



TERMS AND CONDITIONS

For the supply of Products and provision of Services by Beckhoff Automation (Pty) Ltd

1 INTRODUCTION AND APPLICATION

1.1 These Terms shall be deemed to be incorporated in, and shall apply to and be of force and effect in respect of, every agreement and transaction entered into between the Supplier and the Customer and in the event of a conflict between these Terms and any provisions of any, subsequent agreement entered into between the Parties, Quotation, Purchase Order and/or Invoice, the provisions of these Terms shall, unless otherwise specifically provided for, take precedence to the extent of such conflict.

1.2 Notwithstanding clause 1.1, the Supplier may elect to agree to other terms, including those of the Customer, in addition to these Terms ("**Additional Terms**"), provided that this shall remain the sole and absolute discretion of the Supplier and shall only be capable of being approved by the managing director of the Supplier, which approval must be in writing and express, and requires express and written authorisation from BADE. In the event of any conflict between the Additional Terms agreed to in accordance with this clause, and these Terms, the Additional Terms shall take precedence over these Terms, only to the extent of such conflict.

2 DEFINITIONS

2.1 In these Terms, the following words and expressions shall, unless otherwise stated or inconsistent with the context in which they appear, have the meanings given to them below and cognate words and expressions have corresponding meanings -

2.1.1 "**Applicable Laws**" means, in relation to a person, and in any jurisdiction, includes any:

2.1.1.1 statutes and subordinate legislation and common law;

2.1.1.2 regulations;

2.1.1.3 ordinances and by laws;

2.1.1.4 circulars, codes of practice, directives, guidance notices, judgments and decisions

of any competent authority or any governmental, intergovernmental or supranational agency, body, department or regulatory, self-regulatory or other authority or organisation; or

2.1.1.5 other similar provisions, from time to time, compliance with which is mandatory for that person;

2.1.2 "**BADE**" means Beckhoff Automation GmbH & Co. KG, Germany;

2.1.3 "**Business Day**" means any day which is not a Saturday, a Sunday or an official public holiday in South Africa and "**days**" shall mean calendar days;

2.1.4 "**Consumer**" means a Customer who is a consumer as contemplated in the CPA;

2.1.5 "**CPA**" means the Consumer Protection Act No. 68 of 2008;

2.1.6 "**Terms**" means these terms and conditions of the Supplier, and any annexures, schedules, as amended from time to time;

2.1.7 "**Contract Price**" means the price payable by the Customer to the Supplier for the Products and/or Services, including all other amounts that are payable by the Customer to the Supplier, in respect of or connected to or arising from these Terms, as set out in an Invoice;

2.1.8 "**Customer**" means a customer of the Supplier that purchases Products and/or Services;

2.1.9 "**Credit Customer**" means a Customer that has applied for credit and has been approved by the Supplier, in terms of a Credit Application;

2.1.10 "**Credit Application**" means the Supplier's credit application, as amended from time to time, which is subject to these Terms;

2.1.11 "**Delivery**" means the effective transfer of possession of, and risk in respect of, any Products in terms of these Terms, evidenced by a signed Delivery Note;

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2.1.12	"Delivery Address" means the physical address of the Customer, at which Delivery shall take place;	2.1.20	"Purchase Order" means a purchase order submitted by the Customer to the Supplier, requesting the supply of Products and/or provision of Services, and which shall set out the Supplier's minimum required information, including:
2.1.13	"Delivery Note" means the written delivery note confirming Delivery of the relevant Products to the Customer by the Supplier;	2.1.20.1	the Customer's full details;
2.1.14	"Ex Works" means the delivery form known as Ex Works, as defined in the International Commercial Terms 2020;	2.1.20.2	the Customer's customer identification number (if one has been issued);
2.1.15	"Force Majeure Event" means any, delays in shipping or transport, adverse weather conditions, road closures, road works, requirements of any authority, illegal strike, irregular industrial action short of strike, lock-out, riots, demurrage, fires, smugglers, stowaways, explosions, acts of God, war (whether declared or not), sabotage, fire, flood, insurrection, breakdown in law and order, customs seizures, port delays, supervening legislation, governmental or other regulations, restrictions or directives or any other cause beyond the reasonable control of such Party, including any electricity disruptions caused by load shedding;	2.1.20.3	the Customer's value-added tax number (if applicable);
2.1.16	"Invoice" means a tax invoice of the Supplier, which records the Contract Price payable by the Customer;	2.1.20.4	details (telephone number and email address) of a designated contact person of the Customer;
2.1.17	"License Agreement" means the master 'Software License Agreement for Beckhoff Software Products' between BADE and the Supplier, as amended from time to time and available at: https://www.beckhoff.com/media/downloads/general-terms-and-Terms/software license agreement for beckhoff software products.pdf ;	2.1.20.5	the description and/or quantity of the required Products and/or Services;
2.1.18	"Parties" means collectively, the Supplier and the Customer, and "Party" means either of them, as the context may require;	2.1.20.6	the Delivery Address;
2.1.19	"Products" means the products supplied by the Supplier from time to time, including Bespoke Products, and includes any products and/or hardware engineered, modified or fabricated by the Supplier, which may include the Software and Licensing thereof;	2.1.20.7	if the Purchase Order requires Services to be performed in respect of a Product, the variant/serial/device numbers and details of such Product; and
		2.1.20.8	any additional information that the Supplier may request from the Customer, in the Supplier's discretion;
		2.1.21	"Quotation" means a quotation issued by the Supplier setting out the estimated Contract Price for the Products and/or Services requested by the Customer;
		2.1.22	"Sales Order Confirmation" means the confirmation issued by the Supplier to the Customer, after the Supplier's acceptance of a Purchase Order;
		2.1.23	"Restricted Jurisdiction" means any country, region or area that the Supplier is restricted from supplying Products in or providing Services within, based on the Supplier's and BADE's export policies from time to time and any other export policies that the Supplier, in their sole discretion, adhere to;
		2.1.24	"Services" means the services provided by the Supplier, which include, but are not limited to:
		2.1.24.1	training within South Africa on the use of the Software and Products; and/or



- 2.1.24.2 support, replacement and/or maintenance of the Products if the Supplier elects to provide such support, replacement and/or maintenance;
- 2.1.25 **"Software"** means the TwinCAT runtime software and/or TwinCAT/BSD and/or Windows operating systems which are approved for use on the Products and which the Supplier is authorised to license/sublicense (and the like), including other software applications developed specifically for the purpose of automation and control of the Products;
- 2.1.26 **"South Africa"** means the Republic of South Africa;
- 2.1.27 **"Staff"** means any director, officer, employee and/or other representative of either Party;
- 2.1.28 **"Sub-Saharan Area"** means, unless otherwise advised by the Supplier (and subject to the approval of BADE), the geographic area of Africa, south of the Saharan Desert;
- 2.1.29 **"Supplier"** means Beckhoff Automation Pty Ltd, registration number 2006/018973/07;
- 2.1.30 **"ZVEI Terms"** means the 'General Terms for the Supply of Products and Services of the Electrical and Electronics Industry ("Grüne Lieferbedingungen" – GL)', for commercial transactions between businesses as recommended by the Zentralverband Elektrotechnik und Elektronikindustrie e.V. as of January 2022 (as amended from time to time).

3 QUOTATIONS

- 3.1 The Supplier may, at the request of a Customer, issue a Quotation, which shall, subject to clause 5.10, be valid for 30 days from date thereof, provided that such Quotations are indicative of the estimated Contract Price only and shall not be binding on the Supplier. The Supplier may withdraw or amend a Quotation at any time prior to the Sales Order Confirmation, on notice to the Customer, which may be way of email.
- 3.2 Due to the technical nature of the Products and/or Services, the Customer is liable for any additional direct, external costs which cannot be (or were not) reasonably anticipated at the time of providing any

Quotation, provided that the Supplier shall be required to provide an amended Quotation replacing the original Quotation detailing such additional direct, external costs, for the Customer's consideration and acceptance, failing which acceptance, within 5 Business Days from date of such amended Quotation, the Customer shall be deemed to have rejected the amended Quotation. For the avoidance of doubt, if the Supplier issues an amended Quotation, the original Quotation shall not be capable of being of accepted.

- 3.3 If any Products are no longer available (which includes Software no longer being supported or licensed), prior to delivery of the Products or provision of the Services (whether or not the Quotation has been accepted), the Supplier may substitute the Products with a similar Product, on notice to the Customer, which the Customer shall be obliged to accept provided that the Product is similar in function and specifications. If there is no suitable substitution, the Supplier may cancel the Quotation.

