

SO DESIGN ATELIER'S TERMS

SO DESIGN ATELIER (PTY) LTD (TRADING AS) **SO DESIGN ATELIER**

SO DESIGN ATELIER's Terms and SO DESIGN ATELIER FEE OUTLINE and terms of engagement in their prevailing form from time to time (SO DESIGN ATELIER's Terms and SODESINS FEE OUTLINE) are applicable to all business dealings (including those with client and suppliers) and all agreements. Products and Services are made available to customers subject to SO DESIGN ATELIER's Terms. The prevailing SO DESIGN ATELIER Terms together with SO DESIGN ATELIER FEE OUTLINE and terms of engagement are available at www.sodesigns.co.za

1.1 DEFINITIONS

The following terms shall in all agreements to which **SO DESIGN ATELIER** is a party have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings

ABSA	ABSA Bank Limited
Business Day	any day other than a Saturday or Sunday or a proclaimed public holiday in South Africa
Customer	SO DESIGN ATELIER's customer including any consumer of Products
Documentation	SO DESIGN ATELIER's Terms, SO DESIGN ATELIER Client Acceptance - Appointment letter, SO DESIGN ATELIER's notifications of receipt of and acceptance of contracts, proof of payment for orders, invoices, delivery notes issued by SO DESIGN ATELIER.
SO DESIGN ATELIER	SO DESIGN ATELIER (PTY) LTD - Registration Number 2025/623016/07
SO DESIGN ATELIER's Terms	SO DESIGN ATELIER's terms and conditions as prevailing from time to time and as available at www.sodesigns.co.za
Parties	the Customer and SO DESIGN ATELIER (and Party - the Customer or SO DESIGN ATELIER)
Prime	the publicly quoted nominal rate of interest per annum of ABSA (as certified by any General Manager of that bank, whose appointment and authority it shall not be necessary to prove) at which that bank lends monies on overdraft and without security to its most favoured corporate borrowers, which interest shall be calculated and payable monthly in advance
Product	the products and services as referred to in any Documentation or whatever products and services have been sold by SO DESIGN ATELIER to a Customer including all materials
Services	means consultations, procurement on behalf of customer and advice provided by SO DESIGN ATELIER to Customer.
Quotation	quotation, tender, price list or other offer to contract
South Africa	the Republic of South Africa

1. INTERPRETATION

- The following interpretation provisions shall apply to all agreements to which **SO DESIGN ATELIER** is a party.
- The headings in **SO DESIGN ATELIER's** Terms and/or any agreement entered into by **SO DESIGN ATELIER** are for convenience only and shall not be deemed part of **SO DESIGN ATELIER's** Terms and/or any agreement entered into by **SO DESIGN ATELIER** nor shall they be taken into consideration in the interpretation or construction thereof.
 - Words importing the singular only also include the plural and vice versa where the context requires.
 - Words denoting any gender shall include all genders.
 - Words importing persons shall include firms, partnerships, corporations, joint ventures and any organisation having a legal personality.
 - If figures are referred to in numerals and words, the words shall prevail in the event of any conflict between the two.
 - Where a number of days is prescribed such number shall be reckoned exclusively of the first and inclusively of the last day.
 - Where the day upon or by which any act is required to be performed is not a Business Day, the Parties shall be deemed to have intended such act to be performed upon or by the first Business Day thereafter.
 - Reference to any person or public organisation shall include the successors (statutory or otherwise) and permitted assignees or successors in title of such person or public organisation or to any organisation or entity which has taken over the functions or responsibilities of such public organisation irrespective of whether such assignment or succession occurred before or after the date of **SO DESIGN ATELIER's** Terms and/or any agreement entered into between the Parties.
 - References to Terms, agreements, documents or other instruments include (subject to all relevant approvals) a reference to Terms and any agreement, document or instrument as amended, supplemented, substituted, ceded or assigned.
 - Where an expression has been defined (whether above or elsewhere in **SO DESIGN ATELIER's** Terms and/or any agreement entered into by **SO DESIGN ATELIER**) and such definition contains a provision conferring rights or imposing obligations on any Party, effect shall be given to that provision as if it were a substantive provision contained in the body of **SO DESIGN ATELIER's** Terms and/or any agreement entered into by **SO DESIGN ATELIER**.
 - The rule of construction that an agreement shall be interpreted against the party responsible for the drafting or preparation of an agreement shall not apply.
 - Words of inclusion are not words of limitation.
 - The expiration or termination of **SO DESIGN ATELIER's** Terms and/or any agreement entered into by **SO DESIGN ATELIER** shall not affect such of the provisions of **SO DESIGN ATELIER's** Terms and/or any agreement entered into by **SO DESIGN ATELIER** as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
 - Trade terms shall where appropriate, and where not consistent with the provisions of any agreement, be interpreted in accordance with the International Rules For the Interpretation of Trade Terms of the International Chamber of Commerce.

2. OVERRIDING EFFECTS

SO DESIGN ATELIER's Terms shall apply without alteration or variation and shall have the effect of specifically excluding any terms howsoever stipulated, incorporated or referred to by any Customer including without limitation terms stipulated, incorporated or referred to in any negotiations, Quotation, order, invoices, statements or other documents. Terms and conditions of the Customer shall, unless otherwise specifically agreed in writing by a duly authorised representative of **SO DESIGN ATELIER**, have no application whether or not they conflict with **SO DESIGN ATELIER's** terms.

