

KWAL STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND/OR SERVICES

These Terms and Conditions (TC) shall regulate the supply of goods and/or Services to Kenya Wine Agencies Limited (KWAL) by the Vendor thereof ordered under a Purchase Order (PO) of KWAL.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. INTERPRETATION AND PRELIMINARY

The headings of the clauses in these TC are for the purpose of convenience and reference only and shall not affect the interpretation or construction of the terms of these TC nor any clause hereof. Unless a contrary intention clearly appears -

- 1.1. words importing -
 - 1.1.1. any one gender includes the other two genders;
 - 1.1.2. the singular includes the plural and *vice versa*;
 - 1.1.3. natural persons include created entities (incorporated or unincorporated) and the state and *vice versa*;
 - 1.1.4. the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the TC; and
 - 1.1.5. any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely –
 - 1.2.1. “**TC**” means these Terms and Conditions of Purchase;
 - 1.2.2. “**Commencement Date**” means the date stipulated in clause 3.1 hereof, being the date on which these TC comes into force and effect;
 - 1.2.3. “**Goods**” means the goods to be supplied by the Vendor to KWAL, the details, Specifications and prices of which are set out in the PO;
 - 1.2.4. “**Key Personnel**” means the Vendor’s key personnel who will be involved in supervising or rendering the Services, as set out in PO;
 - 1.2.5. “**KWAL**” means Kenya Wine Agencies Limited, a company duly incorporated in accordance with the laws of Kenya;
 - 1.2.6. “**KWAL Purchase Order number**” means Vendor’s unique number on the Purchase Order (PO) relating to the supply of the Goods or Services;
 - 1.2.7. “**KWAL’s Rules and Regulations**” means the internal rules, regulations and policies of KWAL as amended from time to time;
 - 1.2.8. “**Parties**” means KWAL and the Vendor, and the “**Party**” shall mean a reference to any of them as the context may require;
 - 1.2.9. “**Purchase Order (PO)**” means the purchase order to be used and issued by KWAL for placing an order with the Vendor for the specific quantities of the Goods and/or Services and which may contain details on pricing, Specifications of Goods and/or Services and other information determined by KWAL at its sole discretion;
 - 1.2.10. “**RFI**” means the relevant request for information together with any supporting documents as dispatched by KWAL to the Vendor;
 - 1.2.11. “**RFQ**” means the relevant request for quote together with any supporting documents as dispatched by KWAL to the Vendor;
 - 1.2.12. “**Services**” means the services or to be provided by the Vendor to KWAL the details, Specifications and prices of which are set out in the PO;
 - 1.2.13. “**Specifications**” means the information regarding the Goods or the Services, which fully describes certain minimum standards (quality) and requirements regarding the Goods or the Services;
 - 1.2.14. “**Supervising Officer**” means KWAL employee tasked with managing the job or task activities of the Vendor whilst the Vendor is on the premises of KWAL;
 - 1.2.15. “**VAT**” means value-added tax payable in terms of the VAT Act, No. 35 of 2013 Laws of Kenya, and where applicable includes the regulations promulgated in terms thereof;
 - 1.2.16. “**Vendor**” means the Party from whom KWAL procures Goods or Services in terms of the PO.
 - 1.2.17. “**Working Day**” means a day other than a Saturday, Sunday or official Kenyan public holiday;
- 1.3. any reference to legislation is to that legislation as amended or re-enacted from time to time;
- 1.4. if any provision in this definition clause is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the TC;
- 1.5. when any number of days is prescribed in these TC, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Working Day, in which case the last day shall be the next succeeding Working Day;
- 1.6. the use of any expression in these TC covering a process available under Kenyan law such as a winding-up (without limitation *eiusdem generis*) shall, if any of the Parties to these TC is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of that jurisdiction;
- 1.7. where any term is defined within the context of any particular clause in these TC, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to that clause, shall bear the meaning ascribed to it for all purposes in terms of these TC, notwithstanding that that term has not been defined in this interpretation clause;
- 1.8. the expiration or termination of these TC shall not affect such of the provisions of these TC as 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 clauses themselves do not expressly provide for this;
- 1.9. the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply;
- 1.10. any reference in these TC to a Party shall, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party’s liquidator or trustee, as the case may be; and
- 1.11. these TC shall be governed by and interpreted in accordance with, the laws of Kenya.

2. RECORDAL

- 2.1. KWAL is involved in the manufacture, import, marketing, distribution and sale of BEVERAGES and requires the supply of the Goods and/or Services as set out in the PO.
- 2.2. The Vendor represents itself as having the necessary resources, expertise, staff, products, services and skill, technical knowledge and experience to fully meet the requirements of KWAL in relation to the Goods and/or Services.
- 2.3. In reliance on the above, KWAL wishes to appoint the Vendor to provide the Goods and/or the Services to KWAL and the Vendor accepts this appointment on the terms and conditions set out in these TC.

3. DURATION

- 3.1. These TC shall commence on date set out in the Purchase Order (PO) or date of delivery of Goods or commencement of Services by the Vendor, whichever date occurs first, unless otherwise agreed in writing between the parties.

4. SUPPLY OF GOODS

- 4.1. The Vendor shall sell and supply to KWAL, and KWAL shall purchase from the Vendor, such Goods as KWAL orders from time to time from the Vendor at the applicable prices as set out in the PO and conditions set out in these TC.
- 4.2. In the event that KWAL submits to the Vendor any estimates of KWAL’s projected requirements of the Goods (the “Projection”), such estimates are given for Vendor’s planning purposes only and do not constitute any obligation on KWAL to order or purchase any or all of the Goods as set out in the Projection.

- 4.3. The Vendor shall ensure that it has adequate Goods for sale and delivery to KWAL as stipulated in the Projection.
- 4.4. Nothing contained in these TC will constitute an obligation on the part of KWAL to order or purchase any minimum quantity of the Goods other than the agreed minimum (if any) as set out in the PO.
- 4.5. If KWAL wishes to purchase the Goods, it shall provide the Vendor with a PO for Goods concerned. On the Vendor's receipt of the PO, an agreement of sale of Goods concerned by the Vendor to KWAL shall automatically come in force on the terms and conditions of these TC as read with that PO.
- 4.6. The Vendor shall be obliged to confirm in writing within 48 (forty-eight) hours:
 - 4.6.1 its receipt of the PO; and
 - 4.6.2 that the delivery of the Goods will be made in accordance with clause 5 (*Delivery of Goods*).