- 3.4 Any request for a Quotation for the supply or provision of Services in relation to Products not ordinarily supplied by the Supplier (**"Bespoke Products"**), the Customer acknowledges that the Supplier shall be required to obtain approval from BADE prior to issuing any Quotation, and any Quotation issued in respect of Bespoke Products is subject to availability for supply of the Bespoke Products.

4 ORDERS

- 4.1 Customers within the Sub-Saharan Area may issue Purchase Orders, provided that the Delivery Address is also within the Sub-Saharan Area, and provided that the Customer shall not be entitled to deliver or use the Products in, any Restricted Jurisdiction.
- 4.2 All Purchase Orders are irrevocable, unless rejected by the Supplier in writing.
- 4.3 Upon receipt of either a Purchase Order, or the acceptance by the Customer of a Quotation, the Supplier may provide a Sales Order Confirmation.
- 4.4 All Purchase Orders accepted by the Supplier will be confirmed in the form of the Sales Order Confirmation via email to the Customer. If at any

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	time the prices of any Products on a Purchase Order differs from a price listed in:	5.2.1	in the case of a Credit approved Customer, subject to the rights of the Supplier to revoke or suspend Credit facilities:
4.4.1	any current pricelist of the Supplier; or		
4.4.2	any Quotations; or	5.2.1.1	for the first Invoice, by way of a deposit of not less than 50% of the total amount recorded in the Invoice prior to the Products or Services being provided to the Customer, with the balance of the Invoice being payable within 30 days of the Invoice date; and
4.4.3	any alternative pricing offered to that Customer by the Supplier and approved of by the Supplier in writing,		
	the Purchase Order will be deemed to be rejected.		
4.5	The Customer agrees and acknowledges that any price lists published by the Supplier are:	5.2.1.2	for subsequent Invoices, within 30 days of the Invoice date;
4.5.1	valid for the period stated in the price list or, if no such period is stated, then for 12 months from the date of publishing; and	5.2.2	in the case of any other Customer:
		5.2.2.1	immediately upon presentation of an Invoice; and
4.5.2	subject to annual increases of no less than 8% per annum.	5.2.2.2	prior to the Products or Services being provided to the Customer and the Customer agrees that the Supplier shall not be obligated to supply any Products and/or provide any Services, and the Customer shall not be entitled to enforce its rights therefor, against the Supplier unless and until payment as provided for in this clause, has been made; and
4.6	The Supplier reserves the right to, in its sole discretion, reject any Purchase Order in whole or in part.		
4.7	The Supplier shall not be responsible for, nor have any liability in respect of, any errors in the Purchase Order submitted, regardless of the form and medium in which a Purchase Order may be submitted.		
4.8	The Customer shall be estopped from denying the validity of any Purchase Order once received by the Supplier, notwithstanding the fact that such Purchase Order may have been given or signed by a person not duly authorised to do so.	5.2.2.3	the Supplier may, in its sole discretion, require that the Customer make payment of a specified deposit in partial reduction of the amount on the Invoice, prior to the Supplier delivering such Products or providing such Services.
4.9	Subject only to clause 1.2, the Customer expressly acknowledges that these Terms take precedence over any other terms and conditions which the Customer might otherwise seek to reference or impose in a Purchase Order or other correspondence. This is a material and critical term of these Terms and of the Supplier's granting of Credit facilities to the Customer (if applicable), and of the Supplier's willingness to supply Products and/or provide Services.	5.3	If any Products to be supplied are required to be shipped from BADE, the Customer shall be required to make payment to the Supplier of a deposit of not less than 50% of the total Contract Price prior the Supplier ordering such Products from BADE.
		5.4	Notwithstanding clause 5.2.1, if any Products are to be delivered to an address outside of South Africa, the provisions of clause 5.2.2 shall apply to such Products, irrespective of if the Customer is approved for Credit.
5 PRICES		5.5	The Supplier has the right, but not obligation, to allow an extension to the period contemplated in clause 5.2.1.2 in the Supplier's sole and absolute discretion, which extension shall only be capable of being approved in writing by the managing director of the Supplier, and any extension contemplated in
5.1	The Supplier shall, when issuing a Sales Order Confirmation, provide an Invoice to the Customer.		
5.2	The Customer shall make payment of any Invoice and provide proof thereof in writing, as follows:		

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this clause 5.5 shall not create any binding precedent or expectation of future extensions of payment periods.

- 5.6 Any discounts allocated by the Supplier:
- 5.6.1 can be revoked by the Supplier in their sole discretion; and
- 5.6.2 are on a per order basis and are not binding on the Supplier nor shall such discounts be automatically applied to any future transactions and the Customer may not assume it shall receive any discounts for any future orders, based on previous discounts allocated; and
- 5.6.3 each discount offered by the Supplier shall be considered an individual and singular transaction and shall not constitute or form any practice common between the Parties or on which the Customer shall be entitled to rely; and
- 5.6.4 shall only apply if the Invoice is paid in full, on the due date for payment, failing which the discount shall no longer apply and the Customer shall be liable to make payment of the undiscounted full total recorded in the Invoice.
- 5.7 In the case of payment by way of electronic funds transfer, such payment is required to reflect as cleared in the banking account of the Supplier prior to such payment being deemed to have been made.
- 5.8 All amounts payable by the Customer in terms of these Terms exclude value added tax ("VAT") payable in terms of the Value Added Tax Act No 89 of 1991 (as amended) and any other rates, taxes or other imposts that may be payable thereon. VAT must be paid at the rate applicable at the time of each payment and will be paid separately from the amount otherwise payable in terms of these Terms.
- 5.9 Notwithstanding the provisions of clauses 5.1 and 5.8, should the costs of obtaining supply of any Products by the Supplier increase, the Supplier may increase the Contract Price on notice to the Customer, which increase the Customer shall be liable to pay.
- 5.10 If any Products are to be delivered and/or Services to be provided outside of South Africa, the period of validity of the related Quotation shall be 5 Business Days, notwithstanding clause 3.1 and the Supplier may amend the Contract Price to account for any

exchange rate fluctuations and/or any additional taxes or export costs, even after the acceptance of the related Quotation, on written notice to the Customer and the Customer agrees to be bound by any such amendments to the Contract Price and agrees to pay such amended amounts recorded in an amended Invoice, immediately upon receipt thereof.

6 WITHDRAWAL OF CREDIT FACILITIES

- 6.1 Notwithstanding anything contained in these Terms, if the Supplier has granted Credit terms to the Customer, the Supplier reserves the right to withdraw such Credit terms at its sole discretion, if:
- 6.1.1 the Customer breaches any provision of these Terms or fails to make payment of any amount on or before the due date for such payment; or
- 6.1.2 the Supplier believes that the Customer's financial position has deteriorated after the date that the Credit terms were granted; or
- 6.1.3 any information supplied in the Credit Application form is incorrect, untrue or inaccurate; or
- 6.1.4 the Supplier, for any other reason, deems it necessary to revoke the Credit facilities.
- 6.2 Further, it is specifically recorded that any Credit facilities granted by the Supplier to the Customer is for the sole benefit of the Supplier, and the Customer shall not be entitled to rely on said Credit facilities as justification for any limitation of indebtedness to the Supplier.

7 PAYMENT

- 7.1 All payments by the Customer to the Supplier shall be made by electronic fund transfer of immediately available funds (without set-off deduction or withholding of any nature whatsoever), unless agreed otherwise by the Supplier in writing, to the banking account of the Supplier, the details of which banking account shall be as designated in writing by the Supplier, on request and on the Invoice.
- 7.2 For the avoidance of doubt, the Customer has no right to withhold, set-off or deduct from any payments due by it to the Supplier for any reason whatsoever.

