



ingrain

**STANDARD
TERMS AND
CONDITIONS**

INGRAIN – **TOUCHING LIVES** AND MAKING
A WORLD OF DIFFERENCE SINCE 1921



Barloworld

1. Introduction

- 1.1. Ingrain may have a requirement for Goods and/or Services from time to time.
- 1.2. The Supplier is a supplier of such Goods and/or an expert in the provision of such Services, and has represented to Ingrain that it has the necessary expertise, personnel, certifications, stock and skills required to deliver the Goods and/or the Services.
- 1.3. From time to time Ingrain may issue Purchase Orders for Goods and/or Services on the Supplier. The Goods delivered and/or Services rendered by the Supplier are governed by and subject to these Terms and Conditions and the terms of the relevant Purchase Order.

2. Definitions and interpretation

- 2.1. In these Terms and Conditions, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings:
 - 2.1.1. **"AFSA"** means the Arbitration Foundation of Southern Africa;
 - 2.1.2. **"Bespoke Intellectual Property"** means any copyright that arises or any patentable invention that is created by or on behalf of the Supplier in the course of executing any Purchase Order and which constitutes or forms part of a Deliverable;
 - 2.1.3. **"Best Industry Practice"** means the exercise of such reasonable skill, care, prudence, efficiency, foresight and timeliness as would be expected from a reasonably and suitably skilled, trained and experienced person engaged in the same type of undertaking and under the same or similar circumstances;
 - 2.1.4. **"Confidential Information"** means any records, data or information (including Personal Information) of any nature, tangible or intangible, oral or in writing and in any format or medium, which is collected, received, processed, stored or transmitted by the Parties in any manner connected with the delivery of the Goods and/or Services hereunder, or data which by its nature or content is identifiable as confidential and/or proprietary to the disclosing party and/or any third party, or which is provided or disclosed in confidence; and which the disclosing party or any person acting on its behalf may disclose or provide to the receiving party or which may come to the knowledge of the receiving party by whatsoever means;
 - 2.1.5. **"Deliverables"** means any Goods, Services, work products, equipment and tangible or intangible items including any Bespoke Intellectual Property, Supplier Intellectual Property or Third-Party Intellectual Property delivered to Ingrain pursuant to any Purchase Order;

- 2.1.6. **"Dispute"** means any dispute, disagreement and/or claim between the Parties relating to these Terms and Conditions and/or any Purchaser Order and/or its or their contents, its or their interpretation or otherwise;
- 2.1.7. **"Documentation"** means all documentation that Ingrain would reasonably require to be provided by the Supplier in order to make use of the Goods and/or Services and includes, but is not limited to, all materials, documents, drawings, specifications, technical manuals, user manuals, plans, flow diagrams, file descriptions and other written information that describes the function and use of the Goods and/or Services;
- 2.1.8. **"Fees"** means the amounts payable by Ingrain to the Supplier as compensation for the Goods and/or Services, as stipulated in the relevant Purchase Order;
- 2.1.9. **"Force Majeure Event"** means any act of God (including fire, flood, earthquake, storm, hurricane or other natural disaster) war, invasion, act of foreign enemies, hostilities (regardless of whether war was declared), civil war, rebellion, revolution, insurrection, military or surged power or confiscation, terrorist activities, nationalisation, changes in laws, rules or regulations (including but not limited to any such changes which are enacted to deal with any pandemic, epidemic and/or government declared disaster), government sanction, blockage, embargo, labour dispute, strike, lock out or interruption or failure of electricity or telephone service, unavailability of equipment and materials or other event or incident beyond the reasonable control of the Parties;
- 2.1.10. **"Goods"** means the goods (if any) to be delivered by the Supplier to Ingrain as contemplated in any applicable Purchase Order;
- 2.1.11. **"Loss"** means all losses, liabilities, costs, expenses, fines, damage, damages and claims, and all related costs and expenses of any nature whatsoever (including, but not limited to, legal fees on the scale as between attorney and own client, tracing and collection charges, costs of investigation and interest);
- 2.1.12. **"Parties"** means Ingrain and the Supplier and Party means either one of them, as the context requires;
- 2.1.13. **"Personal Information"** shall bear the meaning ascribed to that term in the POPI;
- 2.1.14. **"POPI"** means the Protection of Personal Information Act, 2013 as amended from time to time;
- 2.1.15. **"Processing"** shall bear the meaning ascribed to that term in the POPI;
- 2.1.16. **"Purchase Order"** means any official purchase order on the Ingrain letterhead issued by Ingrain to the Supplier for the supply of Goods and/or Services and including the information referred to in clause 6.2 below;

