

STANDARD TERMS AND CONDITIONS OF SALE
between Casarredo Italia Proprietary Limited (“Casarredo”) and the Customer
in respect of the sale of Products by Casarredo to the Customer

IT IS HEREBY AGREED as follows:

1. DEFINITIONS

1.1 In this Standard Terms and Conditions of Sale, unless the contrary intention appears, capitalised terms shall have the meaning set forth below:

1.1.1 **“Agreement”** means these Standard Terms and Conditions of Sale and all Orders (including their attachments and appendices (if any)) and other documents attached to or otherwise expressly incorporated into this Standard Terms and Conditions of Sale, as may be amended from time to time in accordance with the terms of this Agreement;

1.1.2 **“Applicable Rate”** means the Prime Rate plus 2% (two percent);

1.1.3 **“Casarredo”** means Casarredo Italia Proprietary Limited;

1.1.4 **“CPA”** means the Consumer Protection Act, No 68 of 2008;

1.1.5 **“CPA Regulations”** means regulations promulgated pursuant to the CPA from time to time;

1.1.6 **“Currency”** means the Rand, being the currency of the Republic of South Africa, with symbol ZAR or R;

1.1.7 **“Customer”** means the person whose name appears on the Pro-Forma Invoice and Invoice, under the heading **“Customer”**;

1.1.8 **“Customer’s Designated Address”** means the Customers designated delivery address for the Products purchased by it, as set out in the Pro-Forma Invoice and Invoice;

1.1.9 **“Delivery Charges”** means the charges payable by the Customer to Casarredo for the delivery of the Products to Customer’s Designated Address, set out in the Pro-Forma Invoice and Invoice;

1.1.10 **“Deposit”** means, unless otherwise agreed between the Parties in writing, an amount equivalent to 50% (fifty percent) of the amount reflected on each Pro-Forma Invoice (VAT inclusive) to be paid by the Customer as a non-refundable deposit;

1.1.11 **“Designated Account”** means Casarredo’s designated bank account for payment for Products set out in the Pro-Forma Invoice;

1.1.12 **“Force Majeure Event”** means war, riots, civil disorder, terrorism, acts of government, whether lawful or unlawful,

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earthquake, fire, explosion, storm or flood, inclement weather, act of nature or other similar cause beyond Casarredo’s reasonable control;

1.1.13 **“Invoice”** means the written tax invoice in respect of an Order, addressed to the Customer which refers to these terms and conditions setting out, *inter alia*, the details in respect of the Products, the Price payable by the Customer to Casarredo for the Products and any further charges payable by the Customer to Casarredo and which invoice, once signed by the Customer, shall be deemed to be incorporated in and form part of these Standard Terms and Conditions of Sale;

1.1.14 **“Law”** means:

1.1.15.1 any statute, regulation, by law, ordinance or subordinate legislation in force from time to time to which a Party is subject;

1.1.15.2 the common law as applicable to the Parties from time to time;

1.1.15.3 any binding court order, judgement or decree;

1.1.15.4 any applicable industry code, policy or standard enforceable by law; or

1.1.15.5 any applicable direction, policy, rule or order that is binding on a Party and that is made or given by any regulatory body having jurisdiction over a Party or any of that Party’s assets, resources or business, in South Africa;

1.1.16 **“Notification Date”** means the date on which Casarredo has notified the Customer that the manufacturer of the Products has delivered the Products to Casarredo’s warehouse and that the Products are ready for delivery to the Customer;

1.1.17 **“Notice”** means a written document;

1.1.18 **“Order”** means an order for Products pursuant to this Agreement, describing the particular Products to be sold by Casarredo and the applicable Price and “Orders” has a corresponding meaning;

1.1.19 **“Parties”** means the parties to this Agreement and the term “Party” refers to any one or more of them as the context may indicate;

