

General terms and conditions

Epiroc Namibia

These general terms and conditions hereunder read with a signed Customer Agreement (the "**Terms**"), govern the sale, delivery and use of all Products and Services provided by Epiroc Mining Namibia Proprietary Limited, including its subsidiaries ("**Epiroc**"). These Terms are binding and enforceable on all persons who contract with Epiroc without qualification or exception. The Customer agrees to be bound by and is deemed to have accepted these Terms, which the Customer acknowledges to have read and understood.

1. Introduction and recordals

- 1.1. Epiroc is a leading productivity partner for mining, construction and infrastructure industries. Epiroc develops, manufactures, produces, provides, sells, supports and maintains, a wide range of mining and construction related products and services for various surface and underground applications in the Republic of Namibia ("**Republic**").
- 1.2. To the extent that the Customer wishes to purchase the Products and/or for Epiroc to deliver the Services to the Customer in terms of these Terms, under Customer Agreements entered into between the Parties and/or under any valid quotation issued by Epiroc to the Customer, these Terms set out the terms and conditions upon which:
 - 1.2.1. Epiroc sells, and the Customer purchases, the Products; and/or
 - 1.2.2. the Customer appoints Epiroc to provide the Services.

2. Contracting structure and order of precedence

- 2.1. Products and Services are specifically contracted under Customer Agreements. Each Customer Agreement is binding upon the Parties to it and is separate and distinct from other Customer Agreements. Products and/or Services are described in the relevant Customer Agreements and if applicable, additional Service Schedules incorporated and attached thereto.
- 2.2. These Terms apply to the exclusion of any other documents, purchase orders or terms or conditions submitted, or requested, by the Customer. No standard terms or conditions on any Customer purchase order or other Customer purchase documents shall form part of these Terms or the Customer Agreement. Epiroc's acceptance or acknowledgement of a Purchase Order, shall not be construed as acceptance of any terms and conditions proposed by the Customer.

2.3. In the event of conflict, ambiguity or inconsistency between the documentation, the order of precedence will be:

- 2.3.1. the Customer Agreement;
- 2.3.2. the Service Schedules;
- 2.3.3. these Terms; and thereafter
- 2.3.4. the Purchase Order (to the extent a Purchase Order is part of the Customer Agreement).

3. Duration

- 3.1. These Terms will remain in effect and be incapable of termination by the Customer until the termination of the last of the Customer Agreements under these Terms. Termination or expiration of a particular Customer Agreement shall not affect the validity of these Terms including the remaining Customer Agreements, if any.
- 3.2. Each Customer Agreement shall commence on the Commencement Date and shall, subject to any other provision of these Terms and/or the relevant Customer Agreement that provides for early termination, endure until the Completion Date.
- 3.3. If a Customer Agreement is silent about its duration, it shall be deemed to:
 - 3.3.1. have commenced on the date it was signed or otherwise finally agreed; and
 - 3.3.2. continue until the Products have been delivered, or all Services to be provided under that Customer Agreement have been completed, and all payments and other obligations have been fulfilled,unless otherwise agreed between the Parties in writing.
- 3.4. In the event of the Customer terminating a Customer Agreement, other than as provided for in the relevant Customer Agreement or these Terms, the Customer:
 - 3.4.1. shall, upon written demand, be immediately liable to pay to Epiroc the total remaining Fees payable under the relevant Customer Agreement but not yet paid to Epiroc; and
 - 3.4.2. hereby irrevocably and unconditionally acknowledges and agrees that it shall not be entitled to a reimbursement of any Fees already paid by it under the relevant Customer

Agreement, notwithstanding that any Fees may have been paid by the Customer in advance.

3.5. To the extent that the provisions of clause 3.4 are considered to be, or qualify as, a penalty stipulation in terms of Conventional Penalties Act No. 15 of 1962 or other Applicable Laws:

3.5.1. the provisions of clause 3.4 shall not be construed or interpreted in such a way as entitling Epiroc to recover both damages and the penalty;

3.5.2. Epiroc shall be entitled to recover damages in lieu of the relevant penalty; and

3.5.3. the Customer acknowledges and agrees, having taken account of the prejudice that will be suffered by Epiroc, that the penalty stipulation is equitable in the circumstances.

4. Order and sale of products and services

4.1. All Purchase Orders must be made in writing and sent by the Customer to Epiroc at such address as may be nominated by Epiroc from time to time.

4.2. A Purchase Order shall constitute an irrevocable offer by the Customer to purchase the Products and/or Services specified therein from Epiroc.

4.3. Unless otherwise agreed between the Parties in writing, upon receipt of a Purchase Order, Epiroc shall review and confirm its accuracy in respect of the Fees and the quotation issued by Epiroc to the Customer and shall either accept or reject the Purchase Order. Should it be accepted, Epiroc shall fulfil the order by issuing an invoice to the Customer.

4.4. Each Purchase Order shall constitute a separate and divisible transaction.

4.5. Epiroc shall deliver the Products and/or Services to the Customer by such means as may be set out in a Customer Agreement, or as otherwise agreed between the Parties in writing.

5. Ownership and risk

5.1. Unless otherwise agreed in a Customer Agreement:

5.1.1. risk in and to a Product (or any part thereof), will pass to the Customer in accordance with the agreed Incoterms and if no Incoterms have been agreed, upon delivery of the Products in accordance with the provisions of clause 6.3.2.1; and

5.1.2. title and ownership in a Product shall pass to the Customer when the Product has been paid for in full and delivered by Epiroc to the Customer.

5.2. Where the Customer itself collects the Products or engages its own carrier to collect the Products from Epiroc, all risk in and to the Products shall reside exclusively in the Customer, and there shall be no liability whatsoever on the part of Epiroc to the

Customer.

5.3. Unless specifically agreed to by Epiroc in writing, the Customer irrevocably acknowledges, agrees and undertakes that it shall not be entitled to encumber the Product (or any part thereof) for any reason whatsoever, until full ownership has passed to it in terms of clause 5.1.2. Further, the Customer shall, upon Epiroc's request, assist in taking any measures necessary to protect Epiroc's title to the Products until full ownership has passed to the Customer.

5.4. Where the Product or Services comprise software or digital services, such parts of the Product or Services will be licensed for use, subject to the Epiroc licence terms as outlined in clause 5.3 below and the applicable Customer Agreement, and ownership thereof will not pass to the Customer.

6. Licence and software specific terms

6.1. To the extent that the Products include the provision of software and/or licensing of software, the terms outlined in this clause 5.3, together with specific terms contained in the applicable Customer Agreement, shall apply.

6.2. Epiroc is not required to provide the Customer with the source code of any software. Further, unless otherwise agreed in the Customer Agreement, Epiroc is not required to provide any updates or upgrades in the software embedded in Products or provided standalone, or as part of a Service.

6.3. End User Licence Agreement, Ownership and Usage Restrictions

6.3.1. Where Epiroc provides Products, Services and/or licenses developed or created by a Licensor or Third Party Service Provider, or based on a Third Party Service Provider's solution (e.g. for hosting of data) such Products, Services and/or licenses are provided "as is". Third-party licences, Services, or Products delivered under these Terms may be subject to the terms of the applicable third party's/vendor's End User License Agreement ("EULA"), including all warranties, terms of use, and limitations. Warranty periods for the software and maintenance and support services will be as set out in the EULA. Epiroc is not the owner of such third-party Products, Services and/or licenses and except as aforesaid or expressly provided in this Agreement or the Customer Agreement, Epiroc gives no representations, undertakings or warranties, express or implied, by operation of law or otherwise, including, without limitation, that the Products or Services provided, as applicable, will operate uninterrupted or that it will be free from defects or errors that may affect such performance, that any product will meet all of the Customer's business requirements, any implied warranty or condition of merchantability;

of satisfactory quality; and/or of fitness for a particular purpose.