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- 7.3 The Customer acknowledges that criminal syndicates may attempt to induce it to make payment into bank accounts that do not belong to the Supplier. Fraud of this nature may be perpetrated using emails, letters or other forms of correspondence that may appear to have emanated from the Supplier. Accordingly, the Customer shall have the obligation to verify the banking details of the Supplier, as received from the Supplier on a bank-stamped confirmation of the Supplier's bank details, not older than 3 months, telephonically at **+27 (11) 795 2898**.
- 7.4 The Supplier shall not in any way be liable (whether in contract, delict or otherwise) for payment by the Customer into an incorrect bank account, unless such incorrect payment was made as a result of the wilful fraud of the Supplier. In the event of any payments being transferred to the incorrect banking account, the Customer shall still be liable to the Supplier for full payment of any amounts due by the Customer to the Supplier.
- 7.5 The Supplier shall be entitled to apply any payments received from the Customer to whichever outstanding claims or debts as it sees fit, and entirely at the Supplier's discretion. Unless otherwise specified by the Supplier, it shall be presumed that any payments received from the Supplier are allocated to the payment of any interest accrued or legal costs incurred by the Supplier to enforce the Supplier's rights in these Terms, and thereafter to the oldest outstanding claims or debts.
- 7.6 The Supplier shall be entitled to set-off any amounts received from the Customer against any amounts that may be owed by the Supplier to the Customer from time to time, which set-off the Customer hereby consents and agrees to.
- ## 8 DELIVERY
- 8.1 The Delivery and sale Terms for the Products and Services are subject to the ZVEI Terms, which are incorporated herein by reference and which the Customer acknowledges and agrees it has read and understood. If there is any conflict between the provisions of the ZVEI Terms and:
- 8.1.1 these Terms, then the provisions of these Terms shall take precedence over the ZVEI Terms, to the extent of such conflict; and
- 8.1.2 any South African Applicable Laws, then the provisions of such South African Applicable Laws shall take precedence over the ZVEI Terms, to the extent of such conflict.
- 8.2 Notwithstanding the ZVEI Terms, and for the avoidance of doubt, the Customer acknowledges and agrees that the Supplier does not provide installation or commissioning of any Products, and the Customer shall be required to obtain its own installation and commissioning.
- 8.3 Whilst every effort will be made to deliver and/or dispatch the Products as requested on a Purchase Order or as reflected on a Quotation, the Supplier does not guarantee or warrant Delivery and/or dispatch times by a specific date, and the Supplier shall not be liable for any damages or failure to deliver/dispatch any Products timeously for any reason whatsoever.
- 8.4 The Customer or the Supplier may appoint a transport service provider to affect Delivery of the Products to the Delivery Address ("**Delivery Agent**"), or the Customer may collect the Products from the Supplier's premises.
- 8.5 If the Delivery Agent is appointed:
- 8.5.1 by the Customer, then the Customer shall provide confirmation to the Supplier of the appointment of the Delivery Agent, and full details and particulars, to the Supplier's satisfaction, of the Delivery Agent, prior to the Delivery Agent being entitled to collect the Products from the Supplier and the Supplier shall only be required to make the Products available Ex Works for collection at the Supplier's premises; or
- 8.5.2 by the Supplier, then the Supplier shall have the Delivery Agent deliver the Products to the Delivery Address, subject to all remaining Terms.
- 8.6 In event of either clauses 8.5.1 or 8.5.2 being applicable:
- 8.6.1 the Supplier's responsibility for Delivery and providing proof of Delivery of the Products will be

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- limited to proving that the Products were accepted by a person purporting to be the Delivery Agent;
- 8.6.2 any courier waybill shall be deemed to be a valid and complete Delivery Note;
- 8.6.3 the appointment of a Delivery Agent is at the sole risk and liability of the Customer;
- 8.6.4 the Customer agrees herewith that it shall not be entitled to hold the Supplier liable, and the Supplier shall have no liability, for any delays in Delivery (notwithstanding the ZVEI Terms) and/or damage caused to and/or loss of, the Products, whether directly or indirectly caused by or associated with or connected to, use of the Customer's own transport vehicles or Delivery by the Delivery Agent, and in the event of Delivery by the Delivery Agent, the Customer shall be obliged to claim for any such damage and/or loss from the Deliver Agent directly.
- 8.7 If the Supplier elects to deliver the Products, which at all times will be in the Supplier's sole discretion:
- 8.7.1 The Supplier shall deliver the Products to the Delivery Address; and
- 8.7.2 The Customer shall be solely liable and responsible for offloading the Products, and the Supplier shall have no liability for any damage or loss to the Products and/or the Customer's premises caused by the offloading; and
- 8.7.3 The Delivery is at the sole risk and liability of the Customer in accordance with the agreed Ex Works;
- 8.7.4 The Supplier's responsibility for Delivery and providing proof of Delivery will be limited to proving that the Products were received by a person purporting to be the Customer or its representative, at the Delivery Address.
- 8.8 Unless otherwise agreed between the Supplier and the Customer in writing, any Delivery Agent shall be deemed to be the agent of the Customer. The risk in the goods, but not the ownership, shall pass upon Delivery to such Delivery Agent, and thus on to the Customer, even in the event of the Supplier appointing the carrier.
- 8.9 Any transport and Delivery Agent costs shall not include insurance costs, which the Customer shall be required to obtain themselves. Unless otherwise agreed in writing between the Supplier and Customer, the Supplier shall not arrange for any form of insurance for Products dispatched via any Delivery Agent.
- 8.10 The Customer shall be liable for all delivery costs (including all costs of the Delivery Agent), which the Supplier is entitled to recover the cost of from the Customer.
- 8.11 Notwithstanding anything to the contrary in these Terms or the ZVEI Terms, all Products are sold and delivered, to the Customer or the Delivery Agent, Ex Works from the Supplier's premises.
- 8.12 The Supplier has the election, at its sole discretion, to contribute to or make payment of the costs of the Delivery Agent, provided that at all times the Customer may not assume that the Supplier will, and no representations are made that it will, contribute to or make payment of any Delivery Agent costs, and any election to do so by the Supplier shall not create any precedent for future orders that the Customer may rely on.
- 8.13 The Supplier may elect to insure the Products in transit if requested to do so in writing by the Customer, provided that the Customer shall be liable to make payment to the Supplier of the full costs of such insurance. However, the Supplier may reject any such request and failure to obtain such insurance pursuant to any a request shall not give rise to any claim by the Customer against the Supplier.
- 8.14 No claim by the Customer against the Supplier in connection with the Products shall be enforceable unless the Customer has notified the Supplier in writing of such claim, specifying the particulars thereof in sufficient detail to enable the Supplier to deal therewith, within seven days of receipt of the Products, subject to the remaining provisions of these Terms. If the Customer is a Consumer, the provisions of this clause shall be limited or amended to the extent necessary to not contravene the CPA.
- 8.15 The Supplier reserves the right to refuse to enter the site of any Delivery Address if, in the Supplier's view,

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it is unsafe and any such delay in the supply of Products and/or the provision of Services occasioned thereby shall not be construed as delay in terms of these Terms, provided that the Supplier supplies the Products and/or provide the Services once it is safe to do so.

8.16 Notwithstanding anything to the contrary in these Terms and the ZVEI Terms, where the Products are to be delivered outside of South Africa:

8.16.1 the Customer shall be liable for all costs, expenses and duties occasioned by the export of any Products; and

8.16.2 the export of Products shall at all times be subject to any export policy implemented by the government of South Africa and/or the government of the Federal Republic of Germany and/or the Supplier and/or BADE, from time to time ("**Export Policies**"); and

8.16.3 the Supplier shall not export Products to or provide Services within, any Restricted Jurisdiction.

8.17 In amplification of clause 8.16.2:

8.17.1 the Supplier shall not be obliged to accept any Purchase Order from any Customer that will result, or which the Supplier believes may result in, the Products being supplied to any countries or jurisdictions that are excluded by any Export Policies;

8.17.2 if any existing Customers or orders require the Delivery to a Restricted Jurisdiction or any country or jurisdiction that is excluded by any Export Policies, the Supplier shall be entitled to immediately cancel such orders and desist from providing any further Products or Services to that Customer; and

8.17.3 the Customer warrants and undertakes in favour of the Supplier that it shall not, do or cause anything to be done that will result in any Products or parts thereof being sold or delivered to any Restricted Jurisdiction.

8.18 The Customer shall be required to notify the Supplier of any loss and/or damages of or to the Products, where the cause of such loss and/or damage was due to the gross negligence or wilful misconduct of the Supplier ("**Defective Products**"),

within 5 days of the Customer receiving the Defective Products at the Delivery Address, failing which, the Customer shall be deemed to have accepted that the Products received at the Delivery Address are free from any and all damages and/or loss.

