

STANDARD TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1. In these terms and conditions the following expressions shall have the meanings assigned to them below:

(a)	"Agreement"	Any contract or agreement for Goods and/or Services between you and us, whether that contract arises out of an offer made by us and accepted by you, or an order made by you and accepted by us, and includes these terms and conditions.
(b)	"CPA"	The Consumer Protection Act 68 of 2008.
(c)	"Goods"	Products we sell, supply, repair or service which form the subject matter of the Agreement, including but not limited to equipment, software, licenses and hardware.
(d)	"Service/s"	All the service/s we provide in terms of the Agreement, including all installations, maintenance, upgrading of software and hardware, access to and use of our engineers and third party facilities, including communication equipment and stored data.

1.2. Unless the context indicates otherwise, in these terms and conditions:

- (a) references to any other contract or document shall include a reference to that contract or document as lawfully amended, varied, novated or substituted from time to time;
- (b) the headings of clauses, sub-clauses and schedules are included for convenience only and shall not affect the interpretation of these terms and conditions;
- (c) any annexures to these terms and conditions are an integral part of the terms and conditions;
- (d) the parties acknowledge that each of them has had the opportunity to take legal advice concerning these terms and conditions, and agree that no provision or word used herein shall be interpreted to the disadvantage of either party because that party was responsible for or participated in the preparation or drafting of these terms and conditions or any part of it;
- (e) words importing the singular number shall include the plural and vice versa, and words importing either gender or the neuter shall include both genders and the neuter; and
- (f) the number of days indicated to commit an act or indicated for any other purpose, is calculated by excluding the first day and including the last day.

2. GOODS AND SERVICES

2.1. All Goods and Services provided by us shall be governed by these terms and conditions together with any other agreement (if any) concluded between you and us ("Service Level Agreement").

2.2. To the extent that there may a conflict between the Service Level Agreement and these terms and conditions, these terms and conditions shall prevail.

3. QUOTATIONS AND ORDERS

3.1. All terms, conditions, proposals or quotations exchanged between you and us will be subject to these terms and conditions.

3.2. All our quotations are valid for 30 (thirty) days and may be withdrawn or amended without penalty prior to acceptance.

3.3. All quotations are supplied errors and omissions excluded (E & OE).

3.4. All prices quoted:

- (a) exclude Value Added Tax, charges for installation of the Goods, surcharge and delivery, unless otherwise stated in the Agreement; and
- (b) are subject to exchange rate fluctuations. All quotations are accordingly subject to the



ruling exchange rate on the date of the invoice and the quotation may vary accordingly.

- 3.5. If you wish to accept a quotation, you must sign it and fax or email it to us before it expires or is withdrawn or amended.
- 3.6. Any quotation not accepted by you and communicated to us timeously shall lapse and be considered null and void.
- 3.7. Your official client order number must accompany any Goods or Services ordered, which orders must be made in writing and emailed or hand delivered to us.
- 3.8. ***Orders cannot be cancelled or shipments deferred or Goods returned except with our consent and upon terms that will indemnify us against all loss, including the profit on any part of the order that is cancelled.***

4. INVOICING

- 4.1. We are registered VAT Vendors. Accordingly VAT Invoices will be raised for all Goods and Services provided by us to you.
- 4.2. All invoices will be subject to these terms and conditions unless specifically stated otherwise by us in advance.
- 4.3. Cash sale customers will be invoiced on placement and acceptance of your order. Goods will only be ordered from our supplier once payment of our invoice in full reflects in our bank account.
- 4.4. Where Services are to be provided, you will be invoiced in advance.
- 4.5. Please note that we would prefer not to receive cash deposits into our account as a cash deposits received will attract bank charges which we reserve the right to pass on to you.