6.3.2. In addition to the provisions set out in the applicable EULA, the Customer shall not attempt to and shall not, whether as proprietor, partner, director, shareholder, natural or juristic person, association of persons, employee, consultant, contractor, financier, agent, licensor, distributor, representative, assistant or in any other capacity whatsoever, whether directly or indirectly:

- 6.3.2.1. sell, lease, licence, sub-licence, encumber, modify, vary, enhance, copy or otherwise deal with the Product or Service or any part, variation, modification, copies, releases, versions and/or enhancements thereof;
- 6.3.2.2. have any software or other programme written or developed for it based on any component of the Product, Service or any Confidential Information or trade secrets supplied to it by Epiroc or the Licensor or of which it becomes possessed of pursuant to these Terms or a Customer Agreement;
- 6.3.2.3. decompile, disassemble and/or reverse engineer the Product, Service, or any component thereof;
- 6.3.2.4. use the Product, Service or any component of such software otherwise than as authorised in terms of these Terms, the Customer Agreement and/or the EULA;
- 6.3.2.5. provide, disclose, divulge or in any other manner make available or permit use of the Product, Service or any component thereof by any third party; and
- 6.3.2.6. it shall not register (or make any filing with respect to) the Licensor's name, trade names, trademarks, service marks, and logos relevant to the Product, Service and/or the subject matter of these Terms, or any trademark, name or other designation confusingly similar thereto, or contest the use by (or authorized by) the Licensor of same.

7. Delivery

7.1. Delivery of the Product may be affected either:

7.1.1. on the date the Customer is advised the Product is ready to be delivered in accordance with its instructions unless Epiroc has undertaken in writing to deliver the Product to a place nominated by the Customer, and delivery of the Product to a carrier (including Epiroc's own carrier) shall be deemed to have been delivered to the Customer; or

7.1.2. on the delivery date referred to in the Customer Agreement or valid quotation provided by Epiroc, or at an earlier date; or

7.1.3. on a date agreed in writing between the Parties; or

7.1.4. in respect of software or digital services, electronically.

7.2. Epiroc shall use reasonable endeavours to meet any firmly agreed date for the delivery of the Products in a signed Purchase Order, noting that timely delivery depends on timely receipt of all necessary information and approvals. Any other delivery dates presented or stated are indicative and are estimates only, which may be varied at any time by Epiroc by giving notice to the Customer.

7.3. Epiroc may deliver the Products in such batches or instalments as it considers expedient.

7.4. Epiroc shall not be held liable for any late or partial delivery of the Products due to:

7.4.1. acts or omissions of the Customer, including failure to provide accurate and complete delivery instructions or failure to make necessary preparations for the receipt of the Products;

7.4.2. any changes or modifications requested by the Customer which effects the originally agreed-upon delivery schedule;

7.4.3. unforeseen circumstances or events that arise after Epiroc has dispatched the Products, including an event of Force Majeure;

7.4.4. delays caused by a Third Party Service Provider, including late delivery of Products from Third Party Service Providers, regardless of the reason for the delay; or

7.4.5. any other cause whatsoever beyond Epiroc's reasonable control.

7.5. If Epiroc is unable to complete the delivery for any of the reasons outlined in 7.4, the Customer agrees that Epiroc shall be entitled to a reasonable extension of time to endeavour to complete, manufacture and/or make delivery, failing which Epiroc shall be entitled to cancel the Customer Agreement, or applicable Purchase Order under such Customer Agreement, and the Customer shall have no claim against Epiroc for any loss or damage suffered as a result of this cancellation.

7.6. Signature or electronic acceptance of an official delivery note of any independent and/or Epiroc carrier shall constitute proof of delivery of the Products.

8. Services

- 8.1. With effect from the Commencement Date and for the duration set out in the relevant Customer Agreement, to the extent that Services are to be rendered by Epiroc, Epiroc shall perform the Services for the Customer in accordance with the provisions of these Terms and the relevant Customer Agreement.
- 8.2. Epiroc shall perform its obligations under a Customer Agreement in accordance with:
 - 8.2.1. Applicable Laws applicable to the delivery of the Services;
 - 8.2.2. Good Industry Practice; and
 - 8.2.3. the provisions of these Terms.

9. Suspension

- 9.1. Epiroc shall be entitled, without prejudice to any right it may have in terms of these Terms or at law, at any time and upon written notice, to suspend the delivery of the Products and/or provision of the Services, or any part thereof, in any of the following circumstances:
 - 9.1.1. for so long as the Customer remains in breach of its obligations under these Terms (including having not paid any amounts due to Epiroc);
 - 9.1.2. if it is clear from the circumstance that the Customer is not going to perform its contractual obligations;
 - 9.1.3. if the Customer is in breach of any Applicable Law;
 - 9.1.4. if the quality of the Products or such other element related to the Services, as the case may be, is adversely affected due to any act or omission of the Customer;
 - 9.1.5. if the Customer infringes or is alleged to have infringed the Intellectual Property rights of any entity within the Epiroc Group;
 - 9.1.6. if Epiroc, in its reasonable discretion, believes the Customer is utilising the Products, or such other element related to the Services, as the case may be, in a manner prejudicial to the interests of Epiroc or any third party;
 - 9.1.7. the performance or operation of the Products or Services poses a security risk and/or is in violation of Applicable Law, court order, or administrative order; and/or
 - 9.1.8. if Epiroc, in its reasonable discretion, believes the continued delivery or use of the Products or Services poses a health or safety risk to any party.
- 9.2. Epiroc shall not be liable to the Customer for any claims, damages, losses, costs, liability or expenses (direct or indirect, consequential, special or otherwise) of whatsoever nature and howsoever arising in connection with or related to the suspension or interruption of the

Services or provision of the Products as contemplated in clause 9.1.

10. Returns and cancellations: spare parts and consumables

10.1. General

The provisions of this clause 9.2 only apply to returns and cancellations of Products that are categorised as either Spare Parts or Consumables. Other categories of Products cannot be returned or cancelled save to the extent return or cancellation is permitted by the applicable Epiroc Warranty Policy for such category of Products or as otherwise explicitly permitted by these Terms.

10.2. Returns

- 10.2.1. Customer is required to send all requests for return to returns.namibia@epiroc.com (unless Epiroc instructs Customer to use other means or contact details) and is required to specify the reason for return. Customer must submit a return request to Epiroc within 5 (five) business days from delivery.
- 10.2.2. Customer may only submit a return if (i) the Product is Defective, (ii) the Customer has been wrongly supplied by Epiroc, or (iii) in the case of oversupply of the Product to the Customer by Epiroc.
- 10.2.3. In the case of Defective Products, Epiroc will inspect the Products to ensure that they are Defective. Should the request return be approved, Epiroc will inform the Customer and (at the discretion of Epiroc) either (i) repair; (ii) redeliver non-Defective Products; or (iii) process a credit to the Customer.
- 10.2.4. If the Customer has requested return for wrongly supplied Products, the Customer has the option to either return the Products to Epiroc (as directed by Epiroc) at its own cost, or request Epiroc's customer care team to arrange transport using an approved Epiroc transport service provider. Contact details to the customer care team are provided upon request.
- 10.2.5. If the request to Epiroc is in respect of oversupply of Products to the Customer, Epiroc will consult with the Customer on whether the Customer would like to either keep the oversupplied Products and be invoiced for them or if the Customer would like to return the Products.

10.3. Cancellations

- 10.3.1. The Customer is required to send all requests for cancellation to cancellations.namibia@epiroc.com (unless Epiroc instructs the Customer to use other means or contact details) and must specify reason for cancellation.
- 10.3.2. For purposes of this clause:

"**Cancellation Fee**" is 20% (twenty percent) of the total value of the applicable Products cancelled

"**Despatch status**" is when the Product is in transit from Epiroc's supplier or is in the process from being dispatched from Epiroc's distribution centres;

"**Post-shipping status**" is when the order has been invoiced and is in-transit to the applicable delivery point or is available at collection area; and

"**Pre-shipping status**" is when the order is yet to be shipped and/or not yet in transit from Epiroc's supplier;

- 10.3.3. The Customer may only request a cancellation of a Purchase Order while the relevant Products are in Pre-shipping status or Despatch status.
- 10.3.4. If the Purchase Order is in Post-shipping status at the time of receiving the cancellation request or if Epiroc has already invoiced for the Purchase Order, cancellation of the Purchase Order will not be accepted. Further, no cancellation will be accepted at time of delivery. Customers will be advised to instead request a return. In any of these scenarios, the Epiroc returns policy will apply.
- 10.3.5. The Cancellation Fee may be applied at the discretion of Epiroc.
- 10.3.6. No cancellation fees will be charged to Customers should the reason for the cancellation be due to a materially delayed delivery, i.e., a delivery which is significantly outside the agreed delivery time.
- 10.3.7. Purchase Order cancellation shall be solely within the discretion of Epiroc to accept or reject.
- 10.4. Epiroc shall not be liable for any consequences arising from a Customer's non-compliance with the returns and cancellation policies.