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1.1.20	“Personal Information” means information relating to an identifiable, living, natural person, and where applicable, an identifiable, existing juristic person as contemplated in section 1 of the POPI;;	1.1.24.1	the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;
1.1.21	“Price” means the amounts payable by the Customer to Casarredo for the purchase of the Products, as set out in each Pro-Forma Invoice and invoice;	1.1.24.2	dissemination by means of transmission, distribution or making available in any other form; or;
1.1.22	“Prime Rate” means the publicly quoted basic prime overdraft rate of interest per annum of Investec Bank Limited (or its successor-in-title) from time to time (as certified by any manager of Investec Bank Limited, whose appointment and authority it shall not be necessary to prove), calculated on a daily basis, compounded monthly in arrears and determined on a 365 day year factor, irrespective of whether the year in question is a leap year or not;	1.1.24.3	merging, linking, as well as restriction, degradation, erasure or destruction of information;
1.1.23	“POPI” means the Protection of Personal Information Act, 4 of 2013;	1.1.25	“Product” means any product acquired by the Customer from Casarredo pursuant to an Order and “Products” have a corresponding meaning;
1.1.24	“Process” means any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including –	1.1.26	“Pro-Forma Invoice” means the pro-forma invoice presented by Casarredo to the Customer, detailing among other things, as follows:
		1.1.26.1	the Products to be sold and delivered by Casarredo to the Customer, quantities and prices; and/or;
		1.1.26.2	the services to be provided by Casarredo to the Customer and charges; and/or;
		1.1.26.3	Delivery Charges;
		1.1.27	“Storage Charges” means storage charges payable by the Customer to Casarredo on undelivered Products calculated

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at the rate of 4% (four percent) per month or part thereof of the Price payable for such Products;

- 1.1.28 “**VAT**” means Value Added Tax as provided for in the Value Added Tax Act 89 of 1991.

1.2 Interpretation

- 1.2.1 Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of this Agreement.
- 1.2.2 Unless otherwise stated herein, references in this Agreement to this Agreement or to any other agreement are references to this Agreement or such other agreement as varied, supplemented, substituted or replaced from time to time.
- 1.2.3 Unless otherwise stated herein, references to clauses, sub-clauses, schedules or paragraphs are references to clauses, sub-clauses, schedules or paragraphs of this Agreement, as the case may be.
- 1.2.4 References to any Law shall be deemed to include references to such Law as re-enacted, amended or replaced from time to time.

- 1.2.5 References to persons shall include natural and juristic persons and references to either Party shall include such Party’s successors or permitted assigns.

- 1.2.6 References to the singular includes the plural and *vice versa*. References to any gender include references to the other genders and vice versa.

- 1.2.7 If any provision in a definition is a substantive provision conferring rights or imposing obligations on either Party, effect shall be given to it as if it were a substantive provision in this Agreement notwithstanding that it is only contained in this clause 1.

- 1.2.8 Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in this clause 1.

- 1.2.9 Unless expressly otherwise stated, when any number of days is prescribed in this Agreement, same shall be reckoned

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exclusively of the first and inclusively of the last day, unless the last day falls on a day that is not a business day, in which case the last day shall be the next business day.

- 1.2.10 No rule of construction that an agreement shall be interpreted against the Party responsible for its drafting or preparation shall apply to this Agreement.

2. INTRODUCTION.

- 2.1 These Standard Terms and Conditions of Sale are intended to apply to any transaction entered into between Casarredo and the Customer for the purchase of Products only by the Customer, unless otherwise agreed to between the Parties in writing.
- 2.2 These Standard Terms and Conditions of Sale shall not apply to an order for products which form part of an order for a kitchen, cupboard or vanity made by the Customer with Casarredo.
- 2.3 By placing an Order for Products, you unreservedly agree to these Standard Terms and Conditions of Sale, unamended (unless otherwise agreed by the Parties in writing), which the Customer confirms it has read and understood and agree to be legally bound.

3. STATUS AND PRECEDENCE

3.1 Master Agreement

This Agreement is a master agreement under which the Parties may from time to time agree for the sale of Products by Casarredo. Such Products and the applicable Price (in addition to the terms and conditions contained in this Agreement) shall be described in Orders.

3.2 Status of Orders

- 3.2.1** Casarredo shall present to the Customer a Pro-Forma Invoice setting out all relevant details relating to the transaction between the Parties.
- 3.2.2** If the Customer accepts the details contained in the Pro-Forma Invoice, it is required to sign the Pro-Forma Invoice and return the duly signed Pro-Forma Invoice to Casarredo. The delivery by the Customer of a signed Pro-Forma Invoice, shall constitute an Order by the Customer to Casarredo in respect of the subject matter contained in the Pro-Forma Invoice on the terms and conditions set out herein and shall be binding on the Customer.

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3.2.3 Casarredo may accept or reject in whole or in part any Order placed upon it by the Customer pursuant to the receipt by it of a signed Pro-Forma Invoice or otherwise. For the avoidance of any doubt, a contract shall only come into force between Casarredo and the Customer if after receipt by Casarredo of a signed Pro-Forma Invoice, Casarredo confirms to the Customer that such an Order has been accepted or if Casarredo supplies, or tenders to supply, the Products in question to the Customer.

