

ALULATECH ENGINEERS (PTY) LTD - GENERAL TERMS AND CONDITIONS FOR DESIGN AND ENGINEERING SERVICES (“GTCS DESIGN”)

Adopted by the Company on 1st of January 2023

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this document, save where the context otherwise requires, the following words and expressions shall have the following meanings: -
- 1.1.1 **“Agreement”** means the Company Works as defined hereinafter together with the Company’s General Terms and Conditions for Design and Engineering Services (“GTCS Design”).
- 1.1.2 **“Company”** means Alulatech (Pty) Ltd with registration number 2019/175354/07.
- 1.1.3 **“Company Works”** means the scope of work rendered by the Company and includes:
- 1.1.3.1 any business transaction and/or requested services to be rendered by the Company as requested by the Customer;
- 1.1.3.2 purchase orders (including its annexes);
- 1.1.3.3 quotations;
- 1.1.3.4 invoices;
- 1.1.3.5 email and/or other written documents between the Company and the Customer; and
- 1.1.3.6 any and all oral instructions, advices or guidance duly accepted by the Company.
- 1.1.4 **“Contract Documents”** means all regulations, documents, exhibits, ordinances, directives, calculations, specifications, drawings and legislation required to perform the Company Works.
- 1.1.5 **“Customer”** means the person and/or juristic entity requesting, at its own special instance and such request, services to be rendered by the Company pertaining to Company Works, as defined.

- 1.1.6 “**Design Information**” means general information, specifications, calculations, details, requirements, regulations and any other documentation and/or information that the Company would reasonably require and/or need to fulfil and complete the Company Works.
- 1.1.7 “**GTCS Design**” means this document, adopted by the Company by means of resolution, and which are available on the Company’s website at: <https://www.alulatechengineers.co.za/>
- 1.1.8 “**Representative of the Customer**” means any natural person requesting services to be rendered by the Company to the Customer, which representative warrants that he/she is duly authorised to i) represent the Customer; and ii) bind the Customer to the Agreement.
- 1.2 Expressions which denote a natural person shall include a reference to bodies corporate and juristic persona;
- 1.3 Expressions which denote the masculine shall include a reference to the other two genders and vice versa;
- 1.4 Expressions which denote the singular shall include a reference to the plural and vice versa;
- 1.5 Headings are for reference purposes only and shall not be considered in the interpretation of the conditions which they relate;
- 1.6 The rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply.

2. OVERRIDING EFFECTS OF GTCS DESIGN

- 2.1 Unless otherwise specifically agreed in writing, all Company Works conducted by the Company shall be on the GTCS Design as adopted by the Company by resolution.
- 2.2 The Company reserves the right to amend its GTCS Design from time to time, without notice or warning to the Customer, and shall ensure that its current and active GTCS Design is available on its website at <https://www.alulatechengineers.co.za/>.
- 2.3 It is the Customer’s responsibility to ensure that it is up to date with the Company’s GTCS Design as set out herein, and no other terms or conditions, whether contained in the Customer’s documentation or otherwise, shall be binding on the Company unless reduced to writing and signed by a director of the Company.

- 2.4 By conducting business and/or trading and/or business transaction with the Company, the Customer accepts the Company's GTCS Design that is current and active at the time of initiating such business; trading and/or transaction.
- 2.5 The Company will perform any sales and/or Company Works and/or Agreement provided that such sales and/or Company Works and/or Agreement are in accordance with specifications that the Company is accustomed to and/or qualified to do and/or are willing to undertake.

3. OBLIGATIONS OF THE COMPANY

- 3.1 The Company shall apply the technical standards applicable in South Africa at the time of acceptance of the Company Works, together with any and all legal provisions and guidelines.
- 3.2 The Company shall perform all designing and engineering services required to fulfil the Company Works.
- 3.3 The Company shall obtain information on the scope of the required services and the conditions in which they are to be performed that are sufficient to capture all circumstances required for pricing and completion of the Company Works.
- 3.4 The Customer warrants its professional and financial capacity and performance at all times during the performance of the service.
- 3.5 The Company reserves the right, in its sole discretion to subcontract with a third party in performance of any sales and/or Company Works and/or Agreement. The Customer will be liable for such subcontractors' costs.
- 3.6 The Company will not be liable for any loss suffered by the Customer during the course of performing any sales and/or Company Works and/or Agreement.

4. OBLIGATIONS OF THE CUSTOMER

- 4.1 Payment of Invoices:
 - 4.1.1 Payment of invoices shall be strictly within 30 days of receipt of such invoice and/or statement as in the discretion of the Company.

