

GENERAL TERMS AND CONDITIONS OF PURCHASE (“FREUDENBERG’S T&C’S” or “T&C’S”)

07.2017

1. DEFINITIONS AND INTERPRETATION

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

- 1.1 **“Supplier”** shall mean any natural person, juristic person including, without limitation, a company or firm, from whom an order is placed by Freudenberg in terms of these T&C’s;
- 1.2 **“Freudenberg”** shall mean Freudenberg Filtration Technologies (Pty) Ltd with registration number: 2008/026284/07;
- 1.3 **“Goods”** shall mean any Goods/Services purchased by Freudenberg from the supplier in terms of these T&C’s;
- 1.4 **“Purchase Price”** or **“Price”** shall mean the agreed Purchase Price of the Goods;
- 1.5 **“Order”** shall mean a written order placed by Freudenberg;
- 1.6 **“Party”** or **“Parties”** shall mean Freudenberg and the Supplier in reference to any one of them separately or when referring to them jointly;
- 1.7 **“T&C’s”** shall mean Freudenberg’s T&C’s, being these terms and conditions as contained in this document or Agreement and / or any transaction entered into between the Parties;
- 1.8 In this Agreement, unless clearly inconsistent with or otherwise indicated by the context:
 - 1.8.1 The meaning of words so indicated with “ “ or with the use of capital letters shall be so interpreted as indicated herein, except in a context indicating that some other meaning is intended;
 - 1.8.2 any reference to the singular (including in the expressions defined in 1 includes the plural and vice versa, any reference to natural persons includes legal persons (corporate or unincorporated) and *vice versa* and any reference to a gender includes the other genders;
 - 1.8.3 headings and the use of bold typeface are to be ignored;
 - 1.8.4 references to any enactment shall include references to such enactment as it may, after the Signature Date, from time to time be amended, supplemented or re-enacted;
 - 1.8.5 any reference to a number of days shall be a reference to calendar days, unless it is specifically stated that such reference is a reference to Business Days;
 - 1.8.6 when a number of days is prescribed, the days shall be reckoned exclusively of the first day and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday in which case the last day shall be the next succeeding Business Day;

- 1.8.7 a reference to any Agreement or other document (including this Agreement) shall include references to such Agreements and documents as they may, after the Signature Date, be amended;
- 1.8.8 where appropriate, meanings ascribed to defined words and expressions in clause 1, shall impose substantive obligations on the Parties;
- 1.8.9 a reference to a recital, clause, sub-clause, paragraph, sub-paragraph, schedule or appendix is, unless indicated to the contrary, a reference to a recital, clause, sub-clause, paragraph, sub-paragraph, schedule or appendix of this Agreement;
- 1.8.10 where any term is defined within the context of any particular clause or sub-clause, the term so defined shall, unless it appears clearly from such clause or sub-clause that such term has limited application to the relevant clause or sub-clause only, bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that such term has not been defined in clause 1;
- 1.8.11 the words "**material**" and "**materially**" mean, when used as an adjective in conjunction with an event, condition, circumstance, effect or other item, that there is a substantial likelihood that a reasonable expert would attach importance to the event, condition, circumstance, effect or item in evaluating the Party to which it relates and/or the event, condition, circumstance, effect or item contemplated in this Agreement;
- 1.8.12 where this Agreement requires a Party to use its "**Best Endeavours**" in relation to an act or omission, that Party shall do all such things as are or may be necessary or desirable so as to achieve that act or to omit taking an action, until the Parties agree that it is not reasonable to take the action or to omit taking an action;
- 1.8.13 in the interpretation of this Agreement, the *contra proferentum* rule of interpretation shall not apply (this Agreement being the product of negotiations between the Parties), nor shall this Agreement be construed in favour of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement;
- 1.8.14 the use of the words "**include**", "**including**" and "**in particular**" in this Agreement followed by a specific example or examples shall not be construed or interpreted as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording and/or such specific example or examples and the words "**other**" or "**otherwise**" shall not be construed *eiusdem generis* with any preceding words where a wider construction is possible;
- 1.8.15 the expiry or termination of this Agreement shall not affect such provisions as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

