

TERMS AND CONDITIONS ATTACHING TO A CONFIRMED ORDER

1 INTERPRETATION

1.1 In this document the following words shall have the meaning ascribed to them:

1.1.1 **"Adjustment Increase Percentage"** has the meaning ascribed to that term in **Error! Reference source not found.** below;

1.1.2 **"Confirmed Order"** means an Order which has been signed and completed by the Customer;

1.1.3 **"Customer"** **"You"** **"Your"** or **"Yourself"** means the juristic person, whose asset value or turnover is equal to or exceeds R2,000,000.00, reflected in the Order;

1.1.4 **"Data"** means all data provided by You to Us directly or indirectly, including Your Personal Information;

1.1.5 **"Defect"** means any material defect, whether patent or latent, relating to the Product and **"Defects"** means any one or more of them as the context may indicate;

1.1.6 **"Delivery"** means the act of delivering the Product to You Ex Works and **"Delivered"** has a corresponding meaning;

1.1.7 **"Force Majeure Event"** means any event beyond the reasonable control of a Party, including but not limited to acts of God, floods, earthquakes, hurricane, fire, drought, lightning, strikes, labour walkout or other labour interruptions or disputes, civil commotion, riot, insurrection, act of terrorism, war or invasion, act of government, fire, explosion, general shortage of qualified labour, material disruption in airline, shipping or other transportation systems, local, regional or world threats or outbreak of infectious disease, epidemic or pandemic disease(s), government embargo, travel advisories or alerts issued by any Governmental Body or any international agency or body, inability of Us to procure the supply of critical supplies or equipment required to manufacture the Product or similar event;

1.1.8 **"Governmental Body"** means any country, any national body, any state, province, municipality, or subdivision of any of the foregoing, any Governmental department, or any agency, court, entity, commission, board, ministry, bureau, locality or authority of any of the foregoing, or any quasi-Governmental or private body exercising any regulatory, taxing, importing, exporting, or other Governmental or quasi-Governmental function;

1.1.9 **"Input Cost"** means the total cost incurred by Us to produce the Product;

1.1.10

"Intellectual Property Rights" means all patents, rights to inventions, utility models, logos, brand names, copyright and related rights, trademarks, service marks, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world, and Intellectual Property Right means any one of the Intellectual Property Rights, as the context may require;

1.1.11 **"Intended Purpose"** means accommodation for persons;

1.1.12 **"Order"** means the Skulpod standard order form reflecting (i) Customer details (ii) Product purchased and its Specifications and (iii) Purchase Price payable, (iv) Adjustment Increase Percentage (iv) Provisional Delivery Date, (v) Your physical address, (vi) Your email address and (v) Your designated destination port;

1.1.13 **"Parties"** means You and Us collectively and **"Party"** means either You or Us, as the context may so require;

1.1.14 **"Personal Information"** has the meaning assigned to that term in the POPI Act;

1.1.15 **"POPI Act"** means the Protection of Personal Information Act No 4 of 2013 and any regulations published under that Act, and any amendments to that Act and/or the regulations from time to time (if any);

1.1.16 **"Product"** means the product(s) described in the Confirmed Order;

1.1.17 **"Provisional Delivery Date"** means the date as reflected in the Confirmed Order on which We estimate the Product shall be Delivered to You Ex-Works or such revised estimate date of which We may notify You in accordance with these Terms;

1.1.18 **"Purchase Price"** means the total sum paid for the Product reflected in the Confirmed Order, excluding VAT, all sales and export taxes, insurance, freight and other transport costs and packaging costs;

1.1.19 **"Selected Location"** has the meaning ascribed to that term in clause 7.1;

1.1.20 **"Specifications"** means the detailed description of the design and specifications of the Product recorded in the Confirmed Order;