11. Change request

- 11.1. Save as contemplated in clause 35.2, no alteration or variation to the Products and/or the Services shall be of any force or effect unless it is agreed in writing between the Parties in accordance with the procedures set out in this clause **Error! Reference source not found.**
- 11.2. Any change to the Products and/or the Services shall be implemented as follows:
 - 11.2.1. a change request may be raised by either Party;
 - 11.2.2. Epiroc will assess the effect of such change on the Products or Services, their related deliverables and fees, and provide a written change request to the Customer ("**Change Request**"); and
 - 11.2.3. the Customer shall assess the Change Request and accept it, by signing same, within 3 (three) Business Days of receipt thereof, failing which it

shall be deemed to have been rejected and shall no longer be capable of acceptance by the Customer.

- 11.3. Epiroc shall not implement any change until such time as the Change Request has been signed by both Parties.
- 11.4. Each duly executed Change Request will be attached to the relevant Customer Agreement and sequentially numbered, commencing with "**Change Request 1**".

12. Excused performance

Epiroc shall not be in breach of its obligations under these Terms or any Customer Agreement to the extent that such breach is occasioned as a result of:

- 12.1. a default by the Customer of any of its obligations under these Terms or any Customer Agreement;
- 12.2. any delay caused as a result of Epiroc's inability to obtain the Customer's consent timeously or at all;
- 12.3. a failure by a Third-Party Service Provider to provide any services incidental to the use of the Products and/or the provision of the Services; and/or
- 12.4. telecommunications, infrastructure and communication line faults, power failures or power interruptions or the occurrence of Force Majeure.

13. Fees and payment terms

- 13.1. In consideration for the Products and/or the Services, the Customer shall pay Epiroc the Fees.
- 13.2. In addition to the Fees (unless explicitly included in the Fees), the cost of any special packing materials and the cost of carriage shall be paid by the Customer.
- 13.3. Epiroc reserve the right to increase the Fees payable by the Customer, upon sufficient notice to the Customer. The specific terms in this regard will be set out in the relevant Customer Agreement. Unless otherwise agreed, Epiroc is always entitled to increase the Fees in the event of variations in costs of materials, transport, increased costs for third party products and services forming part of the Products and/or Services provided by Epiroc to the Customer, a change in Applicable Law or rules or rulings issued by a court or governmental authority, or similar conditions over which Epiroc has no or limited control.
- 13.4. Invoices for the Fees shall be submitted by Epiroc monthly, unless otherwise set out in the relevant Customer Agreement.
- 13.5. Unless otherwise agreed in the applicable Customer Agreement, payment of the Fees are to be made by the Customer to Epiroc in full, by means of an electronic funds transfer into Epiroc's nominated bank account, within 30 (thirty) days after the date of receipt of the invoice.
- 13.6. All amounts that are payable to Epiroc are to be paid without deduction or set off of any nature, free of

exchange, bank costs and other charges.

13.7. Unless otherwise agreed between the Parties, all amounts payable by the Customer to Epiroc are exclusive of any direct and indirect taxes such as VAT, and VAT on such amounts, and any other statutory levies, taxes, imposts and disbursements from time to time, shall be borne and paid by the Customer.

13.8. To the extent permissible at law, if at any time the Customer is required by law and/or regulation to make any deduction or withhold any amount from any sum payable by the Customer to Epiroc (or if there is a change in the rates, at which or the manner in which, such deductions or withheld amounts are calculated), the sum payable by the Customer, in respect of which such deduction, withheld amount or payment is required to be made, shall be increased to the extent necessary to ensure that, after the making of such deduction, withheld amount or payment, Epiroc receives and retains (free from any liability in respect of any such deduction, withheld amount or payment) a net sum equal to the sum, which Epiroc would have received and retained, had no such deduction, withheld amount or payment been made.

13.9. The Customer shall not, under any circumstances, be entitled to withhold payment of any amount due under these Terms. In the event that the Customer fails to make due and timeous payment, such amount shall bear interest at the Prime Rate plus 2% (two percent) from the due date until payment thereof has been received by Epiroc in full. Further, the Customer shall be liable for Epiroc's administrative costs, collection costs and reasonable attorneys' fees relating to overdue amounts.

13.10. If the Customer fails to make payment when due and in accordance with what the Parties have agreed, or if Epiroc reasonably believes that the Customer will not make such payment for any Products or Services, Epiroc reserves the right:

13.10.1. to request pre-payment; or

13.10.2. to divert Products and/or Services to third parties,

in each case without prejudice to any other right or remedy which Epiroc may have under these Terms, the Customer Agreement or otherwise in accordance with Applicable Law.

14. Obligations of the customer

The Customer shall:

14.1. allow Epiroc, its employees and/or representatives, as well as any duly appointed subcontractor, upon reasonable notice, to access the Premises for purposes of providing the Products and/or undertaking the Services;

14.2. cooperate with Epiroc, when necessary and reasonably requested, to facilitate the effective implementation of these Terms and the relevant Customer Agreements;

14.3. provide Epiroc with all reasonable and necessary assistance as may be required by Epiroc to provide the Products and/or Services;

14.4. provide Epiroc with all information as reasonably required, for purposes of allowing Epiroc to provide the Services and/or deliver the Products, and for purposes of auditing or verifying compliance with Applicable Laws and these Terms, including but not limited to export regulations, embargo and anti-boycott provisions and anti-bribery rules, that are applicable to the Parties' relationship, to these Terms or any Customer Agreement;

14.5. use the Products and Services in accordance with: (i) the Customer Agreement and these Terms; (ii) applicable Third Party Service Provider's terms (if any); (iii) Applicable Laws; and (iv) the intended purpose of the Products and Services only, in accordance with: (i) any specifications and instructions received from Epiroc; and (ii) general practices and conditions for the mining and construction industry;

14.6. comply with Epiroc's safety manuals and instructions, operator manuals and other written instructions as regards the use and maintenance of the Products and Services;

14.7. make timeous and full payment of all Fees in terms of the Customer Agreement;

14.8. meet all obligations of the Customer as stated in the Customer Agreement or otherwise agreed with Epiroc;

14.9. comply with the principles set out in Epiroc's Business Partner Code of Conduct accessible on the website: <https://www.epirocgroup.com/en/sustainability/high-est-ethical-standards/responsible-supply-chain>;

14.10. use reasonable care when handling any Epiroc property leased or otherwise provided to Customer, but that Epiroc remains owner of, and always in accordance with Epiroc's reasonable instructions to limit risk for damage to Epiroc's property;

14.11. not disclose any of the Epiroc Group's or a Licensor's Intellectual Property to any third party for any reason or purpose whatsoever without the prior written consent of Epiroc;

14.12. not copy, access, adapt, utilise, employ, exploit, expose or in any other manner whatsoever use any of the Epiroc Group's or Licensor's Intellectual Property rights for any purpose whatsoever;

14.13. inform Epiroc of all relevant Customer policies, health and safety, physical and information security and remote access requirements that apply to any of the Customer's Premises to which Epiroc requires access;

14.14. notify Epiroc within 14 (fourteen) days of any change of business address;

- 14.15. maintain the Products in proper repair and good working order;
- 14.16. allow reasonable facilities for the inspection of the good; and
- 14.17. advise Epiroc forthwith of any potential risk to, or loss or damage to, the Products.

15. General warranties

- 15.1. Each Party hereby warrants to the other that:
 - 15.1.1. it has the requisite authority and capacity to enter into these Terms;
 - 15.1.2. it shall at all times comply with Applicable Laws; and
 - 15.1.3. these Terms, including each Customer Agreement, constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms.
- 15.2. The Customer warrants to Epiroc that:
 - 15.2.1. any and all information provided to Epiroc is true, accurate and complete in all respects;
 - 15.2.2. it shall not do anything or omit the doing of anything, which is likely to adversely affect or reflect on the name, reputation, business or goodwill of Epiroc;
 - 15.2.3. it shall comply with the Policies, which may be modified by Epiroc from time to time and in its sole discretion, and the Customer shall adhere to any such updates and/or modifications. Any material updates or modifications to the Policies shall be communicated to the Customer;
 - 15.2.4. it is authorised to use the Products and/or receive the Services, as may be applicable, in accordance with the provisions of these Terms;
 - 15.2.5. to the extent permitted by Applicable Laws, the Terms constitute a written undertaking to take specified steps sufficient to ensure, as far as reasonably practicable, that the Products will be safe and without risk to health and safety when used properly and that it complies with Applicable Laws; and
 - 15.2.6. it has and complies with all the necessary licences, certificates, authorisations and consents required to use the Products and/or receive the Services, as may be applicable.