2. SCOPE

- 2.1 These Terms and Conditions of Purchase apply exclusively between entrepreneurs, towards legal persons under public law or special funds under public law in terms of to all orders placed and contracts concluded by us. Any conditions set by our suppliers that are deviating from or are supplementary to these Terms and Conditions of Purchase will not be accepted and shall not be binding for us. These Terms and Conditions of Purchase shall also be exclusively valid if we do not object to the incorporation of our Supplier's conditions in a particular case or if, in recognition of contrary or supplementary terms and conditions by the supplier, we accept his delivery without reservation.
- 2.2 These Terms and Conditions of Purchase also apply to all future business relations with the supplier, even if not explicitly and separately stipulated.
- 2.3 If any one clause of these Terms and Conditions of Purchase is or becomes invalid or unenforceable, the validity of the remaining stipulations shall not be affected. In such case the invalid or unenforceable provisions shall be replaced by lawful provisions coming as close as possible to the purpose pursued by the invalid or unenforceable provisions.

3. COMPLETION OF CONTRACT

- 3.1 Any agreement with the Supplier and all orders shall be considered binding for us only if they are set down in writing. Any modification, addition or subsidiary agreement before, at or after the conclusion of the contract also requires our written consent. The writing requirement may only be waived in written form. Fax, email or remote data transmissions shall be tantamount to written form.
- 3.2 Once Freudenberg places a Purchase Order with the Supplier in writing it constitutes a legally binding agreement of Purchase and shall thereafter continue to so constitute in one indivisible transaction, If the supplier does not accept our order within two weeks of receipt in writing, we shall be entitled to revoke the order. Delivery on call shall be binding unless the supplier objects within three (3) working days of receipt. Any deviation from, modification of or supplement to our orders shall only be effective if explicitly and separately indicated as deviation, modification or supplement and expressly approved by us.

4. PRICES AND PAYMENT

- 4.1 Prices specified in the order are fixed prices. Prices include "free delivery" as well as any packaging, transport, insurance and other costs of delivery, unless stipulated otherwise in writing. VAT must be shown separately, otherwise it will be deemed to be included in the price.
- 4.2 In case the Supplier is responsible for erection, assembly and/or commissioning and no other provisions have been agreed upon in writing, the Supplier shall bear all necessary costs, such as travel expenses and provision of tools.

- 4.3 Invoices will be processed only if we receive them by separate email. Each order must be invoiced separately. Invoices must include the order number specified in our order, order date, supplier number and our item number, all highlighted for easy readability.
- 4.4 Invoices must be made out in the currency specific to the country from which the goods are being purchased and payments will be made only in this currency.
- 4.5 Unless otherwise specified in this agreement, payments will be made 30 (thirty) days after the end of the calendar month in which the Supplier has supplied the goods and or Services to Freudenberg. The Supplier is to provide Freudenberg with a valid tax invoice and monthly statement. If the Supplier does not submit a valid tax invoice showing the Freudenberg Purchase Order number and Supplier's V.A.T. number, as well as supply the statement to Freudenberg, the Supplier will not be paid.
- 4.6 The Supplier shall not be entitled to assign or otherwise dispose of his claims wholly or partly against us without our prior written consent.
- 4.7 We shall be entitled to claim statutory setoff and retention rights.

5. DELIVERY AND DELIVERY TIME

- 5.1 Delivery dates specified in the order or otherwise agreed upon are binding and must be strictly met. The Supplier shall promptly notify us in writing of emerging delays in meeting delivery dates and deadlines, explaining the reasons for the delay and specifying how long they are expected to prevail.
- 5.2 Deliveries by instalments and premature deliveries shall be allowed only with our express consent. Payment claims, however, shall be due no earlier than on the delivery date originally agreed upon.
- 5.3 Unless otherwise agreed upon, deliveries must be accompanied by a delivery note and a works test certificate according to EN 10204 or any other equivalent internationally recognized test certificate specifying the details as mutually agreed upon with the supplier. A test report (Certificate of Analysis or Certificate of Conformance) must be furnished with all deliveries where relevant.
- 5.4 On-site deliveries are only possible at previously arranged times.
- 5.5 Acts of God that render a delivery by our supplier or the acceptance or use of delivery in our or at our Supplier's business impossible or substantially more difficult shall postpone our acceptance duty, as is appropriate with respect to our actual demand. In cases of Acts of God concerning us or our supplier we shall also have the choice to wholly or partly cancel the contract.

