WARRANTY TERMS AND CONDITIONS

IN THIS AGREEMENT THERE ARE CERTAIN CLAUSES OF SIMILAR FONT AND COLOUR TO THIS TEXT WHICH CONTAIN PROVISIONS THAT MAY HAVE THE EFFECT OF (I) LIMITING THE RISK OR LIABILITY OF BSH OR OF ANY OTHER PERSON AND/OR (II) MAY CONSTITUTE AN ASSUMPTION OF RISK OR LIABILITY BY YOU AND/OR (III) MAY IMPOSE AN OBLIGATION ON YOU TO INDEMNIFY BSH OR ANY OTHER PERSON FOR ANY CAUSE AND/OR (IV) MAY BE AN ACKNOWLEDGEMENT OF ANY FACT BY YOU. THESE PROVISIONS ARE VERY IMPORTANT AND YOU MUST ENSURE THAT YOU READ THEM CAREFULLY AND THAT YOU UNDERSTAND THEM CLEARLY.

1. DEFINITIONS & INTERPRETATION

1.1 Unless such meaning is inconsistent with the context, the following terms shall, throughout this BSH WARRANTY, have the meanings respectively ascribed to them, namely:

1.1.1 “AUTHORIZED SERVICE PERSONNEL” means the staff authorized by BSH, who have been sufficiently trained to repair the PRODUCT(S), and as are appointed and/or accredited as such by BSH from time to time;

1.1.2 “AUTHORISED SERVICE CENTRE” means the place of repair as appointed and/or approved by BSH from time to time;

1.1.3 “BSH” means BSH HOME APPLIANCES (PTY) LTD (Registration Number: 1985/05742/07);

1.1.4 “BSH WARRANTY” means this agreement and any annexures, schedules and/or amendments thereto;

1.1.5 “COMMENCEMENT DATE” means the date upon which the CUSTOMER purchases the PRODUCT(S);

1.1.6 “CPA” means the Consumer Protection Act, 86 of 2008 (as amended);

1.1.7 “CUSTOMER” means the person who purchases BSH’S PRODUCT(S) from a reseller and/or distributor, who is authorised by BSH or any of its related companies to do so;

1.1.8 “EXTENDED WARRANTY PERIOD” means the defined time period in which certain PRODUCT(S) have an extended warranty for purposes of this BSH WARRANTY, as set forth in clause 7 below;
1.1.9 “PRODUCT(S)” means the products of BSH, which form part of the subject matter of this BSH WARRANTY;
1.1.10 “STANDARD WARRANTY PERIOD” is the period in which this BSH WARRANTY applies, and which differs depending upon the type of PRODUCT specified in clause 7 as read with Appendix 1 hereto.

1.2 In this BSH WARRANTY unless the context otherwise requires –

1.2.1 The singular shall import and include the plural and vice versa;
1.2.2 Words indicating natural persons shall import and include juristic persons;
1.2.3 Clause headings are for reference only and do not affect interpretation;
1.2.4 Where any number of days is prescribed in this BSH WARRANTY, they shall be calculated exclusive of the first day and inclusive of the last day unless the last day falls on a Saturday, Sunday or public holiday. On such day the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
1.2.5 The rule of construction that this BSH WARRANTY shall be interpreted against the party responsible for the drafting or preparation of this BSH WARRANTY shall not apply. The same applies to the schedules or annexures.

1.3 This BSH WARRANTY constitutes the whole agreement between BSH and the CUSTOMER as to the subject matter hereof and no agreements, representations or warranties between BSH and the CUSTOMER other than those set out herein are binding on BSH and the CUSTOMER.

1.4 No addition to or variation, consensual cancellation or novation of this BSH WARRANTY and no waiver of any right arising from this BSH WARRANTY or its breach or termination shall be of any force or effect unless reduced to writing and signed by BSH and the CUSTOMER or their duly authorised representatives.