1.1.21	" Terms " means the terms and conditions set out in this document which are applicable to a Confirmed Order;	2.5	We may, without notice to You, unilaterally amend or update these Terms at any time by updating Our Website.
1.1.22	" Us " " We " or " Our " refers to Skulpod Proprietary Limited, registration number (Registration Number 2018/352731/07);	2.6	It is Your responsibility to periodically review these Terms and acquaint Yourself with any and all amendments hereto.
1.1.23	" VAT " means value-added tax as contemplated in the VAT Act;	2.7	You understand that third party websites, domains and/or platforms which You visit have their own terms and conditions of use, privacy, cookies and other policies (" Third Party Terms and Policies ") to which You may be bound.
1.1.24	" VAT Act " means the Value-Added Tax Act No. 89 of 1991, as amended from time to time; and		
1.1.25	" Website " means www.skulpod.com .		
1.2	In these Terms -		
1.2.1	" days " shall be construed as calendar days unless qualified by the word "business", in which instance a " business day " will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time; and	3	PROJECT SUSPENSION OR DELAY BY CLIENT
1.2.2	an expression which denotes -	3.1	If You delay, suspend or place the project on hold for more than thirty (30) days after commencement of manufacture, Skulpod reserves the right to:
1.2.3	a Party includes a reference to that Party's successors in title and assigns allowed at law; and	3.1.1	Invoice for work completed, materials procured and commitments incurred;
1.3	When any number of days is prescribed such number will exclude the first and include the last day except where the last day falls on a Saturday, Sunday or a public holiday in the Republic of South Africa, in which case the last day will be the next succeeding day which is not a Saturday, Sunday or a public holiday in the Republic of South Africa.	3.1.2	Charge reasonable storage, warehousing, handling, insurance and preservation costs;
1.4	The expiration, cancellation or termination of these Terms shall not affect such provisions of these Terms which, out of necessity, must continue to have effect after such expiration, cancellation or termination, notwithstanding that the clauses themselves do not expressly provide for this.	3.1.3	Revise pricing to reflect inflation, exchange rate fluctuations, supplier increases, remobilisation costs or changes in market conditions; and
		3.1.4	Revise manufacturing schedules, production sequencing and delivery dates accordingly.
		3.2	If any suspension or delay exceeds ninety (90) days, Skulpod may, upon written notice, treat the order as cancelled by You, in which event all amounts paid shall be non-refundable and all outstanding amounts relating to work completed, materials procured and costs incurred shall immediately become due and payable.
		3.3	Skulpod shall not be liable for any delay, deterioration, material substitution, supplier changes, material availability issues or cost escalation arising from prolonged project suspension or delay caused by You.
2	ACCEPTANCE OF THESE TERMS		
2.1	These Terms are incorporated by reference into the Confirmed Orders and shall be valid and binding on the Parties with effect from the date that You sign the Order.	4	PAYMENT
2.2	With effect from the date You sign the Order, We hereby agree to sell and You agree to purchase the Product on the terms and conditions reflected in the Confirmed Order and these Terms.	4.1	The Purchase Price for the Product is payable as follows:
2.3	For the avoidance of doubt, the cancellation of the Terms will result in the cancellation of the Confirmed Order and vice-a-versa.	4.1.1	an amount equal to 70% of the Purchase Price shall be paid within 5 business days of signature of the Order (" Deposit ");
2.4	We shall be entitled to make minor changes to the Specifications in our sole and unfettered discretion, if such changes do not affect the Products use or functionality. Reasons for such changes may include to suit Our local conditions and facilities, the availability of materials and equipment, the introduction of improved production methods or otherwise.	4.1.2	an amount equal to 20% of the Purchase Price shall be paid upon written notice from Us that the Product is ready for final completion, testing, packing, dispatch preparation or shipment arrangements; and
		4.1.3	the remaining 10% of the Purchase Price shall be paid in cleared funds no later than 5 Business Days prior to Delivery.
		4.2	The Product will not be Delivered Ex-Works until We have received full and final payment of the Purchase Price for the