6. PLACE OF PERFORMANCE, ACQUISITION OF OWNERSHIP

- 6.1 The place to which, according to the order, the goods have to be delivered or where the service is to be performed shall be the place of performance. Place of performance for our payment's is our registered office.

- 6.2 On Supplier's account and at Supplier's risk the delivery shall be properly packed and made, free "place of delivery", to the address named by us and/or performed there. The risk of accidental perishing or accidental deterioration of delivery will pass on to us only with receipt of delivery by us or by a forwarding agent appointed by us at the place of performance or after final acceptance of the delivery, whichever comes later, even if we have agreed to pay the freight charges. Freudenberg becomes the owner of the goods purchased in terms of an order on the earlier date when it makes any payment for them or on the date on which the Suppliers delivers them to Freudenberg. Until the Supplier delivers to Freudenberg goods ordered by Freudenberg, the Supplier bears any and all risk in and to these goods and the Supplier is responsible for any loss of or damage to or caused by, them. The Supplier hereby waives any reservation of ownership, lien and any other right to retain possession of any of the goods which the Supplier may to acquire in terms of the Agreement.

7. LIABILITY FOR DEFECTS AND OTHER LIABILITY

- 7.1 Freudenberg will inspect the delivered goods on the basis of accompanying documents only for identity and quantity as well as for visible transport damage and will notify the supplier about defects of the delivery once discovered in the ordinary course of our business within an appropriate time of at least 14 working days after the defect has been detected. If Freudenberg complies with the aforesaid, the Supplier hereby waives his right to object to the notification of defects on grounds of delay pursuant.
- 7.2 Unless stipulated otherwise in this paragraph, the Supplier shall be liable according to the applicable legal provisions, in particular for defects of the delivery, whereas this liability is in no way limited or disclaimed with respect to cause or amount, and insofar shall indemnify and hold Freudenberg harmless from and against any third party's claims.
- 7.3 If any of the goods supplied are defective, the Supplier must immediately, at Freudenberg's option and without prejudice to any of Freudenberg's other rights, including the right to claim damages, repair or replace them at the cost of the Supplier. If Freudenberg has not yet paid the Supplier for the defective goods, Freudenberg is only obliged to pay the Supplier for them when the Supplier has completed the repair or replacement to Freudenberg's satisfaction.
- 7.3 If the Supplier fails to remedy the defect promptly upon the request of Freudenberg, Freudenberg shall - in urgent cases, in particular to avert danger or major damage - have the right to rectify the defects themselves at Supplier's cost or have this done by a third party without any obligation to grant a grace period.
- 7.4 In addition, the Supplier shall exempt Freudenberg from any third-party claims related to deficiencies in title. For deficiencies in title a limitation period of 10 years shall apply.
- 7.5 If a defective delivery necessitates extra work in the incoming inspection process, the supplier shall bear the costs of such additional inspection.

8. PRODUCT LIABILITY

- 8.1 Supplier assumes full responsibility for, indemnifies and holds Freudenberg harmless from and against any liabilities and third party claims arising out of the death of or injury to any person or damage to property, if and to the extent the causes for this lie in the Supplier's domain. Within the scope of this provision the Supplier is also obligated to reimburse to Freudenberg all expenses) that are incurred by or in connection with a recall action or any other measure initiated by Freudenberg.

9. INDUSTRIAL PROPERTY RIGHTS AND REGULATIONS

- 9.1 The Supplier guarantees that neither his delivery nor its use infringe upon industrial property rights or other rights of third parties nor violate legal or official regulations of whatever kind. The Supplier also guarantees that the goods delivered by him do not contain CFC, PCB or asbestos. The Supplier shall undertake to provide, at our request, all relevant IMD system data at no charge.
- 9.2 The Supplier shall indemnify us from all and any claims lodged against us by third parties for reasons of or in connection with the delivery or its use; whereas point 7.4 sentence 2 shall be applicable.
- 9.3 The Supplier's obligation of indemnification shall also cover all expenses arising from or in connection with claims by a third party.