- 2.1.17. **“Ingrain”** means Ingrain SA Proprietary Limited, registration number 1945/020077/07, a private company duly incorporated in accordance with the laws of the Republic of South Africa;
- 2.1.18. **“Ingrain Intellectual Property”** means any form of intellectual property recognised and protected under law which belongs to Ingrain;
- 2.1.19. **“Services”** means the services (if any) to be provided by the Supplier to Ingrain as contemplated in any applicable Purchase Order;
- 2.1.20. **“Staff”** means any natural person who is either an employee, consultant or subcontractor of either Party (including any sub-processor), and where the context requires, employees, consultants and subcontractors of a subcontractor (including any sub-processor);
- 2.1.21. **“Supplier”** means the party referred to as such in the relevant Purchase Order;
- 2.1.22. **“Supplier Intellectual Property”** means any form of intellectual property recognised and protected under law which belongs to the Supplier;
- 2.1.23. **“Terms and Conditions”** means these Ingrain standard terms and conditions for the supply of goods and services;
- 2.1.24. **“Third-Party Intellectual Property”** means any form of intellectual property recognised and protected under law which belongs to a third party and is incorporated into the Goods and/or used in the Services (if any); and
- 2.1.25. **“VAT”** shall mean value-added tax, chargeable under the Value Added Tax Act, 1991.
- 2.2. Any reference in these Terms and Conditions to-
- 2.2.1. any gender includes the other genders;
- 2.2.2. a natural person includes a juristic person and vice versa;
- 2.2.3. the singular includes the plural and vice versa;
- 2.2.4. a Party includes a reference to that Party's successors in title and assigns allowed at law;
- 2.2.5. **“business hours”** shall be construed as being the hours between 08h00 and 17h00 on any business day;
- 2.2.6. **“days”** shall be construed as calendar days unless qualified by the word “business”, in which instance a “business day” will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the republic of South Africa from time to time;

2.2.7. **“laws”** means all South African constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgements, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of, or instructions by any governmental body; and the common law, and “law” shall have a similar meaning; and

2.2.8. **“person”** means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality.

2.3. The headings of the clauses in these Terms and Conditions are for reference purposes only and shall not be taken into consideration in the interpretation thereof.

2.4. The words “include” and “including” mean “include without limitation” and “including without limitation”. The use of the words “include” and “including” followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.

2.5. Defined terms appearing in these Terms and Conditions in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.

2.6. Any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the succeeding business day.

2.7. If the due date for performance of any obligation in terms of these Terms and Conditions is a day which is not a business day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding business day.

2.8. The rule of construction that an agreement shall be interpreted against the Party responsible for the drafting of such agreement, shall not apply.

2.9. The termination of these Terms and Conditions and/or any Purchase Order for any reason whatsoever does not affect those of its provisions which expressly provide that they will operate after termination, or which must continue to have effect after termination, or which must by implication continue to have effect after termination.

3. Appointment and binding nature of Terms and Conditions

3.1. By issuing a Purchase Order to the Supplier, Ingrain appoints the Supplier as an independent contractor to supply such Goods and/or Services as are referred to in the relevant Purchase Order to it. If the Supplier accepts Ingrain’s order, the Supplier shall be deemed to have accepted the aforementioned appointment and undertakes to deliver the Goods and/or

Services to Ingrain on the terms and subject to the conditions of these Terms and Conditions as read together with the relevant Purchase Order only.

- 3.2. It is expressly acknowledged and agreed that these Terms and Conditions shall be deemed to be accepted by the Supplier and binding and enforceable upon it, if the Supplier accepts Ingrain's Purchase Order and/or commences with the delivery of the Goods and/or Services, irrespective of whether or not the Supplier signed these Terms and Conditions.

4. Relationship

The relationship of the Parties pursuant to these Terms and Conditions and a Purchase Order shall be that of independent contractors. No partnership or joint venture is hereby created between Ingrain and the Supplier. Neither Party shall be entitled to bind the credit of the other. Save as specifically herein contemplated, the Supplier shall have no authority to assume any obligation of any kind on behalf of Ingrain or to bind or commit Ingrain in any way.

5. No exclusivity

The Supplier specifically acknowledges and agrees that:

- 5.1. these Terms and Conditions and the conclusion of one and/or more Purchase Orders does not establish an exclusive arrangement; and
- 5.2. Ingrain is entitled to engage any one and/or more other third party/ies to provide all or any of the Goods and/or Services and/or any other goods and/or services which are similar to the Goods and/or Services.