3.2.4 An Order may not be withdrawn until accepted or rejected by Casarredo. Any such Order shall upon acceptance thereof by Casarredo be irrevocable by the Customer.

3.2.5 Casarredo shall be entitled to cancel any Order concluded with the Customer in the event that the conditions affecting the procurement of the Products change or local market conditions change in the discretion of Casarredo and the Customer shall have no claim against Casarredo as a result of such cancellation, subject to the refund of any amounts already paid by the Customer.

3.2.6 All Orders will be incorporated into, form part of and be subject to the terms of this Agreement.

3.3 Conflicts

3.3.1 Insofar as any term and condition in a Pro-Forma Invoice and/or an Invoice conflicts with this Agreement, the terms of this Agreement shall prevail.

3.3.2 Any apparent or purported or attempted exclusion, substitution or variation of any of the terms and conditions of this Agreement in an Pro-Forma Invoice and/or Invoice or in any other way shall not be effective and notwithstanding the fact that Casarredo may accept an Order which appears or purports or attempts such exclusion, substitution or variation, this Agreement shall stand unaffected thereby as if such apparent or purported or attempted exclusion, substitution or variation was *pro non scripto*.

4. SEPARATE CONTRACT

Every Order placed by the Customer with Casarredo and accepted by Casarredo, shall constitute a separate and divisible contract between the Parties subject to the terms and conditions hereof.

5. TERMS OF PAYMENT

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5.1 In respect of Products purchased off the floor and immediately available for delivery to the Customer:

Unless otherwise agreed between the Parties in writing, the Customer shall pay 100% of the Price for the Products on date of signature by the Customer of the Invoice for the Products.

5.2 In respect of Products to be ordered from manufacturers and not available for delivery to Customer:

5.2.1 Unless otherwise agreed between the Parties in writing:

5.2.1.1 the Customer shall pay the Deposit within 48 (forty eight) hours from the date of signature by the Customer of the Invoice in respect for the Products ordered .

5.2.1.2 the Customer shall pay the balance of the Price within 48 (forty eight) hours from the Notification Date.

5.3 General

5.3.1 All amounts payable by the Customer to Casarredo shall be paid into the Designated Account.

5.3.2 The Customer shall not be entitled to the delivery of the Products until the Price, Delivery Charges (if applicable) and Storage Charges (if applicable) has been paid in full.

6. PRICE AND CHARGES

6.1 General

6.1.1 Casarredo shall present an Invoice to the Customer for the Price, Delivery Charges and Storage Charges (if applicable) due to it under the relevant Orders.

6.1.2 The Price ruling at date of acceptance of an Order shall apply to that Order provided that such Price is subject to adjustment by Casarredo, after acceptance, to account for any increase in foreign currency exchange rates and/or the imposition of or any increase to any customs and excise charges, import duties, customs surcharges, any other statutory imposts or charges payable by Casarredo.

6.2 Taxes

6.2.1 All amounts charged by Casarredo will be deemed exclusive of VAT, which Casarredo shall show as a separate item on each Invoice submitted to the Customer.

6.2.2 The Customer shall be obliged to pay to Casarredo in addition to any amount payable by it:

6.2.2.1 the amount of any tax, duty or other charge of any nature whatsoever imposed by any Law;

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6.2.2.2 any other additional costs of any nature whatsoever arising due to factors beyond the control of Casarredo.

6.2.3 Without limiting or derogating from what is set out in clauses 6.2.1 and 6.2.2, the Customer shall be liable for any other taxes relating to the Products. The Customer shall reimburse Casarredo any withholding taxes that Casarredo may become obliged to pay directly to any government or tax authority on behalf of the Customer.

6.3 Credit

6.3.1 Casarredo reserves the right, at its sole and absolute discretion, to grant and withdraw any credit facility to the Customer at any time and from time to time.

6.3.2 Without in any way limiting or derogating from what is set out in clause 6.3.1 above, once a credit limit has been reached, further Orders shall, unless otherwise agreed by Casarredo in writing, be due and payable in on the terms set out in clause 5.

6.4 Invoicing

6.4.1 Unless otherwise agreed, Casarredo shall invoice the Customer for all amounts due under this Agreement in the Currency.

