

POWEROPTIMAL STANDARD TERMS AND CONDITIONS (RESIDENTIAL)

1. NOTHING IN THIS AGREEMENT IS INTENDED TO OR MUST BE UNDERSTOOD TO UNLAWFULLY RESTRICT, LIMIT OR AVOID ANY RIGHTS OR OBLIGATIONS, AS THE CASE MAY BE, CREATED FOR EITHER OF POWEROPTIMAL OR THE CLIENT IN TERMS OF THE CONSUMER PROTECTION ACT, ACT 68 OF 2008 AS AMENDED ("CPA").

1.1 *The Agreement contains terms and conditions which appear in similar text style to this clause and which:*

- 1.1.1 *may limit the risk or liability of PowerOptimal or a third party; and/or*
- 1.1.2 *may create risk or liability for the Client; and/or*
- 1.1.3 *may compel the Client to indemnify PowerOptimal or a third party; and/or*
- 1.1.4 *serves as an acknowledgement, by the Client, of a fact.*

1.2 *The Client's attention is drawn to these terms and conditions because they are important and should be carefully noted.*

PART I

2. INTERPRETATION

In these Terms and Conditions, , unless the context clearly indicates a different intention, an expression which indicates any gender includes the other genders; a natural person includes a company or other type of entity and vice versa; the singular includes the plural and vice versa;

2.1 the following words have the following meanings –

- 2.1.1 **"Assessment"** means the assessment of, amongst other things, (i) the Client's electricity bills and the electrical landscape of the Premises; and (ii) the billing procedure used by the Client's electricity supplier; as well as an analysis of the Client's electricity demand, which may be carried out under and in accordance with an Assessment Agreement, or at PowerOptimal's own cost;
- 2.1.2 **"Assessment Agreement"** means the agreement entered into by the Parties either before or at the same time as these Terms and Conditions governing the particular details of the Assessment for the Client;
- 2.1.3 **"Client"** means an existing or potential client as identified in the Transaction Document;
- 2.1.4 **"Confidential Information"** means any information or data which by its nature or content is confidential and/or belongs to PowerOptimal and/or any third party, or which is provided or disclosed in confidence; and which PowerOptimal or any person acting on its behalf may disclose or provide to the Client or which may come to the knowledge of the Client by any means. PowerOptimal's Confidential information includes (ii) information relating to PowerOptimal's business activities, business relationships, the Product, services and Staff; (iii) PowerOptimal's technical, scientific, commercial, financial and market information and trade secrets; (iv) (vi) PowerOptimal's plans, designs, drawings, functional and technical requirements and specifications; (vii) information concerning faults or defects in the Product or in PowerOptimal's systems, plant or equipment or the incidence of such faults or defects; (viii) contracts which PowerOptimal has entered into ; and (ix) any and all methodologies, formulae and related information and trade secrets in PowerOptimal's business and industrial processes. The determination of whether information is Confidential Information will not be affected by whether or not such information is subject to, or protected by, case law or legislation related to copyright, patent, trade marks or otherwise;
- 2.1.5 **"Contract Documents"** means these Terms and Conditions, and all annexures to these Terms and Conditions;
- 2.1.6 **"Defective"**, in relation to the Product means (i) that the Product is unsafe; (ii) that there is a failure, defect or hazard in relation to the Product; or (iii) inadequate instructions or warnings have been provided to the Client about any hazard arising from or associated with the use of the Product;
- 2.1.7 **"Domain Name"** means PowerOptimal's web domain, namely: www.poweroptimal.com;
- 2.1.8 **"Effective Date"** means the date shown in any Transaction Document as the date on which the Product would be supplied to the Client;
- 2.1.9 **"Know-How"** means know-how relating to analysis and assessment of electricity bills, error identification and correction of electricity bills, as well as related information, methodologies and databases;
- 2.1.10 **"Losses"** means all losses, liabilities, damages and claims, and all related costs and expenses (including legal charges on the scale as between attorney and client, tracing and collection charges, costs of investigation, interest and penalties);
- 2.1.11 **"Manuals"** means any manuals, training materials, reports and other documentation relating to the installation and use of the Product;
- 2.1.12 **"Parties"** means the parties to this Agreement, being PowerOptimal and the Client;

