



weighing, control and process management

TERMS AND CONDITIONS OF SALE

PROMTEK AFRICA (PTY) LTD

TERMS AND CONDITIONS (Promtek Africa (Pty) Limited Software Licence and Hardware Sale Agreement, July 2017)

The most up-to-date copy of our Terms and Conditions of Sale are available on our website:
<http://www.promtek.com/about-us/terms-and-conditions/>

1 Definitions

1.1 In this agreement unless the context otherwise requires:

"Acceptance Date" means the date upon which the Equipment is accepted by the Customer (deemed or actual) in accordance with clause 4 below

"Bespoke Software" means bespoke amendments to Standard Software supplied by Promtek Africa (Pty) Ltd or bespoke software products developed by Promtek Africa (Pty) Ltd but does not include Third Party Software

"Delivery Date" means the estimated date for the delivery of the Products set out in the Proposal

"Documentation" means the manuals and other items of documentation supplied with the Products or in connection with the Services

"Equipment" means the items of hardware (excluding Software and Third Party Software) supplied by Promtek Africa (Pty) Ltd to the Customer under this Agreement

"Licensed Computer" means the computer(s) or equipment configuration on which the Software is first used

"Place(s) Of Use" means that part of the Customer's premises at the Site(s) where the Equipment is to be installed and operated

"Products" means Equipment, Software, Third Party Software and related documentation or other products furnished under this Agreement

"Purchase Price" means the aggregate price of the Products and Services set out in the Proposal

"Services" means the provision of services in respect of commissioning, training and support as set out in the Proposal

"Site" means the address for delivery of the Products and Services specified by the Customer and set out in the Proposal

"Software" means Standard Software and Bespoke Software

"Software Licence" means the licence to use the Software referred to in clause 8

"Standard Software" means Promtek Africa (Pty) Ltd standard software products (including databases and diagnostics) produced and supplied by Promtek Africa (Pty) Ltd but does not include Third Party Software

"Third Party Software" means third party software products including but not limited to databases and operating systems and whether licensed directly to the Customer by a third party or sub-licensed by Promtek Africa (Pty) Ltd

2 Quotations and Acceptance

2.1 Quotations are valid for 60 days unless otherwise stated and represent no obligation until the Seller accepts the Purchaser's order.

2.2 Unless otherwise amended in writing by a director of the Company these conditions of Sale will apply.

2.3 The Buyer may cancel or suspend an order only with our written consent and agreement to terms, which will indemnify us against any expenses incurred. There will in any case be a 15% cancellation charge, which will be added to any expense incurred. On no account can cancellation be accepted for items ordered specially on a Customer's behalf.

2.4 In the event that a part payment is invoiced and not received, the entire balance of the supply shall become invoiceable and due.

3 Purchase price and Payment

3.1 The Purchase Price shall be the price set out in the Proposal and shall not include:

3.1.1 any special delivery costs properly incurred by Promtek Africa (Pty) Ltd in respect of cranes or hoists which costs shall be separately invoiced to the Customer and shall be payable (together with value added tax thereon) in accordance with the provisions of clause 3.2 below; and

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- 3.1.2 value added tax or any import duties or other taxes which may be imposed and which shall be payable by the Customer in the manner and at the rate from time to time prescribed by law; and
- 3.1.3 any cabling, Hardware installation or communications hardware within each Place of Use and linking the Customer's Places of Use
- 3.2 Unless otherwise specified in the Proposal the Customer shall pay the Purchase Price on execution of the Order Acceptance Form.
- 3.3 Promtek Africa (Pty) Ltd reserves the right to demand compensation and charge the Customer interest in respect of the late payment of any sum due under this agreement (as well after as before judgment) under the terms of the **Prescribed Rate of Interest Act 55 of 1975**. (See http://www.saflii.org/za/legis/consol_act/proia1975271/ for more details.)

4 Delivery

- 4.1 Promtek Africa (Pty) Ltd shall use all reasonable endeavours to deliver the Products and Services to the Place of Use on the Delivery Date or as soon thereafter as is reasonably practicable.
- 4.2 At delivery the Customer shall make available to Promtek Africa (Pty) Ltd free of charge such labour and equipment as Promtek Africa (Pty) Ltd shall reasonably require to perform its duties hereunder. Any requirements will be discussed and agreed prior to delivery.