6.4.2 Casarredo shall raise a separate Invoice(s) for each Order.

6.4.3 In the event that Casarredo does not receive timeous payment of any amounts due and payable to it, then interest shall be payable by the Customer to Casarredo at the Applicable Rate computed from the due date for payment until date of final payment and computed on the daily balance and capitalised monthly in arrears.

7. PAYMENT

7.1 All payments shall be made by the Customer into the Designated Account by electronic transfer of immediately available and freely transferable funds.

7.2 Casarredo may change the Designated Account to another bank account by giving the Customer at least 7 (seven) days prior Notice thereof. Any such change will be communicated on an official letterhead, signed by a director of Casarredo and addressed to the Customer’s Domicilium. The authenticity of this letter shall, after receipt and before the Customer takes action

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on such letter, be verified by the Customer in writing as soon as possible and without causing any delay in payment of any amount on the due date in terms of this Agreement. Without limiting Casarredo’s rights, any payment, including payments not verified as stipulated herein, shall be at the Customer’s sole risk.

7.3 All payments due and owing to Casarredo in terms of this Agreement shall be paid in monies (payment cannot be effected in any other legal manner, such as for example, set-off) free of deduction or withholding of whatsoever nature.

7.4 The Customer shall have no right to defer, withhold or adjust any payment due to Casarredo arising out of this Agreement, to obtain the deferment of any judgment for any such payment or part thereof, or to obtain deferment of execution of any judgment whether by reason of any set-off or counterclaim of whatsoever nature and howsoever arising.

7.5 Without in any way limiting or derogating from any matter referred to elsewhere in this Agreement, and in particular in clauses 7.3 and 7.4 above, the Customer’s obligation to affect all payments in accordance with this Agreement shall be absolute

and unconditional, irrespective of any contingency whatsoever including, but not limited to:

7.5.1 any right of set-off, counterclaim, recoupment, defence or other right;

7.5.2 any insolvency, bankruptcy, administration, judicial management, reorganisation, arrangement, readjustment of debt, dissolution, liquidation or similar proceedings by or against either Party.

7.6 A certificate by an employee or representative of Casarredo (whose authority need not be proven) as to the existence and the amount of the indebtedness of the Customer to Casarredo at any time, as to the fact that such amount is due and payable, the amount of interest accrued and as to any other fact relating to the indebtedness of the Customer to Casarredo shall be *prima facie* proof of the contents and correctness thereof and of the amount of the Customer’s indebtedness.

8. DELIVERY

8.1 Unless otherwise agreed, Products shall be delivered to the Customer, at the Customer’s Designated Address.

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- 8.2 Time shall not be of the essence in respect of any Order for Products placed with and accepted by Casarredo and the Customer shall accept delivery when Casarredo or its' transport agent effects delivery to the Customer.
- 8.3 Casarredo does not guarantee the despatch of Products on any specific date.
- 8.4 In the event of Casarredo being required to effect delivery in parts, its failure to effect any one part delivery, and/or if Casarredo effects late delivery of any part delivery, the Customer shall not have the right to cancel such Order, or to refuse to accept delivery of any late part delivery or of the balance of Products purchased by the Customer.
- 8.5 The Customer will be liable for the Delivery Charges, unless otherwise agreed between the Parties in writing.
- 8.6 The risk in the Products ordered by the Customer shall pass to the Customer upon delivery.
- 8.7 Notwithstanding clause 8.6, Products delivered by an independent service provider at the request of the Customer or by written agreement shall be at the Customer's sole risk, and all claims for damages, short delivery or non-delivery of the

Products shall lie against such service provider, and the Customer shall not have any claim against Casarredo in respect thereof howsoever arising.

- 8.8 The Customer shall accept delivery of the Products whenever it is tendered after the Notification Date and the Customer shall not be entitled to resile from an Order nor to any other right or remedy against Casarredo, on account of delays in effecting delivery, late delivery, partial delivery or non-delivery, whether occasioned by any negligent act or omission on the part of Casarredo.
- 8.9 If the Customer fails to:
- 8.9.1 pay the balance of the Price, as required in terms of clause 5.2.1.2; and/or
- 8.9.2 take delivery of the Products when delivery falls due after the Notification Date, Casarredo shall be considered to have tendered and the Customer to have refused to accept delivery,
- in this event, the Customer shall be liable to pay Casarredo Storage Charges from the date payment and/or delivery falls due (after the Notification Date) to the date of actual

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payment of the Price in full and/or delivery of the Products to the Customer, which charges shall be paid by the Customer to Casarredo on demand.

