

STANDARD TERMS AND CONDITIONS

1 INTERPRETATION

- 1.1 The Conditions as set out in this document and in any written document signed by the duly authorised representative of Maxi Security (Pty) Ltd ("the CONTRACTOR") and the CLIENT (named in the SCHEDULE) are the sole agreement between the CONTRACTOR and the CLIENT.
- 1.2 The headings to the paragraphs of the Conditions are included for reference purposes only and shall not in any way affect or govern the interpretation or construction of this AGREEMENT.
- 1.3 Unless the context clearly indicates a contrary intention; words importing –
- i. any one gender shall include the other genders;
 - ii. the singular shall include the plural and vice versa;
 - iii. natural persons shall include legal persons or entities.
- 1.4 "Month" shall mean the period commencing on the first day of any one month, and terminating on the last day of the same month;
- 1.5 "SCHEDULE" means the schedule annexed hereto and initialed by the signatories for the purpose of identification;
- 1.6 "PREMISES" means the property at which security services are to be provided under this agreement, the address of which is specified in the SCHEDULE.

2 SERVICE

- 2.1 The CONTRACTOR undertakes to provide the security services to the CLIENT in respect of the security area, being the specified areas of the CLIENT's premises, as specified in the SCHEDULE on the terms and conditions as set out in this agreement.
- 2.2 The object and function of the security services and security personnel to be provided by the CONTRACTOR is to minimize the risk of loss / or damage by theft, burglary, vandalism (malicious damage to property), and other related acts of dishonesty, and the CONTRACTOR furnishes no warranty or guarantees that it or its security personnel will be able to minimize or prevent any such loss or damage, or that same will be minimized or prevented as a result of the CLIENT relying, or acting upon any technical or other advice given.
- 2.3 On the date of commencement of the AGREEMENT, the CONTRACTOR and the CLIENT shall each nominate one or more persons in their respective employ as the persons responsible for security and shall provide each other with the names, telephone numbers or other means of contact with such persons in the event of an emergency.
- 2.4 The CLIENT shall provide a telephone and/or such other means of communication as may be agreed with the CONTRACTOR for the use of the CONTRACTOR's personnel to enable the same to communicate with the police, fire brigade, other emergency services, or the central office of the CONTRACTOR at any time of the day or night.
- 2.5 The CLIENT shall supply an appropriately furnished room or gatehouse on its premises where the CONTRACTOR's personnel can attend to administrative functions relative to the services provided by the CONTRACTOR in terms of the AGREEMENT. The CLIENT shall also provide toilet facilities for use by the CONTRACTOR's personnel.
- 2.6 The CLIENT hereby furnishes the CONTRACTOR and its personnel with authority in terms of Section 42(3) of the Criminal Procedure Act No. 51 of 1977, to arrest any person found committing an offence on or in respect of the CLIENT's premises or any part thereof.
- 2.7 The CLIENT irrevocably indemnifies the CONTRACTOR, its Directors, agents, employees and servants against any claim which may be instituted against any one or more or all of them, and which claim arises out of or in connection with any search conducted or arrest effected pursuant to the provisions of paragraph 2.6 above, provided that such search or arrest has been done procedurally correctly and in terms of the laws of the Republic of South Africa.

3 CONTRACTOR'S LIABILITY/CLIENT'S INDEMNITY

- 3.1 It is recorded that and agreed by the parties that the security services provided in terms of this AGREEMENT are not intended as an alternative or supplement to any insurance to the benefit of the CLIENT, whether or not such insurance is in force, and nor shall the security services constitute an insurance of any kind whatsoever, or any indemnity against injury, loss or damage which may be sustained by the CLIENT.
- 3.2 The CONTRACTOR undertakes that it will use its best endeavors, and take responsible precautions, as far as possible, relevant to the employment of reliable security personnel, and in the rendering of the services, with the objective of minimizing risk of loss or damage, it being expressly agreed that save for any warranties, express and implied, as are contained in this agreement, same are specifically disclaimed and excluded by the CONTRACTOR, and without derogating from the generality of the foregoing, the CONTRACTOR affords the CLIENT no warranties or guarantees that it will be able to minimize or prevent any such risk, loss or damage, howsoever caused or arising.