8.19 If the Customer provides the notification contemplated in clause 8.18:

8.19.1 the return of the Defective Products shall be subject to the Warranty;

8.19.2 the Customer shall pay all costs and expenses incurred in the return of the Defective Products to the Supplier for assessment;

8.19.3 the Supplier shall not be liable to repair and/or replace and/or accept return of any Products that have been varied, tampered with or otherwise altered by the Customer or any third party; and

8.19.4 the Customer acknowledges that the repair and/or replacement of any Defective Products:

8.19.4.1 first requires an assessment process and is subject to such delays in the assessment process; and

8.19.4.2 may be required to be done by BADE, and have the assessment undertaken by BADE, and thereby be subject to the time periods of assessment and/or repair and/or replacement from BADE, inclusive of shipping, delivery, and other delays that may be occasioned in this process.

8.20 The Supplier shall have no liability to the Customer or any third party, whatsoever and howsoever arising, as a result of any delays in repair and/or replacement of the Defective Products, including but not limited to any loss of production, halting of operations and loss of income, profits, contracts, clients or customers, goodwill, reputation and whether it is known, knowable, foreseen or foreseeable.

9 OWNERSHIP

9.1 Notwithstanding any Delivery of Products to the Customer or provision of any Services, the ownership of the Products shall not pass to the Customer until the full Contract Price and any additional amounts recorded on the Invoice have

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been paid by the Customer to the Supplier, and such amounts have finally been received by the Supplier, until which time the Supplier shall remain the sole owner of the Products.

9.2 In amplification of clause 9.1, the Customer shall not alienate, dispose, encumber, pledge, or otherwise deal with the Products until the full Contract Price has been paid by the Customer to the Supplier in full, and such amounts have been received by the Supplier.

9.3 Where Products are sold by the Supplier to the Customer in terms of Credit facilities, the Customer remains solely liable for securing their own finance to settle the amounts outstanding to the Supplier within 30 days.

9.4 The Customer shall be obliged to inform any third party (including any lessor at whose premises the Customer shall keep or store the Products delivered) of the Supplier's ownership rights in the Products and shall provide the Supplier with proof thereof, upon request by the Supplier.

9.5 The Customer acknowledges that the Supplier holds a *lien* over the Products until the Supplier has received the full amount payable for such Products from the Customer and is only obligated to give the Customer possession and ownership thereof once all outstanding amounts due owing and payable to the Supplier (including any storage costs), have been paid. The Customer acknowledges and agrees (which includes a waiver of any right) that it has no right of spoliation in respect of any Products whose possession is retained by the Supplier or which the Supplier recovers possession of, from the Customer.

10 SOFTWARE, LICENSING AND SUPPORT

10.1 By purchasing the Products, the Customer may be required to also pay for a license to make use of the Software in the Products, which shall be in the form of a once-off, fully paid up non-transferable license to utilise the Software as part of the Products, ("**License**"), provided that such use of the Software under the License shall be subject at all times to these Terms and the License Agreement, the terms of which are incorporated herein by reference and

which the Customer acknowledges they have read and understood.

10.2 The fee for the License shall be set out on an Invoice.

10.3 In the event of any conflict between the provisions of these Terms and the provisions of the License Agreement, the provisions of the License Agreement shall take precedence over the provisions of these Terms, to the extent of such conflict.

10.4 The Customer acknowledges and agrees that the purchase of the Products and the use of the Software under the License does not entitle the Customer to, nor guarantee in any way that there will be, any fixes, updates, patches, maintenance or other forms of ongoing support, and the Supplier is under no obligation to provide any services or assistance in respect of the Software or the License.

10.5 In amplification of clause 10.4, the Customer acknowledges and agrees that:

10.5.1 the Software will not function in perpetuity and, if for any reason (including but not limited to end-of-life support for the Software infrastructure, discontinuation of any infrastructure whether hardware, firmware or software that the Software relies on and/or the termination or amendment of the License Agreement) the Software cannot operate at all or to its original specifications; and

10.5.2 the License is dependent on both the License Agreement and the authorisation of the Supplier to license/sublicense the Software from the owner of the relevant software or underlying software and code, if applicable, and if the License Agreement and/or the authorisation is terminated for any reason, the License shall immediately similarly be terminated and if the License Agreement is amended for any reason, such amendments shall apply to the License with immediate effect,

and in either event the Customer shall have no claim whatsoever, and howsoever arising, against the Supplier.

10.6 To the extent that the Customer is a customer for the purposes of on selling Products and/or Licenses to a third party that will use the Products and/or



Licenses ("End User"), such on sale may only be done with the written consent of the Supplier and:

- 10.6.1 the Customer shall be obliged to procure the End User's agreement with and acceptance of these Terms insofar as it relates to the Products, Licenses, Software and the License Agreement;
- 10.6.2 any breach by the End User of these Terms and/or the License Agreement shall be deemed to be a breach by the Customer of these Terms and/or the License Agreement, as the case may be.
- 10.7 The Supplier may, at its sole discretion, and in the event of clause 10.5 occurring and the Supplier being capable of doing so, transfer the License to a new hardware system and/or substitute a new License.
- 10.8 If the Customer requires the Software or any specific part thereof installed on their own hardware, they may request a Quotation from the Supplier for such installation and licensing. The Supplier may, in their sole discretion, determine if the requested Software is capable of being installed on or integrated with the Customer's hardware. In such event, the Supplier may notify the Customer that additional specific terms will apply to that aspect of the Software so licensed.
- 10.9 The Software may be licensed on a trial basis by the Supplier to a potential or existing Customer ("**Trial**"), provided that:
- 10.10 The potential or existing Customer accepts and agrees to these Terms;
 - 10.10.1 any use of the Trial shall only be for so long as the Supplier elects to allow use of the Trial, and the Supplier may at any time elect to cancel the Customer's access to the Software in terms of the Trial;
 - 10.10.2 the Trial is only available to a potential or existing Customer (which includes and is limited to, such Customer's staff, directors and employees) once, and any attempts to circumvent this clause may result in the immediate termination of the Trial and will be deemed a breach of these Terms;
 - 10.10.3 the Customer acknowledges the Trial is purely for purposes of assessing performance of the

Software in their application, and is not intended or designed for operational use and may cause damage and/or loss to the Customer's hardware; and

- 10.10.4 no person shall have any claim against the Supplier, whatsoever and howsoever arising, for any loss or damages incurred or as a result of, the use of the Trial.

11 WARRANTIES BY SUPPLIER

- 11.1 Save as expressly stipulated in these Terms or another warranty notice issued by the Supplier to the Customer, or in terms of clause 11.3, the Supplier gives no warranties or representations of any nature whatever, whether express, tacit or implied by law, in relation to the Products or any other matter whatsoever and the Products are sold on a "voetstoots" basis.
- 11.2 For the avoidance of doubt, the Supplier does not warrant or represent that the Products are fit for any intended purpose and the Customer shall be obliged to ensure that the Products are fit for the purpose that the Customer intended prior to placing a Purchase Order or accepting a Quotation.
- 11.3 The Supplier provides a warranty against factory-caused defective Products (which does not apply to any Software) for a period of 12 months from the date of Invoice ("**Warranty**"), in terms of which:
 - 11.3.1 the Supplier undertakes to repair a defect in the operation of, or replace a defective part of, the Products or repair or replace a defective Product, resulting exclusively from a defect in design or manufacture, the determination of which shall be at the Supplier's sole and absolute discretion;
 - 11.3.2 without derogating from the provisions of clause 11.3.2.1, the Warranty shall not apply if:
 - 11.3.2.1 any person has tampered with, altered or otherwise operated outside of prescribed specifications in respect of, the Products;
 - 11.3.2.2 any unauthorised work or repairs of any nature is done or attempted on the Products;
 - 11.3.2.3 the Products experienced any voltages outside of the normal operating specifications of the Products or was subject



- to electrical disruptions (including loadshedding and electrical surges);
- 11.3.2.4 excessive or undue stress is placed on the Products;
- 11.3.2.5 there is intentional or wilful damage or destruction of the Products, including any damage or destruction caused by any third party, acts of theft, violence, war, public or civil unrest or disorder, terrorism, riot, strike, or any similar intentional acts;
- 11.3.2.6 any serial number, warranty seal or any identifying marks placed on the Products by the Supplier is illegible, has been defaced or removed;
- 11.3.2.7 the Customer is unable to provide its proof of purchase issued by the Supplier;
- 11.3.2.8 any improper testing, operation, maintenance or installation of the Products has occurred; or
- 11.3.2.9 any defect is caused by the normal wear and tear of the Products or otherwise due to the normal aging of the Products in the relevant service and environmental conditions that such Products are designed to operate in;
- 11.3.3 if the defect is isolated to certain components or parts of the Products, only the components or parts that are defective shall be replaced or repaired in terms of the Warranty;
- 11.3.4 the Customer shall complete such forms, provide such information and documentation that the Supplier requests for it to process any claim by the Customer in terms of this clause 11.3, failing which the Supplier shall not be required to process such claim; and
- 11.3.5 the Customer acknowledges and agrees that the Warranty is provided on the basis that the Supplier the Supplier's warranty with BADE as the original equipment manufacturer, and if any warranty claim made by the Customer under this clause 11.3 would not be accepted by BADE for any reason whatsoever, the Supplier shall not be required to repair or replace the defective Products or part thereof, and the Customer shall have no claim against the Supplier as a result thereof.