16. Force majeure

- 16.1. Should a Party ("**Affected Party**") be prevented from fulfilling any of its obligations in terms of these Terms or a Customer Agreement, save for any payment obligations, as a result of an event of Force Majeure, then:

- 16.1.1. those obligations shall be deemed to have been suspended to the extent that and for so long as the Affected Party is so prevented from fulfilling them, and the corresponding obligations of the other Party ("**Unaffected Party**") shall be suspended to the corresponding extent;
- 16.1.2. the Affected Party shall without undue delay notify the Unaffected Party in writing of such event of Force Majeure and such notice shall include an estimation of the approximate period for which the suspension will endure. Such estimate shall not be binding on the Affected Party; and
- 16.1.3. the duration of these Terms, or the affected Customer Agreement, as well as each period within which, and each date by which, any obligation is required to be performed in terms of these Terms or a Customer Agreement shall be extended or postponed, as the case may be, by the period of suspension.
- 16.2. Should an event of Force Majeure continue for more than 3 (three) months after the date of the notice referred to in clause 16.1.2, then the Unaffected Party shall be entitled (but not obliged) to terminate these Terms, or the affected Customer Agreement, as the case may be, by giving not less than 30 (thirty) days written notice to the Affected Party.

17. Confidentiality

- 17.1. During the existence of these Terms and for a period of 5 (five) years after the termination or expiry of the last of the Customer Agreements, each Party shall keep the Confidential Information confidential.
- 17.2. Each Party shall use the Confidential Information solely in accordance with the performance of its obligations under these Terms and shall not directly or indirectly use the Confidential Information for its own benefit or the benefit of any other person. The receiving Party agrees to protect the Confidential Information by using the same standard of care used to safeguard its own information of a confidential and/or proprietary nature and by taking all reasonable steps to prevent any unauthorised disclosure of such Confidential Information.
- 17.3. Each Party acknowledges and agrees that it shall not disclose the Confidential Information to any person other than its employees, directors or advisers who need to know the Confidential Information, provided that such person to whom disclosure is made is or agrees to be bound by confidentiality obligations no less stringent than that of these Terms.

17.4. This clause **Error! Reference source not found.** does not apply to information which:

17.4.1. is in or comes into the public domain other than by breach of these Terms or any other obligation of confidentiality in a Customer Agreement or otherwise;

17.4.2. was already known by the receiving Party without any obligation of confidentiality;

17.4.3. was subsequently lawfully disclosed to the receiving Party by a third party, who did not acquire the information under an obligation of confidentiality; or

17.4.4. is independently developed by or for the receiving Party without misappropriation of disclosing Party's Confidential Information.

17.5. Notwithstanding the foregoing, each Party shall be entitled to make any disclosure required under an order of a court, tribunal or authority of competent jurisdiction.

17.6. Except in compliance with any requirement of a listed stock exchange, a Party shall not publish any announcement in relation to the conclusion and/or contents of these Terms, including any Customer Agreement, without the prior written consent of the other Party, which approval shall not be unreasonably withheld.

17.7. Upon the expiration or termination of these Terms, for any reason, the receiving Party shall, unless otherwise required by any Applicable Laws, promptly:

17.7.1. destroy all Confidential Information of the disclosing Party, prepared or generated by the receiving Party without retaining a copy of such material; or

17.7.2. promptly deliver to the disclosing Party all Confidential Information of the disclosing Party, together with all copies thereof, in the possession, custody or control of the receiving Party, provided however that the receiving Party may retain a list that contains general descriptions of the Confidential Information it has returned or destroyed, to facilitate the resolution of any dispute that may arise after the disclosing Party's Confidential Information is returned or destroyed.

18. Personal data and privacy

18.1. The Parties acknowledge and agree that, for the duration of these Terms, they may each have access and otherwise process certain Personal Data for the purpose of administering the Parties contractual relationship as well as for delivery and use of Products and Services. How Epiroc process personal data as the responsible party is described in Epiroc's external privacy notice available here: <https://www.epiroc.com/en-za/privacy-portal/privacy-notice>.

18.2. The Parties specifically record that all Personal Data shall constitute Confidential Information, and shall be protected as provided for in these Terms.

18.3. Each Party hereby warrants that it shall, to the extent applicable, comply with Applicable Laws. If relevant, the Parties shall enter those agreements required for compliance with Applicable Laws with respect to the processing of Personal Data.

18.4. The Customer hereby warrants that it shall not provide any Personal Data to Epiroc without the prior written consent of the Data Subject to whom the Personal Data relates, or pursuant to another lawful basis, which consent or lawful basis will include the processing by Epiroc of its Personal Data and the transfer of its Personal Data to a third party who is in a foreign country, and the Customer hereby indemnifies Epiroc fully for, and holds it harmless against, any claims made against Epiroc arising out of the provision of Personal Data to it by the Customer.

18.5. Epiroc shall take reasonable steps to identify all reasonably foreseeable internal and/or external risks, posed to Personal Data under its possession, care and/or control and to establish and/or maintain appropriate safeguards against any risks identified.

18.6. The Customer will indemnify and hold Epiroc harmless against all claims, demands, actions, proceedings, damages, charges, costs and expenses (including legal costs and expenses) as well as penalties and fines arising from the Customer's non-compliance with the provisions of this clause and any relevant privacy protection legislation which may be brought against Epiroc.

19. Intellectual property

19.1. All right and title in and to the Epiroc Group's Intellectual Property, including without limitation any and all of the trade names, trademarks, copyrights and other Intellectual Property rights used or embodied in or in connection with the Products and Services (including associated specifications, manuals and other Product and Services documentation), shall be and remain the sole property of the Epiroc Group, and (save as expressly set out herein, or in a Customer Agreement), no Intellectual Property rights therein are granted or assigned to the Customer under these Terms nor under any Customer Agreement.

19.2. Customer may only use the Epiroc Group's and/or the Licensors' Intellectual Property that forms part of the Products and Services in accordance with these Terms and the Customer Agreement, and only to the extent necessary to enable the normal use of such Products and Services for the agreed time period.

19.3. For the avoidance of doubt, the Parties acknowledge and agree that:

- 19.3.1. Epiroc shall have the right to protect, exploit, defend, claim relief and damages, assign and transfer any rights and perform any other act that an owner of Intellectual Property is entitled to perform in respect of Epiroc's Intellectual Property, as Epiroc deems appropriate, without the consent of the Customer and/or any third party; and
- 19.3.2. any jointly created Intellectual Property that has been created or developed for the Customer shall be exclusively owned by Epiroc, during and after the termination of these Terms.
- 19.4. Epiroc may, at its own expense, make application for the registration of any jointly created Intellectual Property in Epiroc's or its nominee's name. The Customer shall support Epiroc, within reason, and sign all such documents and perform all such acts as may be reasonably required in relation to such application, cession, assignment, transfer and/or registration as requested by Epiroc. At the request of Epiroc, the Customer shall, to the extent reasonably required, prove the subsistence of any jointly created Intellectual Property for the purposes of application, registration, enforcement and/or any other form of protection thereof in any country.
- 19.5. No additional compensation shall be paid to the Customer in respect of such acts that the Customer is required to perform in terms of this clause **Error! Reference source not found.**
- 19.6. Should the Customer fail to sign such documents referred to in clause 19.3.1 above and/or fail to hand them to Epiroc or its representative within 5 (five) Business Days after being called upon in writing to do so, then the Customer hereby irrevocably and in *rem suam* appoints Epiroc with the power of substitution, as the agent of the Customer, to do all such things and sign all such documentation, on the Customer's behalf, as may be necessary to implement the provisions of this clause **Error! Reference source not found.**
- 19.7. Neither Party shall acquire any right, title or interest (without the prior written consent of the other) entitling it to use the name, service marks, trademarks or logos of the other. The Parties undertake in favour of one another not to perform any act, which would injure the reputation or goodwill attaching to their respective, names and trademarks or which would prejudice their rights in and to such names and trademarks.
- 19.8. To the extent that there are any components of Epiroc's Intellectual Property included in Deliverables which the Parties have expressly agreed in writing to be retained by the Customer following the termination or expiration of the relevant Customer Agreement, Epiroc grants to the Customer, upon full and final payment of all Fees in respect of the relevant Deliverables, a royalty-free, non-exclusive, non-transferable license to use such Intellectual Property rights for its own internal business

purposes only and solely to enjoy its continued use of such Deliverables.

- 19.9. To the fullest extent permitted by law, Customer must not disassemble, decompile, decipher or reverse engineer the Intellectual Property of the Epiroc Group or a Licensor.