3.3 The total liability (if any) of the CONTRACTOR to the CLIENT under or in connection with this AGREEMENT, whether from negligence or howsoever arising, is limited in respect of any one event or series of connected events:-

3.3.1 In respect of a claim where the CONTRACTOR is wholly indemnified under a Policy of Insurance, to the total amount payable under such Policy of Insurance.

3.3.2 In respect of a claim where the CONTRACTOR is not fully indemnified under a Policy of Insurance, to an amount which is three times the charge payable under the AGREEMENT by the CLIENT to the CONTRACTOR for the month during which the claim arose.

4 PAYMENT

4.1 All payments due by the CLIENT to the CONTRACTOR shall be made monthly in advance on receipt by the CLIENT of the CONTRACTOR's invoice, without deduction, and the CLIENT shall not be entitled to withhold or defer payment, or to effect any set-off in regard to any alleged claim or counter claim.

4.2 The CLIENT shall be obliged to pay the CONTRACTOR interest on any overdue payments calculated at the rate of 2 % (two per cent) per annum higher than the rate of interest charged at the time by the CONTRACTOR's bankers on unsecured overdraft facilities.

4.3 In the event of the CLIENT failing to pay the CONTRACTOR any amounts which are due in terms of the AGREEMENT on due date, and if as a result the CONTRACTOR instructs an Attorney to collect any amounts due, the CLIENT shall be obliged to pay, and shall pay on demand to the CONTRACTOR all the legal costs occasioned thereby, including all Attorney and Client costs, collection charges and tracing fees.

4.4 The CLIENT agrees and warrants that the nature, amount and calculation of the CLIENT's indebtedness to the CONTRACTOR in terms of this Agreement shall be determined and proven by a written certificate signed by a director of the CONTRACTOR (whose capacity and authority it will not be necessary to prove), which certificate shall, on the mere production thereof be binding upon the CLIENT and constitute *prima facie* proof (accepted as true and correct until proven otherwise) of the fact that the amount stated therein is due and payable by the CLIENT to the CONTRACTOR in any legal proceedings against the CLIENT and constitute a liquid document against the CLIENT in any such legal proceedings and capable of sustaining provisional sentence and summary judgment proceedings.

4.5 The CONTRACTOR shall have a lien over the PREMISES and all movable property situated thereon and shall therefore have the right to remain on the PREMISES and retain control of the movable property situated thereon, for any sum due to the CONTRACTOR by the CLIENT that is unpaid and until such time as such sum is paid. The CONTRACTOR shall give the CLIENT 90 (Ninety) days' notice to pay any such sum and if payment is not made accordingly, the CONTRACTOR shall have the right to sell the PREMISES or the movable property situated thereon (or any part thereof) by public auction, or private treaty and to apply the net proceeds thereof to the payment of any sum due to the CONTRACTOR by the CLIENT.

5 CHARGES AND INCREASES

5.1 The CLIENT shall pay the CONTRACTOR the monthly charges in respect of the consideration as detailed in the "SCHEDULE".

5.2 The consideration payable by the CLIENT to the CONTRACTOR as is set out in the SCHEDULE, shall be increased on each anniversary of the date of commencement, agreed to by both parties by an amount proportionate to the increase in the Consumer Price Index (as provided by the Central Statistics Bureau).

5.3 Should the statutory minimum wage payable to the CONTRACTOR'S security personnel employed in or about or in connection with the services supplied by the CONTRACTOR be increased as any time then the consideration payable by the CLIENT in terms of this contract shall be increased with effect from the effective date of such statutory increase by a proportionate share of the total amount of monthly increase would be payable by the CONTRACTOR to all its said security personnel then employed and entitled to such increases.

5.4 The increase referred to in 5.3 above is subject to the CONTRACTOR furnishing the CLIENT with documentary proof of such increase in statutory wages and will become effective on the date of such statutory wage increase.

6 DURATION / TERMINATION

6.1 This AGREEMENT shall commence on _____ and will be ongoing on a month to month basis, until further notice.

6.2 This AGREEMENT shall, on the expiry of the said probation period, automatically endure for the "FIXED" period.

6.3 This AGREEMENT shall be deemed to endure for further periods, on the basis of being automatically renewed unless the CLIENT has at least 1 (one) month's prior to the end of any further period, in writing advised the CONTRACTOR that the AGREEMENT will terminate on expiry of the affected further period, and these provisions shall apply, mutatis mutandis, to all such further periods.