- 4.1.2 The Customer shall not be entitled to withhold, deduct from or defer any amount due by it to the Company and shall pay such amounts free of any deductions, charges and set-off.
- 4.1.3 The Company, in its sole discretion, shall be entitled, but not obliged to set-off against any amounts owed by the Customer to it any amounts that it owes to the Customer.
- 4.1.4 The Company can appropriate payments from the Customer to any such outstanding amounts as it deems fit.
- 4.1.5 The Customer carries any risk associated with or arising from the method elected to effect payment to the Company.
- 4.1.6 Should any account not be paid on due date, all other monies owing by the Customer to the Company shall immediately become due and payable.
- 4.1.7 The Company shall be entitled, without prejudice to its rights, and without prior notice, to immediately cancel any sale and/or Company Works and/or Agreement in circumstances where the price has not been paid in full on due date.
- 4.2 Requests for rendering services:
- 4.2.1 All requests must be placed with the Company in writing. The Company does not accept oral requests.
- 4.2.2 The Company shall not be responsible for any errors or misunderstandings occasioned by the Customer's failure to effect requests in writing.
- 4.2.3 All requests are subject to the GTCS Design and not any provisions that the Customer may attempt to impose by way of its documents.
- 4.2.4 The Company's acceptance of the request is subject to, inter alia, the availability of manpower.
- 4.2.5 The Company reserves the right, in its sole discretion, to decline the Customer's request without providing any reasons.
- 4.2.6 No binding contract shall arise between the Customer and the Company until the Customer's request has been accepted and confirmed by the Company in writing.

- 4.2.7 It shall be the sole responsibility of the Customer to provide the Company with all the necessary requirements and specifications in relation to the services needed.
- 4.2.8 It is the sole responsibility of the Customer to establish that the services requested by it are suitable for its purposes.
- 4.2.9 Requests that have been accepted by the Company may not be cancelled, varied or withdrawn by the Customer, unless the Company, in its sole discretion, agrees thereto in writing, failing which the Customer will be liable for the full order value.
- 4.2.10 Where the Company does so agree in writing to the variation, cancellation or withdrawal of any request or booking, the Company may in its sole and absolute discretion grant a discount based on the stage of Services rendered.
- 4.2.11 The Company reserves the right, in its sole and absolute discretion, to cancel, withhold or suspend the rendering of any services, notwithstanding that such rendering of services has previously been accepted by the Company until such time that the Customer's overdue account has been settled in full.
- 4.2.12 Without limiting the generality of the foregoing, the Company reserves the right to cancel and withhold the rendering of services, or where the Customer is placed under business rescue, liquidated, sequestered, makes any attempt of compromise with its creditors, has judgment recorded against its name and/or breaches any of the Company's Terms and Conditions agreed to.
- 4.2.13 Any monies accrued during the Company's performance of any sales and/or Company Works and/or Agreement; that accrued due to the fault of, and/or misrepresentations made by, the Customer in any way, will result in the Customer being liable for such monies.
- 4.2.14 The Customer will bear the cost of the Company redoing sales and/or Company Works and/or Agreement; if such reperformance was in any way due to the fault of the Customer.
- 4.3 The Customer shall notify the Company immediately of any concerns and doubts the Customer may have regarding the services to be provided in comparison to the content of the Agreement and instructions and suggestions by the Company; the Customer shall substantiate its concerns

and doubts. The Customer shall coordinate its services with Company and other involved persons prior to finalising the services.

- 4.4 The Customer shall investigate in due course whether its designing instructions complies with legislation requirements; the Customer shall immediately report to Company where legislation issues or concerns arise. The Customer shall not be liberated from its duty and responsibility to control, coordinate and supervise by the fact that another person is also in charge of the same duties.
- 4.5 The Customer shall be liable for the completeness and accuracy of all documents and calculations provided by it as well as for the fitness of these documents with regard to the realization of the envisaged project. In case of discrepancies between the plans and calculations of the Customer and documents of other persons involved in the project, the Customer shall be obliged to inform the Company immediately.
- 4.6 The Customer shall be obliged to safeguard the Company's rights and the Customer shall inform the Company immediately on circumstances which may lead to a claim against the Company.

