



# FLOORING SYSTEMS

INDUSTRIAL | COMMERCIAL | CONCRETE

## **TERMS AND CONDITIONS OF QUOTATION AND CONTRACT OF ENGAGEMENT FOR GOODS AND/OR SERVICES OFFERED AND DELIVERED BY:**

**FLOOR TECH FLOORING SYSTEMS (PTY) LTD t/a**

Registration Number: **2015/ 334559/ 07**

Hereinafter referred to as **"FTFS"**.

Duly represented by **Wesley Blom** in his capacity as Managing Director of **the Company herein referred to as FTFS.**

## **The quotation and contract of engagement for goods and/or services offered and delivered will be applicable to:**

\_\_\_\_\_  
Identity Number: \_\_\_\_\_

**OR**

\_\_\_\_\_  
Company Registration Number: \_\_\_\_\_

Duly represented by \_\_\_\_\_ in **his / her** capacity as  
\_\_\_\_\_ of **the Customer.**

Hereinafter referred to as **"the Customer"**.

FTFS: \_\_\_\_\_

The Customer: \_\_\_\_\_

## **FLOOR TECH FLOORING SYSTEMS STANDARD TERMS AND CONDITIONS**

1. This document contains the standard terms and conditions that shall apply to, and form part of each and every agreement, whether written or oral, concluded between Floor Tech Flooring Systems (Hereinafter referred to as "FTFS") and the Customer, in respect of the sale and/or supply of any and/or all Goods and/or Services to be delivered by FTFS accordingly.

### **2. INTERPRETATION**

2.1. Clause headings appear in this Agreement for reference purposes only and shall not influence the proper interpretation of the subject matter.

2.2. In this Agreement, except in a context that clearly indicates that some other meaning is intended, the following applies –

2.2.1. "**COMMENCEMENT DATE**" means the date on which **FTFS** has commenced to deliver its Goods and/or Services to the Customer accordingly;

2.2.2. "**TERMINATION DATE**" means the day on which this Agreement is **lawfully terminated** by either party hereto as per the termination provisions, as contained within this Agreement, alternatively upon agreement between **the Parties**, alternatively the date on which FTFS has duly completed its delivery of the Goods and/or Services, to the Customer accordingly;

2.2.3. "**SIGNATURE DATE**" means the date upon which the last party hereto signed and/or accepted this Agreement, alternatively the date on which FTFS has started to deliver the Goods and/or Services to the Customer accordingly;

2.2.4. "**FTFS**" means Floor Tech Flooring Systems (Pty) Ltd and any and/or all duly authorized representatives of FTFS accordingly;

2.2.5. "**THE CUSTOMER**" means jointly and severally, the signatory hereto and/or any entity or person on whose behalf the signatory signs this Agreement accordingly;

2.2.6. "**THE PARTIES**" means the Parties as has been indicated and provided for on the from page of this Agreement, and whom hereinafter will be jointly referred to;

2.2.7. "**SERVICES AND/OR GOODS**" means the Goods and/or Services to be provided by FTFS to the Customer, under this Agreement, including but not limited to the provisions of deliverables, hereinafter referred to as "**Services**";

2.2.8. "**INSTALLATION**" means the application and installation process which FTFS will be attending to and applying, to provide the Customer with *his/her/its* specified and required flooring system(s)/ system coating(s) as per the accepted Quotation accordingly;

2.2.9. "**FLOORING SYSTEM(S)/ SYSTEM COATING(S)**" means the system and product which will be installed by FTFS accordingly and in terms of the accepted Quotation, hereinafter referred to as "**the System(s)**";