5 Installation and acceptance

- 5.1 Installation is defined as the physical installation of Equipment at the Place of Use and/or the loading of Software or Third Party Software on the Licensed Computer or if the Products are put into substantial operational use by the Customer.
- 5.2 Installation of each Product shall be deemed complete once written notice thereof is provided by the Customer, which may not be unreasonably withheld.
- 5.3 In default the Customer shall be deemed to accept the Equipment upon the date that Promtek Africa (Pty) Ltd delivered the Equipment or Software.

6 Title to and risk in the Products

- 6.1 Title to the Products shall not pass to the Customer until the date that the Purchase Price (and any special costs payable pursuant to clause 3.1 above) and value added tax thereon have been paid in full to Promtek Africa (Pty) Ltd (the "Payment Date").
- 6.2 Until the Payment Date the Customer shall not be entitled to sell transfer lease charge assign by way of security or otherwise deal in or encumber the Products and in respect of the Products the relationship between Promtek Africa (Pty) Ltd and the Customer shall be a fiduciary one.
- 6.3 If either:
- 6.3.1 the Customer fails to effect payment in full of all sums due hereunder by the Payment Date; or
- 6.3.2 prior to the Payment Date the Customer convenes a meeting of its creditors or a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 24 of 1936 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) the Customer's creditors or if the Customer is unable to pay its debts within the meaning of the Insolvency Act 24 of 1936 or if a trustee receiver administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the Customer or if a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the Customer or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction) then Promtek Africa (Pty) Ltd (without prejudice to any other legal remedies it may have) shall at any time thereafter be entitled to enter upon the Place of Use (without notice to the Customer) and remove the Equipment.
- 6.4 Risk in the Products shall pass to the Customer upon delivery.

7 Warranty in respect of the Equipment

- 7.1 Promtek Africa (Pty) Ltd shall warrant the Equipment. The manufacturer of the Equipment may have given a guarantee or warranties to Promtek Africa (Pty) Ltd. The Customer shall only be entitled to such benefits as Promtek Africa (Pty) Ltd may receive under any guarantee or warranties given by the manufacturer of the Equipment and Promtek Africa (Pty) Ltd hereby assigns (to the extent that it is able so to do) the benefits of all such guarantees or warranties. Promtek Africa (Pty) Ltd will use reasonable endeavours to repair or replace, or procure the repair or replacement of, defective Equipment under the guarantee or warranties (if any) given to Promtek Africa (Pty) Ltd during the guarantee or warranty period (if any).
- 7.2 The warranty period and start date for Equipment (if applicable) will be specified in the Proposal.

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- 7.3 The obligations of Promtek Africa (Pty) Ltd under clause 7.1 above shall be discharged between the hours of 9 am to 4.00 pm Monday to Friday (bank and other public holidays excepted).
- 7.4 Any Equipment or component parts of the Equipment replaced by Promtek Africa (Pty) Ltd pursuant to 7.1 above ("Replaced Equipment") shall upon replacement become the property of Promtek Africa (Pty) Ltd and the Customer warrants that its title to such Replaced Equipment shall be free and unencumbered or that it shall have all necessary consents and authorities to part with possession of the Replaced Equipment.
- 7.5 Subject to the foregoing all conditions warranties terms and undertakings express or implied statutory or otherwise in respect of the Equipment and the provision of the Services are hereby excluded.