1.5 This BSH WARRANTY shall be governed by the laws of the Republic of South Africa, and accordingly, any dispute concerning the validity, existence, interpretation, rectification, breach or termination or any dispute arising out of this agreement, their avoidance, interpretation, rectification, breach or termination, shall be determined according to the laws of the Republic of South Africa.
2. CONSUMER PROTECTION ACT 68 OF 2008

2.1 If the CPA is applicable, the provisions of the CPA will be applied and take precedence where they contradict any provision of this BSH WARRANTY.

2.2 Nothing in this BSH WARRANTY is intended to or must restrict, limit or avoid any rights or obligations, as the case may be, created for either BSH or the CUSTOMER in terms of the CPA.

3. GENERAL

3.1 The BSH WARRANTY is confined only to the first purchase of the PRODUCT(S) and shall not be transferable to any subsequent purchase thereof.

3.2 It is hereby brought to the attention of the CUSTOMER that all PRODUCT(S), which are subject to an EXTENDED WARRANTY PERIOD require that such warranty be activated on BSH’S online portal. These PRODUCT(S) are clearly defined in Appendix 2, as attached hereto.

3.3 The BSH WARRANTY period (both STANDARD WARRANTY PERIOD and EXTENDED WARRANTY PERIOD) starts from the COMMENCEMENT DATE.

3.4 The BSH WARRANTY covers only manufacturing defect(s) in material and workmanship that may arise from the normal operation and usage of the PRODUCT(S), as prescribed in the operating manual of each respective PRODUCT(S). The CUSTOMER specifically acknowledges that no warranty cover shall exist in instances where the PRODUCT(S) is stored, operated and/or utilised out of specification. This shall include (but not be limited to) any type of pest, rodent and/or insect infestation.

3.5 Repairs, installations and removal of the PRODUCT(S) shall only be carried out by AUTHORIZED SERVICE PERSONNEL, failing which this BSH WARRANTY shall be void.

3.6 Repairs and replacements of parts shall be at the discretion of the AUTHORISED SERVICE PERSONNEL only. BSH’S obligation under this BSH WARRANTY shall be limited to repair and providing replacement of defective parts only. It is hereby clarified that after the STANDARD WARRANTY PERIOD, visiting charges will be applicable for all visits and the same will be borne by the CUSTOMER. In the event that the PRODUCT(S) needs to be transported to the AUTHORISED SERVICE CENTRE for repair during the EXTENDED
**WARRANTY PERIOD**, the transportation charges from and to the place of installation shall be solely borne by the **CUSTOMER**.

3.7 The **CUSTOMER** shall provide a reasonable, sufficient and safe working space to access the **PRODUCT(S)** for the required service. The **CUSTOMER** is liable to move away all blocking objects or move the **PRODUCT(S)** to an appropriate location with electricity / gas/ water supply and drainage for testing of the **PRODUCT(S)**.

3.8 In the event that the repair cannot be completed at the **CUSTOMER’S** premises, the company reserves the right to remove the **PRODUCT(S)** from the **CUSTOMER’S** premises and to take them to its **AUTHORISED SERVICE CENTRE** and **BSH** shall return the same after repair.

3.9 In the event that the **PRODUCT(S)** are installed beyond municipal limits of the jurisdiction of **BSH’S AUTHORISED SERVICE CENTRE**, all expenses incurred in transportation of the **PRODUCT(S)** or parts thereof from and to **BSH’S AUTHORISED SERVICE CENTRE**, as well as expenses incurred on deputing of service personnel/technician towards conveyance and other incidental expenses, will be borne by the **CUSTOMER**.

3.10 Any repairs to the **PRODUCT(S)** and/or the replacement of any spare part, this shall only be warranted for the remaining **WARRANTY PERIOD**.

4. **REPRESENTATION AND WARRANTIES**

4.1 As from the **COMMENCEMENT DATE** hereof, **BSH** warrants that the **PRODUCT(S)** supplied in terms of the agreement shall be of **BSH**’s standard quality and are reasonably suitable for the purposes for which they are generally intended. In the event that defects are discovered in the **PRODUCT(S)** supplied (that were present at the **COMMENCEMENT DATE**), **BSH** shall within its own discretion either remedy the defect or supply defect free replacement **PRODUCT(S)**.

