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Reg. No.: 2009/018260/07

## ANNEXURE B

### PRODUCT LIABILITY WAIVER & LIMITATION OF LIABILITY

1. The products manufactured and/or produced ("**Our Products**") by NCS South Africa (Pty) Ltd ("**Us/We/Our**") are intended for sale by Us to industrial and commercial customers, agents, distributors and resellers (collectively referred to as "**Our Customers**").
2. By agreeing to purchase Our Products, Our Customers agree to be bound to the terms hereof. Any breach of the terms hereof or any other agreement concluded between Us and Our Customers shall result in the immediate termination of Our Customers status as a distributor and/or reseller.
3. In terms hereof, We enjoy a right to inspect our Customers' business premises on 72 hours' notice to Our Customers in order to determine whether proper protocols are in place in regard to the use of Our Products.
4. In terms of Our Products, We warrant that Our Products will meet Our written specifications and data sheet as provided to Our Customers with Our Products. Nothing herein contained shall constitute any other warranty by Us, whether expressed or implied, including any warranty of merchantability or fitness for a particular purpose, nor is protection from any law or patent to be inferred in relation to Our Products. No representations outside of those contained in the product specifications and data sheet provided to Our Customers shall be binding on Us.
5. Our Customers expressly and unreservedly acknowledge and accept that –
  - 5.1. any and all claims arising from any cause whatsoever (whether such cause is based in, but not limited to, contract, negligence, delict or otherwise) in relation to our commercial relationship with Our Customers and/or Our Products shall be deemed to be waived and unenforceable unless notice of such a claim is submitted by the Customers to Us and received by Us in writing within 30 (thirty) days of the date of the delivery of the Product to Our Customer;
  - 5.2. a failure by Our Customers to properly deliver written notice of a claim to Us within the aforementioned 30 (thirty) day period shall be deemed to be an absolute and unconditional waiver by Our Customers of any such claim against Us, irrespective of whether the facts giving rise to such a claim had been discovered as at the date on which the notice of the claim fell due or whether other use or resale of Our Products shall have taken place;
  - 5.3. the exclusive remedy available to Our Customers for all proven claims relating to Our Products is the replacement of Our Products and in no event shall We be liable to Our Customers (or any third party) for any special, incidental and/or consequential damages claims relating to Our Products and/or the use of Our Products. In order to prove any claim, Our Customers are required to retain samples / cut-outs to demonstrate any claim that Our Customers may have for replacement product. To the extent that samples / cut-outs are not retained by Our Client, the claim will automatically be rejected. We are entitled to call for cut-outs / samples in relation to Our Products supplied to Our Customers, which cut-outs / samples are to be provided to us by the Customers within 120 hours (or such longer period as We may agree to) of our request; and
  - 5.4. Our Customers are required to and undertake to disclose to their customers the terms of this product liability waiver and limitation of liability document.
6. Our Customers agree –
  - 6.1. to indemnify and hold Us harmless in relation to and defend any and all claims brought by Our Customers' customers or any third parties in relation to Our Products; and