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FTFS: \_\_\_\_\_

The Customer: \_\_\_\_\_

- 2.2.10. **"THE SITE"** means the place and/or location where FTFS will be assigned, by the Customer, to provide and/or deliver its Services as well as where the System(s) will be installed;
  - 2.2.11. **"THE PROJECT"** means the Site at which FTFS will be providing and/or delivering its Services to the Customer accordingly, inclusive of the System(s) being installed;
  - 2.2.12. **"TERMS AND CONDITIONS"** means the standard terms and conditions of the Services provided for, as stipulated in terms of this Agreement and unless the context otherwise requires, includes any special terms and conditions the Parties hereto might have and/or will agree to in writing, hereinafter referred to as **the "Conditions"**;
  - 2.2.13. **"QUOTATION"** means the written quotation provided by FTFS to the Customer, in respect of the supply and/or delivery of any and/or all Goods and/or Services accordingly. The Quotation may however be subject to change, should the need arise and additional costs must be added by FTFS in terms of the Services delivered and or supplied. Should such change(s) however be required, FTFS will however inform the Customer accordingly and in writing, which in turn have to be accepted by the Customer, in order for the Project to proceed, alternatively be completed. Should acceptance be unreasonably withheld by the Customer and the Project cannot continue, alternatively be completed, then the Customer herewith indemnifies FTFS pertaining to same, *in toto* and will remain liable for the costs due and owing to FTFS accordingly;
  - 2.2.14. **"THE BANK ACCOUNT OF FTFS"** means the banking account details, as reflected on the Quotation, alternatively supplied by FTFS to the Customer accordingly;
  - 2.2.15. **"AGREEMENT"** means this Agreement as well as any and/or all Annexures and/or Addendums hereto, as may be amended from time to time, inclusive of any electronic communication between the offices of FTFS and the Customer, which will furthermore be Annexed hereto and form part of same, should same however become applicable;
  - 2.2.16. **"WRITING"** means any form of agreement and/or negotiation and/or written form of communication between the Customer and FTFS, including but not limited to, electronic mail, facsimile transmissions and comparable means of communication, exchanged between the Parties in terms of the Project accordingly.
- 2.3. Any reference made to an enactment is to the enactment as at the date of signature hereof and as amended or re-enacted from time-to-time; and
- 2.4. Clause headings appear in this Agreement for reference purposes only and shall not influence the proper interpretation of the subject matter.

### **3. QUOTATIONS, PRICES AND PAYMENT**

- 3.1. All Quotations will be valid for a period of **30 (Thirty) days**, starting as from the date reflected on the Quotation, unless withdrawn sooner or otherwise stipulated and/or agreed to between the Parties, in writing. The Quotation will however expire automatically on the conclusion of that applicable period accordingly.
  - 3.1.1. In addition to **Clause 3.1. above**, the Customer is herewith furthermore informed that the Quotation as provided by FTFS to *him/her/it* will however be subject to change, due to, but not limited to, Rates

FTFS: \_\_\_\_\_

The Customer: \_\_\_\_\_

of Exchange occurring, which in turn will affect the Product pricing from supplier(s)/ manufacture(s), etc.

- 3.2. Any Services to be delivered and/or provided by FTFS to the Customer, totaling an amount ***below R100 000.00 (One Hundred Thousand Rand)*** is however subject to an **upfront payment of the full amount**, which is to be deposited into the Bank account of FTFS prior to commencement of the Project, inclusive of all works to be done accordingly.
- 3.3. Any Services to be delivered and/or provided by FTFS to the Customer, totaling an amount ***over R100 000.00 (One Hundred Thousand Rand)*** is however subject to a **50% (Fifty Percent) deposit** upfront, which is to be deposited into the Bank account of FTFS prior to commencement of the Project accordingly. The remaining **50% (Fifty Percent)** payment, will however immediately become due and payable to FTFS upon the completion of the Project, inclusive of all works which was to be done.
- 3.4. Any Services to be delivered and/or provided by FTFS to the Customer, totaling an amount ***over R100 000.00 (One Hundred Thousand Rand)*** and the scope of the Project and all works to be done, however extends to a **period greater than 10 (Ten) working days**, is however subject to a **50% (Fifty Percent) deposit** upfront, which is to be deposited into the Bank account of FTFS prior to commencement of the Project accordingly. The remaining **50% (Fifty Percent)** will however immediately become due and payable by way of fort nightly payments, which are to be made, up until the Project inclusive of all works which was to be done, is thus accordingly completed.
- 3.5. Any shut down work to be delivered and/or provided by FTFS to the Customer, will however be subject to a **100% (One Hundred Percent) upfront payment** of the full amount due and owing, in terms of the Quotation, which is to be deposited into the Bank account of FTFS prior to commencement of the Project, inclusive of all works to be done accordingly.
- 3.6. The Customer herewith acknowledges, accepts and agrees that should the Project area, inclusive of material calculations and charges, as originally Quoted for by FTFS, decrease of increase by a **maximum of 5% (Five Percent)**, the **original Quotation will however become void and new calculations as per a new Quotation will be supplied to the Customer accordingly.**
  - 3.6.1. In terms of and in addition to ***Clause 3.6. above***, the Customer is thus herewith informed that the pricing and costing as per the Quotation, provided to him/her/it by FTFS, is however subject to **the Project Area's measurement and scope, which in turn directly relates and affects the costing of the Project.**
- 3.7. FTFS, herewith reserves the right to cancel any and/or all work in terms of the Project, should the need arise, and herewith undertakes to refund the Customer of any deposits paid, where possible and applicable, should the reasons for such cancellation be due to unforeseen circumstances by FTFS.
- 3.8. In addition to ***Clause 3.7 above***, the Customer is herewith informed and accordingly acknowledges, accepts and agrees that, should cancellation of the Project be due to ***his/her/its own Breach, alternatively due to the Customer's election without valid, reasonable and justifiable reasoning***, then a **15% (Fifteen Percent) cancellation fee will be charged, calculated on the Quotation's full**

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FTFS: \_\_\_\_\_

The Customer: \_\_\_\_\_

**amount reflected, and which will become due and payable by the Customer in full, due to loss of income which FTFS may suffer due to the cancellation.**

#### **4. AMENDMENTS TO THE QUOTED SERVICES**

4.1. Where the Customer requires additional and/or amended Services to be supplied and/or delivered by FTFS, such has to be formally requested from FTFS, in writing, whereby FTFS will then in turn supply the Customer with an additional written Quotation for same. The Customer's acceptance of the afore-mentioned will thus be required, in writing. Such additional Quotation and acceptance will be duly added and annexed to the original Quotation and this Agreement accordingly.

