/or Services that Metrowatt supplies and/or renders.
- 14.2. The Customer shall not at any time use, exploit or disclose any of Metrowatt's confidential information as to its business processes, including but not limited to plans, price lists, documents or any other information relating to the Goods and/or Services.
- 14.3. Other than is provided for in the applicable agreement between the Parties, all Intellectual Property rights belonging to Metrowatt shall remain the property of Metrowatt and the Customer will not acquire any right, title or interest in and to such Intellectual Property.
- 14.4. Metrowatt (or its third party licensors) shall retain all rights, titles and interests in and to its Intellectual Property supplied to the Customer in the rendering of Services.
- 14.5. The Customer may, as permitted by Metrowatt in writing, have access to and use Metrowatt's Intellectual Property as is necessary, solely for the purpose of the Customer utilising the Services and such use by the Customer must be in accordance with the provisions of their applicable agreement.
- 14.6. Should the Parties agreement be terminated and the Customer has in its possession any documents, diagrams, notes, memoranda, data, Intellectual Property or other records relating to the Confidential Information of Metrowatt and in any media whatsoever, including but not limited to a hardcopy, disc, back up tape and/or download onto the Customer's computer systems, the Customer undertakes to immediately return such documents, diagrams, notes, memoranda, data, Intellectual Property or other records to Metrowatt and shall not retain any copies or backups thereof or any extracts therefrom.
- 14.7. The obligations contained in the clause above shall be complied with within 7 (seven) days of termination of the Parties agreement.
- 15. BREACH**
- 15.1. If the Customer breaches any provision of these Terms and Conditions, or fails to pay any amount on its due date, or suffers any civil judgment being taken and does not take steps to rescind such judgment with 10 (ten) days of the judgment coming to its knowledge, or commits an act of insolvency, or is placed under sequestration, liquidation (whether provisional or final, voluntary or compulsory) or business rescue, or makes or attempts to make any general offer of compromise with any of its creditors or sells its business or changes the structure of its ownership, Metrowatt shall, without prejudice to any other remedies that it has available to it *inter alia* the right to claim damages, be entitled to:
- 15.1.1. suspend or cease performance of its obligations to the Customer until the Customer's breach has been remedied; and/or
- 15.1.2. summarily cancel the sale of any Goods and/or rendering of Services to the Customer; and/or
- 15.1.3. repossess, to the extent possible, any Goods which have not been paid for; and/or
- 15.1.4. exercise its lien over any of the Customer's property in its possession or under its control; and/or

- 15.1.5. summarily cancel the applicable agreement with the Customer or claim specific performance of all of the Customer's obligations whether or not such obligations have fallen due for performance,
in all instances without prejudice to Metrowatt's right to claim damages or any other rights it may have in law.

16. FORCE MAJEURE AND SUPERVENING IMPOSSIBILITY

- 16.1. The Customer acknowledges and agrees that this clause is applicable to all *force majeure* events (any event beyond the control of Parties which renders obligations of the applicable agreement between the Parties impossible to fulfil) and/or supervening impossibilities as well as any other causes beyond the control of Metrowatt.
- 16.2. Metrowatt will not be liable to the Customer for failing to perform its obligations in terms of the applicable agreement between the Parties as a result of an act of God and/or *force majeure* event/s and/or supervening impossibilities and/or any cause/s beyond its control.
- 16.3. Subject to the provisions of their applicable agreement and these Terms and Conditions, in the event of delays in delivery or performance caused by an act of God and/or *force majeure* event/s and/or supervening impossibility/ies and/or any cause/s beyond its control or the Customer, the estimated date of delivery or performance shall be extended by the period of time that Metrowatt is actually delayed.

17. DISCLOSURE OF INFORMATION

- 17.1. The Customer hereby consent/s and grant/s authority to Metrowatt and/or its duly authorised agents and/or representatives (including its legal representatives) to conduct credit checks, searches and the like with any credit agency or party which Metrowatt may at its discretion consider expedient or necessary, *inter alia*, for the purpose of ascertaining the credit worthiness of the Customer or in order to trace the Customer or any of their assets.
- 17.2. Metrowatt shall be entitled to record any adverse credit report with any agency or person. The Customer acknowledge/s that the application for and existence of any account with Metrowatt may be recorded by credit agencies and details of the conduct of the account may be given to and duly recorded by and shared with other persons for various reasons.
- 17.3. The Customer hereby waive/s any claim and indemnifies and holds Metrowatt and/or its duly authorised agents and/or representatives (including its legal representatives) harmless against any claim for any nature and howsoever arising from the aforesaid instances.