	Product.		suspension, delayed payment or changes in market conditions may materially affect the cost of manufacturing and supplying the Product.
4.3	The currency in which the Purchase Price is to be paid is reflected in the Order.		
4.4	All amounts payable by You to Us shall be paid without deduction or set-off of any nature whatsoever (including bank charges).		
5	LATE PAYMENT AND DEFAULT	7	DELIVERY AND COLLECTION
5.1	Any amount not paid on the due date shall accrue interest at a rate of sixteen percent (16%) per annum, calculated daily and compounded monthly from the due date until payment is received in full.	7.1	Delivery shall be made Ex-Works at Our despatch location or at the location nominated by Us in writing (" Selected Location ").
5.2	You shall be liable for all legal costs, collection commission, tracing fees and recovery expenses incurred by Skulpod in recovering overdue amounts, including attorney-and-client costs where permitted by law.	7.1.1	Delivery is made Ex Works (Incoterms 2020) at the Selected Location.
5.3	If payment is not received within seven (7) days after written demand, Skulpod may, without prejudice to any other rights or remedies available to it:	7.1.2	Risk in the Product passes to You upon Delivery Ex Works, irrespective of whether We assist with loading, transport arrangements, export processes or shipping coordination.
5.3.1	Suspend manufacture, shipment, support or further performance;	7.1.3	You are solely responsible for loading, export clearance, freight, marine insurance, import duties, taxes, destination handling, unloading and all costs arising thereafter unless expressly agreed otherwise in writing.
5.3.2	Withhold shipping documents, drawings or technical information;	7.2	We shall use Our best endeavours to Deliver the Product on the Provisional Delivery Date. To the extent that You have not received notice from Us of a firm delivery date, Delivery shall occur on the Provisional Delivery Date.
5.3.3	Place the project on hold;	7.3	If You require Our assistance with the transportation of the Product from the Selected Location to Your designated destination port as contemplated in clause 7.4 below, You shall be required to insert Your designated destination port in the blank space provided therefore on the Order. If You do not provide us with Your designated destination port in the Order, You will be required to arrange Your own transport from the Selected Location to Your designated destination port.
5.3.4	Reallocate manufacturing capacity;		
5.3.5	Charge reasonable storage fees, warehousing and related costs; and/or		
5.3.6	Terminate the order.		
5.4	Any agreed delivery dates and performance obligations shall automatically extend for any period caused by delayed payment.	7.4	Without derogating from the Delivery method referred to in clause 7.1, We shall, if required by You, assist with arranging transport of the Product from the Selected Location to Your designated destination port by furnishing You with 2 quotes from transport companies (such selection of transport companies being at Our discretion). Within 3 business days of the quotes being delivered to You, You are required to notify Us in writing which of the quotes You accept or whether You intend to use an alternative transport company and if so, the details of such company. If You intend to use an alternative transport company, You shall be obliged to arrange same.
6	ADJUSTMENT OF THE PURCHASE PRICE	7.5	Should You fail to respond timeously, We will not accept any quote on Your behalf and You will be required to arrange Your own transport. In such event We may notify You that the Provisional Delivery Date of the Product has changed.
6.1	The Purchase Price is based on estimated input, procurement, manufacturing, labour, logistics and supplier costs applicable at the date of the Order.		
6.2	Skulpod reserves the right to adjust the Purchase Price at any time prior to Delivery where increases occur in:		
6.2.1	material or component costs;		
6.2.2	supplier pricing;		
6.2.3	exchange rates;		
6.2.4	freight, shipping or logistics costs;		
6.2.5	labour or operational costs;		
6.2.6	governmental charges, duties or taxes; or		
6.2.7	costs arising from project delays, suspension, remobilisation or changes requested by You.		
6.3	Any adjusted Purchase Price shall be communicated to You in writing together with reasonable supporting detail.		
6.4	Any increase in the Purchase Price shall be payable prior to Delivery unless otherwise agreed in writing.		
6.5	You acknowledge that prolonged project		