3 APPLICATION TO FUTURE CONTRACTS AND DEBTS

- 3.1 In the absence of express written agreement to the contrary, **SO DESIGN ATELIER's** prevailing Terms shall apply to any future sales by **SO DESIGN ATELIER** to any Customer.
- 3.2 **SO DESIGN ATELIER's** Terms shall be applicable to all debts which the Customer may owe to **SO DESIGN ATELIER**.

4 INTELLECTUAL PROPERTY AND COPYRIGHT

- 4.1 All intellectual property rights associated with Products and Services Designed or / presented vest in **SO DESIGN ATELIER** and/or its suppliers. Notwithstanding anything provided for in any agreement, the Customer undertakes to refrain from doing anything or causing anything to be done which infringes upon **SO DESIGN ATELIER's** (and/or its suppliers') intellectual property rights, including but not limited to patent, trade mark, trade name, concept designs and all AutoCAD drawings, 3D renders or other and copyright.
- 4.2 The Customer acknowledges and will be bound by all copyright vested in **SO DESIGN ATELIER**. The Customer shall not duplicate copyrighted material whether on websites or otherwise without the prior written permission of **SO DESIGN ATELIER**. **SO DESIGN ATELIER** shall in its sole discretion be entitled without notice to withdraw any permission granted.
- 4.3 The Customer indemnifies **SO DESIGN ATELIER** and holds **SO DESIGN ATELIER** harmless in respect of any and all claims by any third party whomsoever for any breach by the Customer of the provisions of this clause.

5 PRICE LISTS

SO DESIGN ATELIER prices and other **SO DESIGN ATELIER** publications and websites are for information only, do not constitute or form part of any Estimates, Quotation or Documentation and constitute merely a guide to Customers. **SO DESIGN ATELIER** reserves the right to vary the prices of Estimated Products and Services from time to time.

6 QUOTATIONS, OFFERS, ORDERS AND INVOICES

- 6.1 **SO DESIGN ATELIER** shall not be bound by Quotations.
- 6.2 **SO DESIGN ATELIER** shall only be bound by an order upon written acceptance - signed by a duly authorised representative of **SO DESIGN ATELIER** - of a written order and payment by the Customer to **SO DESIGN ATELIER** of the amount due in respect of such order.
- 6.3 All orders and or Estimates are accepted by **SO DESIGN ATELIER** subject to and on the basis of **SO DESIGN ATELIER's** Terms. **SO DESIGN ATELIER** may at its sole election
- 6.4 Orders constitute irrevocable offers to purchase Product from **SO DESIGN ATELIER's** usual prices as at the date when the Customer places the order for Product.
- 6.5 Orders accepted by **SO DESIGN ATELIER** shall not be varied or cancelled by the Customer, except with the written consent of a duly authorised **SO DESIGN ATELIER** representative.
- 6.6 The Documentation constitutes the complete and exclusive statement of the final purchase agreement.
- 6.7 The Customer shall be bound by the invoice issued by **SO DESIGN ATELIER** detailing Products and or Services ordered and bought and the price thereof.

7 PAYMENT

- 7.1 The Customer shall pay for Product on receipt of **SO DESIGN ATELIER's** invoice of an order detailing the amount due to **SO DESIGN ATELIER**.
- 7.2 If the Customer uses a postal or similar service to effect payment, such service provider shall be deemed to be the agent of the Customer. If the Customer uses Internet banking or effects electronic transfer of monies, the bank shall be deemed to be the agent of the Customer.
- 7.3 **SO DESIGN ATELIER** may appropriate and/or allocate all payments made by the Customer to such accounts as **SO DESIGN ATELIER** may in its sole and absolute discretion decide.
- 7.4 Any party owing any monies to **SO DESIGN ATELIER** shall, under no circumstances, set off and/or deduct any amount from amounts due to **SO DESIGN ATELIER** without the prior written authority of **SO DESIGN ATELIER**.

8 NEGOTIABLE INSTRUMENTS

Acceptance of a negotiable instrument offered by the Customer shall not be deemed to be a waiver of **SO DESIGN ATELIER's** rights under any agreement. In relation to cheques furnished by the Customer to **SO DESIGN ATELIER**, the Customer waives its right to insist on notice of dishonour or protest being given to it in the event that the cheque is dishonoured.

9 DELIVERY

- 9.1 The Customer shall at all times promptly provide ready accesses and all services and information necessary to enable **SO DESIGN ATELIER** to carry out **SO DESIGN ATELIER's** obligations to the Customer without delay.
- 9.2 Time shall not be of the essence of agreement or delivery of any Product. Delivery dates and times are approximate and are dependent on prompt compliance by the Customer with all the Customer's obligations. **SO DESIGN ATELIER** shall make every endeavour to ensure that delivery is made timeously, but **SO DESIGN ATELIER** shall not be liable in any manner whatsoever for delivery failures or delays by first, second or third party supplier or / and other subcontractors.
- 9.3 **SO DESIGN ATELIER** shall be entitled to effect part deliveries.
- 9.4 **SO DESIGN ATELIER** shall be entitled to effect deliveries through a carrier of **SO DESIGN ATELIER's** choice. Any third party effecting delivery including a postal or similar service chosen by the Customer or **SO DESIGN ATELIER** to deliver or return Product shall be deemed to be the agent of the Customer.
- 9.5 Delivery of Product (including Product being either returned or subsequently redelivered) between **SO DESIGN ATELIER** and the Customer shall be at the risk of the Customer.
- 9.6 If execution of any order or agreement is delayed without fault on **SO DESIGN ATELIER's** part
- 9.6.1 **SO DESIGN ATELIER** shall be entitled to a reasonable extension within which to execute that order or agreement;
- 9.6.2 any additional costs incurred by **SO DESIGN ATELIER** including the costs of preparation and handling for storage, storage, inspection, demurrage, interest, insurance and any other charges occasioned by the delay of delivery shall be for the Customer's account; and
- 9.6.3 the risk of loss of or damage to such Product shall pass to the Customer if it has not so passed.
- 9.7 A delay shall be deemed to have been caused without fault on **SO DESIGN ATELIER's** part if it is due to default or request on the part