5. **DELIVERY OF GOODS**

- 5.1. The Vendor shall deliver the Goods on the date stipulated by KWAL in the PO or such later date as otherwise agreed in writing between the Parties.
- 5.2. The Goods shall be delivered by the Vendor to such address included in the Purchase Order or as otherwise agreed in writing between the Parties. Delivery of the Goods shall be completed once the completion of unloading the Goods from the transporting vehicle at the delivery address has taken place and KWAL has signed for the Delivery.
- 5.3. The quantities of the Goods which the Vendor must so deliver to KWAL must be as set out in the PO. KWAL will accept a maximum of 5% (five percent) deviation from the quantities stipulated in the PO.
- 5.4. Notwithstanding the time lines set out in this clause 5, KWAL may reasonably request from time to time, to have the Goods manufactured, packaged, shipped and delivered on an expedited basis. The Vendor shall use its best endeavours to comply with any such requests.
- 5.5. Any access to KWAL's premises and any labour and equipment that may be provided by KWAL in connection with delivery of the Goods shall be provided without acceptance by KWAL of any liability in respect of any actions, claims, costs and expenses incurred by third parties for any loss of damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of KWAL or its servant or agent. The Vendor shall indemnify KWAL in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which KWAL may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Vendor or any of his employees and agents.
- 5.6. Unless otherwise stipulated by KWAL, deliveries shall only be accepted by KWAL on Working Days and during normal business hours.
- 5.7. The Vendor warrants that:
 - 5.7.1 it has full clear and unencumbered title to all the Goods;
 - 5.7.2 at the date of delivery of any of the Goods it shall have full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to KWAL.

6. **RISK AND TITLE**

- 6.1. Risk in the Goods shall only pass to KWAL when KWAL has accepted the goods as being to its complete satisfaction and the Goods will, therefore be held at the Vendor's risk or returned to the Vendor for credit or replacement as may be required by KWAL and in the case of replacement, within the delivery period as originally specified on the PO or as soon as reasonably possible thereafter.

7. **QUALITY OF GOODS**

- 7.1. The Vendor shall implement all necessary quality controls to ensure that the Goods meet the agreed Specifications.
- 7.2. Each item of the Goods shall bear appropriate trademarks and shall be in appropriate packaging, which shall meet the Specifications in the PO.
 - 7.2.1 All Goods packaged shall comply with all laws and regulatory requirements, shall be securely packaged, carried and shall be delivered free of defects (manifest or latent).
 - 7.2.2 Certificates of conformance in relation to the packaging of the Goods may be required from time to time and shall be submitted by the Vendor to KWAL at the request of KWAL before delivery of the Goods is accepted by KWAL.
- 7.3. KWAL shall be entitled to accept the Specifications from time to time by mutual agreement in writing with the Vendor.
- 7.4. All Goods must be manufactured and packaged under appropriate sanitary conditions (the "**Conditions**"), and shall comply in all respects with the Specifications and with the quality standards of KWAL, medical clearances, raw material standards and legal requirements (the "**Standards**") and packaging standards applicable to the Goods.
- 7.5. KWAL, through its duly authorized representative(s) shall have the right upon reasonable notice at any reasonable time or times to inspect those portions of the facilities and equipment used by the Vendor in the converting, packaging and/or processing otherwise (including, without limitation, the manufacturing and storing) of the Goods to ensure compliance with Conditions, Standards and Specifications. Any such inspection of the Goods and review of the Vendor's quality assurance program will not constitute acceptance of any Goods and shall not be construed as relieving the Vendor from any of its obligations under this clause 7 (Quality of Goods).
- 7.6. KWAL is entitled not to accept (and/or to refuse delivery of) any Goods which do not conform to any of the Conditions, Standards and/or Specifications and any other standards set out in the PO or in KWAL's Rules and Regulations or any previously approved samples.
- 7.7. The Vendor shall ensure that the Goods, (including, without limitation, its packages, labels, direction sheets, cartons and containers used in connection with the Goods) conform to any previously approved samples, and the Vendor shall not make (nor allow anyone else to make) any change to any of them or to any Goods without the prior written consent of KWAL.
- 7.8. Payment for the Goods shall not constitute acceptance by KWAL of the Goods.
- 7.9. As soon as practicably possible KWAL shall notify the Vendor of any defective or non-conforming Goods and shall give the Vendor a reasonable opportunity to inspect same. Subject to KWAL's availability, the Vendor shall inspect the Goods concerned and shall within seven (7) days thereafter either repair (where suitable and agreed to by KWAL) or replace all non-conforming or defective Goods with conforming Goods at no additional charge to KWAL.
- 7.10. Any defective Goods delivered to KWAL by the Vendor and not accepted by KWAL shall, if KWAL so requests the Vendor be properly disposed of by the Vendor. KWAL may request certificate of safe disposal, which the Vendor shall provide at the request of KWAL (the Vendor may not use any of those defective Goods or resell any defective Goods to anyone else without KWAL's prior written consent). Any such defective Goods may be disposed of by KWAL at the written request of the Vendor. All costs relating to such disposal shall be borne by the Vendor, which cost shall be payable upon demand. If KWAL chooses not to dispose of defective Goods itself, it will be entitled to demand that the Vendor removes the defective Goods from KWAL's premises within seven (7) days of the inspection contemplated in clause 7.9 and disposes of the defective Goods in accordance with this clause 7.10.
- 7.11. The Vendor shall notify KWAL immediately in writing once it becomes aware of or has a reason to believe that any Goods delivered to KWAL are defective or do not conform with the applicable Conditions, Standards and Specifications in any manner whatsoever. The Vendor will cooperate with KWAL to determine whether the Goods are so defective or non-conforming. In addition, if a defect or non-conformity is or may be present, the Vendor shall cooperate with KWAL in good faith (i) to correct the cause of the defect or non-conformity, and (ii), if requested by KWAL, to provide KWAL with all and any information about the Goods to assist KWAL to identify and recover any such defective or non-conforming Goods that may have been distributed or made available by KWAL to any third parties and comply with KWAL's relevant procedures.
- 7.12. The Vendor shall also carry out a root cause analysis in respect of the defects and put in place appropriate corrective measures to eliminate recurrences.

- 7.13. Complaint Handling
 7.12.1. Each Party shall provide the other with an opportunity to review and inspect any records that are maintained by that Party regarding complaints received by that Party regarding the Goods.
 7.12.2. The Vendor shall promptly notify KWAL upon the receipt by the Vendor of any consumer complaint regarding any of the Goods supplied by the Vendor to KWAL.
- 7.14. KWAL Issued Materials
 Where KWAL for the purposes of the PO issues materials to Vendor, such materials shall be, and remain the property of KWAL. The Vendor shall maintain all such materials in good order and condition subject, in the case of tooling, patterns and the like to fair wear and tear. The Vendor shall use such materials solely in connection with the PO. Any surplus materials, which shall for the avoidance of doubt, include packaging, shall be disposed of at KWAL's discretion. In the event of waste of or damage to such materials arising from bad workmanship or negligence of Vendor, Vendor shall at the request of KWAL either replace the wasted or damaged material or reimburse KWAL an amount equal to the agreed value of the wasted or damaged material.

