

SUPPLY AGREEMENT

Entered between:

Supplier Name: CHROMAR TECHNOLOGY (PTY) Ltd
Registration Number: 2022/694506/07
Registered Address: 85 Via Lucia,
TreDonne Estate, Helderberg,
7135, South-Africa
Tel: +2782 452 3195
eMail: info@chromar.co.za

(hereinafter referred to as “the Supplier”)

and

Client Name:
Registration Number:
Registered Address:
Tel:
eMail:

Duly represented by:

Name:

(hereinafter referred to as “the Client”)

(hereinafter collectively referred to as “the Parties”)

WHEREAS

- A. The Client wishes to appoint the Supplier to supply it with specified goods and/or services as requested at the Client's special instance and request.
- B. The Supplier has extensive experience in supplying the abovementioned goods and/or services and wishes to accept such an appointment.
- C. The Parties wish to enter into a Supply Agreement on the terms and conditions recorded below (hereinafter referred to as "**Agreement**").

1. DEFINITIONS

- 1.1. The following terms of the Agreement shall have the meanings assigned to them hereunder and similar expressions shall have corresponding meanings, namely:
 - 1.1.1 "Agreement" means these terms and conditions of supply, including all annexures attached hereto;
 - 1.1.2 "Client" means the company and/or person referred to on the cover page;
 - 1.1.3 "Goods" shall mean whatever is ordered by the Client from the Supplier in terms hereof and includes, where applicable, work to be done or services to be rendered;
 - 1.1.4 "Order" shall mean and include the contents of each purchase order or any document in response to a quotation of the Supplier or otherwise generated out of own accord by the Client to the Supplier with the intention to order Goods from the Supplier and agreed in writing by Parties.
 - 1.1.5 "Parties" refer to both the Supplier and the Client as per the cover page;
 - 1.1.6 "Prices" shall mean the price and/or fees as stated in the quotation, Invoice or other Transactional Document in respect of the Goods ordered by the Client;
 - 1.1.7 "Supplier" means Chromar Technology CC;
 - 1.1.8 "Transactional Document" means any document, including an Order, intending to form part of the transaction between the Client and Supplier pursuant to this Agreement and/or with the aim to quote and/or order and/or invoice and/or arrange any other detail in respect of achieving the Supply of Goods by the Supplier to the Client, which document will be considered to form part of this Agreement;

- 1.1.9 "Prescribed interest rate" shall be calculated as the South-African repo rate plus 3.5%;
- 1.2 In this Agreement:
- 1.2.1 references to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time;
- 1.2.2 words importing any one gender include the other gender; the singular include the plural and vice versa; and natural persons include created entities (corporate or non-incorporate) and vice versa;
- 1.2.3 any definition, wherever it appears in this Agreement, shall bear the same meaning and apply throughout this Agreement unless otherwise stated or inconsistent with the context in which it appears;
- 1.2.4 if there is any conflict between any definitions in this Agreement then, for purposes of interpreting any clause of the Agreement or paragraph of any Annexure, the definition appearing in that clause or paragraph shall prevail over any other conflicting definition appearing elsewhere in the Agreement;
- 1.2.5 any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (*ie pro non scripto*) and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction;
- 1.2.6 when any number of days are prescribed in this Agreement, such number shall be reckoned exclusively of the first day and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday in the Republic of South Africa, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday in the Republic of South Africa;
- 1.2.7 this Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa;
- 1.2.8 The grant of any indulgence, extension of time or relaxation of any provision by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor;

- 1.2.9 A Party may not rely on any representation which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.