of the Customer or to any circumstances which **SO DESIGN ATELIER** cannot reasonably and practicably control in the normal conduct of its business including any act of God, fire, flood, drought, war, civil disturbance, riot, state of emergency, strike, lock out or other labour dispute or unrest, legislation, import control, shipping and other transport delays and default on the part of any third party manufacturer or supplier.

- 9.8 The provisions of clause 9 shall apply notwithstanding that a previous delay may have occurred for any other reason.
- 9.9 The Customer shall be responsible for receiving, unloading and checking the Product upon delivery (whether at the Customer's premises or elsewhere) in the presence of the party effecting the delivery. Any delivery note signed by the Customer or by anyone else at the agreed place of delivery, shall be *prima facie* proof that the Product listed thereon has been delivered in good condition and free of defects. In the event of shortages in or damage to Product included in a delivery and/or in the event of any Product being in a defective state, the Customer shall notify **SO DESIGN ATELIER** thereof in writing within 24 hours of that delivery and any delivery note must upon delivery be endorsed by the Customer accordingly. Unless this action (both notification and endorsement) has been taken Product will be deemed to have been delivered to the Customer in perfect condition, claims will not be recognised and **SO DESIGN ATELIER's** liability will be limited accordingly.
- 9.10 Any delivery note (copy or original) in the possession of **SO DESIGN ATELIER**, and purportedly signed by the Customer and/or its authorised representative and/or its nominated agent, shall be *prima facie* proof that delivery was made to the Customer and shall upon production constitute *prima facie* proof of delivery including for the purposes of any litigation.
- 10 **RETURNED GOODS**
SO DESIGN ATELIER is under no obligation to accept return of Product, the Customer may apply to **SO DESIGN ATELIER** for permission to return Product and if written permission is given by **SO DESIGN ATELIER's** for such return, the following will apply
- 10.1 all Product must be returned within 5 (five) Business Days of receipt of **SO DESIGN ATELIER's** written permission to return Product and must be clean, saleable, unopened, unused and undamaged and in their original packaging;
- 10.2 **SO DESIGN ATELIER** will without the necessity of any further agreement be entitled to claim from the Customer a handling charge of 15% (ten percent) of the invoice price of Product so returned;
- 10.3 **SO DESIGN ATELIER** may at its option repair or replace, or refund a proportionate share of the price in respect of, any defective Product against return of the Product concerned; and
- 11 **NO WARRANTIES, LIMITATION OF LIABILITY AND INDMNITIES**
- 11.1 **SO DESIGN ATELIER** gives no warranties or guaranties whatsoever (including at common law warranties and guaranties) in relation to Product and any Customer and/or consumer rights (if any) shall be strictly limited solely to any warranties and guarantees as may be available from Product manufacturers, Sub Contractors and Product suppliers together with any of **SO DESIGN ATELIER** directly appointed contractors. Without derogating from the foregoing
- 11.1.1 **SO DESIGN ATELIER** does not warrant or represent that any information furnished in connection with Product is correct unless it is given in writing duly signed by an authorised representative of **SO DESIGN ATELIER**;
- 11.1.2 **SO DESIGN ATELIER** makes no representations whatsoever, and gives no guarantees against latent or patent defects, in respect of Product and all conditions and warranties whatsoever whether statutory, implied or otherwise are hereby expressly excluded and no claim shall lie against **SO DESIGN ATELIER** arising out of or in connection with any defects in, or unsuitability of, Product;
- 11.1.3 **SO DESIGN ATELIER specifically disclaims any implied warranty of merchantability, suitability and fitness for a particular purpose. No representation or warranty, including but not limited to statements of capacity, suitability for use or performance, made by employees of SO DESIGN ATELIER shall be considered to be a warranty by or binding on SO DESIGN ATELIER. Any such statements made shall not give rise to any liability of whatsoever nature on the part of SO DESIGN ATELIER, SO DESIGN ATELIER's employees, subcontractors or subsidiaries and in no event will SO DESIGN ATELIER be liable to the Customer for special, indirect or consequential damages including but not limited to loss of profits;**
- 11.1.4 neither **SO DESIGN ATELIER** nor any of **SO DESIGN ATELIER's** suppliers, associate and subsidiary companies, directors, officers, employees or agents shall be liable for
- 11.1.4.1 any damage arising from any misuse of the Product;
- 11.1.4.2 any specialist or unusual requirements of the Customer other than those stipulated in writing in the Customer's order as accepted in writing by **SO DESIGN ATELIER**;
- 11.1.4.3 any negligent or innocent misrepresentations made to a third party including the Customer and such third party including the Customer shall not be entitled to cancel any agreement with **SO DESIGN ATELIER** on such grounds;
- 11.1.4.4 any claims arising out of, or in connection with, any defects in, or unsuitability of Product;
- 11.1.4.5 any loss or damage of any description suffered by a third party including the Customer arising from any cause whatsoever in connection with any agreement or Product or the use thereof, whether such loss or damage results from breach of contract (whether fundamental or otherwise), delict, negligence or any other cause and whether the agreement is cancelled or not;
- 12.1.5 any liability of **SO DESIGN ATELIER** under **SO DESIGN ATELIER's** Terms shall only be in respect of defects in Product existing before delivery to the Customer;
- 11.1.6 **SO DESIGN ATELIER's** liability in respect of Product and the supply thereof shall at **SO DESIGN ATELIER's** election
- 11.1.6.1 not exceed the cost of Product supplied in response to a specific order.
- 11.1.6.2 be limited to replacing the defective Product provisions;
- 11.1.7 **SO DESIGN ATELIER** shall not incur any liability whatsoever of whatever nature and howsoever arising (including whether in contract or delict) for any injury, loss or damage to any person or property arising from the use of the Product.
- 11.2 Every party to an agreement with **SO DESIGN ATELIER** unconditionally and irrevocably indemnifies and holds **SO DESIGN ATELIER** and **SO DESIGN ATELIER's** suppliers, associate and subsidiary companies, subcontractors, directors, officers, employees or agents (**SO DESIGN ATELIER Parties**) harmless against all and any claims, loss, liability, damage, cost, expense, fine, penalty or interest of whatsoever nature and howsoever arising and of whatsoever nature that may be brought or threatened against **SO DESIGN ATELIER** or its employees by any third party arising from or in connection with
- 11.2.1 any defect, latent or otherwise in any Product supplied by **SO DESIGN ATELIER**;
- 11.2.2 the failure of such party or its directors, employees, agents, servants, representatives, contractors, or any other persons for whom such party may be liable in law, to comply with its obligations under any agreement with **SO DESIGN ATELIER**.
- 11.3 An indemnifying party in terms of **SO DESIGN ATELIER's** Terms or any agreement entered into by **SO DESIGN ATELIER** shall be obliged to effect payment under any indemnity as soon as any loss, liability or damage of the nature aforesaid has been incurred or sustained by the party in question.