5. PAYMENT TERMS

- 5.1. You shall pay the purchase price of the Goods and/or Services to us in full and without set-off upon presentation of our VAT invoice relating thereto. Where we identify you on the VAT invoice as a trade debtor with an active account with us, you shall be obliged to pay for all purchases of the Goods within 30 (thirty) days of the date of our current statement relating thereto, unless otherwise agreed by us in writing.
- 5.2. Should you fail to make any payment on due date, all amounts owing by you to us from whatsoever cause, whether or not the date for payment has arrived, will immediately become due and payable by you.
- 5.3. ***If any amount is not paid on due date, we shall be entitled to charge interest at the maximum permissible rate of interest applicable in law***, from due date until date of payment, both days included.
- 5.4. We shall be entitled in our sole discretion to require payment of a deposit or payment in full prior to delivery of the Goods or performance of the Services.
- 5.5. Further payment terms in respect of Services shall be in accordance with the terms agreed with you in respect of the particular Services to be provided by us which shall include *inter alia* provision for payment of 50% deposit in respect of project invoices, which deposit is to be paid prior to commencement of the Services.



6. DELIVERY AND RISK

- 6.1. Your requested delivery schedules will be met to the best of our ability.
- 6.2. Notwithstanding the above, ***we will not be liable for delays in performance, including delivery, or for failures to perform, including failure to deliver or perform, due to:***
- (a) any causes beyond our reasonable control, including our inability to obtain necessary materials, components, services or facilities, or
 - (b) acts of God, your acts, acts of civil or military authorities, governmental regulations or priorities, strikes or other labour disturbances, fires, riots, wars, or natural disasters, including epidemics, droughts, floods, or transportation interruptions.
- 6.3. In the event of a delay, the Agreement will not be terminated and the date of performance will be extended for a period of time equal to the period of the delay.
- 6.4. Subject to our agreeing in writing to the contrary, risk in and to the Goods shall pass to you as follows:
- (a) Where you have ordered new or used equipment from or through us, risk will pass to you upon delivery. We assume no liability for any loss, damage, or destruction of Goods after delivery is made to you.
 - (b) Where you have engaged us to inspect or repair any Goods, risk in and to these Goods shall remain with you irrespective of whether the Goods are at your premises or our premises. We assume no liability for any loss, damage, or destruction of Goods.
- 6.5. You shall immediately upon receipt of the Goods be allowed to inspect the Goods and you must inform us of any errors by way of written notice, to be received by us within 5 (five) days of receipt of the Goods by you. Should you fail to notify us timeously of any claim you may have in terms hereof, such failure shall constitute a complete waiver of any such claim.
- 6.6. Notwithstanding any other provision of this clause 6, where Goods are purchased by you and on delivery by the manufacturer to us we are required to attend to the construction, incorporation or housing of the Goods in suitable housing for the Goods to be used by you, delivery will be deemed to have taken place upon delivery to us by the manufacturer and risk in and to these Goods will pass to you upon that date. We will notify you in writing when delivery to us has taken place and deemed delivery to you has taken place.
- 6.7. You acknowledge that certain Goods may be industry specific and may have been designed for your particular purpose. Accordingly, acceptance of any Return of Goods and/or cancellation of any order will be at our sole discretion and any Goods delivered to you in error will only be considered for return by us provided that the Goods are:
- (a) undamaged, have not been tampered with in any way and are not defaced in any way; and
 - (b) returned in its original packaging which has also not been damaged or defaced.

7. INSTALLATION

We are under no obligation to effect installation of the Goods at your premises. However, if we agree, whether in writing or otherwise, to effect installation of the Goods, the following terms and conditions shall apply, unless otherwise agreed in writing:

- 7.1. we may use any contractor or sub-contractor of our choice to effect installation;
- 7.2. any deposit in respect of the installation, which may be requested by us will, in addition to any other rights which we may have in law, be forfeited by you as liquidated damages in the event of a breach by you of any of the terms of the Agreement;
- 7.3. you shall, free of charge, provide such on-site assistance to the contractors or sub-contractors



appointed by us as may reasonably be required for the performance and execution of the installation;

- 7.4. we will use our best endeavours to ensure that installation is completed as soon as is reasonably possible after the date on which installation commences, but time for the completion of installation shall only be of the essence if a completion date is agreed in writing with us. Notwithstanding this, ***no responsibility will be accepted by us for delays due to forces beyond our reasonable control;***
- 7.5. ***you indemnify and hold us harmless*** against any and all liability which may arise in the event of death or injury to, or pecuniary loss suffered by, any of our contractors, sub-contractors or employees in the course and scope of his/her employment in connection with the installation, as a result of your negligence or wilful misconduct or that of your officers, employees or agents.