7.6	All costs and fees relating to the transport and insurance of the Product is for Your account. We shall not be liable whatsoever or howsoever for any costs and/or fees incurred related to the transport and/or insurance of the Product.		
7.7	Any estimates provided in relation to the transport are subject to change and an exact quotation for the transport shall not be available until approximately the week of the relevant transport date.		
7.8	You are solely responsible for unloading any Product at Your designated destination port and for all and any costs in relation thereto.		
7.9	If You do not accept Delivery timeously, We reserve the right to charge You a reasonable storage fee.		
8	DEFECTS AND RIGHT OF INSPECTION		
8.1	Prior to Delivery We shall provide You with an opportunity to inspect the Product for Defects (" Inspection ").		
8.2	We shall provide You with at least 5 business days prior written notice of the date(s) that You and/or agent may conduct the Inspection (the " Inspection Notice ").		
8.3	The Inspection shall be conducted on the following terms and conditions (the " Inspection "):		
8.3.1	the Inspection shall be conducted at the Selected Location during normal business hours and for the period set out in the Inspection Notice (the " Inspection Period ");		
8.3.2	You shall notify Us in writing by no later than 2 business days after the expiry of the Inspection Period of proposed Defects in the Products (if any) (the " Defects Notification Period ").		
8.3.3	The aforesaid notice setting out the proposed Defects in the Products shall include:		
8.3.3.1	a description of any proposed Defects in reasonable detail; and		
8.3.3.2	photographs of the proposed Defects described,		
8.3.4	such that We can assess the proposed Defects (the " Defects Notice ").		
8.3.5	Should You:		
8.3.5.1	notify Us that there are no Defects in the Products within the Defects Notification Period; or		
8.3.5.2	fail to deliver the Defect Notice within the Defects Notification Period,		
	then the Products shall be deemed to be free of Defects on and after Delivery and You shall irrevocably and unconditionally waive any claims of whatsoever nature, actual or contingent, howsoever arising, in respect of any Defects in the Products on and after Delivery.		
8.3.6	Should You timeously deliver a Defects		
	Notice within the Defects Notification Period, We shall have a period of 5 business days to:		
8.3.6.1	assess the presence of such proposed Defects, which assessment shall be in Our reasonable opinion; and		
8.3.6.2	pursuant to determining that there are Defect(s) present, carry out any repairs and/or alterations necessary in Our reasonable opinion to remedy such Defects to a standard which, in Our reasonable opinion, renders the Product fit for purpose and/or safe for use.		
8.4	Notwithstanding anything to the contrary, should the required repairs and/or alterations set out in clause 8.3.6.2 be expected to delay the Delivery:		
8.4.1	We shall notify You in writing of the revised estimated Delivery Date, which date shall be determined in Our reasonable opinion, provided that We endeavour to do all that is reasonably possible to carry out such repairs and/or alterations as quickly as possible; and		
8.4.2	We shall not be liable for any losses, damages and/or harm suffered by You of whatsoever nature, actual or contingent, howsoever arising.		
8.4.3	For the avoidance of doubt, Delivery shall only occur after We have remedied any Defects in accordance with this clause 8.		
9	TRANSFER OF OWNERSHIP AND RISK		
9.1	Risk in the Product shall pass from Us to You upon Delivery.		
9.2	Ownership of the product shall remain vested in Us until Purchase Price and all other amounts owing to Us have been paid in full.		
9.3	Possession and effective control of the Product shall be given to you on Delivery.		
9.4	Unless expressly agreed otherwise in writing, installation, assembly, commissioning and on-site works are not included in the Confirmed Order.		
9.5	Where Skulpod agrees to provide installation, assembly or related on-site services, such services shall constitute separate services subject to these Terms and any additional written agreement between the Parties.		
9.6	Risk in the Product shall remain with You at all times following Delivery, including during any installation, assembly or site attendance by Skulpod.		
9.7	You shall be responsible for:		
9.7.1	site access;		
9.7.2	local permits and approvals;		
9.7.3	foundations and site preparation;		
9.7.4	cranes, lifting equipment and local labour unless expressly agreed otherwise in writing;		

- 9.7.5 site safety and security; and
- 9.7.6 compliance with local laws, regulations and health and safety requirements.

9.8 Skulpod shall not be liable for:

- 9.8.1 delays caused by site conditions, weather, logistics or third parties;
- 9.8.2 damage arising from improper site preparation, local contractor works or handling by third parties; or
- 9.8.3 indirect, consequential or delay-related losses arising from installation or site works.

10 PRODUCT WARRANTIES

10.1 We hereby make the following Product warranties for a period of 12 months commencing on Delivery ("**Warranty Period**"), that:

- 10.1.1 the Product shall conform to the Specifications recorded in the Confirmed Order;
- 10.1.2 the Product will be safe and fit for its intended use;
- 10.1.3 the Product is free and clear of any liens, security interests, or encumbrances of any nature; and
- 10.1.4 the workmanship shall be free of Defect, subject to clause 8.3.5.

10.2 Should We breach any warranty set out in clause 10.1 above or elsewhere in these Terms ("**Warranty Breach**"), You shall provide Us with written notice thereof within 5 business days of You discovering such breach ("**Warranty Breach Notice**").

