

# General Terms of Sale

## 1 - DEFINITIONS

- 1.1 The "Contract" consists of these documents:
- 1.1.1 the written special conditions (if applicable); and
  - 1.1.2 the Order Confirmation; and
  - 1.1.3 these GTS; and
  - 1.1.4 the terms of credit (if applicable); and
  - 1.1.5 the Quotation.
- 1.2 "Force Majeure" means force majeure as described in clause 6;
- 1.3 "GTS" means these General Terms of Sale;
- 1.4 "Goods" means the goods (including spare parts) or materials to be supplied by Voith in terms of the Contract or otherwise, whether such supply is in conjunction with the Services to be rendered or not;
- 1.5 "Order" means any order placed by the Purchaser on Voith or any Quotation accepted by the Purchaser in accordance with its terms including these GTS;
- 1.6 "Order Confirmation" means Voith's written confirmation of the Order;
- 1.7 "Party" means either Voith or the Purchaser;
- 1.8 "Purchaser" means the purchaser of the Goods or Services in terms of the Contract;
- 1.9 "Quotation" means the quotation provided by Voith to the Purchaser in respect of Goods or Services;
- 1.10 "Services" means any services to be rendered by Voith in terms of the Contract or otherwise, whether rendered in conjunction with the Goods to be supplied or not, and shall include all Work;
- 1.11 "Voith" means Voith Turbo (Pty) Ltd, registration number 1982/01041/07 or another Voith Group company with registered offices in South Africa;
- 1.12 "Work" means installation, maintenance, repairs, reconditioning, or fitment work undertaken by Voith on behalf of or for the Purchaser including the sale of all parts necessary to perform the Work and includes work by authorised subcontractors of Voith.

## 2 - CONTRACTS AND ORDERS

- 2.1 All Goods and Services supplied by Voith shall be subject to the Contract. If there is inconsistency between the provisions of the Contract, the order of precedence shall be as ranked in clause 1.1. Any differing terms and conditions of the Purchaser shall not become part of the Contract either upon Order Confirmation or if they are not objected to. No terms and conditions appearing in the Order or other document which are in conflict with these GTS shall be binding on Voith.
- 2.2 If there are no separate written special conditions, the Contract shall be concluded when Voith issues its Order Confirmation. The written requirement shall also be met if documents are issued in textform (e.g. email, electronic signature vial electronic signature programs such as AdobeSign, AdobeSign).
- 2.3 Other than as provided in these GTS, a Contract may be cancelled, varied, or suspended only by notice in writing and only if such notice is accepted in writing by the other Party. In the event that the Purchaser elects to cancel, suspend or vary an Order/Contract for convenience, which act shall be subject to the written acceptance of Voith, the Purchaser shall compensate Voith for costs as required below:
- 2.3.1 In the event of suspension or variation, the Purchaser shall compensate Voith for any applicable direct costs arising (including any claim for damages or profit) which will be advised after notification of the variation or suspension.
- 2.3.2 In the event of cancellation, the Purchaser of customised Goods or parts shall compensate Voith for the cumulative cancellation costs incurred dependent upon the milestone reached in the table below:

Elapsed contract lead time	Cancellation cost (as % of contract value)
0%-9%	10%
10%-19%	18%
20%-29%	30%
30%-39%	48%
40%-49%	62%
50%-59%	72%
60%-69%	80%
70%-79%	88%
80%-89%	95%
90%-100%	100%

- 2.3.3 In the event of cancellation, the Purchaser of non-customised Goods or parts shall compensate Voith fair and reasonable costs for Work in progress at the time of termination as determined by Voith, subject to a minimum cost of 10% of the value of the Order.

2.4 Voith will only be bound by Orders placed on it upon Order Confirmation or upon implementation of the Orders by delivery or otherwise as agreed.

2.5 Unless withdrawn before acceptance, Quotations or tenders are open for acceptance during the period stated therein, or where no period is stated, within 30 days of the date of the Quotation. The acceptance of any Quotation or tender must be in writing and relate to the entire Quotation or tender unless provision is made for piecemeal acceptance.