8. OWNERSHIP

- 8.1. Notwithstanding prior delivery and the passing of risk, we shall retain ownership of and title to the Goods until the purchase price, and any other amounts owing to us in respect of the Goods or the installation thereof (if applicable), have been paid in full and without setoff.
- 8.2. In the event that ownership and title has not yet passed to you and the Goods are in your possession, ***you undertake:***
- (a) to take reasonable care of the Goods;
 - (b) not to sell, lease, mortgage, transfer, assign or encumber the Goods;
 - (c) not to re-locate the Goods without our knowledge and permission;
 - (d) to inform any landlord that the Goods are owned by us and are therefore not subject to any landlord's hypothec.

9. WARRANTIES

- 9.1. We give only the following warranties in respect of the Goods:
- (a) We have title to the Goods and have the unencumbered right to sell and install the Goods; and
 - (b) any warranties provided by the supplier / manufacturer of the Goods.
- 9.2. We will not be liable to compensate you for any damages sustained by you whilst Goods may be repaired, nor shall we be liable for any other damages, including consequential damages, relating to the replacement or repair of the Goods.
- 9.3. In addition and concurrent to the warranty given above, the Goods are supplied with a six month warranty of quality against defects, within the meaning of the CPA if the CPA applies to this agreement.
- 9.4. Notwithstanding the provisions of clause 9.1 and 9.3 above:
- (a) Unless you have specifically informed us of the intended use of the Goods, we do not warrant that the Goods purchased by you will be fit for the purpose that you intend using the Goods for;
 - (b) if any defect in the Goods, or the components of the Goods, relates to alterations contrary to the instructions or after leaving our control, we will not be liable for those defects, including in respect of any possible liability in terms of the implied warranty of quality contained in the CPA;
 - (c) any warranty provided by us will cease to apply if any material information provided by you, specifically insofar as the intended use of the Goods is concerned, is incomplete or incorrect or if there is any material change in operating conditions or any misuse, abuse or material neglect of the Goods by you.



10. RETURNS AND REFUNDS

- 10.1. If the provisions of the CPA are applicable to the Agreement and/or these terms and conditions, the Goods are warranted in respect of quality, suitability and durability for a period of 6 (six) months of delivery. Provided you are not in breach of the Agreement, you may within this period return the Goods to us without penalty if the Goods fail to satisfy the requirements and standards contemplated and we shall repair or replace the failed, unsafe or defective Goods.
- 10.2. If you elect to enforce the provisions of clause 10.1 and, within 3 (three) months of any repair undertaken by us, the failure, defect or unsafe feature has not been remedied, or a further failure, defect or unsafe feature is discovered by you, we shall, in our sole and absolute discretion:
- (a) replace the Goods; or
 - (b) refund you for the cost of the Goods (excluding delivery and other charges).

11. LIMITATIONS

- 11.1. ***In addition to any other specific exclusions of liability contained herein and unless otherwise expressly stated herein, you agree that*** you shall have no claim against us for any loss or damage, of any nature, occasioned by any defect in any Goods, or any failure to provide adequate instructions in respect of any hazards that might arise from the use or incorrect use of the Goods save to the extent that such loss or damage is contemplated in section 61 of the CPA, and provided that nothing in these terms and conditions must be construed as in any way limiting our rights to raise such defences as may be available to us at common law or in terms of any statute.
- 11.2. In the event that we provide advice regarding the application of Goods at your request, our liability in respect of the non-suitability of the Goods for the purpose for which they are used will be limited to the selling price of those Goods.
- 11.3. ***You hereby agree to indemnify and hold harmless*** us, our members, employees, servants, subcontractors and partners from any demand, action or application or other proceedings, including for attorney's fees and other related costs made by any third party and arising out of or in connection with these terms and conditions and/or the Agreement.
- 11.4. Save to the extent otherwise provided for in these terms and conditions and the Agreement (if applicable) we do not make or provide any express or implied representations, warranties or guarantees regarding the availability, accuracy, reliability, timeliness, quality, security of any Goods or Services.
- 11.5. Without limiting the indemnity set out above, ***you agree to defend, indemnify and hold us harmless from any and all expenses, losses, liabilities, damages or third party claims resulting from:***
- (a) Your breach or alleged breach of any obligations set out in these terms and conditions and/or the Agreement, any other agreement between us or any government regulation or rule of law in connection with your use of the Goods and/or Services;
 - (b) any unavailability of, or interruption in the Services due to an uncontrolled event;
 - (c) any damage, loss, cost or claim which you may suffer or incur from any suspension or termination of the service/s for any reason contemplated in these terms and conditions and/or the Agreement;
 - (d) loss of data or any part thereof for any reason and cause whatsoever.
- 11.6. We accept ***no liability for any loss*** (including consequential loss) resulting from your use of the Services, of the actions of our employees, contractors and/or agents or from any failure or suspension of or interference with the Services.
- 11.7. If the CPA applies to these terms and conditions and/or the Agreement, and any provision of this