4.2 All **PRODUCT(S)** sold by **BSH** shall not be sold as “fit for any specific purpose” unless so agreed upon in writing.

4.3 The **CUSTOMER** bears the burden of proof that such defects were in fact present at the **COMMENCEMENT DATE**. In this regard, the notification requirements referred to in clause 5.1 shall be *prima facie* proof as to whether the **PRODUCT(S)** where defective at the **COMMENCEMENT DATE**.
4.4 Should defects be found without the require notification in terms of clause 5.1, the CUSTOMER shall bear the burden of proof to show that the defects were caused as a result of use for the designated purpose and that the PRODUCT(S) were utilised/operated as per the operating instructions and/or manual.

4.5 BSH makes no other warranty of any kind, express or implied, including without limitation, any warranty of merchantability, or non-infringement. BSH specifically makes no warranties as to any services or as to compliance with laws, regulations, standards and/or conventions including any related to the environment or to the packaging, labelling and/or transport of hazardous PRODUCT(S). No warranty shall apply to shipping damage, damage caused by improper installation, PRODUCT(S) that have been modified or altered in any way, damage caused by corrosion, abrasion, or severe temperatures, or PRODUCT(S) that have been subjected to improper maintenance, abuse, misuse, abnormal usage, storage, insect, pest and/or rodent damage, or accident.

4.6 THE CUSTOMER WARRANTS THAT HE/SHE SHALL FULLY COMPLY WITH ALL LABEL DIRECTIONS FOR THE HANDLING, STORAGE, POSSESSION OR USE OF THE PRODUCT(S) HEREUNDER AND THE CUSTOMER AGREES THAT HE/SHE SHALL INDEMNIFY AND HOLD BSH HARMLESS FROM ALL CLAIMS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS’ FEES) OF PERSONAL INJURY OR PROPERTY DAMAGE RESULTING FROM ANY NEGLIGENCE, RECKLESSNESS OR WILFUL MISCONDUCT ON THE PART OF THE CUSTOMER OR FROM ANY FAILURE OF THE CUSTOMER TO COMPLY WITH THE TERMS OF THIS BSH WARRANTY.

4.7 Specifications, illustrations and the like remain the property of BSH and may only be used for the purpose specified in the agreement and must be returned upon the request of BSH.

4.8 NO LIABILITY FOR DAMAGES WILL BE ATTRIBUTED TO BSH RESULTING FROM UNSUITABLE OR IMPROPER USE, IMPROPER ASSEMBLY AND IMPROPER COMMISSIONING OR HANDLING BY THE CUSTOMER OR BY THIRD PARTIES, NORMAL WEAR AND TEAR OR PREMATURE EROSION DUE TO THE NATURE OF THE MATERIAL OR THE NATURE OF ITS USE, IMPROPER OR NEGLIGENT HANDLING OR STORAGE, IMPROPER MAINTENANCE, DEFECTIVE CONSTRUCTION WORKS, UNSUITABLE BUILDING GROUND, EXPOSURE TO THE ELEMENTS, DAMAGE CAUSED BY INSECTS OR SIMILAR PESTS, CHEMICAL, ELECTRO-CHEMICAL OR ELECTRICAL INFLUENCES UNLESS BSH IS RESPONSIBLE FOR SUCH INFLUENCES.

5. RETURN OF PRODUCTS

5.1 THE PRECONDITIONS OF THE WARRANTY RIGHTS (CLAIMS BASED ON DEFECTS) OF THE CUSTOMER IN TERMS OF THIS BSH WARRANTY IS THAT THE CUSTOMER INSPECTS THE PRODUCT(S) UPON RECEIPT WITHOUT UNDUE DELAY AND GIVES WRITTEN NOTICE OF
ANY VISIBLE DEFECTS AFTER THE INSPECTION, SPECIFYING THE DEFECT. NOTIFICATION MUST BE GIVEN TO BSH’S CALL CENTRE WITHIN A PERIOD OF 3 (THREE) BUSINESS DAYS OF DELIVERY.