4.1.1. In addition to **Paragraph 4.1. above**, the Customer, upon acceptance of the Quotation, will be required to accept the terms associated with such new Quotation (where applicable and in addition to these Conditions), return the newly signed Quotation to FTFA as well as provide a **50% (Fifty Percent) deposit** in terms of such new Quotation to FTFS, prior to FTFS providing and/or delivering any of such amended and/or additional Services accordingly.

4.2. Furthermore, and in addition to **Clause 4.1. above in toto**, the Customer herewith acknowledges, accepts and agrees that should **any alterations** be made by the Customer, to the Product(s) as has been Quoted for by FTFS and against FTFS better judgment and advice to the Customer, and same however **affects the final outcome/ result of the Project(s) and installation of same, FTFS will however not be held liable for such. The Customer thus herewith formally indemnifies FTFS of the afore-mentioned in toto.**

#### **5. GENERAL TERMS OF BUSINESS**

5.1. The Customer's Project will be scheduled into the diary system of FTFS, as soon as possible, which will however be subject to the current workload of FTFS at such time of receiving the Customer's signed acceptance of this Agreement, inclusive of the Quotation accordingly and will furthermore be depending on the availability of the required materials, labour and/or any other conditions beyond the control of FTFS at such applicable time.

5.2. Cancellation and/or deferring from the agreed commencement date of the Project will however result in the Customer being liable for costs charged , including but not limited to costs associated with the procured materials as has been discharged from the supplier(s)/ manufacturer(s), totaling to an approximate amount of **25% (Twenty Five Percent)** of the actual costs pertaining to material, plant, labour and/or consequential loss, which will include the loss and/or forfeiture of any deposit as stipulated in terms of **Clause 3 above**, unless such cancellation and/or deferring had been agreed to and approved, in writing, by FTFS accordingly.

5.3. It should however be clearly understood, by the Customer that, most generic systems and/or products thus require prevailing ambient temperatures and a minimum moisture content of the substrate, prior to any installation to be carried out by FTFS accordingly. All relevant Parties hereto will, at such applicable time, be accordingly notified of the specific criteria pertaining to the specific Project, which in turn will be clearly set out, on site, by FTFS, to the Customer, prior to the Project commencing.

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FTFS: \_\_\_\_\_

The Customer: \_\_\_\_\_

- 5.3.1. In addition to **Clause 5.3. above**, FTFS may however require that the Customer signs off on any and/or all of the applicable readings done on site, prior to the commencement of the Project, in order to avoid any inconsistency, alternatively disputes which may arise, in terms of the installation of the respective System(s), to the substrate, by FTFS accordingly.
- 5.4. Where a situation may arise that third-party contractors are on site, the Customer herewith warrants that the substrate surface will be free of obstructions and in a condition ready to receive the installation of the System. This however remains the Customer’s responsibility, however should FTFS be required to attend to “getting the site ready for the installation” of the System(s), additional charges will apply, at a reasonable rate, as may be determined by FTFS, at such applicable time, should the surface require to be cleared and/or treated. The afore-mentioned additional costs will however be for the Customer’s account, in full.
- 5.5. The Customer herewith agrees to provide FTFS with an unobstructed, clean and clear access to the Site, adequate lighting, relevant power being 220 volt power points and free use of water within the working area where FTFS will be attending to the installation of the System(s).
- 5.5.1. In addition to **Clause 5.5. above**, the Customer however herewith agrees and accepts that FTFS does not allow for generator provision(s) and/or the contracting of an electrician, unless specifically requested by the Customer, as well as accordingly itemized and billed for in terms of the Quotation provided and accepted by the Customer. Should the Customer be unable to supply any of the afore-mentioned, FTFS will then supply same, at an additional cost, which will however be for the Customer’s account, in full.
- 5.5.2. Furthermore, and in addition to **Clause 5.5. above**, should any of the above-mentioned working conditions, inclusive of any additional requests made by FTFS to the Customer, not be supplied and/or complied with, to FTFS, by the Customer and same in thus in turn **affects the final outcome/ result of the Project(s) and installation of same, FTFS will however not be held liable for such. The Customer thus herewith formally indemnifies FTFS of the afore-mentioned in toto.**
- 5.6. The Customer understands and herewith agrees that any selection(s) and/or decision(s) regarding the extent of preparation, colour, type of system coating and/or any other relevant component pertaining to the items stipulate on the respective Quotation however remain the sole responsibility of the Customer, regardless of any input, recommendation and/or samples provided by FTFS, as the afore-mentioned will however merely be recommendations as the final outcome remains the Customer’s decision and instruction, on which FTFS will act accordingly.
- 5.7. The Customer herewith warrants that, prior to the commencement of the Project, FTFS however herewith reserves the right to undertake a full and adequate site inspection as may be deemed necessary. The Customer will thus remain liable to make the Site available for such inspection as per FTFS reasonable request.
- 5.7.1. In addition to **Clause 5.7. above**, should FTFS feel, that any alteration(s) and/or deviation(s) may be applicable, at such point in time, from the originally agreed to and accepted Quotation, regarding to the specification, scope of work(s) and/or Project documentation, same will however be executed by FTFS, once further written instruction has been received from the Customer. The afore-mentioned will be at