5. WARRANTIES AND INDEMNITIES BY CUSTOMER

- 5.1 The Representative of the Customer warrants that he/she has the necessary authority to represent the Customer and to agree and consequently bind the Customer to the Agreement.
- 5.2 The Customer acknowledges and agrees that the accuracy and completeness of the Design Information are essential for the successful completion of the Company Works.
- 5.3 The Customer shall be solely responsible for the accuracy, reliability, and completeness of the Design Information provided to the Company. In the event that the Design Information provided by the Customer is inaccurate, incomplete, or otherwise deficient, and such deficiencies result in errors, defects, or problems with the products designed by the Company, the Customer agrees to indemnify and hold the Company harmless from any and all claims, liabilities, damages, losses, costs, and expenses (including reasonable attorney's fees) arising from or related to such errors, defects, or problems.
- 5.4 The Customer's obligation to indemnify the Company shall apply and/or extend to any claims made by third parties, including but not limited to end-users of the products designed by the Company, arising out of or in connection with the inaccuracies or deficiencies in the Design Information

provided by the Customer.

- 5.5 The Customer shall take immediate corrective action and provide the Company with accurate and complete information as necessary to rectify any problems that it becomes aware of.
- 5.6 This indemnity shall survive the completion of the project and the termination of the agreement between the Customer and the Company for an indefinite period of time.

6. RETENTION OF WORK UNTIL FULL PAYMENT

- 6.1 The Company retains the right of possession of all Company Works created, developed, or provided (or yet to be provided) to the Customer under this Agreement until the Customer has made full payment for all outstanding invoices related to such Company Works.
- 6.2 The Customer acknowledges that, until full payment is received, the Customer shall not acquire any ownership or right to possess the Company Works, and the Customer's right to use the Company Works is contingent upon full payment as specified in the payment terms of this Agreement.
- 6.3 In the event of non-payment or partial payment by the Customer for any reason, the Company reserves the right to withhold, suspend, or revoke the Customer's access to, or use of, the Company Works until such time as full payment has been made.
- 6.4 The Customer shall make payment in accordance with the payment terms outlined in this Agreement or as otherwise agreed upon in writing between the Parties. Late or incomplete payments may result in additional fees, interest charges, or other remedies as specified in this Agreement or allowed by applicable law.
- 6.5 Upon receipt of full payment, the Company shall promptly release or transfer ownership of the Company Works to the Customer in accordance with the terms of this Agreement.

7. INTELLECTUAL PROPERTY RIGHTS / RIGHTS TO USE

- 7.1 All Company Works, including but not limited to software, designs, reports, documentation, and any other materials produced by the Company in the course of providing services under this Agreement, shall be considered the exclusive intellectual property of the Company.

- 7.2 The Customer acknowledges and agrees that it shall have no rights, title, or interest in the Company Works, except as expressly granted by the Company under this Agreement.
- 7.3 The Customer shall not, without the prior written consent of the Company, reproduce, distribute, disclose, or otherwise make the Company Works available to any third party, including but not limited to competitors or any entity with similar business interests. Any such unauthorized use, distribution, or disclosure shall constitute a breach of this Agreement and may result in legal action.

8. CONFIDENTIALITY

- 8.1 **Confidential Information:** Both parties agree that during the engagement, one party may disclose confidential and proprietary information ("Confidential Information") to the other. This includes project details, designs, calculations, and any information marked as confidential.
- 8.2 **Obligation of Confidentiality:** The receiving party shall treat all Confidential Information as confidential, using it only for the purpose of fulfilling their obligations under the agreement and not disclosing it to third parties without written consent from the other party.
- 8.3 **Exceptions:** The confidentiality obligation doesn't apply to information already known, publicly available, lawfully obtained from a third party, or required to be disclosed by law.
- 8.4 **Return or Destruction:** Upon termination or completion of the engagement, the receiving party will promptly return or destroy all Confidential Information.
- 8.5 **Duration:** This obligation continues for 5 years after disclosure.
- 8.6 **No Transfer of Rights:** This agreement doesn't grant the receiving party any rights or licenses to the Confidential Information beyond what's necessary for fulfilling their obligations.

9. DATA PROTECTION/COMPLIANCE

- 9.1 The Parties mutually agree that the respective other party may process and store personal data using data processing systems for the purpose of property management and order processing.

10. PRICE

- 10.1 All quotations shall remain valid for a period of 7 (seven) days from the date of quotation, unless amended by the Company prior to acceptance thereof.
- 10.2 Unless the Company provides the Customer with a written quotation, which the Customer accepts within the period for which the quotation is valid, the price of the Company's services will be the price ruling at the date of the Rendering of those services.
- 10.3 The price shall exclude VAT which the Customer shall be liable to pay to the Company in addition to the price.
- 10.4 The Company will not, under any circumstances, be precluded from raising or correcting any debit (and from obtaining payment thereof) in relation to any amount due to it.
- 10.5 Unless agreed thereto in writing the Company shall not grant any discount, including settlement discounts. In the event that the Company grants a discount, the discount shall be forfeited should payment not be made on or before the required time in full.

11. TIME OF RENDERING OF SERVICES

- 11.1 Unless otherwise stated the prices quoted are final and the Customer shall make use of Company's services at the date and time agreed to, unless alternatively agreed to in writing.
- 11.2 Should the rendering of service/s be delayed by any circumstances whatsoever outside the Company's control the time for the rendering of such services shall be extended until the lapse of a reasonable period after the cessation of the said circumstances and the Company shall not be liable for any loss or any damage caused by such delay.
- 11.3 The Company shall not be under any liability whatsoever in respect of the Rendering of services nor any loss of damage or consequential loss or damage which the Customer may claim was caused thereby.
- 11.4 Where a person holding himself as the Customer's representative/agent accepts the rendering of services, whether same is affected by the Company or the Company's agent to the Customer's premises or site where services is requested, such rendering of services shall be deemed

proper rendering of services to the Customer notwithstanding that such person is not the Customer's authorized representative/agent.

- 11.5 The signature appearing on the Company's Rendering of services note of the official/employee/agent or representative of the Customer who accepted the rendering of services shall be deemed to be confirmation of the complete rendering of services in all respect and that the same were rendered to the required standard. The signatory that signs the Company's rendering of services note shall be deemed to have been duly authorized to accept rendering of services by the Company.
- 11.6 Time shall not be of the essence in respect of any rendering of services. The Customer accepts that the rendering of services will be subject to the availability of capacity/manpower and timeous receipt by the Company of any drawings, designs, and specifications that the Company may require from the Customer.
- 11.7 The Company will not be liable, under any circumstances, for any direct, indirect, or consequential damages of any nature, whether in the contemplation of the parties or not, which the Customer may suffer as a result of a delay of the rendering of the services requested and the Customer shall not be entitled to cancel any request by reason of such delay.
- 11.8 Where a time for performance is given, the Company undertakes to use reasonable endeavours' to adhere to such date(s) and/or time(s), but the Customer acknowledges that the rendering of services date and/or performance time is merely an estimate and the Company shall not be responsible, and shall not incur any liability to the Customer, in the event that the Company fails to perform on such date(s) and/or during such time(s).

12. EXCLUSION OF WARRANTIES BY THE COMPANY

- 12.1 Save for what is expressly set out in this Agreement, the service/s delivered are so done without any warranties, guarantees or undertakings to the Customer, whether express, tacit or implied and/or whether by statute or common law and without any representations, including that the services are suitable for the purpose for which they have been requested.
- 12.2 It is the sole responsibility of the Customer to determine whether the service/s required by him are suitable for the purpose for which he intends using them.
- 12.3 Any advice or opinion given by the Company's employees is for the Customer's benefit only and the Company accepts no responsibility for

any damages that the Customer may incur as a result of the Customer relying upon such advice.

- 12.4 The Company shall not be liable for any direct, indirect, consequential or other loss, including loss to third parties, arising out of the errors in carrying out a contract, or by delivery or by incomplete delivery or by unsuitability of service/s for use as intended.
- 12.5 All specifications, illustrations, drawings, diagrams, price lists, dimensions, completion dates and performance figures furnished by the Company and representations in regard thereto are approximate and are furnished for information purposes only and unless specifically guaranteed by the Company in writing shall not form part of this Agreement nor bind the Company in any way whatsoever.
- 12.6 The Company will not be liable for any loss or damage of any nature and howsoever arising which may be suffered by the Customer as a result of, or in connection with any transaction contemplated herein, whether indirect, consequential, delictual or otherwise and whether caused by the negligent act or omission of the Company or otherwise.
- 12.7 Any direct liability of the Company for breach of this Agreement will not exceed in the aggregate of damages, costs, fees and expenses capable of being awarded to the Customer, the total price paid or due to be paid by the Customer for the rendered services or the Company may, at its sole and absolute discretion, re-render the service/s shown to be defective, provided the Customer notifies the Company in writing of any alleged defective service/s within 30 (thirty) days from date of rendering of those services and the Customer can demonstrate that such serviced/s rendered were defective.
- 12.8 The Customer understands and agrees to be bound by the limited liability clauses applicable to this Agreement.

13. BREACH

- 13.1 In the event that the Customer fails to make any payment to the Company under this Agreement or in the event that the Customer is in breach of any of the Terms and Conditions herein contained, the Company, without prejudice to any of its other rights in law, shall be entitled to cancel the Agreement forthwith and/or claim damages and/or specific performance of the Agreement.