6.4 Notwithstanding the provisions of Clauses 6.1 to 6.4, without prejudice to any claim which it may have in law, the CONTRACTOR shall be entitled but not obliged to terminate the AGREEMENT (or the Conditions) or should the CLIENT be placed in provisional or final liquidation or under provisional or final judicial management, whether compulsorily or voluntarily, or should the CLIENT attempt to compromise with its creditors or allow a judgement of any competent court against it to remain unsatisfied for a period of 14 (fourteen) days from the date of knowledge thereof by the CLIENT and no application be made to a court to rescind such judgement within the period prescribed by the rules of the court.

- 6.5 Breach of any of the terms and conditions contained in this AGREEMENT, then either party shall have the right, without prejudice to any other rights or claims which it may have under this AGREEMENT, or at law (including the right to claim damages), to cancel and terminate this AGREEMENT, provided that any such breach is not remedied within twenty one (21) days after dispatch by the aggrieved party of a notice / demand calling for performance / such breach to be remedied.
- 6.6 The CLIENT acknowledges and accepts liability for the payment of a penalty, equal to three (3) months of the contractual price to the CONTRACTOR in the event of breach of contract by the CLIENT, not adhering to the required notice period.
- 6.7 The penalty clause will only come into effect if the CLIENT selects to cancel the contract.
- 6.8 The CLIENT acknowledges that the abovementioned amount is fair and reasonable amount as compensation for losses incurred by the CONTRACTOR, in the event of breach of contract by the CLIENT.

7 ASSIGNABILITY

- 7.1 The CLIENT shall not have the right to assign this agreement or cede, transfer or make over any of its rights or obligations hereunder, without prior written consent of the CONTRACTOR, which shall not be unreasonably withheld.
- 7.2 The CONTRACTOR shall be entitled, with the consent of the CLIENT, which shall not be unreasonably withheld, to assign this agreement or any particular obligations hereunder, and in which event the assignee shall be bound as fully and effectively as if it had contracted with the CLIENT, and without derogating from any remaining obligations of the CONTRACTOR.

8 FORCE MAJEURE

- 8.1 Neither party shall be liable for any loss or damage sustained by reason of its failure to perform its obligations under this agreement, if such failure results from any one or more of the following, whether happening in the Republic of South Africa, or elsewhere, viz., force majeure, causus fortuitus, refusal by any Government, Provincial or other competent authority, of any necessary license, permit, or authority, law decree, regulation, Government authority, epidemic, flood, earthquake or like natural disaster, explosion, strike, lockout, civil disturbance, labour dispute, embargo, or anything beyond the parties reasonable control provided, however, that the party's whose performance shall have been so prevented, shall give written notice within a reasonable time to the other party, of the nature thereof, and the date such condition commenced, and the obligation of the parties shall, during the period when performance is so affected, be suspended, and during the continuance thereof, the CLIENT shall not be obliged to make payment to the CONTRACTOR of the consideration due, and pro-rated to the period of such suspension

9 RESTRAINT

- 9.1 In order to protect the interest if the CONTRACTOR and its business, the CLIENT agrees and undertakes that during the currency of this AGREEMENT, and for a period of twelve (12) months, following the date of expiration thereof, not on its own behalf, or as representative of any other firm, person, or other entity, or whether directly or indirectly, or via any associated subsidiary or holding entity of the CLIENT, to offer employment to, or to employ, or entice away, or solicit, or accept full or part time services from any of the CONTRACTOR's security personnel who are, or were employed by the CONTRACTOR at any time during the currency of this AGREEMENT, and, irrespective of whether such security personnel were employed in relation to the security services rendered to the CLIENT under this AGREEMENT or otherwise, without the written consent of the CONTRACTOR.
- 9.2 On the same basis, mutatis mutandis, the CLIENT shall not accept any request for employment by any such security personnel or procure or arrange that such security personnel be, within the period of restraint, employed by any other party.
- 9.3 Should the CLIENT be in breach of the above restraint, and employ a member or members of the CONTRACTOR's security personnel, then, in that even, the CLIENT agrees and undertakes to pay to the CONTRACTOR an amount equivalent to 50% (fifty percent) of the annual salary of such members, as a genuine pre-estimate of liquidated damages which will be sustained by the CONTRACTOR in such circumstances, and the CLIENT acknowledges that the above provisions are fair and reasonable and go no further than is necessary for the protection of the interests of the CONTRACTOR. The annual salary aforementioned shall be deemed to include any benefits which such employee earned, or was entitled to receive as at the date of termination of the relevant employee's employment with the CONTRACTOR.
- 9.4 The CLIENT agrees that the restraints as set forth above are severable and divisible in regard to each undertaking and / or part thereof, and that in the event of any undertaking or part thereof not being enforceable for any reason whatsoever, same shall not affect the validity or enforceability of the remaining undertakings or parts thereof, and that the restraints are reasonable and necessary in order to preserve and protect the interests of the CONTRACTOR.