## 3 - PRICE AND PAYMENT

3.1 The price of the Goods shall be the price set out in the Contract, or if no price is agreed, the price set out in Voith's published price list in force as at the date of delivery. Unless otherwise agreed, the prices shall not be deemed to be fixed prices. For Services ordered by the Purchaser, which are not covered by the original order, there is a right to additional, appropriate remuneration.

3.2 Unless agreed separately, Voith's prices are for Goods ex-works of Voith, unpacked including loading at the works, but not including insurance costs, packaging, unloading and other auxiliary costs. Value Added Tax shall be shown as a separate component of the price. Any amounts indicated in any Quotation, for transportation, insurance, storage, unloading and installation shall not be binding on Voith who shall be reimbursed by the Purchaser the actual amount paid by Voith unless otherwise stated.

3.3 Any increase in customs and excise duties or statutory levies or any other external costs incurred by Voith outside of its control in respect of the execution of the Contract, which increase occurred between the date of the Order Confirmation and the date of Voith's invoice in respect of the Order shall be for the Purchaser's account. Voith shall further be entitled to adjust the price if changes (calculated in ZAR) in the amount of at least 10% have occurred with regard to cost factors necessary for the performance of any Service such as procurement costs of the materials used, e.g. due to changes in the national or world market prices for raw materials, exchange rates since the conclusion of the Contract. The adjustment shall be made to the extent that the actual production costs at the time of conclusion of the Contract change compared to those at the time of the actual performance of the Service. A price adjustment for the period in which Voith is in default through its own fault is excluded.

3.4 The Purchaser acknowledges that the terms of payment in respect of the Contract are strictly 45 (forty-five) days from date of invoice and delivery of the Goods and/or Services, unless otherwise stated in the Contract.

3.5 If payment is not made within the period specified in clause 3.4, interest shall accrue on the outstanding amount at a rate equal to the prime rate, being the publicly quoted rate with the same name charged by Voith's bankers from time to time on overdraft to first class lenders. Such interest shall accrue on daily balance from the date the payment is due and shall be compounded monthly in arrears.

3.6 If the Purchaser fails to pay on or before due date, Voith shall be entitled to forthwith withdraw all credit facilities, suspend all further deliveries of Goods and the rendering of Services, and the full balance then outstanding by the Purchaser shall immediately become due and payable. In addition, Voith shall be entitled to repossess any Goods delivered to the Purchaser by Voith.

3.7 All payments shall be made to Voith in South African currency in South Africa, or to its nominee, into the bank account nominated by Voith, without deduction or set-off and payment may not be withheld pending the settlement of any claim, complaint, or dispute.

3.8 Voith shall be entitled to appropriate any payment received from the Purchaser as it sees fit to any liability owed by the Purchaser to Voith regardless of any indication by the Purchaser to the contrary.

3.9 Voith reserves the right at any time to call for satisfactory guarantees for the due and prompt payment of all monies due and which may become due to Voith. If such guarantees are not supplied within 14 days of Voith's written request or in the event that the Purchaser has failed to make any payment due to Voith on due date Voith shall be entitled to cancel, defer or refrain from executing any one or more outstanding Orders wholly or in part. In such event all amounts owing by the Purchaser to Voith shall immediately become due and payable.

3.10 A certificate by a director of Voith showing the amount due, owing and payable by the Purchaser to Voith at any given time (including interest), shall be sufficient prima facie proof of the facts therein stated for the purposes of all legal proceedings against the Purchaser for recovery of the said amount.

3.11 Any promissory note, bill of exchange or other negotiable instrument received by Voith from the Purchaser shall not be a novation of the debt for which it is given, and the Purchaser waives presentment, notice of dishonour and protest where applicable.

