



Terms and Conditions of Sale

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



Barloworld

Introduction

- A** Ingrain manufactures and sells the Products to its customers.
- B** The Customer has a requirement for the Products.
- C** From time to time, the Customer may place orders for the Products on Ingrain. The sale of the Products by Ingrain to the Customer pursuant to such orders shall in all instances be governed by these Terms and Conditions.

1 Definitions and interpretation

1.1. In these Terms and Conditions, unless the context requires otherwise:

1.1.1. **Bulk Products** means Products which are not individually packaged and which are delivered by means of a bulk truck and/or tanker;

1.1.2. **Business Day** means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;

1.1.3. **Confidential Information** means all information confidential to a Party including, to the extent that it is not freely and publicly available, commercial, financial, legal, technical, scientific and research information, trade secrets, passwords, or other secret codes, information disclosed with the permission of third parties in which the third parties have confidentiality rights, information legally protected from disclosure, any information the unauthorised disclosure of which could reasonably be expected to cause harm or risk to the disclosing party and any other information designated by the disclosing party as confidential or which is manifestly confidential;

1.1.4. **Customer** means any natural or juristic person which places orders for the Products on Ingrain from time to time;

1.1.5. **Ingrain** means Ingrain SA Proprietary Limited (registration number: 1945/020077/07), a private company duly incorporated in accordance with the laws of South Africa;

1.1.6. **Losses** means all losses, damages, costs, claims, judgments and penalties of any nature whatsoever;

1.1.7. **Ordering Procedure** means Ingrain's ordering, collections, deliveries and cancellations procedure in force from time to time, a copy of which will be provided to the Customer upon request and/or which can otherwise be accessed on the Ingrain website;

1.1.8. **Packaged Products** means Products which, depending on their nature, are delivered in drums, auto-flow, paper sacks and/or polypropylene bags and/or which are otherwise individually packaged prior to delivery thereof to the Customer;

1.1.9. **Parties** means Ingrain and the Customer and Party means, as the context requires, any one of them;

- 1.1.10. **Personal Information** shall bear the meaning ascribed to that term in the POPI;
 - 1.1.11. **POPI** means the Protection of Personal Information Act, 2013 as amended from time to time;
 - 1.1.12. **Product Prices** means the amounts payable by the Customer to Ingrain in respect of the Products (excluding any transport and/or other costs), as agreed between the Parties in writing from time to time;
 - 1.1.13. **Prime Rate** means the publicly quoted annual prime rate of interest (nominal, compounded monthly in arrears and expressed as a rate per annum) at which the Standard Bank of South Africa Limited lends on unsecured overdraft. It is agreed that a certificate from any manager of the aforementioned bank, whose appointment or authority need not be proved, shall be *prima facie* proof of the aforementioned rate of interest;
 - 1.1.14. **Processing** shall bear the meaning ascribed to that term in the POPI;
 - 1.1.15. **Products** means the Packaged Products and/or Bulk Products manufactured by Ingrain and sold to the Customer pursuant to an order; and
 - 1.1.16. **Terms and Conditions** means these terms and conditions of sale together with any and all annexures and/or schedules hereto (which shall be deemed to include the terms of the Ordering Procedure).
- 1.2. Any reference in these Terms and Conditions to:
- 1.2.1.a **clause** is, subject to any contrary indication, construed as a reference to a clause of these Terms and Conditions;
 - 1.2.2. **law** is construed as any law including common law, statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other measure of any government, local government, statutory or regulatory body or court having the force of law; and
 - 1.2.3. **person** is construed as a reference to any natural or juristic person, firm, company, corporation, government, state, agency or organ of a state, association, trust or partnership (whether or not having separate legal personality).
- 1.3. Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 1.4. The headings do not govern or affect the interpretation of these Terms and Conditions.
- 1.5. If any provision in a definition confers rights, or imposes obligations on any Party, effect is given to it as a substantive provision of these Terms and Conditions.
- 1.6. Unless the context indicates otherwise an expression which denotes any gender includes both the others; reference to a natural person includes a juristic person; the singular includes the plural, and the plural includes the singular.
- 1.7. Any number of days prescribed in these Terms and Conditions excludes the first day and includes the last day and any relevant action or notice may be validly done or given on the last day.
- 1.8. Unless the context indicates otherwise if the day for payment of any amount or performance of any obligation falls on a day which is not a Business Day, that day will be the next Business Day.