2.1.13 **"Products"** means any product/s created and developed by PowerOptimal from time to time which are supplied to the Client under these Terms and Conditions;

2.1.14 **"PowerOptimal"** means PowerOptimal (Pty) Ltd with registration number 2012/099947/07;

2.1.15 **"PowerOptimal Intellectual Property"** means the Software, Manuals, Trade Marks, Know-How, Domain Name and any other intellectual property of whatever nature which PowerOptimal has created or creates in the future in relation to the Products;

2.1.16 **"Premises"** means the premises nominated by the Client at which the Product is installed;

2.1.17 **"Price"** means the price payable by the Client to PowerOptimal in exchange for the supply of the Product and the performance of the Services, which may include/exclude the cost of performing the Assessment (as agreed in writing with PowerOptimal), excluding the installation cost and the costs referred to in clauses 12.3 and 13;

2.1.18 **"Prime"** means Standard Bank's publicly quoted prime rate per annum ruling from time to time

2.1.19 **"Proposal"** means the proposal compiled by PowerOptimal following the completion of an Assessment of what Products the Client requires to reach its particular goals;

2.1.20 **"Quote"** means the written quote issued by PowerOptimal to the Client, which sets out the Price, and which is valid for a period as indicated on it from the date of being issued to the Client;

2.1.21 **"Services"** means the services, functions and responsibilities to be performed by PowerOptimal in relation to the Product, as contracted for by the Client, and as defined in the applicable Transaction Document;

2.1.22 **"Software"** means the specialized suite of computer programs and software, developed by or on behalf of PowerOptimal and/or licensed by PowerOptimal, and which is owned exclusively/ to which PowerOptimal holds the exclusive license, and which is embedded in the Product;

2.1.23 **"Staff"** means any employee, independent contractor, agent, consultant, sub-contractor or other representative of either Party;

2.1.24 **"Trade Marks"** means any trade marks which belong to PowerOptimal, whether registered or unregistered, including South African registered trademark 2009/12793 in Class 9, consisting of the name Powerguard, the description Powerguard Power Demand Controller and the Powerguard logo;

2.1.25 **"Transaction Documents"** means, where applicable, the Assessment Agreement, the Proposal, the Quote and any other documents relating to the supply of the Product and/or the Services by PowerOptimal to the Client under these Terms and Conditions;

2.2 any important wording which gives rights to or imposes obligations on a Party and is in any of the definitions in this clause 2 or somewhere else in these Terms and Conditions, will be given effect to as if it were important wording in the body of these Terms and Conditions;

2.3 words and expressions defined in any clause will, unless the application of any such word or expression is limited to that clause, have that meaning throughout these Terms and Conditions;

2.4 other than the terms that are defined in clauses 2.6, 2.12 and 2.14, defined terms in these Terms and Conditions in title case will be given their meaning as defined, while the same terms appearing in lower case will be interpreted in accordance with their plain English meaning. Where a term is defined in a particular clause then that term will have the same meaning throughout these Terms and Conditions, unless it is clear from the clause in question that the term so defined has limited application to that clause;

2.5 a reference to any legislation is to the legislation as at the Effective Date and as amended or substituted from time to time;

2.6 reference to "days" means calendar days unless qualified by the word "business", in which case a "business day" is any day other than a Saturday, Sunday or public holiday as documented by the government of the Republic of South Africa from time to time. Any reference to "business hours" means the hours between 08h30 and 16h30 on any business day. Any reference to time is based on South African Standard Time;

2.7 reference to day/s, month/s or year/s is to Gregorian (civil) calendar day/s, month/s or year/s

2.8 unless specifically otherwise provided, any number of days will be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next business day;

2.9 where figures are referred to in numbers and in words, and there is any conflict between the two, the words will prevail, unless the context indicates a different intention;

2.10 no wording in these Terms and Conditions will be interpreted to the disadvantage of a Party due to the fact that such Party structured, drafted or introduced such wording;

2.11 the expiry or termination of these Terms and Conditions will not affect

any wording in these Terms and Conditions which provide that they will carry on after expiry or termination or which of necessity must continue to have effect after expiry or termination, despite that the clauses themselves do not expressly provide for this;

2.12 the words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples will not limit the general meaning of the wording that comes before it.