8. DELIVERY DOCUMENTS

- 8.1. Only the Goods set out in the applicable PO will be accepted by KWAL, unless any change to that PO was consented to in writing by KWAL prior to the delivery of the Goods concerned in which case the Goods must be as set out in that amended PO.
- 8.2. Every delivery of the Goods to KWAL shall be accompanied by at least the following documents, to be furnished to the specific facility of KWAL to which the Goods are delivered, as per the delivery address on the PO :
- 8.2.1. delivery document or a goods received note
 8.2.2. a valid tax invoice for the supply of the Goods, which must reflect at least:
 8.2.2.1. the applicable KWAL Purchase Order number;
 8.2.2.2. item number;
 8.2.2.3. the Vendor's delivery note number;
 8.2.2.4. the delivery date;
 8.2.2.5. the description of the Goods;
 8.2.2.6. the applicable price/s for the Goods;
 8.2.2.7. the Vendor's VAT/PIN Number;
 8.2.2.8. KWAL's VAT/PIN Number;
 8.2.2.9. any other information as prescribed by applicable legislation or reasonably requested by KWAL;
- together with an acceptance document signed on behalf of KWAL by a person duly authorized by KWAL to accept such delivery on behalf of KWAL (all together being "**Delivery Documents**").
- 8.3. It will be the responsibility of the Vendor to ensure the correctness of the Delivery Documents. Any inaccuracies in the Delivery Documents may delay receipt of the Goods and possible return of the Goods, as well as delays in payment.

9. PROVISION OR SUPPLY OF SERVICES

- 9.1. The Vendor must –
 9.1.1. render the Services agreed upon to KWAL in accordance with at least good industry practices and the highest professional standards in the Vendor's industry, profession or trade;
 9.1.2. at all times exercise all reasonable skill, care and diligence in rendering the Services and in the performance of all its obligations;
 9.1.3. observe and comply with instructions issued by KWAL from time to time in relation to the Services including access to KWAL premises;
 9.1.4. as soon as possible, but in any event, not later than the Commencement Date have and maintain sufficient professional indemnity insurance for the duration of the PO, against any of its potential liabilities that may arise as a result of the provision of the Services and provide KWAL with proof of such insurance cover in the form of a certificate issued by the Vendor's insurer;
 9.1.5. refrain from engaging in any activity that may prejudice the business of KWAL or place it in risk or disrepute;
 9.1.6. use Key Personnel and other personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Vendor's obligations are fulfilled in accordance with the TC;
 9.1.7. provide all equipment, tools and vehicles and other items as are required to provide the Services.
- 9.2. If necessary, KWAL shall provide the Vendor with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto KWAL's premises by the Vendor or the Key Personnel and other staff shall be at the Vendor's risk.
- 9.3. If the Vendor supplies all or any of the Services at or from KWAL's premises, on completion of the Services or termination or expiry of the PO (whichever is the earlier) the Vendor shall vacate KWAL's premises, remove the Vendor's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave KWAL's premises in a clean, safe and tidy condition. The Vendor shall be solely responsible for making good any damage to KWAL's premises or any objects contained on KWAL's premises which is caused by the Vendor or any Key Personnel or other staff, other than fair wear and tear.
- 9.4. If the Vendor supplies all or any of the Services at or from its premises or the premises of a third party, KWAL may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 9.5. KWAL shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on KWAL's premises the Vendor shall, and shall procure that all Key Personnel and other staff shall, comply with all KWAL's security requirements.
- 9.6. Where all or any of the Services are supplied from the Vendor's premises, the Vendor shall, at its own cost, comply with all security requirements specified by KWAL in writing.
- 9.7. Without prejudice to clause 9.1.7, any equipment provided by KWAL for the purposes of the TC shall remain the property of KWAL and shall be used by the Vendor and the Key Personnel and other staff only for the purpose of carrying out the TC. Such equipment shall be returned promptly to KWAL on expiry or termination of the PO.
- 9.8. The Vendor shall reimburse KWAL for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Vendor or any Key Personnel or other staff. Equipment supplied by KWAL shall be deemed to be in a good condition when received by the Vendor or relevant Key Personnel or other staff unless KWAL is notified otherwise in writing within three (3) Working Days.

10. VARIATION OF THE SCOPE OF SERVICES

- 10.1. KWAL may in writing inform the Vendor that the performance of particular Services is no longer required, in which case that particular aspect of the Services will cease to be part of the Services from the date that the Vendor is so informed in writing to that effect.
- 10.2. KWAL may in writing request the Vendor that:
 10.2.1. the performance of an additional service should become part of the Services;
 10.2.2. a variation be made to a particular element of the Services or the performance of the Services; and/or
 10.2.3. a change be made to the Commencement Date of the Services or any part of the Services,

in which case the Parties shall use their respective reasonable endeavours to consent to the variations, which consent shall not be unreasonably withheld upon the treatment of that request and to amend the PO.

11. **KEY PERSONNEL**

- 11.1. The Services shall be rendered by or under the ultimate supervision of the Key Personnel listed in the PO and such Key Personnel shall direct and control the rendering of the Services.
- 11.2. The Key Personnel of the Vendor or any replacement person approved by KWAL from time to time shall have full authority to act on behalf of the Vendor for all purposes in connection with the PO and if present, shall represent the Vendor at each and every meeting (where applicable).
- 11.3. The Vendor shall use only the Key Personnel and the Vendor's other personnel or consultants, provided that such consultants shall have been approved in writing by KWAL, in the rendering of the Services and such persons shall be available substantially for so long as may be necessary to ensure the proper rendering by the Vendor of the Services.
- 11.4. The Vendor shall not remove any of the Key Personnel without the prior written approval of KWAL, which approval shall not be unreasonably withheld or delayed.
- 11.5. KWAL shall have the right after consultation with the Vendor to request the removal of any person engaged in the rendering of the Services if, in KWAL's opinion, that person's performance or conduct is or has been unsatisfactory and the Vendor shall then promptly remove the person so specified. The Vendor shall be responsible for replacing such person with a person who has been approved by KWAL.
- 11.6. The Vendor shall procure, and has procured that each of the Key Personnel and other staff or consultants employed or engaged to perform or discharge the Vendor's obligations and liabilities under the Services has consented to publication of their photograph/image for promotional purposes by KWAL in any manner or medium;
- 11.7. The Vendor shall release KWAL from all and any claims, demands and liabilities related to the reproduction, publication and use of images, videos or photographs taken during the period of the PO and hereby unconditionally indemnifies KWAL from any and against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties, legal and other professional costs and expenses) which may be imposed on or incurred by or instituted against KWAL arising from or resulting from the reproduction, publication and use of images, videos or photographs taken during the period of the PO.
- 11.8. The Vendor shall procure that the Key Personnel, consultants and other staff comply with any rules, regulations and requirements reasonably specified by KWAL.