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FTFS: \_\_\_\_\_

The Customer: \_\_\_\_\_

an additional cost, over and above the amount originally Quoted for and will thus be for the Customer's account, in full.

- 5.8. It is herewith agreed that any and/or all System(s), as will be applied by FTFS should however be deemed suitable and accepted by the Customer, if no further correspondence has been made to the offices of FTFS, in writing, **within 7 (Seven) days** of the System(s) installation commencing, unless state otherwise or agreed to between the Parties.
- 5.9. The Customer herewith agrees that any and/or all work, in terms of the Project, will however be undertaken during **normal working hours, being Monday to Friday, during the hours of 07:30 to 17:30**, unless otherwise agreed to between the Parties or as may be nominated and/or stipulated on the relevant Quotation.
- 5.10. The Customer herewith acknowledges, agrees and accepts that any and/or all delays which may be **incurred, outside of the reasonable control of FTFS, will be at the Customers expense** and the Customer furthermore herewith accepts that **FTFS will be entitled to charge a penalty surcharge, per day, per team, in the amount of R15 000.00 (Fifteen Thousand Rand), exclusive of VAT (Value-Added-Tax)** as may be deemed necessary by FTFS at such point in time.
- 5.11. The Customer herewith accepts that an additional cost will be applicable and charged for by FTFS for non-standard colours, which were not specified in terms of the respective Quotation. Delivery times and costs of these colours may vary and will be for the Customer's account, in full.
- 5.11.1. In addition to **Clause 5.11 above**, the Customer is thus herewith formally requested by FTFS, to discuss *his/her/its* specific requirements, pertaining to the Project, prior to same being booked and/or scheduled to commence, due to the mere fact that additional lead time may be required for non-standard colours, etc.
- 5.12. The Parties herewith acknowledge, agree and accept that any and/or all Agreements, on FTFS's behalf, are however subject to strikes, accidents, thermal conditions, natural disasters, acts of God, terrorism and/or other delays beyond FTFS' control. It must be appreciated that carrying out the Project however involves the use of powerful and toxic chemicals. Though every precaution is taken, no responsibility will be accepted for injury to any person and/or loss of and/or damage to any property, which may arise from reasonable performance of FTFS' Service(s) in terms of the Project. **The Customer thus herewith acknowledges, agrees and accepts that, by way of accepting the relevant Quotation, he/she/it thus duly indemnifies FTFS from any liability and/or any such injury and/or loss and/or damage accordingly.**

## **6. INSTALLATION**

- 6.1. The Parties herewith acknowledge, accept and agree that should the Customer interrupt(s), alternatively delay(s) the installation process unreasonably and unjustifiably, FTFS will however be entitled to cancel and/or suspend the Project, with notice of same, in writing, to the Customer. Such afore-mentioned interruption(s), alternatively delay(s) may render any warranty, written or implied, in respect of the applicable system(s) void or voidable. **Should FTFS elect to terminate the Project, the Customer will however be liable for the full amount due and owing to FTFS in terms of the Project.**