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- 11.4 Should any claim be made by any third party against which **SO DESIGN ATELIER** is indemnified in terms of this clause, the indemnifying party shall be entitled to defend the action (where necessary in the name of **SO DESIGN ATELIER**) and to control the proceedings in regard thereto, provided that the indemnifying party shall first have indemnified **SO DESIGN ATELIER** to **SO DESIGN ATELIER**'s reasonable satisfaction against all and any costs which may be incurred in resisting any such claim as aforesaid.
- 11.5 If **SO DESIGN ATELIER** rejects liability in writing for defective Product after being duly notified thereof in accordance with the provisions of **SO DESIGN ATELIER**'s Terms, the Customer's right to pursue litigation in relation to such defective Product against **SO DESIGN ATELIER** or **SO DESIGN ATELIER**'s suppliers shall prescribe six months after the date on which such liability was rejected by **SO DESIGN ATELIER**.
- 11.6 Any failure by the Customer to comply with the provisions of **SO DESIGN ATELIER**'s Terms and/or any agreement entered into by **SO DESIGN ATELIER** shall relieve **SO DESIGN ATELIER** of all and any further liability whatsoever.

12 REPAIRS

In the case of repairs undertaken by **SO DESIGN ATELIER**, repair times given are merely estimates and are not binding on **SO DESIGN ATELIER** were and if applicable.