9. MATERIAL AND FINISHES

- 9.1 The Customer confirms that the finishes, patterns and profiles, styles and other material are correctly specified on the Pro-Forma Invoice and that different options, materials and products have been explained to the Customer.
- 9.2 The Customer acknowledges that the Products ordered in terms of this Agreement are “special order goods” as set out in sections 17 and 20 of the CPA.
- 9.3 The Customer acknowledges that variations to Orders will not be accepted.
- 9.4 The Customer acknowledges that paint, granite, wood and other natural products may differ from samples provided to the Customer and that it shall not have any claim against Casarredo as a result of such variation.

10. OWNERSHIP

Ownership of the Products shall not pass to the Customer until all amounts owed by the Customer to Casarredo (including, the Price,

interest and Storage Charges) in respect of the Products in question have been paid in full. The provisions of this clause shall apply notwithstanding the delivery of such Products to the Customer. All Products, whether fixed to immovable property or not, shall be deemed to remain movable property and be deemed to be severable without injury to the Customer’s property.

11. LIMITATION OF LIABILITY

- 11.1 The Customer shall not have any claim of any nature against Casarredo for any loss, damage or injury which the Customer may directly or indirectly suffer (whether or not such loss, damage or injury is caused through the negligence of Casarredo or Casarredo’s employees, agents or subcontractors) by reason of a breach of this Agreement by Casarredo or any latent or patent defects in the Products or by reason of the Products being in a defective condition or state of disrepair or any particular repair not being effected by Casarredo timeously or at all, or arising out of *vis major* or *casus fortuitus* or any other cause either wholly or partly beyond Casarredo’s control, or arising out of any act or omission by any Casarredo’s employees, agents or subcontractors, or arising in

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any manner whatsoever out of the use of this Agreement, for any purpose whatsoever, or arising from any other cause whatsoever.

11.2 To the fullest extent permitted by Law under no circumstances will Casarredo be liable for any consequential, indirect, special, punitive or incidental damages, whether foreseeable or unforeseeable, based on claims of the Customer (including, but not limited to, claims for loss of goodwill or loss of profits), arising out of breach or failure of express or implied warranty, breach of contract, misrepresentation, negligence, strict liability in delict or otherwise, whether based on this Agreement, any commitment performed or undertaken under or in connection with this Agreement, or otherwise.

11.3 Without derogating the provisions of clauses 11.1 and 11.2, Casarredo's maximum total liability for any loss, liability, damage or expense for which it may be liable to the Customer arising out of or pursuant to or in terms of this Agreement, shall be limited, to the extent of any applicable insurance policy held by Casarredo. The merit of each claim will be investigated, prior to the payment of any insurance amount by the insurance

company with whom the insurance policy rests. Payment to the extent of the insurance policy is in no way guaranteed, but based on the validity and merit of the claim as determined by the insurance company. Casarredo will not be liable for any repudiation or failure to pay any claim by the insurance company.

11.4 Notwithstanding the aforementioned provisions of this clause 11, Casarredo's liability in terms of this Agreement will be completely discharged if the Customer, its employees, representatives, agents, assignees and successors attempt to perform, or allow third parties to perform, any obligations which are the responsibility of or will have an effect on the responsibilities of Casarredo under this Agreement without the prior written consent of Casarredo.

11.5 The Customer hereby indemnifies and holds Casarredo harmless against all and any claims, losses, liabilities, costs, expenses, fines, penalties, damage, damages and claims, and all related costs and expenses (including legal fees on the scale as between attorney and own client, tracing and collection charges) which may be made or action brought against

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Casarredo by any person in respect of any matter for which the liability of Casarredo is excluded in terms of this Agreement.

12. CLAIMS

- 12.1 Unless Casarredo is advised in writing within 48 (forty eight) hours of delivery of the Products of any alleged damage of and / or defect in and/or shortage of the said Products, it is deemed that the Customer has accepted the Products as is, free of any defects and Casarredo shall not be liable for any claims instituted by the Customer in this regard.
- 12.2 Failure to comply with clause 12.1 shall constitute a waiver by the Customer of its right to make any claim in respect such alleged damaged and/or defective Products and/or short delivery / non delivery of the Products.