clause is found by a court or tribunal with jurisdiction over us to be unfair, unreasonable or unjust, then that provision (whether it be a word, phrase or sub-clause) will be severed and the remainder of this clause will have full force and effect.

12. CREDIT CHECKS

- 12.1. You hereby consent to, and agree to provide the necessary assistance for us to obtain a credit report from a recognised credit reporting agency containing personal information for our business purposes, including the assessment of an order for Goods or Services or the collection of overdue accounts.
- 12.2. You also agree that we may provide information to a credit reporting agency in relation to any account not operated in accordance with this Agreement and that direct costs associated with any such collections may be added to your account.
- 12.3. We shall be entitled to perform these assessments each and every time you request Goods and/or Services.

13. PRIVACY AND PROTECTION OF INFORMATION

- 13.1. We shall observe all privacy of information best practices, in accordance with the applicable laws of South Africa and shall not distribute your personal information ("Personal Information") (as defined in the Protection of Personal Information Act, 2013) to any third party with the exception of our suppliers, credit checking service providers or where such information is required in order to provide the Goods or Services or as required by law or order of court.
- 13.2. You agree and consent to our processing Personal Information transmitted to us in a way which is consistent with the Goods and/or Services being provided.
- 13.3. **You indemnify and hold us harmless** from any and all expenses, losses, liabilities, damages or third party claims resulting any third parties obtaining the your Personal Information without our consent.

14. TERMINATION

- 14.1. Either of us may terminate the Agreement at the end of any contracted period, or, if there is no contracted period, at any time by giving thirty (30) days written notice.
- 14.2. In the case of Services being terminated by either of us outside of any contract period, the Services will be terminated at the end of the billing period closest to the final days of the notification period.
- 14.3. If you have committed to a fixed term contract (e.g. 6 or 12 months) and wish to terminate the contract before the end of the term, a cancellation fee applies - being the monthly fee for the Services, multiplied by the number of months remaining in the contract term.
- 14.4. In the event that you are not a juristic person, we must send you a written notice not more than 60 and not less than 30 business days before the expiry of the current period of any Services. This notice must inform you of:
- the expiry date,
 - any material changes that will apply to the Services beyond the expiry date, and
 - your right to either terminate the Services or renew for a further fixed period.
- 1.2. Should you not terminate or renew the Services, the Services shall automatically renew on a month-by-month basis after the expiry of the initial period or any successive period, subject to any material changes set out by us in our notice to you.



15. VARIATION

- 15.1. No variation, amendment or consensual cancellation of the Agreement and/or terms and conditions or any provision or term thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of these terms and conditions shall be binding unless recorded in a written document signed by a duly authorized representative from both you and us.
- 15.2. We may, however, vary these terms and conditions (including pricing and any other terms) at any time and all agreements concluded, or Services provided after these variations will be subject to these variations.
- 15.3. If you are materially worse off by any variations made after you have been given access to the Service, we will give you 30 days notice of that change (unless any change is required by law or necessary to prevent fraud or for security or technical reasons, in which case we will give you as much warning as we reasonably can).

