



TERMS AND CONDITIONS

1. Definitions and Interpretation

1.1. The following terms shall have the following meanings for the purposes of these terms and conditions ("T & C"):

1.1.1. "Conditions" means the terms and conditions of sale set out in this Agreement and any special terms and conditions agreed in writing by the KQL;

1.1.2. "Interest" means two per cent (2%) per month compounded monthly;

1.1.3. "Price" means the price for the Product (s) excluding carriage, insurance and VAT;

1.1.4. "Product(s)" means the items listed in the first schedule.

1.2. Unless the context otherwise requires in this T & C references to:

1.2.1. "writing" shall include any mode of reproducing words in a legible and non-transitory form;

1.2.2. Sections, sub-clauses, clauses and Schedules shall be construed as references to sections, sub-clauses and clauses of and the schedules to this Agreement;

1.2.3. a "person" shall be construed as a reference to any legal or natural person, partnership, trust, company, joint venture, agency, government or local authority department or other body (whether corporate or unincorporate);

1.2.4. the definition of any document (including this T & C) shall be deemed to be a reference to such document as from time to time it may be amended, varied, modified or replaced (in whole or in part) but disregarding any amendment, variation, modification or replacement taking place in breach of this T & C or such document;

1.2.5. words and expressions importing the masculine gender shall include the feminine gender and neuter and vice versa and the singular number shall include the plural number and vice versa;

1.2.6. any provision of any statute shall be deemed also to refer to any statutory modification or re-enactment thereof or any statutory instrument, order or regulation made thereunder or under such re-enactment;

1.2.7. "month" means a calendar month;

1.2.8. indemnifying any person against any circumstance includes indemnifying and keeping him harmless from all actions, claims and proceedings from time to time made against that person and all loss or damage and all payments, taxes, liabilities, costs or

expenses made or incurred or suffered by that person as a consequence of or which would not have arisen but for that circumstance;

1.2.9. costs or charges or expenses shall include any value added tax or other tax charged or chargeable in respect thereof;

1.2.10. "tax" shall be construed so as to include any tax, levy, impost, duty or other charge of a similar nature (including, without limitation, value added tax, custom duty, import duty, diversion tax, stamp duty and any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same) and "taxation" shall be construed accordingly and "competent taxing authority" shall mean any governmental or other person or authority having power to levy or demand the payment of any taxes;

1.2.11. any provision of any statute shall be deemed also to refer to any statutory modification or re-enactment thereof or any statutory instrument, order or regulation made thereunder or under such re-enactment; and

1.3. Headings to Sections are for convenience only and shall not affect the construction of this T & C.

2. Supply of the Products

2.1. KQL will, subject to availability, supply the Products to the Customer in the such quantities as stated in any order (hereinafter referred to "the order"), not exceeding the Maximum Credit Quantity as specified in the second schedule below, placed by the Customer pursuant to the terms of this T & C and at the price set out in the first schedule (hereinafter referred to as "the quoted price").

2.2. The quoted price may be varied by additions upwards or downwards by KQL in accordance with corresponding changes in market conditions. KQL shall give the Customer at least five (5) days written notice prior to effecting the change in the quoted price. The change in the said prices will be applicable to all orders placed after the date of such notice. After the expiry of the said five (5) days notice there being any orders issued for which supply of the Products is outstanding, the change in price would be effected to all such supplies after the said five (5) days period.

2.3. Where it has been agreed that the Customer shall collect the Products from

KQL then the price quoted is ex-quarry and shall not include insurance and carriage.

2.4. Where KQL has agreed to deliver the Products to the Customer's premises, delivery of the Products shall be deemed to have made on obtaining an acknowledgement on the copy of the delivery note from the Customer, its agents or employees or servants.

2.5. Where the Customer has agreed to collect the Products from the premises of KQL, delivery shall be deemed to have occurred upon loading of the Products in the Customer's or agent's vehicle.

2.6. The property and risks in the Products shall pass from KQL to the Customer upon delivery of the Products to the Customer as set out clause 2.4 and 2.5.

3. Price and Payment

3.1. The price payable by the Customer for Products shall be the price set out in the first Schedule, or as varied from time to time in accordance with clause 2.2, hereto multiplied by the quantity delivered by KQL to the Customer.

3.2. All payments due and payable by the Customer shall be made on or before the expiry of the Credit Period specified in Schedule 2 below.

3.3. In the event that payments are not settled on the due date (being the date falling on the last day of the Credit Period) Interest shall be payable on that pending payment from the date the payment is due up to and including the date of actual payment. The Customer acknowledges and confirms that the interest payable is justifiable in the circumstances and can be recovered as debt due from the Customer.

3.4. The amount and charges set out in the Schedules hereto are exclusive of VAT (unless explicitly stated) and the Customer shall be liable to pay VAT thereon.

3.5. All payments to be made by the Customer to KQL shall be made in Mombasa net of bank charges or commissions or any deductions whatsoever.