- 13.2 In the event that the Company is in breach of any of the GTCS Design terms and conditions, the Customer shall be obliged to notify the Company of such breach in writing specifying the nature of the breach and afford the Company 7 (seven) days within which to rectify the said breach (provided that if it is not reasonably possible to remedy the breach within such 7 (seven) day period within such further period as is reasonable in the circumstances).
- 13.3 In the event of the Customer suffering any civil judgment being taken or entered against it or committing an act of insolvency in terms of the Insolvency Act 24 of 1936, as amended from time to time or being placed under business rescue proceedings, sequestration, liquidation or judicial management, whether provisional or final, or entering into a compromise with its creditors, or dying, the Company shall, without prejudice to any other remedies that it has available to it, be entitled to summarily cancel the supply of any products to the Customer which have not been paid for and/or claim specific performance of all the Customer's obligations whether or not such obligations have fallen due for performance, in all events without prejudice to the Company's right to claim damages.
- 13.4 Any misrepresentation made by the Customer entitles the Company, without prejudice to its rights, and without prior notice, to immediately cancel any sale and/or Company Works and/or Agreement.

14. FORCE MAJEURE

No failure by the Company to perform any of its obligations shall constitute a breach of such obligations in terms of this Agreement, nor give rise to any claim or remedy by the Customer in the event that such failure arose as a result of force majeure, including acts of God, war, revolution, riot, civil unrest, strikes or other labour action, sanctions, natural disasters, changes in law, regulations, ordinances or the like or as a result of any other circumstance wholly beyond its control.

15. LEGAL PROCEEDINGS

- 15.1 The laws of the Republic of South Africa will be applied in the resolution of any dispute arising from this Agreement between the Company and the Customer.
- 15.2 The Company shall be entitled, but not obliged, to institute action in the Magistrate's Court (Regional or District), notwithstanding that the amount of its claim exceeds the jurisdiction of such court and the Customer hereby consents to the jurisdiction of the Magistrate's Court.

- 15.3 A certificate issued by any Director, manager or secretary of the Company, whose authority, appointment and signature it shall not be necessary to prove, that purports to certify any indebtedness of the Customer to the Company, delivery of the products to the Customer or that payment in respect of the products has not been made, shall constitute prima facie proof of such indebtedness or delivery or non-payment, as the case may be and shall constitute a liquid document for the purpose of summary judgement or provisional sentence.
- 15.4 The Customer shall be liable for the Company's legal fees in the event of the Company enforcing its rights hereunder on an attorney and own client scale, including counsel's fees on brief, tracing agent's fees and collection charges.

16. NON-VARIATION

No amendment, alteration, variation, deletion, addition and/or cancellation of this Agreement shall be of any force or effect unless reduced to writing and signed by duly authorised representatives of the Company and the Customer.

17. GENERAL

- 17.1 These Terms and Conditions represent the entire Agreement between the Company and the Customer and will govern all future contractual relationships between the Company and the Customer and will also be applicable to all debts, which the Customer may owe to the Company prior to the Customer's signature hereto.
- 17.2 No relaxation or indulgence which the Company may give at any time in regard to the carrying out of the Customer's obligations in accordance with this Agreement shall prejudice or be deemed to be a waiver or novation of any of the Company's rights hereunder.
- 17.3 Each clause in this Agreement is severable one from the other and if any clause found by any competent court to be defective or unenforceable for whatever reason, then the remaining clauses shall be and continue to be of full force and effect.
- 17.4 The rule of construction that this Agreement shall be interpreted against the party responsible for drafting this document, shall not apply.
- 17.5 The Customer shall not be entitled to cede its rights or assign its obligations under this Agreement without the prior written consent of the Company.

- 17.6 The Company shall be entitled to cede or transfer its rights and ownership to the products or assign its obligations under this Agreement and the cessionary shall be entitled to enforce its rights hereunder in respect of products that it supplies to the Customer.

18. CESSION

- 18.1 The Customer bears no right to cede its obligations or rights in terms of any sale and/or Company Works and/or Agreement without obtaining prior approval from the Company.
- 18.2 The Company is entitled to cede its obligations and rights under any sale and/or Company Works and/or Agreement and such cessionary is entitled to exercise its obligations and rights in terms of any sale and/or Company Work and or Agreement rendered by the Company and in terms of any security furnished by the Customer to the Company.

19. WAIVER

- 19.1 Failure by any party to exercise any right and/or remedy does not render such right or remedy waived.

20. SEVERANCE

- 20.1 Should any or part of a clause provided in these Terms and Conditions become illegal, invalid or unenforceable; such clause does not affect the enforceability and validity of remaining clauses.

21. NO AGENCY

- 21.1 Being party to these Terms and Conditions does not render the Customer a partner and/or agent of the Company.