13. RETURN OF PRODUCTS

- 13.1 Casarredo does not sell Products on consignment or on a “sale and return” basis and the Customer understands that the Products described in this Agreement are specially designed and custom built for the Customer. Therefore, Products can only be returned, subject to authorisation first being obtained, for one of the following reasons:

- 13.1.1 the Products delivered are different to the Products ordered;
- 13.1.2 the Products are defective.
- 13.2 Products will not be accepted unless returned in same condition as they were at date of delivery to the Customer;
- 13.3 Products damaged or spoilt while in possession of the Customer will not be accepted.
- 13.4 The Customer is required to specify if the damage and or return relates to a consumer purchase.
- 13.5 No Products shall be returned to Casarredo for any reason whatsoever without Casarredo’s prior written consent, given by authorised by senior Casarredo management personnel.
- 13.6 No Casarredo employee or representative has authority to accept the return of Products for any reason, unless specifically authorised by senior Casarredo management personnel.
- 13.7 Casarredo reserves the right to levy a handling fee up to a maximum of 30% (thirty percent) of the Price of the relevant Products on such Products returned to and accepted by Casarredo. Casarredo is not obliged to accept the return of any Products and this clause shall not be used to imply that Casarredo shall be obliged to accept the return of any Products.

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13.8 All Products purchased by the Customer on “SALE” are sold to the Customer voetstoots on an as is basis.

14. WARRANTIES

14.1 Representations and Warranties

14.1.1 No warranties, guarantees or representations, express or implied or tacit whether by Law, contract or otherwise and whether they induced the contract or not, which are not set forth in this Agreement shall be binding on Casarredo, the Customer irrevocably waiving any right (common law or otherwise) it may have to rely thereon.

14.1.2 To the extent that a manufacturer’s warranty applies to any Products, Casarredo’s liability shall be limited to notifying the manufacturer of a warranty claim and Casarredo shall be deemed to do so as agent on behalf of the Customer and Casarredo shall not be liable for any loss, damage, destruction, theft howsoever or by whomsoever caused pursuant thereto.

14.1.3 Casarredo may require the Customer to make available the Products to Casarredo, the manufacturer or their nominee for inspection at a time and place to be determined by

Casarredo, the manufacturer or their nominee to consider the merits or honour any warranty. The Customer must, in writing, specify the alleged defect of the Products. In addition, the Products must be supported by the original Invoice and proof of payment thereof.

14.1.4 The merit of each warranty claim will be investigated by Casarredo, the manufacturer or their nominee with whom the warranty rests. Casarredo will not be liable for any repudiation of any warranty claim by the manufacturer (or their nominee).

14.2 Exclusions

14.2.1 Casarredo shall be relieved of all obligations in terms of this clause, if:

14.2.1.1 repairs or modifications have been made by persons other than Casarredo or any manufacturer (or their nominee) to the Products (or part thereof), unless such repairs or modifications are made with the prior written consent of Casarredo;

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- 14.2.1.2 any Products are used or operated in a manner contrary to which the Product was manufactured and such use or operation was not approved in writing by Casarredo;
- 14.2.1.3 any part of the Products shall not have been used or maintained in accordance with Casarredo’s or the manufacturer’s instruction (as the case may be), or under normal use;
- 14.2.1.4** parts, materials and/or consumable parts other than those recommended for use by Casarredo are fitted, attached or used on the Products.
- 14.2.2 Casarredo shall have no liability in respect of:
- 14.2.2.1 any defect arising from fair wear and tear, wilful damage, negligence, abnormal use, failure to follow Casarredo’s and/or the manufacturers instructions (whether oral or in writing), improper use, damage to the Products caused by improper maintenance, service or repair by untrained personnel or technicians, and unauthorized alterations or modifications of the Products;
- 14.2.2.2 Products which are accepted in the industry to have a limited life expectancy.

14.3 No Reliance

14.3.1 The Customer acknowledges that it must satisfy itself as to the adequacy, appropriateness and compatibility of the Products for its requirements. The Customer acknowledges that it has not relied on any statements or representations on the part of Casarredo as to the performance or functionality of the Products other than as contained in this Agreement.

14.3.2 Casarredo shall have no liability in respect of any injury, loss or damage (direct, indirect or consequential) arising out of the use of, or inability to use, the Products and whether or not occasioned by Casarredo’s negligence or any act or omission on its part. Without limiting the foregoing Casarredo does not warrant that the Products will be fit for the purposes for which they are to be used by the Customer (notwithstanding that the use to which the Customer intends to put the Products is known to Casarredo).

14.4 All Other Warranties Excluded

To the fullest extent permitted by Law, and except as expressly set out in this Agreement, Casarredo excludes all warranties, conditions, terms, representations and undertakings, whether

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express, implied, statutory or otherwise, including any condition or warranty of merchantability or fitness for a particular purpose.

14.5 Authority

The Parties undertake, represent and warrant to one another that:

14.5.1 they have the requisite power and authority to enter into this Agreement and to carry out the obligations contemplated herein; and

14.5.2 their signing, delivery and performance of this Agreement shall not constitute:

14.5.2.1 a violation of any Law, judgment, order or decree;

14.5.2.2 a breach under any contract by which it or any of its assets are bound; or

14.5.3 an event that would, with notice or lapse of time, or both, constitute such a violation or breach.

15. FORCE MAJEURE

15.1 Casarredo shall not be liable for any breach, or delay in performance, of its obligations under this Agreement if, and to

the extent that, the breach or delay is caused by a Force Majeure Event.

15.2 In the event that Casarredo is unable to perform its obligations pursuant to clause 15.1, Casarredo shall:

15.2.1 notify the Customer of the occurrence of the Force Majeure Event within a reasonable period of time and describe, at a reasonable level of detail, the circumstances causing such delay;

15.2.2 use its reasonable efforts to perform (or recommence performing) its obligations as soon as, and to the extent, possible, including through the use of alternative sources, workarounds, and plans.

15.3 Any delay or non-performance of any provision of the Agreement by Casarredo caused by a Force Majeure Event will not constitute a breach of this Agreement and the Customer shall not be entitled to cancel this Agreement or any Order in existence at the time.

15.4 If a Force Majeure Event continue for a period of 90 (thirty) consecutive days or Casarredo shall be entitled to terminate

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this Agreement or any Order by giving Notice to such effect to the Customer.

16. BREACH

16.1 Should the Customer fail to make payment to Casarredo of any amount due by it on due date or commit a breach of any other provision of this Agreement and fail to remedy that breach within 7 (seven) days after receipt of a Notice calling upon it to do so or if the Customer repudiates this Agreement, then Casarredo shall be entitled at its option, in addition to and without prejudice to any other right or remedy it may have under the circumstances, either to –

16.1.1 to immediate specific performance of any or all of the Customer's obligations under this Agreement whether or not any such obligation is then due; or

16.1.2 (either as an alternative to a claim for specific performance or upon the abandonment of such a claim) to cancel this Agreement. Notice of such cancellation shall be given to the Customer and the cancellation shall take effect on the giving of such Notice.

16.2 In the event of Casarredo cancelling this Agreement in terms of clause 16.1.2 all amounts paid by or on behalf of the Customer in terms of this Agreement, including the Deposit and all interest thereon and Storage Charges, shall be forfeited to Casarredo as agreed pre-liquidated damages, unless Casarredo elects to claim damages in lieu of such forfeiture, in which latter event –

16.2.1 Casarredo shall be entitled to hold such amounts pending determination of the amount of the damages by agreement, order of court, or otherwise;

16.2.2 if the damages as determined are greater or less than the amounts held by Casarredo, the difference shall be paid to the Party entitled to the difference, by the other Party.

17. JURISDICTION

17.1 The Customer consents to the jurisdiction of any competent Magistrate's Court in respect of any legal proceedings to be instituted against it by Casarredo in terms of this Agreement notwithstanding that the quantum of such legal proceedings exceeds the jurisdiction of the Magistrate's Court.

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17.2 Notwithstanding clause 17.1, Casarredo shall be entitled in its discretion to institute legal proceedings against the Customer in any competent court having jurisdiction.

18. LEGAL COSTS

The Customer acknowledges and undertakes that, in the event that Casarredo institutes legal action against it as a result of a breach of this Agreement by the Customer, the Customer shall be liable for all legal costs incurred by Casarredo on the scale as between Attorney and Own Client, including collection commission.

19. LIMITED LIABILITY COMPANY AND CLOSE CORPORATION

19.1 In the event of the Customer being a company with limited liability or a close corporation, the signatory of this Agreement hereby warrants that he was duly authorised to enter into the Agreement on behalf of the Customer.

19.2 The signatory to the Agreement interposes and binds himself/herself as surety and co-principal debtor with the Customer for the due and punctual payment of any amount which is now or may in future become owing by the Customer to Casarredo, pursuant to the sale of any products to the Customer.