5.2 A PRECONDITION OF THE WARRANTY RIGHTS (CLAIMS BASED ON DEFECTS) OF THE CUSTOMER IN TERMS OF THIS BSH WARRANTY IS THAT THE CUSTOMER NOTIFIES BSH WITHIN 3 (THREE) DAYS OF THE DISCOVERY OF ANY LATENT (HIDDEN) DEFECTS OF THE PRODUCT(S).

5.3 In the event that the CUSTOMER complies with clauses 5.1 and 5.2 above, and BSH is satisfied that the PRODUCT(S) are defective or do not conform to the specification or other description of the PRODUCT(S) on the invoice, then BSH shall, at BSH’S sole election, replace such PRODUCT(S) or repair such defective parts of the PRODUCT(S).

5.4 Except insofar as any statute provides to the contrary the undertakings contained in the preceding paragraphs of this clause are given in lieu of and to the exclusion of all conditions, warranties and representations whether express or implied by statute or otherwise as to the quality of the PRODUCT(S) or their fitness for any particular purpose or otherwise and BSH shall have no liability in respect of the PRODUCT(S) save as provided in clause 5.3.

5.5 To enable BSH to perform all rework and replace all parts BSH deems necessary, the CUSTOMER, upon consultation with BSH, shall allow enough time and afford sufficient opportunity to BSH to remedy the defects. SHOULD THE CUSTOMER FAIL TO DO SO, BSH SHALL BE RELEASED FROM ANY LIABILITY OR CONSEQUENCES ARISING THERE FROM. Only in urgent cases involving endangering of the operational safety and/or to prevent unreasonably serious damage - in which case the CUSTOMER shall notify BSH immediately - shall the CUSTOMER be entitled to either remedy the defect itself or have such defect remedied by third parties and to demand compensation from BSH for the expenses incurred.

5.6 SHOULD THERE BE AN ALLEGATION THAT ANY PRODUCT(S) ARE UNSAFE, INSUFFICIENT AND/OR DEFECTIVE; BSH SHALL NOT BE LIABLE FOR ANY HARM CAUSED WHERE SUCH ALLEGED UNSAFE CHARACTERISTIC, FAILURE, DEFECT OR HAZARD DID NOT EXIST IN THE PRODUCT(S) AT THE TIME AT WHICH THEY WERE SUPPLIED TO THE CUSTOMER BY BSH. THEREFORE IF NO SUCH NOTIFICATION IS RECEIVED IN TERMS OF CLAUSE 5.1 ABOVE, IT WILL BE REGARDED AS PRIMA FACIE PROOF THAT NO DEFECTS WERE PRESENT AT THE COMMENCEMENT DATE AND THAT THE PRODUCT(S) WERE RECEIVED IN GOOD ORDER.
5.7 The CUSTOMER may not however return to BSH any PRODUCT(S) for any reason whatsoever unless:-

5.7.1 The CUSTOMER and BSH have agreed thereto in writing to such return and to the conditions of such return;
5.7.2 the PRODUCT(S) are being returned in accordance with the provisions of clause 5.1 above;
5.7.3 the PRODUCT(S) were intended to satisfy a particular purpose communicated to BSH prior to the purchase thereof and have been found not to satisfy the purpose for which they were intended, within 7 (Seven) days of delivery and BSH has been notified of this within that time period.
5.7.4 the CUSTOMER was not permitted to inspect the PRODUCT(S) upon delivery thereof;
or
5.7.5 the CUSTOMER is exercising its right to cool-off in terms of section 16 of the Consumer Protection Act 68 of 2008 as amended.

6. FORCE MAJEURE

BSH shall be under no obligation or deemed to be in default for any delay or failure in performance resulting from causes beyond its reasonable control (e.g. strikes, floods, earthquakes etc.), such as events, which may cause or attribute to a delay in servicing due to non-availability of spare parts and / or accessories.

7. TIME PERIOD OF WARRANTY

SIEMENS Vacuum Cleaners:

Valid from 15 June 2019