2. CONDITIONS OF SALE AND/OR SUPPLY

- 2.1. Any Order or Transactional Document resulting from this whether purchased on account or upfront, such document / transaction shall be subject to the conditions herein unless varied by the Supplier in writing, and these conditions will take precedence over any terms, conditions or stipulations contained in other documentation which may be in conflict herewith.
- 2.2. The Supplier may use its discretion to decide whether it wishes to supply to the Client. The Supplier shall immediately inform the Client in writing within 3 days upon receipt of the Order if it does not wish to supply the Client or wishes to make alternations to the Order. The final Order shall be mutually agreed by Parties.
- 2.3. The Supplier's discretion to sell and supply any Goods to the Client in terms hereof may be guided by *inter alia* the following:
- 2.3.1 The availability of stock;
- 2.3.2 Timeous receipt by the Supplier of any drawings, designs and specifications that may be required by the Supplier from the Client provided that such drawings, designs and specifications shall be deemed to have been given to the Supplier for the purpose of description only and shall not form part of the Agreement;
- 2.3.3 Status and age analysis of Client's accounts with the Supplier;
- 2.4. Set-off shall operate automatically as a matter of law, current reciprocal debts between the Parties come into existence and independently of their will. It shall not be necessary for either the Supplier or the Client to specifically raise set off. Upon the operation of an automatic set off as aforementioned, the debt shall be mutually extinguished to the extent of the lesser debt with retrospective effect.
- 2.5. When the Supplier is required to manufacture or supply Goods to the Client's specification and/or drawings, or carries out work according to the Client's instructions, or those of its nominees, the Supplier accepts no responsibility for the efficiency or workability of goods so manufactured or work so carried out only if Supplier reasonably notified in writing the Client objections in details to such Clients specification and/or drawings or Clients instructions that directly influence efficiency or workability of goods.

- 2.6. Should there be any apparent contradiction or mistake in the description, dimensions or quantity of the Goods ordered, the Client shall refer the matter to the Supplier for correction or clarification before proceeding to execute the Order and shall be obliged to effect payment of the account if the Client has failed to query any such apparent contradiction, mistake or anomaly in the Order within 5 days of the delivery of the Goods.

3. APPLICATION FOR AN ACCOUNT WITH THE SUPPLIER

- 3.1 The Client hereby authorizes the Supplier or its agents at all times to contact and request information from any persons, credit bureaus or businesses, including those mentioned under trade references, and to obtain any information relevant to the Client's application and upkeep of the Client's account.
- 3.2 The Client understands that the information given in relation to this Agreement will assist the Supplier in determining before the final Order is agreed by Parties whether or not to sell the Goods to the Client on account and will be used by the Supplier for the purposes of assessing its creditworthiness. The Client confirms that the information given by it is accurate and complete.
- 3.3 The Client further agrees to update the information supplied, as and when necessary, to ensure the accuracy and completeness of the above information at all times.
- 3.4 The Supplier does not grant any credit facilities and payment terms agreed by Parties in final Order are to be strictly adhered to by Parties.

4. PRICE AND PAYMENT

- 4.1 Prices and discounts are those ruling at the date of dispatch of the Goods contained on any Transactional Document.
- 4.2 The Supplier reserves the right to adjust or change any prices and/or discounts only before final Order agreed by Parties with prior written notice to the Client prior to the dispatch of the Goods in the event of any material changes in pricing including but not limited to labour costs and fluctuating exchange rates.
- 4.3 The Client acknowledges that the purchase price as contained in the Transactional Document is payable 50% upfront to secure procurement of raw material before manufacturing commences and remaining 50% within (30)

thirty days from date of delivery of Goods to the Client, unless otherwise agreed in final Order by Parties.

- 4.4 Interest shall immediately begin to run on any overdue accounts; without any notice from the Supplier; that has not been paid on the due date (clause 4.3 above) at the Prescribed Interest Rate, which shall be calculated from the date following the due date of each account.
- 4.5 Penalty shall immediately begin to run on any delivery and/or dispatch delay; without any notice from the Client; that has not been delivered on the due date as agreed by Parties in final Order at the Prescribed Interest Rate, which shall be calculated from the date following the due date of each delivery and/or dispatch of Goods.
- 4.6 A certificate under the hand of any director or manager or the account manager (whose appointment need not be proved) as to the existence and the amount of the Party indebtedness and to the other Party at any time, as to the fact that such amount is due and payable, the amount of mora interest accrued thereon and the correctness thereof for the purpose of provisional sentence, summary judgment or any other proceedings of whatsoever nature against the Party in any competent court and shall have constituted as a liquid document for such purpose.

