

TERMS AND CONDITIONS

1) INTERPRETATION AND PRELIMINARY

1. The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of, nor modify, nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears:-
 - 1.1. words importing:- any one gender include the other two genders; the singular include the plural and vice versa; and natural persons include created entities (corporate or unincorporated) and the state and vice versa;
 - 1.2. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:
“**Agreement**” means this written document as read together with the Schedules thereto, any annexures and subsequent amendments
“**Business Days**” means any day other than a Saturday, Sunday or official Public Holiday in the Republic of South Africa as promulgated in terms of the Public Holidays Act 36 of 1994, as amended from time to time;
“**Business Hours**” means in relation to Business Days, the hours between 08h00 and 16h30 (both inclusive);
“**Client**” means the party that Sanitech is providing services/sales to.

“**Commencement Date**” means the date on which this Agreement commences, irrespective of the date of signature of this Agreement;

“**Consideration**” means the charges which the Client shall pay to Sanitech in consideration for the Services, additional services and ad hoc services rendered as set out in the Pricing Schedule/s;

“**CPI**” means the weighted average of the Consumer Price Index in respect of all areas and for all items as published by Statistics South Africa from time to time; provided that if the Consumer Price Index is no longer published the Parties shall agree a commercially acceptable alternative;

“**Effective Date**” means, in respect of each individual Service, the commencement date as stipulated on each Schedule;

“**Intellectual Property**” means any and all known or hereafter known tangible and intangible rights associated with works of authorship throughout the world, including but not limited to copyrights, trademarks and trade name rights, domain name rights, trade secret rights, patents, designs, algorithms and all other intellectual property rights of whatever nature however known around the world including logos, distinctive marks and any other unique identifiable feature whether arising by operation of law, contract, licence or otherwise and all registrations, initial applications, renewals, extensions, continuations, divisions or reissues now or hereafter in force;

“**Parties**” means the Client and Sanitech collectively and “**Party**” means either one of them as the context may indicate;

“**Insolvency Act**” means the Insolvency Act 24 of 1936, as amended from time to time;

“**Interest Rate**” means the rate of interest charged on overdue amounts as per the provisions of the Prescribed Rate of Interest Act 55 of 1975 read with The Judicial Matters Amendment Act 24 of 2015.

“**Reimbursable Expenses**” means out-of-pocket expenses, not provided for in the Pricing Schedule/s, actually and reasonably incurred by Sanitech in performing its obligations under this Agreement and agreed to, in writing, between the Parties beforehand, and supported by appropriate documentation.

“**Sanitech**” means Sanitech a division of Waco Africa Proprietary Limited with company registration number 2012/00665/07;

“**Service**” means each of the respective services to be rendered by Sanitech as detailed in the Service Schedules and “**Services**” means all of them;

“**Pricing Schedule/s**” means the schedule/s attached to this Agreement setting out the charges which the Client will pay to Sanitech in consideration for the Service;

“**Schedules**” means collectively, the Service Schedules and the Pricing Schedules attached to this Agreement;

“**Service Schedule/s**” means the schedule/s attached to this Agreement setting out the details of the Service/s;

“**Sub-Contractor**” means a service provider, which may be appointed by Sanitech to provide, either in whole or in part, the Services.

“**VAT**” means Value-Added Tax at the prevailing rate in terms of the VAT Act 89 of 1991, as amended from time to time, which rate is currently 14% (fourteen);

- 1.3. Any reference in this Agreement to “date of signature hereof” shall be read as meaning a reference to the date of the last signature of this Agreement
- 1.4. Any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time
- 1.5. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- 1.6. When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or Public Holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or Public Holiday;
- 1.7. Expressions defined in this agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions;
- 1.8. Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 1.9. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement 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; and the rule of construction that the contract shall be interpreted against the Party responsible for the drafting or preparation of the Agreement, shall not apply.

