



**MEMORANDUM OF AGREEMENT  
TERMS AND CONDITIONS**

Between

**KANGOPAK (PTY) LTD**

Registration number: 2010/022896/07

(the "Supplier")

And

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(the "Consumer")

**WHEREAS** the parties have entered into an agreement pursuant to the acceptance of a formal quote from the Supplier to the Consumer;

**AND WHEREAS** the parties have subjected that aforementioned Quotation to certain conditions which the parties now wish to record in writing;

**NOW THEREFORE THE PARTIES AGREE AS FOLLOWS;-**

**1. INTERPRETATION**

1.1. In this agreement unless clearly inconsistent with or otherwise indicated by the context –

1.1.1. "the agreement" or "this agreement" means the agreement as set out in this document;

1.1.2. "business day" means a day other than a Saturday, Sunday or a public holiday recognised as such under the Public Holidays Act No. 36 of 1994 (as amended);

1.1.3. "days" will mean business days unless stated to the contrary herein;

1.1.4. "the effective date" means the date of signature of this agreement or the formal quotation whichever comes into existence first;

1.1.5. "the parties" means the Supplier and the Consumer and "party" means either one of them as the context may indicate;

1.1.6. "the product" means;

The goods and/or Services to be supplied to the Consumer as stipulated in the Quotation;

1.1.7. "the Quotation" means a formal quote from the Supplier as accepted by the Consumer from time to time;

1.1.8. "the transport vehicle" means any vehicle used to transport goods from one location to another.

1.2. any reference to the singular includes the plural and vice versa;

1.3. any reference to natural persons includes legal persons and vice versa;

1.4. any reference to a gender includes the other genders.

- 1.5. The clause headings in this agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.6. Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause;
- 1.7. This agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.

## **2. PRODUCT**

The product(s) subject to this agreement are the good(s) and/or Services as stipulated in the Quotation and described therein. (hereinafter "the product")

## **3. ACCEPTANCE OF QUOTATION**

- 3.1. The Supplier's offer to sell the product to the Consumer is expressly conditioned upon the Consumer's acceptance of this agreement;
- 3.2. The acceptance of these terms will be pursuant to the Consumer accepting a formal Quotation provided to it by the Supplier; and
- 3.3. Said Quotation will stipulate the product(s), the price and the payment method.

## **4. PAYMENT**

- 4.1. Payment shall be made;
  - 4.1.1. in cash by the Consumer to the Supplier as agreed to in the Quotation.
- 4.2. If a credit transaction has been agreed to;
  - 4.2.1. Payment must be made within 30 (thirty) days from statement; and
  - 4.2.2. The Supplier shall be entitled to charge interest at the maximum permissible rate on any amount outstanding as from the date on which payment is due.

4.3. No amount, unless agreed to in writing by both parties, shall be deducted from payments due and payable to the Supplier.

## 5. DELIVERY

5.1. The Supplier shall provide estimated delivery dates in the Quotation; and

5.2. Said delivery dates are only approximates and are dependent on several factors which include but are not limited to;

5.2.1. The Consumers reasonable compliance with the terms of;

5.2.1.1. this agreement;

5.2.1.2. the Quotation; and

5.2.1.3. any variation agreed to in terms of clause 10.1.

5.2.2. The prompt receipt by the Supplier of all information required for the Supplier to proceed with work immediately and without interruption; and

5.2.3. The Consumer's compliance with payment and other obligations pursuant hereto.

5.3. If the Quotation is subject to delivery in separate parts, and/or on separate dates, such separate deliveries are to be regarded as a separate contract and non-delivery or delay in delivery shall not affect the validity of this agreement or entitle the Consumer to cancel the entire contract.

5.4. Delivery shall strictly occur when either of the following situations arise;

5.4.1. If the Supplier provides transportation of the product(s), delivery will occur when the product(s) are offloaded at the stipulated address; or

5.4.2. If the Consumer employs the services of an independent courier company, delivery will occur when that courier company loads the product(s) onto the transport vehicle.

5.5. In the event that the product(s) are subject to delivery by the Supplier, the following will apply:

- 5.5.1. If the product(s) are subject to damage in transit or short delivered, no claim for such damage or shortage can be entertained unless the Supplier receives written notification of such damage or shortage within 5 (five) business days of delivery;
  - 5.5.2. The Supplier will be liable only for reasonable damages and hereby exempts itself from damages caused by the negligence of any outside party to this agreement and/or the Consumer;
  - 5.5.3. It expressly being a condition of this agreement that the Consumer is responsible in ensuring that it has obtained sufficient Goods in Transit Insurance; and
  - 5.5.4. Any liability attributable to the Supplier for shortages will be limited to the delivery of the shortfall in question.
- 5.6. In the event that the product(s) are subject to delivery by an independent courier company (“the courier”);
- 5.6.1. The Supplier hereby exempts itself from any loss, damage or other detriment that may occur during transportation of the product(s) by the courier; and
  - 5.6.2. It further being a condition of this agreement that any packaging required for the transportation and/or loading and/or off-loading of the products is the sole responsibility of the Consumer and/or courier but not the Supplier.

