



ELCA-SALES-POL-01

ELCA ENGINEERING, A DIVISION OF MAN DIESEL AND TURBO SOUTH AFRICA (PROPRIETARY) LIMITED

STANDARD TERMS AND CONDITIONS

These Terms shall apply to the supply of all Goods and Services by ELCA Engineering, a division of MAN Diesel & Turbo South Africa (Pty) Ltd. to the Buyer to the exclusion of the trading and/or other terms and conditions of the Buyer (if any) whether such trading and/or other terms and conditions are contained in an Order or otherwise. In the event of any conflict between these Terms and the trading and/or other terms and conditions of the Buyer (whether contained in an Order or otherwise), these Terms shall prevail over any such terms and conditions of the Buyer, unless commonly agreed in writing.

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms, except where the context clearly indicates a contrary intention, the following words shall bear the following meanings:

- 1.1.1 **"Buyer"** means any person identified in the Order, and/or any other person, contracting to purchase, take delivery of, and pay for, Goods and/or Services, and includes its successors-in-title, legal representatives, administrators, liquidators, trustees or permitted assigns;
- 1.1.2 **"Equipment"** means ELCA Equipment and Other Equipment collectively;
- 1.1.3 **"Fees"** means the fees payable for the Services as specified in an Order and accepted in an Order Acknowledgement;
- 1.1.4 **"Goods"** means any goods (including but not limited to Equipment and Parts) to be supplied by ELCA to the Buyer as specified in an Order and accepted in an Order Acknowledgement;
- 1.1.5 **"ELCA"** means ELCA, a division of MAN Diesel and Turbo South Africa (Proprietary) Limited, registration number 2001/009063/07, a private company incorporated under the laws of South Africa;
- 1.1.6 **"ELCA Equipment"** means machinery and equipment manufactured by ELCA including, *inter alia*, power plants, marine engines and turbomachinery;
- 1.1.7 **"ELCA Parts"** means parts and components manufactured by ELCA;
- 1.1.8 **"Order"** means an order placed by the Buyer with ELCA for the delivery of Goods

and/or provision of Services (whether pursuant to a quotation or Tender provided by ELCA or otherwise), as varied or amended in accordance with clause 8 (if applicable);

- 1.1.9 **"Order Acknowledgement"** means a written order acknowledgement issued by ELCA to the Buyer in terms of which the Buyer's Order is accepted;
- 1.1.10 **"Other Equipment"** means machinery and equipment other than those manufactured by ELCA, but supplied by ELCA;
- 1.1.11 **"Other Parts"** means parts and components other than those manufactured by ELCA, but supplied by ELCA;
- 1.1.12 **"Parties"** means ELCA and the Buyer, and **"Party"** means any one of them;
- 1.1.13 **"Parts"** means ELCA Parts and Other Parts;
- 1.1.14 **"Price"** means the purchase price payable for the Goods as specified in an Order and accepted in an Order Acknowledgement.
- 1.1.15 **"Prime Rate"** means the rate of interest (nominal annual compounded monthly in arrears) from time to time published by ELCA's bankers as its prime overdraft lending rate (a certificate from any manager of that bank, whose appointment or authority need not be proved, as to the prime rate at any time and the usual way in which it is calculated and compounded at such time shall, in the absence of manifest or clerical error, be final and binding on the Parties);

1.1.16 **"Services"** means any services (including but not limited to maintenance, repair and inspection services) to be provided by ELCA to the Buyer as specified in an Order and accepted in an Order Acknowledgement;

1.1.17 **"Site"** means the place where the Services are to be provided as specified in an Order and accepted in an Order Acknowledgement, together with so much of the surrounding area as ELCA actually uses to provide the Services;

1.1.18 **"Tender"** means any tender or proposal provided by ELCA to a potential Buyer in response to a tender or public procurement programme/process conducted by such person; and

1.1.19 **"Terms"** means the standard terms and conditions recorded herein.

1.2 In these Terms, reference to the singular includes the plural and *vice versa*, any gender includes the other genders and natural persons include artificial persons and *vice versa*.

1.3 Where applicable, the provisions of 1.1 shall impose substantive obligations on the Parties as provided in the provision concerned.

1.4 The clause headings in these Terms have been inserted for convenience only and shall not be taken into account in its interpretation.

1.5 Words and expressions defined in any clause shall bear the meaning assigned to such words and expressions throughout these Terms.

1.6 No provision of these Terms shall be construed against or interpreted to the disadvantage of any Party hereto by reason of such Party

having or being deemed to have structured or drafted such provision.

2. QUOTATION, ORDER AND ORDER ACKNOWLEDGEMENT

2.1 A quotation or Tender provided by ELCA for the supply of Goods and/or the provision of Services shall be valid for a period of 30 days only (or such longer period as may be stipulated in the relevant quotation or Tender). A quotation or Tender may include any schedules or technical specifications relating to the Goods and/or Services. Unless expressly stated otherwise in the relevant quotation or Tender, any quotation or Tender issued by ELCA shall be subject to the provisions of these Terms (including but not limited to clauses 2.2 to 2.6).

2.2 An Order placed by the Buyer and provided to ELCA (whether pursuant to a quotation or Tender provided by ELCA or otherwise) shall constitute an offer by the Buyer to purchase the relevant Goods and/or to require the provision of the relevant Services.

2.3 ELCA reserves the right to accept or refuse any Order from the Buyer.

2.4 Acceptance of an Order shall only occur once ELCA delivers an Order Acknowledgement to the Buyer in respect of the relevant Order, at which time a valid and binding agreement for the supply of the relevant Goods and/or provision of the relevant Services solely on the terms and conditions of such Order and these Terms, provided that if any Order incorporates, or purports to incorporate, the trading and/or other terms and conditions of the Buyer, these Terms shall prevail over any such terms and conditions of the Buyer.

2.5 For the avoidance of doubt, an Order submitted by the Buyer (and not accepted by ELCA) does not impose any obligations whatsoever on ELCA, irrespective of whether or not such Order was placed pursuant to a quotation or Tender provided by ELCA.

2.6 All specifications, illustrations, drawings, diagrams, price lists, dimensions, delivery dates and performance figures furnished by ELCA and any data contained in catalogues, prospectuses, circulars, advertisements, illustrated materials and price lists, and representations in regards thereto, are approximate and are furnished for information purposes only, and unless expressly confirmed by ELCA in writing in an Order Acknowledgement or as otherwise provided for in these Terms, shall not bind ELCA in any way whatsoever.