12. **INTELLECTUAL PROPERTY**

The Parties acknowledge and agree to the following –

- 12.1. All intellectual property rights in any materials provided by KWAL to the Vendor for the purposes of the PO shall remain the property of KWAL but KWAL hereby grants the Vendor a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the PO for the sole purpose of enabling the Vendor to perform its obligations under the PO.
- 12.2. Save for information which is proprietary to the Vendor at the Commencement Date, the rendering of the Services may include reviewing, amending, development, drafting, creation and design, for or under instruction of KWAL, of documents, proposals, diagrams and other written works. All work product, property, data, documents, information, proposals, diagrams, written works or materials conceived, discovered, developed or created by the Vendor pursuant thereto or accidental to the performance of the Services (collectively, "**Intellectual Property**") shall be owned exclusively by KWAL.
- 12.3. All such Intellectual Property which the Vendor develops, and all rights, including intellectual property rights in and to such Intellectual Property, will vest in KWAL absolutely and as sole beneficial owner thereof;
- 12.4. The Vendor shall not own any rights in or to the Intellectual Property;
- 12.5. The Vendor shall, if and when so required by KWAL, and at the expense of KWAL, apply or join in applying for the registration of appropriate protection in respect of the Intellectual Property on behalf of KWAL and will, at the expense of KWAL, execute all documents and do all things necessary for vesting the protection and all right, title and interest in respect of the Intellectual Property in KWAL or in any person which KWAL may specify;
- 12.6. The rights in or to the Intellectual Property, as well as all the rights to any Intellectual Property in all works created during the course of the Vendor's appointment in terms of the PO will vest in KWAL;
- 12.7. The Vendor shall not divulge, nor authorize or allow anyone else to divulge, either during its appointment or afterwards, any knowledge of the subject matter of the Intellectual Property. Without limiting the generality of the foregoing, the provisions of clause 30 (*Confidentiality*) shall apply to the Vendor in this regard;
- 12.8. In the event that, and as soon as, any Intellectual Property rights, particularly, but without limitation, copyright, come into existence in respect of documents or Services on which the Vendor works, this clause serves as an automatic assignment of all rights to any Intellectual Property in all works created during the course of the Vendor's appointment in terms of the PO to KWAL; and
- 12.9. The above assignment shall be of all Intellectual Property rights, including, but without limitation, copyright, which came into existence along with all accrued rights therein, including the right to sue for infringement, which may have taken place prior to the date of recording any such assignments.
- 12.10. The Vendor shall indemnify, and keep indemnified, KWAL in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by KWAL as a result of or in connection with any claim made against KWAL for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply of Goods or the Services, to the extent that the claim is attributable to the acts or omission of the Vendor or any Key Personnel or other staff.

13. **GOVERNANCE AND RECORDS**

The Vendor shall:

- 13.1. attend progress meetings with KWAL regarding the provision of the Services at the frequency and times specified by KWAL and shall ensure that it sends suitably qualified representatives to attend such meetings; and
- 13.2. submit progress reports to KWAL at the times and in the format specified by KWAL.

14. **PRICES**

- 14.1. The applicable prices of the Goods and Services as stipulated in the PO respectively ("**Prices**") shall be all inclusive [VAT inclusive],(where applicable) and include amongst other, but without limitation, purchasing, receiving and storing raw materials; provision of labour, utilities, finishing materials, packaging and supplies packing for shipment and preparation of related documents insurance cost, freight and delivery cost, customs and excise duties, storage of the Goods pending delivery, quality control systems, depreciation, overhead and all other costs and expenses of whatever kind.
- 14.2. The Prices shall remain valid and unchanged for the period of the PO and thereafter no price variations shall take place.

15. **PAYMENT FOR GOODS AND SERVICES**

- 15.1. The amount payable for the Goods/Services shall be as set out in the PO and shall be the full sole remuneration of the Vendor in respect of the supply of the Goods or Services. Unless otherwise agreed in writing by KWAL, the amount shall include every cost and expense of the Vendor directly or indirectly incurred in connection with the performance of the Services or supply of Goods.
- 15.2. No payment to the Vendor in respect of Goods and/or Services will be made unless KWAL has received the Delivery Documents as set out in clause 8.2.
- 15.3. The Vendor shall invoice KWAL for the Goods and/or Services monthly in arrears or as otherwise agreed in writing between the parties. The invoice rendered shall comply with clause 8.2.2.

- 15.4. The Delivery Documents specified in clause 8.2 and the invoice in respect of the Goods and/Services contemplated in clause 15.2 must be submitted by the Vendor to KWAL on or after the date of delivery.
- 15.5. The Delivery Documents must be submitted to KWAL at the following address:

Kenya Wine Agencies Ltd.
KWAL House, Enterprise Road
P.O. Box 40550 00100 GPO
Nairobi, Kenya
Tel : 254 20 4979000
E-mail : info@kwal.co.ke

- 15.6. Payments of invoices shall be made strictly thirty (30) days from date of invoice unless otherwise agreed in writing by KWAL. KWAL shall make payment to the Vendor of the whole undisputed amount against the Vendor's invoices, in accordance with payment terms agreed to herein or as otherwise agreed between the parties. If there is a dispute between the Parties as to the amount invoiced, KWAL shall pay the undisputed amount. The Vendor shall not suspend the supply of the Goods or Services unless the Vendor is entitled to terminate the PO for a failure to pay undisputed sums in accordance with clause 27.
- 15.7. The parties will amicably resolve the dispute failing which the matter will be referred for resolution in accordance with clause 32 (*Dispute Resolution*).
- 15.8. The Vendor acknowledges that KWAL shall not be under any obligation to pay based on the Delivery Documents or invoices which are provided to KWAL 3 (three) calendar months after the month within which the delivery of the relevant Goods or the provision of the relevant Services took place except if, as an outcome of dispute declared and determined in terms of these TC, the Vendor is entitled to payment of any amount that it had previously not invoiced KWAL for, in which case then the Vendor shall be entitled to provide KWAL with the invoice in respect of any such amount within 3 (three) months of the outcome of that dispute being declared or determined.
- 15.9. The onus resides on the Vendor to verify any change of banking details. Consequently KWAL shall not be responsible for fraudulent changes to bank details that have not been verified and KWAL is hereby indemnified against any resultant losses or damages.

16. PAYMENTS BY ELECTRONIC FUNDS TRANSFER ("EFT")

- 16.1. All payments by KWAL to the Vendor under the PO shall be made via EFT and the Vendor will provide KWAL:
- 16.1.1. with written details of the Vendor's bank account setting out the Vendor's bank, branch, branch number and account number; and
- 16.1.2. with a letter from the bank confirming the details in clause 16.1.1.
- 16.2. The Vendor further agrees and acknowledges that KWAL, on giving or causing to be given an instruction to its bankers to effect the transfer of any amount due by it to the Vendor, will have fully and effectively discharged its obligation to make such payment to the Vendor, provided that KWAL shall provide the Vendor with reasonable assistance to rectify the bank's errors if such is the case.
- 16.3. The Vendor indemnifies KWAL, its employees and agents against any claims of whatsoever nature which may be brought against any of them by any person or entity alleging non-payment of any amounts due to the Vendor for any EFT payment transfer which has been effected in terms of the above.