8 Software Licence

- 8.1 Promtek Africa (Pty) Ltd transfers no title to or ownership in any Software to the Customer or to any third party. Software and all related documentation provided to the Customer remain the property of Promtek Africa (Pty) Ltd. Except as explicitly set forth in this Agreement, the Customer shall not use or copy Software in any way.
- 8.2 Neither Software, Software Licences nor Documentation supplied in respect of Software may be transferred or otherwise made available to third parties without the express written consent of Promtek Africa (Pty) Ltd. Such consent shall not be unreasonably withheld in the case of the transfer to any successor in title of the Customer, including any firm or company which merges with or takes over the Customer, save where in the opinion of Promtek Africa (Pty) Ltd such successor in title is a competitor of Promtek Africa (Pty) Ltd. The Customer may however make Software and Documentation in respect of Software available to its employees, partners and consultants to the extent necessary to enable the Customer to exercise its licence rights as defined below.
- 8.3 Software may be used by the Customer only upon grant of a licence by Promtek Africa (Pty) Ltd. A personal, non-exclusive licence to use the Software in accordance with the provisions of this Agreement is granted by Promtek Africa (Pty) Ltd upon installation of the Software. The right to use is a right only to execute and load, copy or transmit to the extent necessary for such execution.
- 8.4 Except for use on a temporary basis on another single computer or equipment configuration during malfunction of the Licensed Computer, Software may be used only on the Licensed Computer.
- 8.5 A Software Licence may be transferred without charge to a different computer owned by the Customer provided Promtek Africa (Pty) Ltd approves the transfer in writing; such approval shall not be unreasonably withheld or delayed. Any consultancy services in connection with the transfer will be provided by Promtek Africa (Pty) Ltd at its then-current daily rates.
- 8.6 Copies of Software licensed to the Customer may be made only:
- 8.6.1 for use on the Licensed Computer for back-up and/or security purposes; or
- 8.6.2 where Promtek Africa (Pty) Ltd has granted an additional Software Licence to use such copy on another computer
- 8.7 The Customer shall not without Promtek Africa (Pty) Ltd's prior written permission modify the Software or merge it with other software.
- 8.8 The Customer shall not decompile reverse assemble, analyse or otherwise examine Software (including any hardware or firmware implementation of Software) (except insofar as the Customer is permitted so to do under Section 50B of the Copyright, Designs & Patents Act 1988).
- 8.9 Promtek Africa (Pty) Ltd may terminate any Software Licence if the Customer is in material breach of any condition in this clause 8 and fails to remedy such breach within thirty (30) days of sending of a letter or fax to the Customer informing the Customer of such breach.
- 8.9.1 In the event of termination under this clause 8.9, the Customer will (a) destroy (or at Promtek Africa (Pty) Ltd's option return) all Software, including any parts and copies of Software previously covered by the terminated Software Licence and all Documentation relating to the Software, (b) delete all relevant executable files from the Customer's computer system and all relevant data files and (c) certify in writing to Promtek Africa (Pty) Ltd that such destruction, deletion or return (as appropriate) has taken place.
- 8.10 The Customer shall comply with the separate licence terms and conditions applicable to Third Party Software, details of which will be provided at the time of purchase.
- 8.11 Where licence terms are packaged with Third Party Software media, the Customer will be licensed to use such Third Party Software under the packaged licence terms of the third party licensor (often referred to as a "shrink-wrapped" licence).

9 Warranty in respect of Software

- 9.1 Promtek Africa (Pty) Ltd warrants that:-

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- 9.1.1 its title to and property in the Software is free and unencumbered and that it has the right, power and authority to license the same upon the terms and conditions of this agreement;
- 9.1.2 it will perform the Services with reasonable care and skill;
- 9.2 Promtek Africa (Pty) Ltd does not warrant that the Software will be fit for any particular purpose or that the operating of Software shall be uninterrupted or error free.
- 9.3 Promtek Africa (Pty) Ltd does not warrant the form or content of Third Party Software which is supplied "as is". Third Party Software may be warranted directly to the Customer by the respective licensor as specified in the licence from the respective licensor provided with the Third Party Software
- 9.4 Except for the express warranties stated above, Promtek Africa (Pty) Ltd disclaims all other warranties, conditions or other terms, whether express or implied in law, oral or in writing, including, without limitation, warranties or conditions of quality and fitness for a particular purpose.

10 Safety Compliance


- 10.1 This Contract excludes all costs for site test and consequent modifications.
- 10.2 The Customer agrees to advise details including drawings and specifications of all safety circuits or safety critical equipment affected by our work on site.
- 10.3 Promtek Africa (Pty) Ltd requires the Customer to re-test all such functions and equipment and to notify Promtek Africa (Pty) Ltd of the results and document the tests carried out.
- 10.4 The Customer agrees to carry out such tests and documentation.
- 10.5 Promtek Africa (Pty) Ltd will attend and assist in such tests if required.
- 10.6 These tests are to comply with Occupational Health and Safety Act 1993, Electrical Machinery Regulations 1988 and Electrical Installation Regulations 2003.