10 GENERAL

- 10.1 No waiver, relaxation, extension of time or indulgence by either party of non-performance or breach of any terms, conditions or obligations of this AGREEMENT, shall be, or deemed to be, a waiver, or condonation by such party of such breach or non-performance, or of any subsequent breach or non-performance, and such party shall not be deemed to create any novation or estoppel, insofar as any of the terms and conditions of this AGREEMENT are concerned.
- 10.2 This AGREEMENT shall be binding on the successors-in-title and assigns of the parties (and permitted assigns only, in the case of the CLIENT).
- 10.3 The CLIENT acknowledges that no representations, warranties or guarantees of whatsoever nature or kind, other than those contained in this AGREEMENT have been made to it by the CONTRACTOR, or its agents or representatives, to induce the CLIENT to enter into this AGREEMENT, or for any purpose whatsoever.

- 10.4 The CONTRACTOR and the CLIENT hereby consent in terms of Section 45 of Magistrates Court Act No. 32 of 1944, as amended, to the jurisdiction of the Magistrates Court, in respect of any action or proceeding arising from this AGREEMENT, but without prejudice to the right of the CONTRACTOR to bring proceedings in the Supreme Court where the proceedings would, but for the foregoing consent, fall outside the jurisdiction of the Magistrates Court.
- 10.5 This AGREEMENT shall be governed and construed in accordance with the laws of the Republic of South Africa.
- 10.6 The CLIENT hereby warrants that it knows of nothing which will in any way complicate or render more difficult or dangerous the security services to be rendered by the CONTRACTOR under this AGREEMENT.
- 10.7 The CLIENT undertakes and agrees that it shall regularly instruct its employees and request any other persons in the security area, to ensure that all cash, documents, jewellery, motor vehicle keys, and other valuable and / or sensitive articles and / or documents be kept in a place of safe custody, and, should the foregoing not be safely secured, then no right of recourse whatsoever shall accrue against the CONTRACTOR or the security personnel as a result of any theft, loss or damage to such items and / or articles.

11 DOMICILIA CITANDI ET EXECUTANDI

- 11.1 The parties choose their domicilium citandi et executandi for purposes of giving any notice, for payment of any sum, and the serving of any process, and for such other purposes arising from this AGREEMENT, as may be necessary at the addresses indicated herein, it being specially recorded that the addresses of any contact and / or responsible persons provided in accordance with Clause 2.3, shall in no way be deemed to constitute an address for the purposes of this Clause.
- 11.2 Each party shall be entitled by written notice to the other, to vary its domicilium to any other address within the Republic of South Africa which is not a post office box or poste restante
- 11.3.1 Any notice given and any payment made by either party to the other ("the addressee"), which:
- 11.3.2 is delivered by hand during the normal business hours of the addressee, at the addressee's domicilium for the time being shall be presumed, until the contrary is proved, to have been received by the addressee at the time of delivery;
- 11.3.3 is posted by prepaid certified mail, from an address within the Republic of South Africa, to the addressee at the addressee's domicilium for the time being, shall be presumed, until the contrary is proved, to have been received by the addressee within 4 (four) business days after posting.
- 11.4 THE CONTRACTOR chooses as its domicilium citandi et executandi the following address:
- 243 LOUIS BOTHA AVE, ORCHARDS, JOHANNESBURG
- 11.5 THE CLIENT chooses as its domicilium citandi et executandi the following address:

MAXI
SECURITY