6. Goods, Services and ordering

- 6.1. As and when required by Ingrain, Ingrain shall be permitted to order Goods and/or Services from the Supplier. Each such order shall be governed by these Terms and Conditions and the provisions of the relevant Purchase Order only.
- 6.2. Where Ingrain requires Goods and/or Services, Ingrain shall submit a written Purchase Order for same to the Supplier which written Purchase Order will include, at a minimum:
- 6.2.1.a description of the type and specification of the Goods and/or Services required;
 - 6.2.2.the Fees for the Goods and/or Services required;
 - 6.2.3.the quantity of Goods and/or Services required;
 - 6.2.4.a unique Purchase Order number;

- 6.2.5.the details of the delivery location for the Goods and/or Services and of the nominated contact person at the delivery location;
- 6.2.6.the delivery date of the relevant Goods and/or Services; and
- 6.2.7.any other information relevant to the order (if any).
- 6.3. By no later than 7 (Seven) business days after receipt of the Ingrain's Purchase Order, the Supplier shall advise Ingrain, in writing, whether it accepts or rejects same. Should the Supplier fail to respond to Ingrain timeously as aforesaid, the Supplier shall be deemed to have accepted the relevant Purchase Order. Should the Supplier reject any Purchase Order, neither Party shall have any further obligation to the other with regards to such Purchase Order.
- 6.4. Once a Purchase Order has been accepted and/or is deemed to have been accepted by the Supplier, such Purchase Order may not be amended and/or cancelled by the Supplier in any way except with the prior written consent of Ingrain. Notwithstanding the above, Ingrain reserves the right to cancel any Purchase Order without liability, at any time prior to delivery, on written notice to the Supplier and for any reason whatsoever.
- 6.5. The Supplier undertakes to deliver the Goods and/or Services strictly in accordance with the provisions of these Terms and Conditions and the terms of the relevant Purchase Order. In particular the Supplier agrees to abide strictly by any delivery dates contained in the Purchase Order, it being acknowledged that time is of the essence in the delivery of the Goods and/or Services.
- 6.6. Contemporaneously with delivery of the Goods and/or Services, the Supplier shall also deliver to Ingrain all Documentation reasonably required in order for Ingrain to make use of such Goods and/or Services (if applicable). In this regard it is agreed that delivery of the relevant Goods and/or Services shall not be deemed to have been effected by the Supplier unless and until all such Documentation has been provided to Ingrain.
- 6.7. If applicable, Ingrain shall be entitled to inspect the Goods upon delivery and shall identify any missing and/or damaged Goods by endorsing same on the proof of delivery. The Supplier shall provide all reasonable assistance and facilities (at no additional charge) to Ingrain or its agent for the purposes of such inspection and testing (**Goods Inspection**). If any Goods are identified from the Goods Inspection as being: (i) defective in quality, quantity, material, workmanship or design; (ii) damaged; or (iii) not in conformity with the specifications or normal standards of quality for such supply, then Ingrain shall be entitled (without prejudice to its other rights in law) to:
- 6.7.1.reject the defective Goods (in whole or in part) whether or not title has passed and to return them to the Supplier;

- 6.7.2. require the Supplier to repair or replace the defective Goods, or to provide a full refund of the price of the defective Goods (if paid);
- 6.7.3. recover from the Supplier any expenditure incurred by Ingrain in obtaining substitute goods from a third party;
- 6.7.4. claim damages for any additional Losses incurred by Ingrain arising from the Supplier's failure to supply the Goods in accordance with the specifications set out in Ingrain's Purchase Order; and/or
- 6.7.5. cancel the relevant Purchase Order only insofar as it relates to the defective Goods, with the remainder of the Purchase Order, as it relates to the Goods accepted by Ingrain, remaining in full force and effect, in which case:
 - 6.7.5.1. Ingrain shall notify the Supplier of its election to cancel that part of the Purchase Order; and
 - 6.7.5.2. to the extent that Ingrain has made payment for such defective Goods, at Ingrain's election the Supplier shall either furnish Ingrain with a credit note or refund the applicable amount to Ingrain in cash.
- 6.8. Defective Goods (or any part thereof – if applicable) which are rejected and/or required to be repaired by the Supplier, shall be repaired or replaced at the Supplier's own cost, risk and expense as soon as reasonably possible.
- 6.9. The Supplier warrants and undertakes that it will use adequate numbers of appropriately skilled, qualified and experienced personnel, and all equipment, assets and other resources necessary to deliver the Goods and/or Services in accordance with the provisions of these Terms and Conditions and the provisions of any applicable Purchase Order.
- 6.10. Where the delivery of the Goods and/or Services requires the Supplier to liaise or cooperate with Ingrain's personnel or other contractors rendering services to Ingrain, the Supplier must give its full cooperation and deal with all such persons in a professional and courteous manner. Ingrain will procure the cooperation of its personnel and other contracts in their interactions with the Supplier.
- 6.11. Unless otherwise agreed between the Parties, all Goods and/or Services will be delivered and/or performed:
 - 6.11.1. during business hours, provided that if the Services are services which, by their nature, are not limited to being rendered during business hours only, the Supplier shall deliver such Services as and when required;
 - 6.11.2. at or to the delivery location stipulated in the Purchase Order (unless capable of being provided remotely); and

6.11.3. in accordance with these Terms and Conditions and the terms of the relevant Purchase Order only.

7. Service levels and service penalties

If any service levels and/or service penalties apply, these shall be set out in the relevant Purchase Order.