2) APPOINTMENT AND DURATION

- 2.1. With effect from the Commencement Date, the Client hereby appoints Sanitech as a provider of the Services to the Client, upon the terms and conditions set out in this Agreement and Sanitech hereby accepts such appointment.
- 2.2. Notwithstanding the Commencement Date, the Services as detailed in each respective Service Schedule will commence on the Effective Date detailed in each respective Service Schedule and shall endure for an initial period of 24 (twenty four) months (“initial period”), and thereafter shall automatically be renewed for further period/s of 24 (twenty four) months unless either Party shall have given to the other Party notice in writing by not later than the date being 90 (ninety) days prior to the expiry of any 24 (twenty four) month period. Where a Party gives notice of termination in terms of this clause 2.2, the termination of a Service will not affect those rights and obligations which are to survive beyond the termination of this Agreement.

3) SERVICES AND SERVICE SCHEDULES

- 3.1. Upon commencement of this Agreement, Sanitech shall render the Services to the Client at the locations and in accordance with the details set out on the Service Schedules.
- 3.2. The Services that Sanitech shall render to the Client will be detailed in the Service Schedules attached to this Agreement which shall constitute separate and indivisible contracts for the provision of the Services referred to therein, upon the terms contained in such Service Schedule read together with the provisions of this Agreement, it being recorded and agreed that the terms of this Agreement shall supersede and prevail over any terms and conditions contained in any other document.
- 3.3. The Client may request additional and/or ad hoc services beyond the scope of Services detailed in the Service Schedules, in which instance such additional and/or ad hoc services shall be quoted by Sanitech separately and if accepted by the Client, will be subject to the terms and conditions contained in this Agreement and the relevant Service Schedule.
- 3.4. Notwithstanding anything contained in this Agreement, the respective Service Schedules may contain additional requirements and/or conditions, which shall be read in conjunction with that specific Service Schedule and shall supplement this Agreement.

4) REPAIRS AND MAINTENANCE OF EQUIPMENT

- 4.1. In the event of a breakdown of the equipment the company will repair or replace the equipment as expeditiously as possible at the Company’s cost, save as set out in clauses 4.2 and 4.3 below;
- 4.2. The Client agrees to keep the equipment in good order, repair and operating condition at all times and will be liable for any loss of or damage to the equipment due to misuse, negligence, missing parts, sabotage or any other cause;
- 4.3. Notwithstanding anything contained in this agreement to the contrary; all parts or equipment requiring replacement resulting from misuse of the equipment or negligence on the part of the Client or its employees or any third party or failure by the Client to adhere to any term or condition of this agreement will be replaced at the Client’s sole expense;

5) PRODUCTS

- 5.1. The Client undertakes that during the period of this agreement it shall make exclusive use of Sanitech consumable products to facilitate the normal operation of hired equipment
- 5.2. The Client shall purchase the consumables for use in/on the equipment exclusively from Sanitech.

6) CONSIDERATION

- 6.1. The Consideration for the Services rendered by Sanitech shall be recorded in the relevant Pricing Schedule.
- 6.2. All the amounts specified in the Pricing Schedule or quoted in respect of additional and/or ad hoc services will be exclusive of VAT.
- 6.3. Sanitech shall provide the Client with a consolidated VAT invoice, in the first week of the current month of service save any unexpected delays.
- 6.4. Unless otherwise agreed between the Parties, all quotations, invoices or purchase orders for Services will be expressed in South African Rands
- 6.5. Unless otherwise agreed in writing, the Consideration in respect of each Service shall be subject to annual escalation in July each year, which escalation shall not be less than the annual percentage increase in CPI, and shall take into consideration the statutory wage increase of labour, costs of materials, travelling expenses and other material costs which impacts on the provision of the Services.
- 6.6. In addition to the Consideration referred to in the Pricing Schedule/s and subject to the Client’s written pre-approval, Sanitech shall be entitled to charge the Client for Reimbursable Expenses and per diem expenses.