#### **4 - DELIVERY**

4.1 The delivery period/date shall be as stated in the Contract.

4.2 The Purchaser shall perform all duties to cooperate vis-à-vis Voith in such a timely manner that Voith can deliver or perform in due time. To allow the delivery period/date to commence and to be observed by Voith, all commercial and technical questions must first be clarified, and the Purchaser must have fulfilled its obligations, such as furnishing of the necessary official certificates, permits or approvals at its cost, or making of an advance payment. If this is not the case, the delivery period shall be extended commensurately.

4.3 Unless otherwise stated on the Quotation or Order Confirmation, Services are all rendered at Voith's premises and Goods shall be collected from Voith's premises. Delivery shall be completed when:

4.3.1 Goods transported by means of Voith's supply vehicle are off loaded at their destination; or

4.3.2 Goods transported by the Purchaser, his agent or carrier engaged (whether by Voith or the Purchaser) to transport the Goods, are loaded.

4.4 Should Voith agree to engage a carrier to transport the Goods for the Purchaser, then the Purchaser warrants that:

4.4.1 Voith is authorised to engage a carrier on such terms and conditions as it deems fit; and

4.4.2 The Purchaser shall indemnify Voith for any claims which may be made against it by the carrier so engaged and all liability which Voith may incur to the carrier arising out of the transportation of the Goods.

4.5 The signature of any employee or agent of the Purchaser which appears on Voith's official delivery note or waybill, or the delivery note of any authorised independent carrier, will constitute conclusive evidence of delivery of Goods purchased.

4.6 Orders for Goods which are out of stock will be placed on back order for delivery of the Goods as soon as stocks are available.

4.7 Voith shall be entitled to effect delivery and performance of any Contract piecemeal in such quantities and on the dates as Voith may determine. Voith shall be entitled to invoice each delivery/performance actually made separately. In case of default of acceptance by the Purchaser, Voith shall be entitled to charge a storage fee.

4.8 Delivery, installation and performance times and dates (including dates for the completion of any Work) shall be treated as approximate only unless specifically stated and the delivery date shall be extended in respect of any delay caused by the Purchaser, Force Majeure, safety issues, restrictions in the use of power, or by any other cause beyond the reasonable control of Voith.

4.9 In the event there is a delay in the delivery of Goods or Services or any part thereof, for a reason within the control of Voith, and the Purchaser incurs losses as a result of such delay, the latter may claim compensation (deemed to be **liquidated damages**) due to such delay. Such compensation shall be calculated at the rate for each full week of delay, of 0.5% of the value of that part of the overall delivery that is delayed, provided that the aggregate amount of compensation payable shall not exceed 5% of said value. This shall be the sole and exclusive remedy of the Purchaser for delay in delivery.

#### **5 – RISK AND OWNERSHIP**

5.1 Risk in and to the Goods, any loss or damage or deterioration of the Goods supplied shall pass to the Purchaser on the date of delivery to the Purchaser referred to in clause 4. Ownership in the Goods remains vested in Voith until the entire purchase price is paid in full (even if such Goods are attached to items not belonging to Voith).

5.2 Notwithstanding the provisions of clause 5.1, if the Purchaser fails to take delivery of the Goods on due date, the risk in the Goods shall immediately pass to the Purchaser and the Purchaser shall be responsible for the reasonable storage costs incurred by Voith as a result of having to store the Goods in question. Further, should the Purchaser fail to take physical control and possession of Goods delivered or tendered for delivery within 10 days thereafter, Voith shall be entitled without notice to the Purchaser to cancel the Contract, retake possession of the Goods and recover from the Purchaser any loss, damage and/or expense occasioned by the Purchaser's failure to take delivery.

5.3 Until ownership in the Goods passes to the Purchaser upon payment, the Purchaser shall procure that the Goods are insured against all risks for their full value at the Purchaser's expense. Proof of such insurance cover shall be exhibited to Voith on demand and Voith shall be entitled to register its claim with the insurer for the outstanding balance of the purchase price as a part participant in the policy of insurance in question.