10. RESERVATION OF OWNERSHIP TOOLS

- 10.1 Freudenberg shall reserve the ownership of goods provided by themselves (e.g. parts, components, semi-finished goods).
- 10.2 Reservation of ownership shall also apply to goods resulting from the processing, mixing or combining of Freudenberg's goods in their full amount, whereas these processes are performed on our part so that Freudenberg is considered as manufacturer. If third-party ownership rights extinguish after processing, mixing or combining with goods from those parties, Freudenberg shall acquire joint ownership at a ratio of the objective value of those goods.
- 10.3 Tools made available to the supplier as well as tools manufactured by the Supplier himself or ordered at a third party on our behalf, to the costs of which we have contributed, shall remain our property or shall pass into our ownership upon manufacturing and/or acquisition by the supplier and must be clearly indicated as our property.
- 10.4 The Supplier shall hold our tools in custody on our behalf at no charge, insure them adequately and furnish evidence of insurance cover at our request. The Supplier shall use the tools exclusively for the purpose of manufacturing parts for us, unless otherwise agreed upon. We hereby grant our prior approval to manufacture parts based on orders placed by other companies of the Freudenberg Group.

10.5 The Supplier shall ensure proper maintenance and repair of the tools provided at his own cost. At the end of contract the Supplier shall surrender the tools without delay at our request while no right of retention may be derived by him. Upon surrender the tools must be in apparent good order and condition corresponding to their earlier use. Costs of repair shall be borne by the supplier. In no case must the supplier scrap the tools without our prior written approval.

11. QUALITY ASSURANCE

11.1 The Supplier shall during the entire business relation maintain a quality management system according to DIN EN ISO 9000 ff. that ensures the proper quality of deliveries, monitor the system by internal audits in regular intervals and promptly take action if any deviation has been detected. We shall have the right to inspect the supplier's quality assurance system with prior notice. At our request the supplier shall permit us to examine certification and audit reports as well as inspection procedures including all test records and documents relevant to the delivery.

11.2 Part of any order placed by us or agreement between us and the suppliers are our "Quality Standards" in their current version which shall be sent to our suppliers on request.

12. CONFIDENTIALITY/ RESTRICTIONS ON DISCLOSURE AND USE OF PERSONAL INFORMATION

12.1 The Supplier shall keep any knowledge and information of a technical or economical nature it has received from Freudenberg in connection with the business relationship ("Confidential Information") strictly confidential towards third Parties at all times, even after the end of the business relationship, unless the Supplier proves that the Confidential Information is:

- (i) already known to the Supplier or in the public domain at the time of disclosure or subsequently become public knowledge other than through a fault of the Supplier;
- (ii) subsequently developed by the Supplier completely independent from the Confidential Information; or
- (iii) received by the Supplier from a third Party without breach of a confidentiality obligation.

12.2 Freudenberg shall reserve all proprietary rights and copyrights of estimates, designs, drawings and other documents and these shall only be modified or made available to third parties with Freudenberg's express approval. Drawings and other documents provided as part of a quotation must be returned to Freudenberg on request at any time when the order is not placed with Freudenberg.

12.3 In case of Freudenberg providing drawings, models, samples or other documents to the Supplier, the Supplier shall ensure that industrial proprietary rights of third parties are not infringed upon. If a third party, referring to proprietary rights, prohibits in particular the manufacturing and delivery of such items, Freudenberg shall be entitled to suspend all relevant activities and claim damages without being obliged to analyse legal responsibilities, in addition, the Supplier undertakes to indemnify Freudenberg immediately from third party claims related to documents made available by Freudenberg.