5. DELIVERY. WARRANTY

- 5.1 Time shall be of the essence of the contract and delivery dates shall be treated as final deadlines. The Client shall be entitled to withdraw from or terminate the contract on account of any delay in delivery and/or dispatch of Goods and reserves the right to claim of any nature against the Supplier arising from late delivery and/or dispatch of Goods.
- 5.2 A signed Delivery Note shall constitute *prima facie* proof that the Goods have been delivered to and received by the Client in good condition (without confirmation of compliance of Goods), whether signed by the Client, an employee, an agent or a representative of the Client.
- 5.3 The Supplier warrants that all Goods supplied hereunder will conform to the requirements of the Agreement (including all final Order, descriptions, specifications and drawings) and such Goods will be free from defects.
- 5.4 In the event of non-compliance of any Goods at delivery to the Client with any

of the warranties set forth above (and without limiting any other right or remedy that the Client may have), the Supplier shall, at its option, free of charge and at its own cost and expense, repair or replace said Goods at its premises within 30 (thirty) days (or in respect of a defect within a reasonably prompt period) of the Supplier's receipt of notice of the non-complying Goods.

- 5.5 This warranty will also apply to any non-compliance discovered within 12 (twelve) months of Delivery Note by the Client.

6. DISCLAIMER

- 6.1. The Party shall be exempted from and shall not be liable under any circumstances whatsoever for any damages including indirect and/or consequential damages of any nature whatsoever or any loss of profit or special damages of any nature whatsoever and whether in the contemplation of the Parties or not, which the other Party may suffer as a result of any delay.
- 6.2. The Party hereby indemnifies the other Party against any claim which may be made against the such Party by any other person in respect of any matter for which the liability of the Party is excluded in terms of the foregoing.
- 6.3. Ownership in and to the Goods sold and delivered to the Client on account shall pass to the Client only when all amounts due by the Client to the Supplier has been paid in full, notwithstanding the delivery of the Goods to the Client. Risk in and to the Goods shall however pass to the Client on delivery.

7. BREACH

- 7.1 The Party agrees and acknowledges that in the event of –
- 7.1.1 breaching any condition contained in these conditions;
 - 7.1.2 failing to pay any amount due and payable on due date;
 - 7.1.3 failing to supply, deliver and/or dispatch Goods on due date;
 - 7.1.4 suffering any civil judgment to be taken or entered against it;
 - 7.1.5 causing a notice of surrender of its estate to be published in terms of the Insolvency Act No. 24 of 1936, as amended;
 - 7.1.6 Party passing away;
 - 7.1.7 estate being placed under any order of provisional or final sequestration, provisional or final winding up, placed under business rescue proceedings, or provisional or final judicial management, as the case may be; then the other Party shall, without detracting from any other remedies which may be available

to it, be entitled to summarily cancel the Agreement obligations with notice to the breaching Party, or to claim specific performance of all of the breaching Party's obligations whether or not such obligations would otherwise then have fallen due for performance, in either event without prejudice to the Party's right to claim damages.

- 7.2 In the event of the Party or its agents instructing attorneys to collect from the other Party any amount owing to the Party, such other Party agrees to pay all costs on the scale as between attorney and own client, including collection commission and tracing charges.
- 7.3 In the event of the Party or its agent instructing a debt collector or attorney to collect from the other Party an amount owing to the Party, the other Party agrees to pay the collections commission as allowed by law in addition to capital, interest and legal costs.
- 7.4 If the Party fails to meet its obligations under the Agreement, it authorizes the other Party or its agents to record its non-performance with any credit bureau, which information will be available to third parties. The Party further authorizes researching its records at a credit bureau, use new information and data obtained from the credit bureau in respect of details of how the Party has performed in terms of the Agreement.

8. DOMICILIUM ADDRESS

- 8.1 The Parties nominate as its *domicilium citandi et executandi* (address where Parties will accept service of all legal processes) the address reflected on the face hereof under the heading registered office/business physical address.
- 8.2 A Party may change its address for this purpose to another physical address in the Republic of South Africa by notice in writing to the other Party, such change to be effective only on and with effect from the 7th Business Day after the giving of such notice.
- 8.3 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate service of such written notice or communication to that Party notwithstanding that it was not sent to or delivered or served at that Party's *chosen domicilium citandi et executandi*.