5.4 Voith shall be entitled to notify the Purchaser's landlord of its reservation of ownership in the Goods supplied.

#### **6 – FORCE MAJEURE**

If a failure to observe the delivery period is due to force majeure, such as natural disasters, epidemics, pandemics, war, armed conflicts, civil war,

revolution, terrorism, sabotage, nuclear/reactor accidents, embargo/sanctions or similar restrictions, labour disputes, shortage of raw materials, materials, components and means of transport, currency restrictions, import restrictions or other events that are outside of Voith's control, Voith shall be discharged from its performance obligations for the duration of the event and the delivery period shall be extended appropriately. Effects and/or restrictions arising from or in connection with an event of force majeure as contemplated above which make it impossible or unreasonably difficult to comply with the delivery or performance time, shall be deemed to be a force majeure event within the meaning of clause 6. Voith shall inform the Purchaser of when such circumstances start and end as within a reasonable period of time after its knowledge of such circumstances. If the event lasts for more than 6 months, Voith shall also be authorised to terminate the Contract.

#### **7 - PERFORMANCE, SPECIFICATIONS AND TESTS**

7.1 Any performance figures given by Voith are based solely upon Voith's experience. Voith shall accept no liability if those figures are not obtained unless Voith specifically guarantees them under an agreed sum as liquidated damages.

7.2 The Purchaser assumes responsibility for the capacity and performance of the Goods and Services being sufficient and suitable for the Purchaser's purposes.

7.3 Notwithstanding the description of the Goods ordered, or product or catalogue number, Voith reserves the right to supply Goods ordered to the specification current at the date of delivery and repeat orders or a Purchaser's request to supply Goods "as previously supplied" are subject to this provision.

7.4 Voith reserves the right to make, at any time, such changes in the design, or manufacture of the Goods as may in its judgement constitute an improvement over former practice.

7.5 Voith shall not be required to furnish any safety devices or be responsible for safety regulations which may be required by the Purchaser or by law except those which may be provided for in the specifications attached to the Order.

7.6 If special tests in the presence of the Purchaser or the Purchaser's representatives are required, unless agreed otherwise, these shall be made at Voith's premises and will be charged for as extras. In the event of any delay on the Purchaser's part in attending such tests after seven days' notice that Voith is ready, the tests will proceed in the Purchaser's absence and shall be deemed to have been made in the Purchaser's presence.

#### **8 - WARRANTY**

8.1 Subject to the conditions set out below, Voith warrants that the Goods and Services will correspond with their specifications at the time of delivery and will be free from material defects in material and workmanship for a period of 12 months from date of commissioning or date of delivery ex works, whatever occurs first, unless otherwise stated in the Contract.

8.2 The above warranty is given by Voith subject to the following conditions:

8.2.1 Voith shall be under no liability in respect of any defect in the Goods or Services arising from any information, instruction, drawing, design or specification supplied by the Purchaser.

8.2.2 Voith shall be under no liability in respect of any defect from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow Voith's instructions (whether oral or in writing), the Goods being operated or stored outside Voith's specifications (whether oral or in writing), misuse or alteration or repair of the Goods without Voith's approval.

8.2.3 Voith shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods and Services has not been paid by the due date for payment.

8.2.4 The above warranty does not extend to parts, materials or equipment not manufactured by Voith, in respect of which the Purchaser shall only be entitled to the benefit of any such warranty or guarantee (if any) as is given by the manufacturer to Voith but not so as to impose a liability greater than that imposed on Voith under this clause 8; and

8.2.5 The Purchaser complies with clauses 9.7 and/or 23.9 (as applicable).

#### **9 – LIMITED LIABILITY OF VOITH**

9.1 Voith agrees at its option to pass a credit for the selling price of or to repair or replace without charge, ex-works, any part or parts of the Goods or any Services rendered by Voith which, within the specified warranty period, shall be proved to Voith's satisfaction to have been defective when delivered provided the Purchaser promptly notifies Voith in writing of such alleged defect in accordance with clauses 9.7 and/or 23.8 (as applicable). Voith's liability to the Purchaser shall be limited to repairing or replacing the defective Goods or Services as aforesaid or to passing a credit for the selling price of such Goods and Services (where this has been paid). The Purchaser shall not be entitled to refuse acceptance of any Goods by reason of a minor defect which does not prevent the use of the Goods.