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FTFS: \_\_\_\_\_

The Customer: \_\_\_\_\_

- 6.2. The Parties herewith agree that cracks and/or damages in the substrate, which exceeds the required repair for the respective System(s) to be applied, unless specifically listed by FTFS in the Quotation, will not be funded nor supplied at FTFS cost. Should additional treating and/or repairing of cracks and/or damage be required, prior to the installation, same will however be at an additional charge, which will be for the Customer's account, in full.
- 6.2.1. The Customer herewith agrees that where cracks and/or damages have been allowed for and re-instated, no responsibility will be taken by FTFS to rectify such areas where movement exceeds the capabilities of the materials used, as same will be out of the reasonable control of FTFS.
- 6.3. The Customer herewith accepts that no allowances can be made for any dewatering of or effects caused by inclement weather and/or for any environmental conditions which are prohibitive to the adequate bonding and/or curing of the intended System(s) being applied.
- 6.3.1. In addition to **Clause 6.3. above**, the Customer thus understands that where an instruction is given to FTFS to proceed with specified work and/or the Project to commence and/or continue, **where a delay notice has been issued by FTFS, any such work carried out will however not be covered under any warranty program, written or implied, nor subject to any defect liability and the Customer thus herewith indemnifies FTFS of such accordingly.**
- 6.4. The Customer herewith acknowledges, agrees and accepts that FTFS cannot be held responsible for any delays caused by material suppliers/ manufactures, should such a situation arise, as same is however out of the reasonable control of FTFS.
- 6.5. The Customer herewith acknowledges, agrees and accepts that FTFS will not be held responsible for any debris, dust, flora, fauna, insects, excrement and/or fibers which may settle into the newly applied system(s), whilst drying of same is taking place. The term dustless grinding however refers to a standard practice used during the preparation process. **It is thus unrealistic to assume that no airborne dust will be created. Due care and diligence should thus be taken by the Customer to provide adequate protection at the Site, in order to avoid the afore-mentioned, as far as reasonably possible.**
- 6.6. It is herewith agreed between the Parties, that due to the necessity of high speed grinding equipment being operated, right up to the skirting boards, some marking may however occur on such respective surfaces. **FTFS thus undertakes that any and/or all reasonable care will be taken to reduce these markings, as far as reasonably possible, however FTFS will not accept any liability for any such markings should same occur.**
- 6.7. The Parties herewith acknowledge, accept and agree that no work shall be carried out in terms of the Project, where such work(s) may be compromised due to climatic and/or other prevalent conditions. Should the Customer however require FTFS to resume the work(s) under such afore-mentioned conditions, *he/she/it* will however be required to request same, in writing, as well as accordingly sign such instruction(s) as same may however result in any warranty, written or implied, being void or voidable. **It is herewith place on record that FTFS will always adhere and refer to the product supplier/ manufacturer's recommendations pertaining to such specific product details of the System(s) being installed.**

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FTFS: \_\_\_\_\_

The Customer: \_\_\_\_\_



6.8. The Customer furthermore acknowledges, accepts and agrees that should the Project span cover various phases of installation, same will be quoted for accordingly, however should there be a time lapse between the specific phases and disestablishment and reestablishment is required the Customer will be liable for additional costs, per phase, per time lapse, which will automatically be added to his/her/its account(s) accordingly, and which is thus non-negotiable, as follows:

6.8.1. **Disestablishment** costs will be in the amount of **R5 000.00** (*Five Thousand Rand and Zero Cents*);  
**and**

6.8.2. **Reestablishment** costs will be in the amount of **R10 000.00** (*Ten Thousand Rand and Zero Cents*).

## **7. POST PROJECT**

7.1. Though reasonable precaution will be taken by FTFS, many System(s) are however handmade products and may carry some irregularities and/or imperfections. **By accepting this Quotation, the Customer herewith duly accepts these afore-mentioned aspects as well as the outcomes pertaining to same.**

7.1.1. In addition to **Clause 7.1. above** and although any and/or all work(s) is carried out in a tradesman like manner, there will however be some minor imperfections in the final finished System(s), which may include but not be limited to roller marks, reflective cracking, minor undulation and/or trowel marks. By accepting this Quotation, the Customer herewith duly accepts and implied that *he/she/it* is aware of these afore-mentioned aspects and facts, as well as the outcomes pertaining to same.

7.2. FTFS herewith undertakes that it will adhere to any and/or all best trade practices and that due care and diligence, as reasonably possible, will be taken in order to ensure that adequate preparation, bonding and installation of the System(s) will be attended to, in accordance with the supplier/ manufacturer's technical advice and requirements accordingly. **It is however acknowledged, accepted and agreed to by the Customer that FTFS's warranty, whether in writing or implied, will be void should the system fail resulting of any of the following reasons, but without limitation, namely:**

7.2.1. Failure within the substrate; and/or

7.2.2. Structural movement, including stress fracture(s); and/or

7.2.3. Mechanical damage; and/or

7.2.4. Rising moisture; and/or

7.2.5. Oil and/or other contaminations; and/or

7.2.6. Any unforeseen circumstances beyond FTFS' control; and/or

7.2.7. Alteration of use contrary to that specified at the time of installation(s); and/or

7.2.8. Unreasonable and unjustified delamination and/or system(s) failure after 14 (*Fourteen*) days from installation finalisation.