8. Title To Equipment

Title to any equipment and supplies that may be furnished by Ingrain shall rest with Ingrain and any such equipment shall be returned to Ingrain at the conclusion of this engagement or when no longer needed. Such equipment, when returned shall be in the same condition as when delivered to the Supplier, subject to normal wear and tear, and the Supplier shall be liable to compensate Ingrain for any damage or degradation of the equipment that is beyond normal wear and tear.

9. Ownership and Risk

- 9.1. Delivery of the Deliverables (including the Goods and/or Services) must be effected to Ingrain on the dates stipulated for such delivery in the Purchase Order.
- 9.2. Once delivered, the Deliverables are owned by Ingrain and all risk therein transfers to Ingrain, irrespective of whether or not Ingrain has yet paid for such Deliverables in full, in part or at all.

10. Subcontractors

- 10.1. The Supplier shall not be entitled to subcontract any component of the delivery of the Goods and/or performance of the Services contemplated in a Purchase Order without Ingrain's prior written consent.
- 10.2. Notwithstanding that Ingrain may consent to the subcontracting of certain of the Goods and/or Services, the Supplier shall nevertheless at all times remain responsible and liable to Ingrain for the fulfilment of such subcontracted Services and/or delivery of such subcontracted Goods and any subcontracting shall not absolve the Supplier from complying with its obligations in these Terms and Conditions and/or the relevant Purchase Order nor from its responsibility hereunder and/or thereunder. The Supplier shall furthermore be liable for the actions or omissions of its subcontractors as if those actions or omissions were those of the Supplier itself.

11. Fees, invoicing and payment

- 11.1. As consideration for the provision of the Services and delivery of the Goods, Ingrain shall effect payment to the Supplier of the Fees.
- 11.2. Save where otherwise expressly stated to the contrary, all Fees stated in a Purchase Order are exclusive of VAT or any other tax (excluding income tax), levy or import duty payable by the Supplier in connection therewith.
- 11.3. Unless otherwise agreed between the Parties in writing, the Fees are all-inclusive and Ingrain shall not be under any obligation to effect payment of any other amounts whatsoever to the Supplier in respect of the Goods and/or Services.
- 11.4. Unless otherwise stated in the relevant Purchase Order, payment of the Supplier's invoices shall be made by Ingrain within 60 days of the date of statement, subject to those invoices:
- 11.4.1. being complete and correct valid tax invoices; and
 - 11.4.2. being submitted together with all applicable and relevant supporting documentation including, but not limited to, any proofs of delivery, signed acceptance forms and/or timesheets (if applicable).
- 11.5. All payments will be made by way of electronic funds transfer into the Supplier's bank account as nominated by the Supplier in writing for these purposes from time to time.
- 11.6. Ingrain may withhold payment of any amounts that it disputes in good faith, prior to the due date for payment. The Parties agree that they will endeavour to resolve the Dispute within 10 (ten) business days of same first being reported. The failure of Ingrain to pay a disputed invoice, or to pay the disputed part of an invoice, shall not constitute a breach or default by Ingrain. Should the Parties be unable to resolve the dispute within the aforementioned 10 business day period, the dispute will be resolved in accordance with the provisions of clause 21 below.

12. Supplier Warranties

- 12.1. The Supplier warrants that –
- 12.1.1. it is an expert in providing the Services (if applicable) and is capable of providing the Services as required by these Terms and Conditions and any applicable Purchase Order;
 - 12.1.2. it is an original equipment manufacturer and/or authorised supplier/distributor of the Goods (if applicable) and is capable of delivering the Goods as required by these Terms and Conditions and any applicable Purchase Order;

- 12.1.3. the Goods and/or Services will comply in all respects with any technical and functional specifications thereof as disclosed to Ingrain at any time whether prior to or after the submission and acceptance of the relevant Purchase Order;
- 12.1.4. it shall attend to its obligations in terms of these Terms and Conditions and any applicable Purchase Order in a professional and diligent manner, in accordance with the provisions of such documents and in terms of Best Industry Practice;
- 12.1.5. it shall employ an adequate number of appropriately experienced, qualified, competent and trained Staff to render the Services and deliver the Goods in accordance with these Terms and Conditions, any applicable Purchase Order and Best Industry Practice;
- 12.1.6. all Deliverables shall be fit for any purpose expressly or implicitly made known to the Supplier by Ingrain;
- 12.1.7. all Deliverables, and all goods, materials, standards and techniques used in providing the Services and/or manufacturing and/or delivering the Goods are of the best quality and are free from defects in workmanship, installation and design;
- 12.1.8. all Goods delivered by it pursuant to any Purchase Order (if any) will be:
 - 12.1.8.1. new (unless otherwise agreed between the Parties in writing);
 - 12.1.8.2. in good working order and condition;
 - 12.1.8.3. free of any latent and/or patent defects;
 - 12.1.8.4. free from defect in design, materials and workmanship;
 - 12.1.8.5. fit for the purposes for which they are intended; and
 - 12.1.8.6. complete to the original equipment manufacturer's specifications and will perform as described in the original equipment manufacturer's specifications;
- 12.1.9. with respect to the Goods (if applicable) and/or any materials, equipment or components purchased by the Supplier for incorporation into the Goods, the Supplier shall, at no cost to Ingrain, assign to Ingrain any warranties which the Supplier may have received from the original equipment manufacturer of such Goods and/or materials, equipment or components, on a pass-through basis. The Supplier agrees that Ingrain shall, to the extent applicable or necessary, be entitled to transfer, assign and cede the warranties referred to above relating to the Goods to its customers;