3. PRICE AND FEES

3.1 The Price and any prices quoted by ELCA (whether in a quotation or Tender) are Ex Works (Incoterms 2010) and (without limiting the aforesaid) are exclusive of any taxes, duties, fees, charges, costs of carriage, package (including export packing and special packing) and insurance or similar taxes and charges, which shall be paid by the Buyer. The Buyer shall reimburse ELCA for any such costs and taxes not included in the Price and paid or otherwise incurred by ELCA, which amounts may be invoiced by ELCA to the Buyer from time to time.

3.2 Unless expressly otherwise agreed in writing by ELCA, Services provided by ELCA shall be provided on a time basis at the rates specified in an Order accepted by way of an Order

Acknowledgement. In addition to the Fees, the Buyer shall reimburse ELCA for all reasonable costs for travel, transport, subsistence and costs relating to carriage of luggage, instruments and tools incurred by ELCA's personnel in providing the Services, upon receipt of an invoice therefor from ELCA.

4. PAYMENT TERMS:

4.1 The Buyer shall pay to ELCA the Price (or the relevant portion thereof specified in an invoice or statement) and/or any applicable Fees (as the case may be) within thirty (30) days from the date of issue of an invoice or statement by ELCA to the Buyer (or within such longer period as may be stipulated in the relevant invoice or statement).

4.2 Faxed and/or emailed invoices and statements shall be allowed. A hard copy of the invoice or statement will be mailed to the Buyer for confirmation purposes only.

4.3 All amounts due by the Buyer shall be paid into a bank account nominated in writing by ELCA from time to time, by way of electronic transfer, without any deduction, foreign exchange, bank (or other) charges or set-off of whatever nature.

4.4 The Buyer has no right to withhold payment for any reason whatsoever and agrees that no extension of payment of any nature shall be extended to the Buyer, unless otherwise agreed upon in writing by ELCA.

4.5 If any amount due and payable by the Buyer to ELCA is not paid on the due date therefor, ELCA shall be entitled to, and the Buyer shall pay to ELCA, interest on the outstanding amount at the lower of a rate of 8% per annum above the

Prime Rate and the maximum interest rate as may be permitted by law, calculated from and including the due date for payment up to and including the date on which the full outstanding amount owing has been paid in full and received by ELCA.

4.6 ELCA may appropriate all payments made by or on behalf of the Buyer to the Price (or relevant portion thereof) and/or the Fees, to interest thereon or to such other accounts as ELCA in its sole discretion may determine.

4.7 No settlement discount may be taken, unless otherwise agreed upon in writing by ELCA.

5. DELIVERY OF GOODS AND DELAYS

5.1 Unless expressly agreed otherwise in writing by ELCA, all Goods will be delivered Ex Works, ELCA's plant or warehouse or other ELCA designated shipping point (Incoterms 2010) and in accordance with these Terms.

5.2 ELCA may deliver Goods partially (in instalments) in any sequence or in full. A default or delay by ELCA in the delivery of one or more instalments of Goods shall not entitle the Buyer to terminate the relevant Order as a whole.

5.3 All delivery dates are estimates of approximate date of delivery of Goods and do not constitute a guarantee of delivery of Goods on such dates.

5.4 ELCA shall provide the Buyer with notice of the dates on which Goods will be delivered at least 5 days prior to the date of delivery or such other period as ELCA may deem reasonable in the circumstances.

5.5 ELCA shall prepare a delivery note in respect of all Goods to be delivered, which delivery note shall specify the relevant order number, the type and quantity of the Goods delivered, and whether or not the delivery of the Goods is partial or in full.

5.6 A representative of the Buyer shall be present at the place and time of delivery and shall sign such delivery note immediately prior to the delivery or handover of the Goods. Should the Buyer's representative not be present at the place and time of delivery, a representative of ELCA shall be entitled to sign such delivery note on behalf of the Buyer. Signature of the delivery note by the Buyer's representative (or by ELCA's representative in the absence of the Buyer's representative) shall constitute an acknowledgement by the Buyer that the correct quantity of the Goods has been received and that the Goods are on the face of it in good order and condition.

5.7 In the event it is proved by the Buyer that a delay arises in provision of the Goods, owing to reasons other than set forth in clause 10 and the Buyer suffers loss or damage in consequence thereof, the Buyer shall be entitled, to the exclusion of any further claims, to claim liquidated damages for delay to an amount not exceeding 0.5% for each full week of delay, but limited to a ceiling of 5% of the respective value of those Goods which due to the delay could not be put to commercial use within the agreed time. As far as ELCA does not deny the compensation of delay, any liquidated damages payable by ELCA under this clause will be deducted from ELCA's. The first two weeks of delay do not entitle for delay compensation. Compensation claims are excluded if the Buyer has been provided with an appropriate replacement.

5.8 Notwithstanding anything to the contrary in these Terms, where:

5.8.1 the Buyer fails or refuses to accept delivery of any Goods when they are ready for delivery in accordance with the relevant Order accepted by way of an Order Acknowledgement;

5.8.2 ELCA agrees (at its sole discretion) to postpone delivery of the Goods at the request of the Buyer; or

5.8.3 the Buyer fails to provide any instruction, consent or authorisation required to enable the Goods to be delivered on the due date,

the risk in the relevant Goods shall pass immediately to the Buyer, delivery of the Goods shall be deemed to have taken place and ELCA may store or arrange for the storage of such Goods and charge the Buyer for all related costs and expenses (including but not limited to storage and insurance) and may sell such Goods after 28 days after such failure or refusal and deduct any monies payable to ELCA by the Buyer from the proceeds and charge the Buyer for any shortfall below the Price of the relevant Goods.

5.9 Should the Buyer do or omit to do anything whatsoever which results in any delay in delivery of the Goods, the Buyer shall be liable for any and all expenses, cost, loss or damage incurred or suffered by ELCA in relation thereto.

5.10 Notwithstanding anything contained in these Terms, ELCA shall be entitled to suspend performance of all or any of ELCA's obligations under these Terms read together with an Order accepted by way of an Order Acknowledgement, including but not limited to

the delivery of Goods, for any period during which the Buyer is in breach of any of its obligations under an Order accepted by way of an Order Acknowledgement and/or these Terms.

5.11 No Goods will be accepted for return, unless written authority has been received from ELCA. Goods returned will be subject to a handling charge at Seller's sole discretion of between 25% and 100% of the Price of the returned Goods.