20. Rights to use data

- 20.1. Customer Data may be generated, accumulated and stored:
- 20.1.1. in the Products and/or on a Customer's servers in connection with the Customer using Products or Services that are either connected through internet or other means of data transmission; and/or
- 20.1.2. on the Epiroc Group's or Third Party Service Provider's servers, whether on-premise or cloud, if relevant for the provision of the Products and Services, or the maintenance or repair thereof, or other contractual commitments with the Customer.
- 20.2. The Customer owns all its Customer Data.
- 20.3. The Epiroc Group shall be entitled to use Customer Data as required to perform its undertakings as set out in these Terms and the Customer Agreements. Moreover, the Epiroc Group shall have the right to analyse and otherwise use Customer Data to develop and improve its products and services for the benefit of the Customer and other customers. If Customer Data is used for such purposes Epiroc shall use aggregated or anonymised data and shall always handle Customer Data in accordance with the confidentiality undertakings set out in these Terms.
- 20.4. Data emanating from Epiroc's analytics constitutes Epiroc Data. Epiroc owns all Epiroc Data.
- 20.5. The Customer is, upon written request to Epiroc, entitled to obtain Customer Data stored by Epiroc in a machine-readable form. Epiroc shall be entitled to reasonable remuneration for any work related to providing the Customer with Customer Data.

21. Liability for defects

21.1. General

The provisions in this clause 20.3 (Liability for Defects) shall be read in conjunction with the Epiroc Warranty Policy, which, to the extent there is any inconsistency, shall take precedence over this clause 20.3.

21.2. Warranties applicable to the Products and Services

- 21.2.1. All warranties applicable to the Products and/or Services, together with the warranty periods, are contained in the Epiroc Warranty Policy, Customer Agreement and/or applicable licence terms. The sole and exclusive remedy available to the Customer for any claim, demand or action

under a warranty shall be detailed in and governed by the Epiroc Warranty Policy, Customer Agreement and/or licence terms.

- 21.2.2. If the Customer within the applicable warranty period finds that a Product or Service is Defective, the Customer shall immediately notify Epiroc in writing and provide Epiroc with detailed information and evidence regarding the nature and extent of the Defect within the applicable warranty period.

21.3. Exclusions and limitations

- 21.3.1. The Customer acknowledges and agrees that the Products and Services are provided to the Customer on an "as is" basis, and save as expressly set out herein or in an applicable Customer Agreement, no other warranties are made by Epiroc, whether express, implied in law or residual, in connection with the Products and/or the Services, including any warranties in respect of reliability, merchantability and fitness for a particular purpose, which are expressly disclaimed.
- 21.3.2. Except as set out in the Terms, no statements or information obtained by the Customer from (or on behalf of) Epiroc in connection with the Products and Services will create any warranty, condition or obligation on Epiroc, and the Customer acknowledges and agrees that it has not relied on any such statements or information.
- 21.3.3. The Customer further acknowledges that Epiroc cannot grant any additional rights or take any additional responsibility or liability, in excess of applicable third-party terms for any third-party products and services forming part of the Products and Services.
- 21.3.4. In the event Products or Services are sold by Epiroc but not manufactured or created by the Epiroc Group, they are not warranted by Epiroc and shall carry whatever warranty (if any) which the manufacturer/creator has conveyed to Epiroc to the extent it can be passed on to the Customer.
- 21.3.5. Epiroc shall not be liable for Defects due to the design, data, materials or production specified or instructed by the Customer.
- 21.3.6. Epiroc is not liable for Defects occurring due to operation of the Products or Services in breach of the instructions or safety manuals or for other purposes than what the Products and Services are designed for as per the Customer Agreement and applicable instructions and safety manuals.
- 21.3.7. The Customer acknowledges and agrees that the Products and Services may require maintenance in accordance with the manuals and instructions provided by Epiroc and that the lack of or

incorrect maintenance of the Products and/or Services may negatively affect Products and/or Services.

- 21.3.8. Epiroc is not liable for Defects occurring due to misuse, negligence, storage, transportation, repair, installation, modification, normal wear and tear, or improper handling by the Customer or any third party not acting on behalf of Epiroc.
- 21.3.9. Epiroc is not liable for Defects occurring due to: (i) bugs in third party products and services, that cannot be circumvented by Epiroc by way of a work-around, using commercially reasonable efforts, for which there is not yet a bug fix available on the market; and/or (ii) the Customer not installing a software update recommended by the Epiroc Group;
- 21.3.10. Epiroc shall have no liability for any Defect that the Customer was reasonably aware of during any acceptance testing or commissioning which was not reported in writing to Epiroc before the Product or Services was approved or used by the Customer.
- 21.3.11. If Epiroc, pursuant to the Epiroc Warranty Policy, is obliged to remedy or redeliver a Product or Service such obligation shall be fulfilled at the place where Epiroc made the original delivery unless Epiroc instructs the Customer otherwise.
- 21.3.12. Notwithstanding the provisions set out in this clause 20.3, Epiroc shall not in any event be liable for Defects in any part of the Products or Services: (i) for longer than the applicable warranty period; and (ii) if not reported to Epiroc within three (3) months after the Customer reasonably should have been aware of the Defect.
- 21.3.13. If the use of a Product or Service exceeds what the Parties have agreed, the warranty period shall be reduced proportionally.
- 21.3.14. Please see the Epiroc Warranty Policy for further specific exclusions.

21.4. Process

The specific processes to submit a warranty claim are outlined in the applicable Epiroc Warranty Policy which is available on request.

22. General liability and limitations of liability

- 22.1. In no event shall Epiroc be liable to the Customer for any direct, indirect, incidental, special, consequential or any other loss or damages or any loss of revenue, loss of business, loss of profits, loss of data, loss of reputation or loss of goodwill.
- 22.2. These limitations of liability, as contained in this clause 22 shall apply regardless of the form of action, whether in contract, delict, or otherwise, whether arising from negligence, misrepresentation, breach of contract, or

otherwise, and regardless of whether either Party has been advised as to the possibility of such damages and/or losses occurring.

22.3. Notwithstanding anything to the contrary, Epiroc's liability for damages and/or loss under these Terms and any Customer Agreement shall, be limited:

22.3.1. in aggregate, to a maximum amount equal to 25% (twenty-five percent) of the aggregate amount (excluding taxes) paid by the Customer to Epiroc during the calendar year that the claim was made; and

22.3.2. for claims under a specific Customer Agreement, Epiroc liability is limited to 25% (twenty-five percent) of the aggregate amount (excluding taxes) paid by the Customer under the specific Customer Agreement.

22.4. Epiroc is not liable for any damage to property or person caused by the Products or use of the Products or Services in breach of Applicable Laws after they have been delivered to the Customer, save for mandatory liability of Epiroc pursuant Applicable Laws regarding product liability. If Epiroc incurs liability towards any third party for such damage to property or person caused by the use of Products and Services in breach of Applicable Laws, as described in the preceding sentences, the Customer shall indemnify, defend and hold the Epiroc Group harmless of such liability.

23. Insurance

Each Party will take out and maintain, at its own expense, adequate insurance cover with a reputable insurer, in respect of its risks under these Terms and Customer Agreements, and will, on reasonable written request, provide evidence of such insurance to the other Party.

24. Breach and termination

24.1. Should any Party (the "**Defaulting Party**") commit a breach of any of its material obligations in terms hereof, then the Party who is entitled to receive performance of the obligations in question (the "**Aggrieved Party**") shall be entitled to give the Defaulting Party 30 (thirty) Business Days written notice to remedy the breach. If the Defaulting Party fails to remedy the breach in question within such period, the Aggrieved Party shall be entitled, without prejudice to its other rights at law, to cancel the Customer Agreement to which the breach relates, or to claim immediate payment and/or performance by the Defaulting Party of all of the Defaulting Party's obligations set out in the Customer Agreement to which the breach relates, in either event without prejudice to the Aggrieved Party's rights to claim damages (including all legal costs on an attorney and own client basis and any value added taxes).

24.2. Notwithstanding the above, these Terms and/or any Customer Agreements in force at the time may be immediately terminated by Epiroc on written notice to

the Customer, if the Customer:

24.2.1. is placed under liquidation, or business rescue, whether provisionally or finally;

24.2.2. makes any general arrangement or composition with its creditors or any class of creditors;

24.2.3. has a judgment taken against it and fails to take steps to satisfy or rescind such judgment within 30 (thirty) days after the granting of such judgment;

24.2.4. ceases or threatens to cease to carry on its business; and/or

24.2.5. disposes of a major portion of its business or assets, or suffers any change in Control in its shareholding.