- 12.1.10. it shall at all times perform its responsibilities under these Terms and Conditions and/or any applicable Purchase Order in a manner that does not infringe, or constitute an infringement or misappropriation of, any Third Party Intellectual Property or other proprietary rights of any third party;
- 12.1.11. it shall remain fully compliant at all times with any relevant legislative or regulatory requirements and/or Ingrain policies and/or procedures (all as may be amended from time to time) which are relevant to the performance of its responsibilities under these Terms and Conditions and any applicable Purchase Order;
- 12.1.12. it shall immediately notify Ingrain upon becoming aware of circumstances that may reasonably be expected to jeopardise the performance or timely performance and/or delivery of the Services and/or Goods and/or any part thereof; and
- 12.1.13. it is the owner of the Goods (if applicable) with requisite rights and title to transfer ownership of the Goods. Furthermore, other than the Supplier no person has a right or option to acquire or claim possession, ownership or transfer of the Goods.
- 12.2. If the Supplier fails to comply with any of the warranties set out herein in any manner whatsoever:
- 12.2.1. such failure shall amount to a breach entitling Ingrain to exercise its rights in terms of clause 20; and
- 12.2.2. the Supplier agrees to indemnify Ingrain in full against any and all Losses of any nature whatsoever or howsoever arising which may be suffered by Ingrain as a result of such failure. Any amounts payable to Ingrain in accordance with the provisions of this clause shall be so paid upon demand and shall not be subject to the limitations of liability contained in clause 14 below.

13. Consumer Protection

- 13.1. The Supplier warrants that where its conduct results in any of Ingrain's customers, who are consumers in terms of the Consumer Protection Act, 2008 (**CPA**), becoming entitled to any rights under the CPA, the Supplier shall honour any applicable warranty and/or indemnify Ingrain in respect of any amounts whatsoever for which Ingrain may become liable, whether in contract, delict, strict or statutory liability, in the event that Ingrain's customers claim, *inter alia*, that the Goods (if any) are not:
- 13.1.1. reasonably suitable for the purpose for which they were generally intended unless the customers have been informed that the Goods offered are in a specific condition and the customers agreed to this;

- 13.1.2. of good quality as generally expected, in good working order and free of any defects;
- 13.1.3. useable and durable for a reasonable period of time, having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply;
- 13.1.4. in compliance with the applicable standards set under the South African Standards Act, 1993, or any other applicable legislation and/or regulation; and/or
- 13.1.5. in compliance with any specific purpose which Ingrain communicated to the Supplier when Ingrain ordered the Goods.

14. Indemnity and limitation of liability

- 14.1. Unless otherwise agreed between the Parties in writing, each Party's total liability to the other shall be limited, in the aggregate, to an amount equal 100% (one hundred percent) the total Fees paid and/or payable to the Supplier in terms of the relevant Purchase Order to which such claim relates.
- 14.2. In no event will either Party be liable to the other for any indirect, special or consequential damages, arising out of or relating to its breach of these Terms and Conditions and/or the provisions of any Purchase Order.
- 14.3. The limitation of liability set forth in clause 14.2 shall however not apply with respect to Losses:
 - 14.3.1. occasioned by the fraud, wilful misconduct or gross negligence of the Party;
 - 14.3.2. that are the subject of indemnification under these Terms and Conditions;
 - 14.3.3. occasioned by a breach or violation of any applicable law by the Party;
 - 14.3.4. occasioned by the Party's breach of its confidentiality or data privacy and protection of personal information obligations in terms of these Terms and Conditions;
 - 14.3.5. which are caused by the Party's breach of the other Party's or any Third Party's Intellectual Property rights;
 - 14.3.6. arising from a breach by the Party of any warranties provided by it in terms of these Terms and Conditions;
 - 14.3.7. associated with the Party being the cause of any damage to the other Party's property;
 - 14.3.8. in respect of any liability for death or personal injury resulting from the Party's wilful and / or grossly negligent act; and/or

14.3.9. in respect of any liability that cannot be excluded in terms of any applicable law.