7) PAYMENT

- 7.1. The invoice referred to in 6.3 shall be paid free of deduction or set off and is due in advance, by no later than the 25th day of each month, (“the due date”)
- 7.2. Any amounts overdue and not paid on the due date shall bear interest at the rate dictated by the Prescribed Rate of Interest Act 55 of 1975, then applicable and published in the Government Gazette calculated from the due date until date of final payment, both days inclusive, which interest shall be compounded monthly in arrears
- 7.3. All payments made by Client under this Agreement shall be made without deduction of any taxes, withholding or other charges or imposts of whatever nature or wherever or by whomsoever imposed, unless directed to by a recognised regulatory or judicial body.
- 7.4. Sanitech shall be entitled, after 90 (ninety) days of payment of any amount being due and owing for services supplied and invoiced, to suspend the rendering of any further services, as such default on the part of the Client will amount to a breach of this agreement. Furthermore, Sanitech shall have the right to enforce the relevant provisions of this agreement and to declare the whole balance of all amounts owing as outstanding (whether due or not) in terms hereof, to be immediately due, owing and payable, without further notice to the client.
- 7.5. In the event that services normally rendered to the Client have been suspended in the above manner, The Client shall still be liable for the full amount reflected on the invoice, which shall be inclusive of the period of the suspension, as if the Client had received those services in the usual manner and they had not been suspended.
- 7.6. Sanitech shall, in its discretion, be entitled to invoice the Client in respect of such portions of an order and at such intervals as it may deem appropriate or convenient.
- 7.7. If the Client objects to any item on the statement of its account, the client must deliver a written notice of that objection to Sanitech within 7 (seven) days of his becoming aware thereof, failing which the client accepts that such statement is true and correct in all respects.

8) NON-SOLICITATION

- Unless otherwise agreed, for the duration of this Agreement and for a period of 24 (twenty four) months after its termination, for any reason whatsoever, the Client shall not, directly or indirectly, employ, solicit or offer employment to an employee of Sanitech who is or was employed or involved in the provision of the Services to the Client, nor shall it solicit, entice, encourage or persuade any such employee to terminate his/her employment with Sanitech.

TERMS AND CONDITIONS [CONTINUED]

9) DISPUTE RESOLUTION, JURISDICTION AND COSTS

- 9.1. The Parties agree that should any dispute, difference, deadlock or impasse of any kind arise between the Parties in connection with or arising out of this Agreement or the carrying out of the Services including any dispute as to any decision, opinion, instruction or direction of the Client, whether prior to or upon termination, abandonment or breach of this Agreement, it shall be settled in the following matter:
 - upon the dispute arising, the respective liaison officers of the Parties shall meet with a view to co-operating to the utmost degree in order to resolve the issues;
 - if within 2 (two) days, the Parties are unable to resolve the dispute, a senior management executive of Sanitech and a senior management executive of the Client shall meet with the same objective as those stipulated in clause 9.1. above;
 - if the dispute still remains unresolved after a further 5 (five) days then either Party shall be entitled to exercise any rights and/or remedies available to it in terms of law in order to resolve the dispute.
- 9.2. Where the Client fails to pay any Consideration on the due date, Sanitech shall be entitled to institute legal proceedings in a Court of competent jurisdiction in order to recover such outstanding Consideration together with interest and charges thereon, collection commission and legal costs on the scale of attorney-and-own-client.
- 9.3. A written statement or certificate issued by Sanitech and signed by any Director/Manager pertaining to any amount owing to Sanitech shall be prima facie proof of such indebtedness at the time and/or date concerned for the purpose of obtaining provisional sentence, summary judgment proceedings or any other legal process.
- 9.4. Sanitech and the Client hereby consent, in terms of section 45 of the Magistrate's Court Act 32 of 1994 (as amended), to Sanitech instituting legal proceedings for the enforcement of any of its rights under or arising from this Agreement in a Magistrate's Court which has jurisdiction in respect of the Client in terms of section 28(1) of the Magistrate's Court Act 32 of 1994 (as amended). Without prejudice to the rights of Sanitech, Sanitech may in its sole discretion institute proceedings in any other Court having competent jurisdiction.
- 9.5. Nothing contained in this clause provisions shall not preclude any Party from access to an appropriate Court for interim relief in the form of an interdict, mandamus or order for specific performance, pending the outcome of the dispute resolution proceedings, if any.