10.3 On receipt of such Warranty Breach Notice, We shall remedy Our breach, by electing, in our sole and unfettered discretion, to:

- 10.3.1 repair the relevant Product; or
- 10.3.2 replace the relevant components and/or materials of the Product with conforming components and/or materials; or

10.3.3 provide You with a credit or pay You an amount equal to the fair reasonable and necessary costs of repair of the Product, in which case You shall be responsible for purchasing materials and equipment reasonably necessary to enable You or third party to repair the Product on site,

10.3.4 (clauses 10.3.1 to 10.3.3 are collectively referred to as the "**Remedy Actions**").

10.4 You hereby agree that any of the Remedy Actions elected by Us is Your sole and exclusive remedy in the event of a Warranty Breach.

11 BREACH

11.1 The provisions of this clause 11 do not apply to a Warranty Breach.

11.2 If a Party ("**Defaulting Party**") commits any breach of these Terms and fails to remedy such breach within 7 business days ("**Notice**

Period") of written notice requiring the breach to be remedied, then the Party giving the notice ("**Aggrieved Party**") will be entitled, at its option:

- 11.2.1 to claim immediate specific performance of any of the Defaulting Party's obligations under these Terms, with or without claiming damages, and to require the Defaulting Party to provide security to the reasonable satisfaction of the Aggrieved Party for the Defaulting Party's obligations; or
- 11.2.2 to cancel these Terms in its entirety, with or without claiming damages, in which case written notice of the cancellation shall be given to the Defaulting Party, and the cancellation shall take effect on the giving of the notice. Neither Party shall be entitled to cancel these Terms unless the breach is a material breach.

11.3 Notwithstanding anything to the contrary herein, no Party shall be entitled to cancel these Terms after Delivery and the sole remedy of such Party shall be relying on its rights in terms of clause 11.2.1.

11.4 If any Party ("**Default Party**") prior to Delivery:

- 11.4.1 commits an act of insolvency;
- 11.4.2 is placed into bankruptcy or business rescue;
- 11.4.3 ceases, or threatens to cease, to carry on business or disposes of its business or changes the fundamental nature of its business and/or disposes of the major portion of its assets other than for value;
- 11.4.4 assigns its rights under these Terms to any third party without the prior written consent of the other Party;
- 11.4.5 compromises generally with its creditors; or
- 11.4.6 passes a resolution for voluntary winding up,
- 11.4.7 the other Party may in its sole discretion, on written notice to the Default Party, forthwith cancel these Terms and claim damages.

11.5 You shall be liable for any legal costs on an attorney-client scale, collection costs, tracing fees as well as any governmental tax including but not limited to VAT, incurred by Us in recovering any amounts owing by You to Us.

11.6 The Parties agree that any costs awarded will be recoverable on an attorney-and-own-client scale unless the Court specifically determines that such scale shall not apply, in which event the costs will be recoverable in accordance with the High Court tariff, determined on an attorney-and-client scale.

11.7 The Aggrieved Party's remedies in terms of this clause 11 are without prejudice to any other remedies to which the Aggrieved Party may be entitled in law.