12 WARRANTIES BY CUSTOMER

- 12.1 The Customer hereby represents and warrants to the Supplier that-
- 12.1.1 it has the legal capacity and power to purchase the Products and/or Services from the Supplier and bind themselves to these Terms and perform all obligations of the Customer in terms of these Terms; and
- 12.1.2 it shall comply with all Applicable Laws for the duration of its engagement with the Supplier; and
- 12.1.3 it has taken all necessary actions (whether statutory, corporate, governance, internal or otherwise and in terms of Applicable Laws) to authorise its engagement with the Supplier and the performance of its obligations in terms of these Terms; and
- 12.1.4 it has provided full and accurate information in any Credit Application (if applicable) to the Supplier and undertakes to inform the Supplier immediately should there be any change of whatsoever nature in any of its Personal Information, including its addresses and/or contact details and/or representatives details, as previously supplied to the Supplier; and
- 12.1.5 the Products will not be utilised or stored in any nuclear facilities or in any application relating to or implanted into any form of aircraft.

13 BREACH BY SUPPLIER AND LIMITATION OF LIABILITY

- 13.1 If the Supplier breaches any provision of these Terms and fails to remedy that breach within 30 days after receiving written notice requiring that remedy from the Customer, then (to the fullest extent permitted by Applicable Laws) the Customer's exclusive remedy shall be to claim immediate specific performance of such obligations of the Supplier then due for performance or to claim damages from the Supplier in an amount not exceeding the lower of:
- 13.1.1 the cost of repairing or replacing the damaged or defective Products; or

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13.1.2 the Contract Price relating to the damaged or defective Products.

13.2 The Customer is only entitled to a claim in terms of clause 13.1 if the damage, defect or non-performance in question was caused (whether directly or indirectly) by the Supplier, and not by the Customer or any third party.

14 BREACH BY CUSTOMER

14.1 If the Customer -

14.1.1 breaches any provision of these Terms and fails to remedy that breach within 7 days (or in the case of a Consumer, then within 20 Business Days) after receiving written notice from the Supplier to remedy that breach; or

14.1.2 undergoes an Insolvency Event; or

14.1.3 commits 3 or more breaches of any provision of these Terms within a 6-month period, regardless of whether such breaches are remedied,

then the Supplier is entitled, without prejudice to its other rights under these Terms (including any right to claim damages), to –

14.1.4 cancel any current Sales Order Confirmations;

14.1.5 repossess any Products delivered to the Customer in respect of which the Customer has failed to make full payment for;

14.1.6 claim immediate specific performance of all of the Customer's obligations (whether or not otherwise then due for performance); and/or

14.1.7 suspend Delivery of any Products.

14.2 If any amount due by the Customer to the Supplier is not paid by the Customer on the due date for such payment, the Supplier shall be entitled to charge the Customer interest on such amounts outstanding at the rate of 24% per annum calculated from the due date for payment thereof until date of payment in full, calculated and payable monthly in advance, provided however that nothing contained herein shall be interpreted as the Supplier affording the Customer any indulgence to make payment of any amount after the due date therefor.

14.3 In the event that the Customer is not a juristic person (as defined the National Credit Act, No. 34 of 2005 ["NCA"]), then any interest that the Customer shall

be liable for in terms of clause 14.2, shall be limited to the maximum amount that may be imposed in terms of the NCA and shall not exceed the applicable amounts and restrictions as contemplated by Chapter 5, Part C of the NCA.

14.4 For purposes of this clause 13, "**Insolvency Event**" means any of the following circumstances or events -

14.4.1 an order or declaration is made, steps are taken or a meeting of the directors or shareholders of the Customer is convened to consider the passing of a resolution, or a resolution is proposed or passed, for the business rescue, liquidation (whether provisional or final), winding up or deregistration of the Customer;

14.4.2 the Customer is unable (or admits its inability) to pay its debts generally as they fall due, or it is (or it admits to being) otherwise insolvent, or it stops, suspends or threatens to stop or suspend payment of all or a material part of its debts, or it proposes or seeks to make or makes a general assignment or any arrangement or composition with or for the benefit of its creditors, or a moratorium is agreed or declared in respect of or affecting all or a material part of its indebtedness;

14.4.3 the Customer takes any proceeding or other step with a view to the general readjustment, rescheduling or deferral of its indebtedness (or any part thereof which it would otherwise be unable to pay when due) or proposes to take any such step;

14.4.4 any business rescue practitioner, liquidator or the like is appointed in respect of the Customer or any material part of its assets, or the Customer requests any such appointment;

14.4.5 the Customer is or becomes insolvent, or commits any act that would, if it were a natural person who were subject thereto, constitute an act of insolvency as described in the Insolvency Act No 24 of 1936;

14.4.6 the Customer or any other person takes steps to invoke business rescue proceedings in respect of the Customer; and/or

14.4.7 the Customer becomes subject to any of the proceedings contemplated in chapter 6 of the

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Companies Act, including any "business rescue", becomes regarded as "financially distressed" or subject to "supervision", all as defined in chapter 6 of the Companies Act.

14.5 In amplification of clause 14.1, in the event of unremedied breach in terms of clause 14.1:

14.5.1 the full balance outstanding (whether due or not) will immediately become due and payable by the Customer to the Supplier;

14.5.2 if the Supplier has to enforce its rights in terms of this clause to recover any amount from the Customer, the Customer agrees to be liable for and pay all costs so incurred by the Supplier on an attorney and own client scale, including all collection commission payable in terms of any Applicable Laws; and

14.5.3 the Customer agrees and to the extent necessary provides its consent for the Supplier to:

14.5.3.1 inform any registered credit bureau of any default by the Customer in making payment of any amount due and payable to the Supplier;

14.5.3.2 take possession, by lawful means, of such of the Products that the Customer has failed to make full payment for in accordance with these Terms.

15 LIABILITY AND INDEMNITY

15.1 Notwithstanding anything to the contrary herein contained, the Supplier shall not be liable for any losses (of any nature whatsoever and howsoever arising) suffered or incurred by the Customer (and/or its Staff) resulting from:

15.1.1 the negligence on the part of the Customer and/or any of its Staff;

15.1.2 any delay or failure in the supply of the Products and/or provision of the Services;

15.1.3 as a result of any event contemplated in clause 16; or

15.2 Neither Party shall be liable to the other Party for any special, indirect or consequential damages including but not limited to the loss of profits.

15.3

The Customer hereby indemnifies and holds harmless the Supplier (and its Staff) against all losses of whatever nature and howsoever arising (including but not limited to any direct and/or indirect damages, costs or losses incurred or suffered by the Supplier arising out of any claim by any third party for, or in respect of, injury, death or illness affecting such third party, or any loss or damage to property of such third party and/or any infringement of a third party's intellectual property), which the Supplier (and/or its Staff) may suffer as a result of Customer's breach of these Terms and/or negligence and/or wilful misconduct of the Customer or any of its Staff.

16 FORCE MAJEURE

16.1 Should the Supplier be prevented or restricted from fulfilling any of its obligations in terms of these Terms as a result of:

16.1.1 a Force Majeure Event occurring; or

16.1.2 the Customer failing, in the Supplier's sole discretion, to provide the Supplier with all, or accurate, information and/or documentation required by the Supplier in terms of these Terms and/or the Credit Application (if applicable); or

16.1.3 any failure on the part of the Customer and/or its Staff to comply with any obligation stipulated in these Terms, whether same constitutes a breach or not; or

16.1.4 the Supplier needing to comply with any Applicable Laws,

then those obligations shall be deemed to have been suspended to the extent that and for so long as the Supplier is so prevented or restricted from fulfilling them and the corresponding obligations of the Customer shall be suspended to the corresponding extent. In such circumstances, the time for performance of such obligations and corresponding obligations shall be extended by the period of such suspension.