15. Confidentiality

- 15.1. A Party which receives Confidential Information (“the Receiving Party”) from the other Party (“the Disclosing Party”) shall treat and hold it as confidential.
- 15.2. The Receiving Party undertakes and agrees that in order to protect the proprietary interests of the Disclosing Party in and to its Confidential Information, the Receiving Party will not at any time without the prior written consent of the Disclosing Party, whether during the currency of these Terms and Conditions and/or any Purchase Order or at any time thereafter, either use any Confidential Information of the Disclosing Party or directly or indirectly divulge or disclose any Confidential Information of the Disclosing Party to third parties.
- 15.3. Confidential Information (including but not limited to instructions, drawings, notes, memoranda and records) which has or will come into the possession of the Receiving Party will be and will at all times remain the sole and absolute property of the Disclosing Party, and the Receiving Party shall acquire no right, title or interest therein save as otherwise expressly agreed between the Parties in writing.
- 15.4. The foregoing obligations will not apply to any information which –
- 15.4.1. is lawfully in the public domain at the time of disclosure to the Receiving Party;
 - 15.4.2. subsequently becomes lawfully part of the public domain by publication or otherwise;
 - 15.4.3. subsequently becomes available to the Receiving Party from a source other than the Disclosing Party which is lawfully entitled without any restriction on disclosure to disclose such Confidential Information to the Receiving Party; or
 - 15.4.4. is disclosed pursuant to requirement or request by operation of law, regulation of court order.
- 15.5. The Disclosing Party may at any time on written request to the Receiving Party, require that the Receiving Party immediately return to the Disclosing Party any Confidential Information and may, in addition, require that the Receiving Party furnish a written statement to the effect that upon such return, it has not retained in its possession or under its control, either directly or indirectly, any such Confidential Information or material. Alternatively, the Receiving Party shall, as and when required by the Disclosing Party on written request to the Receiving Party, destroy all such Confidential Information and material and furnish the Disclosing Party with a written statement to the effect that the same has been destroyed. The Receiving Party shall comply with any request in terms of this clause 15.5 within 7 (seven) days of receipt of such request.

16. Adherence to anti-bribery legislation

16.1. Without prejudice to any other clause in these Terms and Conditions, the Supplier warrants and represents that it shall:

16.1.1. comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the South African Prevention and Combating of Corrupt Activities Act, the US Foreign Corrupt Practices Act and the UK Bribery Act 2010 (collectively the **Anti-Bribery Legislation**); and

16.1.2. have and maintain in place for the duration of this Agreement its own policies and procedures to ensure compliance with the Anti-Bribery Legislation and enforce them where appropriate.

16.2. For the duration of this Agreement the Supplier undertakes on behalf of itself, its directors, officials, employees, agents and contractors to:

16.2.1. comply with the Ingrain supplier code of conduct (a copy of which will be made available on request); and

16.2.2. not do or omit to do any act that will cause or lead the Ingrain to be in breach of any Anti-Bribery Legislation.

16.3. Notwithstanding anything to the contrary in these Terms and Conditions, Ingrain may immediately cancel any Purchase Order on written notice to the Supplier in the event of a proven breach by the Supplier of any of the warranties in clause 16.1 or any of its obligations in clause 16.2 without prejudice to its other rights in terms of this Agreement or in law.

16.4. The Supplier shall for the duration of this Agreement keep itself up to date in respect of any changes to the Anti-Bribery Legislation and shall comply with such changes as and when they are effected.

16.5. The Supplier hereby indemnifies Ingrain against any Losses suffered by Ingrain as a result of a breach of this clause 16 by the Supplier.

17. Protection of Personal Information

To the extent that the Parties will or may Process any Personal Information whatsoever in complying with their obligations in terms of these Terms and Conditions and/or any applicable Purchase Order, the Parties undertake to do so strictly in accordance with the provisions of the POPI and any other applicable data protection legislation.