12 DISPUTE RESOLUTION

- 12.1 In the event of any dispute or difference arising between the Parties in connection with these Terms, including the implementation, rectification, termination or cancellation of these Terms, then the Parties shall first endeavour to resolve and settle the dispute by way of mediation.
- 12.2 The Parties may agree on the mediation procedure and failing agreement within 5 business days of the dispute being referred to mediation, the mediation shall take place in accordance with the AFSA rules and the mediator shall be appointed by AFSA.
- 12.3 If for any reason, including lack of co-operation by the Parties, a dispute is not settled by mediation within a period of 15 business days of the date of referral to mediation, or such longer period of time as the Parties may agree to in writing, the dispute shall be settled by arbitration in Cape Town in accordance with the AFSA rules, which arbitration shall be administered by AFSA. Should AFSA, as an institution, not be operating at that time or not be accepting requests for arbitration for any reason, then the arbitration shall be conducted in accordance with the AFSA rules for commercial arbitration (as last applied by AFSA).
- 12.4 The Parties shall agree on the arbitrator and the legal counsel to be appointed to assist the arbitrator. If agreement is not reached within 10 business days after any Party in writing calls for agreement, then the arbitrator shall be, if the arbitration relates –
 - 12.4.1 primarily to a financial matter, a practicing chartered accountant of at least 15 (fifteen) years' standing nominated at the request of any Party by the President for the time being of the South African Institute of Chartered Accountants assisted by a senior counsel of at least 5 years' standing in respect of the legal and procedural aspects of the dispute appointed;
 - 12.4.2 primarily to a legal matter or to any other matter not covered by clause 12.4.1, to a senior counsel of at least 5 years' standing on the panel of arbitrators of the AFSA or should AFSA not be operational for whatever reason, a senior counsel with similar experience shall be appointed by the Chairperson of the Cape Bar Council at his/her discretion,provided that if the Parties are unable to agree on whether the arbitration relates to a financial or legal matter, such matter shall be deemed to be a legal matter.
- 12.5 The request to nominate an arbitrator shall be in writing (outlining the matter of which the Party concerned is aware) and, if desired, suggesting suitable nominees for appointment, and a copy shall be furnished to the other Parties who shall, within 10 business days, submit written comments on the request to the addressor of the request.
- 12.6 The arbitrator shall determine the dispute in accordance with the law of South Africa and shall have the same remedial powers as a Court of law in South Africa would have were it adjudicating the dispute.
- 12.7 Any Party may appeal the decision of the arbitrator or arbitrators in terms of the AFSA rules for commercial arbitration. The Parties agreeing, however, that such appeal shall be heard by 2 arbitrators.
- 12.8 Nothing herein contained shall be deemed to prevent or prohibit a party to the arbitration from applying to the appropriate court for urgent relief or for judgment in relation to a liquidated claim.
- 12.9 Any arbitration in terms of this clause 12 shall be conducted in camera and the Parties shall treat as confidential details of the dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.
- 12.10 This clause 12 will continue to be binding on the Parties notwithstanding any termination or cancellation of these Terms.
- 12.11 The Parties agree that the written demand by a party to the dispute that the dispute or difference be submitted to arbitration, is to be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act, 1969.
- 13 **FORCE MAJEURE EVENT**
 - 13.1 If a Party is prevented or restricted from carrying out any of its obligations under these Terms (other than its payment obligations) by a Force Majeure Event ("**Force Majeure Enforcer**"), it will, to the extent so prevented:
 - 13.1.1 be relieved of its obligations during such event;
 - 13.1.2 not be liable for any delay or failure in the performance of any of its obligations;
 - 13.1.3 not be liable for any losses, whether direct, indirect or consequential, which the other Party may suffer in connection with such delay or failure.
 - 13.2 Notwithstanding anything in these Terms to the contrary, the Force Majeure Enforcer must notify the other Party in writing of the Force Majeure Event within 3 business days of such Force Majeure Event occurring, if reasonably possible.
 - 13.3 Should the Force Majeure Event last more than 6 months, either Party may terminate these Terms by giving at least 30 days written notice to the other Party.
 - 13.4 For the avoidance of doubt, no Party shall be relieved of its obligation to make payment under these Terms or in terms of the Confirmed Order due to a Force Majeure

Event.

14 INTELLECTUAL PROPERTY RIGHTS

- 14.1 All Intellectual Property Rights are and shall remain the exclusive property of Us (or, where applicable, the third party from whom its right to use the Intellectual Property has derived).
- 14.2 We do not grant You a licence or any other right including without limitation under copyright, trademark or patent in/or to the Intellectual Property Rights.
- 14.3 Except as expressly provided in these Terms, no part of the Intellectual Property Rights may be copied, reproduced, aggregated, republished, uploaded, posted, publicly displayed, encoded, translated, transmitted, distributed, sold, licensed, or otherwise exploited for any commercial purpose whatsoever, without Our express prior written permission.