16.2 Should the Supplier be unable to fulfil a material part of its obligations under these Terms for a period in excess of 30 days due to circumstances as recorded in clause 16.1 the Supplier may, at its sole discretion, cancel the Order forthwith by written notice to Customer, which may be effected by email.

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16.3 For the avoidance of doubt, this clause 16 shall in no way affect any payment obligations of the Customer in respect of goods delivered by the Supplier.

17 CONFIDENTIAL INFORMATION

Each Party (including each Party's Staff and/or agents, associates, contractors or any other person appointed by a Party, which each Party shall be obligated to ensure comply with this clause), shall treat and hold as confidential all information which it may receive from the other Party or which becomes known to it concerning the other Party which is marked as confidential or has the necessary quality of confidentiality about it.

18 INTELLECTUAL PROPERTY

18.1 Each of the Supplier and the Customer acknowledges that the Supplier is the proprietor, or licensee of all intellectual property rights in and to the goods including, but without limitation, trademarks, domain names, copyright, patents, designs, confidential information, and all proprietary rights in and to ownership of any idea, discovery, artwork, design, concept, technique or improvement, industry information, know-how, system, methodology, data model, computer software, computer source code and object code, report, correspondence, documentation, flow chart, data base, table, calculation, spread sheet, schematic plan, photograph, presentation or invention (whether patented or not) and any other rights of a similar nature which exist now or will in the future exist, and whether registered or not ("**Intellectual Property**"). The Customer further acknowledges that it has no claim of ownership in and to the Intellectual Property belonging to the Supplier.

18.2 The Customer shall not, at any time, during or after termination or cancellation of these Terms, dispute the validity or enforceability of the Intellectual Property or cause to be done any act or thing contesting or in any way impairing or intending to impair any part of those rights, and shall not counsel or assist any person to do so.

18.3 The Customer shall not remove or tamper with the trademarks, including the logos and slogans, of the Supplier as applied to the Products and/or packaging.

18.4 The Customer shall not in any way represent that it has any right of any nature in the Intellectual Property. The Customer may only use the Intellectual Property as authorised by the Supplier and any such use will inure to the benefit of the Supplier.

19 DATA PROTECTION AND PERSONAL INFORMATION

19.1 For purposes of this clause 19 –

19.1.1 "**PAIA Manual**" means the manual in terms of section 51 of the Promotion of Access to Information Act No 2 of 2000 ("**PAIA**");

19.1.2 "**Personal Information**" has the meaning given to this term in section 1 of POPIA;

19.1.3 "**POPIA**" means the Protection of Personal Information Act No 4 of 2013;

19.1.4 "**Processing**" has the meaning given to this term in section 1 of POPIA, and "**Process**" has a corresponding meaning; and

19.1.5 "**Privacy Policy**" means the data and information privacy policy of the Supplier, as amended from time to time, published by the Supplier at its website and available at: <https://www.beckhoff.com/en-za/data-privacy-policy/> and upon request by email to dataprotection@beckhoff.com.

19.2 The Privacy Policy and PAIA Manual are available on the Supplier's website and upon request and the Terms of which Privacy Policy and PAIA Manual are incorporated herein and form part of these Terms and shall apply to the Processing of all Personal Information to give effect to these Terms, provided that any conflict between these Terms and the Privacy Policy and/or PAIA Manual, will be resolved by these Terms taking precedence to the extent of such conflict.

19.3 The Customer acknowledges and that it has read, understood and accepted the terms of the Privacy Policy and PAIA Manual, as it pertains to the Processing of its Personal Information and

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expressly consents to the Supplier Processing its Personal Information for purposes of implementing the transactions contemplated in Terms, which shall include but not be limited to:

19.3.1 sharing Personal Information with registered credit bureaus and/or banks and/or other financial institutions in order to ascertain information relating to the Customer's creditworthiness and/or for fraud prevention purposes in order to process any payment transactions necessary for and relative to these Terms;

19.3.2 to legal practitioners and/or debt collection agencies in the event that the Customer is in breach of these Terms;

19.3.3 to the Supplier's affiliates, partners, agents, shareholders, Staff, associates, contractors, trade partners, consultants, service providers and/or any other person appointed by the Supplier, but only to the extent necessary and in order to allow the supply of the Products and/or provision of the Services;

19.3.4 to comply with the provisions of clause 20.

19.4 The Supplier undertakes that it shall Process the Personal Information of the Customer received pursuant to the relevant Purchase Order, and in accordance with the Terms for lawful Processing of Personal Information set out in POPIA, the Privacy Policy and the PAIA Manual and any relevant Applicable Laws.

19.5 The Customer has the right to access its Personal Information held with the Supplier, which the Supplier shall grant during normal office hours within a reasonable time after the receipt of a written request for this access in terms of POPIA regulations.

19.6 Any queries, complaints, requests for access and other communications relating to the Processing of Personal Information, the PAIA Manual and/or Privacy Policy may be directed to the Information Officer designated in the Privacy Policy, with contact details:

19.6.1 Phone: **+49 5246 963-0**

19.6.2 E-mail: **dataprotection@beckhoff.com**

19.6.3 Other contact details:

<https://www.beckhoff.com/en-za/company/global-presence/south-africa.html>

20 FICA COMPLIANCE

20.1 The Customer acknowledges that in terms of the Financial Centre Intelligence Act No 38 of 2001 ("FICA") certain businesses are required to report certain categories of transactions, including suspicious or unusual transactions or series of transactions to the Financial Intelligence Centre (or its successor in title) and in particular where the Supplier has received, or is about to receive, the proceeds of suspected unlawful activities in payment of the Customer's indebtedness to the Supplier. In addition, the Supplier may be required to obtain and Process certain Personal Information of the Customer in order to comply with its customer due diligence obligations in terms of FICA.

20.2 The Customer indemnifies and holds the Supplier harmless against any claim of whatsoever nature instituted against the Supplier for any damage or harm suffered by the Customer or a third party arising from any action taken by the Supplier in discharging its obligations in terms of FICA.

20.3 The Supplier shall notify the Customer, in writing (which may be by way of email), of the specific documentation required in accordance with this clause 19, which documentation shall be provided to the Supplier by the Customer within 10 days of request, the Customer acknowledging that the Supplier shall be entitled to refuse to provide any Products and/or Services until the Customer provides the requested documentation.

21 PROOF OF CLAIMS

A certificate signed by a manager or any director of the Supplier - whose position and signature shall not be necessary to prove - reflecting the amount owing by the Customer to the Supplier, howsoever arising including but not limited to, in respect of any Credit facilities granted to the Customer, and of the fact that such amount is due, owing and unpaid shall be considered as prima facie proof on its production of the Customer's indebtedness to the Supplier for the

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purpose of any action (whether by way of provisional sentence, summary judgment or otherwise), proof of debt on insolvency or for any purpose whatsoever where the amount of such claims is required to be established, and it shall rest with the Customer to prove that such amount is not owing and/or due and unpaid.

22 DOMICILIUM AND NOTICES

22.1 The Parties choose domicilium citandi et executandi ("**Domicilium**") for all purposes relating to these Terms, including the giving of any notice, the serving of any process, as follows -

22.1.1 The Supplier -

22.1.1.1 Physical address: 7 Ateljee Street Randpark Ridge Randburg 2169 Gauteng, South Africa

22.1.2 Email address: info@beckhoff.co.za

22.1.3 **The Customer –**

22.1.4 The physical and e-mail addresses of the Customer reflected in the Purchase Order, or if there is no Purchase Order, then in the Invoice.

22.1.5 In the case of a Credit approved Customer, then the physical and email addresses set out in the Credit Application.

22.2 The Parties shall be entitled to deliver any notices that are not required to be delivered by hand at any chosen Domicilium, by email at any email address provided for each Party in these Terms.

22.3 Either Party shall be entitled from time to time, by, in the case of the Customer, their giving written notice to the Supplier or, in the case of the Supplier, by email to the Supplier or notice on its website, to vary its physical Domicilium to any other physical address (not being a post office box or poste restante) in South Africa and to vary its email Domicilium to any other email address, provided that any change of address of the Customer shall only become effective on the date of receipt by the Supplier of a written acknowledgement.