5.12 At the Buyer's request, ELCA may arrange packaging, transportation, insurance, equipment rental which shall not be warranted as part of the Services. This will be done at the sole cost and risk of the Buyer, and ELCA shall not be liable for any loss, costs, damage, liability or claim suffered or incurred by the Buyer arising therefrom or in connection therewith,

6. PROVISION OF SERVICES AND DELAYS

6.1 ELCA shall provide the Services on the Site.

6.2 The provision of the Services by ELCA shall be subject to the Buyer providing ELCA with such manual assistance through either engine room staff or other personnel, as ELCA may reasonably require.

6.3 The Services shall be deemed to be complete and taken over by the Buyer when the Buyer receives a notice from ELCA that the Services have been completed, provided that ELCA has provided the Services in accordance with the Order and the Order Acknowledgement. Minor deficiencies which do not affect the efficiency of the Services provided or work performed

shall not prevent completion of the Services or the relevant work.

- 6.4 ELCA may provide Services in sections and in any sequence. A default or delay by ELCA in the delivery of one or more sections of the Services shall not entitle the Buyer to terminate the relevant Order as a whole.
- 6.5 All dates for the provision of Services are estimates of approximate date of provision of Services and do not constitute a guarantee of provision of Services on such dates.
- 6.6 In the event it is proved by the Buyer that a delay arises in provision of the Services, owing to reasons other than set forth in clause 10 and the Buyer suffers loss or damage in consequence thereof, the Buyer shall be entitled, to the exclusion of any further claims, to claim liquidated damages for delay to an amount not exceeding 0.5% for each full week of delay, but limited to a ceiling of 5% of the respective value of that Service which due to the delay could not be put to commercial use within the agreed time. As far as ELCA does not deny the compensation of delay, any damages payable by ELCA under this clause will be deducted from ELCA's. The first two weeks of delay do not entitle for delay compensation. Compensation claims are excluded if the Buyer has been provided with an appropriate replacement.
- 6.6 Should the Buyer do or omit to do anything whatsoever which results in any delay in provision of the Services, the Buyer shall be liable for any and all expenses, cost, loss or damage incurred or suffered by ELCA in relation thereto.
- 6.7 Notwithstanding anything contained in these Terms, ELCA shall be entitled to suspend

performance of all or any of ELCA's obligations under these Terms read with an Order accepted by way of an Order Acknowledgement, including but not limited to the provision of Services, for any period during which the Buyer is in breach of any of its obligations under an Order (accepted by way of an Order Acknowledgement) and/or these Terms.

Notwithstanding Articles 5.7 and 6.6, ELCA's maximum liability for liquidated damages, if any, under the Order shall be 10% of the Price. Liquidated damages represent a fair and reasonable calculation and shall be Buyer's sole and exclusive measure of damages and remedy against ELCA with respect to the failure to achieve the delivery time for Goods and/or Services. Any further rights and claims for any delay whatsoever shall be excluded.

7. OWNERSHIP AND RISK

- 7.1 Subject to clause 5.8, all risk in and to the Goods shall pass to the Buyer upon delivery of the Goods by ELCA in accordance with clause 5. Since the Goods are delivered Ex Works, delivery shall occur or be deemed to occur on the earlier of:
- 7.1.1 the moment when the Goods are delivered to the place specified in the Order accepted by way of an Order Acknowledgement; and
- 7.1.2 the moment when the Goods leave the possession of ELCA and pass into the possession of any railway, carrier or transport provider other than ELCA (irrespective of whether or not any transport cost is paid by ELCA).
- 7.2 Ownership of the Goods shall only pass to the Buyer upon receipt by ELCA of the full Price (including interest, if any) for such Goods. Ownership of any products or goods supplied during or for purposes of the provision of Services shall only pass to the Buyer upon

receipt by ELCA of the full Fees (including interest, if any) for such Services.

- 7.3 The Buyer shall at all times advise the landlord of any premises in or at which the Buyer keeps
- 7.4 If third parties try to assert or substantiate rights to any Goods or products or other goods supplied or delivered during, or for the purpose of, provision of the Services in which ELCA still has proprietary rights, the Buyer shall be obliged to inform ELCA of any such action immediately and ELCA shall be entitled to take whatever action it may deem fit to protect its rights, including cancellation of the Order and/or repossession or resale of such Goods, products and other goods.
- 7.5 In the event of any such cancellation or repossession, the Buyer shall continue to bear all risk in such Goods, products and other goods and shall keep such Goods, products and other goods safe until repossessed or re-delivered by ELCA and, upon request from ELCA, the Buyer undertakes to hand over and return such Goods, products and other goods to ELCA. The Buyer shall affect re-delivery to ELCA, at ELCA's request, and at the Buyer's own cost and risk.

8. VARIATION OF AN ORDER

- 8.1 The Buyer may at any time after the issue by ELCA of an Order Acknowledgement request a variation or modification of the Order on written notice to ELCA ("**Notice of Variation**").
- 8.2 Within [14] days of receipt of a Notice of Variation by ELCA (or such longer period as may be

agreed between the Parties in writing) ELCA, in its sole and absolute discretion, shall:

- 8.2.1 give written notice to the Buyer of any increase or reduction in the Price and/or Fees and/or any change in the delivery dates and other dates stipulated for performance caused by the variation or modification of the Order ("**Revised Order**"); or
- 8.2.2 refuse to effect the variations or modifications recorded in the Notice of Variation.
- 8.3 Any variations made in terms of this clause 8 shall be of no force or effect unless the Buyer, within 7 days of receipt of the Revised Order, accepts the Revised Order, in writing, and settles in full any costs already incurred by ELCA in respect of the original Order.
- 8.4 Should the Buyer accept the Revised Order, then the Order shall be amended only to the extent necessary to incorporate the terms of the Revised Order, and the original Order Acknowledgement shall apply in respect of such amended Order.
- 8.5 Should ELCA refuse to effect the variations or modifications contained in the Notice of Variation, or should the Buyer elect to not accept the Revised Order in terms of clause 8.3, or fail to settle in full any costs already incurred by ELCA in respect of the original Order, the original Order will remain of full force and effect between the Parties.

9. BUYER'S OBLIGATIONS

- 9.1 The Buyer shall provide ELCA's personnel with assistance in obtaining official entry, exit or working permits required in the country where

the Services are to be provided and ensure that they have free access to the Site.