11 Limitation of liability

- 11.1 The following provisions set out Promtek Africa (Pty) Ltd's entire liability (including any liability for the acts and omissions of its employees agents and sub-contractors) to the Customer in respect of:
- 11.1.1 any breach of its contractual obligations arising under this agreement; and
- 11.1.2 any representation statement or delictual act or omission including negligence arising under or in connection with this agreement AND THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE 11.
- 11.2 Any act or omission on the part of the Promtek Africa (Pty) Ltd or its employees agents or sub-contractors falling within clause 11.1 above shall for the purposes of this clause 11 be known as an "Event of Default".
- 11.3 Promtek Africa (Pty) Ltd's liability to the Customer for:
- 11.3.1 death or injury resulting from its own or that of its employees' agents' or subcontractors' negligence; and
- 11.3.2 damage suffered by the Customer as a result of any other liability which Promtek Africa (Pty) Ltd is prohibited from excluding by law shall not be limited.
- 11.4 Subject to the provisions clauses 11.5 below and 11.6 below Promtek Africa (Pty) Ltd shall accept liability to the Customer in respect of damage to the tangible property of the Customer resulting from the negligence of Promtek Africa (Pty) Ltd or its employees agents and sub-contractors.
- 11.5 Promtek Africa (Pty) Ltd shall not accept liability to the Customer in respect of damage to the Customer's property where such damage:-
- 11.5.1 is a result of its improper use, (other than by Promtek Africa (Pty) Ltd) or the operation of the Equipment or Software or Third Party Software outside the appropriate environmental conditions or those environmental conditions contained in the Proposal; or
- 11.5.2 is a result of Force Majeure or any incident or cause beyond the control of Promtek Africa (Pty) Ltd which occurs after delivery including but not limited to fire, flood and any attempt by the Customer or a third party to repair Equipment or Software or Third Party Software;

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- 11.5.3 is a result of repairs, adjustments, alterations or modifications made by any party other than Promtek Africa (Pty) Ltd or its authorised agents or authorised sub-contractors.
- 11.6 Subject to the provisions of clause 11.2 above Promtek Africa (Pty) Ltd's entire liability in respect of any Event of Default shall be limited to damages of an amount equal to the lower of the purchase price of the component(s) affected by the Event of Default and the total purchase price of the Products.
- 11.7 Subject to clause 11.2 above Promtek Africa (Pty) Ltd shall not be liable to the Customer in respect of any Event of Default for loss of profits goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or Promtek Africa (Pty) Ltd had been advised of the possibility of the Customer incurring the same.
- 11.8 If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this agreement.
- 11.9 The Customer hereby agrees to afford Promtek Africa (Pty) Ltd 7 days in which to remedy any Event of Default hereunder, unless otherwise agreed in writing.
- 11.10 Except in the case of an Event of Default arising under clause 11.2 above Promtek Africa (Pty) Ltd shall have no liability to the Customer in respect of any Event of Default unless the Customer shall have served notice of the same upon Promtek Africa (Pty) Ltd within 6 months of the date it became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become so aware.
- 11.11 Nothing in this clause 11 shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.

12 Technical Support

- 12.1 With effect from the Acceptance Date and for the duration of agreement Promtek Africa (Pty) Ltd shall provide such category of Technical Support as shall be indicated in the Proposal.
- 12.2 The Customer shall supply in writing if required to Promtek Africa (Pty) Ltd a detailed description of any fault requiring Technical Support and the circumstances in which it arose forthwith upon becoming aware of the same.
- 12.3 The Response time for Technical Support shall be between the hours of 9 am and 4.00 pm Monday through Friday (excluding bank and other public holidays). Promtek Africa (Pty) Ltd shall use its reasonable endeavours to by the next working day
- 12.4 Technical Support shall not include the diagnosis and rectification of any fault resulting from:
- 12.4.1 the improper use operation or neglect of the Products or any of them;
 - 12.4.2 the modification of the Products or the merger (in whole or in part) of the Software or Third Party Software with any other software;
 - 12.4.3 the use of the Software or the Third Party Software on equipment other than the Equipment;
 - 12.4.4 the failure by the Customer to implement recommendations in respect of or solutions to faults previously advised by Promtek Africa (Pty) Ltd;
 - 12.4.5 any repair adjustment alteration or modification of the Software by any person other than Promtek Africa (Pty) Ltd without Promtek Africa (Pty) Ltd's prior written consent;
 - 12.4.6 any breach by the Customer of any of its obligations under any maintenance agreement in respect of the Equipment;
 - 12.4.7 the use of the Software for a purpose for which it was not designed.
- 12.5 Promtek Africa (Pty) Ltd shall upon request by the Licensee provide Technical Support notwithstanding that the fault results from any of the circumstances described in clause 12.4 above. Promtek Africa (Pty) Ltd shall in such circumstances be entitled to levy additional charges in the manner set out in clause 12.7 below. Any additional charges that may be levied must be agreed by both parties before the services or goods are delivered.
- 12.6 Without prejudice to clause 12.5 above Promtek Africa (Pty) Ltd shall be entitled to levy reasonable additional charges in the manner set out in clause 12.7 below if Technical Support is provided in circumstances where any reasonably skilled and competent data processing operator would have judged the Customer's request to have been unnecessary.
- 12.7 Additional charges shall be levied by the Customer monthly in arrears and shall be payable by the Customer (together with value added tax thereon) within 30 days of receipt of an invoice therefor.