22.4 Any notice given or payment made by either Party to the other ("**Addressee**") which is delivered by hand between the hours of 09:00 and 17:00 on any Business Day to the Addressee's physical Domicilium for the time being, shall be deemed to

have been received by the Addressee at the time of delivery.

22.5 Any notice given by either Party to the other which is successfully transmitted by email to the Addressee's email Domicilium for the time being ("**Transmitted**") shall, if the notice is Transmitted -

22.5.1 by no later than 17:00 on a Business Day, be deemed (unless the contrary is proved) to have been received by the Addressee on that day;

22.5.2 after 17:00 on a Business Day or is Transmitted on a day which is not a Business Day, be deemed (unless the contrary is proved) to have been received by the Addressee on the next day which is a Business Day.

22.6 Notwithstanding the above of this clause 22, a written notice or communication actually received by a Party shall be an adequate service of such written notice or communication to that Party notwithstanding that the notice or communication was not sent to or delivered or served at that Party's Domicilium in this clause 22.

22.7 Any notice in terms of or in connection with Terms shall be valid and effective only if received or deemed to be received by the Addressee in terms of these Terms.

23 SUB-CONTRACTING

The Supplier is entitled to subcontract any of its obligations under these Terms to any other person without notice to or consent being required from, the Customer, provided that the Supplier shall continue to remain primarily responsible to the Customer in terms of these Terms for the due and proper discharge by such other person of the obligations assigned by the Supplier to such other person.

24 CESSION, DELEGATION AND ASSIGNMENT

24.1 The Customer is not entitled to cede, delegate or otherwise assign or transfer any of its rights or obligations in, under or in terms of the Purchase Order or these Terms to any third party without the prior written consent of the Supplier, which consent may be withheld in the Supplier's discretion.

24.2 The Supplier is entitled to cede, delegate or otherwise assign or transfer all of its rights and/or

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obligations in, under or in terms of the Purchase Order or these Terms, or any part thereof, to any third party without consent being required from the Customer.

25 AMENDMENT OF TERMS

- 25.1 Notwithstanding anything to the contrary in these Terms, the Supplier may, in its sole discretion, change (which includes varying, amending, deleting, substituting or adding to) any of these Terms at any time, and which Terms as changed will be deemed to be effective and binding on the earlier of:
- 25.1.1 the date that such amended Terms are delivered to the Customer, which may be by way of email; or
- 25.1.2 upon acceptance of any Quotation or upon receipt of any Invoice, by the Customer, together with these amended Terms, and
- the Customer must not purchase Products or Services from the Supplier. For the avoidance of any doubt, it will be the responsibility and obligation of the Customer, to confirm any amendments to these Terms, by contacting the Supplier, prior to ordering any Products or Services from the Supplier.

26 GOVERNING LAW AND CONSENT TO JURISDICTION

- 26.1 These Terms will, in all respects (including its existence, validity, interpretation, implementation, termination and enforcement), be governed by the law of South Africa.
- 26.2 The Customer consents in terms of section 45 of the Magistrates Court Act No 32 of 1944 ("**Magistrates Court Act**") to the jurisdiction of any magistrate's court having jurisdiction over the Parties by virtue of section 28 of the Magistrates Court Act, for the determination of any claim which the Supplier may at any time have against the Customer, arising out of the supply of Products and/or Services and in respect of any legal proceedings arising out of or in connection with these Terms, notwithstanding whether such claim would otherwise be beyond the jurisdiction of the Magistrates Court because of the amount of the claim. For the avoidance of doubt, this clause 26.2 constitutes a consent in writing in terms of section 45(1) of the Magistrate's Court Act

Notwithstanding the aforementioned, the Supplier shall be entitled in its discretion to institute legal proceeding in any other court of competent jurisdiction.

27 DISPUTE RESOLUTION

- 27.1 In the event of any dispute arising between the Parties, either of them may proceed to have this dispute referred to arbitration as referred to in these Terms.
- 27.2 The arbitration shall be held in Johannesburg, South Africa.
- 27.3 The arbitration shall be held within 90 days after it has been demanded.
- 27.4 The arbitration shall be held before an arbitrator which has been mutually agreed upon between the Parties, and failing agreement, the arbitrator shall be selected by the Association of Arbitrators (Southern Africa) NPC ("**the Association**").
- 27.5 The Parties agree that the decision by the arbitrator shall be final and binding on all Parties and shall be made an order of court, of any court with a competent jurisdiction.
- 27.6 The Parties agree that the arbitrator shall be entitled to make an order as to the costs of the arbitration.
- 27.7 The latest rules of the Association will be applicable to any arbitration in terms of this clause, unless specifically agreed otherwise between the Parties in writing.
- 27.8 Any award that may be made by the arbitrator:
- 27.8.1 shall be final and binding;
- 27.8.2 shall be carried into effect; and
- 27.8.3 may be made an order of any court to whose jurisdiction the Parties are subject.
- 27.9 Notwithstanding the provisions contemplating referral to arbitration herein, either Party shall retain the right to seek and obtain any urgent injunctive relief or other urgent equitable remedies from the High Court of South Africa.
- 27.10 This right is exercisable notwithstanding the ongoing arbitration proceedings, and the pursuit of such remedies shall not be construed as a waiver or limitation of the Parties' rights and obligations under the arbitration clause of these Terms.

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28 GENERAL AND INTERPRETATION

- 28.1 These Terms constitute the sole record of the agreement between the Parties in relation to the subject matter hereof. It is specifically recorded for the sake of clarity that any terms and conditions of the Customer are excluded and neither Party is or will be bound by any express, tacit or implied promise, representation, term, warranty or the like not recorded herein. These Terms accordingly replace and supersede all prior commitments, representations or undertakings (whether oral or written) between the Parties in respect of the subject matter hereof.
- 28.2 The Customer shall not be entitled to make any addition to, variation, novation or claim cancellation of any provision of these Terms, including this clause, unless reduced to writing and signed by a duly appointed director of the Supplier.
- 28.3 Unless otherwise expressly stipulated in these Terms, each Party contracts as a principal and not as an agent for any other person, disclosed or undisclosed.
- 28.4 Without prejudice to any other provision of these Terms, any successor-in-title, including any executor, heir, liquidator, business rescue practitioner, curator or trustee, of either Party shall be bound by these Terms.
- 28.5 The signature by either Party of a counterpart of these Terms shall be as effective as if that Party had signed the same document as the other Party.
- 28.6 Each provision of these Terms is, notwithstanding the grammatical relationship between that provision and the other provisions of these Terms, severable from the other provisions of these Terms. Any provision of these Terms which is or becomes invalid, unenforceable or unlawful in any jurisdiction shall, in such jurisdiction only, be treated as *pro non scripto* to the extent that it is so invalid, unenforceable or unlawful, without invalidating or affecting the remaining provisions of these Terms which shall remain of full force and effect. The Parties declare that it is their intention that these terms would be executed without such invalid, unenforceable or unlawful provision if they were aware of such invalidity, unenforceability or unlawfulness at the time of execution of these terms.
- 28.7 The use of any expression covering a process available under South African law (including, for example, a winding-up) shall, if any of the Parties is subject to the law of any other jurisdiction, be interpreted in relation to that Party as including any equivalent or analogous proceeding under the law of such other jurisdiction.
- 28.8 Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of these Terms.
- 28.9 References to a statute or a statutory provision include any subordinate legislation made from time to time under that statute or provision and include that statute or provision as modified or re-enacted from time to time.
- 28.10 Words importing any particular gender include the other genders (i.e. the masculine, feminine and neuter genders, as the case may be); the singular includes the plural and vice versa; and references to natural persons include legal persons and vice versa.
- 28.11 References 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.
- 28.12 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.
- 28.13 Where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last day shall be the next succeeding Business Day.
- 28.14 Where the day upon or by which any act is required to be performed is not a Business Day, the Parties shall be deemed to have intended such act to be performed upon or by the next succeeding Business Day.