10) FORCE MAJEURE

- 10.1. Neither Party shall be liable for any failure to fulfil its obligations under this Agreement if and to the extent such failure is caused by any circumstances beyond its reasonable control, including flood, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions or Acts of God.
- 10.2. Should any event of force majeure arise, the affected Party shall notify the other Party without delay and the Parties shall meet within 7 (seven) days of such notice to negotiate in good faith alternative methods of fulfilling its obligations in terms of this Agreement, if any.
- 10.3. Sanitech shall continue to provide and the Client shall continue to pay the pro rata Consideration for those Services not affected by the event of force majeure.
- 10.4. Should either Party be unable to fulfil a material part of its obligations under this Agreement for period in excess of 60 (sixty) days due to circumstances of force majeure, the other Party, may at its sole discretion cancel this Agreement forthwith by physical written notice.

11) NON-VARIATION AND NON-WAIVER

- 11.1. No amendment to, or variation of, this Agreement shall be of any force or effect, unless and until the same shall have been reduced to writing and shall have been signed by the Parties or their duly authorised representatives.
- 11.2. No relaxation or indulgence granted by Sanitech to the Client shall be deemed to be a waiver of any of Sanitech's rights in terms of this Agreement nor shall any such relaxation or indulgence be deemed to be a novation of any of the terms and conditions of this Agreement.

12) SANITECH OBLIGATIONS

- 12.1. Sanitech shall perform the Services in accordance with the Service Schedules with all reasonable care, diligence and skill in accordance with generally accepted professional techniques and standards.
- 12.2. It is the core principle of this Agreement that Sanitech shall be solely responsible to the Client for all work undertaken in terms of this Agreement, notwithstanding the fact that some or all of the Services may be performed by Sub-Contractors, managed and working in conjunction with Sanitech, it being recorded that the Client has consented to Sanitech utilising the services of Sub-Contractors.
- 12.3. Sanitech shall ensure the exercise of reasonable care by each Sub-Contractor in the provisions of the Services and in doing so shall conduct the necessary audits and/or inspections of the Sub-Contractor at regular intervals.

13) CLIENT OBLIGATIONS

- 13.1. The Client will provide Sanitech with the following, free of charge, at each of the sites specified in the Service Schedules:-safe and unhindered access to the premises; lighting; electricity; water; other facilities that may be reasonably necessary to facilitate the service.
- 13.2. The Client shall ensure that the Consideration is duly and timely paid in accordance with this Agreement.
- 13.3. The Client shall at all times act in good faith.
- 13.4. Upon reasonable notice, the Client shall do all tasks required to provide Sanitech and/or the Sub-Contractors access to any environment as may be reasonably required by Sanitech and/or the Sub-Contractors to provide the Services efficiently and in order for Sanitech to comply with its obligations in terms of this Agreement.
- 13.5. The Client will not become involved in the internal processes of Sanitech, save to the extent that it is necessary for the fulfilment of the Client's and Sanitech's obligations in terms of this Agreement.

14) WHOLE AGREEMENT

This Agreement, together with all the schedules hereto, constitutes the whole and entire Agreement between the Parties with regard to the subject matter hereof and there have not been and there are no agreements, representations or warranties between the Parties other than those specifically set forth herein. This Agreement shall supersede in all respects any terms and conditions appearing in any Client purchase order or other documentation in relation to the Services.

15) BREACH

If at any time during this Agreement, a Party (hereinafter "Defaulting Party") commits a material breach of this Agreement, the other Party (hereinafter "Aggrieved Party") shall notify the Defaulting Party thereof in writing. The Defaulting Party shall then be given 7 (seven) Business Days within which to rectify the breach. Should the Defaulting Party fail to remedy the breach within the specified period, the Aggrieved Party shall be entitled, without prejudice to any other remedies which may be available in law, either to claim specific performance of the terms of this Agreement and/or the Schedule/s or to cancel this Agreement and/or the Schedule/s and, in either event, claim and recover damages from the Defaulting Party.