17. SET-OFF MONIES DUE FROM THE VENDOR

If any sum of money is recoverable from or payable by the Vendor under the PO (including any sum which the Vendor is liable to pay to KWAL in respect of any breach of the PO), that sum may be deducted unilaterally by KWAL from any sum then due, or which may come due, to the Vendor under the PO or under any other agreement or contract with KWAL. The Vendor shall not be entitled to assert any credit, set-off or counterclaim against KWAL in order to justify withholding payment of any such amount in whole or in part.

18. VERIFICATION OF VENDOR INFORMATION

The Vendor hereby consents and grants authority to KWAL for KWAL to verify Vendor information through *inter alia* credit checks, searches and verifications in respect of the Vendor, its shareholders, directors and any other related parties, with any credit bureau, agency or party which KWAL may at its sole discretion consider expedient or necessary.

19. SUBCONTRACTORS

- 19.1. Unless KWAL provides express prior written consent, the Vendor may not;
- 19.1.1. sub-contract all or any of its obligations under the PO; nor
- 19.1.2. cede, delegate, assign or encumber all or any of its rights and/or obligations under the PO.
- 19.2. Notwithstanding such consent granted under clause 19.1, the Vendor shall remain responsible for the actions of the sub-contractor, as if it was the Vendor itself that performed the service or delivered the goods agreed to. All subcontractors shall be subject to KWAL's rules and regulations, similarly to the Vendor herein and shall ensure compliance with KWAL's occupational health and safety requirements as set out in clause 25 (*Occupational Health and Safety*) hereof.

20. VENDOR WARRANTIES AND INDEMNITIES

- 20.1. The Vendor represents and warrants to KWAL that:
- 20.1.1. The Vendor has the necessary capacity and the Vendor has taken all the necessary actions to authorize the execution, delivery, and performance of the PO in accordance with its terms and the execution, performance and delivery of the PO will not conflict with any obligation to which the Vendor is subject;
- 20.1.2. it is carrying on business in compliance with any applicable laws or regulations;
- 20.1.3. is the Vendor has the necessary skill and knowledge to perform the Services and supply the Goods and/or Services in accordance with the PO and these TC;
- 20.1.4. the Goods and/or the Services conform to the required Specifications, Conditions and Standards and are fit for, the purpose for which they are intended;
- 20.1.5. it is fully experienced in the rendering of the Services and other obligations substantially similar to rendering the Services and its employees possess and will apply the highest level of skill and expertise in the rendering of the Services and the performance of the Vendor's obligations in terms of the PO and these TC;
- 20.1.6. all the necessary actions to authorize the Vendor's entering into of this TC and the performance of its obligations under the PO and these TC have been taken;
- 20.1.7. the rendering of the Services or the supply of the Goods by the Vendor will not contravene
- 20.1.7.1. any provision of the Vendor's constitutional documents;
- 20.1.7.2. any order or decree of any court or arbitration award which is binding on the Vendor; nor
- 20.1.7.3. any documentation or legal obligation which is binding upon the Vendor;
- 20.1.8. the Vendor is not subject to and will not subject itself to any obligation, compliance which has, or is likely to have, a material adverse effect on the ability of the Vendor to perform its obligations under these TC, nor is it aware, having made due and careful enquiry, of any reason why it would be subject to any such obligation; and
- 20.1.9. no proceedings or other steps have been taken and not discharged for its winding-up or dissolution, or for it to be placed in business rescue or for the appointment of a business rescue practitioner, receiver, administrator, liquidator, trustee or similar office in relation to any of its assets or revenue.
- 20.2. The Vendor represents and warrants to KWAL in respect of the Goods delivered to KWAL that:
- 20.2.1. they do not constitute unsafe goods;