16. DOMICILIUM AND NOTICES

- 16.1. The physical address given by you in your order or request for services form, or the address to which Goods are delivered, shall be the address you have chosen where summonses, legal documents and notices can be served on you ("domicilium").
- 16.2. We may also serve notices on you by email and we shall use the email address used by you in correspondence with us ("email domicilium").
- 16.3. We choose our domicilium at Unit 16, Wareing Park, 2 Wareing Road, Pinetown.
- 16.4. Either of us shall be entitled from time to time to vary our domicilium or email domicilium on ten (10) days written notice to the other.
- 16.5. Any notice which:
- (a) is delivered by hand at the addressee's street address domicilium shall be deemed to have been received by the addressee at the time of delivery; or
 - (b) is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's *domicilium* shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the seventh day after the date of posting; or
 - (c) if transmitted by email to the addressee at the addressee's *domicilium* shall be deemed to have been received by the addressee on the date of transmission or, if the transmission is made out of normal business hours, on the first business day following after the date of transmission.

17. BREACH

- 17.1. If either you or we:
- (a) breach any of the terms and conditions of this Agreement and fail to remedy this breach within 7 (seven) days after receipt of written notice from the other party;
 - (b) commit any act of insolvency;
 - (c) endeavour to compromise generally with y/our creditors or do or cause anything to be done which may prejudice the other party's' rights hereunder or at all;
 - (d) allow any judgement against you/us, in excess of R200 000,00 (Two Hundred Thousand Rand), to remain unsettled for more than 10 (ten) days without taking immediate steps to have it rescinded and successfully prosecuting the application for rescission to its final end; or
 - (e) is placed in liquidation or become subject to business rescue proceedings (in either case, whether provisionally or finally) or
 - (f) being an individual, y/our estate is sequestrated or voluntarily surrendered;



- (g) allow any amount due to the other to be over due for more than 30 (thirty) days;

the other party shall have the right, as and where applicable without prejudice to any other right which that party may have, to:

- (a) suspend or terminate the Services;
- (b) in our case, treat as immediately due and payable all outstanding amounts which would otherwise become due and payable over the unexpired period of the Agreement, and to claim such amounts as well as any other amounts in arrears including interest and to cease performance of our obligations hereunder as well as under any other contract with you until you have remedied the breach; and/or
- c) cancel the Agreement and claim damages.

17.2. The breaching party shall be liable for all costs incurred by the non-breaching party in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and own client scale whether incurred prior to or during the institution of legal proceedings or if judgment has been granted, in connection with the satisfaction or enforcement of such judgment.

17.3. In the event of your insolvency, without derogation of rights, we will be entitled to cancel any outstanding order during the period allowed for filing of claims against your estate and will be paid for our cancellation charges.

17.4. If the provisions of the CPA are applicable to this Agreement, the above sub-clauses shall operate as follows:

- (a) The parties will be required to give 20 business days' notice to the other of any of the circumstances set out in clause 17.1;
- (b) Clause 17.1(b) shall not be applicable and in these circumstances we shall be entitled to payment by you of no less than 80% (Eighty Percent) of the remaining amounts due and payable over the unexpired period of the Agreement.

18. DISPUTES

18.1. In the event of any dispute arising as to the amount or calculation of any fee or charge to which we are entitled, the dispute shall be referred for determination to our auditors. They shall act as experts and their decision shall be final and binding on you and us. The cost of the determination shall be paid on demand by the party against whom the determination is made, or as determined by the said auditors.

18.2. All other disputes arising out of our supply of Goods or Services shall, unless resolved amongst us within ten (10) days, be referred to arbitration.

18.3. The arbitrator shall be a person agreed to by both of us, and failing agreement, be a person nominated by the President of the Association of Arbitrators.

18.4. It is the intention of both parties that the arbitration:

- (a) Shall be held in Durban
- (b) Shall be held in a summary manner and completed within 21 days of the appointment of the arbitrator.

18.5. The decision of the arbitrator shall be final and binding on both parties.

19. GENERAL

19.1. **Confidentiality** All data and information pertaining to you that is available on any machinery or equipment or Backup device which may be read or backed-up from time to time will be treated as



highly confidential by us and may never be divulged to any other party or person.