7.3. In addition to **Clause 7.2. above**, it may be admissible that an independent assessment of any of the above issues may be required to determine the cause whereby any additional costs associated with such may be attributed to the Customer's account.

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FTFS: \_\_\_\_\_

The Customer: \_\_\_\_\_

7.4. It is thus confirmed and recorded that, **the Customer is herewith duly notified and in turn accepts that many System(s) require a minimum of 24 (Twenty Four) hours drying and/or settling time.** This period being from the time of installation completion prior to the acceptance of foot traffic. It is further noted and recorded that **longer periods are required for vehicular traffic.** The afore-mentioned are thus as per and in accordance with the supplier/ manufacturer's technical data sheet(s) requirements and advice, pertaining to the respective product/ System(s) being installed.

7.4.1. **In addition to Clause 7.4 above, FTFS will thus not accept any liability for any defects caused, due to early use of the newly installed System(s).** In addition to the above and aforementioned, it is furthermore recorded that **many system(s) may take up to 7 (Seven) days to achieve full chemical cure,** where during this period the use of any water, cleaning agents or may however affect the System(s) appearance and/or performance. Additionally, any form of traffic and the placement of plant, equipment, furniture etc., onto the System(s) should be at a minimum. **FTFS furthermore requires the Customer to please consult the System(s)' technical data for reference on all traffic ability and/or cleaning and/or maintenance parameters.**

7.5. In addition to all of the above and under no circumstances will FTFS accept any liability for any consequential loss. The Customer thus herewith accepts the afore-mentioned and duly indemnifies FTFS accordingly of same.

## **8. LEGAL COSTS**

8.1. **The Parties hereto acknowledge, accept and agree that:**

8.1.1. Overdue accounts may carry **interest at a rate of 10% (Ten Percent),** at FTFS discretion which right is herewith reserved *in toto* and which may/ will be applied, in FTFS discretion, from the due date to date on which full payment is received; **and**

8.1.2. Any legal costs incurred by FTFS, in respect of enforcing any and/or all of the terms as laid out in this Agreement and/or any breach thereof, by the Customer, shall be due and payable, by **the Customer, on an Attorney-and-Own-Client Scale, where applicable, including the cost of collecting outstanding amounts due and owing to FTFS; and**

8.1.2.1. **The Customer** shall immediately reimburse the legal fees to **FTFS,** upon formal request of same.

## **9. DOMICILLIUM CITANDI ET EXECUTANDI**

9.1. **The Customer** herewith elects and nominates its ***domicilium citandi et executandi,*** to be situated at the Site where FTFS will be delivering and/or supplying its Services, alternatively the registered business address of the Customer, which ever may be applicable at such point in time, unless otherwise agreed to, in writing. This address will thus also be in line with the address as is supplied for on the Quotation.

9.2. **FTFS** herewith elects and nominates its ***domicilium citandi et executandi*** as its duly registered company address.

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FTFS: \_\_\_\_\_

The Customer: \_\_\_\_\_

- 9.3. **The Parties** hereto, choose as their *domicilium citandi et executandi* the addresses as have been stipulated in **Clause 9.1. and 9.2. above**, provided that such *domicilium* of either party may be changed by written notice, within **10 (Ten) Business Days** from changing, from such party to the other party, with effect from the date of receipt or deemed receipt by the latter of such notice;
- 9.4. Any notice, acceptance, demand or other communication properly addressed by either party to the other party at the latter's chosen *domicilium citandi et executandi* physical address in terms hereof for the time being and sent by prepaid registered post shall be deemed to be received by the latter on the 5<sup>th</sup> (*Fifth*) business day following the date of posting thereof.
- 9.5. Any notice, acceptance, demand or other communication properly addressed by either party to the other party at the latter's chosen *domicilium citandi et executandi* e-mail or facsimile addresses in terms hereof for the time being and sent shall be deemed to be received by the latter on the same date as the former sent the communication as envisaged in **Section 23 of the Electronic Communications and Transactions Act, Act 25 of 2002, as amended**.

## **10. MARKETING**

- 10.1. The Customer herewith acknowledges, accepts and agrees to FTFS taking pictures, video recordings, etc., hereinafter referred to as "marketing material", for its professional use, prior, during and after conclusion of the installation process for marketing purposes only. Such marketing material obtained by FTFS on the Site will thus become the property of FTFS accordingly and will be used for the specific purpose thereof.
- 10.2. FTFS herewith acknowledges, accepts and agrees that any and/or all marketing material obtained from the Customer's site will only be used for the specific purpose thereof and that no name, address, personal information and/or confidential information will be made available to the public whatsoever.