9.2 Except as stated in this clause and in clause 8:

9.2.1 Voith gives no representations, guarantees or warranties of merchantability, fitness for any purpose, performance or otherwise, express or implied by law; and

9.2.2 Voith shall have no liability for loss of profit, indirect, consequential, special, or other damages of any kind (whether in the contemplation of the Parties or not), howsoever caused or sustained, including loss or damage caused or sustained by the negligence of Voith, (excluding gross negligence) or otherwise, nor shall Voith be liable for any delictual liability of any nature whatsoever.

9.3 Insofar as any of Voith's obligations hereunder are carried out by any of its employees, agents, sub-contractors, associates or subsidiaries, the provisions of clause 9.2 are stipulated for their benefit as well as Voith and each of them shall be exempted accordingly.

9.4 Notwithstanding the provisions hereof, Voith's liability towards the Purchaser in connection with the Contract is limited to 20% of the net value of the delivered Goods or Services or Work. This limitation shall not apply if the damage was caused through gross negligence or willful misconduct.

9.5 No agent, representative or dealer is authorised to give any further warranties on behalf of Voith nor to assume for Voith any other liability in connection with the Goods and Services.

9.6 While the equipment or assets of the Purchaser or of any other person (whether a pump, coupling, vehicle and its contents or any other asset or item) are left in Voith's custody or otherwise deposited with Voith by the Purchaser, whether for the supply of Goods, the rendering of the Services or otherwise, the Purchaser agrees that they are left, deposited, parked, stored, kept and driven entirely at the Purchaser's and/or the owner's risk, and that Voith shall not be liable in any way for any loss or damage to them of whatsoever nature and howsoever caused or sustained, including loss or damage caused by theft or fire or by the negligence of Voith's employees or agents or of any other persons.

9.7 Voith shall not be liable to the Purchaser for any claim of any nature whatsoever made by the Purchaser unless the claim is made in writing within 7 days of the date on which the defect was discovered or ought reasonably to have been discovered.

## **10 - STORAGE**

10.1 If:

10.1.1 the manufacture or delivery of the Goods or the rendering of any Services is delayed due to any cause within the Purchaser's control; or

10.1.2 should the Purchaser not collect the Goods or Work at the appropriate time, the Goods (or any equipment upon which the Services are to be or are being rendered) may be placed in storage by Voith for the Purchaser's account and risk and the cost thereof and any incidental expenses in connection therewith shall be paid by the Purchaser. If in Voith's opinion Voith is unable to obtain or to continue such storage, the Purchaser shall, on request, provide or arrange for suitable storage facilities and assume all costs and risks in connection therewith. Voith may in its discretion arrange insurance cover for the Goods or goods so stored and the cost thereof shall be paid by the Purchaser.

10.2 The provisions of clause 9.6 shall, with the necessary changes, apply to the Goods and other assets mentioned above.

## **11 - RETURNS**

11.1 The Purchaser must check the Goods immediately upon receipt thereof so as to determine whether the Goods delivered are of the type and quantity ordered. Claims for short delivery must be made within 7 days of the receipt of Goods, failing which the Purchaser shall be deemed to have waived any right to make such a claim.

11.2 Voith's Goods are not sold on a sale or return basis. Goods will not be accepted for return without Voith's prior written authorisation. In no circumstances will Goods be accepted for credit or exchange if the packaging has been opened or if seals or labels are broken or should the Goods be stored outside Voith's specifications.

11.3 Goods authorised for return by Voith shall be promptly returned by the Purchaser to Voith at the Purchaser's expense and in the same order and condition as on delivery to the Purchaser. The Purchaser shall ensure that the correct storage and transportation requirements are adhered to during transportation.