- 9.2 The Buyer shall provide ELCA's personnel with unobstructed and safe access to the Site to enable them to deliver the Services in accordance with the these Terms read together with the Order accepted by way of an Order Acknowledgement.
- 9.3 The Buyer shall be responsible for ensuring the health and safety of ELCA's personnel whilst on the Site. The Buyer shall take appropriate measures to protect ELCA's personnel from risks associated with lone working, working in confined spaces and with substances hazardous to health. When ELCA is to provide the Services on the Site, the Buyer shall make available and bear the costs of an adequate number of fitters, local transport, lifting gear, towing, dockage, supply of electricity and similar supplies as may be requested by ELCA.
- 9.4 The Buyer shall assume all responsibility for all acts and omissions of the Buyer's personnel and ELCA shall have no liability with respect thereto or with respect to such personnel. ELCA shall furthermore not be liable for any injury or death suffered by any of the Buyer's personnel arising from or in connection with assisting ELCA to provide the Services on the Site or in any way in connection with the provision by ELCA of the Services.
- 9.5 The Buyer shall provide all tools, test equipment and test facilities unless specifically stated otherwise in any Order accepted by way of an Order Acknowledgement. Where ELCA does supply tools the Buyer shall give all necessary assistance with the customs formalities

required for the import and re-export of ELCA's tools and equipment free of all taxes.

- 9.6 The Buyer shall to the best of its ability assist ELCA in obtaining all necessary information concerning such local laws and regulations as are applicable to ELCA's provision of the Services.
- 9.7 Generally, the Buyer shall co-operate with ELCA and provide such reasonable assistance to ELCA as may be required from time to time, in order to allow ELCA to provide the Services on the Site and to comply with its obligations under these Terms read together with the Order accepted by way of an Order Acknowledgement.
- 9.8 ELCA may at its sole discretion refuse to provide the Services in conditions or surroundings that it considers may be prejudicial to the health and/or safety of its personnel and/or where the Buyer is in breach of this clause 9 and ELCA shall not be liable under these Terms read together with the Order accepted by way of an Order Acknowledgement for any delay in or failure of delivery in such event.
- 9.9 The Buyer shall perform its obligations in this clause 9 at its own costs.

10. EXCUSABLE EVENTS AND CIRCUMSTANCES BEYOND ELCA'S CONTROL

- 10.1 If ELCA is prevented or restricted, directly or indirectly, from carrying out all or any of its obligations under an Order accepted by way of an Order Acknowledgement by reason of an Excusable Event, ELCA shall be relieved of such obligations during the period that such Excusable Event and its consequences continue, but only to the extent so prevented,

and shall not be liable for any delay or failure in the performance of any obligations hereunder, or loss or damages (whether general, special or consequential) which the Buyer may suffer due to or resulting from such delay or failure. In addition, ELCA shall be entitled to an increase in the Price or Fees for any necessary delay costs (including, but not limited to, standby charges at the applicable rate(s) per hour for every employee and supervisor, and rental fees and costs for all rental equipment affected by the delays) actually incurred by it arising from the occurrence or continuation of an Excusable Event, which increase shall be payable by the Buyer to ELCA upon ELCA presenting an invoice therefor to the Buyer together with reasonable proof that such costs have in fact been incurred. As used herein, an "Excusable Event" shall mean and refer to:

- 10.1.1 acts of God, fires, explosions, casualties, floods, earthquakes, tornadoes, severe weather, natural disasters, epidemics, civil disturbances or commotion, unrest or disturbances war, terrorism, riots, sabotage, embargo, accidents, restraints or injunctions issued by a court or other governmental entity or other governmental acts or omissions, strikes, lock-outs or labour disputes, or other work stoppages or cessation of labour, power outages, public health emergencies, or non-delivery of acceptable materials or unusual delays in the supply of materials by suppliers;
- 10.1.2 transportation delays or a shortage of, or a breakdown in, transportation facilities; and/or

10.1.3 the occurrence of any other events or matters which are beyond the reasonable control of ELCA, irrespective of whether such contingency is specified herein or is presently occurring or anticipated.

10.2 If such Excusable Event continues for a period of more than 90 days, then ELCA shall be entitled to cancel the relevant Order with immediate effect, in respect of any obligations still to be performed hereunder in respect of such Order. In the event of ELCA electing to cancel in terms of this clause 10.2, the Buyer shall immediately pay to ELCA the outstanding amount of the Price and any applicable Fees in respect of Goods already delivered and Services already provided in terms of the Order, and neither Party shall have any further claim against the other.

11. WARRANTIES

11.1 The Buyer acknowledges that the Price and Fees are predicated on the limited warranties and limited warranty remedies in these Terms, and that the Price and Fees would be substantially higher if ELCA's liability were not so limited, and that the Buyer accepts these limitations in exchange for such lower Price and Fees.

11.2 ELCA Equipment, ELCA Parts and other Goods manufactured by ELCA - Subject to clause 11.4, ELCA warrants for a period of 12 months from the date on which any ELCA Equipment, ELCA Parts and/or other Goods manufactured by ELCA was delivered to the Buyer, that all such ELCA Equipment, ELCA Parts and other Goods manufactured by ELCA are free from substantial defects in material or manufacture.

11.3 Services - Subject to clause 11.4, ELCA warrants for a period of 12 months from the date on

which any Services have been provided by ELCA, that the relevant Services have been provided with reasonable skill and care

11.4 The warranties referred to in clause 11.2 and 11.3 shall under no circumstances apply:

11.4.1 where any defect in the relevant Goods or Services arises from any drawing, design, specification or intellectual property right supplied by the Buyer or arises from normal wear and tear, wilful damage, the Buyer's negligence, abnormal working conditions, or misuse or alteration or repair of the Goods without ELCA's approval or arises from any failure to follow ELCA's advice (whether oral or written or whether relating without limitation to the fabrication, operation, use or maintenance of the Goods), or misuse or alteration or repair of the goods without ELCA's approval or by anyone other than a person approved by ELCA;

11.4.2 if ELCA or its agents are not given a reasonable opportunity to safely inspect the defective Goods and/or Services;

11.4.3 if the Price or Fees of the defective Goods or Services has not been paid in full by the Buyer to ELCA;

11.4.4 if the Goods supplied by ELCA are mounted in a ELCA engine for which the Buyer has also used unoriginal parts (i.e. parts which have not been supplied through ELCA or through a ELCA licensee);

11.4.5 if the Goods have been manufactured by ELCA in accordance with the instructions, drawings or specifications of the Buyer;

11.4.6 if the Goods or the product of the Services have in any way been altered or tampered with by the Buyer; or

11.4.7 if the Goods or the product of the Services are not used by the Buyer in strict conformity with ELCA's instructions and guidelines,

it being agreed that in such instances ELCA shall have no liability in respect of the relevant defective Goods or Services.

