

BACKYARD SOLUTIONS LTD
("THE COMPANY")
TERMS OF TRADE

1. GENERAL

- a) THE COMPANY ACCEPTS THE CUSTOMER'S ORDER ON THESE CONDITIONS WHICH CONDITIONS (TOGETHER WITH THE COMPANY'S ACCEPTANCE) CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE COMPANY AND THE CUSTOMER (EXCEPT TO THE EXTENT THAT SUCH TERMS AND CONDITIONS ARE MODIFIED IN WRITING AND SIGNED BY BOTH PARTIES) AND IT IS EXPRESSLY AGREED THAT THERE ARE NO OTHER UNDERSTANDINGS, REPRESENTATIONS OR WARRANTIES OF ANY KIND (EXPRESS OR IMPLIED) FORMING PART OF THIS CONTRACT.
- b) ANY VARIATION, WAVER OR CANCELLATION OF THE CUSTOMER'S ORDER SHALL BE OF NO EFFECT UNLESS ACCEPTED IN WRITING BY THE COMPANY. WHERE THE COMPANY ACCEPTS CANCELLATION THE COMPANY MAY LEVY A HANDLING CHARGE OF UP TO 25% OF THE PRICE IN THE CASE OF NON PROCESSED ORDERS AND 50% OF THE PRICE IN RESPECT OF PROCESSED ORDERS.
- c) PLACEMENT BY THE CUSTOMER OF ANY ORDER WITH THE COMPANY CONSTITUTES AN ACKNOWLEDGEMENT BY THE CUSTOMER THAT THE CONTRACT BETWEEN THE CUSTOMER AND THE COMPANY SHALL BE GOVERNED BY THESE TERMS OF TRADE.
- d) IF ANY OF THESE TERMS OR CONDITIONS OR PART THEREOF ARE HELD TO BE INVALID, ILLEGAL, UNENFORCEABLE OR VOID FOR ANY REASON OR REASONS ALL OF THE REMAINING TERMS AND CONDITIONS (OR PART THEREOF) SHALL REMAIN IN FULL FORCE AND EFFECT.
- e) THE CUSTOMER AGREES THAT IN THE EVENT OF DEFAULT OF SETTLEMENT OF ANY ACCOUNT DUE THE CUSTOMER SHALL PAY UPON DEMAND ALL REASONABLE COSTS, CHARGES AND LEGAL EXPENSES (INCLUDING COSTS BETWEEN SOLICITOR AND OWN CLIENT) INCLUDING ANY COLLECTION COSTS INCURRED BY THE COMPANY IN RECOVERING THE OUTSTANDING ACCOUNT FROM THE CUSTOMER.

2. PRICE AND TERMS OF PAYMENT

- a) THE COMPANY'S PRICES ARE SUBJECT TO ALTERATION WITHOUT NOTICE AND THE PRICE PAYABLE BY THE CUSTOMER FOR THE GOODS ORDERED SHALL BE THE PRICE AGREED TO BETWEEN THE COMPANY AND THE CUSTOMER OR IN THE ABSENCE OF SUCH AGREEMENT THE PRICE RULING AT THE DATE THE GOODS ARE DISPATCHED. THE ONUS IS ON THE CUSTOMER TO CONFIRM PRICES PRIOR TO EACH DELIVERY.
- b) THE COMPANY'S PRICES REFERRED TO IN THIS CONTRACT AND IN ANY QUOTATION WHICH MAY HAVE FORMED THE BASIS OF THIS CONTRACT ARE EXCLUSIVE OF GOODS AND SERVICES TAX (UNLESS STATED OTHERWISE). THE CUSTOMER SHALL PAY GOODS AND SERVICES TAX ON THE GOODS OR SERVICES THE SUBJECT OF THIS CONTRACT, AS INVOICED BY THE COMPANY.
- c) ALL ACCOUNTS ARE DUE FOR PAYMENT 7 DAYS AFTER THE ACCOUNT HAS BEEN INVOICED IN WHICH THE GOODS (OR ANY INSTALLMENT OF THE GOODS) ARE EITHER DELIVERED OR COMPLETE THEIR FINAL PROCESSING (AS THE CASE MAY BE).
- d) WITHOUT PREJUDICE TO ITS RIGHTS TO SUE FOR PAYMENT OR EXERCISE ANY OTHER REMEDY WHERE ANY PAYMENT IS NOT MADE ON THE DUE DATE THE COMPANY MAY:
 - i. REINVOKE THE GOODS AT THE THEN CURRENT FULL RETAIL PRICE
 - ii. CHARGE THE CUSTOMER INTEREST ON THE AMOUNT OUTSTANDING AT THE RATE EQUAL UP TO 10% PER MONTH OVER THE BASE LENDING RATE FROM TIME TO TIME OF THE COMPANY'S BUNKERS (FROM THE DUE DATE OF PAYMENT UNTIL PAYMENT IS RECEIVED BY THE COMPANY) BUT THE CHARGING OF INTEREST DOES NOT EXTEND THE TIME FOR PAYMENT NOR IMPLY ANY FORBEARANCE TO SUE OR OTHERWISE RECOVER OVERDUE MONIES.
 - iii. DEMAND PAYMENT OF THE ARREARS AS WELL AS PAYMENT IN ADVANCE FOR ANY UNDELIVERED GOODS BEFORE PROCEEDING WITH MAKING ANY FURTHER DELIVERY OF GOODS UNDER THIS CONTRACT.