13 BREACH, INTEREST AND TERMINATION

- 13.1 Should any defaulting party (the **Defaulting Party**), including **SO DESIGN ATELIER** commit a breach of any of the provisions of any agreement entered into by **SO DESIGN ATELIER**, and should the Defaulting Party fail to remedy such breach within 48 (forty eight) hours after receipt of notice from the other party (the **Aggrieved Party**) calling upon the Defaulting Party to remedy any breach, or should the Defaulting Party repeatedly breach any of the terms of the agreement in such manner as to justify the Aggrieved Party holding that the Defaulting Party's conduct is inconsistent with the intention or ability of the Defaulting Party to carry out the terms of the agreement, the Aggrieved Party/ies shall be entitled to cancel the relevant agreement against the Defaulting Party in question or to claim immediate payment and/or performance by the Defaulting Party of all of the Defaulting Party's obligations whether or not the due date for payment and/or performance shall have arrived, in either event without prejudice to the Aggrieved Party/ies' rights to claim damages and without prejudice to such rights as the Aggrieved Party may have at law; provided always that notwithstanding anything to the contrary contained in **SO DESIGN ATELIER**'s Terms and any agreement entered into by **SO DESIGN ATELIER**, the Aggrieved Party shall not be entitled to terminate **SO DESIGN ATELIER**'s Terms or any agreement entered by **SO DESIGN ATELIER** for any breach by the Defaulting Party unless such breach is a material breach going to the root of **SO DESIGN ATELIER**'s Terms and/or any agreement entered into by **SO DESIGN ATELIER** and is incapable of being remedied by a payment of money or, if it is capable of being remedied by a payment of money, the Defaulting Party fails to pay the amount concerned within 3 (three) Business Days after such amount has been determined.
- 13.2 Any amount falling due for payment by any party in terms of or pursuant to **SO DESIGN ATELIER**'s Terms and any agreement entered into by **SO DESIGN ATELIER**, including any amount which may be payable as damages, shall bear interest thereon, at Prime and calculated from the due date for payment (or, in the case of any amount payable by way of damages, with effect from the date upon which those damages are sustained) to the actual date of payment thereof, both dates inclusive.
- 13.3 If any party breaches any obligation owed by it to **SO DESIGN ATELIER**, whether under **SO DESIGN ATELIER**'s Terms and/or any agreement entered by **SO DESIGN ATELIER** or otherwise, **SO DESIGN ATELIER** shall be entitled after giving notice pursuant to the provisions of 14.1 and in the event of such party continuing to remain in breach as aforesaid, without prejudice to any other remedies to which **SO DESIGN ATELIER** may be entitled
- 13.3.1 to claim immediate payment of all amounts payable by such party to **SO DESIGN ATELIER**, whether due under **SO DESIGN ATELIER**'s Terms and/or any agreement entered into by **SO DESIGN ATELIER**, and whether then due and payable or not;
- 13.3.2 to suspend performance of any obligation owed by **SO DESIGN ATELIER** and to claim any additional costs and expenses incurred by **SO DESIGN ATELIER** as a result thereof. **SO DESIGN ATELIER** shall further be entitled to an extension of time for performance of its obligations equal to the period the above applies, whether or not it elects to suspend performance and the provisions of 10.6 shall apply *mutatis mutandis*;
- 13.3.3 to cancel the relevant agreement; and/or
- 13.3.4 to retain as a penalty all amounts paid by the Customer or alternatively to claim such damages as it may have suffered.
- 13.4 **SO DESIGN ATELIER**'s rights in terms of **SO DESIGN ATELIER**'s Terms and any agreement entered into by **SO DESIGN ATELIER** shall not be exhaustive and shall be in addition to **SO DESIGN ATELIER**'s common law rights.
- 13.5 **SO DESIGN ATELIER** shall have the right but not be obliged, to cancel any agreement entered into by **SO DESIGN ATELIER** at any time by addressing a written notice to that effect to the other party/ies to any such agreement if the other party/ies
- 13.5.1 commits an act which is or would (if committed by a natural person) be an act of insolvency within the meaning of section 8 of the Insolvency Act, 1936 or section 344 of the Companies Act, 1973; or
- 13.5.2 allows any judgment against it to remain unsatisfied for a period of 5 (five) Business Days; or
- 13.5.3 compromises or attempts to compromise or defer payment of any debt owing by it to any of its creditors; or
- 13.5.4 being a juristic person, is provisionally or finally liquidated, removed from the register of companies or placed under judicial management, or takes any steps for its voluntary winding-up or any analogous event occurs under the laws of the jurisdiction in which the Dealer is incorporated; or
- 13.5.5 generally does or omits to do or suffers anything to be done which may in any way prejudice **SO DESIGN ATELIER**'s rights under any agreement entered into with **SO DESIGN ATELIER** or brings **SO DESIGN ATELIER** into disrepute; or
- 13.5.6 disposes of all or a material portion of its assets or business or ceases to conduct its business without the prior written consent thereto of **SO DESIGN ATELIER**; or
- 13.5.7 generally does or omits to do or suffers anything to be done which may in any way prejudice **SO DESIGN ATELIER**'s rights under any agreement with **SO DESIGN ATELIER**; or
- 13.5.8 undergoes a material adverse change in its financial position (as determined by **SO DESIGN ATELIER** within its sole and absolute discretion); or
- 13.5.9 encumbers or passes any other security whatsoever over a material portion (as determined by **SO DESIGN ATELIER** within its sole and absolute discretion) of its assets (without **SO DESIGN ATELIER**'s prior written consent thereto); or
- 13.5.10 undergoes a change of control, in that the shareholders which have the right to vote the majority of the votes attaching to its entire ordinary share capital from time to time, cease to control such votes for any reason whatsoever;