18. Intellectual Property Rights

- 18.1. Ingrain shall retain all title and interest in and to the Ingrain Intellectual Property. The Supplier shall not be permitted to use Ingrain Intellectual Property for the benefit of any entities other than Ingrain without the written consent of Ingrain. The Supplier shall immediately cease all use of Ingrain's Intellectual Property with effect from the date of termination of its obligations under any Purchase Order for any reason whatsoever.
- 18.2. The Supplier retains all rights and interests in the Supplier Intellectual Property save as stated in these Terms and Conditions. Supplier Intellectual Property must be original or novel and not infringing of any third parties' rights. The Supplier grants to Ingrain a perpetual, irrevocable royalty-free, non-transferable licence to use, and to permit its contractors to use, any Supplier Intellectual Property embedded or incorporated in a Deliverable. Ingrain may use, and permit its contractors to use, the Supplier Intellectual Property solely for Ingrain's internal business purposes. This clause will survive termination of these Terms and Conditions for any reason whatsoever.
- 18.3. All Bespoke Intellectual Property will be the property of Ingrain. The Supplier will irrevocably transfer all of its rights and interest in all Bespoke Intellectual Property to Ingrain upon its development. The Supplier must, at Ingrain's request and expense, do all things and sign all documents required to transfer the Bespoke Intellectual Property to Ingrain or any successor in title. No compensation in addition to the Fees will be paid to the Supplier for the transfer of Bespoke Intellectual Property. The Supplier waives all personality and moral rights in Bespoke Intellectual Property transferred to Ingrain pursuant to the above.
- 18.4. If the Supplier uses any Third-Party Intellectual Property to provide the Goods and/or Services it must have the right to do so. If Third-Party Intellectual Property must be used by Ingrain or any person contracted by it, then unless it is open-source software it may only be used in the provision of the Goods and/or Services if the third party grants a licence to Ingrain:
- 18.4.1. to use and adapt the Third-Party Intellectual Property; and
 - 18.4.2. to permit its contractors to use and adapt the Third-Party Intellectual Property, for Ingrain's internal purposes on terms acceptable to Ingrain. The obligation to procure the abovementioned licence will be the Supplier's.
- 18.5. The Supplier will indemnify Ingrain against any Losses caused by its breach of clause 18.4 and at its own cost take all steps necessary to rectify the breach upon the demand of Ingrain.

19. Force Majeure

- 19.1. Neither Party will be held responsible or liable for any impossibility or partial impossibility of performance caused by a Force Majeure Event.
- 19.2. The Party first affected by the Force Majeure Event must, immediately when it becomes aware of the occurrence thereof, notify the other Party in writing of the Force Majeure Event and must provide an estimate, which must be updated in writing from time to time while the Force Majeure Event persists, of when the Force Majeure Event can reasonably be expected to end.
- 19.3. Each Party must take all reasonable steps by whatever means available to it, to resume the performance of its obligations under these Terms and Conditions and any applicable Purchase Order as soon as reasonably possible after the cessation of the Force Majeure Event and must discuss with the other Party ways and means to effectively overcome the Force Majeure Event.
- 19.4. If either Party is unable to fulfil a material part of its obligations under these Terms and Conditions and/or any applicable Purchase Order for a period of 15 (fifteen) consecutive days due to the Force Majeure Event, the other Party may, in its sole discretion, notwithstanding anything to the contrary stipulated in these Terms and Conditions, terminate the relevant Purchase Order without prejudice to either Party's rights.

20. Breach and termination

- 20.1. If either Party ("Defaulting Party") commits a breach of these Terms and Conditions and/or any applicable Purchase Order and thereafter fails to remedy such breach within 7 (seven) days of receipt of a written notice from the other Party ("**Aggrieved Party**") requiring it to do so, the Aggrieved Party shall be entitled, in addition to any other rights and remedies that it may have in terms of these Terms and Conditions or otherwise (including but not limited to its right to claim damages) to:
- 20.1.1. terminate the relevant Purchase Order upon written notice to the Defaulting Party; or
- 20.1.2. claim immediate payment and/or performance by the Defaulting Party of all of its obligations which are then due.
- 20.2. Where a Purchase Order is terminated in accordance with this clause 20, the Supplier shall have no claim against Ingrain, save that Ingrain shall remain liable for payment in respect of any Goods and/or Services actually delivered and/or rendered by the Supplier prior to the termination date.
- 20.3. Any termination of a Purchase Order as aforesaid is without prejudice to any claim that either Party may have in respect of any other breach of these Terms and Conditions by the other Party arising prior to the date of termination.

21. Dispute resolution

- 21.1. Any Dispute arising out of or in connection with these Terms and Conditions or any Purchase Order must be resolved in terms of this clause 21.
- 21.2. Disputes must be referred to the senior executives of each Party with settlement authority as soon as possible for attempted resolution. The Parties' senior executives must attempt to resolve the Dispute as speedily as possible and will meet as often as necessary to do so.
- 21.3. Any settlement must be recorded in writing and signed by the senior executives on behalf of each Party.
- 21.4. The senior executives will have failed to resolve the dispute when either Party declares this to be the case.
- 21.5. If the Dispute is not resolved by the senior executives, the Dispute will be resolved by way of arbitration at the instance of either Party.
- 21.6. The arbitration will be held subject to these Terms and Conditions:
- 21.6.1. in Johannesburg;
 - 21.6.2. with only the Parties, their legal representatives, arbitrator/s and any witnesses who may be called to give evidence present; and
 - 21.6.3. otherwise in accordance with the provisions of the rules of AFSA.
- 21.7. The arbitrator will be a senior counsel with no less than 10 (ten) years' standing agreed upon between the Parties.
- 21.8. If the Parties cannot agree upon an arbitrator in terms of clause 21.7 within 10 (ten) business days after the arbitration has been demanded, the nomination will be made by the chairman of AFSA at the request of either Party.
- 21.9. The arbitration will be conducted in the English language.
- 21.10. Subject to clause 21.14, all information concerning the arbitration proceedings, all evidence led or presented and the arbitrator's award will be confidential.
- 21.11. The arbitrator will be obliged to give written reasons for the award.
- 21.12. The decision of the arbitrator will not be subject to appeal in terms of the appeal rules of AFSA.
- 21.13. Either Party may have the award of an arbitrator made an order of court.
- 21.14. Nothing contained herein will prevent either Party from applying to court for urgent or interdictory relief.