11.5 Other Equipment, Other Parts and other Goods not manufactured by ELCA - ELCA gives no warranties in respect of Other Equipment, Other Parts and other goods and accessories not manufactured by ELCA.

OTHER THAN THE FOREGOING WARRANTIES ELCA GIVES NO WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS, IMPLIED, ORAL, WRITTEN OR OTHERWISE, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING BY CUSTOM, TRADE USAGE, PROMISE, EXAMPLE OR DESCRIPTION, ALL OF WHICH WARRANTIES ARE EXPRESSLY EXCLUDED AND DISCLAIMED BY ELCA AND WAIVED BY THE BUYER.

12. BREACH OF WARRANTY AND REMEDIES

12.1 If, at any time prior to the end of the applicable warranty period set forth in clause 11.2 or 11.3, there is a failure or breach of ELCA's applicable warranties in clause 11.2 and/or 11.3 and the Buyer notifies ELCA in writing within thirty (30) days of discovery of such breach during the applicable warranty period, and in the case of defective ELCA Equipment, ELCA Parts or other Goods manufactured by ELCA, the defective ELCA Equipment, ELCA Part or other Goods manufactured by ELCA is

made available for inspection by ELCA or, at the request of ELCA, delivered freight prepaid to ELCA, then ELCA shall, at ELCA's sole option, either:

- 12.1.1 repair or rectify such non-conformance or defect, or
- 12.1.2 furnish without charge, Ex Works (Incoterms 2010), ELCA's factory or warehouse, a replacement for any such nonconforming or defective ELCA Equipment, ELCA Parts or other Goods manufactured by ELCA.
- 12.2 Repaired, rectified or replacement Goods or Services provided under clause 12.1 are warranted only for the remainder of the original applicable warranty period. ELCA, at its option, may issue a credit in satisfaction of its obligations to repair, rectify or replace as set forth herein. The amount of any credit to be issued shall be the price of the relevant Goods at the time of its failure, or ELCA's determination of the cost of labour, at ELCA's standard rates, and materials necessary to do the repair, rectification or replacement.
- 12.3 ELCA shall not be liable for the cost, including labour costs, of dismantling and installing replacement Goods or for any other expense connected therewith or for any special, exemplary, indirect, incidental or consequential damages. Ownership of any replaced Goods shall revert to ELCA.
- 12.4 The Buyer's sole and exclusive remedy for non-conformance of any Services shall be ELCA's correction or reperformance of any such nonconforming Services, provided that ELCA is given written notice of any claimed non-conformance within thirty (30) days of the provision of such Services. Except for ELCA's

direct costs incurred in correcting or reperforming non-conforming Services, ELCA shall not be liable for any other expense connected with the correction or reperformance of any Services or for any special, exemplary, indirect, incidental or consequential damages.

THE FOREGOING REMEDIES SHALL CONSTITUTE BUYER'S SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY AND ALL OTHER REMEDIES ARE HEREBY EXPRESSLY EXCLUDED. THE BUYER SHALL NOT BE ENTITLED TO ANY FURTHER RECOURSE OR REMEDIES FOR A BREACH OF ANY WARRANTIES PROVIDED BY ELCA HEREIN.

13. INTELLECTUAL PROPERTY RIGHTS

- 13.1 ELCA shall be entitled to exercise its lawful rights to protect the various patents and trademarks registered in its name, as well as any other intellectual property rights including without limitation any and all inventions, patents, utility models, designs and design rights, copy right, know how, trade secrets, confidential information, trademarks service marks, trade names and goodwill (hereinafter "**Intellectual Property Rights**") which it may have and any supply of Goods or provision of Services to the Buyer may not be construed as any waiver of ELCA's rights in this regard.
- 13.2 The Buyer shall under no circumstances acquire any right in and to any Intellectual Property Rights of ELCA resulting from, relating to or subsisting in any of the Goods or Services or any plans, descriptions, blueprints, designs, technical information, software, documents, drawings and/or specifications relating thereto either (a) supplied by or on behalf of ELCA to the Buyer in connection with the Goods or

Services; (b) resulting from the Goods or Services; or (c) by virtue of the sale of the Goods or provision of the Services to the Buyer unless otherwise expressly agreed to by ELCA in writing. If the Buyer shall in any way acquire any such rights then the Buyer shall immediately inform ELCA and shall forthwith take such steps as may be required by ELCA to assign such rights or vest such title in ELCA.

13.3 ELCA shall have the right to apply any trademarks, trade names, and/or service marks to the Goods. The Buyer acknowledges that no rights are granted to the Buyer by the use by the Buyer of the trademarks, trade names, and/or service marks. The Buyer shall not deface, remove or obliterate any trademarks, trade names or logs applied by ELCA on or in relation to the Goods.

13.4 In no event shall ELCA be liable to the Buyer for any lost profits, consequential, exemplary, indirect or incidental damages arising out of any claim or threatened claim of infringement or arising out of the modification of, or the substitution of different products for ELCA Equipment or ELCA Parts to avoid any claim or threatened claim of infringement. Notwithstanding the foregoing, the Buyer shall indemnify, defend and hold ELCA harmless from any and all claims, actions, damages, costs, expenses and reasonable attorney's fees arising out of a claim that any ELCA Equipment or ELCA Parts or Services or part thereof manufactured or rendered by ELCA according to the Buyer's specifications constitutes an infringement of any patent, copyright or trademark or infringes any other Intellectual Property Rights of any person.

14. COMPLIANCE WITH REGULATIONS

ELCA shall provide Goods and Services in accordance with ELCA's good faith interpretation of applicable legislation and regulations in effect on the date of the provision of such Goods and Services. However, due to possible interpretations of such legislation and regulations, ELCA makes no representation and does not warrant or guarantee that Goods and Services comply with all laws, regulations and standards applicable to the use or operation of the Goods within the Buyer's operation, or will eliminate hazards to the Buyers' personnel. ELCA shall not be liable for injuries resulting from the removal or defacing of or additions or modifications to instructions, notices or warnings, guards or safety devices furnished or recommended by ELCA. The Buyer shall comply with all applicable laws and regulations in respect of its performance of its obligations hereunder.

