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## Standard Terms and Conditions

The following general terms and conditions apply to Goods and Services we supply to you. If we are supplying Services, the provisions of our Service Level Agreement will apply too.

### A. DEFINITIONS AND INTERPRETATION

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Clause headings shall not be used in the interpretation of these terms and conditions.

The following expressions shall mean the following:

- (a) "**Agreement**" means 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**" means the Consumer Protection Act 68 of 2008.
- (c) "**Goods**" means the products we sell, supply, repair or service which form the subject matter of the Agreement, including but not limited to software, licences and hardware.
- (d) "**Service/s**" means 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 network, computer resources, and data storage facilities, and third party facilities, including communication equipment and stored data.

### B. GOODS

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#### 2. QUOTATIONS AND ORDERS

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

All our quotations are valid for 7 (seven) days and may be withdrawn or amended without penalty prior to acceptance.

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

All prices quoted:

- (a) exclude Value Added Tax, charges for installation of the Goods, surcharge and delivery, unless otherwise stated in the Agreement.

- (b) are subject to exchange rate fluctuations. All quotations are accordingly subject to the ruling exchange rate on the date of order and the quotation may vary accordingly.

If you wish to accept a quotation, you must sign it and fax or email it to us before it expires or is withdrawn or amended.

Any quotation not accepted by you and communicated to us timeously shall lapse and be considered null and void.

Your official client order number must accompany any Goods ordered, which orders must be made in writing.

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

### **3. AVAILABILITY**

Where applicable, availability of the Goods quoted for is subject to availability from the South African distributors of these Goods.

### **4. INVOICING**

We are registered VAT vendors. Accordingly, VAT Invoices will be raised for all Goods we sell to you.

All invoices will be subject to these terms and conditions unless specifically stated otherwise.

In the event of a conflict between the terms of any invoice and these terms and conditions, these terms and conditions shall prevail.

### **5. PAYMENT**

You shall pay the purchase price of the Goods 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 the VAT invoice relating thereto, unless otherwise agreed by us in writing. We may in our sole and absolute discretion offer a settlement discount to you for early settlement of a VAT invoice.

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 and you shall immediately forfeit all discounts which may have been granted to you.

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.

### **6. DELIVERY AND RISK**

Your requested delivery schedules will be met to the best of our ability.

Notwithstanding the above, we will not be liable for delays in performance, including delivery, or for failures to perform, including failure to deliver, 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.

In the event of a delay this 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.

Subject to our agreeing in writing to the contrary, risk in and to the Goods shall pass to you as follows:

- (c) 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.
- (d) 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.

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.

Any Goods delivered to you in error will only be considered for return by us provided that such Goods are undamaged, have not been tampered with in any way and are not defaced in any way.

## **7. INSTALLATION**

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

we may use any contractor or sub-contractor of our choice to effect installation;

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;

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;

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;

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

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.

## 9. WARRANTIES

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) unless otherwise agreed in writing, we will at our sole discretion and at our expense replace or repair any Goods manufactured and installed by us, on a carry in basis only, within a reasonable time, if you notify us in writing of any defects in respect of the Goods within 9 (nine) months from the date of installation and such Goods are determined by us on a good faith inspection thereof, to be defective in respect of materials and/or workmanship. We will not be liable to compensate you for any damages sustained by you whilst the Goods are being repaired, nor shall we be liable for any other damages, including consequential damages, relating to the replacement or repair of the Goods.
- (c) In addition and concurrent to the warranty given in (b) above, the Goods are supplied with a six month warranty of quality against defects, within the meaning of the CPA.

Notwithstanding the provisions of clause 9.1 above:

- (d) 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;
- (e) 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;
- (f) 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.
- (g) All warranties on hardware not manufactured by us are given by the hardware vendor/s or manufacturer/s concerned and not by us. We are happy to assist you with a hardware warranty claim against a vendor or manufacturer and will charge at our usual rates for our services in liaising with the vendor or manufacturer, collecting and delivering hardware, reinstalling software, and performing backups and data restoration.

## 10. RETURNS AND REFUNDS

If the provisions of the CPA are applicable to this Agreement, 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.

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

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.

In the event that we provide advice regarding the application of the 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.

## **B. SERVICES**

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All Services provided by us shall be governed by these terms and conditions as well as our standard Service Level Agreement, which is available on request.

Normal hourly rates will be those hourly rates (excluding VAT) communicated by CMS IT to its clients from time to time or as advertised on CMS IT's website. If the job is completed within 30min then only half an hour will be charged. The fee charged will cover the normal working day, 07:30 – 16:30, Monday to Friday, excluding public holidays. In the event that work is required outside of normal hours specified above, time shall be as follows:

Normal overtime: normal hourly rate x 1,5

Saturday work: normal hourly rate x 1,5

Sunday work: normal hourly rate x 2

Annual escalations in service fees will be as per the Service Level Agreement or as communicated by us to you in writing.