- 21.15. This clause 21 constitutes each Party's irrevocable consent to arbitration proceedings, and no Party may withdraw from such proceedings or claim that it is not bound by this clause.
- 21.16. The Parties will continue to perform their respective obligations under these Terms and Conditions and any applicable Purchase Order pending the resolution of a Dispute, it being agreed that neither Party may, without the agreement of the other, terminate any Purchase Order based on the issues under dispute until the Dispute is finally resolved.
- 21.17. A demand by a Party to submit a Dispute to arbitration in terms of this clause 21 is adequate legal process to interrupt any time bar laws in respect of legal claims.
- 21.18. This clause 21 is a separate, divisible clause from the rest of these Terms and Conditions and will remain valid and enforceable in perpetuity notwithstanding the expiry or termination of these Terms and Conditions and/or any applicable Purchase Order.

22. Notices and domicilia

- 22.1. The Parties select as their respective *domicilia citandi et executandi*, the addresses as set out in the relevant Purchase Order for the purposes of giving or sending any notice provided for or required under these Terms and Conditions.
- 22.2. All notices to be given in terms of these Terms and Conditions will be given in writing, but it shall be competent to give notice by email.
- 22.3. If a Notice is delivered:
- 22.3.1. by hand during business hours, same will be presumed to have been received on the date of delivery. Any notice delivered after business hours or on a day which is not a business day will be presumed to have been received on the following business day; and
 - 22.3.2. by email during business hours, same will be presumed to have been received on the same date as the date it was despatched. Any email sent after business hours or on a day which is not a business day will be presumed to have been received on the following business day.
- 22.4. Notwithstanding the above, any notice given in writing, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause 22.

23. Applicable law and jurisdiction

- 23.1. These Terms and Conditions and all Purchase Orders concluded between the Parties will in all respects be governed by and construed under the laws of the Republic of South Africa as amended from time to time.
- 23.2. The Contractor shall comply with all laws, ordinances, rules and regulations bearing upon the performance of its obligations under these Terms and Conditions and any Purchase Order.
- 23.3. The Parties hereby irrevocably and unconditionally submit to the non-exclusive jurisdiction of any High Court and/or Magistrates Court in the Republic of South Africa having jurisdiction over the matter.

24. General

- 24.1. These Terms and Conditions as read together with the terms of an applicable Purchase Order:
- 24.1.1. constitute the whole of the agreement between the Parties relating to the matters dealt with therein and shall be read and construed as one agreement; and
 - 24.1.2. supersede and replace, in their entirety, any previous agreements which may have been concluded between them in relation to the same subject matter (if any), irrespective of whether such prior agreements were concluded orally, in writing or in any other manner whatsoever.
- 24.2. Ingrain does not accept any other terms and conditions which the Supplier may specify (including, without limitation, the Supplier's standard terms and conditions of engagement, supply and/or procurement), which terms and conditions are hereby expressly excluded from application in respect of the subject matter herein and are null and void and of no force or effect.
- 24.3. No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of these Terms and Conditions will be of any force or effect unless in writing and signed by both Parties.
- 24.4. No indulgence by a Party to another Party, or failure strictly to enforce the terms of these Terms and Conditions or any order, is to be construed as a waiver or be capable of founding an estoppel.
- 24.5. No waiver, suspension or postponement by either Party of any right arising out of or in connection with these Terms and Conditions and/or any Purchase Order shall be of any force or effect unless in writing and signed by that Party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.

- 24.6. The Parties undertake at all times to do all such things, perform all such actions and take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect of or maintenance of the terms, conditions and/or import of these Terms and Conditions and/or any applicable Purchase Order. Furthermore, the Supplier shall at all times observe the principles of good faith towards Ingrain in the performance of its obligations in terms hereof.
- 24.7. Neither these Terms and Conditions nor any Purchase Order nor any part, share or interest herein or therein nor any rights or obligations hereunder or thereunder may be ceded, delegated or assigned by either Party without the prior signed written consent of the other, which consent may not be unreasonably withheld or delayed.
- 24.8. The Supplier shall not advertise or otherwise make public for purposes of commercial advantage that it is a supplier of Ingrain, nor shall the Supplier, in any manner whatsoever, use the name, logo and/or other trademarks of Ingrain or any abbreviation of the name of Ingrain in connection with its business or otherwise, without the prior written approval by Ingrain. These obligations shall subsist in perpetuity.



Scan the QR code to
visit the Ingrain website



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