- 1.9. The words “including” and “in particular” are without limitation.
- 1.10. Any reference to legislation is to that legislation as at the date on which these Terms and Conditions are supplied to the Customer, and as amended or replaced thereafter from time to time.
- 1.11. Any reference to a document or instrument includes the document or instrument as ceded, delegated, novated, altered, supplemented or replaced from time to time.
- 1.12. A reference to a Party includes that Party’s successors-in-title and permitted assigns.
- 1.13. The rule of interpretation that, in the event of ambiguity, the contract must be interpreted against the party responsible for the drafting of the contract does not apply.
- 1.14. The termination of these Terms and Conditions 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.

2. Appointment and binding nature of terms and conditions

- 2.1. By placing an order for Products with Ingrain, the Customer appoints Ingrain as an independent contractor to supply such Products to it. If Ingrain accepts the Customer’s order in accordance with these Terms and Conditions (as read together with the Ordering Procedure), Ingrain shall be deemed to have accepted the aforementioned appointment and undertakes to sell the Products to the Customer on the terms and subject to the conditions of these Terms and Conditions (including the terms of the Ordering Procedure).
- 2.2. In consideration for the sale of the Products in accordance with these Terms and Conditions, the Customer shall pay the Product Prices and all other costs referred to herein to Ingrain.
- 2.3. It is expressly acknowledged and agreed that these Terms and Conditions (inclusive of the Ordering Procedure) shall be deemed to be automatically binding and enforceable on the Customer, and the Customer accepts that same shall be binding and enforceable upon it, if the Customer places an order for Products with Ingrain, irrespective of whether or not the Customer signed these Terms and Conditions and/or the Ordering Procedure.

3. No partnership and no exclusivity

- 3.1. Ingrain, in providing the Products, is acting as an independent contractor. Accordingly, nothing contained herein shall:
- 3.1.1. be deemed to create a partnership, joint venture or agency between Ingrain and the Customer; and/or
- 3.1.2. shall be construed as:
- 3.1.2.1 authorising a Party to enter into contracts, undertakings or arrangements for and on behalf of the other Party, or to bind the other Party or the credit of the other Party in any way whatsoever, other than as expressly provided for herein; or
- 3.1.2.2 authorising a Party to act as the other Party’s agent or representative for any purpose.
- 3.2. Neither Party shall be liable for the debts of the other Party, howsoever incurred.

- 3.3. The Customer specifically acknowledges and agrees that it does not have an exclusive arrangement with Ingrain and that Ingrain is entitled to provide all or any of the Products and/or any other goods which are similar to the Products to any other third party whomsoever, as determined by Ingrain in its sole and absolute discretion.

4. Orders for Products

- 4.1. As and when required by the Customer, the Customer shall be permitted to order Products from Ingrain. Each such order:
- 4.1.1. must be submitted in accordance with the Ordering Procedure;
 - 4.1.2. will be processed in accordance with the Ordering Procedure; and
 - 4.1.3. shall be governed by these Terms and Conditions, the Ordering Procedure and any other written instrument signed by both Parties in relation to such order (if any) only.

5. Changes to orders

- 5.1. Where changes to accepted orders for Products are permitted, these are governed by the Ordering Procedure. Accordingly, any permissible changes to orders shall be processed in accordance with the terms of the Ordering Procedure.

6. Delivery/Collection of Products

- 6.1. All matters related to the delivery, collection and/or transportation of the Products shall be governed by the terms of the Ordering Procedure.

7. Charges and payment terms

- 7.1. As consideration for the Products, Ingrain will be paid the Product Prices together with any applicable VAT which is payable by the Customer (subject to receipt by it of an invoice compliant with the Value Added Tax Act, 1991 (VAT Act)) as well as any other taxes and duties which are levied on the sale of the Products.
- 7.2. It is acknowledged that Ingrain shall be permitted, on any agreed review dates, to adjust the Product Prices on written notice to the Customer. Any such notification shall become binding on the Customer with effect from the date of such notice. Where the Customer places an order for Products (which order is accepted by Ingrain) prior to the date of receipt by the Customer of a notification in terms of this **clause 7.2**, but which Products have a delivery date falling after the date of any such notification, such Products will be charged for by Ingrain at the Product Prices which apply at the date of dispatch.
- 7.3. As soon as reasonably possible after delivery or collection of any Products, Ingrain shall submit an invoice to the Customer setting out the amounts payable in respect of such Products based on the quantity of Products delivered or collected. In this regard it is agreed that the amount invoiced by Ingrain shall include the Product Prices for the Products (determined with reference to the weight of the Products as reflected on the delivery note and/or as otherwise determined in accordance with the terms of the Ordering Procedure) plus all transport, delivery and other ancillary costs (including, but not limited to, any standing time on the Customer's premises and/or any futile trip charges – in instances where Ingrain is delivering the Products to the Customer).
- 7.4. On or as soon as reasonably possible after the agreed statement date, Ingrain shall deliver to the Customer a monthly statement which reflects and sets out a summary of the invoices delivered by Ingrain to the Customer during

the month to which the statement relates. Ingrain shall be entitled to reflect in such statement any invoices in respect of which the Customer has not made payment, whether such invoice relates to the month of the statement or not, and any further or other amount owed by the Customer.

- 7.5. Save where Ingrain elects to exercise its rights in terms of **clause 7.8** below, the Product Prices and any other amounts payable in respect of the Products (including, but not limited to, those referred to in **clause 7.3**) shall be paid by the Customer to Ingrain within the payment terms determined by Ingrain and notified to the Customer or, where no such payment terms have been received from Ingrain, by no later than 30 days after the date of the statement. In this regard it is recorded that unless otherwise advised by Ingrain in writing, the statement date shall be the 25th day of each month. All payments will be made by way of electronic funds transfer, free of deduction or set-off and into the bank account nominated by Ingrain in writing from time to time. Notwithstanding the above, non-receipt by the Customer of Ingrain's statement shall in no way excuse the Customer from its obligation to make payment of the amounts owing by it timeously, and thus a failure by the Customer to receive the relevant statement on the aforementioned statement date shall not absolve the Customer from needing to make payment of all applicable invoiced amounts within the agreed payment terms.
- 7.6. The Customer acknowledges that the bank account details of Ingrain are not likely to change. In the unlikely event of such a change, the Customer will be informed of same in writing and on a letterhead from Ingrain. Prior to acting on any such letter, the Customer shall verify the accuracy and veracity of same by contacting any senior finance manager at Ingrain. Pursuant to such engagement with the senior finance manager, the Customer shall further confirm and verify the change in banking detail in writing, on an official letterhead of the Customer and addressed to the senior finance manager with whom they have been engaging. Prior to making payment into any other bank account, the Customer shall confirm with the relevant Ingrain senior finance manager that they have received the aforementioned letter. Should payment of invoiced amounts be made in any manner other than as set out above, the risk and liability to ensure that such payments are received by Ingrain shall remain vested with the Customer. The Customer hereby accepts the full risk and liability should any payment be lost, stolen or misappropriated and the Customer shall immediately make a proper payment in replacement thereof.
- 7.7. Should any amount not be paid by the Customer on the due date then, without prejudice to any other rights which Ingrain may have in terms of these Terms and Conditions or in law:
 - 7.7.1. the whole amount in respect of all purchases of the Products by the Customer shall become immediately due, owing and payable (irrespective of the dates on which such orders were placed);
 - 7.7.2. Ingrain shall be permitted to levy interest on such overdue amounts at the Prime Rate plus 2% from the due date for payment until the date on which payment is received in full (both dates inclusive). The Customer undertakes to pay such interest charges to Ingrain upon demand; and
 - 7.7.3. Ingrain shall be permitted to cancel any part of an order in respect of any undelivered portion of the Product or to suspend further deliveries or collections of the Products until payment has been received in full. In such circumstances the Customer shall remain liable for the payment of any Product Prices and other costs in respect of Products which had been delivered or collected up to the date of such cancellation.
- 7.8. Notwithstanding any other provision of these Terms and Conditions to the contrary, it is agreed that Ingrain shall be permitted, by notice in writing to the Customer, to require that the Customer effect payment of the Product Prices in respect of any Products either upon acceptance by Ingrain of the Customer's order for such Products (as evidenced by the issuance of the official Ingrain order number) or upon delivery or collection of the Products to or by the Customer. In the event that Ingrain elects to exercise its rights in terms of this **clause 7.8**, Ingrain shall be obliged to deliver such notice to the Customer either before or simultaneously with its acceptance of the relevant order whereafter such notice shall become binding on the Customer upon its receipt.

8. Credit facilities and consent

- 8.1. It is acknowledged that Ingrain may offer the Customer one and/or more credit facilities from time to time, the nature and extent of which shall be determined by Ingrain in its sole and absolute discretion. Should any such credit facilities be afforded to the Customer, the terms applicable to same shall be recorded in a separate document to be signed by both Parties.
- 8.2. Where Ingrain has afforded the Customer one and/or more credit facilities as aforesaid, Ingrain reserves the right to withdraw and/or amend such credit facilities at any time, in its sole and absolute discretion and on written notice to the Customer. Any such written notice shall be effective from the date of dispatch thereof (unless otherwise stated in such notice).
- 8.3. Notwithstanding that Ingrain may have afforded the Customer one and/or more credit facilities as aforesaid, such credit facilities and/or limits shall not in any manner whatsoever be deemed to limit the Customer's indebtedness and/or liability to Ingrain arising in terms of and/or pursuant to these Terms and Conditions.
- 8.4. In the event that any credit facility afforded to the Customer is inactive for a period of three months or more, such credit facility will automatically be suspended. In such circumstances Ingrain reserves the right to withdraw or re-instate the credit facility at its sole discretion.
- 8.5. In relation to the aforementioned credit facilities, the Customer consents to Ingrain:
 - 8.5.1 seeking information about the Customer's credit record with any credit bureau for the purposes of assessing any credit application or updating the information in relation to the Customer in future. In addition thereto, the Customer consents to being contacted by such agencies to request additional information from the Customer and/or to verify information supplied by the Customer;
 - 8.5.2 sharing information with other credit providers and agencies about how the Customer manages its payment obligations in terms of these Terms and Conditions and further consents to such credit providers and agencies in turn sharing the information so provided with other credit providers or agencies; and
 - 8.5.3 conducting identity and fraud prevention checks and sharing information relating to these Terms and Conditions with the appropriate authorities.

9 Ownership and risk

- 9.1 All risks (including *inter alia* those of loss, damage and/or destruction) in and to the Products shall pass to the Customer upon signature of the delivery note in accordance with the provisions of the Ordering Procedure. Should the Customer elect to engage a carrier to transport Products as contemplated in the Ordering Procedure, the risks shall pass to the Customer immediately upon loading of the Product on to such carrier's vehicle(s).
- 9.2 Notwithstanding the above, ownership in and to the Products shall not pass to the Customer unless and until the Product Prices in respect of such Products have been paid by the Customer in full.

10 Subcontractors

- 10.1 Ingrain may use subcontractors to perform any of its obligations under these Terms and Conditions without the Customer's prior written permission.

- 10.2 Notwithstanding the above, subcontracting does not relieve Ingrain from any of its obligations under these Terms and Conditions and Ingrain will be liable to the Customer for all direct Losses incurred by the Customer through the acts or omissions of Ingrain's subcontractors as if the acts and omissions were those of Ingrain itself, subject to the provisions of clause **15** below.

11 The Customer's general obligations

- 11.1 The Customer will ensure that it performs its obligations referred to in these Terms and Conditions (inclusive of the Ordering Procedure) within the time periods prescribed, or within a reasonable period of time if none are stated.
- 11.2 Where Ingrain depends on and requests the provision of information and assistance by the Customer in order to supply the Products, the Customer will ensure that it provides the information and assistance in a timely manner.
- 11.3 The Customer will not unreasonably withhold or delay any instruction required of it.
- 11.4 The Customer must ensure that only authorised and approved personnel of the Customer sign delivery notes and other relevant documentation. Pursuant to the above, should any document relating to these Terms and Conditions (including but not limited to any delivery note) be signed by any person purporting to act on behalf of the Customer:
- 11.4.1. such person shall be deemed to have authority to bind the Customer to such document;
 - 11.4.2 Ingrain shall be permitted to rely on such person's representation that they are duly authorised to bind the Customer; and
 - 11.4.3 the Customer shall be bound by the terms of such document.
- 11.5 Where the supply of the Products requires the Customer to liaise or cooperate with Ingrain's personnel or other contractors rendering services to or on behalf of Ingrain, the Customer 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 contractors in their interactions with the Customer.

12 Protection of Personal Information

- 12.1 In performing its obligations in terms of these Terms and Conditions, each Party undertakes to comply with the provisions of POPI and any other applicable data protection legislation.
- 12.2 To the extent that Ingrain Processes any Personal Information of the Customer and/or of third parties that is being Processed by the Customer, Ingrain will at all times during such Processing comply with the terms of its privacy statement (as amended or updated from time to time), which can be accessed on its website at the following link: https://ingrainsa.com/pdf/Ingrain_Privacy_Statement.pdf.

13 Adherence to anti-bribery legislation

- 13.1 Without prejudice to any other clause in these Terms and Conditions, each Party warrants and represents that it shall:
- 13.1.1 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
 - 13.1.2 have and maintain in place at all times its own policies and procedures to ensure compliance with the Anti-Bribery Legislation and enforce them where appropriate.
- 13.2 Each Party undertakes on behalf of itself, its directors, officials, employees, agents and contractors not to do or omit to do any act that will cause or lead such Party and/or the other Party to be in breach of any Anti-Bribery Legislation.
- 13.3 Each Party shall at all times 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.
- 13.4 Each Party hereby indemnifies the other Party against any Losses suffered by the other Party as a result of a breach of this **clause 13** by the first Party.

14 Warranties

- 14.1 Ingrain warrants that:
- 14.1.1 all Products sold by it will conform to Ingrain's published specifications from time to time and will be as recorded in the certificate of analysis which will accompany such Products;
 - 14.1.2 it will, at all times, comply with all laws which are applicable to it and/or the manufacture and/or the sale of the Products; and
 - 14.1.3 it will, at all times, obtain and maintain in force all approvals, licenses, permissions, authorisations, consents and permits which may be required by it from time to time in order to manufacture and sell the Products in accordance with these Terms and Conditions and all applicable laws.

15 Limitation of liability

- 15.1 Neither Party shall be liable to the other for any consequential or indirect Losses, loss of profits or income and/or loss of production.
- 15.2 The limitation of liability in **clause 15.1** does not apply to Losses arising from fraud or wilful misconduct.
- 15.3 Notwithstanding any provision contained elsewhere in these Terms and Conditions and/or the Ordering Procedure, the total aggregate liability of Ingrain to the Customer in respect of any order for Products shall be limited to:
- 15.3.1 direct damages only; and

- 15.3.2 the amount(s) actually paid by the Customer to Ingrain in respect of such order (i.e. the Product Prices as well as any transport and associated costs), irrespective of whether the Customer's claim is founded in contract, delict or otherwise.

16 Confidentiality

- 16.1 Each Party shall treat as strictly confidential all information received or obtained from the other Party which relates to:
- 16.1.1 any negotiations between the Parties;
 - 16.1.2 any information provided in terms of these Terms and Conditions or for purposes of the transactions contemplated in these Terms and Conditions; and/or
 - 16.1.3 the other Party.
- 16.2 Either Party may disclose information which would otherwise be confidential if and to the extent:
- 16.2.1 required by law;
 - 16.2.2 required by any securities exchange or regulatory or governmental body to which either Party is subject, wherever situated, whether or not the requirement for information has the force of law;
 - 16.2.3 required to vest the full benefit of these Terms and Conditions in either of the Parties;
 - 16.2.4 disclosed to the professional advisers, auditors and bankers of either Party;
 - 16.2.5 the information has come into the public domain through no fault of that Party; and/or
 - 16.2.6 the other Party has given prior written approval to the disclosure, such approval not to be unreasonably withheld or delayed, provided that any information so disclosed shall be disclosed only after notification to the other Party.
- 16.3 Each Party shall treat all Confidential Information received by it from the other Party (if any) with the same standard of care as it uses to protect its own confidential information.
- 16.4 Neither Party shall make any public announcement (save for any announcement required under applicable law or the rules of any securities exchange or regulatory body to which such Party or its affiliates are subject) regarding the transactions contemplated in these Terms and Conditions unless such announcement has been approved by the other Party in writing, provided that such approval shall not be unreasonably withheld or delayed.

17 Force majeure

- 17.1 To the extent that it becomes impossible for a Party to perform any obligation (other than a payment obligation) in terms of these Terms and Conditions (including the Ordering Procedure) because of an event or circumstance that was neither foreseen nor reasonably foreseeable or which, if the event could have been foreseen at that time, cannot be guarded against or avoided by reasonable care or the reasonable acts of that Party, that Party may:

- 17.1.1 notify the other Party in writing as soon as reasonably possible after becoming aware of the event or circumstance of the nature, extent, effect and likely duration of the event or circumstance; and keep the other Party updated as may be reasonably required by the other Party;
- 17.1.2 take all commercially reasonable action to remedy or minimise the consequences; and
- 17.1.3 immediately resume performance of its obligations under this Agreement and notify the other Party in writing when performance of the obligation again becomes possible.
- 17.2 Notwithstanding the provisions of **clause 17.1**, performance of any such obligation is suspended for as long as the event or circumstance continues to make the performance impossible.

18 Dispute resolution

- 18.1 Any dispute arising out of or in connection with these Terms and Conditions (including the Ordering Procedure) and/or any order must be resolved in terms of this **clause 18**.
- 18.2 Disputes must be referred to 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.
- 18.3 Any settlement must be recorded in writing and signed by the senior executives on behalf of each Party.
- 18.4 The senior executives will have failed to resolve the dispute when either Party declares this to be the case.
- 18.5 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.
- 18.6 The arbitration will be held subject to the provisions of these Terms and Conditions:
 - 18.6.1 at Sandton;
 - 18.6.2 with only the Parties, their legal representatives, arbitrator/s and any witnesses who may be called to give evidence present; and
 - 18.6.3 otherwise in accordance with the provisions of the rules of the Arbitration Foundation of Southern Africa (**AFSA**).
- 18.7 The arbitrator will be a practising attorney or advocate with no less than 10 (ten) years standing agreed upon between the Parties.
- 18.8 If the Parties cannot agree upon an arbitrator in terms of **clause 18.7** 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.
- 18.9 The arbitration will be conducted in the English language.
- 18.10 Subject to **clause 18.14**, all information concerning the arbitration proceedings, all evidence led or presented and the arbitrator's award will be confidential.
- 18.11 The arbitrator will be obliged to give written reasons for the award.
- 18.12 The decision of the arbitrator will be subject to appeal.

- 18.13 Either Party may have the award of an arbitrator, including an award on appeal made an order of court.
- 18.14 Nothing contained in **clause 18** will prevent either Party from applying to court for urgent or interdictory relief.
- 18.15 This **clause 18** 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.
- 18.16 The Parties will continue to perform their respective obligations under these Terms and Conditions pending the resolution of a dispute.
- 18.17 A demand by a Party to submit a dispute to arbitration in terms of this **clause 18** is adequate legal process to interrupt any time bar laws in respect of legal claims.
- 18.18 This **clause 18** is a separate, divisible clause from the rest of these Terms and Conditions and will remain valid and enforceable in perpetuity.

19 Severability

Each provision in these Terms and Conditions is severable from all of the others, notwithstanding the manner in which they may be linked together or grouped grammatically, and if in terms of any judgment or order, any provision, phrase, sentence, paragraph or clause is found to be defective or unenforceable for any reason, the remaining provisions, phrases, sentences, paragraphs and clauses shall nevertheless continue to be of full force. In particular, and without limiting the generality of the foregoing, the Parties acknowledge their intention to continue to be bound by these Terms and Conditions notwithstanding that any provision may be found to be unenforceable or void or voidable, in which event the provision concerned shall be severed from the other provisions, each of which shall continue to be of full force.