20. NOVATION

In the event of Casarredo concluding any arrangement with the Customer for the settlement of any liability of the Customer to Casarredo pursuant to this Agreement, such arrangement shall not constitute a novation of the cause of the liability concerned nor shall it prevent Casarredo from instituting legal proceedings to enforce its rights, as contained in this Agreement.

21. DOMICILIUM

Unless, the Customer selects another in writing, the Customer selects the Customer's Designated Address reflected on the Pro-Forma Invoice and Invoice as its *domicilium citandi et executandi* for all purposes relating to this Agreement or any Order for Products.

22. VARIATION

This is the entire Agreement, regardless of any representation that may have been made regarding the Products or this Agreement, and no variation, waiver, suspension, extension of time or agreement to cancel this Agreement or any Order made in terms thereof shall be of any force or effect unless in writing and signed by both the Customer and Casarredo and shall not operate as an

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estoppel (indulgence as a right) against Casarredo in respect of its rights nor shall it operate to preclude Casarredo from thereafter enforcing strict and punctual performance with each and every provision of this Agreement.

23. PERSONAL INFORMATION

23.1 The Customer agrees and consents that Casarredo may consider, assimilate, store utilise and Process its Personal Information as contemplated in this clause 23.

23.2 The Customer agrees to the use and collection of its' Personal Information, which includes but is not limited to:

23.2.1 the name of the Customer;

23.2.2 the identity / registration number of the Customer;

23.2.3 the Customer's physical, postal and email address/es;

23.2.4 the Customer's telephone numbers;

23.2.5 the Customer's banking details; and

23.2.6 internet usage information, click patterns, browsing habits, language preferences, browser settings, demographic information of the Customer.

23.3 The Customer confirms and agrees that Casarredo is entitled, at any time, to communicate with any person to obtain and

provide any information relating to the Customer's payment behaviour, creditworthiness or defaults and the Customer consents to Casarredo sharing such information with third parties including its associates, credit bureau and funders for any purpose as contemplated in the POPI.

23.4 The Customer agrees that Casarredo may:

23.4.1 make enquiries to confirm and verify any Customer information provided by the Customer;

23.4.2 seek information from any credit bureau when assessing the Customer's credit worthiness and at any time.

23.5 The Customer acknowledges and expressly consents that Casarredo may:

23.5.1 verify information provided by the Customer to Casarredo and generally make whatever enquiries Casarredo deems necessary from any source whatsoever;

23.5.2 Process the Customers Personal Information to conclude this Agreement and for the purposes of selling Products to the Customer;

23.5.3 Process and disclose the Customers Personal Information for the purposes of the prevention, detection and reporting of

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fraud and criminal activities, the identification of the proceeds of unlawful activities and the combating of money laundering activities; and

23.5.4 Process and report on the Customer’s Personal Information to comply with an obligation imposed by Laws on Casarredo.

23.6 The Customer has the right to access its Personal Information held by Casarredo. Casarredo shall grant the Customer such access during office hours within a reasonable time after receiving a Notice requesting access.

23.7 The Customer hereby consents to Casarredo photographing the completed Installation Works and Products for its own marketing material and media, provided that facial images and the Customers personal details are not disclosed.

24. THE IMPORTANCE OF THE CPA

24.1 In circumstances where the CPA is applicable to this Agreement, the provisions of the CPA shall prevail in the event of a conflict between any provision of this Agreement and the provisions of the CPA.

24.2 Unless a contrary intention clearly appears, the terms used in this indemnity shall have the meanings assigned to them in section 1 or section 53 of the CPA.

24.3 The Parties acknowledge that in terms of section 61 of the CPA, the producer, importer, distributor, retailer and/or supplier may be jointly and severally liable for any harm cause wholly or partly as a consequence of –

24.3.1 supplying any unsafe goods; or

24.3.2 a product failure, defect or hazard in any goods; or

24.3.3 inadequate instructions or warnings provided to the consumer pertaining to any hazard arising from or associated with the use of any goods, irrespective of whether the harm resulted from any negligence on the part of the producer, importer, distributor, retailer and/or supplier, as the case may be.

25. ASSIGNMENT

25.1 Subject to clause 25.2 the Customer shall not transfer, assign, cede or delegate or purport to transfer, assign, cede or delegate this Agreement or any part thereof to any third party without the prior written consent of Casarredo.

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25.2 By giving the Customer prior Notice, Casarredo may, subject to CPA Regulation 44(3)(t), cede, assign, delegate or otherwise transfer any of its rights and obligations under this Agreement and sub-contract the whole or any part of its obligations under this Agreement.