15. CONFIDENTIALITY

15.1 All proposals, drawings, specifications, software, and technical data furnished to the Buyer by ELCA shall:

15.1.1 be retained in confidence

15.1.2 remain the exclusive property of ELCA,

15.1.3 not be disclosed by the Buyer to third parties or used in any manner not authorized by ELCA, and

15.1.4 be returned to ELCA upon request.

15.2 All drawings, specifications, designs, plans, computer programs and other documents prepared by or on behalf of ELCA in connection with any Goods and/or Services hereunder (the "**Design Materials**"), and all Intellectual Property Rights in and to the Design Materials, are and shall remain ELCA's property. The Design Materials are for use

solely with respect to Goods which are the subject of the relevant Order, and shall not, without ELCA's prior written consent, be used by the Buyer, or its agents or contractors, on any other project, for completion of any of the Goods or Services hereunder by others, or for any other services or work. The Design Materials are confidential, and the Buyer agrees to keep the Design Materials confidential upon receipt of the same directly or indirectly from ELCA or from any of ELCA's contractors, subcontractors, vendors or consultants, and to return such Design Materials to ELCA upon request. The obligation to keep the Design Materials confidential shall survive the cancellation or expiry of an Order accepted by way of an Order Acknowledgement or the completion and delivery of any Goods and/or Services.

15.3 The Buyer, its agents or distributors and/or their employees and representatives, shall maintain confidentiality of all information, specifications and technical documentation relating to ELCA, the Order, the Intellectual Property Rights, the Goods and/or Services, Prices and Fees and the business, operations and affairs of ELCA, howsoever such information was obtained, and shall not use same for its own purposes or for disclosing same to any third party without ELCA's prior written consent.

15.4 Where required by ELCA, the Buyer, its agents or distributors and/or their employees or representatives shall sign such confidentiality undertakings as may be required by ELCA.

16. INDEMNITIES

16.1 The Buyer indemnifies ELCA, its employees, officers and/or agents or person for whom it may be liable in law against any claim, liability, loss, proceeding, expense and/or cost of whatsoever nature which may be brought against ELCA, its employees, officers, agents and any person for whom it may be liable in law due to the implementation of an Order accepted by way of an Order Acknowledgement or any act or omission on the part of the Buyer, its employees, officers, agents and/or any person for whom it is liable in law and/or any infringement by ELCA of any patent, design, trademark or proprietary right due to the use by ELCA of any information, specifications, designs or other data supplied by the Buyer.

16.2 The Buyer shall have no claim of any nature whatsoever whether for damages, a remission of the Price of Fees, cancellation or otherwise, against ELCA, its employees, officers, agents and/or any other person for whom it may be liable in law in respect of any loss or damage sustained by the Buyer of any nature whatsoever or any damage caused to the assets of the Buyer or assets kept on its premises by any third parties or in regard to the Buyer's business or sustained by any of its customers, howsoever caused including but not limited to the negligent acts or omissions of ELCA, its employees, officers, agents and/or any other person for whom it may be liable in law. This constitutes also *stipulatio alteri* in favour of such persons the benefits of which may be accepted by them at any time.

17. PERMITS AND LICENSES

The Buyer shall secure and pay for any and all permits, licenses and governmental fees, inspections and approvals necessary for the installation, erection, and use of any of the Goods. ELCA shall at its cost secure and pay for permits required for ELCA to provide Services.

18. ENVIRONMENTAL MATTERS

18.1 ELCA and the Buyer agree that ELCA shall not be responsible for any hazardous or toxic wastes or substances ("**Hazardous Substances**") at the Site. If ELCA is found to be a responsible party with respect to the Site or the Goods or Services under applicable environmental laws or regulations or becomes liable under any other law or regulation regarding protection of the environment or workplace safety, including those relating to the treatment, storage, transportation, disposal, release, investigation or remediation (collectively "**Handling**") of Hazardous Substances in relation to the Goods or Services, the Buyer agrees to indemnify, defend and hold ELCA harmless from such liability. ELCA shall immediately notify the Buyer in writing of any Hazardous Substances brought to the Site, and any spills caused by ELCA in the provision of the Services, and shall promptly clean up any such spills in accordance with the Buyer's instructions and applicable regulations at no cost to the Buyer.

18.2 The Buyer will provide drums or other containers for the appropriate disposal of, or will provide alternate methods of disposing of, chemicals and Hazardous Substances, which shall include but not be limited to, oil, fuel, grease, solvents and paint utilized by ELCA during the provision of Services. ELCA will remove any

unused portions of Hazardous Substances brought to Site upon completion of Services.

18.3 The Buyer will direct ELCA to place any Hazardous Substances in containers provided by the Buyer, and the Buyer will dispose of the containers. ELCA shall dispose of rubbish and trash and perform normal housekeeping clean-up of the work area prior to leaving the Site. Upon completion of Services, ELCA will, upon request of the Buyer, certify that ELCA has cleaned-up the Site, and removed Hazardous Substances brought by ELCA to the Site. In the absence of such request and unless the Buyer notifies ELCA of deficient Site clean-up or removal of Hazardous Substances brought by ELCA to the Site, the Buyer shall be deemed to have accepted the condition of the Site at completion of performance of Services.

18.4 ELCA and the Buyer agree that ELCA and its sub-contractors shall:

18.4.1 not be responsible for the condition of the Site prior to the commencement of Services on Site, and after completion of Services on Site;

18.4.2 not be responsible for any Hazardous Substances at the Site where Services are provided, other than those brought to the Site or generated by ELCA.; and

18.4.3 have no discretion or control regarding the Handling of any such Hazardous Substances and no authority to make decisions or implement actions to prevent or abate damage caused by the Handling of such Hazardous Substances.

19. LIMITATION OF LIABILITY

19.1 The Buyer acknowledges that the Price and Fees are predicated on the enforceability of the following limitation of liability, that the Price and Fees would be substantially higher if ELCA could not limit its liability as herein provided and that the Buyer accepts this limitation of liability in exchange for such lower Price and Fees.