- 20.2.2. there is no product failure, defect or hazard in any of those Goods; and
 20.2.3. there is not any need to display instructions or warnings to consumers in respect of any hazard from or associated with the use of those Goods.
- 20.3. The Vendor indemnifies and holds harmless KWAL against any and all loss, damages, liability, cost and or expense incurred or suffered by KWAL as a result of:
- 20.3.1. any Goods constituting unsafe goods; or
 20.3.2. a product failure, defect or hazard in any of the Goods; or
 20.3.3. any need to display instructions or warnings to consumers in respect of any hazard from or associated with the use of the Goods, including, without limitation, as a result of any third party:
 20.3.4. anyone suffering death, injury or illness as a result of use or consumption of the Goods; or
 20.3.5. anyone suffering any loss of, or physical damage to, any property as a result of the Goods, regardless of whether or not the property concerned is movable or immovable; or
 20.3.6. any environmental impairment, fines or penalties; or
 20.3.7. anyone suffering any economic loss as a result of any harm contemplated in clauses 20.3.4 or 20.3.5.
- 20.4. In addition to the provisions of clause 20.3 and any other indemnities under in these TC, the Vendor hereby indemnifies and holds KWAL harmless against any and all damages, losses, liabilities, claims, demands, actions and causes of action for loss or damage arising from any act or omission of the Vendor, its directors, officers, agents or employees or anyone else for which it is vicariously liable in connection with the supply, processing, treatment, manufacture, packaging, shipment and/or delivery of the Goods under these TC for any reasons other than those contemplated in clause 20.3.
21. **LIMITATION OF LIABILITY**
- 21.1. Subject to the provisions of these TC, neither party shall be liable to the other for any consequential or indirect damages, whether arising under contract or tort law, including, but not limited to, lost profits, lost business, lost goodwill, lost savings (anticipated or otherwise), lost revenue, lost production and/or the increased cost of energy, materials and labour associated with its acts or omissions hereunder, provided that nothing contained in this clause 21 is intended or shall be construed or interpreted to limit, alter or modify the rights and/or remedies of either party in the recovery of costs, expenses or other amounts contractually agreed.
- 21.2. KWAL's liability for any claim arising out of these TC for breach of contract, breach of warranty, breach of statutory duty or negligence or other tort, whether by virtue of strict liability or otherwise is strictly limited to the purchase price of the relevant Goods.
- 21.3. Nothing in the TC shall be construed to limit or exclude either Party's liability for:
- 21.3.1. death or personal injury caused by its negligence or that of its Staff, representatives and/or or agents;
 21.3.2. fraud or fraudulent misrepresentation by it or that of its Staff, representatives and/or or agents; or
 21.3.3. any other matter which, by law, may not be excluded or limited.
22. **INSURANCE**
- 22.1. The Vendor shall acquire adequate insurance cover, in an amount acceptable to KWAL in respect of:
- 22.1.1. The Goods, prior to delivery thereof to KWAL or the Services, prior to acceptance and satisfactory completion thereof at the discretion of KWAL until the expiration of any warranty periods that are applicable to the Goods or Services or in accordance with a specific written agreement between the parties.
 22.1.2. The Vendor's public liability and all other legal liabilities hereunder and in respect of its employees, workmen, agents and third parties.
- 22.2. The insurance policies listed in clause 22.1 must cover all legal liabilities of the Vendor in terms of these TC.
 22.3. The Policies shall contain an endorsement that the Vendor's policies shall be primary in all instances regardless of the policies claimed by KWAL. At the request of KWAL the Vendor shall provide certificates of insurance in respect of the Goods or Services to the value as directed and determined by KWAL, in its sole discretion.
23. **USE OF KWAL NAME AND TRADE MARKS**
- 23.1. The Vendor shall not without the express prior written consent of KWAL represent, advertise or publish in any manner whatsoever, the fact that the Vendor is contractually associated with KWAL or supplies Goods and/or Services to KWAL.
 23.2. The Vendor shall not without the express prior written consent of KWAL use KWAL's name or logo or any of its other trademarks in any manner whatsoever.
24. **COMPLIANCE WITH LAWS**
- 24.1. The Vendor shall, in performing these TC, comply with all and any applicable laws and all and any applicable KWAL's Rules and Regulations.
 24.2. The applicable KWAL's Rules and Regulations are available on request. It is the responsibility of the Vendor to request the copy of, and acquaint itself with the content of all applicable KWAL's Rules and Regulations.
 24.3. KWAL reserves the right to amend its Rules and Regulations from time to time without the Vendor's consent. Any such amendment shall be binding on the Vendor once KWAL notifies the Vendor of such amendment in writing.
 24.4. The Vendor warrants to KWAL that it holds all necessary consents, authorizations, registrations, agreements, certificates, licenses, approvals, permits and exemptions which are required to perform its obligations under these TC and has paid all fees due in relation to them and is not in breach of any conditions under them where such breach would be likely to have a material and adverse effect on the Vendor's ability to perform its obligations under these TC.
 24.5. The Vendor shall give all and any notices, pay all taxes, duties and fees, and obtain and maintain all permits, licenses and approvals required by all applicable laws in relation to the supply, rendering and provision of the Goods and Services and the remedying of any defects. The Vendor indemnifies and holds KWAL harmless against and from all consequences of any failure to do so.
25. **OCCUPATIONAL HEALTH AND SAFETY**
- 25.1. The Vendor shall:
- 25.1.1. ensure that all employees, workmen and sub-contractors of the Vendor are inducted in their area of work (workers of the Vendor);
 25.1.2. ensure that all requirements in terms of the Occupational Health and Safety Act 2007 are complied with;
 25.1.3. ensure that KWAL's Critical Safety rules are complied with by workers of the Vendor.
 25.1.4. prior to commencement of the TC, provide KWAL with a certificate of fitness for every safety critical worker for review by the **Supervising Officer** before such workers of the Vendor enter the premises of KWAL for any duration of work.
 25.1.5. Complete all KWAL safety forms and comply therewith. Comply with security checks and fill all requisite registers maintained for security purposes.
- 25.2. The Vendor shall ensure that the workers of the Vendor that occupy safety critical positions and that will be on the premises of KWAL, for a period in excess of one week undergo regular fitness evaluations to determine their fitness for the performance of their jobs.
 25.3. The Supervising Officer shall determine the basis of the specific safety critical jobs undertaken by the workers of the Vendor, how often the workers of the Vendor are required to undergo the fitness evaluations.
 25.4. The Vendor shall provide KWAL with copies of the certificates of fitness, to be included in the Contract Safety file.
 25.5. For purposes of this clause 25 'Safety file' shall include all relevant information that is significant to health and safety risks that KWAL must be made aware of and consequently consider to address at its discretion prior to conclusion or during execution of these TC. The relevant documentation shall be completed and submitted to the Safety Officer or supervisors of KWAL before entry to premises
 25.6. The fitness evaluations shall be performed by Occupational Health Service Providers that are approved by KWAL.
 25.7. The costs for performing the medical and physical fitness evaluations shall be borne by the Vendor.

26. **ANTI BRIBERY AND CORRUPTION**

- 26.1. The Vendor warrants that it is and will remain in compliance with the laws of Kenya applicable to the services it will perform under these TC and the PO. The Vendor will not, and nor will any of its officers, employees, shareholders, representatives or agents ("associated parties"), directly or indirectly, make or offer any payment, gift or other advantage with respect to any matters which are the subject of the PO which (i) would violate any anti-corruption laws or regulations applicable to it or to KWAL or any of KWAL Affiliated Entities, (ii) is intended to, or does, influence or reward any person for acting in breach of an expectation of good faith, impartiality or trust, or which it would otherwise be improper for the recipient to accept, (iii) is made to or for a Public Official with the intention of influencing them and obtaining or retaining an advantage in the conduct of business, or (iv) which a reasonable person would otherwise consider to be unethical, illegal or improper ("Corrupt Act"). The Vendor represents and warrants that it and its associated parties have not engaged in any Corrupt Act prior to the date of the PO.
- 26.2. The Vendor undertakes not to seek, directly or indirectly, improperly or corruptly to influence or attempt to influence a Public Official, or an associated party of a customer or a potential customer, to act to the advantage of either of the Parties or otherwise to perform their duties improperly, and not to use any of the proceeds of any payments made under these TC, directly or indirectly, for this purpose or otherwise for the purpose of or in connection with any Corrupt Act. For the purposes of these TC, "Public Official" includes, without limitation, any person holding or acting on behalf of a person holding legislative, administrative or judicial office, including any person employed by or acting on behalf of a public agency, a state owned or public enterprise, a public international organisation, any federal or regional government department or agency, any political party, or any candidate for political office, or a relative or associate of any such person.
- 26.3. During the term of the PO, the Vendor shall (i) properly and accurately record in its books and records all transactions which relate in any way to the PO or to Goods or Services provided by it ("Transaction Records"), (ii) provide the Transaction Records and/or any other such information as KWAL may reasonably require by notice in writing in order to monitor the Vendor's compliance with its obligations under clause 26. For the purpose of this clause, "books and records" shall be deemed to include, without limitation, corporate records, bank statements, books of account, supporting documentation and other records and documentation (including without limitation, invoices, transfer documents and any other documents), whether in paper or other form.
- 26.4. The Vendor accepts that it will permit KWAL periodic access, upon request by KWAL, to the Transaction Records in order to verify compliance with this Clause 26.
- 26.5. The Vendor warrants to KWAL that to its awareness, neither it nor any of its directors, employees, agents, representatives, or sub-contractors has at any time prior to entering into these TC, committed any offence conceivable under the UK Bribery Act 2010, the US Foreign Corrupt Practices Act or any legislation in Kenya including the Bribery Act, 2016 creating offences in respect of bribery or fraudulent or corrupt acts.
- 26.6. The Vendor further warrants to KWAL that it did not enter into the PO with any knowledge that any money has been, or will be, paid to any person working for or engaged by KWAL or that an agreement has been made to that effect, unless details of any such arrangement have been disclosed in writing to KWAL before the date of the PO.
- 26.7. The Vendor agrees that, at any time after entry into the PO it shall not and it shall procure that its directors, employees, agents, representatives, service providers or sub-contractors shall not commit any offence under any legislation or common law anywhere in the world creating offences conceivable under the UK Bribery Act 2010, the US Foreign Corrupt Practices Act or any legislation in Kenya including the Bribery Act, 2016 creating offences in respect of bribery or fraudulent or corrupt acts.
- 26.8. The Vendor agrees and accepts to abide with KWAL's code of business conduct as advised from time to time and it shall ensure that any third parties whom it engages to assist in providing the Services shall also comply with such codes.
- 26.9. If requested by KWAL, the Vendor shall participate in compliance training from time to time.
- 26.10. The Vendor shall have in place adequate procedures designed to prevent any person working for or engaged by the Vendor or any other third party in any way connected to the PO, from committing offences of corruption or bribery.
- 26.11. If at any time the Vendor (or any of its directors, employees, agents, representatives, service providers or Sub-Contractors) breaches any of its compliance obligations, the Vendor shall indemnify and keep indemnified KWAL against any losses, liabilities, fines, damages, costs and expenses including legal fees and costs of investigation, litigation, settlement, judgment, interest and penalties that KWAL may suffer as a result of such breach.