9. MISCELLANEOUS

- 9.1 The Parties consent to the jurisdiction of the Magistrates' Court in terms of Section 45 of the Magistrates' Court Act, No. 32 of 1944, as amended, having jurisdiction under Section 28 of the said Act, notwithstanding that the claim exceeds the normal jurisdiction of the Magistrates' Court.
- 9.2 No relaxation or indulgence granted to the Party by the other Party, at any time, shall be deemed to be a waiver of any of the other Party's rights in terms hereof, and such relaxation or indulgence shall not be deemed as a novation of any of the terms and conditions set out herein, or create any estoppel against such other Party.
- 9.3 Any agreement purporting to vary or novate the terms of this Agreement, or any consensual cancellation, shall not be valid unless reduced to writing and signed by the Parties. For the purposes of this clause electronic communication does not constitute to writing.

CESSION OF CLAIMS

10. The Party hereby and severally, irrevocably and *in rem suam* cede and assign as a pledge unto and in favour of the other Party, all the right, title, interest in and to all claims of whatsoever nature and description and howsoever arising which the Party may now or at any time hereafter have against all and any persons, companies, corporations, firms, partnership, associations, syndicates and other legal personae whomsoever without exception as continuing covering security for the due payment of every sum of money which may now or at any time hereafter be or become owing by the Party from whatsoever cause or causes arising, it being acknowledged that this cession is a cession in *securitatum debiti* and is not an out-and-out cession.
11. Should it transpire that the Party entered into prior deeds of cession or otherwise disposed of any of the right, title and interest in and to any of the claims which will from time to time be subject to this cession, then this cession shall operate as a cession of all the Party reversionary rights.
12. This Cession shall be and remain in full force and effect as a continuing security notwithstanding any fluctuation, or temporary extinction of the Party indebtedness to the other Party.
13. For the purpose of giving effect to the foregoing Cession, the Party hereby nominate, constitute and appoint the other Party to be its Attorney and Agent,

in rem suam, with full authority for the Party and in the Party name to demand, sue for, recover and receive all sums of money hereby ceded and assigned and with the authority to sign all documents on the Party behalf and in the Party name in connection with the recovery of the said sums and to give acquittances and receipts for the Party.

14. The Party agrees that, on request by the other Party, they shall be obliged to hand over to the other Party all books of account, contracts, invoices, documents and the like which it may require for the purposes of ascertaining the amounts due to the Party for the purpose of recovery of payment.
15. The Party shall be obliged to furnish the other Party with a schedule of all debts due to the Party by its debtors monthly and upon demand. Notwithstanding the foregoing, the other Party or its nominee shall at all times be entitled to inspect all or any of the Party's records as the other Party deems fit. Failure by either party to give effect to the foregoing shall not in any way prejudice the rights of the other Party hereunder, and the other Party shall at all times be deemed to have perfected its security in terms hereof.

CESSION BY PARTY

16. Should the Party cede its claim against the other Party to any third party ("the Cessionary"), then the above Cession of Claims shall be deemed to have been given by the other Party to such Cessionary as continuing covering security for the due payment of every sum of money which may at the time of such Cession or at any time thereafter be or become owing by the Party to the Cessionary (whether acquired the Cessionary by way of Cession or otherwise), and such Cessionary shall be entitled to exercise all rights in terms of the Cession of Claims as if such Cessionary were the supplier hereunder.
17. The Party agrees that if one clause is found to be invalid, this invalid clause does not affect the validity of the remainder of the Agreement.

SIGNED at _____ on this _____ day of _____ 20____.

1. _____
For and on behalf of the **Supplier**
(who is duly authorised to sign)

Witness

SIGNED at _____ on this _____ day of _____ 20____.

2. _____
For and on behalf of the **Client**
(who is duly authorised to sign)

Witness