- i. **RESEND THIS CONTRACT AND THE CUSTOMER SHALL NOT BE ENTITLED TO DEMAND OR ENFORCE DELIVERY OF ANY GOODS OR INSTALLMENT OF GOODS UNDER THIS CONTRACT.**

3. DELIVERY

- a) **THE COMPANY MAY WITHHOLD DELIVERY IN TERMS OF CLAUSE 2 ABOVE.**
- b) **IF THE CUSTOMER FAILS OR REFUSES OR INDICATES TO THE COMPANY THAT THE CUSTOMER WILL FALL OR REFUSE TO TAKE OR ACCEPT DELIVERY, THEN THE GOODS SHALL BE DEEMED TO HAVE BEEN DELIVERED WHEN THE COMPANY WAS WILLING TO DELIVER THEM.**
- c) **WHERE THE COMPANY ACKNOWLEDGES AN ORDER WHICH PROVIDES FOR DELIVERY B INSTALLMENTS, THE COMPANY SHALL BE ENTITLED TO PAYMENT FOR EACH INSTALLMENT DELIVERED (AS IF IT WERE A SEPARATE CONTRACT) BUT FAILURE TO DELIVER ANY INSTALLMENT SHALL NOT ENTITLE THE CUSTOMER TO REPUDIATE THE CONTRACT AS TO ANY REMAINING INSTALLMENTS.**
- d) **ANY QUOTATIONS OF DELIVERY TIMES BY THE COMPANY ARE MADE IN GOOD FAITH BUT AS ESTIMATES AND NOT COMMITMENTS. THE COMPANY SHALL NOT BE BOUND BY SUCH ESTIMATES.**
- e) **PROOF OF DELIVERY INFORMATION WILL NOT BE PROVIDED BY THE COMPANY BEYOND 60 DAYS FROM DATE OF INVOICING.**

4. SHORTAGES

THE COMPANY'S LIABILITY FOR SHORTAGES IN THE QUANTITY OF THE GOODS SUPPLIED IS LIMITED TO MAKING UP THE SHORTAGES. NO CLAIM FOR SHORTAGES IN QUANTITY WILL BE ALLOWED UNLESS THE CUSTOMER GIVES WRITTEN NOTIFICATION OF THE SHORTAGE IN WRITING WITHIN THREE (3) DAYS OF DELIVERY AND PROVIDES A REASONABLE OPPORTUNITY FOR THE COMPANY TO TAKE ALL NECESSARY STEPS TO INVESTIGATE THE CLAIM.

5. RISK AND LOSS IN TRANSIT

- a) **RISK (INCLUDING, WITHOUT LIMITATION, INSURANCE RESPONSIBILITY) OF ANY LOSS, DAMAGE OR DETERIORATION OF OR TO THE GOODS SHALL PASS TO THE CUSTOMER ON COLLECTION OF THE GOODS BY THE CUSTOMER OR THE PASSING OF THE GOODS TO A CARRIER (INCLUDING WITHOUT LIMITATION, THE COMPANY'S OWN DELIVERY VEHICLES) FOR DELIVERY.**
- b) **CLAIMS MADE FOR DAMAGE OR LOSS IN TRANSIT MUST BE MADE AGAINST THE COMPANY IN THE PRESCRIBED MANNER:**
 - i. **PRIOR TO ACKNOWLEDGING DELIVERY TO THE CARRIER OR THE COMPANY'S DELIVERY PERSON THE CUSTOMER MUST ENSURE THAT THE COMPLETE CONSIGNMENT AS PER THE DELIVERY NOTE HAS BEEN RECEIVED.**
 - ii. **SHOULD THERE BE A SHORTAGE OR VIABLE DAMAGE TO THE GOODS THE DELIVERY NOTE MUST BE ENDORSED BY THE CUSTOMER ACCORDINGLY.**
 - iii. **WITHIN TWO DAYS OF RECEIPT OF CONSIGNMENT THE CUSTOMER MUST ENSURE THAT ALL GOOD RECEIVED ARE IN GOOD ORDER AND CONDITION.**
- c) **NO CLAIMS WILL BE CONSIDERED AFTER TWO (2) DAYS OF RECEIPT OF GOODS.**
- d) **THE LIABILITY OF THE COMPANY IN RESPECT OF THE FAILURE TO DELIVER FOR REASONS WITHIN ITS CONTROL ON GOODS THAT ARE INADEQUATELY PACKED OR WHERE THE COMPANY USES ITS OWN DELIVERY VEHICLES TO TRANSPORT THE GOODS TO THE CUSTOMER OR WHERE RISK HAS NOT PASSED TO THE CUSTOMER IN TERMS OF CLAUSE 3(B), 5(C) OR 7(A) (AND WHERE SUCH LIABILITY IN EITHER CASE IS IN CONTRACT OR IN TORT), SHALL BE LIMITED, IN THE CASE OF INADEQUATELY PACKED GOODS AND FAILURE TO DELIVER, TO REFUNDING OR CREDITING THE CUSTOMER WITH THE PURCHASE PRICE AND IN THE CASE OF DAMAGE IN TRANSIT, AT THE OPTION OF THE COMPANY, TO PROVIDING REPLACEMENT GOODS OR REFUNDING OR CREDITING THE CUSTOMER WITH THE PURCHASE WITH THE PURCHASE PRICE OF THE DAMAGED GOODS.**
- e) **RISK SHALL PASS BACK TO THE COMPANY ONLY IF THE COMPANY EXERCISES ITS RIGHT OF REPOSSESSION PURSUANT TO CLAUSE 7(1) AND IN THAT REGARD RISK SHALL PASS BACK TO THE COMPANY ONLY IF THE COMPANY REPOSSESSES THE GOODS.**

6. DISPUTES

IN THE EVENT THAT ANY PART OF THE INVOICE IS DISPUTED THE AMOUNT NOT UNDER QUESTION SHALL BE PAID PROMPTLY ACCORDING TO APPLICABLE PAYMENT TERMS. ANY CLAIM OR DISPUTE ARISING HEREUNDER SHALL BE SUBJECT TO ARBITRATION IN ACCORDANCE WITH THE ARBITRATION ACT (1999) OR ANY AMENDMENT THERETO.

7. OWNERSHIP

- a) **OWNERSHIP OF ALL GOODS SOLD BY THE COMPANY IS RETAINED BY THE COMPANY UNTIL FULL PAYMENT IS RECEIVED FOR ALL AMOUNTS OWING (INCLUDING ANY DEFAULT INTEREST PURSUANT TO CLAUSE 2(D) AND ENFORCEMENT AND LEGAL COSTS PURSUANT TO CLAUSE 1(E)) IN RESPECT OF ALL GOODS SUPPLIED. THIS PROVISION IS DESIGNED TO PROTECT THE COMPANY IN RESPECT OF ANY EVENT WHERE THE CUSTOMER DEFAULTS IN PAYMENT OF THE GOODS OR ANY OTHER GOODS SOLD BY THE COMPANY TO THE CUSTOMER OR ANY EVENT OCCURS WHICH WOULD ENTITLE A DEBENTURE HOLDER OF THE CUSTOMER TO APPOINT A RECEIVER OF THE CUSTOMER OR THE CUSTOMER IS SERVED WITH A NOTICE UNDER THE COMPANIES ACT (1993 OR ANY EVENT OCCURS WHICH WOULD ENTITLE A CREDITOR TO PETITION FOR WINDING UP OR BANKRUPTCY OR A PETITION FOR WINDING UP OR BANKRUPTCY OF THE CUSTOMER IS FILED OR A RECEIVER IS APPOINTED OF ANY OF THE CUSTOMER'S ASSETS OR A RESOLUTION FOR VOLUNTARY WINDING UP IS PASSED BY THE CUSTOMER (EXCEPT FOR THE PURPOSE OF RECONSTRUCTION) OR ANY APPROACHES MADE BY THE CUSTOMER TO CREDITORS TO EXTEND TIME FOR OR OTHERWISE COMPROMISE PAYMENT OF THE CUSTOMER'S DEBTS. SUCH EVENTS AND THE FILING OF LEGAL PROCEEDINGS IN CONNECTION WITH ANY SUCH EVENT ARE SUBSEQUENTLY REFERRED TO AS "THE EVENTS".**
- b) **UNTIL PAYMENT IS MADE THE CUSTOMER AGREES TO :**
 - i. **ENABLE THE GOODS TO BE READILY IDENTIFIABLE AS THE PROPERTY OF THE COMPANY.**
 - ii. **MAINTAIN THE GOODS SO SUPPLIED IN GOOD ORDER AND CONDITION AND TO RETURN THE GOODS IMMEDIATELY IF CALLED UPON TO DO SO BY THE COMPANY.**
- c) **THE CUSTOMER HEREBY AGREES TO MEET ALL COSTS OF AND ANY INCIDENTALS IN THE RECOVERY OF THE SAID GOODS AS WELL AS ANY SHORTFALLS BETWEEN THE AMOUNT OWING AND THE VALUE OF THE GOODS RECOVERED.**
- d) **NOTWITHSTANDING THE RETENTION OF OWNERSHIP, THE CUSTOMER, MAY PRIOR TO PAYMENT IN FULL, AS AGENT FOR THE COMPANY, SELL THE GOODS UNDER A BONA FIDE TRANSACTION IN THE ORDINARY COURSE OF BUSINESS NOT INTENDED TO DEPRIVE THE COMPANY OF THE BENEFIT OF THE RETENTION OF TITLE. IN THE EVENT OF A SALE OF THE GOODS OR ANY OF THEM PRIOR TO PAYMENT IN TOLL THE CUSTOMER SHALL, AS TRUSTEE FOR THE COMPANY.**
 - i. **HOLD ALL MONIES RECEIVED BY THE CUSTOMER ON SUCH SALE OF THE GOODS SEPARATE FROM THE CUSTOMER'S OWN MONEY AND FOR THE COMPANY AND THE CUSTOMER WILL ON REQUEST FROM THE COMPANY PAY SUCH PROCEEDS TO THE COMPANY.**
 - ii. **HOLD ALL CLAIMS AGAINST THE PURCHASERS OF ANY SUCH GOODS WHO HAVE NOT MADE PAYMENT FOR THE SAME IN TRUST FOR THE COMPANY AND THE COMPANY MAY IN ANY OF THE EVENTS EITHER IN ITS OWN NAME OR IN THE NAME OF THE CUSTOMER MAKE CLAIM TO AND ISSUE PROCEEDINGS TO RECOVER THE SALE PRICE OF SUCH GOODS. IF CALLED UPON TO DO SO BY THE COMPANY, THE CUSTOMER SHALL ASSIGN TO THE COMPANY ALL RIGHTS AGAINST THE PERSON TO WHOM THE CUSTOMER HAS SUPPLIED THE GOODS.**
- e) **THE COMPANY SHALL BE ENTITLED FORTHWITH TO CANCEL THE CUSTOMER'S RIGHTS UNDER THE TERMS OF TRADE BY NOTICE TO THE CUSTOMER IF THE CUSTOMER DEFAULTS IN PAYMENT ON THE DUE DATE, TIME FOR WHICH IS STRICTLY OF THE ESSENCE OR FAILS TO COMPLY WITH ANY OF THESE GENERAL CONDITIONS OR ANY TERMS OF ANY PARTICULAR CONTRACT OF SALE BETWEEN THE COMPANY AND THE CUSTOMER, OR IF THE COMPANY RECEIVES ANY INFORMATION WHICH, IN THE OPINION OF THE COMPANY, INDICATES UNCERTAINTY AS TO THE CUSTOMER'S ABILITY TO MEET IT'S FINANCIAL COMMITMENTS. THE RIGHT OF CANCELLATION UNDER THIS CLAUSE 7(C) IS IN ADDITION TO ANY OTHER RIGHT OF CANCELLATION THE**

COMPANY MAY HAVE WHETHER PURSUANT TO THESE GENERAL CONDITIONS OR ANY PARTICULAR CONTRACT OF SALE, OR ANY STATUTE ORAL COMMON LAW OR EQUITY.

- f) IF ANY ONE OR MORE OF THE EVENTS OCCURS, OR UPON CANCELLATION UNDER CLAUSE 7(C), OR UPON CANCELLATION PURSUANT TO ANY OTHER RIGHT, THE CUSTOMER HEREBY GIVES THE COMPANY IRREVOCABLE AUTHORITY, WITHOUT PREJUDICE TO ANY OTHER RIGHTS OR REMEDIES OF THE COMPANY, TO :
- i. RECOVER POSSESSION OF ALL GOODS IN RESPECT OF WHICH THE COMPANY HAS RETAINED TITLE WHETHER OR NOT SUCH GOODS ARE FIXED TO ANY BUILDING, INCLUDING PROCESSED GOODS, EITHER BY REMOVING THE GOODS FROM THE POSSESSION OR CONTROL OF THE CUSTOMER, THE DULY APPOINTED LIQUIDATOR OR RECEIVER OF THE CUSTOMER, THE CUSTOMER'S PURCHASE, OR THE DULY APPOINTED LIQUIDATOR OR RECEIVER OF THE CUSTOMER'S PURCHASER.
 - ii. ENTER ANY PREMISES, AND IF NEED BE FORCIBLY, FOR THE PURPOSES OF REPOSSESSION OR IMPOUNDING ANY GOODS WHETHER OR NOT SUCH GOODS ARE FIXED TO ANY BUILDING, AND, IN SUCH EVENT THE CUSTOMER SHALL INDEMNIFY THE COMPANY AGAINST ALL CLAIMS THAT MAY BE MADE UPON THE COMPANY AS A CONSEQUENCE OF THE COMPANY'S EXERCISING SUCH POWER OF ENTRY AND REMOVAL.
 - iii. EMPLOY THE SERVICES OF ANY PERSON OR ENTER UPON ANY PREMISES OCCUPIED BY OR CONTROLLED BY THE CUSTOMER TO EXERCISE ANY OF THE PROCEEDING RIGHTS;
 - iv. GIVE NOTICE TO ANY THIRD PARTY OF THE COMPANY'S RIGHTS PURSUANT TO THESE GENERAL CONDITIONS AND OF THE EXERCISE OF ANY OF THE COMPANY'S RIGHTS OR REMEDIES AND THE CUSTOMER SHALL HAVE NO CLAIM AGAINST THE COMPANY FOR ANY LOSS, DIRECT OR INDIRECT, SUFFERED BY THE CUSTOMER AS A CONSEQUENCE OF SUCH NOTICE BEING GIVEN BY THE COMPANY.
- g) UPON TERMINATION OF THE CUSTOMER'S RIGHTS PURSUANT TO CLAUSE 7(C), OR PURSUANT TO ANY OTHER RIGHTS OF THE COMPANY, AND WITHOUT PREJUDICE TO ANY OTHER RIGHTS OR REMEDIES OF THE COMPANY, THE COMPANY SHALL BE ENTITLED TO SELL ALL GOODS FULLY OR PARTLY OWNED BY THE CUSTOMER AND THE FOLLOWING FURTHER PROVISIONS SHALL APPLY;
- i. ON THE SALE BY THE COMPANY OF ANY UNPROCESSED GOODS IN RESPECT OF WHICH FULL TITLE HAS BEEN RETAINED BY THE COMPANY, THE COMPANY SHALL HAVE NO OBLIGATION TO ACCOUNT TO THE CUSTOMER FOR ANY PART OF THE PROCEEDS OF SALE PROVIDED THAT IF THE TOTAL PROCEEDS OF SALE EXCEED IN VALUE ALL SUMS OWED BY THE CUSTOMER TO THE COMPANY PURSUANT TO ALL CONTRACTS BETWEEN THE CUSTOMER AND THE COMPANY LESS ANY DIMINUTION IN VALUE OF THE UNPROCESSED GOODS, THEN THE COMPANY SHALL HAVE NO FURTHER CLAIM ON THE CUSTOMER AND SHALL REFUND TO THE CUSTOMER THE DIFFERENCE BETWEEN THE SALE PRICE AND THE TOTAL INDEBTEDNESS OF THE CUSTOMER TO THE COMPANY.
 - ii. IN THE CASE OF PROCESSED GOODS THE COMPANY IS EMPOWERED TO SELL SUCH GOODS ON BEHALF OF THE CUSTOMER AND THE COMPANY FOR THEIR RESPECTIVE RIGHTS AND INTERESTS AND SHALL ACCOUNT TO THE CUSTOMER FOR THE CUSTOMER'S SHARE OF THE PROCEEDS, WHETHER OR NOT ANY MONIES MAY STILL BE DUE FROM THE CUSTOMER TO THE COMPANY.

8.0 PERSONAL PROPERTY SECURITIES ACT 1999

8.1 IT IS AGREED AND ACKNOWLEDGED THAT BY THESE TERMS AND CONDITIONS;

- a) A PURCHASE MONEY SECURITY INTEREST ("PMSI") PURSUANT TO THE PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA") IS GRANTED IN PRIORITY TO ALL OTHER CREDITORS BY YOU IN FAVOUR OF THE COMPANY IN ALL GOODS FROM TIME TO TIME SUPPLIED, AND THAT SUCH PMSI AND THE PRIORITY THEREOF SHALL EXTEND INTO AND OVER THE ITEMS REFERRED TO IN CLAUSES 8.2 AND 8.3 (D) (I) (II) (III);
- b) THE COMPANY MAY AT THE CUSTOMERS COST REGISTER THE PMSI INTEREST UNDER THE PPSA BY REGISTERING A FINANCING STATEMENT AND IF AT SOME LATER DATE ADDITIONAL OR DIFFERENT PROPERTY IS SUPPLIED, TO PROVIDE IF NECESSARY FOR REGISTRATION A NEW COLLATERAL DESCRIPTION BY REGISTERING A FINANCING CHANGE STATEMENT. THIS WILL NOT AFFECT THE COMPANY'S RIGHT TO REGISTER SUBSEQUENT FINANCING STATEMENTS, AND

TO REGISTER SUBSEQUENT FINANCING CHANGE STATEMENTS IN RESPECT OF ANY OTHER AMENDMENTS;

- c) THE CUSTOMER AGREES TO PROVIDE THE COMPANY WITH SUCH INFORMATION AS IT MAY NEED TO ENABLE REGISTRATION OF THE PMSI UNDER THE PPSA AND SHALL PROMPTLY EXECUTE ANY DOCUMENTS TO ENSURE THAT THE SECURITY INTEREST UNDER THESE TERMS AND CONDITIONS IS A FIRST RANKING PERFECTED SECURITY INTEREST AND WAIVE THE RIGHT TO RECEIVE A COPY OF THE RATIFICATION STATEMENT BANNED UPON REGISTRATION OF THE FINANCING STATEMENT OR ANY FINANCING CHARGE STATEMENT'
- d) THAT THE CUSTOMER HAS RECEIVED VALUABLE CONSIDERATION FROM THE COMPANY AND AGREE THAT IT IS SUFFICIENT; AND
- e) THE CUSTOMER SHALL NOT UNDER ANY CIRCUMSTANCES INITIATE ANY CHANGE TO THE REGISTERED FINANCING STATEMENT.

8.2 WHERE THE CUSTOMER IS A CONSUMER AS THAT TERM IS DEFINED BY THE CONSUMER GUARANTEES ACT 1993 IT ACKNOWLEDGES THAT ITS RIGHT TO UNDISTURBED POSSESSION TO THE GOODS IS SUBJECT TO FULL PAYMENT OF THE GOODS AND OTHER COSTS AND CHARGES AS STIPULATED IN THESE TERMS AND CONDITIONS AND BY YOUR SIGNATURE YOU ACKNOWLEDGE IN WRITING SUCH PROVISION AND YOUR UNDERSTANDING OF THE AFFECTS AND IMPLICATIONS OF IT.

9. COMPANY'S LIABILITY

- a) THE CUSTOMER SHALL ENSURE THAT THE GOODS ORDERED ARE FIT AND SUITABLE FOR THE PURPOSE FOR WHICH THEY ARE REQUIRED AND THE COMPANY IS UNDER NO LIABILITY IF THEY ARE NOT.
- b) IN LIEU OF ANY WARRANTY, CONDITION OR LIABILITY IMPLIED BY LAW, THE COMPANY'S LIABILITY IN RESPECT OF ANY DEFECT IN OR FAILURE OF THE GOODS SUPPLIED OR FOR ANY LOSS, INJURY OR DAMAGE ATTRIBUTABLE THERETO IS LIMITED TO MAKING GOOD THE REPLACEMENT OR REFUNDING THE PURCHASE PRICE OF DEFECTS ARISING UNDER NORMAL PROPER USE AND MAINTENANCE ARISING SOLELY FROM FAULTY MATERIALS OR WORKMANSHIP WITHIN SIX (6) MONTHS OF THE DATE OF SUPPLY PROVIDED ALWAYS THAT SUCH DEFECTIVE GOODS ARE PROMPTLY RETURNED TO THE COMPANY, UNLESS OTHERWISE ARRANGED. AT THE TERMINATION OF THE APPROPRIATE PERIOD ALL LIABILITY ON THE COMPANY'S PART CEASES.
- c) THIS WARRANTY DOES NOT COVER DAMAGE FROM MISUSE, ACCIDENT, NEGLIGENCE, INSTALLATION, MODIFICATION, ADJUSTMENT OR MAINTENANCE.
- d) ANY ADVICE, RECOMMENDATION, INFORMATION, ASSISTANCE OR SERVICE ("CUSTOMER INFORMATION") PROVIDED BY THE COMPANY IN RELATION TO THE GOOD'S USE OR APPLICATIONS GIVEN IN GOOD FAITH AND IS BELIEVED TO BE APPROPRIATE AND RELIABLE. ANY CUSTOMER INFORMATION PROVIDED AND ANY STATEMENTS OR REPRESENTATIONS MADE BY THE COMPANY IN RELATION TO ANY GOODS SUPPLIED BY THE COMPANY IS PROVIDED OR IS MADE WITHOUT LIABILITY OR RESPONSIBILITY ON THE PART OF THE COMPANY AND THIS PROVISION PRECLUDES ANY COURT FROM ENQUIRING OF DETERMINING THE QUESTIONS REFERRED TO IN SECTION 4 OF THE CONTRACTUAL REMEDIES ACT 1979.
- e) THE COMPANY'S LIABILITY UNDER THIS CONTRACT AND THE WARRANTY IN THIS CLAUSE IS CONTINUED TO THE NEXT CUSTOMER NAMED IN THIS CONTRACT OF BEING AGREED THAT THE COMPANY HAS NO LIABILITY TO ANY PURCHASER OF THE GOODS FROM THE CUSTOMER IN THAT THE CUSTOMER'S RIGHTS UNDER THIS CONTRACT ARE NOT ASSIGNABLE WITHOUT THE PRIOR WRITTEN CONSENT OF THE COMPANY.

10. FORCE MAJEURE

THE COMPANY SHALL NOT BE LIABLE TO THE CUSTOMER FOR ANY LOSS OR DAMAGE DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN CONNECTION WITH ANY DELAY IN DELIVERY OF THE GOODS OR FAILURE TO PERFORM ANY TERM OF THIS CONTRACT WHERE SUCH DELAY OR FAILURE IS CAUSED DIRECTLY OR INDIRECTLY BY AN ACT OF GOD, FIRE, ARMED CONFLICT, LABOUR DISPUTE, CIVIL COMMOTION, INTERVENTION OF A GOVERNMENT, INABILITY TO OBTAIN LABOUR, MATERIALS OR MANUFACTURING FACILITIES, ACCIDENTS, INTERRUPTIONS OF OR DELAY IN TRANSPORTATION OR ANY OTHER CAUSE BEYOND THE COMPANY'S CONTROL.