- 19.2. **Whole Agreement and Representations** This Agreement contains the entire understanding of the parties as to its subject matter. No party shall be bound by any condition, warranty, representation or undertaking of any kind, whether express or implied, unless agreed to by each of the parties will be of any effect.
- 19.3. **Cession** We shall be entitled, on written notice to you, to delegate, assign, cede, transfer or in any way alienate or dispose of any of our rights or obligations in terms of these terms and conditions to any other person. You may not delegate, assign, cede, transfer or in any way alienate or dispose of any of your rights or obligations in these terms and conditions to any other person without our prior written consent.
- 19.4. **Failure to require performance** The failure of either party at any time to require performance of any provision of this agreement shall not affect the right of that party to require performance of that provision or of any other provision in the future.
- 19.5. **No waiver** No waiver by either of us with respect to a breach of any provision of these terms and conditions shall be construed as a waiver with respect to any continuing or subsequent breach of that provision, or as a waiver of any other right hereunder.
- 19.6. **Severability** Each provision in these terms and conditions is severable from all others, notwithstanding the manner in which they may be linked together or grouped grammatically. If any provision is found to be defective or unenforceable for any reason, the remaining provisions shall nevertheless continue to be of full force.
- 19.7. **Jurisdiction** These terms and conditions will be governed by and construed in accordance with the laws of the Republic of South Africa. The parties hereby consent in terms of Section 45 of the Magistrates' Court Act of 1944 to any legal proceedings being instituted in the Magistrates' Court of any district having jurisdiction in respect of the other by virtue of the provisions of Section 28(1) of the said Act. Notwithstanding such consent, an aggrieved party shall have the option of instituting proceedings against the other party in the High Court of South Africa.
- 19.8. **Authority** If applicable, the persons accepting these terms and conditions and/or quotation on behalf of the parties warrant that they are authorised to sign on behalf of their principals.
- 19.9. **Implementation** The parties agree to do all things as may be required by law or necessary to implement the terms and condition and the Agreement and Service Level Agreement (if applicable).
- 19.10. **Applicable Law** These terms and conditions will be governed by and construed in accordance with the laws of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with South African law by a South African court having jurisdiction
- 19.11. **Termination** In the event of any expiration, termination or cancellation of the Agreement and/or these terms and conditions, provisions which are intended to continue and survive shall so continue and survive.
- 19.12. **Conflict** In the event that any provision of the Agreement and/or these terms and conditions conflicts with any statute, ruling or order of any governmental or regulatory body from time to time, then such provision of this Agreement shall be controlled by the statute, ruling or order.



20. CONSUMER PROTECTION ACT

- 20.1. Should the CPA apply to these terms and conditions, nothing contained in these terms and conditions is intended to or must be understood to unlawfully restrict, limit or avoid your rights or our obligations under sections 54, 55, and 56 of the CPA, which are admitted only to the minimum possible extent. Unless the contrary is stated elsewhere in these terms and conditions, you shall have no rights in respect of quality of service, safe & good quality goods or implied warranty of quality beyond those explicitly stated in the aforementioned sections.
- 20.2. A transaction (as defined in the CPA) between us and you may or may not fall under the provisions of the CPA depending upon whether certain values applicable to you ("Threshold Values") are below a certain value at the time the transaction is entered into.
- 20.3. The Threshold Values are your asset value or annual turnover (or such other measurement as may be dictated by the CPA as amended from time to time), and the value against which they are measured is as determined by the Minister of Trade and Industry by publication in the Government Gazette from time to time.
- 20.4. Our duties under a particular order or agreement may vary depending upon whether the transaction in question is subject to the CPA, and we will act upon the information you give to us in this regard. Consequently:
- (a) You warrant that any statement made to us in respect of your Threshold Values is accurate.
 - (b) If you claim that all the Threshold Values are below the relevant value, or otherwise that the CPA applies to the transaction in question, we may at our instance require you to provide us with financial statements as proof thereof.
 - (c) If you misstate the Threshold Values in such a way that we consider for a period that the transaction is subject the CPA when it is not, all provisions of this agreement that do not apply to transactions subject to the CPA shall retroactively apply to the transaction in question, and you shall be liable for any damage we sustain resulting from such misstatement.
- 20.5. ***Your attention is drawn to terms and conditions which appear in similar text style to this clause and which:***
- (a) ***may limit the risk or liability of us or a third party; and/or***
 - (b) ***may create risk or liability for you; and/or***
 - (c) ***may compel you to indemnify us or a third party; and/or***
 - (d) ***serves as an acknowledgement, by you, of a fact.***