- or if
- 13.5.11 any event of default or analogous event occurs in terms of any agreement to which any other party may at any time be party which may, in the discretion of **SO DESIGN ATELIER**, affect the ability of such other party to comply with all or any of its obligations to **SO DESIGN ATELIER**;
- 13.5.12 any representation or warranty given by any party to **SO DESIGN ATELIER** in terms any agreement, proves to be incorrect in any manner or respect whatsoever.
- 13.6 If any agreement between the Customer and **SO DESIGN ATELIER** terminates for any reason whatsoever, any unexecuted orders placed by the Customer shall, at **SO DESIGN ATELIER**'s option, remain of full force and effect to all intents and purposes as if any such agreement had not terminated.
- 13.7 Upon the termination of any agreement all property and documentation, including but not limited to all samples, pamphlets, catalogues relating to any products as well as all architectural plans and designs shall be delivered and handed over to **SO DESIGN ATELIER** or be disposed of as **SO DESIGN ATELIER** shall reasonably direct.
- 14 **GOVERNING LAW, JURISDICTION AND LEGAL PROCEEDINGS**
- 14.1 **SO DESIGN ATELIER**'s Terms and any agreement entered into by **SO DESIGN ATELIER** and all modifications and amendments thereof, shall be governed by and decided upon and construed under and in accordance with the laws of South Africa.
- 14.2 Any party entering into an agreement with **SO DESIGN ATELIER** agrees to submit to the jurisdiction of South African courts having jurisdiction in respect of Johannesburg and/or Cape Town.
- 14.3 **SO DESIGN ATELIER** shall in relation to **SO DESIGN ATELIER**'s Terms and any agreement entered into by **SO DESIGN ATELIER**, at its option and notwithstanding that the amount of its claim or the nature of the relief sought by it exceeds the jurisdiction of the Magistrate's Court, be entitled to institute action out of such court.
- 14.4 A certificate in relation to **SO DESIGN ATELIER**'s Terms and any agreement entered into by **SO DESIGN ATELIER** issued and signed by any director or manager of **SO DESIGN ATELIER**, whose authority need not be proved, in respect of any indebtedness of any party that has entered into an agreement with **SO DESIGN ATELIER** or in respect of any other fact, including the fact that such goods were sold and delivered, shall be *prima facie* proof of the customer's indebtedness to **SO DESIGN ATELIER** and *prima facie* proof of delivery of the goods in terms any agreement with a Customer.
- 14.5 Any printout of computer-generated information tendered in evidence by **SO DESIGN ATELIER** shall be admissible evidence and any party to an agreement with **SO DESIGN ATELIER** shall not be entitled to object to the admissibility of such evidence on the grounds that such evidence is computer evidence or hearsay evidence or that such evidence or document is not original.
- 14.6 In the event of any party to an agreement with **SO DESIGN ATELIER** breaching any of its obligations and/or failing to make payment of any amount due to **SO DESIGN ATELIER** timeously, such party agrees to pay, and shall be liable to pay, all legal costs incurred by **SO DESIGN ATELIER** in enforcing its rights in terms of **SO DESIGN ATELIER**'s Terms and/or any agreement entered into with **SO DESIGN ATELIER** the Parties on the attorney/own client scale including collection charges, tracing agent's fees, air fares and expert's fees.
- 15 **DOMICILIA AND NOTICES**
- 15.1 **SO DESIGN ATELIER** chooses *domicilia citandi et executandi* for all purposes as
Digital Footprint: atelier@sodesigns.co.za or soda@sodesigns.co.za,
- 15.2 The *domicilia citandi et executandi* chosen in writing by a party to an agreement with **SO DESIGN ATELIER**, or in the absence of such written choice of *domicilia citandi et executandi* the most recent physical address furnished to **SO DESIGN ATELIER** by a party to an agreement with **SO DESIGN ATELIER**, shall be recognised as that party's *domicilium citandi et executandi* (domicilium) for all purposes of any agreements between **SO DESIGN ATELIER** and that party, whether in respect of the serving of any Court process, notices, the payment of any amount or communications of whatever nature.
- 15.3 Any notice required or permitted under **SO DESIGN ATELIER**'s Terms or any agreement entered into with **SO DESIGN ATELIER** shall be valid and effective only if in writing. All notices, correspondence, documentation or communications of whatsoever nature including without limitation drawings, reports, certificates and specification which are to be given, submitted or prepared under or in connection with **SO DESIGN ATELIER**'s Terms and/or any agreement entered into by **SO DESIGN ATELIER** shall be in English.
- 15.4 Any notice to a party under **SO DESIGN ATELIER**'s Terms or any agreement entered into with **SO DESIGN ATELIER** and contained in a correctly addressed envelope and
- 15.5.1 delivered by hand to a responsible person during ordinary business hours at such party's chosen *domicilia citandi et executandi*, shall be deemed to have been received on the date of delivery;
- 15.5.2 posted by prepaid registered mail to such party's chosen *domicilia citandi et executandi*, shall be deemed to have been received within 10 (ten) Business Days of the date of posting thereof.
- 15.6 Notwithstanding anything to the contrary contained in this clause, a written notice or communication actually received by a party under **SO DESIGN ATELIER**'s Terms or any agreement entered into with **SO DESIGN ATELIER** shall be an adequate written notice or communication to such party, notwithstanding that such notice was not delivered at such party's chosen its chosen *domicilia citandi et executandi* and shall be deemed to have been received on the date of delivery.
- 15.7 Any party may under **SO DESIGN ATELIER**'s Terms or any agreement entered into with **SO DESIGN ATELIER** by notice to another other party change its chosen *domicilia citandi et executandi* to another physical address in South Africa.
- 16 **FORCE MAJEURE**
- 16.1 No party to an agreement with **SO DESIGN ATELIER** including **SO DESIGN ATELIER** shall be responsible or liable for any delay or non-performance of its obligations directly caused by or resulting from Acts of God including major accident, fire or flood; sabotage or any officially declared state of emergency; embargoes, boycotts, strikes, lockouts; restrictions imposed by any Government or Governmental authority; or without limitation, any other cause of a force majeure nature beyond the reasonable control of a party, which prevents any performance.
- 16.2 Any party affected by any of the conditions referred to in 17.1 above shall give the other party/ies written notice of the existence of such condition within 5 (five) Business Days of its existence being discovered.
- 16.3 No party shall be entitled to rely on the provisions of 17.1 above unless it has given notice as envisaged in 17.2 above.
- 16.4 In the event of the force majeure situation continuing for a period of more than 2 (two) calendar months after the giving of the notice referred to in 17.2 above any party including **SO DESIGN ATELIER** shall be entitled to terminate any agreement entered into between the parties by giving written notice to that effect to the other party in which event no party shall be liable to any other party for damages as a result of the force majeure.