- 12.4 The disclosure of Confidential Information does not establish any industrial proprietary rights, rights to know how or copyrights to the Supplier and does not constitute a prior publication or right of prior use according to the applicable patent, design and utility model laws. Any kind of licence is subject to a written agreement.
- 12.5 The Supplier agrees:-
- 12.5.1 That it shall only be entitled to use the Confidential Information of Freudenberg for the specific purposes set out in the Disclosing Purpose, and it shall not utilise, employ, exploit or in any other manner use the Confidential Information of Freudenberg for any purpose other than the Disclosing Purpose;
- 12.5.2 subject to clause 12.5.3, not to disclose the Confidential Information of Freudenberg to any third party or publish such information in any manner, for any reason or purpose whatsoever without the prior written consent of Freudenberg, which consent may be withheld in the sole discretion of Freudenberg;
- 12.5.3 it will restrict the dissemination of the Confidential Information of Freudenberg to only those of its personnel who are actively involved in the Disclosing Purpose and then only on a "need to know" basis and will take all practical steps to impress upon those personnel who need to be given access to Confidential Information, the secret and confidential nature thereof;
- 12.5.4 that any unauthorised use, publication or other disclosure of the Confidential Information of Freudenberg may cause irreparable loss, harm and damage to Freudenberg. Accordingly, the Customer hereby indemnifies and holds Freudenberg harmless against any loss, action, expense, claim, harm or damage of whatsoever nature suffered or sustained by Freudenberg pursuant to:
- (i) a breach by the Supplier of the provisions of this Agreement; and
- (ii) any unauthorised use, publication or disclosure of any Confidential Information by any of the Receiving Party's personnel.
- 12.6 The Supplier shall protect the Confidential Information of Freudenberg in the same manner and with the same endeavour which a reasonable man would use to protect his own Confidential Information. Should the Supplier become aware of any unauthorised copying, disclosure or use of Disclosing Party's Confidential Information, it shall immediately notify Freudenberg thereof in writing and, without in any way detracting from Freudenberg's rights and remedies in terms of this Agreement, take such steps as may be necessary to prevent a recurrence thereof.
- 12.7 To the extent that the Supplier is ordered to disclose any of Freudenberg's Confidential Information pursuant to a judicial or government request, requirement or order (hereafter called the "Forced Disclosure"), the Supplier shall, unless legally prohibited to do so, promptly notify Freudenberg thereof and take any and all reasonable steps to assist Freudenberg in contesting such a request, requirement or order, or otherwise take all reasonable steps to protect Freudenberg's rights prior to Forced Disclosure.

- 12.8 Freudenberg may at any time request the Supplier to return any material containing, pertaining to, or relating to the Confidential Information of Freudenberg and may, in addition, request the Supplier to furnish a written statement to the effect that upon such return, the Supplier has not retained in its possession or under its control, either directly or indirectly, any such material.
- 12.9 Alternatively to clause 12.8, the Supplier shall, at the instance of Freudenberg, destroy such material and furnish Freudenberg with a written statement to the effect that such material has been destroyed.
- 12.10 The Supplier shall comply with a request in terms of this clause 12 within 3 three days of receipt of such request, or such shorter period as Freudenberg may demand, so long as this allows the Supplier adequate time to comply.

12.11 Personal Information

12.11.1 Standard of care

The Supplier shall protect the Confidential Information of Freudenberg in the same manner and with the same endeavour which a reasonable man would use to protect his own Confidential Information. Should the Supplier become aware of any unauthorised copying, disclosure or use of Freudenberg's Confidential Information, it shall immediately notify Freudenberg thereof in writing and, without in any way detracting from Freudenberg's rights and remedies in terms of this Agreement, take such steps as may be necessary to prevent a recurrence thereof.

12.11.2 Forced Disclosure

To the extent that the Supplier is ordered to disclose any of Freudenberg's Confidential Information pursuant to a judicial or government request, requirement or order (hereafter called the "Forced Disclosure"), the Supplier shall, unless legally prohibited to do so, promptly notify Freudenberg thereof and take any and all reasonable steps to assist Freudenberg in contesting such a request, requirement or order, or otherwise take all reasonable steps to protect Freudenberg's rights prior to Forced Disclosure.

12.11.3 Return of information

12.11.3.1 on request. Freudenberg may at any time request the Supplier to return any material containing, pertaining to, or relating to the Confidential Information of Freudenberg and may, in addition, request the Supplier to furnish a written statement to the effect that upon such return, the Supplier has not retained in its possession, or under its control, either directly or indirectly, any such material.

12.11.3.2 Destruction. Alternatively to clause 12.11.3.1, the Supplier shall, at the instance of Freudenberg, destroy such material and furnish Freudenberg with a written statement to the effect that such material has been destroyed.

- 12.11.3.3 Compliance with request. The Supplier shall comply with a request in terms of this clause 7 within 3 (three) days of receipt of such request, or such shorter period as Freudenberg may demand, so long as this allows the Customer adequate time to comply.