27. **BREACH AND TERMINATION**

- 27.1. KWAL may terminate the PO for any reason whatsoever, without costs or liabilities by furnishing the Vendor with seven (7) days' written notice of termination. All costs and liabilities due and payable before termination shall remain payable under the provisions of these TC. The Vendor shall also refund all pre-payments made by KWAL for which goods and/or Services have not been supplied.
- 27.2. Should any Party breach any provision of the PO and fail to remedy such breach within fourteen (14) days after receiving a written notice requiring such remedy from the other Party, then the Party giving such notice shall, by further written notice, be entitled to, without prejudice to any of its other rights in law including any right to claim damages, to immediately cancel the PO or to claim immediate specific performance of all of the defaulting Party's obligations then due for performance.
- 27.3. KWAL shall also be entitled to terminate the PO with immediate effect, without prejudice to any of its other rights in law including any right to claim damages, if:
- 27.3.1 if the Vendor suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts or it shall compound or make any arrangement with its creditors or have a receiver appointed over all or any part of its assets or go into liquidation (whether voluntary or otherwise) save as part of a bona fide reconstruction not involving insolvency or shall take or suffer to be taken any similar action as a result of its liability to pay its debts or its insolvency or any event occurs, or proceeding is taken, with respect to the Vendor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of these events or Vendor suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business (each an "Insolvency Event"), it shall promptly so notify KWAL in writing giving particulars of the circumstances whereupon KWAL may terminate these TC immediately by notice. (For the avoidance of doubt, KWAL may terminate these TC upon the occurrence of any of the circumstances described in this clause notwithstanding that KWAL may not have given notice to the Vendor);
- 27.3.2 If at any time during the Term there shall be any change in the legal or beneficial ownership or control of the Vendor. For the purposes of this clause, "control" shall mean either the ownership (direct or indirect) of more than fifty per cent. (50%) of the ordinary share capital of the Vendor carrying the right to vote at general meetings or the power to nominate a majority of the board of directors of the Vendor;
- 27.3.3 the Vendor breaches any warranty given by it to KWAL;
- 27.3.4 the Vendor generally does or omits to do anything which may prejudice the rights of KWAL in terms of the PO or causes KWAL to suffer any loss or damage; or
- 27.3.5 the Goods or Services do not conform with the Specifications, Conditions or Standards and the Vendor has not remedied the defect or replaced the Goods in accordance with clause 7.9.

28. **DELAY PENALTIES**

In the event of delays in performance or delivery arising from the negligence or non-compliance of the Vendor with the terms of these TC or of the PO, KWAL shall be entitled to claim penalties from the Vendor at a rate of 0.5% of the contract value to a maximum of 5% of the total contract value.

29. **FORCE MAJEURE**

- 29.1 Neither Party shall be liable for a delay or failure to perform under the PO which results from any occurrence or event entirely outside of its control and which could not have been reasonably avoided including, but not limited to, accident, action of the elements, act of God, civil commotion, war (whether or not declared), enemy action, epidemic, explosion, fire, flood, insurrection, strike, lockout or other labour trouble or shortage, natural catastrophe, riot, unavailability or shortage of material, equipment or transportation, act, demand or requirement of law or of the Government of Kenya or any other competent governmental authority ("**Force Majeure**"); provided however, that the Party in default or failure shall make all reasonable efforts to remove or overcome the effects of such occurrence or event and, in any event, shall promptly resume performance after cessation of such occurrence or event.
- 29.2 If a Party is or will be prevented from performing any of its obligations under the PO by Force Majeure, then it shall give written notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within five (5) Working Days after the Party became aware, or should reasonably have become aware, of the relevant event or circumstance constituting Force Majeure.
- 29.3 The notifying Party shall, having given the written notice, be excused from performance of such directly affected obligations for so long as such Force Majeure strictly prevents it from performing them.
- 29.4 The notifying Party shall at all times use all reasonable endeavours to minimize any delay in its performance of the PO as a result of Force Majeure.
- 29.5 A Party shall give written notice to the other Party when it ceases to be affected by Force Majeure.
- 29.6 Either Party may terminate the PO if Force Majeure continues for a period of thirty (30) days or more.

30. **CONFIDENTIALITY**

- 30.1. No Party will disclose to any person:
- 30.1.1. any details of these TC, any details of the negotiations leading to these TC (including the details contained in the RFI and the RFQ), any confidential information handed over to such Party during the course of those negotiations nor any confidential details of any transaction, agreement or matter contemplated by or set out in these TC; nor
- 30.1.2. any confidential information relating to the operations and affairs of another Party, (together the "**Confidential Information**").
- 30.2. The Parties shall keep all Confidential Information confidential and disclose it only to their directors, officers, employees, consultants and professional advisers who:
- 30.2.1. have a need to know (and then only to the extent that each such person has a strict need to know);
- 30.2.2. are aware that the Confidential Information must be kept confidential;
- 30.2.3. are aware of the disclosing Party's undertaking in relation to such information in terms of these TC; and
- 30.2.4. have been directed by the disclosing Party to keep the Confidential Information confidential and have undertaken to keep the Confidential Information confidential and not to directly or indirectly use it for its own or any third party's benefit.