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13 Patent and copyright indemnity

- 13.1 Promtek Africa (Pty) Ltd will indemnify and hold harmless the Customer against any damages (including costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the normal operation possession or use of the Equipment and/or the Documentation by the Customer infringes the patent copyright registered design or trade mark rights of the said third party (an "Intellectual Property Infringement") provided that the Customer:
- 13.1.1 gives notice to Promtek Africa (Pty) Ltd of any Intellectual Property Infringement forthwith upon becoming aware of the same;
 - 13.1.2 gives Promtek Africa (Pty) Ltd the sole conduct of the defence to any claim or action in respect of an Intellectual Property Infringement and does not at any time admit liability or otherwise attempt to settle or compromise the said claim or action except upon the express instructions of Promtek Africa (Pty) Ltd; and
 - 13.1.3 acts in accordance with the reasonable instructions of Promtek Africa (Pty) Ltd and gives to Promtek Africa (Pty) Ltd such assistance as it shall reasonably require in respect of the conduct of the said defence including without prejudice to the generality of the foregoing the filing of all pleadings and other court process and the provision of all relevant documents.
- 13.2 Promtek Africa (Pty) Ltd shall have no liability to indemnify the Customer in respect of an Intellectual Property Infringement if the same results from:
- 13.2.1 any unauthorised alteration modification or adjustment to the Equipment or Documentation without the prior consent of Promtek Africa (Pty) Ltd; or
 - 13.2.2 the combination connection operation or use of the Equipment or (as appropriate) the Documentation with any other equipment or documentation not supplied by Promtek Africa (Pty) Ltd.
- 13.3 In the event of an Intellectual Property Infringement Promtek Africa (Pty) Ltd shall be entitled at its own expense and option either to:
- 13.3.1 procure the right for the Customer to continue using the Equipment and Documentation; or
 - 13.3.2 make such alterations modifications or adjustments to the Equipment or Documentation that they become non-infringing without incurring a material diminution in performance or function; or
 - 13.3.3 replace the Equipment or Documentation with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function.

14 Training

- 14.1 Any reasonable additional training services required by the Customer shall be provided by Promtek Africa (Pty) Ltd subject to the payment by the Customer of its charges. Such charges shall be calculated upon a time and materials basis at Promtek Africa (Pty) Ltd's then prevailing rates.

15 Documentation

- 15.1 The Documentation provided by Promtek Africa (Pty) Ltd to the Customer hereunder is the copyright of Promtek Africa (Pty) Ltd and contains confidential information of Promtek Africa (Pty) Ltd.
- 15.2 The Customer shall take all such steps as shall be necessary to protect Promtek Africa (Pty) Ltd's copyright and confidential information in the Documentation and without prejudice to the generality of the foregoing shall not copy or reproduce the same nor distribute sell or disclose the contents of the same to any third party without the prior consent of Promtek Africa (Pty) Ltd.
- 15.3 The Customer undertakes to Promtek Africa (Pty) Ltd to make its employees agents and sub-contractors aware of the provisions of this clause 15 and to use its best endeavours to ensure compliance by its said employees agents and sub-contractors with the obligations set out in clause 15.2 above.