18. PROTECTION OF PERSONAL INFORMATION

- 18.1. The Customer is hereby informed and accordingly consents that Metrowatt may, during the course of their relationship and during the course of their agreement, collect, store, delete, outsource, transfer or otherwise process personal information of the Customer, which includes *inter alia*, personal, identifying, contact, residential, financial, correspondence, criminal, and employment information, as well as any assessments, evaluations and interpretations in respect of any of the aforesaid (hereinafter referred to as "Personal Information" as read with and otherwise contemplated in terms of the Protection of Personal Information Act 4 of 2013).
- 18.2. The Customer is hereby informed and accordingly consents that Personal Information shall be collected for purposes as required by Metrowatt in terms of these Terms and Conditions and/or the applicable agreement between the Parties or as otherwise required by law. Such Personal Information shall only be processed by Metrowatt and/or an authorised third-party operator for purposes relating to the applicable agreement and business relationship, or any other third party where required in terms of applicable law, or where any additional information not incidental to the aforesaid relationship (if applicable) is processed by Metrowatt in accordance with the circumstances, upon prior consent of the Customer.
- 18.3. The Parties acknowledge and agree that all Data provided by either of the Parties, or to which the Parties may be exposed, shall constitute Confidential Information and where applicable, Intellectual Property belonging to the Party disclosing such Data.
- 18.4. The Parties hereby warrant, represent and undertake in favour of each other that:
- 18.4.1. they shall at all times strictly comply with all Applicable Laws and with all the provisions and requirements of any of Metrowatt's data protection policies and procedures which may be in force from time to time; and
- 18.4.2. Metrowatt shall not, at any time process Data for any purpose other than with the express prior written consent of the Customer, and to the extent necessary to provide the Services to Customer; and it shall ensure that all its systems and operations which it uses to provide the Services, including all systems on which Data is processed as part of providing the Services, shall at all times be of a minimum standard required by all Applicable Laws and be of a standard no less than the standards which are in compliance with the Best Industry Practice for the protection, control and use of Data.
- 18.5. The Parties shall take appropriate and reasonable technical and organisational measures to prevent the loss of, damage to or unauthorised destruction of Data and the unlawful access to or processing of Data. The measures taken must at all times be of a minimum standard required by all Applicable Laws and be of a standard no less than the standards which are in compliance with Best Industry Practice for the protection, control and use of Data.
- 18.6. Metrowatt shall take reasonable steps to identify all reasonably foreseeable internal and external risks posed to Data under Metrowatt's possession or control and establish and maintain appropriate safeguards against any risks identified. Metrowatt shall regularly verify that the safeguards are effectively implemented, and keep a record of such verification. The safeguards shall be updated continually in response to new risks or deficiencies in previously implemented safeguards. Records kept must be available for inspection on 10 (ten) Days' notice, upon notice in writing from the Customer.
- 18.7. A Party shall immediately notify the other Party (i) of any risks posed to Data that it has identified; (ii) of the safeguards established by it to mitigate the impact of the risks; and (iii) that the safeguards have been effectively implemented.
- 18.8. A Party shall notify the other Party of any security compromises or suspected security compromises of which it becomes aware or suspects, immediately on becoming so aware or forming such a suspicion.
- 18.9. The Parties acknowledge and agree that the retention and destruction of records shall be in accordance with Applicable Laws.

19. LEGAL PROVISIONS

- 19.1. These Terms and Conditions, the applicable agreement and all transactions between the Customer and Metrowatt shall be governed by and decided upon in accordance with the laws of the Republic of South Africa, unless otherwise stated by Metrowatt.
- 19.2. The Customer hereby irrevocably consents to the jurisdiction of the Magistrate's Court in respect of any dispute which may arise between the Parties at any time, notwithstanding that the amount of any claim which may form the subject matter of such dispute exceeds the jurisdiction of such Court.
- 19.3. Clause 19.2 shall not preclude Metrowatt from instituting action against the Customer in any other competent Court with jurisdiction, and in such event, the Customer agrees that Metrowatt shall not be limited to recovering any costs occasioned thereby on the Magistrates' Court tariff.
- 19.4. A certificate issued by any manager of Metrowatt, whose authority, appointment and signature it shall not be necessary to prove, that certifies any indebtedness of the Customer to Metrowatt, delivery of the Goods or rendering of Services to the Customer or any other fact shall constitute prima facie proof of such indebtedness or delivery or such other fact.
- 19.5. The Customer shall be liable for Metrowatt' legal fees in the event of Metrowatt enforcing or defending its rights hereunder on the attorney and own client scale, including counsel's fees, tracing agent's fees and collection charges.