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- 28.15 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 (i.e. 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.
- 28.16 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 (i.e. the *contra preferentum* rule), shall not apply.
- 28.17 Any relaxation or indulgence which the Supplier may show to the Customer shall not in any way prejudice any of the Supplier's rights under these Terms and more particularly no act of the Supplier in accepting payments after due date, or in accepting a lesser sum than the instalment or amount due, shall be construed as a waiver by the Supplier of any right under these Terms or otherwise in law.
- 28.18 Save as is expressly provided for in these Terms, no provision of these Terms constitute a stipulation for the benefit of a third party (i.e., a stipulatio alteri) which, if accepted by the third party, would bind any Party in favour of that third party.
- 28.19 Each of these Terms is severable, the one from the other and if any one or more clauses are found to be invalid or unenforceable, that clause, or clauses, shall not affect the remaining provisions of these Terms, which shall remain of full force and effect.
- 28.20 The Customer shall at all times be and has been free to secure independent legal advice as to the nature and of each provision of these Terms and the Customer confirms by purchasing the Products that it has either taken such independent legal advice or has dispensed with the necessity of doing so.
- 28.21 Each provision of these Terms are fair and reasonable in all the circumstances and shall be part of the overall intention of the Parties in connection with the transaction contemplated in these Terms.



SCHEDULE 1 – GUARANTEE

I, the undersigned,

With Identity Number: _____

Email Address: _____

Physical Address (*domicilium citandi et executandi*): _____

(herein referred to as the "**Guarantor**")

hereby guarantee and bind myself as guarantor, in favour of **Beckhoff Automation Pty Ltd**, with Registration Number **2006/018973/07** (the "**Supplier**") to make payment of any and all amounts due and payable by:

With Registration Number: _____

(herein referred to as the "**Customer**")

to the Supplier in terms of, or arising from, the Customer's engagement with the Supplier and any indebtedness of the Customer to the Supplier, as more fully set out herein ("**Guarantee**").

1 The Guarantor acknowledges having read the terms and conditions of sale concluded between the Customer and Supplier ("**Terms**") and agrees that both the Customer and the Guarantor (wherever applicable) are bound by them.

1.1 The Guarantor hereby binds himself, in favour of the Supplier, its successors in title and assignees, jointly and severally, as surety and co-principal debtor *in solidum* with the Customer, for the payment to the Supplier of any and all sums of money which the Customer may in terms of these Terms, or any other cause of action whatsoever, and from time to time hereafter, owe or be indebted to the Supplier for, arising from or in relation to the Terms and/or for the proper and timeous performance in all respects of all the Customer's obligations to the Supplier in accordance with the Terms ("**Principal Debt**").

1.2 The Guarantor's obligations in terms of this Guarantee are principal obligations and not accessory.

1.3 The Guarantor renounces the benefits of:



- 1.3.1 *excussion* (which means that the Guarantor is no longer entitled to claim that the Supplier first exhausts its remedies against the Customer before proceeding against the Guarantor in terms of this Guarantee; and
- 1.3.2 *division* (which means that the Guarantor is no longer entitled to claim that the obligations of the Guarantor be divided proportionately between the Guarantor and the Customer);
- 1.3.3 to the extent not prohibited by the National Credit Act No 34 of 2005, the legal exception of:
- 1.3.3.1 *non numeratae pecuniae*, which means that the Guarantor is no longer entitled to claim that no moneys or Products and/or Services were in fact paid over, supplied and/or provided to the Customer; and
- 1.3.3.2 *non causa debiti*, which means that the Guarantor is no longer entitled to claim that the Principal Debt for which the Guarantor undertook liability does not exist; and
- 1.3.3.3 *errore calculi*, which means that the Guarantor is no longer entitled to claim that the amount claimed has been incorrectly calculated; and
- 1.3.3.4 revision of accounts, which means that the Guarantor is no longer entitled to claim that the Supplier revises its accounts in respect of the Guarantor and/or the Customer's indebtedness; and
- 1.3.3.5 the Guarantor also renounces all other exceptions which might or could be pleaded in defence to the payment of the Guarantor's obligation or any part thereof, with the force and effect of which exceptions the Guarantor declares himself to be fully acquainted.
- 1.4 This Guarantee shall be in addition to and without prejudice to any other suretyship or security now held or hereafter to be held by the Supplier. and shall remain in force as a continuing security notwithstanding any partial or intermediate settlement of account by the Customer or on its behalf.
- 1.5 Notwithstanding any part payment by or on behalf of the Guarantor, the Guarantor shall have no right to any cession of action in respect of any such part payment and shall not be entitled to take any action against the Customer or against any other surety for the Customer in respect thereof unless and until the indebtedness of the Customer to the Supplier shall have been discharged in full.
- 1.6 In the event of the insolvency, business rescue or liquidation of the Customer, or any assignment or compromise in respect of the debts of the Customer, no dividends or payments which the Supplier may receive from the Customer or the Customer's trustee, business rescue practitioners or liquidator, shall prejudice the Supplier's right to recover from the Guarantor to the full extent of this Guarantee, any sum which, after receipt of such payments or dividends, may remain owing by the Customer, provided that this clause of this Guarantee shall in no way be construed as obliging the Supplier to excuse the Customer before proceeding against the Guarantor,



and any action by the Supplier under this clause may be taken without notification to the Guarantor and shall in no way affect, limit or prejudice the Guarantor's liability hereunder.

- 1.7 This Guarantee shall remain in force as a continuing security notwithstanding any partial or intermediate settlement of any other amounts due and owing from time to time by the Guarantor and/or the Customer to the Supplier.
- 1.8 The Guarantor states that this Guarantee is not a waiver of any of its present and/or past obligations to the Supplier.
- 1.9 This Guarantee is irrevocable and shall not be capable of alteration, amendment, variation, rescission or cancellation.
- 1.10 The Guarantor confirms their agreement and consent herewith for the Supplier's entitlement at any time to communicate with any person to obtain and provide any information relating to the Guarantor's payment behaviour, credit worthiness or defaults, and that such information may be disclosed to any other person.
- 1.11 A certificate furnished by any manager or director of the Supplier (whose appointment and/or authority need not be proved by the Supplier) setting out the amount due, owing and payable in terms of or arising in terms of this Guarantee, shall be *prima facie* proof of the contents and correctness thereof and of the Supplier's claims against the Guarantor and of the amount of such claims for the purposes of provisional sentence or summary judgement or any other proceedings against the Guarantor in respect of such claims, and shall be valid as a liquid document.
- 1.12 The Guarantor agrees that any legal action and/or legal proceedings that may arise out of this Guarantee may be instituted against the Guarantor in any Magistrate's Court having jurisdiction over this Guarantee and that, notwithstanding that the action or proceedings may be beyond the ordinary jurisdiction of the Magistrate's Court, this clause constitutes a consent in writing in terms of section 45(1) of the Magistrate's Court Act, No. 32 of 1944, as amended (then of any statutory amendment thereto or substitution thereof) ("**the Act**") by the Guarantor, to the jurisdiction of the Magistrate's Court.
- 1.13 The Guarantor acknowledges that on the occurrence of an event that results in the entire amount due to the Supplier becoming due and payable to the Supplier in terms of this Guarantee, the Supplier shall be entitled to proceed for the recovery of the full amount then owing, together with any and all with any and all interest thereon, and legal costs on the attorney and own client scale (inclusive of any collection commission, disbursement charges and/or other charges) that are incurred in the recovery of the outstanding amount and/or enforcement



of the Supplier's rights herein, without further notice to the Guarantor, in terms of this Guarantee, and to proceed to obtain judgment, and the Guarantor hereby consents to judgment being taken against it in terms of sections 57 and/or 58 of the Act.

- 1.14 Should the Guarantor fail to promptly fulfil any of its obligations arising from this Guarantee, then the Supplier shall immediately be entitled to apply for judgment on the basis of this Guarantee and/or on the basis of any other underlying cause of action.
- 1.15 Unless inconsistent with, or otherwise indicated by the context, any capitalised term not defined herein shall be a reference to the term as defined in the Terms, and in the event of any conflict between the provisions of this Guarantee and the provisions of the Terms, the provisions in this Guarantee shall take precedence over the provisions of the Terms, respectively, only to the extent of such conflict.
- 1.16 The provisions of clause 21 of the Terms shall apply *mutatis mutandis* to proof of the Supplier's claims against the Guarantor.

This Guarantee is signed by the Guarantor at the place and on the date reflected beneath their signature, or those of their duly authorised representative, and the person signing for and on behalf of the Guarantor warrants that they are the Guarantor's duly authorised representative and that they have the requisite authority to so sign for and on behalf of and to bind the Guarantor in concluding this Guarantee, and to the terms and conditions thereof.

The Guarantor

Full Names:

Identity Number:

Date: