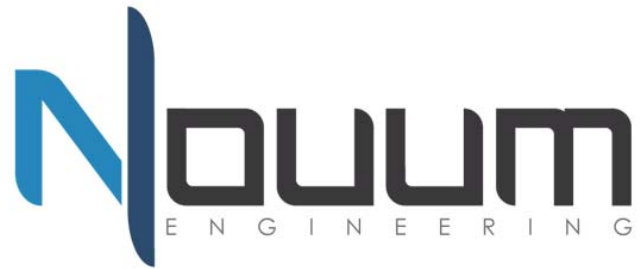


Nouum (Pty) Ltd

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STANDARD TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

In these conditions the following words and/or terms bear the meaning ascribed herein :

- 1.1. **“NOUUM OR MAJESTIC”** means NOUUM OR MAJESTIC (Pty) Limited, registration number 2016/436697/07 a private company incorporated under the laws of South Africa.
- 1.2. **“Employee”** means servants, agents, sub-contractors, direct or indirect, permanently employed or employed just for the purposes of the contract or persons for whom the party employing is responsible in terms of the contract.
- 1.3. **“Works”** means Goods and/or Services provided by NOUUM OR MAJESTIC either as agent or as principal.
- 1.4. **“Conclusion”** means the moment at which NOUUM OR MAJESTIC is of the honest belief that it has completed the works.
- 1.5. **“Buyer”** means any person identified in an Order, and/or any other person, contracting to purchase, take delivery of, and pay for, Goods and/or Services, and includes its successors-in-title, legal representatives, administrators, liquidators, trustees or permitted assigns.
- 1.6. **“Fees”** means the fees payable for the Services as specified in an Order and accepted.
- 1.7. **“Goods”** means any goods (including but not limited to Equipment and Parts) to be supplied by NOUUM OR MAJESTIC to the Buyer as specified in an Order and accepted in an Order Acknowledgement.
- 1.8. **“NOUUM OR MAJESTIC Equipment”** means machinery and equipment procured by NOUUM OR MAJESTIC.
- 1.9. **“Equipment”** means NOUUM OR MAJESTIC Equipment and Other Equipment collectively.
- 1.10. **“NOUUM OR MAJESTIC parts”** means parts and components procured by NOUUM OR MAJESTIC.
- 1.11. **“Parts”** means NOUUM OR MAJESTIC Parts and Other Parts.
- 1.12. **“Order”** means an order placed by the Buyer, verbally and/or in writing, with NOUUM OR MAJESTIC for the delivery of Goods and/or provisions of Services (whether pursuant to a quotation or Tender provided by NOUUM OR MAJESTIC or otherwise).
- 1.13. **“Order Acknowledgment”** means a written order acknowledgement issued by NOUUM OR MAJESTIC to the Buyer in terms of which the Buyer's Order is accepted.



- 1.14. **“Parties”** means NOUUM OR MAJESTIC and the Buyer, and **“Party”** means any one of them.
- 1.15. **“Price”** means the purchase price payable for the Goods and/or Services as specified in an Order.
- 1.16. **“Prime Rate”** means the rate of interest (compounded monthly in arrears) from time to time published by NOUUM OR MAJESTIC’s bankers as its prime overdraft lending rate (a certificate from any manager of that bank, whose appointment or authority need not be proved, as to the prime rate at any time and the usual way in which it is calculated and compounded at such time shall be final and binding on the Parties).
- 1.17. **“Services”** means any services (including but not limited to maintenance, repair and inspection services) to be provided by NOUUM OR MAJESTIC to the Buyer as specified in an Order and accepted.
- 1.18. **“Site”** means the place where the Goods and/or Services are to be provided.
- 1.19. **“Tender”** means any tender or proposal provided by NOUUM OR MAJESTIC to a potential Buyer in response to a tender or public procurement programme/process conducted by such person.
- 1.20. **“CPA”** means the Consumer Protection Act 68 of 2008 and any promulgated regulations thereto and as amended from time to time.
- 1.21. **“Terms”** means the standard terms and conditions recorded herein.
- 1.22. In these Terms, reference to the singular includes the plural and *vice versa*, any gender includes the other genders and natural persons include artificial persons and *vice versa*.
- 1.23. The clause headings in these Terms have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.24. No provision of these Terms shall be construed against or interpreted to the disadvantage of any Party hereto by reason of such Party having or being deemed to have structured or drafted such provision.

2. QUOTATION, ORDER AND ORDER ACKNOWLEDGMENT

- 2.1. A quotation or Tender provided by NOUUM OR MAJESTIC for the supply of Goods and/or the provision of Services shall be valid for a period of 30 (thirty) days only unless otherwise agreed to in writing. Unless expressly stated otherwise in the relevant quotation or Tender, any quotation or Tender issued by NOUUM OR MAJESTIC shall be subject to the provisions of these Terms.
- 2.2. An Order placed by the Buyer and provided to NOUUM OR MAJESTIC shall constitute an offer by the Buyer to purchase Goods and/or Services and NOUUM OR MAJESTIC reserves the right to accept or refuse any Order from the Buyer.
- 2.3. All specifications, measurements, masses, technical data, illustrations, drawings, diagrams, price lists, dimensions, delivery dates and performance figures furnished by NOUUM OR MAJESTIC or its suppliers and any data contained in catalogues, prospectuses, circulars, advertisements, illustrated materials and price lists, and representations in regards thereto, are furnished for information purposes only and, unless expressly confirmed by NOUUM OR MAJESTIC in writing or as otherwise provided for in these Terms, shall not bind NOUUM OR MAJESTIC in any way whatsoever.
- 2.4. The provisions of this clause 2 shall be subject to revision and alteration without prior notice to the Buyer.

3. PRICE AND FEES

- 3.1. NOUUM OR MAJESTIC shall be entitled to increase its quoted price by any increase in cost or expense to it in respect of the works from the date of such quote to the date such cost or expense is incurred by it and the Buyer shall be obliged to pay such increased price.
- 3.2. The Price and any prices quoted by NOUUM OR MAJESTIC (whether in a quotation or Tender) are Ex Works (Incoterms 2010) and (without limiting the aforesaid) are exclusive of any taxes, duties, fees, charges, costs of carriage, package, insurance, taxes and charges, which shall be paid by the Buyer. The Buyer shall reimburse NOUUM OR MAJESTIC for any

such costs and taxes not included in the Price and paid or otherwise incurred by NOUUM OR MAJESTIC, which amounts may be invoiced by NOUUM OR MAJESTIC to the Buyer from time to time.

- 3.3. The Buyer shall reimburse NOUUM OR MAJESTIC for all reasonable costs for travel, transport, subsistence and costs relating to carriage of luggage, instruments and tools incurred by NOUUM OR MAJESTIC's personnel in providing the Services in addition to the Fees, upon receipt of an invoice from NOUUM OR MAJESTIC.
- 3.4. Supporting documents, i.e. Documentation for flight tickets and hotel accommodation, will only be made available if this is requested when the service is ordered. If such documents are ordered after the service attendance, a fee of EUR 350 will be charged.
- 3.5. NOUUM OR MAJESTIC is not responsible for payment of crantage, dry-dock, port or cargo dues, pilotage charges, levies and/or other related expenses imposed by the National Port Authority or the operator of the relevant berth. Such charges are the responsibility of and for the account of the Buyer.

4. PAYMENT TERMS

- 4.1. The Buyer shall pay to NOUUM OR MAJESTIC the Price (or the relevant portion thereof specified in an invoice or statement) and/or any applicable Fees (as the case may be) within 30 (thirty) days from the date of issue of an invoice or statement by NOUUM OR MAJESTIC to the Buyer unless otherwise agreed to in writing.
- 4.2. The Price shall be payable free of taxes, bank charges, exchange control regulations and in the currency in which it was quoted in accordance with the Terms agreed, or, if no such terms are agreed, at Conclusion.
- 4.3. The exchange rate will be fixed on the date of issue of the order.
- 4.4. In the event of further work being conducted after Conclusion in respect of which separate quotation has been made, the Price in respect of such work shall be payable free of taxes, bank charges, exchange control regulations and in the currency in which it was quoted in accordance with the terms agreed, or, if no such terms are agreed, on Conclusion.
- 4.5. Faxed and/or emailed invoices and statements shall be permitted.
- 4.6. All amounts due by the Buyer shall be paid into a bank account nominated in writing by NOUUM OR MAJESTIC from time to time, by way of electronic transfer, without any deduction, foreign exchange, bank (or other) charges or set-off of whatever nature.
- 4.7. The Buyer has no right to withhold payment for any reason whatsoever.
- 4.8. If any amount due and payable by the Buyer to NOUUM OR MAJESTIC is not paid on the due date, NOUUM OR MAJESTIC shall be entitled to interest on the outstanding amount at the rate of 3% per annum above the Prime Rate, from and including the due date for payment up to and including the date on which the full outstanding amount owing has been paid in full and received by NOUUM OR MAJESTIC.
- 4.9. In the event of it having been agreed that payment for work completed will be paid in instalments partially or wholly thereafter, a failure to pay one instalment shall render all subsequent instalments immediately due and payable.
- 4.10. NOUUM OR MAJESTIC may appropriate all payments made by or on behalf of the Buyer to the Price (or relevant portion thereof) and/or the Fees, to interest thereon or to such other accounts as NOUUM OR MAJESTIC in its sole discretion may determine.
- 4.11. No settlement or discount may be taken, unless otherwise agreed upon in writing by NOUUM OR MAJESTIC.

5. DELIVERY OF GOODS AND DELAYS

- 5.1. Unless expressly agreed otherwise in writing by NOUUM OR MAJESTIC, all Goods will be delivered Ex Works, NOUUM OR MAJESTIC's plant or warehouse or other NOUUM OR MAJESTIC designated shipping point (Incoterms 2010) and in accordance with these Terms.
- 5.2. NOUUM OR MAJESTIC may deliver Goods partially (in instalments) in any sequence or in full. A default or delay by NOUUM OR MAJESTIC in the delivery of one or more instalments of Goods shall not entitle the Buyer to terminate the relevant Order as a whole.
- 5.3. All delivery dates are estimates of approximate date of delivery of Goods and do not constitute a guarantee of delivery of Goods on such dates.
- 5.4. A representative of the Buyer shall be present at the place and time of delivery and shall sign such delivery note immediately prior to the delivery or handover of the Goods. Should the Buyer's representative not be present at the place and time of delivery, a representative of NOUUM OR MAJESTIC shall be entitled to sign such delivery note on behalf of the Buyer. Signature of the delivery note by the Buyer's representative (or by NOUUM OR MAJESTIC's representative in the absence of the Buyer's representative) shall constitute an acknowledgement by the Buyer that the correct quantity of the Goods has been received and that the Goods are on the face of it in good order and condition.
- 5.5. Notwithstanding anything to the contrary in these Terms, where:
 - 5.5.1. the Buyer fails or refuses to accept delivery of any Goods when they are ready for delivery in accordance with the relevant Order accepted;
 - 5.5.2. NOUUM OR MAJESTIC agrees (at its sole discretion) to postpone delivery of the Goods at the request of the Buyer; or
 - 5.5.3. the Buyer fails to provide any instruction, consent or authorisation required to enable the Goods to be delivered on the due date, the risk in the relevant Goods shall pass immediately to the Buyer, delivery of the Goods shall be deemed to have taken place and NOUUM OR MAJESTIC may store or arrange for the storage of such Goods and charge the Buyer for all related costs and expenses (including but not limited to storage and insurance) and may sell such Goods after 28 (twenty eight) days after such failure or refusal and deduct any monies payable to NOUUM OR MAJESTIC by the Buyer from the proceeds and charge the Buyer for any shortfall below the Price of the relevant Goods.
- 5.6. Should the Buyer do or omit to do anything whatsoever which results in any delay in delivery of the Goods, the Buyer shall be liable for any and all expenses, cost, loss or damage incurred or suffered by NOUUM OR MAJESTIC in relation thereto.
- 5.7. Notwithstanding anything contained in these Terms, NOUUM OR MAJESTIC shall be entitled to suspend performance of all or any of NOUUM OR MAJESTIC's obligations under these Terms and/or an Order accepted, including but not limited to the delivery of Goods, for any period during which the Buyer is in breach of any of its obligations under an Order accepted.
- 5.8. No Goods will be accepted for return, unless written authority has been received from NOUUM OR MAJESTIC. Goods returned will be subject to a handling charge at NOUUM OR MAJESTIC's sole discretion.
- 5.9. NOUUM OR MAJESTIC may, at the Buyer's request, arrange packaging, transportation, insurance, equipment rental which shall not be warranted as part of the Services. This will be done at the sole cost and risk of the Buyer, and NOUUM OR MAJESTIC shall not be liable for any loss, costs, damage, liability or claim suffered or incurred by the Buyer arising therefrom or in connection therewith.

6. PROVISION OF SERVICES AND DELAYS

- 6.1. NOUUM OR MAJESTIC shall provide the Services on the Site.

- 6.2. The provision of the Services by NOUUM OR MAJESTIC shall be subject to the Buyer providing NOUUM OR MAJESTIC with such assistance through either engine room staff or other personnel, as NOUUM OR MAJESTIC may reasonably require.
- 6.3. The services, including any additional services, shall be performed during normal working hours. Any overtime carried out at the Buyer's request shall be subject to extra cost, unless the price is agreed to in writing.
- 6.4. There shall be no obligation on NOUUM OR MAJESTIC to carry out additional services. In the event of such being conducted, it shall, unless otherwise agreed in writing, be carried out at the Buyer's expense.
- 6.5. NOUUM OR MAJESTIC may provide Services in sections and in any sequence. A default or delay by NOUUM OR MAJESTIC in the delivery of one or more sections of the Services shall not entitle the Buyer to terminate the relevant Order as a whole.
- 6.6. Unless otherwise agreed in writing, there shall be no specific time for completion of the services, including any additional services.
- 6.7. In the event that a contract period has been agreed, such shall no longer apply in the event that additional services are agreed to.
- 6.8. All dates for the provision of Services are estimates of approximate date of provision of Services and do not constitute a guarantee of provision of Services on such dates.
- 6.9. Should the Buyer do or omit to do anything whatsoever which results in any delay in provision of the Services, the Buyer shall be liable for any and all expenses, cost, loss or damage incurred or suffered by NOUUM OR MAJESTIC in relation thereto.
- 6.10. Notwithstanding anything contained in these Terms, NOUUM OR MAJESTIC shall be entitled to suspend performance of all or any of NOUUM OR MAJESTIC's obligations under these Terms and/or an Order accepted, including but not limited to the provision of Services, for any period during which the Buyer is in breach of any of its obligations under an Order and/or these Terms.
- 6.11. Should any specified materials or equipment not be available at the time required for use, NOUUM OR MAJESTIC shall have the right to use other suitable materials or equipment or to delay completion of the works until such materials or equipment are available.

7. OWNERSHIP AND RISK

- 7.1. Subject to clause 5.5, all risk in and to the Goods shall pass to the Buyer upon delivery of the Goods by NOUUM OR MAJESTIC in accordance with clause 5.
- 7.2. Risk in and to any material, equipment or supplies provided by the Buyer shall remain with the Buyer and NOUUM OR MAJESTIC shall not be liable for the failure of the same or any machinery or equipment overhauled or repaired using, whether wholly or partly, the same.
- 7.3. Without derogating from the previous sub-clause, NOUUM OR MAJESTIC shall not be responsible for any failure of any machinery or equipment following overhaul or repair by it if :
 - 7.3.1. it is not notified timeously thereof so as to permit it or any third party requested by it is to conduct a thorough investigation of the cause thereof; and
 - 7.3.2. It or any third party requested by it is not permitted to conduct a thorough investigation of the cause thereof.
- 7.4. Ownership of the Goods shall only pass to the Buyer upon receipt by NOUUM OR MAJESTIC of the full Price (including interest, if any) for such Goods. Ownership of any products or goods supplied during or for purposes of the provision of Services shall only pass to the Buyer upon receipt by NOUUM OR MAJESTIC of the full Fees (including interest, if any) for such Services.



7.5. NOUUM OR MAJESTIC shall use its best endeavours to pass to the Buyer the benefit of any guarantee received by NOUUM OR MAJESTIC from the supplier of any materials, equipment or supplies provided but shall not be under any obligation to itself enforce same.

8. APPROVALS AND CERTIFICATES

8.1. The Buyer shall secure and pay for any and all permits, licenses and governmental fees, inspections and approvals necessary for the installation, erection, and use of any of the Goods.

9. BUYER'S OBLIGATIONS

9.1. The Buyer shall provide NOUUM OR MAJESTIC's personnel with assistance in obtaining official entry, exit or working permits required in the country where the Services are to be provided and ensure that they have free access to the Site.

9.2. NOUUM OR MAJESTIC shall at the time and place agreed be given unimpeded access to the vessel or equipment that is the subject of the work and such shall be in a condition as will allow the works to commence immediately. In the event of a vessel, she shall be safely afloat and, unless otherwise agreed, gas free and/or inerted, free of cargo that is hazardous to the work and free of cargo, slops, sludge, dirty ballast and of any substances in the structure of the vessel in the way of the works.

9.3. If for any reason such access is not provided to NOUUM OR MAJESTIC at the agreed place within twelve hours of the agreed time, NOUUM OR MAJESTIC shall have the right to cancel the contract and claim whatever damages it has incurred as a consequence thereof.

9.4. The Buyer shall be responsible for ensuring the health and safety of NOUUM OR MAJESTIC's personnel whilst on the Site. The Buyer shall take appropriate measures to protect NOUUM OR MAJESTIC's personnel from risks associated with lone working, working in confined spaces and with substances hazardous to health. When NOUUM OR MAJESTIC is to provide the Services on the Site, the Buyer shall make available and bear the costs of an adequate number of fitters, local transport, lifting gear, towing, dockage, supply of electricity and similar supplies as may be requested by NOUUM OR MAJESTIC.

9.5. NOUUM OR MAJESTIC may at its sole discretion refuse to provide the Services in conditions or surroundings that it considers may be prejudicial to the health and/or safety of its personnel and/or where the Buyer is in breach of this clause 10 and NOUUM OR MAJESTIC shall not be liable under these Terms read and/or the Order accepted for any delay in or failure of delivery in such event.

9.6. The Buyer shall be responsible for the security of the vessel, and/or site, and everything on or in her, the provision of good and safe gangway, and/or access, facilities, as well as the deployment of adequate fire watch facilities.

9.7. The Buyer shall assume all responsibility for all acts and omissions of the Buyer's personnel and NOUUM OR MAJESTIC shall have no liability with respect thereto or with respect to such personnel. NOUUM OR MAJESTIC shall furthermore not be liable for any injury or death suffered by any of the Buyer's personnel arising from or in connection with assisting NOUUM OR MAJESTIC to provide the Services on the Site or in any way in connection with the provision by NOUUM OR MAJESTIC of the Services.

9.8. The Buyer shall provide all tools, test equipment and test facilities unless agreed to otherwise in writing. Where NOUUM OR MAJESTIC does supply the tools, the Buyer shall give the necessary assistance with the customs formalities required for the import and re-export of such tools.

9.9. The Buyer shall, to the best of its ability, assist NOUUM OR MAJESTIC in obtaining all necessary information concerning such local laws and regulations as are applicable to NOUUM OR MAJESTIC's provision of the services.

9.10. The Buyer shall have at least one representative available to NOUUM OR MAJESTIC for the Services. Such representative shall be authorised to act on behalf of the Buyer in respect of all matters relating to the Works, including, but not limited to, approving plans, drawings, calculations and documents and agreeing and signing variations to the Works and invoices.

9.11. Such representative shall provide reasonable assistance to facilitate efficient completion of the Works.

9.12. In the absence of the appointment of any other person, the Master of any vessel, and/or the manager of any site, shall be the Buyer's representative for works conducted on or relating to the vessel and/or site.



- 9.13. Should the representative use any of NOUUM OR MAJESTIC's facilities, NOUUM OR MAJESTIC shall be entitled to charge for such use.
- 9.14. The Buyer shall not conduct any work which may interfere in the performance of the works by NOUUM OR MAJESTIC without its prior written consent.
- 9.15. The Buyer shall perform its obligations in this clause 10 at its own cost.
- 9.16. Any additional costs and expenses occasioned by a breach of the Buyer's obligations under this clause shall be borne by the Buyer and NOUUM OR MAJESTIC shall not be responsible for any consequent delays.

10. EXCUSABLE EVENTS

- 10.1. If NOUUM OR MAJESTIC is prevented or restricted, directly or indirectly, from carrying out all or any of its obligations by reason of an Excusable Event, NOUUM OR MAJESTIC shall be relieved of such obligations during the period that such Excusable Event and its consequences continue, but only to the extent so prevented, and shall not be liable for any delay or failure in the performance of any obligations hereunder, or loss or damages (whether general, special or consequential) which the Buyer may suffer due to or resulting from such delay or failure. In addition, NOUUM OR MAJESTIC shall be entitled to an increase in the Price or Fees for any necessary delay costs (including, but not limited to, standby charges at the applicable rate(s) per hour for every employee and supervisor, and rental fees and costs for all rental equipment affected by the delays) actually incurred by it arising from the occurrence or continuation of an Excusable Event, which increase shall be payable by the Buyer to NOUUM OR MAJESTIC upon NOUUM OR MAJESTIC presenting an invoice therefor to the Buyer together with reasonable proof that such costs have in fact been incurred. As used herein, an "Excusable Event" shall mean and refer to:
- 10.2. acts of God, fires, accidents, explosions, casualties, floods, earthquakes, tornadoes, severe weather, natural disasters, epidemics, civil disturbances or commotion, unrest or disturbances war, terrorism, riots, sabotage, embargo, accidents, restraints or injunctions issued by a court or other governmental entity or other governmental acts or omissions, strikes, lock-outs or labour disputes, or other work stoppages or cessation of labour, whether of NOUUM OR MAJESTIC employees or not, power outages, public health emergencies, non-delivery of acceptable materials or unusual delays in the supply of materials by suppliers, failure of the Buyers and/or Buyer's regulatory bodies to review/approve technical information within a reasonable time, any breach of the contract by the Buyer and late delivery of any item supplied by or at the instance of or request of the Buyer;
- 10.3. transportation delays or a shortage of, or a breakdown in, transportation facilities; and/or
- 10.4. the occurrence of any other events or matters which are beyond the reasonable control of NOUUM OR MAJESTIC, irrespective of whether such contingency is specified herein or is presently occurring or anticipated.
- 10.5. If such Excusable Event continues for a period of more than 90 (ninety) days, then NOUUM OR MAJESTIC shall be entitled to cancel the relevant Order with immediate effect, in respect of any obligations still to be performed hereunder in respect of such Order. In the event of NOUUM OR MAJESTIC electing to cancel in terms of this clause 11.2, the Buyer shall immediately pay to NOUUM OR MAJESTIC the outstanding amount of the Price and any applicable Fees in respect of Goods already delivered and Services already provided in terms of the Order, and neither Party shall have any further claim against the other.

11. WARRANTIES

- 11.1. NOUUM OR MAJESTIC Equipment, NOUUM OR MAJESTIC Parts and other Goods procured by NOUUM OR MAJESTIC - Subject to clause 12.4, any NOUUM OR MAJESTIC Equipment, NOUUM OR MAJESTIC Parts and/or other Goods procured by NOUUM OR MAJESTIC which are delivered to the Buyer, shall maintain the warranty provided for by the manufacturer and NOUUM OR MAJESTIC does not provide any warranty over such Goods.
- 11.2. Services - Subject to clause 12.4, NOUUM OR MAJESTIC warrants for a period of 6 (six) months from the date on which any Services have been provided by NOUUM OR MAJESTIC, that the relevant Services have been provided with reasonable skill and care.
- 11.3. The warranties referred to in clause 11.1 and 11.2 shall under no circumstances apply:



- 11.3.1. where any defect in the relevant Goods or Services arises from any drawing, design, specification or intellectual property right supplied by the Buyer or arises from normal wear and tear, wilful damage, the Buyer's negligence, abnormal working conditions, or misuse or alteration or repair of the Goods without NOUUM OR MAJESTIC's approval or arises from any failure to follow NOUUM OR MAJESTIC's advice (whether oral or written or whether relating without limitation to the fabrication, operation, use or maintenance of the Goods), or misuse or alteration or repair of the goods without NOUUM OR MAJESTIC's approval or by anyone other than a person approved by NOUUM OR MAJESTIC;
- 11.3.2. if NOUUM OR MAJESTIC or its agents are not given a reasonable opportunity to safely inspect the defective Goods and/or Services;
- 11.3.3. if the Price or Fees of the defective Goods or Services has not been paid in full by the Buyer to NOUUM OR MAJESTIC;
- 11.3.4. if the Goods have been procured by NOUUM OR MAJESTIC in accordance with the instructions, drawings or specifications of the Buyer;
- 11.3.5. if the Goods or the product of the Services have in any way been altered or tampered with by the Buyer; or
- 11.3.6. if the Goods or the product of the Services are not used by the Buyer in strict conformity with NOUUM OR MAJESTIC's instructions and guidelines, it being agreed that in such instances NOUUM OR MAJESTIC shall have no liability in respect of the relevant defective Goods or Services.

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

12. BREACH OF WARRANTY AND REMEDIES

- 12.1. If, at any time prior to the end of the applicable warranty period set forth in clause 11.2, there is a failure or breach of NOUUM OR MAJESTIC's applicable warranties in clause 11.2 and the Buyer notifies NOUUM OR MAJESTIC in writing within 30 (thirty) days of discovery of such breach during the applicable warranty period, then NOUUM OR MAJESTIC shall, at NOUUM OR MAJESTIC's sole option, either repair or rectify such non-conformance or defect.
- 12.2. Repaired or rectified Services provided under clause 11.2 are warranted only for the remainder of the original applicable warranty period. NOUUM OR MAJESTIC, at its option, may issue a credit in satisfaction of its obligations to repair, rectify or replace as set forth herein. The amount of any credit to be issued shall be the price of the relevant Goods at the time of its failure, or NOUUM OR MAJESTIC's determination of the cost of labour, at NOUUM OR MAJESTIC's standard rates, and materials necessary to do the repair, rectification or replacement.
- 12.3. NOUUM OR MAJESTIC shall not be liable for the cost, including labour costs, of dismantling and installing replacement Goods or for any other expense connected therewith or for any special, exemplary, indirect, incidental or consequential damages. Ownership of any replaced Goods shall revert to NOUUM OR MAJESTIC.
- 12.4. The Buyer's sole and exclusive remedy for non-conformance of any Services shall be NOUUM OR MAJESTIC's correction or reperformance of any such nonconforming Services, provided that NOUUM OR MAJESTIC is given written notice of any claimed non-conformance within 30 (thirty) days of the provision of such Services. Except for NOUUM OR MAJESTIC's direct costs incurred in correcting or reperforming non-conforming Services, NOUUM OR MAJESTIC shall not be liable for any other expense connected with the correction or reperformance of any Services or for any special, exemplary, indirect, incidental or consequential damages.

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

13. COMPLIANCE

- 13.1. NOUUM OR MAJESTIC shall provide Goods and Services in accordance with NOUUM OR MAJESTIC's good faith interpretation of applicable legislation and regulations in effect on the date of the provision of such Goods and Services.



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

14. CONFIDENTIALITY

- 14.1. All proposals, drawings, specifications, software, and technical data furnished to the Buyer by NOUUM OR MAJESTIC shall:
 - 14.1.1. be retained in confidence;
 - 14.1.2. remain the exclusive property of NOUUM OR MAJESTIC and/or its suppliers;
 - 14.1.3. be returned to NOUUM OR MAJESTIC upon request.
- 14.2. All drawings, specifications, designs, plans, computer programs and other documents used and/or prepared by or on behalf of NOUUM OR MAJESTIC and/or its suppliers in connection with any Goods and/or Services hereunder (the "Design Materials"), and all Intellectual Property Rights in and to the Design Materials, are and shall remain NOUUM OR MAJESTIC's property and/or the property of the holder of the Intellectual Property Rights. The Design Materials are for use solely with respect to Goods which are the subject of the relevant Order, and shall not, without NOUUM OR MAJESTIC's prior written consent, be used by the Buyer, or its agents or contractors, on any other project, for completion of any of the Goods or Services hereunder by others, or for any other services or work. The Design Materials are confidential, and the Buyer agrees to keep the Design Materials confidential upon receipt of the same directly or indirectly from NOUUM OR MAJESTIC or from any of NOUUM OR MAJESTIC's contractors, subcontractors, vendors or consultants, and to return such Design Materials to NOUUM OR MAJESTIC upon request. The obligation to keep the Design Materials confidential shall survive the cancellation or expiry of an Order and/or the completion and delivery of any Goods and/or Services.
- 14.3. The Buyer, its agents or distributors and/or their employees and representatives, shall maintain confidentiality of all information, specifications and technical documentation relating to NOUUM OR MAJESTIC, the Order, the Intellectual Property Rights, the Goods and/or Services, Prices and Fees and the business, operations and affairs of NOUUM OR MAJESTIC, howsoever such information was obtained, and shall not use same for its own purposes or for disclosing same to any third party without NOUUM OR MAJESTIC's prior written consent.
- 14.4. Where required by NOUUM OR MAJESTIC, the Buyer, its agents or distributors and/or their employees or representatives shall sign such confidentiality undertakings as may be required by NOUUM OR MAJESTIC.

15. INDEMNITIES

- 15.1. The Buyer indemnifies NOUUM OR MAJESTIC, its employees, officers and/or agents or person for whom it may be liable in law against any claim, liability, loss, proceeding, expense and/or cost of whatsoever nature which may be brought against NOUUM OR MAJESTIC, its employees, officers, agents and any person for whom it may be liable in law due to the implementation of an Order or any act or omission on the part of the Buyer, its employees, officers, agents and/or any person for whom it is liable in law and/or any infringement by NOUUM OR MAJESTIC of any patent, design, trademark or proprietary right due to the use by NOUUM OR MAJESTIC of any information, specifications, designs or other data supplied by the Buyer.
- 15.2. The Buyer shall have no claim of any nature whatsoever whether for damages, a remission of the Price of Fees, cancellation or otherwise, against NOUUM OR MAJESTIC, its employees, officers, agents and/or any other person for whom it may be liable in law in respect of any loss or damage sustained by the Buyer of any nature whatsoever or any damage caused to the assets of the Buyer or assets kept on its premises by any third parties or in regard to the Buyer's business or sustained by any of its customers, howsoever caused including but not limited to the negligent acts or omissions of NOUUM OR MAJESTIC, its employees, officers, agents and/or any other person for whom it may be liable in law. This constitutes also stipulatio alteri in favour of such persons the benefits of which may be accepted by them at any time.

16. ENVIRONMENTAL ISSUES

- 16.1. NOUUM OR MAJESTIC and the Buyer agree that NOUUM OR MAJESTIC shall not be responsible for any hazardous or toxic wastes or substances ("Hazardous Substances") at the Site. If NOUUM OR MAJESTIC is found to be a responsible party with respect to the Site or the Goods or Services under applicable environmental laws or regulations or becomes liable under any other law or regulation regarding protection of the environment or workplace safety, including those relating to the treatment, storage, transportation, disposal, release, investigation or remediation (collectively "Handling") of Hazardous Substances in relation to the Goods or Services, the Buyer agrees to indemnify, defend and hold NOUUM OR MAJESTIC harmless from such liability. NOUUM OR MAJESTIC shall immediately notify the Buyer in writing of any Hazardous Substances brought to the Site, and any spills caused by NOUUM OR MAJESTIC in the provision of the Services, and shall promptly clean up any such spills in accordance with the Buyer's instructions and applicable regulations at no cost to the Buyer.
- 16.2. The Buyer will provide drums or other containers for the appropriate disposal of, or will provide alternate methods of disposing of, chemicals and Hazardous Substances, which shall include but not be limited to, oil, fuel, grease, solvents and paint utilized by NOUUM OR MAJESTIC during the provision of Services. NOUUM OR MAJESTIC will remove any unused portions of Hazardous Substances brought to Site upon completion of Services.
- 16.3. The Buyer will direct NOUUM OR MAJESTIC to place any Hazardous Substances in containers provided by the Buyer, and the Buyer will dispose of the containers. NOUUM OR MAJESTIC shall dispose of rubbish and trash and perform normal housekeeping clean-up of the work area prior to leaving the Site. Upon completion of Services, NOUUM OR MAJESTIC will, upon request of the Buyer, certify that NOUUM OR MAJESTIC has cleaned-up the Site, and removed Hazardous Substances brought by NOUUM OR MAJESTIC to the Site. In the absence of such request and unless the Buyer notifies NOUUM OR MAJESTIC of deficient Site clean-up or removal of Hazardous Substances brought by NOUUM OR MAJESTIC to the Site, the Buyer shall be deemed to have accepted the condition of the Site at completion of performance of Services.
- 16.4. NOUUM OR MAJESTIC and the Buyer agree that NOUUM OR MAJESTIC and its sub-contractors shall:
- 16.4.1. not be responsible for the condition of the Site prior to the commencement of Services on Site, and after completion of Services on Site;
- 16.4.2. not be responsible for any Hazardous Substances at the Site where Services are provided, other than those brought to the Site or generated by NOUUM OR MAJESTIC; and
- 16.4.3. have no discretion or control regarding the Handling of any such Hazardous Substances and no authority to make decisions or implement actions to prevent or abate damage caused by the Handling of such Hazardous Substances.

17. LIMITATION OF LIABILITIES

- 17.1. Notwithstanding anything to the contrary in these Terms, to the extent allowed by law NOUUM OR MAJESTIC shall not be liable to the Buyer or to any other person for any claim, loss, liability or damages (whether foreseeable or unforeseeable) :
- 17.1.1. incurred or suffered by the Buyer or such third party arising from, pursuant to or in connection with an Order, these Terms, NOUUM OR MAJESTIC's performance or non-performance of its obligations under these Terms, the Goods or the Services, other than where such claim, loss, liability or damages are caused by NOUUM OR MAJESTIC's negligence (but in such instances subject to the other limitations of liability contained in this clause 17);
- 17.1.2. arising out of or in connection with the contract for the works. NOUUM OR MAJESTIC'S liability shall cease upon Conclusion save in respect of defects notified to it by the Buyer within three months of Conclusion and in that event such liability shall extend only to repair by NOUUM OR MAJESTIC of the defect timeously notified at the place where the works were conducted;
- 17.1.3. arising out of or in connection with any tests, trials or movements of the vessel and/or site or equipment which shall be at the Buyer's own risk and responsibility;
- 17.1.4. arising from damage to the Buyer's reputation or goodwill;
- 17.1.5. arising from loss of income, loss of goodwill or profits, loss of use or business interruption, professional fees or charges; and/or

- 17.1.6. arising from a delay in the delivery of the Goods or provision of the Services (other than as specified in clauses 5.7 and 6.9);
- 17.1.7. arising from any instructions, drawings or specifications which are provided by or on behalf of the Buyer;
- 17.1.8. arising from any failure, defect or the like in any goods or services procured from or provided by a sub-contractor, supplier, manufacturer or any other person, it being agreed that NOUUM OR MAJESTIC shall, on written request therefor by the Buyer, cede and assign to the Buyer the necessary rights which it may have against such subcontractor, supplier, manufacturer or other person;
- 17.1.9. for any consequential, incidental, indirect, special or punitive damages whatsoever (including but not limited to loss of income, loss of goodwill or profits, loss of use or business interruption, loss of hire, loss of contracts and loss of savings), and the Buyer hereby indemnifies and holds NOUUM OR MAJESTIC harmless against any such claim, loss, liability or damages.
- 17.2. The Buyer waives any right to rely on tonnage limitation in respect of any claim by NOUUM OR MAJESTIC against it.
- 17.3. The Buyer accepts responsibility and liability for the death or personal injury of its employees under the contract, irrespective of the cause of death or personal injury, and whether or not caused by the negligence or gross negligence of NOUUM OR MAJESTIC, or its employees. It agrees to indemnify and hold harmless NOUUM OR MAJESTIC as regards both liability and legal costs in the event that the aforesaid employees or their dependents pursue claims for death or personal injury against NOUUM OR MAJESTIC and bear the expense of investigations in that respect.

18. DISPUTES/JURISDICTION

- 18.1. The contract shall in all respects be governed by the national law of the Republic of South Africa and any claim by either PARTY against the other which in any manner arises out of or pertains to the contract, whether based in contract or delict or on any other cause of action whatsoever, shall be determined in accordance with that system of law.
- 18.2. Without prejudice to NOUUM OR MAJESTIC's rights to pursue any claim in any other court, the Buyer submits to the jurisdiction of the Kwa-Zulu Natal Local Division (Durban) of the High Court of South Africa in respect of any claim by NOUUM OR MAJESTIC against it which in any manner arises out of or pertains to the contract, whether based in contract or delict or on any other cause of action whatsoever.

19. TERMINATION AND SUSPENSION

- 19.1. Without prejudice to any of NOUUM OR MAJESTIC's other rights or remedies in these Terms or in law, if the Buyer fails to make payment when due or to perform any of its other obligations on time, NOUUM OR MAJESTIC shall be entitled to suspend its performance under an Order accepted until the failure is remedied. Regardless of whether or not NOUUM OR MAJESTIC elects to suspend performance:
 - 19.1.1. for the duration of such failure by the Buyer, the time for performance by NOUUM OR MAJESTIC of its obligations under an Order accepted shall automatically be extended accordingly;
 - 19.1.2. the Buyer shall reimburse NOUUM OR MAJESTIC on demand for any delay costs (including but not limited to financial costs and storage, demurrage or other charges) incurred by NOUUM OR MAJESTIC arising from such failure.
- 19.2. Without prejudice to any of NOUUM OR MAJESTIC's other rights or remedies in these Terms or in law, NOUUM OR MAJESTIC may without any liability to the Buyer immediately terminate an Order accepted if any of the following occur:
 - 19.2.1. a suspension by NOUUM OR MAJESTIC under clause 19.1 continues for more than 120 (one hundred and twenty) days;
 - 19.2.2. there is damage to NOUUM OR MAJESTIC's property in the course of the works for which the Buyer is liable and the reasonably estimated cost of repairing the damage exceeds the Buyer's total liability;
 - 19.2.3. the works are disrupted by any of the events referred to in clause 10 for more than 90 (ninety) days;
 - 19.2.4. the Buyer breaches any of the provisions of these Terms and/or an Order accepted and, where such breach is capable of remedy, fails to remedy the breach for a period of 30 (thirty) days after receipt of notice from NOUUM OR MAJESTIC calling upon the Buyer to remedy its breach;