17 GENERAL

17.1 entire agreement

17.1.1 *The Documentation together with the Estimates and/or Quotations to Client - SO DESIGN ATELIER Fee Outline and Terms of Engagement in relation to any particular order constitutes the entire agreement between SO DESIGN ATELIER and the Customer in relation to that order.*

17.1.2 Any agreement between the **SO DESIGN ATELIER** and another party/ies embodies and constitutes the entire and sole agreement between the parties as to the subject matter thereof and the latest agreement on any particular matter shall prevail and any prior or contemporaneous agreements between such parties with respect such a matter shall be of no further effect and force. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded in an agreement. A party entering into any agreement with **SO DESIGN ATELIER** (including **SO DESIGN ATELIER**) shall do so on the basis that such party acknowledges that it has had or, as the case may be, is deemed to have had, full opportunity to include any representation or warranty (if any) made to it by any party in the process leading up to the conclusion of any agreement.

17.1.3 No amendment, addition to, deletion, variation or agreed cancellation of any agreement entered into **SO DESIGN ATELIER** and another party/ies shall be of any force or effect unless in writing and duly signed by or behalf of the parties by an authorised representative and then such addition, variation or agreed cancellation shall be effective only in the specific instance and only for the purpose and to the extent for which made or given.

17.2 *exclusion of pactum de non potendo*

All agreements to which **SO DESIGN ATELIER** is a party are concluded on the basis that the parties to such agreement specifically agree to exclude the defence of pactum de non potendo, whether exercised orally or in writing.

17.3 *co-operation*

Parties who have entered into any agreement with **SO DESIGN ATELIER** (including **SO DESIGN ATELIER**) undertake at all times to do all such things, to perform all such acts and to take all such steps including without limitation, signing all such documents as may be from time to time be required to give effect to what is intended in any such agreement and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of such agreement.

17.3.1 *rights*

The respective rights and remedies of any party under any agreement entered into with **SO DESIGN ATELIER** shall be cumulative, may be exercised as often as the parties consider appropriate and are in addition to their respective rights and remedies in common law.

17.4 **expiry or termination**

17.5.1 The expiry or termination of **SO DESIGN ATELIER's** Terms and/or any agreement entered into with **SO DESIGN ATELIER** shall not prejudice the rights of any party thereto in respect of any antecedent breach or non-performance by any party of any of the terms or conditions thereof.

17.5.2 No party to any agreement with **SO DESIGN ATELIER** (including **SO DESIGN ATELIER**) shall have any rights or remedies against the other party on termination save for the rights and remedies specified in the relevant agreement, provided that in cases where a remedy other than termination is sought, the provisions of this clause shall not detract from such other rights or remedies as may be available to a party at law.

17.6 **Waivers**

17.6.1 The rights and remedies of the parties to any agreement with **SO DESIGN ATELIER** (including **SO DESIGN ATELIER**) whether arising under an agreement or in common law shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing duly executed by an authorised representative of the relevant party, and shall be strictly construed and effective only in the specific instance and for the sole purpose and only to the extent expressly granted, and shall not operate so as to preclude a party from exercising its rights strictly in accordance with an agreement.

17.6.2 No waiver, variation, relaxation, suspension, indulgence, condemnation, leniency or extension of time made or given by any party in respect of any provision of any agreement entered into between **SO DESIGN ATELIER** and another party/ies or in common law, or of any arising rights and remedies or failure to exercise or enforce any provisions of any agreement shall constitute or operate as

17.6.2.1 a waiver of such party's rights whether of a like or different character nor shall any single or partial exercise of any such power, right or remedy preclude any other or further exercise thereof nor the exercise of any other power, right or remedy of such party nor affect in any way such parties' (including **SO DESIGN ATELIER**) right to require the performance of such provision at any time in the future, nor shall a waiver of a subsequent breach nullify the effectiveness of the provision itself;

17.6.2.2 an estoppel against any party in respect of its rights under **SO DESIGN ATELIER's** Terms and/or any agreement entered into between the parties.

17.7 **Cession and Assignment**

17.7.1 No party to an agreement with **SO DESIGN ATELIER** (excluding **SO DESIGN ATELIER**) may cede its rights nor assign its obligations under such agreement unless **SO DESIGN ATELIER** agrees in writing to such cession and/or assignment.

17.7.2 **SO DESIGN ATELIER** shall at any time in its sole discretion be entitled to cede all or any of its rights in terms of any agreement to any third party without prior notice to the Customer.

17.8 **Change of address and/or information**

17.8.1 The Customer undertakes to notify **SO DESIGN ATELIER** within 5 (five) Business Days of any change of address or any changes in the information that the Customer has furnished to **SO DESIGN ATELIER**.

17.8.2 The Customer undertakes to send a written notice should the scope of project change during the agreed course of contract as signed for in the Acceptance letter - Appointment letter. Should the customer fail to send a written notice of confirmation within 8 hours it will be deemed acceptable for **SO DESIGN ATELIER** to send through a written confirmation with regards to such change in scope as confirmation and acceptance of such change, and the customer should be bound by such confirmation.

