

STANDARD TERMS

(A) INTERPRETATION

1. In this Agreement the headings of clauses are for reference purposes only and shall not be taken into account in construing the contents hereof, the singular will include the plural and vice versa, one gender will include the other genders and, unless inconsistent with the context, the following words will have the meanings ascribed to them:
 - 1.1 "Agreement" or "this Agreement" shall mean these terms read with the terms overleaf and, if applicable, any additional or further terms of any addendum containing specific and detailed reference to this Agreement which, once signed by both parties, shall form part of this Agreement;
 - 1.2 OHS Act – means the Occupational Health and Safety Act 1993 and all applicable regulations in terms thereof;
 - 1.3 "Services" shall mean the service to be provided by WES on behalf of the Customer as set out overleaf;
 - 1.4 the Parties – means collectively WES and the Customer, and "Party" shall mean either one of them as the context requires
2. Words and expressions defined in any sub-clause shall for the purpose of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
3. The agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.

(B) RELATIONSHIP BETWEEN THE PARTIES

1. The contractual relationship between the Customer and WES shall be that of principal and independent contractor.
2. WES is not an employee or partner of the Customer.
3. The persons employed by WES in the rendering of the Services shall at all times be employees of WES and shall not be or be deemed to be employees of the Customer.
4. Neither Party shall have the authority, either express, implied or ostensible, to bind the other Party, except to the extent that same may be consistent with the performance of a Party's obligations in terms of this Agreement.
5. All Services provided by WES on behalf of the Customer shall be rendered in accordance with the provisions of this Agreement.

(C) PROVISION OF SERVICES

1. Each of the Parties hereby confirms that it is fully acquainted with all of the legal requirements with which it has to comply in respect of the performance of the Services and hereby confirms that it has, and will for the duration of this Agreement have:-
 - 1.1 all necessary licences required by it and its employees to render the Services;
 - 1.2 properly trained and qualified employees to provide the Services;
2. and each Party hereby indemnifies the other Party and holds it harmless against any liability, loss or damage suffered by the other Party arising out of the failure by a Party to comply with the aforesaid undertakings.
3. Each Party shall at all times comply with all statutory requirements relating to the rendering of the Services and in particular the applicable provisions of the OHS Act, with particular reference to Sections 5, 6 and 12 of the OHS Act.
4. All the Services shall be rendered during Working Hours unless otherwise agreed upon in writing between the Parties.
5. The Customer shall designate a responsible person who shall represent the Customer in connection with the Services to be performed by WES under this Agreement. All communications with the Customer in regard to this Agreement shall be directed to such responsible person.

(D) CHARGES AND PAYMENT

1. The charges payable by the Customer to WES in respect of the Services shall be the charges set out overleaf.
2. Payment of the charges shall be effected by the Customer to WES on the due date set out overleaf.
3. All payments shall be made by electronic funds transfers into the bank account of WES set out overleaf.
4. All amounts payable by the Customer are payable in full without any set-off, deduction, withholding or counterclaim for any reason whatsoever.
5. All charges are exclusive of value added tax, which shall also be payable by the Customer to WES on the due date for payment.

(E) COMPENSATION AND INSURANCE

1. The Parties warrant that all of their employees are covered in terms of the Compensation For Occupational Injuries and Diseases Act 1993.
2. WES warrants that it is in possession of the following insurance cover:
 - 2.1 Insurance covering its liability to its employees whose earnings are in excess of earnings as defined in the Compensation for Occupational Injuries and Diseases Act 1993.
 - 2.2 Public liability insurance cover.
 - 2.3 Professional Indemnity insurance cover that will adequately make provision for any losses and/or claims arising from its and/or its employees' acts and/or omissions in the performance of the Services and against all consequences of any violations of the OSH Act, including the payment of any fine, penalty and interest assessed in connection therewith.