13. GOOD FAITH

All Goods are purchased only in accordance with the standard specification applicable to such Goods and subject to these T&C's. No variations from these conditions of purchase and no contrary stipulations by the Supplier shall be valid unless specifically accepted by Freudenberg in writing.

14. DEFAULT

- 14.1. Subject to the any other Agreement between the parties, including any Credit Agreement as well as clause 10, should either Party:
- 14.1.1. commit a breach of any of the terms and/or conditions of this Agreement, and fail to remedy such breach within a period of 7 (seven) days after receipt of written notice requiring it to do so; or
 - 14.1.2. repeatedly breach any of the terms and/or conditions of this Agreement in such a manner as to justify the other Party ("Innocent Party") in holding that the breaching Party's conduct is inconsistent with the intention and/or ability of the breaching Party to carry out the provisions of this Agreement;
- 14.2. The provisions of clause 9 do not constitute a waiver by any Party of its common law rights and remedies arising from any breach of this Agreement.

15. DISPUTE RESOLUTION

- 15.1. The Parties agree that the terms of this Agreement will be performed in the spirit of mutual co-operation, trust and confidence. The Parties further agree to use their reasonable endeavours to resolve, through mutual consultation, without involving any third Party or Parties, any dispute which may arise under, out of, or in connection with or in relation to this Agreement. If, following such mutual consultation, the dispute still remains unresolved, the matter shall be referred to 1 (one) representative of each of the Parties, who shall negotiate for a period of up to 5 (five) Business Days from the date of such referral in an attempt to resolve such dispute. If, following the expiry of such 5 (five) Business Day period, the dispute is still unresolved, then, save where otherwise provided in this Agreement, the matter shall be referred to arbitration in accordance with the remaining provisions of this clause 10.
- 15.2. This clause 10 is a separate, divisible agreement from the rest of this Agreement and shall subject to the provisions of 10.13:
- 15.2.1. not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating, in substance, to the rest of the Agreement and not to this clause 10, which issue, the Parties agree, shall be subject to arbitration in terms of this clause 10;and

- 15.2.2. remain in effect even if the Agreement is terminated or cancelled, for whatsoever reason.
- 15.3. Save , in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, any dispute arising out of or in connection with this Agreement, or the subject matter of this Agreement, including, without limitation, any dispute concerning:
 - 15.3.1. the existence of this Agreement apart from this clause 10;
 - 15.3.2. the interpretation and effect of this Agreement;
 - 15.3.3. the Parties' respective rights or obligations under this Agreement;
 - 15.3.4. the rectification of this Agreement;
 - 15.3.5. the breach, termination or cancellation of this Agreement or any matter arising out of such breach, termination or cancellation;
 - 15.3.6. damages in contract, in delict, compensation for unjust enrichment; or
 - 15.3.7. any other claim whether or not the rest of this Agreement apart from this clause 10 is valid and enforceable,
 - 15.3.8. shall be decided by arbitration as set out in this clause 10.
- 15.4. The Parties to this dispute shall agree on the arbitrator. If Agreement is not reached within 5 (five) Business Days after any Party to the dispute in writing calls for Arbitration, the arbitrator shall be:
 - 15.4.1. If the dispute relates primarily to a financial matter, a practicing chartered accountant of at least 15 (fifteen) years' standing nominated by the Chairman for the time being of the South African Institute of Chartered Accountants at the request of either Party; or
 - 15.4.2. if the dispute relates to any other matter, a practising commercial attorney or advocate of at least 15 (fifteen) years' standing on the panel of arbitrators of the Arbitration Foundation of Southern Africa ("AFSA") or such other institution of similar standing as the Parties may agree, nominated at the request of any Party to the dispute by the Registrar of AFSA or such other institution (if applicable), for the time being. This provision will also apply where the Parties are unable to agree on whether the dispute relates to a financial or other matter;
- 15.5. The request to nominate an arbitrator shall be in writing outlining the claim and any counterclaim of which the Party to the dispute concerned is aware and, if desired, suggesting suitable nominees for appointment, and a copy shall be furnished to the other Parties to the dispute who may, within 5 (five) Business Days, submit written comments on the request to the addressor of the request.
- 15.6. The arbitration shall be held in Cape Town and the Parties shall endeavour to ensure that it is completed within 90 (ninety) Business Days after notice requiring the claim to be referred to arbitration is given.