11.4 Should Voith agree to accept the return of any Goods, the Purchaser shall be liable to pay Voith a handling charge of not less than 10% of the invoice price of the Goods so returned.

11.5 Should Voith agree to accept the return of any Goods, Voith shall, at its option, be entitled to exchange the Goods, or alternatively, refund the relevant portion of the purchase price which has already been paid or issue a corresponding credit note.

## **12 - DRAWINGS**

Unless expressly incorporated in the Quotation, all descriptive and shipping specifications, drawings, dimensions, and weights submitted with the Quotation are approximate only. In the event descriptions, illustrations, and data contained in catalogues, price lists and other advertisement matter are intended only to present a general idea of the work described therein and none of these shall form part of the Contract.

## **13 - INDEMNITY**

The Purchaser indemnifies Voith against any claims by third parties made against Voith:

13.1 as a result of the use of the Goods outside Voith's specifications, tolerances or usual purposes for such Goods, it being agreed that the Purchaser shall be responsible to enquire from Voith as the details of such specifications, tolerances or uses and to ensure compliance with same; or

13.2 as a result of fair wear and tear, wilful damage, negligence (other than by Voith), abnormal working conditions, failure to follow Voith's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without Voith's approval; or

13.3 for any loss or damage arising due to Voith complying with the Purchaser's instructions, information, specifications, calculations, drawing, design or technical information; or

13.4 arising out of Voith's infringement of any copyright, trademark or design due to information supplied by the Purchaser.

## **14 - INTELLECTUAL PROPERTY**

The Purchaser acknowledges that save for any intellectual property rights of the Purchaser in any specification provided by the Purchaser, Voith is the legal and beneficial owner (or licensee) of the intellectual property rights in the Goods and that no intellectual property rights are granted to the Purchaser in respect of the Goods other than for the use of the Goods in accordance with these GTS.

## **15 - USE OF SOFTWARE**

15.1 If software is supplied, the Purchaser shall be granted a non-exclusive right to use it and its documentation. It shall be provided for use on the intended Good supplied. The software shall not be used on more than one system.

15.2 The Purchaser shall reproduce, revise, compile or translate the software or convert it from object code to source code only to the extent permitted by copyright law. All other rights to the software and documentation, including copies thereof, shall remain with Voith or the software supplier. Sublicensing of it shall not be permitted.

## **16 - INFORMATION PROVIDED BY THE PURCHASER**

The Purchaser shall be responsible for the accuracy and efficacy of any instructions, information, calculations, drawings and/or technical data provided to Voith for the purpose of manufacturing and supplying the Goods and rendering the Services. The Purchaser shall be liable for any additional costs incurred by Voith as a consequence of any inaccuracies in such instructions, information, calculations, drawings and/or data or as a consequence of failure or delay in the Purchaser giving particulars requisite to enable work to proceed on schedule.

## **17 - DATA PRIVACY**

17.1 Each Party understands and accepts, that during the course of the Contract that each Party or its data processor, who in some instances may reside outside of the Republic of South Africa, may collect and process personal information about the other Party and or the other Party's employees, consultants, agents or representatives involved, in fulfilling its duties in terms of the Contract. Each Party hereby, to the extent required by statute, consents and shall procure the consent of its employees, consultants, agents, or representatives to the processing of such personal information by the respective Party in order for such Party to (i) carry out and manage its business, (ii) comply with its legal obligations; and (iii) protect its legitimate business interests.

17.2 Neither Party shall process, publish, make accessible or use in any way any personal information of the other Party, its employees, consultants, agents or representatives to which the respective Party has access in the course of giving effect to the Contract, for any purpose other than the fulfilment of its duties set out in the Contract.

## **18 - CANCELLATION FOR BREACH**

Subject to the provisions hereof, either Party may cancel the Contract (or any uncompleted part of it) immediately if the other Party commits a material breach or permits a material breach of the Contract and fails to remedy or commence remedial action of such breach within 21 days of notice thereof by the non-defaulting Party, it being recorded that failure by the Purchaser to make any payment on due date constitutes a material breach.