2.13 any reference in these Terms and Conditions to "these Terms and Conditions" or any other agreement or document means a reference to "this Agreement" or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time;

2.14 these Terms and Conditions include the attachments, which attachments will have the same force and effect as if they were in the body of this Agreement. In this Agreement the word "clause" or "clauses" and "annexe" or "annexes" refer to clauses of and annexes/attachments to these Terms and Conditions.

3. STRUCTURE OF THESE TERMS AND CONDITIONS

3.1 These Terms and Conditions apply to all clients of PowerOptimal who are supplied with the residential range of the Product.

3.2 To avoid any doubt, *any departure from these Terms and Conditions must be specifically identified and recorded as such* in order to be effective against either Party.

3.3 These Terms and Conditions consist of two parts, namely:

3.3.1 Part I, being the definitions and preliminary;

3.3.2 Part II, being the general terms and conditions;

3.4 These Terms and Conditions will take preference over any other documents signed or to be signed between the Parties and in the event of a conflict, these Terms and Conditions will prevail.

4. TRANSACTION DOCUMENT(S)

A Transaction Document can only amend these Terms and Conditions in relation to the subject matter of such Transaction Document and only if the Transaction Document states which clause(s) of these Terms and Conditions must be amended and also states that it is the intent of the Parties to amend such clause(s). Also, such amendment must be in writing and signed by both the Parties.

PART II

5. DURATION

5.1 These Terms and Conditions will start on the date of receipt by PowerOptimal of written acceptance of the Quote and will continue for the period identified in the applicable Transaction Document. If the Transaction Documents do not specify a period, then these Terms and Conditions will continue until the Parties have finished performing their obligations under the Contract Documents.

5.2 *If these Terms and Conditions are not signed by the Client by the Effective Date, and the Product has been supplied to the Client, then the Client will be deemed to have accepted these Terms and Conditions and all Transaction Documents, and will be bound to these Terms and Conditions.*

5.3 These Terms and Conditions provide for the early termination of the relationship between the Parties by PowerOptimal under certain circumstances. Such early termination may be in relation to particular Transaction Documents, or the entire relationship between the Parties.

6. ASSESSMENT

6.1 PowerOptimal, may, in certain instances, carry out an Assessment.

6.2 Where PowerOptimal carries out an Assessment, the Client must sign an Assessment Agreement.

7. SUPPLY OF THE PRODUCT

7.1 The Client hereby engages PowerOptimal to supply and install the Product and perform the Services, in exchange for the Price.

7.2 PowerOptimal hereby agrees to supply the Client with and install the Product and perform the Services, in exchange for the Price.

7.3 PowerOptimal will only supply the Product once it has received written acceptance of the Quote from the Client.

8. SERVICES

PowerOptimal will render the Services to the Client, and the Client will accept and pay for such Services in accordance with these Terms and Conditions.

9. DELIVERY, INSTALLATION AND THE PASSING OF RISK

9.1 The Product will be delivered to the Client and installed as soon as reasonably possible after the Quote is accepted, or as soon as reasonably possible after any delivery date has been agreed between the Parties.

9.2 Whilst every effort will be made by PowerOptimal to deliver and install the Product on a specified date and/or time, **the Client will not have a claim against PowerOptimal if PowerOptimal does not deliver and/or install the Product by any specified date or time.**

9.3 The Product will be installed in accordance with PowerOptimal's instructions and directives relating to the particular Product purchased by the Client. Unless arranged with and agreed to in writing with PowerOptimal, the installation will be carried out by PowerOptimal or an

electrician duly appointed by PowerOptimal. Where PowerOptimal agrees to the Client appointing its own electrician to install the Product, then:

9.3.1 such installation will be entirely at the risk and expense of the Client; and

9.3.2 **the Client will not have any claim against PowerOptimal due to the installation of the Product by such electrician appointed by the Client.**

9.4 Delivery and the passing of ownership and risk in the Product will be deemed to have taken place when the Product is handed to the Client or the Client's employee or nominated agent at the Premises. The signature of any employee or nominated agent of the Client on PowerOptimal's delivery note or statement will, on the face of it, constitute proper delivery of the Product.