## **6. OWNERSHIP AND RISK**

- 6.1. Ownership of any products sold shall remain with the Supplier until the purchase prices and all additional charges have been paid in full by the Consumer.
- 6.2. The Supplier therefore retains the right to, without prejudice to any other rights of the Supplier in terms of this agreement or any other applicable law and in their sole discretion, take possession of and remove the product(s) from the Consumer’s premises, or from any premises at which the product(s) may be located; until such time as all of the Consumer’s obligations in terms of this agreement have been fulfilled.

- 6.3. In the event of the Supplier being delayed or hindered in or prevented from doing or performing any act or thing required herein by reason of strikes, lockouts, demonstrations, casualties, act of God, *causus fortuitus*, labour difficulties, failure of power supply, governmental regulations, riots, insurrection, war or other cause beyond the control of the Supplier, in terms of this agreement, neither party shall be responsible for such delays and the doing or performing shall be excused for the period of the delay, and the period for the performance shall be extended for the period of such delay.

## **7. BREACH**

- 7.1. Should any party fail to fulfill any of their respective obligations in terms of this agreement (the defaulting party) on the due date and remain in default for a period of 7 (seven) business days after the other party (the aggrieved party) has delivered a written notice to the defaulting party specifying the breach and demanding that it be rectified, then the aggrieved party may without further notice and without prejudice to its rights:

7.1.1. claim specific performance by the defaulting party of all its obligations under this agreement; or

7.1.2. cancel this agreement and claim damages that may have been suffered as a result of the breach.

## **8. INTELLECTUAL PROPERTY**

Ownership of all documents, drawings and samples shall not be copied or made accessible to third parties without the written consent of the Supplier which shall be entitled to claim their return at any time.

## **9. NOTICES AND DOMICILIA**

- 9.1. The Parties to this agreement choose the following addresses as their respective *domicilia citandi et executandi* for all purposes arising hereunder and as their respective addresses for the service of any notices required to be served upon them and agree that such addresses shall be the exclusive addresses used for delivery of processes or notices in terms of this agreement and shall be deemed

to have been received by the party at such address once delivered, even if such party is not present at the address at time of delivery.

9.1.1. The Supplier at \_\_\_\_\_  
Email address: \_\_\_\_\_

9.1.2. The Consumer at \_\_\_\_\_  
Email address: \_\_\_\_\_

9.2. Any notice or communication required or permitted in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give such notice by email.

9.3. Either party may by notice to the other change the physical address chosen as *domicilium*, or may advise an email address; provided that such change[s] shall only become effective after 6 (six) business days after the date of delivery, or deemed date of delivery, of such notice by the addressee.

9.4. Any notice to a party shall –

9.4.1. If sent by pre-paid registered post, be deemed to have been received after 6 (six) business days after posting unless the contrary is proved.

9.4.2. If delivered by hand, shall be deemed to have been received on the day of delivery or on the next business day if the day of delivery is not a business day.

9.4.3. If sent by email, shall be deemed to have been received on the date of delivery or on the next business day if the time of delivery is not on a business day unless the contrary shall otherwise be proved.

9.4.4. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party to this Agreement shall be an adequate written notice or communication to it/him/her notwithstanding that it was not sent to or delivered at the chosen *domicilium citandi et executandi* or transmitted to such party's email address as stipulated herein.

**10. GENERAL CONDITIONS**

- 10.1. No variation or alteration of any of the terms and conditions of this agreement shall be of any force or effect, unless reduced to writing and signed by both parties thereto, or their duly authorized representative.
- 10.2. No failure by a party to enforce any provision of this agreement shall constitute a waiver of such provision or affect in any way a party's rights to require performance of such provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself.
- 10.3. This agreement, in conjunction with the Quotation, constitutes the entire agreement between the parties and no other conditions, stipulations, warranties or representations whatsoever have been made by either party or agent other than such as are contained herein.
- 10.4. If any of these provisions are determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remainder of these Terms shall be unaffected. Also there shall be substituted for the affected provision a valid and enforceable provision as similar as possible to the affected provision.

**11. CONSUMER PROTECTION ACT NO. 68 of 2008 ("CPA")**

11.1. The Consumer hereby warrants to the Supplier that it, as a company, has an asset value or annual turnover, at the effective date of this agreement, of

11.1.1. Below and not including R 2 000 000.00 (Two Million Rand); or

11.1.2. Above and including R 2 000 000.00 (Two Million Rand).

(select applicable amount)

11.2. Should the annual value be below the amount stipulated in Section 6 of the CPA (Two Million Rand) or the CPA applies in another manner then the Consumer warrants that it has;



11.2.1. satisfied itself with regards to the aforementioned terms and conditions of this agreement; and

11.2.2. agrees to be bound thereto.

**THUS DONE AND SIGNED BY THE PARTIES HERETO ON THE DATES AND AT THE PLACES HEREINAFTER SET FORTH:**

BY **THE SUPPLIER** AT ..... ON THE ..... DAY OF .....2020.

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

BY **THE CONSUMER** AT ..... ON THE ..... DAY OF .....2020.

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_