- 6.2. to take out appropriate insurance cover relating to their commercial arrangements and/or undertakings with their customers in respect of Our Products, with product liability cover of a minimum amount of \$100,000,000 (One Hundred Million United States Dollars). Our Customers agree and undertake to furnish Us with proof of insurance within 48 hours of Our Request that proof of insurance be provided.
7. Our Customers expressly agree to indemnify Us against any and all claims for any special, incidental and/or consequential damages which may be brought by any of Our Customers' customers against Us.
8. Our Customers are expected and are assumed to (and undertake to ensure that they and their relevant personnel, representatives, contractors, sub-contractors and/or agents) have sufficient knowledge and/or proficiency and/or expertise in relation to Our Products ("**Expected Knowledge**") and the –
  - 8.1. applications, capabilities and specifications of Our Products, so as to allow Our Customers to make informed decisions relating to the use and/or applications of Our Products and/or the onward supply of our Products to the customers of Our Customers, as well as any third parties to which Our Products are supplied by Our Customers; and
  - 8.2. suitability of Our Products in relation to the requirements of the customers of Our Customers and any third parties to which Our Products are supplied by Our Customers.
9. In addition, Our Customers are expected to inspect and test Our Products in specific applications to satisfy themselves as to the suitability of Our Product to their requirements and/or those of their customers.
10. The aforementioned Expected Knowledge of Our Customers informs the warranties and indemnities that our Customers unreservedly and irrevocably provide to us (as dealt with herein) in relation to the use, sale and/or onward supply of Our Products to third parties by Our Customers.
11. Further to the aforementioned Expected Knowledge, and by virtue of the fact that Our Products are manufactured and produced in specific climate settings (specifically a South African climate setting), Our Customers accept sole liability –
  - 11.1. for and undertake to ensure the suitability of Our Products for use in a climate setting that differs from those in terms of which the specifications of Our Product, together with the data sheet, are provided and/or in terms of which Our Products are manufactured and/or produced.
  - 11.2. to their customers and/or any third party to which Our Customers supply Our Products and undertake to ensure the suitability of Our Products for use in a climate setting that differs from those in terms of which the specifications of Our Product, together with the data sheet, are provided and/or in terms of which Our Products are manufactured and/or produced. Our Customers accept and agree to fully indemnify Us against any and all claims of whatsoever nature and howsoever arising relating to the use, sale and/or supply of Our Product by Our Customers to their customers and/or any third parties;
  - 11.3. In relation to –
    - 11.3.1. the housing and/or repackaging of Our Products; and
    - 11.3.2. any changes to Our Products that result by virtue of, but not limited to –
      - 11.3.2.1. the transportation of Our Product (whether by land or sea) to the Customer (notwithstanding that we may have arranged and facilitated any such transport of Our Products on behalf of Our Customers);
      - 11.3.2.2. the storage of Our Product by the Customer (notwithstanding that We may have arranged and facilitated any such storage of Our Products on behalf of Our Customers); and
      - 11.3.2.3. any variations (regardless of the degree of variation) to the formulation of Our Products introduced by the Customers;
  - 11.4. to their customers and/or any third party to which Our Customers supply Our Products in relation to –
    - 11.4.1. the supply of Our Products; and
    - 11.4.2. any changes to Our Products that result by virtue of, but not limited to –
      - 11.4.2.1. the transportation of Our Product (whether by land or sea) to the Customer or the customer of our Customers (notwithstanding that We may have arranged and facilitated any such transport of Our Products on behalf of Our Customers);
      - 11.4.2.2. the storage of Our Product by the Customer (notwithstanding that We may have arranged and facilitated any such storage of Our Products on behalf of Our Customers); and
      - 11.4.2.3. any variations (regardless of the degree of variation) to the formulation of Our Products introduced by the Customers;

12. Our Customers agree that any and all claims and/or disputes arising out of and/or relating to Our Products and/or the use or application of Our Products by and/or the supply of Our Products to Our Customers and/or their customers and/or any third parties shall be –
  - 12.1. governed by South African law;
  - 12.2. determined by way of arbitration, which arbitration proceedings shall –
    - 12.2.1. be held in Sandton, Johannesburg, Gauteng, South Africa;
    - 12.2.2. be conducted in camera and treated as private and confidential;
    - 12.2.3. conducted in accordance with the Commercial Rules of the Arbitration Foundation of South Africa ("**AFSA**"). Should AFSA, as an institution, not be operating at the time that the dispute and/or claim is to be referred, then the arbitration shall be conducted in accordance with the AFSA rules for commercial arbitration as last applied by AFSA before an arbitrator appointed by agreement between the parties to the dispute failing agreement within 10 (ten) business days of the demand for arbitration, then any party to the claim and/or dispute shall be entitled to call upon the chairperson of the Johannesburg Bar Council to nominate the arbitrator, provided that the person so nominated shall be an advocate of not less than 15 years standing as an advocate;
    - 12.2.4. be administered by AFSA. Should AFSA, as an institution, not be operating at the time that the dispute and/or claim is to be referred, then the administration of the arbitration shall be determined by the appointed arbitrator whose decision in relation to the administration of the arbitration shall be final and binding on the parties to the dispute;
    - 12.2.5. not be subject to appeal, unless otherwise agreed to in writing between the parties to the claim and/or dispute.
13. Our Customers agree and undertake to comply with all applicable laws, regulations, and industry standards related to the use, storage, handling, transportation, and disposal of Our Products in whichever jurisdiction Our Customers elect to supply Our Products to. The Customer agrees and undertakes to indemnify Us against any and all penalties and regulatory orders that may be made in relation to the supply of Our Products to any jurisdiction outside of South Africa and assume sole responsibility in relation to the supply of Our Products to any jurisdiction outside of South Africa.
14. Our Customers agree and acknowledge that we have provided reasonable warnings and instructions for the use, storage, handling, transportation, and disposal of Our Products, and that Our Customers have read and understand such warnings and instructions.
15. Our Customers agree that the contents hereof shall be binding upon their respective heirs, successors, and assigns and inure to Our benefit and those of Our respective heirs, successors, and assigns.