15 EMAIL DISCLAIMER

- 15.1 This disclaimer pertains to any email containing information about Us or Our Products or services.
- 15.2 Any email is intended only for the person to whom it is addressed and access to such e-mail by anyone else is unauthorised.
- 15.3 Any recipient who is not named as an addressee in an email is not entitled to read that email, to disclose its content to any person or to make copies.
- 15.4 If You have received an email in error, please notify Us immediately by return email.
- 15.5 Whilst all reasonable steps are taken to ensure the accuracy and integrity of information and/or data transmitted electronically and to preserve the confidentiality thereof, no liability or responsibility whatsoever is accepted if information or data is, for whatever reason, corrupted or does not reach its intended destination.
- 15.6 In the event that any e-mail is of a personal nature and not business related, the recipient accepts that the e-mail is not authorised by, or sent on behalf of Us or Our affiliates.

16 NOTICES AND DOMICILIA

- 16.1 The Parties select the following addresses:
- 16.1.1 **Us:** (i) Physical address: Unit 8, Block B, Collingwood Place, 8 Anson Street, Observatory, Cape Town, South Africa, 7925 and (ii) email address: info@skulpod.com and
- 16.1.2 **You:** the (i) physical address and (ii) email address that You insert in the blank space provided therefore on the Order,
- 16.1.3 as the addresses for the service of all formal notices and legal processes in

connection with these Terms ("**Legal Address**").

- 16.2 We may change Our Legal Address from time to time by updating these Terms on Our website.
- 16.3 You may change Your Legal Address to any other physical address by giving Us not less than 7 days' notice in writing.
- 16.4 Notices must be sent either by hand, courier, or email and must be in English. All notices sent –
- 16.4.1 by hand will be deemed to have been received on the date of delivery;
- 16.4.2 by email will be deemed to have been on the date indicated in the "delivery receipt" notification.

17 LIMITATION OF LIABILITY

- 17.1 These Terms set out the full extent of Our obligations and liabilities in respect of the supply of the Products and the performance of any services related thereto.
- 17.2 There are no warranties, conditions or other terms that are binding on Us other than those stated herein.
- 17.3 In purchasing the Product, You hereby expressly acknowledge that the Products are to be used for accommodation and other related activities/ purposes in remote places and harsh environments associated with high risk and a high level of danger including property damage, loss of property and equipment and physical injury (potentially involving permanent disability or death) to You and to third parties. We shall not be liable for any losses, injury, death, damages and/or harm suffered by You or third parties of whatsoever nature, actual or contingent, howsoever arising.
- 17.4 The Product is designed to only be used for its Intended Purpose.
- 17.5 You hereby expressly agree and warrant that You shall use:
- 17.5.1 the Product only for the Intended Purpose; and
- 17.5.2 care for, and maintain the Product in accordance with any instructions provided by Us.
- 17.6 You hereby acknowledge and agree that Our maximum aggregate liability for all claims of any kind to You and/or third parties under or related to the Confirmed Order (including claims related to our warranties set out in clause 10), whether in contract, warranty, condition, delict, strict liability, statute, or otherwise, shall be limited to the sum paid to Us by Our insurance.
- 17.7 In no event, whether as a result of breach of contract, warranty, condition, tort, strict liability, statute or otherwise shall either Party be liable to the other for any special, consequential, incidental, or indirect damages (including loss of business profits or revenue, loss of contracts, loss of data,