## **19 - TERMINATION BY VOITH**

19.1 Notwithstanding the provisions hereof, Voith may terminate the Contract (or any uncompleted part of it) immediately if:

19.1.1 the Purchaser is a natural person and dies or is provisionally or finally sequestered or surrenders or makes application to surrender his estate;

19.1.2 being a partnership, the partnership is terminated; or

19.1.3 being a company, is placed under provisional or final liquidation or judicial management; or

19.1.4 has a judgment recorded against it which remains unsatisfied for a period of seven days; or



19.1.5 compromises or attempts to compromise generally with any of the Purchaser's creditors.

19.2 Voith's rights in terms of clauses 19.1.1 to 19.1.5 shall not be exhaustive and shall be in addition to its common law rights.

19.3 Upon termination of the Contract by Voith or if for any reason whatsoever credit facilities are withdrawn then (without detracting from any other remedies which may be available to Voith):

19.3.1 all amounts owing by the Purchaser to Voith in terms of any contract between them or in terms of the credit facilities shall become due and payable forthwith, whether or not such obligations would otherwise then have fallen due for payment.

19.3.2 Voith may retake possession of Goods in respect of which ownership has not passed.

## 20 - EMBARGOED COUNTRIES

20.1 Voith is a majority owned subsidiary of a company incorporated in the Federal Republic of Germany. Consequently the Contract is contingent on compliance with EU trade sanctions.

20.2 If, due to applicable export and trade regulations of the Federal Republic of Germany, the United States of America, the Council of the European Union, or any EU Member State:

20.2.1 the execution of this Contract should or will be inadmissible;

20.2.2 the export should or will be forbidden;

20.2.3 an export license should be denied or withdrawn;

20.2.4 direct or indirect payments should or will be forbidden, restricted or otherwise affected in whole or in part, then Voith shall be entitled to suspend the performance under the Contract or to cancel the Contract without notice.

20.3 In such case, the Purchaser shall not have any legal claims whatsoever against Voith. In particular claims for damages due to loss of production, loss of profit, loss of use, loss of earnings, other consequential or indirect damages, or for damage caused by delay, shall be excluded.

20.4 In case of cancellation, the costs of cancellation of the Contract shall be paid according to the costs incurred. If reimbursement of the down payments already made by the contracting party is impossible due to applicable export and trade regulations, a passive debt will be booked in the business records of Voith.

## 21 - NOTICES

Unless otherwise agreed, the Purchaser chooses as its *domicilium citandi et executandi* for all purposes in terms of the Contract, the physical address of the Purchaser set out in the Order. Notices may be served physically at the *domicilia* or by email.

## 22 - GENERAL

22.1 In these GTS, words importing any gender include the other two genders and words in the singular include the plural.

22.2 No relaxation or indulgence granted to the Purchaser by Voith shall be deemed to be a waiver of any of Voith's rights in terms hereof, any such relaxation or indulgence shall not be deemed to be a novation of any of the terms and conditions set out herein or create an estoppel against Voith.

22.3 The law of South Africa shall govern the Contract and the interpretation thereof.

22.4 In the event of legal or other action being taken for the recovery of any amount due to Voith, the Purchaser shall be liable for all costs thereby incurred including tracing and repossession charges and attorney's charges on an attorney and own client basis (including collection commission).

22.5 The Contract contains the entire agreement between the Parties on the subject matter hereof. No Party shall be bound by any express or implied term, representation, warranty, promise, or the like not recorded herein.

22.6 No salesman, representative or agent has the authority to waive or vary the GTS or make any representations on behalf of Voith.

22.7 The Purchaser may not, without Voith's written consent, assign any of the Purchaser's contractual rights or obligations under Contract to a third party.

22.8 Should any provisions contained in the Contract be or become unlawful or unenforceable by reason of any law, then such unlawful provision only shall be severed from this document and the remaining provisions shall continue to be of full force and effect

22.9 Subject to the provisions of clause 22.10 no addition to or variation of the Contract shall be of any force and effect unless in writing and signed by both Parties. Signature may be also made by the use of electronic signature programs such as DocuSign, AdobeSign.