4. The Products

4.1. KQL hereby undertakes and agrees with the Customer that, subject to these T & C, the Products shall conform in all respect with the quantity, quality and description and any other particulars stated in the order

Customer Signature: _____



and any specifications notified to the Customer;

4.2. The Customer shall at the request of KQL supply to KQL reports, returns and other information relating to the supply and delivery of the Products.

4.3. The Customer acknowledges that the delivery of the Products at KQL's premises may present a safety hazard. The Customer shall comply with all requirements imposed by KQL regarding safety.

4.4. The Customer shall at all times be responsible for any damage or injury occasioned at its premises as a result of failure by the Customer to put in place adequate safety precautions. For avoidance of doubt it is hereby agreed that KQL shall not be responsible for any damage of loss of life or injury to any person occasioned during transportation and delivery of the Products to the Customer's premises and the Customer and Guarantor hereby undertake to indemnify KQL against all such claims.

5. Termination

5.1. Without prejudice to any other remedies KQL may have against the Customer, KQL shall have the right at any time by giving notice in writing to the Customer to suspend the performance of or terminate all or any of its obligations of KQL under these T & C immediately in any of the following events;

5.1.1. If the Customer commits a breach of any of the terms and conditions hereof and fails to make its best efforts to remedy the same to the satisfaction of KQL in fourteen (14) days of the date of a notice from KQL requiring it to remedy such breach;

5.1.2. If the Customer ceases or threatens to cease to carry on business;

5.1.3. the Customer enters into liquidation whether compulsorily or voluntarily otherwise than for the purposes of amalgamation or reconstruction or has a Receiver appointed over the whole or part of its assets or compounds with its creditors or takes or suffers any similar action in consequence of debt or enters into any arrangement with its creditors or takes or suffer any similar action in consequence of debt.

5.2. Either party shall have the right to terminate this Agreement by giving (...) days notice in writing to the other party.

5.3. Any termination of this Agreement (whether under this clause or otherwise) shall not relieve either party of any obligation under this Agreement which is expressed to continue after termination and failure by either party in any one or more instances to terminate this Agreement on account of any default or breach by the other shall not be taken to constitute a condonation or waiver of the same or of any other default or breach or other.

6. General

6.1. Nothing in this T & C shall constitute or be deemed to constitute a partnership between the parties hereto or constitute or be deemed to constitute the Customer as agent of KQL.

6.2. No variation waiver or modification of any of the terms of this T & C shall be valid unless in writing and signed by or on behalf of the parties hereto.

6.3. Any dispute or difference which may arise between the parties hereto as to the meaning or construction of this T & C or anything herein contained or as to the rights or obligations of either party hereunder or otherwise in connection with this Agreement shall be referred for decision to a single arbitrator to be appointed by agreement between the parties or, failing such agreement within thirty (30) days after the date on which one of the parties hereto first serves on the other a notice giving the name, address and a summary of the qualifications of a suggested arbitrator, an arbitrator to be appointed by the Chairman for the time being of the Kenya Chapter of the Institution of Arbitrators. Any arbitration proceedings hereunder shall be conducted in Nairobi in accordance with a subject to the provisions of the Arbitration Act (Chapter 49 Laws of Kenya) and any rules made thereunder.

6.4. The waiver by KQL of any term or any breach of any term of this T & C shall not prevent the subsequent enforcement of that term and shall not be deemed a waiver of any subsequent breach.

6.5. Any notice or other communication given or made under or in connection with the matters contemplated by this T & C shall be in writing. Any such notice or other communication shall be addressed as provided in this clause and, if so addressed,

shall be deemed to have been duly given or made as follows:-

6.5.1. if sent by personal delivery, upon delivery at the address of the relevant party;

6.5.2. if sent by post, five (5) clear days after the date of posting provided that proof is given that the notice was properly addressed and duly dispatched by post; and

6.5.3. if sent by facsimile/Email, when dispatched;

provided that if, in accordance with the above provisions, any such notice or other communication would otherwise be deemed to be given or made outside normal working hours in the place of service of the notice or other communication it shall be deemed to be given or made at the start of normal working hours on the next usual working day

6.5.4. The relevant address of each party for the purposes of this T & C, is the address set out in the Request Form or, if different, such party's principal place of business for the time being.

6.6. KQL shall not be liable to the Customer or be in breach of this T & C if there is any total or partial failure of performance by it of its duties and obligations under this T & C occasioned by any event of war, insurrection or act of foreign enemy, hostilities, rebellion, revolution, insurrection of military or usurped power, strikes, main-line power failure, lockouts or any other cause beyond the control of KQL.

6.7. If KQL is unable to perform its duties and obligations under this T & C as a direct result of the effect of one of the preceding reasons, KQL shall give written notice to the Customer of the inability which sets out full details of the reason in question. The operation of this T & C shall be suspended during the period (and only during the period) in which the reason continues. Forthwith upon the reason ceasing to exist, KQL shall give written advice to the Customer of this fact. If the reason continues for a period of more than 45 days and substantially affects the commercial intention of this T & C, Customer shall have the right to terminate this Agreement upon giving 15 days' written notice of such termination to KQL.

Customer Signature: _____