16) DISCLAIMER AND LIMITATION OF LIABILITY

- 16.1. The Client shall have no claim against Sanitech and the Client hereby indemnifies and holds Sanitech harmless from any liability in respect of any loss or damage of whatsoever nature whether direct, incidental or consequential caused by or arising from the Equipment and/or Products supplied and Services rendered by Sanitech and/or a Sub-Contractor to the Client from any other cause whatsoever or howsoever arising.
- 16.2. Sanitech has made no representations or warranties and disclaims all representations and warranties in regard to the Equipment and/or Products supplied and Services rendered by it, including, inter alia, warranties as to the suitability of the Services to the Client.
- 16.3. Save as expressly provided for in this Agreement, Sanitech shall not be liable to the Client under any circumstance whatsoever including but without limitation as a result of or in connection with Sanitech's negligent acts or omissions or those of its directors, employees, Sub-Contractors, agents, representatives, affiliates or other persons for whom in law Sanitech may be liable, for any direct, indirect, incidental, special or consequential loss of any kind whatsoever or howsoever caused and whether arising or under contract, delict or otherwise and whether such loss was actually foreseen or reasonably foreseeable, sustained by the Client, and the Client indemnifies Sanitech for any such loss suffered by the Client.
- 16.4. Sanitech, its directors, employees, Sub-Contractors, agents, representatives or affiliates shall not be liable for any loss, damage (whether direct, indirect or consequential) or expense of any nature whatsoever which may be suffered as a result of or which may be attributable, directly or indirectly, to the use or reliance upon the rendering of services, equipment and/or products and the Client indemnifies Sanitech, its directors, employees, Sub-Contractors, agents, representative and affiliates from and against any such loss or damage suffered or liability incurred by the Client or any other person whatsoever.
- 16.5. The Client hereby acknowledges that no director, employee, Sub-Contractor, agent, representative and/or affiliate has the authority to make any verbal representation, statement, warranty or guarantee which has any binding effect on Sanitech.
- 16.6. The Client shall have no claim against Sanitech in the event that any of the client's staff suffers allergic reactions or any harm as a result of chemicals or cleaning agents used during and after the rendering of any service or supply of equipment and/or products.

17) INTELLECTUAL PROPERTY

- 17.1. All Sanitech's Intellectual Property shall remain the sole and exclusive property of Sanitech and all the Client Intellectual Property shall remain the sole and exclusive property of the Client.
- 17.2. The Client shall not during nor at any time after the termination of this Agreement acquire or be entitled to claim any right or interest therein, nor in any way question or dispute the ownership thereof.

18) VALIDITY

If any provision of this Agreement is found or held to be invalid or unenforceable, the validity and enforceability of all other provisions of this Agreement will not be affected.

19) ASSIGNMENT, CESSION AND DELEGATION

The client shall not be entitled to assign, cede, delegate or transfer any rights, obligations, share or interest acquired in terms of this Agreement, in whole or in part, to any other party or person without prior written consent of Sanitech, which consent shall not unreasonably be withheld or delayed.

20) DOMICILIUM ADDRESSES

- 20.1. The Client hereby chooses domicilium citandi et executandi for all purposes of this Agreement at its address in this Agreement and all notices to be given at this address.
- 20.2. All notices to be given to the Client under this Agreement shall be given in writing and be addressed to the Client as specified in the Agreement.
- 20.3. Either party shall be entitled to nominate an address (which shall not be a box number) in substitution for the above at any time by delivering to the other party hereto 21 (twenty one) days written notice of such change of address.
- 20.4. Any notice or letter posted by registered post to the client's address as specified in the Agreement shall be deemed to have been received 7 (seven) days after the date of posting thereof
- 20.5. Where a party also nominates a fax number then such number may be chosen as an alternative address for the receipt of any notice connected with this agreement and such notice shall be deemed to have been received on the date of transmission unless the contrary is proved

21) SEVERABILITY

If any provision of this Agreement shall be held illegal or unenforceable, such provision shall be deemed separate and divisible from and shall in no way affect or impair the validity or enforceability of, the remaining provisions.