20. DOMICILIUM

- 20.1. The Customer choose as their *domicilium citandi et executandi* for all purposes under these Terms and Conditions, the physical addresses and email addresses as set out in the applicable agreement between the Parties.
- 20.2. Any notice or communication required or permitted to be given in terms of these Terms and Conditions and/or the applicable agreement between the Parties shall be valid and effective only if in writing, provided that it shall be competent to give notice by way of email.

- 20.3. A party may change its *domicilium citandi et executandi* (its physical address in the Republic of South Africa and/or email address by furnishing the other party with 5 (five) days written notice of its new physical address, provided that the change will only become effective from the 7th (seventh) Day from the deemed receipt of the notice by the other party.

21. GENERAL

- 21.1. These Terms and Conditions may be updated by Metrowatt from time to time.
- 21.2. No relaxation or indulgence granted by Metrowatt to the Customer shall prejudice or be deemed to be a waiver of any of Metrowatt' rights hereunder.
- 21.3. Each provision of these Terms and Conditions is severable, the one from the other. If any provision is found to be defective, unlawful or unenforceable for any reason, the remaining provisions shall continue to be of full force and effect.
- 21.4. The rule of construction that these Terms and Conditions be interpreted against the party responsible for drafting this document shall not apply.
- 21.5. The Customer shall not be entitled to cede any rights or assign any obligations under the Terms and Conditions.
- 21.6. Metrowatt shall be entitled to cede its rights or assign its obligations under these Terms and Conditions, without notice to the Customer or any other person and such cessionary shall be entitled to enforce its rights hereunder against the Customer in respect of any Goods and/or Services that it supplies to the Customer.

22. INTERPRETATION

- 22.1. Words in the singular include the plural and vice versa;
- 22.2. Words importing any one gender includes the other and the neuter;
- 22.3. The headings of clauses are intended for convenience only and shall not affect the interpretation of the agreement;
- 22.4. Any reference to a "person" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;
- 22.5. Any reference to a party includes that party's successors, permitted assigns and any of its subsidiaries;
- 22.6. Any reference to a document includes an amendment and/or supplement thereto and replacement and/or novation of the document;
- 22.7. Any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time.
- 22.8. Any reference to a statutory provision include any subordinate legislation made from time to time under that provision and includes that provision as modified or re-enacted from time to time;
- 22.9. Effect shall be given to any provision that is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definitions clause, it as if it were a substantive provision in the body of the agreement;
- 22.10. If a definition imposes substantive rights and obligations on a party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- 22.11. Where any word is defined within the context of any particular clause in the agreement, that word, unless it is clear from the clause in question that that word has limited application only to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of the agreement, notwithstanding that that word has not been defined under the definitions clause/section of the agreement;
- 22.12. Expressions defined in the agreement shall bear the same meanings in schedules or annexures to the agreement which do not themselves contain their own definitions;
- 22.13. Any provision in the agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by the agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (pro non scripto) and severed from the balance of the agreement, without invalidating the remaining provisions of the agreement or affecting the validity or enforceability of such provision in any other jurisdiction;
- 22.14. The use of any expression covering a process available under South African law (such as but not limited to a winding-up) shall, if any of the parties is subject to the law of any other jurisdiction, be interpreted as including any equivalent or analogous proceeding under the law of such other jurisdiction;
- 22.15. The rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (the *eiusdem generis* rule) shall not apply, and whenever the word "including" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given;
- 22.16. The expiration or termination of the agreement shall not affect such of the provisions of the agreement which are expressly provided to operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this;
- 22.17. Each of the provisions of the agreement has been negotiated by the parties and drafted for the benefit of the parties, and accordingly the rule of construction that the contract shall be interpreted against or to the disadvantage of the party responsible for the drafting or preparation of the agreement (the *contra proferentem* rule), shall not apply;
- 22.18. When any number of days is prescribed in the agreement, same shall reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday; and
- 22.19. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 22.20.
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