## **11. PERFORMANCE**

- 11.1. The Services, as quoted for and duly accepted by the Customer, will be supplied and/or delivered by FTFS, including but not limited to FTFS's Partners, Vendors and/or Service Providers, at the Customer's elected and/or nominated premises, being the Site, during the agreed period in time, pertaining to same.
- 11.2. Any dates and/or times quoted for, in terms of the Services to be supplied and/or delivered by FTFS, are only approximate and FTFS will however not be held liable in the event of any delay caused in the performance of such Services, due to circumstances outside of FTFS' reasonable control.

## **12. AUTHORITY**

- 12.1. The Customer warrants to FTFS that it and its representative has full power, authority and legal right to conclude this Agreement, for and/or on behalf of the Customer and that the conclusion of this Agreement and the terms as set out herein, has been duly authorized by way of any and/or all necessary actions.

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FTFS: \_\_\_\_\_

The Customer: \_\_\_\_\_

12.2. **The Customer furthermore warrants to FTFS that *he/she/it* has duly read this Agreement and accordingly understands and accepts all the terms as contained herein.**

**13. WARRANTIES AND LIABILITIES**

13.1. Subject to the conditions as set out below, FTFS herewith warrants that the Services to be supplied and/or delivered, will however be done in such a manner, including but not be limited to, the use of reasonable care and skill and will correspond with their specification(s) and requirement(s), as at the time of the Services being supplied and/or delivered to the Customer accordingly by FTFS.

13.1.1. In line with **Paragraph 13.1. above**, such warranty is, however, given by FTFS, subject to the condition that FTFS shall be under no liability in terms of such warranty, or any other warranty, condition and/or guarantee, should the total price due and owing, in terms of the Services to be being supplied and/or delivered, not been settled by the Customer in terms of the provisions as laid out in **Clause 3. And 8. above.**

13.2. Pertaining to this Agreement and its Conditions, as well as any and/or all other warranties, conditions and/or other terms, implied by any form of statute, legislation and/or common law are herewith expressly excluded, to the fullest extent, as may be permitted by law.

**14. GENERAL TERMS AND FORCE MAJURE**

14.1. Any typographical, clerical and/or other error and/or omission, in any of the Services' documentation, Quotation(s), Addendum(s), Price list(s), acceptance of Quotation(s), Invoice(s) and/or any other relevant documentation and/or information, used by either one of the Parties hereto, shall be subject to correction, without any liability on the part of FTFS accordingly.

14.2. FTFS herewith reserves the right to make any changes to the specification of the Services, which are required by the Customer, for such to conform with any applicable safety and/or other statutory requirements and/or in instances where the Services are to be supplied to FTFS' specification, which, however, does not materially affect the quality of its performance in terms of such Services accordingly.

14.3. FTFS shall not be held liable by the Customer and/or be deemed to be in breach of this Agreement, by reason of any delay in performing or any failure to perform any of FTFS' obligations, pertaining to the Services, if the delay and/or failure was due to any cause, beyond FTFS's reasonable control. Without prejudice to the generality of the above-mentioned, **the following shall be regarded as causes beyond FTFS's reasonable control, namely:**

14.3.1. *Acts of God, including but not limited to, explosion, flood, tempest fire and/or accident; and/or*

14.3.2. *War or threat of war, sabotage, insurrection, civil disturbance and/or requisition; and/or*

14.3.3. *Acts, restrictions, regulations, by-laws, prohibitions and/or measures of any kind, on the part of any governmental and/or parliamentary authority; and/or*

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FTFS: \_\_\_\_\_

The Customer: \_\_\_\_\_

- 14.3.4. *Strikes, lock-outs of any other industrial actions and/or trade disputes, whether involving employees of FTFS or that of FTFS' Partners, Vendors and/or Suppliers or any other third parties hereto, whichever may be applicable; and/or*
- 14.3.5. *Difficulties in obtaining raw materials, fuel, parts and/or machinery; and/or*
- 14.3.6. *Power failure and/or breakdown in machinery; and/or*
- 14.3.7. *In the event of FTFS having to make changes to the specification of the Services, due to reasons beyond its reasonable control, FTFS will, however, be entitled to supply alternative Services, providing they are of equal ranking to that which the Customer had accordingly accepted.*