16 Telecommunications

- 16.1 If the Customer intends to attach the Equipment to any telecommunications or other network (the "Network") the Customer shall be responsible for:
- 16.1.1 where necessary obtaining the consent of the owner of the Network (the "Owner") for the connection of the Equipment to the Network;
 - 16.1.2 purchasing and installing all equipment necessary to make the said connection to the Network;
 - 16.1.3 paying all charges from time to time levied by the Owner for connection to the Network; and

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16.1.4 at all times complying with such technical and other regulations that the Owner shall impose as a condition of connection to the Network.

16.2 Promtek Africa (Pty) Ltd shall not be liable for any loss or damage resulting from the acts or omissions of the Owner or the breach by the Customer of its obligations under clause 15.1 above.

17 Access to the place of use

17.1 The Customer shall allow Promtek Africa (Pty) Ltd including its employees agents and sub-contractors such reasonable access to the Place of Use as it shall from time to time require to perform its obligations under this agreement.

18 Termination

18.1 This agreement may be terminated:

18.1.1 forthwith by Promtek Africa (Pty) Ltd if the Customer fails to pay any sum due hereunder within 21 days of the due date therefor;

18.1.2 forthwith by either party if the other commits any material breach of any term of this agreement (other than one falling within 18.1.1 above) and which (in the case of a breach capable of being remedied) shall not have been remedied within 30 days of a written request to remedy the same; and

18.1.3 forthwith by Promtek Africa (Pty) Ltd if the Customer shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee receiver administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other party or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).

18.2 Any termination of this agreement pursuant to this clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

19 Confidentiality

19.1 Each of the parties hereto undertakes to the other to keep confidential all information (written or oral) concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to or the entering into of this agreement save that which is:

19.1.1 trivial or obvious;

19.1.2 already in its possession other than as a result of a breach of this clause; or

19.1.3 in the public domain other than as a result of a breach of this clause.

19.2 Each of the parties undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of clause 19.1 above by its employees agents and sub-contractors.

20 Force majeure

20.1 Neither party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to fires strikes (of its own or other employees) insurrection or riots embargoes container shortages wrecks or delays in transportation inability to obtain supplies and raw materials requirements or regulations of any civil or military authority (an "Event of Force Majeure").

20.2 Each of the parties hereto agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

20.3 If a default due to an Event of Force Majeure shall continue for more than 4 weeks then the party not in default shall be entitled to terminate this agreement. Neither party shall have any liability to the other in respect of the termination of this agreement as a result of an Event of Force Majeure.

21 Waiver

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21.1 The waiver by either party of a breach or default of any of the provisions of this agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

22 Notices

22.1 Any notice request instruction or other document to be given hereunder shall be delivered or sent by first class post or by facsimile transmission (such facsimile transmission notice to be confirmed by letter posted within 12 hours) to the address or to the facsimile number of the other party set out in this agreement (or such other address or numbers as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery (if sent by post) upon the expiration of 48 hours after posting and (if sent by facsimile transmission) upon the expiration of 12 hours after dispatch.

23 Invalidity and severability

23.1 If any provision of this agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

24 Entire agreement

24.1 Neither Promtek Africa (Pty) Ltd nor the Customer shall be liable to any party for loss arising from or in connection with any representations agreements statements or undertakings made prior to the date of execution of this agreement other than those representations agreements statements and undertakings confirmed by a duly authorised representative of Promtek Africa (Pty) Ltd or the Customer in writing or expressly incorporated or referred to in this agreement.

25 Successors

25.1 This agreement shall be binding upon and enure for the benefit of the successors in title of the parties hereto.

26 Assignment

26.1 Neither party shall be entitled to assign this agreement nor all or any of their rights and obligations hereunder without the prior written consent of the other.

27 VAT

27.1 Save insofar as otherwise expressly provided all amounts stated in this agreement are expressed exclusive of value added tax and any value added tax arising in respect of any supply made hereunder shall on the issue of a valid tax invoice in respect of the same be paid to the party making such supply by the party to whom it is made in addition to any other consideration payable therefor.

28 Headings

28.1 Headings to clauses in this agreement are for the purpose of information and identification only and shall not be construed as forming part of this agreement.

29 Law

29.1 This agreement shall be governed by and construed in accordance with South African law and the parties hereto agree to submit to the non-exclusive jurisdiction of the South African courts.

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