	interruption in use, unavailability of data, or the cost of the procurement of substitute goods) or for punitive or exemplary damages. The limitations set forth in clauses 17.6 and 17.7 shall not apply to (i) any claim by Us against You for a violation of any Intellectual Property Rights, or (ii) for payment of the amount due to Us by You for Products and services related thereto purchased in terms of the Confirmed Order.		
17.8	Any warranty, condition or other term concerning the Products which might otherwise be implied into or incorporated in the Confirmed Order by statute, common law or otherwise (including without limitation any implied term as to quality, fitness for purpose, reasonable care and skill) are hereby expressly excluded to the maximum extent permitted by law.	18.4	with Your access to or use of the Website. Notwithstanding the fact that the Website may refer to or provide links to third party websites, Your use of such third-party websites is entirely at Your own risk and We are not responsible for any loss, expense, claim or damage, whether direct, indirect or consequential, arising from Your use of such third party websites or Your reliance on any information contained thereon.
		18.5	We shall not be liable for any direct, indirect, incidental, special or consequential loss or damages which might arise from Your use of, or reliance upon, the website or the content contained in the website; or Your inability to use the website, and/or unlawful activity on the website and/or any linked third-party website.
		18.6	You hereby indemnify Us against any loss, claim or damage which may be suffered by Yourself or any third party arising in any way from Your use of this website and/or any linked third party website.
18	WEBSITE USE AND LIMITATION OF LIABILITY	19	WEBSITE TRACKING AND COOKIES
18.1	The use of the Website is entirely at Your own risk, and You assume full responsibility for any risk or loss resulting from use of the Website or reliance on any information on the Website.		
18.2	Whilst We take reasonable measures to ensure that the content of the Website is accurate and complete, We make no representations or warranties, whether express or implied, as to the quality, timeliness, operation, integrity, availability or functionality of the Website or as to the accuracy, completeness or reliability of any information on the Website. If any such representations or warranties are made by Our representatives, We shall not be bound thereby.	19.1.1	The Website uses cookies to enhance customers' browsing experience, analyse site usage and assist in Our marketing efforts. By clicking "Accept Cookies" on the bar displayed on the Website, You agree to receive all Our cookies. You can change Your cookie settings at any time.
18.3	In addition to the disclaimers contained elsewhere in these Terms, We also make no warranty or representation, whether express or implied, that the information or files available on the Website are free of viruses, spyware, malware, trojans, destructive materials or any other data or code which is able to corrupt, destroy, compromise, disrupt, disable, harm, jeopardise or otherwise impede in any manner the operation, stability, security functionality or content of Your computer system, computer network, hardware or software in any way. You accept all risk associated with the existence of such viruses, destructive materials or any other data or code which is able to corrupt, compromise, jeopardise, disrupt, disable, harm or otherwise impede in any manner the operation or content of a computer system, computer network, any handset or mobile device, or Your hardware or software, save where such risks arise due to the gross negligence or wilful misconduct of Us, Our employees, agents or authorised representatives. We thus disclaim all liability for any damage, loss or liability of any nature whatsoever arising out of or in in connection	20	YOUR REPRESENTATIONS
			By accepting these Terms, You represent and warrant that:
		20.1	You have the legal capacity to accept these Terms; and
		20.2	You agree to comply with and be bound by these Terms.
		21	INDEMNITY
			You indemnify and hold Us, our affiliates, customers, suppliers and subcontractors harmless from and against any third-party claims, damages or costs (including reasonable attorney's fees) caused by or attributable to Your -
		21.1	acts or omissions;
		21.2	use of the Products; and/or
		21.3	breach of these Terms.
		22	PROTECTION OF PERSONAL INFORMATION ACT
		22.1	We will collect information from You for the purposes of the Confirmed Order contemplated in these Terms. Such information will be used for the purpose of giving effect to the Confirmed Order and will be subject to the provisions of the Protection of Personal Information Act.

23 APPLICABLE LAW

- 23.1 These Terms shall be governed by and construed in accordance with the laws of the Republic of South Africa.
- 23.2 In the event of any dispute arising between You and Us, You hereby consent to the non-exclusive jurisdiction of the High Court of the Republic of South Africa (Western Cape Division, Cape Town) notwithstanding that the quantum in the action or proceedings may otherwise fall below the monetary jurisdiction of that court.
- 23.3 Nothing in this clause 23 or the Terms limits Your right to approach any court or tribunal.

24 GENERAL

- 24.1 You acknowledge that, in agreeing to these Terms, You do not do so on the basis of, and You do not rely on, any representation, warranty or other provisions except as expressly provided in these Terms, and all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.
- 24.2 If any provision in these Terms shall be or become invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.
- 24.3 You shall not be entitled to cede and/or delegate any or all of Your rights and/or obligations under these Terms without Our prior written consent. We shall be entitled to cede and/or delegate any or all of Our rights and/or obligations under these Terms without Your prior written consent.
- 24.4 By engaging with Us, You acknowledge and agree that You have had independent legal, accounting, financial, technical and/or other relevant expert advice relating to Your relationship with Us, or have dispensed with the necessity of doing so.
- 24.5 No relaxation, indulgence or extension of time granted by any party ("**Grantor**") to the other party shall be construed as a waiver of any of the Grantor's rights in terms hereof, or a novation of any of the terms of these Terms and or estop the Grantor from enforcing strict and punctual compliance with the terms of these Terms.