9.5 If the Client fails to take delivery of the Product ordered, or in any way delays such delivery, then the risk in and to the Product will immediately pass to the Client.

10. GRANT OF LICENCE

PowerOptimal grants to the Client a limited, reversible, non-exclusive, non-transferrable right (where applicable) to use the Software, at the Premises, for the period that these Terms and Conditions are in effect.

11. INTELLECTUAL PROPERTY RIGHTS

11.1 The Client acknowledges and agrees that the right, title and interest in and to the PowerOptimal Intellectual Property vests in PowerOptimal, and unless these Terms and Conditions state that the Client will obtain any rights in the PowerOptimal Intellectual Property, the Client will not acquire any rights (proprietary or otherwise) therein.

11.2 To avoid any doubt, ownership of the PowerOptimal Intellectual Property will not at any stage pass to the Client, even though the Client may obtain ownership of the Product under these Terms and Conditions.

11.3 If the Client becomes aware of any violation of any of the rights (including intellectual property rights) of PowerOptimal, or any claim or legal proceedings which may in any way affect any of the rights (including any intellectual property rights) of PowerOptimal, then it must (i) immediately inform PowerOptimal in writing and provide it with all details of such violation, claim or legal proceeding known to it; and (ii) give reasonable help to investigate such violation, claim or legal proceedings and in any legal proceedings which arise from such violation.

12. DUTIES OF THE CLIENT

12.1 The Client must (i) give PowerOptimal access to the Premises, and such other equipment and facilities; and (ii) provide PowerOptimal with such help, as may be needed by PowerOptimal, in order to effectively perform its duties and obligations in terms of the Transaction Documents.

12.2 The Client must, as quickly as possible bring to PowerOptimal's attention any circumstances which may impact upon the Client's performance of its duties and obligations in terms of the Contract Documents.

12.3 The Client must immediately inform PowerOptimal (i) if it intends to buy or install additional equipment or appliances at the Premises; or (ii) of any other fact or circumstances which could affect all or some of these Terms and Conditions, including, which could have the result of changing the payments to be made in terms of these Terms and Conditions (so as to assist PowerOptimal in issuing a revised quote to cater for these circumstances).

13. INSTALLATION AND OTHER COSTS

13.1 The Client will be required to pay the costs of installing the Product at the Premises, as well as any other costs, expenses and liabilities mentioned in these Terms and Conditions, including, cables, wiring, fittings and other items which are required to effect the installation.

13.2 If, during the course of installing and/or supplying the Product, it appears that additional work, consumables and/or deliverables are required which could not have been reasonably expected at the time of performing the Assessment and/or issuing the Quote, then PowerOptimal will be entitled to quote the Client for such additional work, consumables and/or deliverables.

14. THE PRICE

14.1 In exchange for the supply of the Product, the Client agrees to pay PowerOptimal the Price.

14.2 All payments will be COD (Cash on Delivery).

14.3 Payment of any amount must be made without any delay, deduction, withholding or set-off.

14.4 PowerOptimal will not accept any payments made by cheque.

15. WARRANTY ON THE PRODUCT

15.1 If the Product is found to be Defective, the Client will be entitled to a repair or replacement of it within 2 (two) years of the date of delivery of the Product to the Client. Where the Client is a consumer as defined in the CPA, then the Client will be entitled to such remedies as are made available under the CPA in relation to the return of goods. All claims in this regard must be accompanied by an original tax Statement from PowerOptimal.

15.2 *Despite clause 15.1, PowerOptimal will not have any liability or obligation to the Client where the Product has been subjected to abuse, misuse, improper use, improper testing, negligence, accident, alteration, tampering or faulty repair, or due to ordinary wear and tear due to*

use by the Client, and the Client will be required to compensate PowerOptimal for the costs of defending any action against it if any of these circumstances arise.

- 15.3 Where the Client is a consumer as defined in the CPA, then the Client agrees to comply at all times with the provisions of the CPA regarding returns, repairs and refunds and the implied warranties relating to returns, repairs and refunds. *If any claim is made and/or any Losses are suffered by PowerOptimal due to a failure by the Client to comply with these provisions of the CPA, the Client will be required to compensate PowerOptimal for the costs of defending any action against it.*

16. WARRANTIES AND UNDERTAKINGS BY THE CLIENT

In addition to any other obligations of the Client contained in these Terms and Conditions, the Client warrants and undertakes that:

- 16.1 it is aware of the nature and the limitations of the Product;
- 16.2 where the Client is a consumer as defined in the CPA, then it will comply with the provisions of the CPA relating to all dealings with the Product, including any warning labels and instructions relating to the Product.