17.8.2 Any party to any agreement with **SO DESIGN ATELIER** shall be obliged to inform **SO DESIGN ATELIER** in writing at least 10 (ten) Business Days prior to any intended selling or alienating of the whole or of any part of that party's business and a failure to do so will constitute a material breach of each and every agreement between the Customer and **SO DESIGN ATELIER** entitling **SO DESIGN ATELIER** to cancel any such agreements without further notice to the party.

17.9 **No expectation of Renewal**

A party that has entered into an agreement with **SO DESIGN ATELIER** shall not be entitled to assert any expectation of renewal of any such agreement.

17.10 Severability

- 17.10.1 If any one or more of the provisions of **SO DESIGN ATELIER's** Terms and/or any agreement entered into by **SO DESIGN ATELIER** is or becomes declared or adjudged (formally or informally) by competent authority to be invalid, unenforceable, defective or illegal for any reason whatsoever then
- 17.10.2 the remaining terms and provisions of **SO DESIGN ATELIER's** Terms and/or any agreement entered into between parties shall be deemed to be severable therefrom and shall continue in full force and effect unless such invalidity, unenforceability, defect or illegality goes to the root 17.10.3 of **SO DESIGN ATELIER's** Terms and/or any term of any such agreement;
- 17.10.4 **SO DESIGN ATELIER's** Terms and any agreement thus continuing shall (subject and without prejudice to any appeal to higher authority as to the status of that provision) exclude the offending provision but, if such deletion substantially affects or alters the commercial basis of **SO DESIGN ATELIER's** Terms and/or any such agreement, then **SO DESIGN ATELIER's** Terms and any such agreement including such provision shall be amended in such manner as the parties agree which will, while not being void or unenforceable, most nearly achieve the object of the allegedly void or unenforceable provisions.
- 17.10.5 Each of the terms in any agreement entered into by **SO DESIGN ATELIER**, shall be separate and divisible and if any such term or portion of such term becomes unenforceable for any reason whatsoever, then that term and/or the remaining portion shall be severable and shall not affect the validity of the other terms or of any agreement as a whole.

17.11 disclosure of personal information

- 17.11.1 **SO DESIGN ATELIER** has the Customer's consent at all times to contact and request information from any persons, credit bureaus or businesses and to obtain any information which **SO DESIGN ATELIER** considers relevant to the Customer's credit assessment.
- 17.11.2 The Customer agrees and understands that information pertaining to the Customer and given in confidence to **SO DESIGN ATELIER** by a third party will not be disclosed to the Customer.
- 17.11.3 The Customer consents to and authorises **SO DESIGN ATELIER** at all times to furnish credit information concerning the customer's dealings with **SO DESIGN ATELIER** to a credit bureau and to any third party seeking a trade reference regarding the Customer in the Customer's dealings with **SO DESIGN ATELIER**.

17.12 Confidentiality

- All agreements to which **SO DESIGN ATELIER** is a party are concluded on the basis that the parties reciprocally undertake to treat as strictly confidential all information of any nature whatsoever which any party may obtain from any other party pertaining to the conclusion or implementation of the provisions of any agreement (the party receiving such information hereinafter referred to as the **Recipient Party** and the party disclosing such information hereinafter referred to as the **Disclosing Party**) howsoever such information may be disclosed to the Recipient Party including, without limiting the a foregoing, whether orally, visually or by reason of inspection of documentation or other matter;
- 17.12.2 acknowledge that the aforesaid information would not have been made available to the Recipient Party but for this undertaking;
- 17.12.3 agree not
- 17.12.3.1 to disclose such information to any person whomsoever other than the Recipient Party's employees (which shall include any of its directors), agents and/or contractors, on the basis that such information shall, notwithstanding the disclosure thereof as aforesaid, be maintained confidential by such employees, agents or contractors on exactly the same terms and conditions as set out herein; and
- 17.12.3.2 directly or indirectly to use for their benefit or the benefit of any other person such information unless any part of such information is or becomes public knowledge and in the public domain by reason of becoming public property other than through an act or omission on the part of the Recipient Party or the employees, agents and/or contractors contemplated in clause 18.11.3.1;
- 17.12.3.3 make any public disclosures or announcements of any of the matters dealt with in **SO DESIGN ATELIER's** Terms and/or any agreement entered into between the parties without the prior written consent of the other parties;
- 17.12.4 agree to return to the Disclosing Party, unless it otherwise agrees in writing, all copies of any documents which the Recipient Party may have obtained from as well as all notes or copies of documents concerning it which the Recipient Party may have prepared or which the Recipient Party may obtain as a result of information being made available to it as contemplated herein.

17.13 Dispute Resolution

- Without derogating from any party's other rights, between the parties to any agreement entered into by **SO DESIGN ATELIER** (including **SO DESIGN ATELIER**), the parties shall endeavour to settle amicably
- 17.13.1 any matter arising out of; or
- 17.13.2 the interpretation of; or
- 17.13.3 the termination of; or
- 17.13.4 any matter arising out of the termination of such agreement and any party may send any other party a written invitation to enter into non-binding mediation in accordance with the rules of the Arbitration Foundation of Southern Africa in an endeavour to resolve any such dispute.