Notwithstanding clause 30.1, a Party may disclose Confidential Information which it receives from the other Party where disclosure is required by applicable law or by a court of competent jurisdiction.

- 30.3. KWAL may, in its sole discretion require the Vendor to enter into a Non-Disclosure Agreement in addition to this Clause 30.

31. **GENERAL**

- 31.1. These TC as read with the relevant Purchase Orders constitutes the sole record of the agreement between the Parties in relation to the subject matter hereof. The terms and conditions which may be contained or referred to by the Vendor when tendering or when acknowledging the Purchase Order shall be deemed to have no force or effect and are expressly superseded by these terms and conditions.
- 31.2. All quotations are made and all orders are accepted subject to the terms and conditions in these TC, notwithstanding any statements made to the contrary in any other document or correspondence.
- 31.3. No addition to, novation, variation, or agreed cancellation of these TC shall be of any force or effect unless in writing and signed by or on behalf of the Parties.
- 31.4. No indulgence which any Party may grant to the other shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the grantor in terms hereof and the grantor shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which might arise in the future save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right.
- 31.5. Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licenses and permissions to enter into and perform its obligations under the TC, and that the TC is executed by its duly authorized representatives.
- 31.6. The Vendor shall maintain adequate disaster recovery, back-up procedures and contingency plans to ensure the Vendors' business continuity and that the Vendor is able to perform contracts with KWAL without interruption.
- 31.7. The failure of either party at any time to enforce any of the provisions of these TC or any rights in respect hereto or to exercise any election herein provided shall not be a waiver of such provisions, rights or election or affect the validity of these TC.
- 31.8. If any provision of the TC is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the TC and rendered ineffective as far as possible without modifying the remaining provisions of the TC, and shall not in any way affect any other circumstances of or the validity or enforcement of the TC.
- 31.9. Any notice to be given under the TC shall be in writing and may be served by personal delivery, registered post or to e-mail to the address of the relevant Party, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.
- 31.10. Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 31.11. Without prejudice to any other provision of these TC, any successor in title, including any executor, heir, liquidator, judicial manager, curator or trustee, of any Party, shall be bound by these TC.

32. **DISPUTE RESOLUTION**

32.1. **Amicable Settlement**

The parties shall use their best efforts to settle amicably any dispute arising from or in connection with the PO or the interpretation thereof.

32.2. **Arbitration**

- 32.2.1. If a dispute has not been settled amicably within a period of thirty (30) days (or such longer period as may be agreed upon between the Parties), any Party may elect to commence arbitration. Such arbitration shall be by a single arbitrator to be appointed by agreement between the Parties or in default of such agreement within fourteen (14) days of the notification of the dispute, upon the application of either Party, to the Chairman for the time being of the Kenya Branch of the Chartered Institute of Arbitrators.
- 32.2.2. Such arbitration shall be conducted in Nairobi in accordance with the Rules of Arbitration of the said Institute and subject to and in accordance with the provisions of the Arbitration Act 1995.
- 32.2.3. To the extent permissible by law, the determination of the arbitrator shall be final conclusive and binding upon the parties.

- 32.2.4. Pending final settlement or determination of a dispute, the parties shall continue to perform their subsisting obligations hereunder.
- 32.2.5. Nothing in these TC shall prevent a Party from seeking urgent injunctive or interlocutory relief in a court of competent jurisdiction.

33. DATA PROTECTION

- 33.1 Where necessary and in order to enable KWAL to perform this Agreement and for KWAL business requirements, KWAL shall have your (Vendor) authority to process personal data (i.e. any information relating to an individual as defined in the Kenyan Data Protection Act, 2019 (DPA)) in accordance with this clause.
- 33.2 The Vendor warrants and represents that they have obtained all the necessary consents, provided any necessary notices to the data subjects and complied with all other requirements of the DPA to disclose personal data they hold to KWAL in connection with the Services and hereby indemnify KWAL from any claims in that regard.
- 33.3 KWAL shall process personal data provided by the Vendor in accordance with this clause and as required by law, or the order of a competent court or any regulation or professional requirement.
- 33.4 KWAL shall process the personal data as reasonably required:
- i. to provide the Services;
 - ii. for our reasonable business purposes including facilitation and support of our business and quality control processes; and
 - iii. to meet our legal and regulatory obligations.
- 33.5 The Vendor will, if required, obtain consent from the data subjects for KWAL to share personal data with KWAL's affiliates or other parties who facilitate or support KWAL's business.
- 33.6 KWAL undertakes to only make such a disclosure where it is required in connection with such purposes and in compliance with the DPA.
- 33.7 Where KWAL process personal data on a purely automated basis that has a significant impact on the data subjects, it shall give the data subjects through the Vendor the opportunity to discuss the output of such processing before making any decisions save as required by applicable law.
- 33.8 KWAL undertakes to take appropriate measures to protect against unauthorized or unlawful processing of personal data and against accidental loss, destruction of, alteration of, or damage to, personal data and notify the data subjects through the Vendor in the event of breach.
- 33.9 KWAL shall also notify the data subjects through the Vendor promptly upon receiving a request for personal data or other request from a data subject, or if KWAL receives any claim, complaint or allegation relating to the processing of the personal data.
- 33.10 KWAL undertakes not to sub-contract the processing of personal data (save that we may sub-contract and, in doing so, transfer personal data, to our parent company (Distell, South Africa), affiliates or third parties who are bound by appropriate confidentiality and security obligations) without the data subjects prior written consent through the Vendor.
- 33.11 KWAL shall respond to reasonable enquiries to enable the Vendor to monitor KWAL's compliance with this clause and the data subjects shall have access to their personal data through the Vendor where the request is reasonable and permitted by law or regulation.
- 33.12 KWAL shall rectify, amend, or delete personal data upon request where it is inaccurate or where it is being used contrary to this clause and shall only retain personal data only for as long as it serves the purpose(s) for which it was initially collected or subsequently authorized except to the extent permitted by applicable law.
- 33.13 The information in KWAL's possession with regard to data subjects in the Vendor organization may only be used by KWAL and its affiliates perform this agreement.

34. COUNTERPARTS AND SIGNING

This agreement may be executed in any number of counterparts each of which when executed and delivered shall constitute an original, and all the counterparts together shall constitute one and the same agreement. The parties accept that this Agreement may be signed either by handwritten signature or by means of electronic signature technology. The parties agree that to the extent they sign electronically, their electronic signature is the legally binding equivalent to their handwritten signature. Whenever they execute an electronic signature, it has the same validity and meaning as their handwritten signature. They will not, at any time in the future, repudiate the meaning of the electronic signature or claim that their electronic signature is not legally binding. They agree not to object to the admissibility of this Agreement as an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the grounds that it is an electronic record or electronic signature or that it is not in its original form or is not an original. If either party would like a paper copy of this Agreement, they may request a copy from the other party.