24.3. Epiroc shall be entitled to terminate affected Customer Agreements where Epiroc is dependent on a Third Party Service Provider and such Third Party Service Provider ceases to conduct business with the Epiroc Group, in whole or in part, and Epiroc is consequently unable to, using reasonable commercial efforts to, find a replacement Third Party Service Provider within a reasonable time.

25. Rights on termination

Notwithstanding any other provision of these Terms, on the termination of these Terms or any Customer Agreement for any reason whatsoever:

25.1. the Customer shall, at its own cost, return to Epiroc all Deliverables in its possession, unless otherwise agreed between the Parties in the Customer Agreement;

25.2. any amounts due and owing to Epiroc shall immediately be paid by the Customer to Epiroc;

25.3. the Customer shall immediately cease all use whatsoever of any Intellectual Property;

25.4. the Customer shall no longer be entitled to use the Services and Epiroc shall be entitled to discontinue the provision of the Services;

25.5. to the extent permitted in law, the Customer shall provide a written undertaking pursuant to clause 15.2.5; and

25.6. the Customer shall deliver and/or destroy, at the election of Epiroc, any and all materials in its possession or control that bear and/or include their Intellectual Property and confirm and warrant in writing to Epiroc, as the case may be, that it has done so.

26. Dispute resolution and arbitration

26.1. In the event of there being any dispute or difference between the Parties arising out of these Terms or a Customer Agreement, the Parties shall forthwith meet to attempt to settle such dispute or difference and failing such settlement within a period of 5 (five)

Business Days, the said dispute or difference shall on written demand by any Party be submitted to arbitration in Windhoek in accordance with the rules of the Arbitration Foundation of Southern Africa ("**AFSA**") for commercial arbitration (as last applied by AFSA) ("**AFSA Rules**"), which arbitration shall be administered by AFSA.

- 26.2. Should AFSA, as an institution, not be operating at that time or not be accepting requests for arbitration for any reason, then the arbitration shall be conducted in accordance with the AFSA Rules before an arbitrator appointed by agreement between the Parties to the dispute or failing agreement within 10 (ten) Business Days of the demand for arbitration, then any Party to the dispute shall be entitled to forthwith call upon the chairperson of the Society of Advocates of Namibia to nominate the arbitrator, provided that the person so nominated shall be an advocate of not less than 10 (ten) years standing as such, with experience in presiding over corporate law disputes. The person so nominated shall be the duly appointed arbitrator in respect of the dispute. In the event of the attorneys of the Parties to the dispute failing to agree on any matter relating to the administration of the arbitration, such matter shall be referred to and decided by the arbitrator whose decision shall be final and binding on the Parties to the dispute.
- 26.3. Either Party to the arbitration may appeal the decision of the arbitrator or arbitrators in terms of the AFSA Rules for commercial arbitration.
- 26.4. Nothing herein contained shall be deemed to prevent or prohibit a Party to the arbitration from applying to an appropriate court for urgent relief or for judgment in relation to a liquidated claim.
- 26.5. Any arbitration in terms of this clause **Error! Reference source not found.** (including any appeal proceedings) shall be conducted in English and *in camera* and the Parties shall treat as confidential, details of the dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.
- 26.6. This clause **Error! Reference source not found.** will continue to be binding on the Parties notwithstanding any termination or cancellation of these Terms.
- 26.7. The Parties agree that the written demand by a Party to the dispute in terms of clause 26.1 that the dispute or difference be submitted to arbitration, is to be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act No. 68 of 1969 and any other Applicable Laws.

27. Anti-bribery and corruption

- 27.1. The Parties hereby confirm that it is their stated policy not to transact, directly or indirectly, with any person involved in or generally associated with corruption, organised crime, bribery, money-laundering, terrorism or any other criminal activity. To this effect, each Party

shall (and shall ensure that any employee shall) comply with all Applicable Law relating to bribery and corruption including:

- 27.1.1. the Anti-Corruption Act 8 of 2003;
- 27.1.2. the Prevention of Organized Crime Act 29 of 2004;
- 27.1.3. Financial Intelligence Act 13 of 2012;
- 27.1.4. the Bribery Act of 2010, as legislated in the United Kingdom; and
- 27.1.5. the Foreign Corrupt Practices Act of 1977, as legislated in the United States of America, ("**Anti-Bribery Law**").
- 27.2. Each Party shall furthermore:
- 27.2.1. not do or omit to do anything likely to cause the other Party to be in breach of any such Anti-Bribery Law; and
- 27.2.2. not give, offer, promise, receive, or request any bribes, including in relation to any public official.
- 27.3. The Customer represents and covenants, (on an on-going basis) that:
- 27.3.1. it is familiar with and will strictly comply with Anti-Bribery Law;
- 27.3.2. it shall not retain, employ, or permit as an owner, director, officer or employee of the Customer, any government official who has responsibility for, or authority over, the award of contracts to the Customer or Epiroc or any of their respective Affiliates;
- 27.3.3. upon signing of each Customer Agreement no current owner, director, officer, or employee of the Customer is a government official or employee; and
- 27.3.4. that if during the term of these Terms any owner, director, officer, or employee of the Customer accepts a temporary or permanent government position, the Customer shall immediately notify Epiroc.
- 27.4. For purposes of these Terms, a government official is an officer or employee of any department, agency, court, or any instrumentality of a government (including municipal, provincial, central, federal, or any other level of government) including employees of government owned or controlled entities, and legislators, members of parliament or parliamentary committees, political party officials and employees, and candidates for political office.
- 27.5. Epiroc will only be paid by the Customer by electronic funds transfer or other traceable instrument to a bank account nominated by Epiroc, in Epiroc's name.
- 27.6. The Customer hereby irrevocably and unconditionally indemnifies Epiroc and its directors, officers,

employees, agents and Affiliates against all losses which Epiroc suffers or may suffer, as a result of breach of this clause **Error! Reference source not found.** by the Customer.

- 27.7. The Customer hereby represents, warrants and covenants that it will neither receive, nor offer, give, pay or promise to pay, either directly or indirectly, anything of value to anyone in connection with the appointment of Epiroc in respect of these Terms. Furthermore, the Customer shall notify Epiroc immediately in writing with full particulars in the event that the Customer receives a request from anyone requesting illicit payment.
- 27.8. Notwithstanding any other provision in these Terms and without prejudice to its right to claim damages under these Terms or in law, Epiroc shall be entitled to immediately terminate these Terms and any Customer Agreement if it concludes, in its reasonable discretion, that the Customer has not complied with the provisions of this clause **Error! Reference source not found.** or clause **Error! Reference source not found.** to Epiroc's reasonable satisfaction.
- 27.9. In addition, Epiroc will be entitled to recover from the Customer the amount of any loss arising or resulting from such termination and/or from the Customer's (or the Customer's employees, representatives or sub-contractors) non-compliance with the Anti-Bribery Law.

28. Anti-slavery

- 28.1. The Customer represents and covenants (on an ongoing basis) that:
- 28.1.1. it is familiar with and will strictly comply with the Anti-Slavery Laws; and
- 28.1.2. it will ensure that its Affiliates, suppliers, subcontractors, contractors, or any director, officer, employee any of the aforementioned parties comply with the Anti-Slavery Laws.

29. Trade compliance and sanctions

- 29.1. The Customer represents and covenants (on an ongoing basis) that neither it, its subsidiaries, nor any director or officer of the Customer or its Affiliates, is targeted by, or is owned or controlled by a person or entity that is targeted by, any economic or financial sanctions or trade embargoes, including without limitation those of the United Nations, the European Union, any Member State of the European Union, the United Kingdom or the United States (collectively, "**Sanctions**").
- 29.2. The Customer undertakes:
- 29.2.1. to comply with all Sanctions and export controls, that are applicable to it and its business;
- 29.2.2. not to sell, resell, export, re-export, transfer, re-transfer, dispose of, disclose or otherwise deal

with the Products or other products or technology supplied by Epiroc, directly or indirectly, to any country, destination, company or person in violation of Sanctions or export control laws or in violation of any prohibited end-use pursuant to Sanctions or export control laws;

- 29.2.3. not to use the services or technology provided by Epiroc, directly or indirectly, in violation of Sanctions or export control laws or in violation of any prohibited end use pursuant to Sanctions or export control laws;
- 29.2.4. not to do anything which would cause Epiroc to be in breach of Sanctions or export control laws;
- 29.2.5. to inform Epiroc without delay in the event that it becomes aware of any event or matter that might result in a violation of applicable Sanctions or export controls by the Customer or by Epiroc; and
- 29.2.6. to and hereby indemnifies and holds Epiroc harmless from and against any loss, liability, claim, proceeding, action, fine, cost and damages of whatever nature that Epiroc or any entity in the Epiroc Group may incur or sustain by reason of the Customer being in breach of the representations, covenants and undertakings given in this clause 28.1.1.
- 29.3. If Epiroc, in its sole discretion, determines that its continued performance would or may result in a violation of applicable Sanctions or export control laws, or if Epiroc deems that the Customer fails to comply with this clause 28.1.1, Epiroc is entitled to immediately suspend and/or terminate all agreements between the Parties without any liability towards the Customer, and reserves the right to refuse to enter into or to perform any order and to cancel any order at its sole discretion.