22.10 Voith shall be entitled to amend and change these GTS from time to time on notice to the Purchaser.

22.11 Any dispute or claim arising out of the Contract shall be referred in writing for resolution, firstly to the Managing Directors of Voith and the Purchaser within 14 days of such dispute arising. In the event resolution is not reached through such process within 21 days of the referral, the matter shall be resolved in accordance with the UNCITRAL rules of Arbitration. The place of the Arbitration shall be Sandton, South Africa.

The number of arbitrators shall be one and the language of arbitration shall be English.

## 23 - GENERAL CONDITIONS OF CONTRACT RELATING TO WORK

In addition to the above GTS, the following conditions specifically relate to Work undertaken by Voith. In the event of a direct conflict with any of the above conditions, the following conditions shall prevail:

23.1 Repair costs quoted are estimates only and, unless otherwise stated in writing by Voith, all such Services shall be rendered at Voith's standard rates and charges ruling at the time the Work is carried out, details of these rates and charges are available on request. Voith is authorised to do the repairs mentioned in its Order Confirmation, or otherwise agreed to by the Purchaser, and to replace and supply such parts and materials as may be necessary to complete the Work, at the Purchaser's expense.

23.2 In the event that the Work is performed at Voith's premises, the Purchaser shall at its cost deliver the item on which the Work is to be carried out to Voith's premises and on completion of the Work collect such items from Voith's premises.

23.3 The Purchaser shall accept or reject the Quotation in writing, within 60 days from the date of such Quotation ("Response Period"). Should the Purchaser reject the Quotation and/or fail to collect any unrepaid items on its premises within 15 days from the date of expiry of the Response Period without prior written consent of Voith, Voith shall be entitled, in addition to the fee charged as described in clause 23.6, to scrap and destroy for no value, in the manner it deems fit, the uncollected, unrepaid items and the Purchaser agrees that it shall have no claims whatsoever against Voith for the return of such equipment.

23.4 The Purchaser agrees that Voith may retain any item on which the Work is performed, as security for the payment of the contract price and may retain such goods until the contract price is paid in full.

23.5 All or any part of the Work to be carried out by Voith may be carried out by it or on its behalf by any agent or sub-contractor appointed by Voith.

23.6 If it is necessary to strip and/or dismantle any equipment in order to prepare a Quotation for repairs, the following conditions shall apply:

23.6.1 Voith shall be entitled to dismantle the equipment to such an extent as it may deem necessary in order to prepare in the said Quotation;

23.6.2 the Purchaser shall be liable for payment of a fee, including all costs incurred by Voith in dismantling the equipment, which fee shall be charged at Voith's current rates; and

23.6.3 In the event that the dismantled equipment is on Voith's premises, and the Purchaser does not accept the Quotation, the Purchaser shall accept and remove the equipment in its stripped-down condition, provided that the Purchaser shall only be permitted to remove the equipment once payment has been made to Voith of its charges and expenses incurred in the stripping and in the preparation of the Quotation.

23.7 The Purchaser authorises Voith, or any of its employees, agents, or subcontractors, to drive a vehicle belonging to the Purchaser for the purpose of testing, or for the purpose of removing the vehicle to and from the premises of any subcontractor or driving the vehicle within the workshop of Voith or any subcontractor. The Purchaser hereby acknowledges that any such driving shall be the sole risk of the Purchaser.

23.8 In the event that Services are rendered on the Purchaser's premises, the Purchaser shall make available to Voith, free of charge and for the time of performance, lockable closed rooms not accessible to third parties for the stay of Voith's employees and for the storage of tools and materials.

23.9 Voith shall not be liable to the Purchaser for any claim of any nature whatsoever made by the Purchaser unless the claim is made in writing within 7 days of the date on which the defect was discovered or ought reasonably to have been discovered, and then shall be subject to clause 8.