19.2 Notwithstanding anything to the contrary in in contract, at law or otherwise, ELCA shall not be liable to the Buyer or to any other person for any claim, loss, liability or damages (whether foreseeable or unforeseeable):

19.2.1 incurred or suffered by the Buyer or such third party arising from, pursuant to or in connection with an Order, these Terms, ELCA's performance or non-performance of its obligations under these Terms, the Goods or the Services, other than where such claim, loss, liability or damages are caused by ELCA's gross negligence or wilful misconduct (but in such instances subject to the other limitations of liability contained in this clause 19);

19.2.2 arising from damage to the Buyer's reputation or goodwill;

19.2.3 arising from loss of income, loss of goodwill or profits, loss of use or business interruption, loss of production, loss on a sub-contract, loss of trade, loss of business reputation, loss of use legal costs, loss of profits on resale, professional fees or charges; and/or

19.2.4 arising from a delay in the delivery of the Goods or provision of the Services (other than as specified in clauses 5.7 and 6.6);

19.2.5 arising from any instructions, drawings or specifications which are provided by or on behalf of the Buyer;

19.2.6 arising from any failure, defect or the like in any goods or services procured from or provided by a sub-contractor, supplier, manufacturer or any other person, it being agreed that ELCA shall, on written request therefor by the Buyer, cede and assign to the Buyer the necessary rights which it may have against such sub-contractor, supplier, manufacturer or other person;

19.2.7 for any consequential, incidental, indirect, special or punitive damages whatsoever (including but not limited to loss of income, loss of goodwill or profits, loss of use or business interruption, loss of hire, loss of contracts and loss of savings),

and the Buyer hereby indemnifies and holds ELCA harmless against any such claim, loss, liability or damages.

19.3 Without prejudice to clauses 11.4 and 19.2, to the extent allowed by law the aggregate overall liability of ELCA, irrespective whether based on contract, indemnity, law, tort or any other legal concept in terms of any Order accepted by way of an Order Acknowledgement shall be limited to the Price of the Goods purchased, and the Fees payable in respect of the Services requested, by the Buyer as contained in the relevant Order accepted by way of an Order Acknowledgement.

19.4 Notwithstanding anything herein to the contrary, but subject to clause 24 and to the extent allowed by law, the rights and remedies specifically set forth in these Terms are the sole and exclusive rights and remedies available to the Parties, and neither Party shall

be entitled to avail itself of any other rights or remedies.

20. DISPUTES/JURISDICTION

If a difference of opinion cannot be settled by the Parties themselves, the dispute shall be finally decided by arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce in Paris (ICC), by three arbitrators, appointed under such Rules. The arbitration proceedings shall take place in Johannesburg, South Africa in the English Language. However ELCA shall not be prevented from choosing, at ELCA's own discretion, to bring an action against the Buyer in any ordinary courts of law having jurisdiction over such action.

21. SUSPENSION AND TERMINATION

21.1 Without prejudice to any of ELCA's other rights or remedies in these Terms or in law, if the Buyer fails to make payment when due or to perform any of its other obligations on time, ELCA shall be entitled to suspend its performance under an Order accepted by way of an Order Acknowledgement until the failure is remedied. Regardless of whether or not ELCA elects to suspend performance:

21.1.1 for the duration of such failure by the Buyer, the time for performance by ELCA of its obligations under an Order accepted by way of an Order Acknowledgement shall automatically be extended accordingly;

21.1.2 the Buyer shall reimburse ELCA on demand for any delay costs (including but not limited to financial costs and storage, demurrage or other charges) incurred by ELCA arising from such failure.

21.2 Without prejudice to any of ELCA's other rights or remedies in these Terms or in law, ELCA may without any liability to the Buyer immediately terminate an Order accepted by way of an Order Acknowledgement if any of the following occur:

21.2.1 a suspension by ELCA under clause 21.1 continues for more than 120 days;

21.2.2 the Buyer breaches any of the provisions of these Terms read together with an Order accepted by way of an Order Acknowledgment and, where such breach is capable of remedy, fails to remedy the breach for a period of 30 days after receipt of notice from ELCA calling upon the Buyer to remedy its breach;

21.2.3 the Buyer commits any other breach of these Terms read together with an Order accepted by way of an Order Acknowledgment which is incapable of being remedied;

21.2.4 the Buyer takes steps or has steps taken against it for its winding-up, deregistration, sequestration or liquidation (whether voluntary or otherwise) or is placed under business rescue proceedings or has entered into a compromise or any scheme of arrangement or anything similar occurs under any foreign law to which it may be subject;

21.2.5 the Buyer commits any act of insolvency, or an act which if committed by an individual would amount to an act of insolvency, in terms of the Insolvency Act 24 of 1936 or

is, or deemed to be insolvent in terms of the Insolvency Act 24 of 1936;

- 21.2.6 the Buyer is unable to pay its debts in the normal and ordinary course of its business operations or becomes aware that it is in 'financial distress' (as that term is defined in section 128(1)(f) of the Companies Act 71 of 2008);
- 21.2.7 the Buyer agrees to any 'business rescue' (as that term is defined in section 128(1)(b) of the Companies Act 71 of 2008);
- 21.2.8 the Buyer has a writ of attachment or execution issued against it;
- 21.2.9 the Buyer being a company or close corporation, ceases to be controlled by the person(s) that control(s) it at the date of submission of an Order; and/or
- 21.2.10 the Buyer fails to contest or discharge any final judgment taken against it in any court of competent jurisdiction for a period of 14 days or longer.
- 21.3 Upon termination of an Order pursuant to clause 21.2 ELCA shall be entitled to suspend any further work under any contract between ELCA and the Buyer without any liability to the Buyer. Without prejudice to any of ELCA's other rights or remedies in these Terms or in law, within 14 days of any such notice of termination, however arising, the Buyer shall pay to ELCA:
- 21.3.1 the outstanding balance of the Price or Fee payable in respect of Goods delivered and Services provided up to and including the date of the notice of termination;

- 21.3.2 the costs incurred or committed by ELCA up to and including the date of the notice of termination in performing such work under the terminated Order which is not yet completed plus a reasonable margin to be agreed between the Parties, and failing such agreement within 7 days of any Party requiring such agreement, such margin shall be 15%;
- 21.3.3 any other costs reasonably incurred by ELCA arising from or pursuant to the termination.
- 21.4 The expiry or termination of any Order shall not affect such of the provisions of these Terms which are expressly provided to operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.

22. **DOMICILIUM AND NOTICES**

22.1 The Parties choose the following physical addresses at which documents in legal proceedings in connection with an Order accepted by way of an Order Acknowledgement may be served (ie their *domicilia citandi et executandi*) and at which any written notice in connection with such Order may be addressed:

22.1.1 in the case of the Buyer, to the address, fax number and e-mail address stipulated in the Order;

in the case of ELCA, to the following address:

Turbine Division:

Petter Street CE6

Vanderbijlpark

1911

Phone: +27 16 910-7300

E-mail: elca@elca.co.za

22.2 Any process and written notice in connection with an Order accepted by way of an Order Acknowledgement shall be deemed to have been duly given:

22.2.1 on delivery, if delivered to the Party's physical address in terms of clause 22.1.1 between 08h30 and 17h00 on a business day (or on the first business day after that if delivered outside such hours);

22.2.2 7 days (and 14 days if the address is not in South Africa) after posting if posted by registered post or airmail to the Party's physical address in terms of clause 22.1.1;

22.2.3 on despatch, if sent to the Party's then fax number or e-mail address between 08h30 and 17h00 on a business day (or on the first business day after that, if despatched outside such hours).