30. No re-export to Russia or Belarus

- 30.1. The Customer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or Belarus for use in the Russian Federation or Belarus any goods supplied under or in connection with these Terms and/or the Customer Agreements that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014 and Article 8g of Council Regulation (EU) No 2024/1865.
- 30.2. The Customer shall undertake its best efforts to ensure that the purpose of clause 31.1 is not frustrated by any third parties further down the commercial chain, including by possible resellers.
- 30.3. The Customer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of clause 31.1.
- 30.4. Any violation of clauses 31.1, 31.2 or 30.3, shall constitute a material breach of an essential element of the Terms

and/or the Customer Agreements, and Epiroc shall be entitled to seek appropriate remedies, including:

- 30.4.1 termination of these Terms or any applicable Customer Agreement; and
- 30.4.2 a penalty of 10% (ten percent) of the total value of the applicable Customer Agreements under these Terms or price of the goods exported, whichever is higher.
- 30.5. The Customer shall immediately inform Epiroc about any problems in applying clauses 30.1, 30.2 or 30.3, including any relevant activities by third parties that could frustrate the purpose of clause 30.1. The Customer shall make available to Epiroc, information concerning compliance with the obligations under clauses 30.1, 30.2 or 30.3 within two weeks of the request of such information.
- 30.6. To the extent intellectual property rights or trade secrets (including rights to access or re-use any material or information protected by intellectual property rights or protected as trade secret) related to common high priority items as listed in Annex XL of EU Regulation 833/2014 (as amended) or Annex XXX of EU Regulation 765/2006 (as amended) are provided by Epiroc, the Customer hereby warrants to Epiroc that the Customer shall prohibit possible sublicensees from using such intellectual property rights, trade secrets or other information in connection with such common high priority items that are intended for sale, supply, transfer or export, directly or indirectly, to Russia or Belarus, or for use in Russia or Belarus.

31. Epiroc global trade and compliance policy

- 31.1. To ensure compliance with the Epiroc Global Trade and Compliance Policy, as well as legal and regulatory requirements, all cash on delivery ("**COD**"), Customers shall provide Epiroc with the following:
 - 31.1.1. completed Epiroc application form for COD;
 - 31.1.2. completed Epiroc screening data sheet;
 - 31.1.3. signed end user certificate;
 - 31.1.4. copy of the Customer's company registration letter;
 - 31.1.5. copy of the Customer's VAT registration certificate;
 - 31.1.6. copy of the Customer's Director(s) identification documents; and
 - 31.1.7. any other documentation or information reasonably requested by Epiroc which may be required for Epiroc to comply with Applicable Laws.
- 31.2. In addition to the above, if a COD Customer purchases Spare Parts, it is required to provide Epiroc with:
 - 31.2.1. the relevant Epiroc machine model;
 - 31.2.2. the serial number of the machine;

31.2.3. end-user details such as the name and location of the end user who will be using the machine; and

31.2.4. any other additional information which may be required for Epiroc to comply with Applicable Laws.

32. Addresses for notices

32.1. The Parties choose as their nominated addresses, the addresses set out in the applicable Customer Agreement, for all purposes arising out of or in connection with these Terms and such Customer Agreement, including its breach or termination, at which addresses all processes and notices may validly be served upon or delivered to the Parties.

32.2. Any notice given in terms of these Terms shall be in writing and shall:

32.2.1. if delivered by hand be deemed to have been duly received by the addressee on the date of delivery; or

32.2.2. if transmitted by email be deemed to have been received by the addressee on the day of dispatch, unless such day is not a Business Day, in which event it shall be deemed to have been received on the next Business Day.

32.3. Notwithstanding anything to the contrary contained in these Terms, a written notice or communication actually received by one of the Parties from another, including by way of email or facsimile transmission, shall be adequate written notice or communication to such Party.

33. Governing law and jurisdiction

33.1. These Terms and any the Customer Agreements will, in all respects, be governed by and construed under the laws of the Republic and all disputes, actions and other matters relating thereto will be determined in accordance with such law.

33.2. Subject to clause **Error! Reference source not found.**, the Parties hereby consent and submit to the non-exclusive jurisdiction of the High Courts of the Republic (Windhoek) in any dispute arising from or in connection with these Terms or any Customer Agreements.

34. General

34.1. These Terms, read with the Customer Agreements, supersede all agreements between the Parties, and constitute the entire agreement between the Parties, with respect to the subject matter dealt with herein and no undertaking, representation, warranty or promise not contained herein shall be of any force between the Parties.

34.2. No alteration, variation, novation or cancellation by agreement of, addition or amendment to, or deletion from these Terms, including this clause 34.2, shall be of any force or effect unless in writing and signed by or on

behalf of the Parties hereto.

34.3. The Customer acknowledges and agrees that Epiroc provides and/or offers the Products and/or Services, or similar products and services, to third parties who may carry on a similar business to that carried on by the Customer, and the Customer agrees that Epiroc is not an exclusive supplier to the Customer.

34.4. Neither of the Parties shall be entitled to act on behalf of, represent, have the authority to bind, incur, or obligate the other unless duly authorised in writing. These Terms and/or the Customer Agreements, do not constitute, and shall not be deemed to constitute, a partnership, joint venture or the like between the Parties.

34.5. No waiver or abandonment by a Party of any of its rights in terms of these Terms shall be binding on that Party, unless such waiver or abandonment is in writing and signed by the waiving Party.

34.6. If any provision hereof is held to be illegal, invalid or unenforceable for any reason, such provision shall be deemed to be *pro non scripto*, but without affecting, impairing or invalidating any of the remaining provisions of these Terms which shall continue to be of full force and effect.

34.7. To the extent that the provisions of these Terms constitute a *stipulatio alteri* in favour of any company within the Epiroc Group, the applicable company within the Epiroc Group shall be deemed to have accepted the benefit received by or due to it, without being required to provide notice.

34.8. No remedy conferred by these Terms is intended, unless specifically stated, to be exclusive of any other remedy which is otherwise available at law, by statute or otherwise. Each remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law, by statute or otherwise. The election of any one or more remedy by a Party shall not constitute a waiver by such Party of the right to pursue any other remedy available at law.

34.9. The Customer shall not be entitled to cede, assign or transfer all or any of its rights and/or obligations in terms of these Terms or any Customer Agreement, without the prior written consent of Epiroc.

34.10. Epiroc shall be entitled to cede, assign or transfer all or any of its rights and/or obligations in terms of these Terms and/or any Customer Agreement to any third party, provided that it gives prior written notice thereof to the Customer.

34.11. Epiroc is entitled to appoint subcontractors as its duly authorised agent and representative for the purposes of performing any of the Services, and/or delivering any Products. The Customer shall cooperate with any subcontractor, appointed by Epiroc and to do all such things as may be necessary to facilitate such subcontractor's role. Epiroc shall inform the Customer in

advance in case an appointed subcontractor needs to operate on the Customer's Premises.