- 19.2.5. the Buyer commits any other breach of these Terms and/or an Order accepted which is incapable of being remedied;
- 19.2.6. the Buyer takes steps or has steps taken against it for its winding-up deregistration, sequestration or liquidation (whether voluntary or otherwise) or is placed under business rescue proceedings or has entered into a compromise or any scheme of arrangement or anything similar occurs under any foreign law to which it may be subject;
- 19.2.7. the Buyer commits any act of insolvency, or an act which if committed by an individual would amount to an act of insolvency, in terms of the Insolvency Act 24 of 1936 or is, or deemed to be insolvent in terms of the Insolvency Act 24 of 1936;
- 19.2.8. the Buyer is unable to pay its debts in the normal and ordinary course of its business operations or becomes aware that it is in 'financial distress' (as that term is defined in section 128(1)(f) of the Companies Act 71 of 2008);
- 19.2.9. the Buyer agrees to any 'business rescue' (as that term is defined in section 128(1)(b) of the Companies Act 71 of 2008);
- 19.2.10. the Buyer has a writ of attachment or execution issued against it;
- 19.2.11. the vessel and/or site or equipment is arrested or attached by third parties;
- 19.2.12. the Buyer being a company or close corporation, ceases to be controlled by the person(s) that control(s) it at the date of submission of an Order; and/or
- 19.2.13. the Buyer fails to contest or discharge any final judgment taken against it in any court of competent jurisdiction for a period of 14 (fourteen) days or longer.
- 19.3. Upon termination of an Order pursuant to clause 19.2 NOUUM OR MAJESTIC shall be entitled to suspend any further work under any contract between NOUUM OR MAJESTIC and the Buyer without any liability to the Buyer. Without prejudice to any of NOUUM OR MAJESTIC's other rights or remedies in these Terms or in law, within 14 (fourteen) days of any such notice of termination, however arising, the Buyer shall pay to NOUUM OR MAJESTIC:
 - 19.3.1. the outstanding balance of the Price or Fee payable in respect of Goods delivered and Services provided up to and including the date of the notice of termination;
 - 19.3.2. the costs incurred or committed by NOUUM OR MAJESTIC up to and including the date of the notice of termination in performing such work under the terminated Order which is not yet completed plus a reasonable margin to be agreed between the Parties, and failing such agreement within 7 days of any Party requiring such agreement, such margin shall be 15%;
 - 19.3.3. any other costs reasonably incurred by NOUUM OR MAJESTIC arising from or pursuant to the termination.
- 19.4. The expiry or termination of any Order shall not affect such of the provisions of these Terms which are expressly provided to operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.

20. BUYER'S RELATIONSHIP WITH VESSEL AND/OR SITE OR EQUIPMENT AND LIEN

- 20.1. The Buyer warrants that it is either the owner or the bareboat charterer of the vessel and/or site and/or equipment in respect of which the works is to be conducted or the authorised agent of either one of those parties in respect of the conclusion of the contract for the works.
- 20.2. NOUUM OR MAJESTIC and/or the seller of any equipment in respect of which NOUUM OR MAJESTIC acted as agent shall be entitled to exercise a lien on the vessel and/or site and/or equipment for all sums due to either of them on or before delivery.

21. INSURANCE

- 21.1. The Buyer shall effect and maintain, at no cost to NOUUM OR MAJESTIC, Protection and Indemnity Insurance, Hull and Machinery Insurance and War Risks Insurance and provide full coverage for such loss and damage for which the Buyer may be liable to NOUUM OR MAJESTIC under this contract and shall, at NOUUM OR MAJESTIC's request make immediately available to NOUUM OR MAJESTIC copies of insurance policies to provide evidence and details of cover.

22. DOMICILIUM AND NOTICES

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

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

22.1.2. in the case of NOUUM, to the following addresses:

51 Auckland Street Paarden Eiland 7405 Cape Town South Africa Email address: info@nouum.com Web address: www.nouum.com	211-217 South Coast Road Rossburgh 4094 Durban South Africa
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22.1.3. in the case of MAJESTIC, to the following addresses:

211-217 South Coast Road Rossburgh 4094 Durban South Africa Email address: info@nouum.com Web address: www.nouum.com	51 Auckland Street Paarden Eiland 7405 Cape Town South Africa
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22.2. Any process and written notice in connection with an Order accepted shall be deemed to have been duly given:

22.2.1. on delivery, if delivered to the Party's physical address in terms of clause 22.1.1 between 08h30 and 16h30 on a business day (or on the first business day after that if delivered outside such hours);

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

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

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

22.4. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate written notice or communication to that Party notwithstanding that the notice or communication was not sent to or delivered at that Party's chosen address.

23. WAIVER

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

24. GOOD FAITH

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

25. VARIATION

25.1. No variation or alteration of these Terms shall be binding on NOUUM OR MAJESTIC unless embodied in a written document signed by a duly authorised employee of NOUUM OR MAJESTIC. Any purported variation or alteration of these Terms otherwise than as set out herein shall be of no force or effect, whether such purported variation or alteration is written or oral, or takes place before or after the receipt of these terms and conditions by NOUUM OR MAJESTIC.

26. SEVERABILITY

26.1. If any provision of these terms and conditions is unenforceable, NOUUM OR MAJESTIC shall be entitled to elect at any time that such provision be severed from the remaining provisions of these terms and conditions which shall not be affected and shall remain of full force and effect.

27. NO REPRESENTATIONS

27.1. A Party may not rely on any representation which allegedly induced that Party to enter into an agreement with the other Party, unless the representation is recorded in these Terms and/or an Order accepted.

28. INDULGENCES

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

29. CESSION AND DELEGATION

29.1. The Buyer may not cede any or all the Buyer's rights or delegate any or all of the Buyer's obligations under these Terms and/or an Order accepted without the prior written consent of NOUUM OR MAJESTIC.

29.2. NOUUM OR MAJESTIC shall be entitled to cede any or all of its rights or delegate any or all of its obligations under these Terms and/or an Order accepted by providing written notice of such cession and delegation to the Buyer.

30. SUB-CONTRACTING

30.1. The Buyer may not sub-contract any of its obligations under these Terms and/or an Order accepted without the prior written consent of NOUUM OR MAJESTIC.

30.2. NOUUM OR MAJESTIC shall be entitled to subcontract any or all of its obligations under these Terms and/or an Order accepted.

31. CREDIT APPLICATION AND RETENTION OF INFORMATION

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

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

32. CONSUMER PROTECTION ACT

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



Terms and/or an Order accepted must be treated as being qualified, to the extent necessary, to ensure that the provisions of the CPA are complied with.

- 32.2. No provision of these Terms and/or an Order accepted:
 - 32.2.1. does or purports to limit or exempt NOUUM OR MAJESTIC from any liability to the extent that the law does not allow such a limitation or exemption; or
 - 32.2.2. requires the Buyer to assume risk or liability for the kind of liability or loss referred to in clause 32.2.1, to the extent that the law does not allow such an assumption of risk or liability.