(F) CESSION AND SUB-CONTRACTING

1. The rights and obligations of the Parties in terms of this Agreement are personal to the Parties and neither Party shall cede, assign, delegate or otherwise dispose of any of its rights and/or obligations in terms of this Agreement without the prior written consent of the other Party.
2. WES shall not be entitled to sub-contract any of its obligations in terms of this Agreement without the prior written consent of the Customer, which shall not be unreasonably withheld.

(G) DISCLAIMER AND LIMITATION OF LIABILITY

1. The Customer shall have no claim against WES and the Customer hereby indemnifies and holds WES harmless from all liability in respect of any loss or damage of whatsoever nature or howsoever arising, whether direct, indirect, incidental or consequential:
 - 1.1 caused by or arising from any act or circumstance beyond the control of WES; or
 - 1.2 without limiting the foregoing, as a result of any act, cause or circumstances whatsoever and howsoever arising if WES has substantially performed its obligations in terms of this Agreement.
2. Notwithstanding anything to the contrary contained in this Agreement, WES shall not be liable to the Customer under any circumstance whatsoever including, but without limitation, as a result of or in connection with WES' negligent acts or omissions or those of its directors, employees, agents, representatives, affiliates or other persons for whom in law WES may be liable, for any direct, indirect, incidental, special or consequential loss or damage of any kind whatsoever or howsoever caused and whether arising or under contract, delict or otherwise and whether such loss was actually foreseen or reasonably foreseeable, sustained by the Customer, and the Customer hereby indemnifies WES for any such loss or damage suffered by the Customer or any other person whatsoever.
3. Notwithstanding anything to the contrary contained in this Agreement, WES, its directors, employees, agents, representatives or affiliates shall not be liable for any loss, damage (whether direct, indirect or consequential) or expense of any nature whatsoever which may be suffered by the Customer as a result of or which may be attributable, directly or indirectly, to the use of or reliance upon the Services, and the Customer indemnifies WES, its directors, employees, agents, representatives and affiliates from and against any such loss or damage suffered or liability incurred by the Customer or any other person whatsoever.
4. Notwithstanding any other provisions contained in this Agreement, WES' liability whether in contract, delict or otherwise arising from any breach by it of any of its obligations in terms of this Agreement, negligent or howsoever else caused, shall not under any circumstances whatsoever exceed the amount which may be paid to WES by its insurers in respect of any such occurrence in terms of the insurance policy/ies referred to in E1 and/or E2.

(H) BREACH

In the event of either of the Parties ("the Defaulting Party") committing a breach of any of the terms of this Agreement and failing to remedy such breach within a period of 7 (seven) Days after receipt of a written notice from the other Party ("the Aggrieved Party") calling upon the Defaulting Party to remedy the breach complained of, then the Aggrieved Party shall be entitled in its sole discretion and without prejudice to any of its other rights in law, either to claim specific performance of the relevant provision of this Agreement and/or such separate contract or to cancel this Agreement and/or such separate contract forthwith and without further notice and shall, in either event, be entitled to claim and recover damages from the Defaulting Party.

(I) GENERAL

1. This Agreement constitutes the entire agreement between the Parties in regard to the subject matter hereof and no provisions, terms, conditions, stipulations, warranties or representations of whatsoever nature, whether express or implied have been made by either of the Parties or on their behalf except as are recorded herein.
2. No relaxation, extension of time, latitude or indulgence which either Party ("the Grantor") may show, grant or allow to the other Party ("the Grantee") shall in any way constitute a waiver by the Grantor of any of the Grantor's rights in terms of this Agreement and the Grantor shall not thereby be prejudiced or estopped from exercising any of its rights against the Grantee which may have then already arisen or which may arise thereafter.
3. No alteration, variation, amendment or purported consensual cancellation of this Agreement or any deletion therefrom shall be of any force or effect unless reduced to writing and signed by or on behalf of the Parties hereto;
4. The acceptance by the Customer of the quotation set out overleaf cannot be withdrawn by the Customer.
5. The provisions hereof shall supersede and prevail over any terms which the Customer may seek to impose in terms of the Customer's request for a quotation or its enquiry or otherwise.