**15. CONFIDENTIALITY**

- 15.1. The Parties hereto acknowledge, accept and agree, unless it is otherwise required by law and/or specifically authorised, in writing, by the other party to the remaining party hereto, that no party hereto shall disclose and/or infringe copyright of confidential and/or proprietary rights of any information (hereinafter referred to as "Confidential Information"), pertaining to the respective party to which it relates, to any third party hereto, other than FTFS' partners, vendors and/or suppliers/ manufacturers, whom may reasonably have to carry knowledge of such afore-mentioned information, in order to perform the Services as required by the Customer accordingly.
- 15.2. The afore-mentioned Confidential Information, as per **Clause 15.1. above**, shall, however, include, but is not limited to, any and/or all proposals, cost estimates and/or Quotations, creative work, research, documentation and/or advice, pertaining to the Services to be supplied and/or delivered, as duly prepared by FTFS accordingly.
- 15.3. The Customer herewith acknowledges, agrees and accepts that any and/or all copyright, intellectual property and/or proprietary rights, whatsoever in or connected with any of the Confidential Information in terms of **Clause 15.2 above**, shall at all times remain vested in FTFS and that infringements of such copyright rights will, however, be construed as a criminal offence.
- 15.4. **In addition to the above, the Customer and/or any of its third parties hereto, herewith acknowledges, agrees and accepts that he/she/it will not be allowed to poach and/or entice and/or solicit, whether directly or indirectly, any and/or all of FTFS' Employees, whether they were present during the Project, on the Site or not, for a minimum period of 1 (One) year from date of project conclusion.**
  - 15.4.1. **In terms of Clause 15.4. above, should the Customer in any way whatsoever breach the stipulated term(s), FTFS will be entitled to full recourse, in terms of Law, to recover any form of Damage(s), whether same being in the form of, but not limited to, economic, financial and/or brand, form the Customer in full, which legal costs will be for his/her/its account in full.**

**16. MISCELLANEOUS**

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FTFS: \_\_\_\_\_ The Customer: \_\_\_\_\_

- 16.1. No Party may, without the prior written approval of the other party hereto, delegate, assign, cede, transfer and/or in any other way, alienate and/or dispose of any of his/her/its rights and/or obligations in terms of this Agreement, to any other third party hereto. Such prior Written approval may, however, not be unreasonably withheld by any one of the Parties hereto.
- 16.2. No provision of this Agreement, including but not limited to the provisions of this clause may be amended, substituted and/or otherwise varied, and no provision may be added to and/or incorporated in this Agreement, except, in any such case, by an agreement, in Writing and duly signed by the Parties hereto.
- 16.3. Any relaxation, indulgence and/or delay collectively referred to as "**Indulgence**", by either party hereto, in exercising and/or any failure by either Party hereto, to exercise any right and/or obligation, under this Agreement, shall not be construed as a waiver of that right and/or obligation and shall not affect the ability of that Party subsequently to exercise that right and/or to pursue any remedy, nor shall any Indulgence constitute a waiver of any other right, whether against that Party or any other person hereto.
- 16.4. The waiver of any right and/or obligation, under this Agreement, shall however be binding on the waiving party hereto, only to the extent that the waiver has been reduced to Writing and duly signed by the waiving party herein.
- 16.5. This Agreement shall supersede any and/or all prior agreements, representations, communications, negotiations and/or understandings between the Parties hereto.
- 16.6. Were possible, each provision of this Agreement shall be interpreted in a manner which gives it effect as well as makes it valid and binding under applicable Law. Should any provision of this Agreement be held to be illegal, invalid and/or unenforceable under applicable Law, that illegality, invalidity or unenforceability shall not affect the other provisions of this Agreement, all of which shall remain in full force between the Parties hereto accordingly.
- 16.7. ***This Agreement shall be interpreted and applied in accordance with the laws of the Republic of South Africa.***
- 16.7.1. ***In this regard the Parties agree and consent to the jurisdiction of the Magistrate's Court.***
- 16.8. This Agreement may be executed in any number of identical counterparts, all of which, when taken together, shall constitute one Agreement. Any single counterpart and/or a set of counterparts taken together which, in either case, are executed by the Parties hereto shall, however, constitute a full original of this Agreement for all purposes as contained therein.
- 16.9. This Agreement shall govern all aspects of any and/or all contractual relationships pertaining to the Services which are to be supplied and/or delivered in terms hereof. In the event of any conflict between this Agreement and any and/or all associated agreements hereto, on any matter affecting the Parties, including all questions of interpretation, this Agreement shall, however, prevail.
- 16.10. The Parties hereto acknowledge, accept and agree to perform and/or procure the performance of any and/or all further things, and to execute and/or deliver, or procure the execution and/or delivery of, any and/or all further documents, as may be required by Law or as may be desirable and/or necessary to implement and/or give effect to this Agreement as well as the transactions contemplated herein.

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FTFS: \_\_\_\_\_

The Customer: \_\_\_\_\_

16.11. By entering into this Agreement, the Parties hereto accordingly warrant that there are no impediments and/or restrictions to their doing so and that this Agreement does not violate the provisions of any Agreement between any of the Parties and/or any other third party hereto.

16.12. These terms and conditions, as agreed to by the Customer, upon acceptance of the Quotation and which may be varied by FTFS, from time-to-time, will constitute the whole Agreement between FTFS and the Customer accordingly and will, however, include every signed and/or accepted Quotation, as well as the Annexures and/or Addendums thereto.

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FTFS: \_\_\_\_\_

The Customer: \_\_\_\_\_