- 15.7. The proceedings in the arbitration shall as far as practicable take place in private and be kept confidential.
- 15.8. The arbitration shall be governed by the Arbitration Act, No. 42 of 1965 and shall take place in accordance with the Commercial Arbitration Rules of AFSA.
- 15.9. An Order or award made by the arbitrator shall be carried into effect and shall be final and binding upon the Parties and may be made an Order of court of competent jurisdiction.
- 15.10. This clause 10 shall not preclude any Party to a dispute from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator or panel of arbitrators, on appeal.
- 15.11. Notice of a dispute or pending arbitration proceedings shall not entitle any Party to suspend compliance with any of its obligations in terms of this Agreement or any Agreement contemplated in this Agreement.
- 15.12. The Parties agree that a written demand by any Party that a dispute be submitted for resolution in terms of this clause 10 is deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act 68 of 1969.
- 15.13. In the event that any debt in respect of a Supplier is ceded to or assigned to an Insurer or similar institution, the process of dispute resolution as per this clause 10 shall not apply.

16. NOTICES AND DOMICILIA

- 16.1. Each Party chooses as its *domicilium citandi et executandi* their respective addresses set out below for all purposes under these T&C's, whether in respect of a court process, notice, or other document or communication of whatsoever nature, at which addresses all the processes and notices arising out of or in connection with these T&C's, its breach or termination, may validly be served upon or delivered to the Parties:

16.1.1 Freudenberg:
Physical address: 48 Koornhof Road
Meadowdale Ext 1
Germiston, 1401

Email-address:
viledon-filters@freudenberg.co.za

16.1.2 Supplier
Physical address:
Email address:

- 16.2 Any notice given in terms of this Agreement shall be in writing and shall:

16.2.1 If delivered by hand, be deemed to have been duly received by the addressee on the 1st (first) Business Day following the date of delivery;

16.2.2 If delivered by courier service, be deemed to have been duly received by the addressee on the 1st (first) Business Day following the date of such delivery by the courier service concerned; and

16.2.3 If transmitted by facsimile or email, be deemed to have been duly received by the addressee on the 1st (first) Business Day following the date of dispatch.

16.3 Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from another shall be adequate written notice or communication to such.

17 GOVERNING LAW

The validity of this Agreement, its interpretation, the respective rights and obligations of the Parties and all other matters arising in any way out of it or its expiration or earlier termination for any reason shall be determined in accordance with the laws of the Republic of South Africa.

18 LIABILITY

Except as expressly provided for herein, Freudenberg shall only be liable in the event of its wilful misconduct or gross negligence and any further liability whatsoever is hereby expressly excluded.

19 NOVATION

No Party to this Agreement may cede any or all of that Party's rights, nor delegate any or all of that Party's obligations under this Agreement without the prior written consent of the other Party.

20 NO REPRESENTATIONS

A Party may not rely on any representation which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.

21 NON WAIVER

The failure by any of the Parties to enforce any provision of this Agreement shall not affect in any way that Party's right to require Performance of the provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself.

22 SEVERABILITY

If any part of this Agreement is void, illegal, unenforceable, or in conflict with any law of the state or local Government over this Agreement, the validity of the remaining portions or provisions shall not be affected thereby.

23 SIGNATURE IN COUNTERPARTS AND ORIGINAL DOCUMENTS

23.1 This Agreement may be executed in counterparts, each of which will be deemed to be an original and which together will constitute one and the same agreement.

23.2 The Parties hereby agree that purchasing documents sent by email or facsimile are equivalent to originals provided they have been signed by an authorized representative.

24 WARRANTIES ON CAPACITY

Each Party warrants that:

- 24.1 It has the legal capacity and has taken all necessary corporate action required (where applicable) to empower and authorise it to enter into and implement this agreement on the terms and conditions herein set out.
- 24.2 This Agreement constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms.

Signed at _____ on _____

Witnesses:

1

2

(Signatures of witnesses)

.....
*(Signature of Supplier, duly
authorised thereto)*

Signed at _____ on _____

Witnesses:

1

2

(Signatures of witnesses)

.....
*(Signature of Freudenberg, duly
authorised thereto)*