35. Interpretation and definitions

In these Terms:

- 35.1. a reference to a Party in a document includes that Party's successors-in-title and permitted assigns;
- 35.2. unless the context clearly indicates otherwise, words importing natural persons shall include a reference to juristic personae and *vice versa*; a reference to one gender includes a reference to the other genders; a reference to the singular includes a reference to the plural and *vice versa*;
- 35.3. when any number of Business Days is prescribed in these Terms, same shall be reckoned exclusively of the first and inclusively of the last Business Day;
- 35.4. where figures are referred to in numerals and words, if there is any conflict between the two, the words shall prevail;
- 35.5. recordals and introductions shall be binding on the Parties and are not merely for information purposes;
- 35.6. the rule of construction that, in the event of ambiguity, the agreement shall be interpreted against the party responsible for the drafting thereof, shall not apply;
- 35.7. the use of the word "including" followed by a specific example shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s;
- 35.8. the use of the word "material" shall mean, when used as an adjective in conjunction with an event, condition, circumstance, effect, or other item, that there is a substantial likelihood that a reasonable person would regard it to be of great import or consequence to the event, condition, circumstance, effect, or item in evaluating the Party to which it relates and/or the event, condition, circumstance or effect contemplated in these Terms;
- 35.9. a reference to any statutory enactment or regulation shall be construed as a reference to that enactment or regulation as at the Signature Date and as amended, re-enacted or substituted from time to time thereafter;
- 35.10. the expiration or termination of these Terms shall not affect such of its provisions as expressly provide that they will continue to apply after such expiration or termination or which of necessity must continue to apply after such expiration or termination (including provisions on confidentiality and limitation of liability), notwithstanding that the clauses themselves do not expressly provide for this;
- 35.11. any communication which is required to be "in writing" shall include a communication which is written or produced by any substitute for writing or which is partly

written and partly so produced, and shall include printing or electronic mail or any form of electronic communication or other process or partly one and partly another;

- 35.12. any reference to "in writing and signed" by a Party shall, notwithstanding anything to the contrary in these Terms, be read and construed as including any form of electronic signature, accordingly, the provisions of the Electronic Transactions Act No. 4 of 2019 shall apply;
- 35.13. unless specifically stated to the contrary, if any provision requires the consent, approval or agreement of any Party, that Party may not act unreasonably in withholding or delaying any such consent, approval or agreement; and
- 35.14. unless the context indicates a contrary intention, the following words and expressions shall bear the meanings assigned to them hereunder and cognate words and expressions shall bear corresponding meanings:

"Affiliate"

any legal entity that a Party owns, that owns a Party, or that is under common ownership with a Party, whereby "ownership" means direct or indirect Control of more than a 50% interest in an entity

"Anti-Slavery Laws"

applicable laws, statutes, regulations, codes or other instruments relating to Modern Slavery, and the ban of it, in force from time to time (including the UN Guiding Principles on Business and Human Rights) where "Modern Slavery" means any exploitation of a worker, human trafficking, slavery, slavery-like behaviour, servitude, forced labour, child labour, debt bondage or deceptive recruiting for labour or services or similar behaviour, and as referenced in Anti-Slavery Laws

"Applicable Laws"

all applicable laws, including Anti-Bribery Law, statutes, statutory instruments, orders, regulations and codes of practice in the Republic, directly relating to any Party or the delivery, use, performance and/or receipt of the Products and/or the Services

"Business Day"

any day other than a Saturday, Sunday or official public holiday in the Republic

"Confidential Information"

any confidential and/or proprietary information, in any form, that may have been or will be disclosed under these Terms, and/or Customer Agreements (whether before or after the Signature Date)

"Control"

in relation to any person or entity, means the possession, directly or indirectly, of the power to direct or cause the

direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise

"Commencement Date"

the date upon which the Customer may collect, or Epiroc shall deliver the Products and/or commence the provision of the Services, as set out in the relevant Customer Agreement

"Completion Date"

the date upon which that Customer Agreement shall expire by the effluxion of time, as set out in the relevant Customer Agreement, unless completed sooner or otherwise agreed between the Parties in writing

"Consumables"

Products determined by Epiroc to be "consumables" to equipment (typically consumed during the operation of the equipment it is used with and thus required to be exchanged from time to time)

"Customer"

the Party receiving Products or Services under the Customer Agreement

"Customer Agreement"

a Customer Agreement, which may include a Purchase Order on a stand-alone basis or as part of a Customer Agreement, to be entered into by the Parties which shall contain, *inter alia*, a detailed description (specification) of the Products, and/or the Services and/or the service levels, and including any annexures thereto, to be provided by Epiroc

"Customer Data"

data relating to the operations of the Customer and/or the Customer Group that is generated by the Customer Group's use of the Products and Services or that is otherwise inputted in Epiroc's system by Customer

"Customer Group"

the Customer and its Affiliates

"Data Subject"

any juristic or natural person from, or in respect of whom, Personal Data has been requested, collected, collated, processed or stored

"Defect"

any damage, deficiency, fault or inadequacy in design of the Products which is contrary to the specifications agreed in the Epiroc Warranty Policy and/or relevant Customer Agreement, and **"Defective"** shall be construed accordingly

"Deliverable"

a deliverable specified in any Customer Agreement, or any document, product or material provided by Epiroc in relation to the Products or Services

"Epiroc Data"

data relating to the operations of Epiroc and the Epiroc Group and data emanating from Epiroc's analytics of Customer Data

"Epiroc Group"

Epiroc and its Affiliates

"Epiroc Warranty Policy"

Epiroc's applicable Warranty Policy for each Product/Service category, including any warranty policies relating to Epiroc's divisions, which is applicable to all customers in the Republic and is available upon request

"Fees"

the fees payable by the Customer to Epiroc in consideration of the Products and/or the provision of the Services, as detailed in the relevant Customer Agreement

"Force Majeure"

any event or circumstance beyond the reasonable control of the relevant Party (a Party shall not be deemed to have control over its Affiliates, or suppliers acts or omissions) including an act of God, pandemic, epidemic, strikes, lockouts, fire, floods, storms, natural disasters, riot, war (whether declared or not) embargoes, export control, international restrictions, shortage or delay of transport facilities, restrictions on the use of or access to electricity and other sources of power or material, any order of any international authority, any court order, any requirements of any authority or other competent local authority, in each case whether any of these factors affect a Party, its Affiliates or its suppliers or sub-contractors

"Good Industry Practice"

the exercise of the degree of skill and care which would reasonably be expected from a supplier performing services substantially similar to the Services (taking into account factors such as the service levels, term and pricing), to customers of the same nature and size as the Customer

"Intellectual Property"

any ideas, concepts, know-how, methodologies, data processing techniques, databases, trademarks (whether or not registered), copyrights, patents, designs, design rights, design registrations, design applications, inventions (whether or not patented), models, processes, techniques, research, software, source code, trade secrets, inventions rights, rights in goodwill and

reputation, and any other type of intellectual property, whether registered or unregistered (including applications for and rights to obtain, use or for the protection of same)

"Licensor"

the proprietor of any licensed software utilised by Epiroc pursuant to the Product and/or Services, as the case may be

"Parties"

collectively, Epiroc and the Customer, and the term **"Party"** shall refer to either one of them, as the context may require

"Personal Data"

any information that relates to an identified or identifiable living natural person or existing juristic person

"Policies"

directives, guidelines, policies, procedures and practices of Epiroc, including its environmental, health and safety, anti-bribery and corruption, sanctions, global trade and compliance, returns and cancellation policies, Epiroc Warranty Policy and information technology directives, guidelines, policies, procedures and practices, and such other directives, guidelines, policies, procedures and practices of Epiroc as it may apply pursuant to the Terms

"Premises"

the location where the Products and/or Services shall be provided, as specified in the relevant Customer Agreement

"Prime Rate"

the prime bank overdraft rate as charged by Epiroc's corporate bankers to its corporate customers in respect of overdraft facilities, calculated and compounded monthly in arrears, as certified by any manager of such bank whose appointment and designation it shall not be necessary to prove

"Products(s)"

the goods, and/or equipment provided by Epiroc to the Customer, as detailed in the relevant Customer Agreement

"Purchase Order"

an order submitted by the Customer to Epiroc for the purchase of Products and/or Services that forms part of the Customer Agreement, specifying the description, quantities, and Fees of the Products and/or Services, and which is to be based entirely on a valid quotation issued by Epiroc to the Customer

"Spare Parts"

Products determined by Epiroc to be "spare parts" to equipment (typically ordered to replace a lost or damaged part of the equipment or to keep as spare until use of it is needed)

"Services"

the services to be performed and/or provided by Epiroc for the Customer, as detailed in the relevant Customer Agreement

"Service Schedules"

the document that further describes the Products and/or Services to be delivered and/or provided by Epiroc under a Customer Agreement

"Signature Date"

the date upon which the Customer Agreement is signed by the last Party signing in time

"Third Party Service Provider"

a third party service provider, including a Licensor, supplier, vendor and original equipment manufacturer, of either Party, upon whom Epiroc is or may reasonably be reliant upon (either directly or indirectly) in order to provide the Products and/or Services to the Customer and/or upon whom the Customer relies in order to utilize the Products, as may be applicable

"VAT"

value added tax levied in terms of the Value Added Tax Act No 10 of 2000, as amended from time to time