20 General

- 20.1 These Terms and Conditions (inclusive of the Ordering Procedure) as read together with the terms of the relevant order are the whole agreement between the Parties in regard to their subject matter. Ingrain does not accept any other terms and conditions which the Customer may specify (including, without limitation, the Customer'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.
- 20.2 No Party shall be bound by any representation, warranty, promise or the like not expressly recorded in these Terms and Conditions, any applicable order or any other written document signed by that Party.
- 20.3 No addition to or variation of these Terms and Conditions by the Customer shall be of any force or effect unless in writing and signed by or on behalf of the Parties. Notwithstanding the above, Ingrain shall be permitted to revise, amend and/or update these Terms and Conditions on written notice to the Customer from time to time. Any such revised, amended and/or updated Terms and Conditions shall become automatically binding and enforceable on the Customer, and the Customer accepts that same shall be binding and enforceable upon it, if the Customer places an order for Products with Ingrain after receipt of the revised, amended and/or updated Terms and Conditions, irrespective of whether or not the Customer signed such revised, amended and/or updated Terms and Conditions.
- 20.4 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.

20.5 Neither Party shall be permitted to cede, delegate and/or assign all or any of its rights and/or obligations hereunder to any other third party without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).

20.6 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. Furthermore, the Parties shall at all times observe the principles of good faith towards each other in the performance of their obligations in terms of these Terms and Conditions and any applicable order.

21 Notices and addresses

21.1 Notices

Any notice, consent, approval or other communication in connection with these Terms and Conditions (Notice) will be in writing in English.

21.2 Addresses

21.2.1 Each Party chooses the physical address and/or email address corresponding to its name below as the address to which any Notice must be sent

21.2.1.1 Ingrain:

21.2.1.1.1 Physical address: 6 Anvil Road, Isando

21.2.1.1.2 Email address: legal@ingrainsa.com

21.2.1.1.3 Marked for the attention of: Legal Department

21.2.1.2 Customer:

21.2.1.2.1 Physical address: The delivery location or such other address as may be notified by the Customer to Ingrain in writing from time to time.

21.2.1.2.1.2 Email address: As notified by the Customer to Ingrain in writing from time to time.

21.2.2 Any Party may by Notice to the other Party change its address and/or the person, if any, for whose attention any Notice must be marked in **clause 21.2.1**.

21.3 Effective on receipt

21.3.1 Any Notice takes effect when received by the recipient (or on any later date specified in the Notice) and, unless the contrary is proved, is deemed to be received:

21.3.1.1 on the day of delivery, if delivered by hand to a responsible person at the recipient's physical address in **clause 21.2**. If delivery is not on a Business Day, or is after ordinary business hours

on a Business Day, the Notice is deemed to be received on the Business Day after the date of delivery; and/or

21.3.1.2 on the first Business Day after the date of transmission, if sent by email to the recipient's email address in **clause 21.2.1**.

21.3.2 Despite anything to the contrary in these Terms and Conditions, a Notice actually received by a Party is effective even though it was not sent, or delivered, or sent and delivered to its address in **clause 21.2**.

21.4 Service of legal process

21.4.1 Each Party chooses its physical address referred to in **clause 21.2.1** as its address at which legal process and other documents in legal proceedings in connection with these Terms and Conditions may be served (**domicilium citandi et executandi**).

21.4.2 Any Party may by Notice to other Party change its address at which legal process and other documents in legal proceedings in connection with these Terms and Conditions may be served in the Republic of South Africa.

22 Applicable law

These Terms and Conditions and all orders concluded hereunder are governed by South African law.

23 Jurisdiction

The Parties unconditionally consent and submit to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg in regard to all matters arising from these Terms and Conditions (including the Ordering Procedure) and/or any order concluded hereunder.

Accepted by _____ (Customer's full name)

on the _____ day of _____ 2025.

Name:
Capacity:
Who warrants authority



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