17. INDEMNITIES

- 17.1 *The Client will be required to compensate (i) PowerOptimal for the costs of defending any action against it; or (ii) any third party that acquires PowerOptimal or to whom these Terms and Conditions are transferred, from any and all Losses caused by the Client's:*

17.1.1 *failure to observe or perform any duties or obligations in accordance with any law, license, certificate, authorisation and/or approval;*

17.1.2 *any breach by the Client of the warranties in clause 16;*

17.1.3 *failure to observe or adhere to any warning labels and/or instructions pertaining to the Product.*

18. DISCLOSURE OF PERSONAL INFORMATION

- 18.1 The Client may be required to provide PowerOptimal with personal information.

18.2 Whilst PowerOptimal will, in general, use such personal information anonymously, the Client understands and agrees that such personal information is to be used for the purposes of:

- 18.2.1 monitoring performance of the Product;
- 18.2.2 conducting case studies regarding the use of the Product by each Client; and
- 18.2.3 connecting data regarding the Client's use of the Product with the billing by the Client's electricity service provider.

- 18.3 PowerOptimal undertakes that any personal information provided by the Client to it will be held securely and in accordance with applicable laws.

18.4 The Client confirms that all personal information provided to PowerOptimal is accurate and complete. The Client further agrees to update such information if it changes at any time, *failing which, PowerOptimal will not be liable for any inaccuracies or lack of completeness of such information, or any resulting failure to properly perform its obligations under these Terms and Conditions.*

19. CONFIDENTIALITY

- 19.1 The Client acknowledges the great importance of the Confidential Information to PowerOptimal and, where applicable, third party owners of such information, and recognises that PowerOptimal and/or third party owners may suffer severe harm or loss if such information is disclosed or used otherwise than in accordance with the Contract Documents.

19.2 The Client agrees and undertakes:

19.2.1 except as allowed for in the Contract Documents, not to disclose or publish any Confidential Information in any way, for any reason or purpose without the advance written approval of PowerOptimal and provided that if the Confidential Information is owned by a third party, the Client must get the approval of such third party;

19.2.2 except as allowed for in the Contract Documents, not to use, employ, exploit or in any other way use the Confidential Information for any purpose whatsoever without the advance written approval of PowerOptimal and provided that if the Confidential Information is owned by a third party, the Client must get the approval of such third party.

- 19.3 All Confidential Information disclosed by PowerOptimal to the Client or which otherwise comes to the knowledge of the Client, is acknowledged by the Client:

19.3.1 to be owned by PowerOptimal or where applicable, the relevant third party owner; and

19.3.2 not to give any rights in such Confidential Information to the Client.

- 19.4 The Client must protect the Confidential Information in the way that a reasonable person protecting his own Confidential Information would. In no event will the Client use less than reasonable efforts to protect the confidentiality of the Confidential Information.

19.5 PowerOptimal can at any time on written request to the Client, require that the Client immediately returns to PowerOptimal or destroys any Confidential Information and may, in addition, require that the Client give a written statement to the effect that all such Confidential Information has been returned or destroyed as the case may be.

20. BREACH

- 20.1 If the Client commits a breach of any part of the Contract Documents and fails to correct it within 14 (fourteen) days of notice or a shorter period, should a shorter period be reasonable in the circumstances, PowerOptimal will be entitled, in addition to any other rights and remedies that it may have in terms of the Contract Documents or otherwise, to terminate any or all Contract Documents without in addition to any claims which PowerOptimal may have for damages against the Client.

20.2 To avoid any doubt, all Contract Documents will terminate when these Terms and Conditions terminate.

21. TERMINATION FOR CONVENIENCE

PowerOptimal may terminate these Terms and Conditions or any Transaction Document(s) in whole or in part for convenience and for no reason at any time by giving the Client at least 30 days' advance written notice, specifying the termination date. PowerOptimal will not be liable to the Client due to such termination.

22. PENALTY FOR EARLY TERMINATION BY THE CLIENT

If the Client terminates or tries to terminate these Terms and Conditions prior to the before they are due to finish, then:

- 22.1 **PowerOptimal will be entitled to remove the Product from the Premises, and the Client will provide PowerOptimal with access to the Premises for such purposes; and**

22.2 **the provision of all Services under these Terms and Conditions will immediately stop.**

23. LIMITATION OF LIABILITY

23.1 *Despite any conflicting wording in the Contract Documents, but in line at all times, with applicable laws, PowerOptimal will not be liable for any Losses as a result of:*

23.1.1 *the Client or any other person, including any electrician appointed by the Client as contemplated in clause 9.3, handling, storing, installing, using or otherwise dealing with the Product in a way which does not comply with: (i) warning labels or instructions for installation or use; (ii) the purpose which the Product is designed for; and (iii) the normal and proper way that the Product is meant to be handled, stored, installed, used or otherwise dealt with;*

23.1.2 *any malfunction, non-performance or lowering of performance of the Product caused by or resulting directly or indirectly from any alterations, attachments, tampering with or relocation of the Product which is not approved in writing by PowerOptimal, it being understood that the Client will be entirely responsible for resulting violation, injury to person or damage to property and the Product;*

23.1.3 *modifications, repairs or replacements or attempted modifications, repairs or replacements not performed by PowerOptimal or not approved by PowerOptimal in writing before such modifications, repairs or replacements are made or attempted to be made by any other party, including the Client;*

23.1.4 *any changes or modifications to the Product which are required due to any technical or regulatory changes introduced by the appropriate regulatory authorities;*

23.1.5 *causes external to the Product such as failure or fluctuation of electrical power, including load shedding (unless the Product is specifically designed to assist in the management of load shedding).*

23.2 *Subject to applicable laws, under no circumstances, including due to its negligent acts or omissions or those of its servants, agents or contractors or other persons who by law PowerOptimal may be liable for, will PowerOptimal be liable for any indirect, extrinsic, incidental, special, penal, punitive, exemplary or consequential Losses of any kind however it may be caused (whether arising under contract, injury to another or otherwise and whether the Loss was actually expected or reasonably expected), suffered by the Client, its directors and/or servants, including any loss of profits, revenue, economic loss, loss of operation time, corruption or loss of information and/or loss of contracts, arising from or related to the Product and/or the use of the Software.*

23.3 *Subject to clauses 23.1 and 23.2, and subject to applicable laws, PowerOptimal's liability for any loss or damages arising out of or relating to the Contract Documents (including in connection with the performance or omission by PowerOptimal of its obligations and duties under the Contract Documents) will be limited to the price paid by the Client as at the date on which the incident which gave rise to such Loss occurred.*

24. MEDIATION AND ARBITRATION

24.1 All disputes arising out of or relating to the Contract Documents, including disputes about the meaning or interpretation of any part of the Contract Documents, must first be resolved or attempted to be resolved by the Parties through good faith discussions within 30 (thirty) days of the dispute having been declared by any of the Parties;

24.2 Subject to clause 24.1 being exhausted, any dispute will be referred to an independent Advocate with not less than 10 years' experience with the Johannesburg Bar, of PowerOptimal's choice;

24.3 The arbitrator will act as an expert and not an arbitrator and will not be bound to the rules of arbitration under the arbitration laws for the time being in force in the Republic of South Africa;

24.4 The arbitrator will be entitled to make such award, including an award for specific performance, an interdict (court order which will require a Party to do or not do something), damages or a penalty or otherwise as he in his entire discretion decides it appropriate and to deal as as he decides with the question of costs.

24.5 Any award made by the arbitrator:-

24.5.1 will be capable of being taken on appeal to a court with authority;

24.5.2 may be made an order of any court with authority;

24.5.3 nothing in this clause 24 will prevent either party from obtaining intermediate relief (short term assistance) on an urgent basis from a court with authority, whilst awaiting the decision of the arbitrator.

25. ADDRESSES WHERE LEGAL NOTICES MAY BE SENT

25.1 The Parties select the following addresses as their respective addresses where legal notices may be sent, or such other address as may be notified by either Party to the other:

25.1.1 PowerOptimal:

16 Halyard Walk, Marina da Gama, 7945, Western Cape.

25.1.2 The Client:

The address contained in the Quote.

25.2 A notice, request, demand and determination under the Contract Documents (i) delivered by hand will be deemed to have been properly given when delivered by hand during ordinary business hours; or (ii) delivered by mail when mailed in a properly addressed envelope to a responsible person at the receiver's address set out above by registered mail, which delivery will be evidenced by the registered mail receipt;

26. FORCE MAJEURE (UNFORESEEABLE CIRCUMSTANCES)

26.1 Neither Party will be liable for any failure to fulfil its obligations under the Contract Documents if, and to the extent that, such failure is caused by any circumstances beyond its reasonable control.

26.2 Should either Party be unable to fulfil its obligations under the Contract Documents for a period of 90 (ninety) days, due to circumstances beyond its reasonable control, as recorded in clause 26.1, then such Party must, as soon as it becomes aware that such circumstances are likely to cause a delay or suspension of the Contract Documents, give written notice to the other Party, estimating the length of such delay. However, the Party claiming a force majeure event (unforeseeable circumstance) must, to the extent possible:

26.2.1 use its reasonable endeavours to terminate the circumstances causing the force majeure (unforeseeable circumstance); and

26.2.2 should the force majeure (unforeseeable circumstance) come to an end, immediately give notice to the other Party that it has ended.

26.3 If the force majeure event (unforeseeable circumstance) has a permanent effect, affecting the fulfillment of all or part of a Party's obligations under the Contract Documents, then either Party can terminate the Contract Documents immediately by giving written notice of such termination to the other Party.

27. GENERAL

27.1 The Contract Documents will be binding on the Parties and any third party that acquires PowerOptimal or to whom these Terms and Conditions

are transferred. The Client will not be entitled to cede, assign, sub-contract or otherwise transfer any rights or obligations contained in any or all Contract Documents without the advance written approval of PowerOptimal. PowerOptimal, in its entire discretion, may cede, assign, sub-contract or otherwise transfer any rights and/or obligations under any or all Contract Documents without the approval of the Client which will include, a company or other type of entity which acquires all or almost all of the assets of PowerOptimal.

27.2 If any of the terms and conditions of the Contract Documents are held to be invalid, unlawful or unenforceable, such terms and conditions can be removed from the remaining terms and conditions, which will continue to be valid and enforceable. If any term or condition which is held to be invalid can be changed so as to make it valid, the Parties agree to negotiate an amendment to remove the invalidity.

27.3 No change, waiver (surrender) or discharge (release) of the terms and conditions of the Contract Documents will be valid unless it is in writing and signed by an authorised representative of the Party against which such change, waiver (surrender) or discharge (release) is sought to be enforced. Any such change, waiver (surrender) or discharge (release) will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party to exercise any right, power or privilege under the Contract Documents will operate as a waiver (surrender) of the Contract Documents. No single or partial exercise of any right, power or privilege will prevent any other or further exercise of the Contract Document or the exercise of any other right, power or privilege.

27.4 The Contract Documents will be governed by and interpreted in accordance with the law of the Republic of South Africa and all disputes, actions and other matters relating to the Contract Documents will be determined in accordance with such law.

27.5 The Contract Documents constitute the whole of the agreement between the Parties relating to the subject matter of those documents and unless the Contract Documents allow for it, no amendment, alteration, addition, variation or agreed cancellation will be of any force or effect unless it is in writing and signed by the Parties or their duly authorised representatives.

27.6 The Parties agree that there are no other terms or conditions to the Contract Documents, whether oral or written.

27.7 The Parties warrant and acknowledge that the relationship between them is not in the nature of a partnership and that neither Party can make or enter into binding agreements of any nature on behalf of the other Party.

27.8 Any provision of the Contract Documents, which contemplates performance or observance after any termination or expiry of the applicable Contract Documents, will survive any termination or expiry of the applicable Contract Documents and continue in full force and effect.

27.9 Each Party agrees that, in its respective dealings with the other Party under or in connection with the Contract Documents, it will act in good faith.

27.10 Each Party will bear and pay its own costs of or associated with the drafting, preparation and execution of the Contract Documents.