Should there be any conflict between the Service Level Agreement and these terms and conditions, these terms and conditions shall prevail.

## **C. GENERAL**

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## 12. WHOLE AGREEMENT

These standard terms and conditions form the entire agreement between the parties regarding the subject matter hereof, save insofar as any incidental documentation (such as credit application forms, quotations) may be required for reference purposes to establish variables (such as prices and quantities) which are specific to a contract and are not recorded herein.

## 13. VARIATION

No variation, amendment or consensual cancellation of this Agreement 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 this Agreement shall be binding unless recorded in a written document signed by a duly authorized representative from both you and us.

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.

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).

## 14. REPRESENTATIONS

You acknowledge having read and understood this Agreement and confirm that you are not entering into this Agreement on the basis of any representations not expressly set forth in it.

Neither of us shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the Agreement between you and us or not.

## 15. NO WAIVER

No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against either of us in respect of our rights under this Agreement, nor shall it operate so as to preclude either of us thereafter from exercising our rights strictly in accordance with this Agreement.

No relaxation which we may have permitted on any occasion in regard to the carrying out of your obligations shall prejudice or be regarded as a waiver of our rights to enforce those obligations on any subsequent occasion.

In the event that any provision of this Agreement 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.

## 16. SEVERABILITY

All clauses in this Agreement are separate and severable from each other and shall each be capable of standing on their own. Any provision or clause of this Agreement which is or becomes unenforceable or illegal or void may be removed or severed from this

Agreement as if it never formed part of this Agreement, while the remaining provisions or clauses shall continue to operate and be of full force and effect.

In the event of any expiration, termination or cancellation of this Agreement, provisions hereof which are intended to continue and survive shall so continue and survive.

#### 17. **CREDIT CHECKS**

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.

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.

#### 18. **CONFIDENTIALITY**

This document is confidential and issued for your information only. It is subject to copyright and may not be reproduced in whole or in part without our written permission.

#### 19. **CESSION**

You shall not be entitled to cede or assign your rights and/or obligations in terms hereof to any third party unless we consent thereto to in writing.

Where we transfer your account to a third party, we will notify you in writing, and transfer any of your confidential data in a secure manner to the third party, and also seek to ensure that the third party holds that data in a secure manner, to ensure its ongoing protection.

#### 20. **DOMICILIUM**

The physical address given by you in your order or Application for Credit 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").

We may also serve notices on you by email and we shall use the email address given by you in your Application for Credit form, or the email address used by you in correspondence with us ("email domicilium").

We choose our domicilium at 11 Saint Georges Drive, Westville, 3629.

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.

Any notice which:

- (a) is posted by prepaid registered post or hand delivered to the other party's domicilium and shall be presumed, unless the contrary is proved by the party to whom it is addressed, to have been received by that party on the seventh (7th) day after the date of posting or on the day of delivery as the case may be; or

- (b) is transmitted by email to the other party's email domicilium shall be deemed to have been received by the party to whom it is addressed 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.

## 21. **BREACH**

If either you or we:

- (a) breach any of the terms or conditions of this Agreement and fail to remedy this breach within 7 (seven) days after the 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, being an individual, y/our estate is sequestrated or voluntarily surrendered;
- (f) allow any amount due to the other to be overdue 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 this Agreement and claim damages.

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.

If you breach this Agreement and this causes us to suffer damages of any nature whatsoever, we shall not be required to attach any of your hardware in execution, and shall be entitled to retain a lien over such hardware in reduction of any debt due by you to us.



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.

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

- (g) The Parties will be required to give 20 business days' notice to the other of any of the circumstances set out in clause 21.1;
- (h) Clause 21.1(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.

## 22. **DISPUTES**

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.

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.

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.

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.

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

## 23. **TERMINATION**

Either of us may terminate this 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.

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.

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.

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:

- (a) the expiry date,

- (b) any material changes that will apply to the Services beyond the expiry date, and
- (c) your right to either terminate the Services or renew for a further fixed period.

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.

#### 24. **APPLICABLE LAW**

This Agreement 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.

#### 25. **CONSUMER PROTECTION ACT**

Should the Consumer Protection Act ("CPA") be applicable to this Agreement, nothing in this Agreement 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 this agreement, 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.

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.

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.

Our duties under a particular Service Order 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.

This agreement contains terms and conditions which appear in similar text style to this clause and which:

- (d) may limit the risk or liability of us or a third party; and/or
- (e) may create risk or liability for you; and/or

- (f) may compel you to indemnify us or a third party; and/or
- (g) serves as an acknowledgement, by you, of a fact.

Your attention is drawn to these terms and conditions because they are important and should be carefully noted.