22.3 A Party may change that Party's address, fax number or e-mail address for this purpose, by notice in writing to the other Party, such change to be effective only on and with effect from the 7th day after the giving of such notice.

22.4 Notwithstanding anything to the contrary herein contained, a written notice or communication

actually received by a Party shall be an adequate written notice or communication to that Party notwithstanding that the notice or communication was not sent to or delivered at that Party's chosen address.

23. **WAIVER**

No right or remedy of ELCA shall be deemed to have been waived or renounced, in whole or in part, unless such waiver or renunciation is supported by consideration and is in writing signed by ELCA. Any such waiver or renunciation shall be effective only to the extent expressed in such writing.

24. **ELCA'S REMEDIES**

ELCA shall have all rights and remedies specified in these Terms read together with an Order accepted by way of an Order Acknowledgment in addition to those remedies that ELCA has through operation of law. All such rights and remedies are cumulative. No delay or failure by ELCA to exercise any right or remedy shall impair in any manner whatsoever any of such rights or remedies or be construed to be a waiver of any breach or acquiescence therein, and any single or partial exercise of any such right or remedy shall not preclude other or further exercise thereof or the exercise of any other right or remedy. The Buyer shall pay all costs and expenses paid or incurred by ELCA in enforcing its rights hereunder including, without limitation, reasonable attorneys' fees and court costs.

25. **APPLICABLE LAW**

These Terms read together with an Order accepted by way of an Order Acknowledgment are to be governed, interpreted and implemented in accordance with the laws of the Republic of South Africa.

26. **JURISDICTION OF SOUTH AFRICAN COURTS**

Subject to clause 20, the Parties consent to the non-exclusive jurisdiction of the High Court of South Africa,

South Gauteng High Court, Johannesburg for any proceedings arising out of or in connection with these Terms read together with an Order accepted by way of an Order Acknowledgment.

27. GOOD FAITH

The Parties shall at all times act in good faith towards each other and shall not bring any of the other Parties into disrepute.

28. VARIATION

No contract varying, adding to, deleting from or cancelling these Terms read together with an Order accepted by way of an Order Acknowledgment, and no waiver of any right under these Terms read together with an Order accepted by way of an Order Acknowledgment, shall be effective unless reduced to writing and signed by or on behalf of the Parties.

29. SEVERABILITY

Should any of the terms and conditions of these Terms read together with an Order accepted by way of an Order Acknowledgment be held to be invalid, unlawful or unenforceable, such terms and conditions shall be severable from the remaining terms and conditions, which shall continue to be valid and enforceable. If any term or condition held to be invalid can be amended to render it valid, the Parties may agree to such amendment to restore this validity.

30. NO REPRESENTATIONS

A Party may not rely on any representation which allegedly induced that Party to enter into an agreement with the other Party, unless the representation is recorded in these Terms read together with an Order accepted by way of an Order Acknowledgment.

31. INDULGENCES

The grant of any indulgence, extension of time or relaxation of any provision by ELCA under these Terms read together with an Order accepted by way of an Order Acknowledgment shall not constitute a waiver of any right by ELCA or prevent or adversely affect the exercise by ELCA of any existing or future right of ELCA.

32. CESSION AND DELEGATION

32.1 The Buyer may not cede any or all the Buyer's rights or delegate any or all of the Buyer's obligations under these Terms read together with an Order accepted by way of an Order Acknowledgment without the prior written consent of ELCA.

32.2 ELCA shall be entitled to cede any or all of ELCA's rights or delegate any or all of ELCA's obligations under these Terms read together with an Order accepted by way of an Order Acknowledgment by providing written notice of such cession and delegation to the Buyer.

33. SUB-CONTRACTING

33.1 The Buyer may not sub-contract any of its obligations under these Terms read together with an Order accepted by way of an Order Acknowledgment without the prior written consent of ELCA.

33.2 ELCA shall be entitled to subcontract any or all of ELCA's obligations under these Terms read together with an Order accepted by way of an Order Acknowledgment.

34. CO-OPERATION

Each of the Parties undertake at all times to do all such things, perform all such acts and take all such steps, and to procure the doing of all such things, within its power and

control, as may be open to it and necessary for and incidental to the putting into effect or maintenance of the terms, conditions and import of these Terms read together with an Order accepted by way of an Order Acknowledgment.

35. CREDIT APPLICATION AND RETENTION OF INFORMATION

35.1 ELCA may, without prejudice to any of its other rights, grant to the Buyer credit facilities on such terms as ELCA in its sole discretion may determine. The Buyer shall furnish ELCA with such security as ELCA may from time to time require, including, but not limited to, a deed of suretyship in a form acceptable to ELCA. ELCA further reserves the right to withdraw or amend such credit facilities at any time without prior notice.

35.2 The Buyer consents to ELCA accessing and retaining information about the Buyer (whether such information is held by the Buyer or any third party) for the purpose of investigating and evaluating the creditworthiness of the Buyer from time to time.

36. CONSUMER PROTECTION ACT

36.1 If these Terms read together with an Order accepted by way of an Order Acknowledgement and/or any Goods delivered or Services provided under these Terms read together with an Order accepted by way of an Order Acknowledgement are regulated by or subject to the Consumer Protection Act 68 of 2008 ("**CPA**"), it is not intended that any provision of these Terms read together with an Order accepted by way of an Order Acknowledgement contravene any provision of the CPA. Therefore all provisions of these Terms read together with an Order accepted

by way of an Order Acknowledgement must be treated as being qualified, to the extent necessary, to ensure that the provisions of the CPA are complied with.

36.2 No provision of these Terms read together with an Order accepted by way of an Order Acknowledgement:

36.2.1 does or purports to limit or exempt ELCA from any liability to the extent that the law does not allow such a limitation or exemption; or

36.2.2 requires the Buyer to assume risk or liability for the kind of liability or loss referred to in clause 36.2.1, to the extent that the law does not allow such an assumption of risk or liability.