



IT HARDWARE SUPPLY ONLY TERMS AND CONDITIONS

1. BASIS OF CONTRACT

These terms and conditions (“**Terms**”) apply to the supply of any Hardware only by the Supplier to the Customer as set out in an Order.

2. DEFINITIONS AND INTERPRETATION

2.1. Definitions

Defined terms used in these Terms shall bear the meanings given to them below unless otherwise defined within a clause in these Terms:

- 2.1.1. “**Applicable Law**” means any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time relating to a Party or the performance of its obligations hereunder;
- 2.1.2. “**Business Day**” means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 2.1.3. “**Business Hours**” means the Supplier’s normal business hours, being 08h00 to 16h30 on any Business Day, unless otherwise agreed in writing between the Parties;
- 2.1.4. “**Cancellation Costs**” means the amount of 15% (Fifteen percent) of the total amount of an Order;
- 2.1.5. “**Change**” means any written request by a Party to amend any aspect of a Supply which is accepted by the other Party in writing;
- 2.1.6. “**Commissioning**” means the date on which a supply of Hardware has been installed or is available for use by the Client;
- 2.1.7. “**Confidential Information**” means any information of a Party including, but without limitation such Party’s, data, software, trade secrets, copyright, proprietary information, Intellectual Property and Know-How (which includes all technical knowledge, expertise and methods whether embodied in drawings, written descriptions or otherwise) and any other information whatsoever of a confidential nature concerning the business affairs of either Party;
- 2.1.8. “**CPA**” means the Consumer Protection Act of 2008;
- 2.1.9. “**Customer Equipment**” means the equipment owned by the Customer, or leased from another supplier;
- 2.1.10. “**ECA**” means the Electronic Communications Act 36 of 2005;
- 2.1.11. “**Delivery Date**” means the date for the delivery of the Hardware as shown in the Order;
- 2.1.12. “**Fees and Costs**” means any fees, costs, charges, expenses, and the like charged by the Supplier in respect of a supply of Hardware to the Customer as set out in an Order;
- 2.1.13. “**Force Majeure Event**” means any event beyond the reasonable control of the Supplier including but not limited to acts of God, lock-out, strikes, government action, sabotage, civil unrest, war, pandemics or events of like or similar nature) or Customer delays which effects the ability of the Supplier to comply with its obligations under these Terms;
- 2.1.14. “**Hardware**” means any computer hardware, being the physical or tangible components of computer systems including but not limited to processing and processing units (such as central processing units (CPU), random access memory units (RAM), storage drives, system boards, devices (such as keyboards, mice, touchscreens, scanners monitors, printers and speakers) and network hardware (such as routers, switches and network interface cards (NICs));
- 2.1.15. “**Installation**” means the unpacking, assembly and installation of any Hardware including to the Network if applicable, if agreed to between the Parties in writing and specified in an Order;
- 2.1.16. “**Intellectual Property**” means, collectively, patents, copyright, trademarks, logos, style names, slogans, designs, models, methodologies, Know-How, inventions, trade and business secrets and any other type of intellectual property (whether registered or unregistered including applications for and rights to obtain, use or for their protection) which are used or held, whether or not currently, in connection with a Party’s business;



- 2.1.17. **"Know-How"** means ideas, designs, documents, diagrams, information, devices, technical data, scientific data, secret and other processes and methods used in connection with a Party's business, and all available information regarding marketing and promotion of the products and services of a Party and all and any modifications or improvements to any of them;
- 2.1.18. **"Network"** means any system of electronic communications as defined under section 1 of the ECA, including without limitation satellite systems; fixed systems (circuit- and packet-switched); mobile systems; fibre optic cables (undersea and land-based); electricity cable systems (to the extent used for electronic communications services); and other transmission systems, used for conveyance of electronic communications;
- 2.1.19. **"Order"** means a firm, written order for a supply of Hardware by the Supplier to the Customer pursuant to which a system-generated order number is issued by the Supplier to the Customer following acceptance of a Quotation by the Customer;
- 2.1.20. **"Prime Rate"** means the rate of interest publicly quoted by the Supplier's transactional bankers and being the rate at which such bankers lend on unsecured overdraft;
- 2.1.21. **"Product Documentation"** means any user documents published by the manufacturer or original licensor of the Hardware describing its functionality and intended operation and containing any safety instructions for the use thereof;
- 2.1.22. **"Quotation"** means a written quotation (evidenced by a system generated quotation number) issued by the Supplier to the Customer in response to a request for pricing by the Customer, setting out the details and indicative pricing of a proposed supply of Hardware;
- 2.1.23. **"Staff"** means a Party's employees, agents, contractors and/or representatives;
- 2.1.24. **"VAT"** means value-added tax in terms of the Value- Added Tax Act 1991.

2.2. Interpretation

In these Terms, unless the context indicates otherwise:

- 2.2.1. the singular includes the plural and vice versa;
- 2.2.2. headings are inserted for convenience only and shall not be used in the interpretation of these Terms;
- 2.2.3. references to persons shall include individuals, companies, close corporations, partnerships, joint ventures, estates, trusts and any other body of persons incorporated or unincorporated and shall include their respective successors or permitted assigns;
- 2.2.4. references to a statutory instrument shall include any amendments to replacements thereto;
- 2.2.5. unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding business day;
- 2.2.6. the rule of construction that these Terms shall be interpreted against the Party responsible for the drafting of these Terms (i.e. the *contra proferentem* rule) shall not apply; and
- 2.2.7. no provision of these Terms shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a Party to these Terms.

3. CONSUMER PROTECTION ACT

In the event that the Customer is a "consumer" as defined under the CPA any provisions of these Terms that conflict with the CPA shall apply to the extent of such conflict.

4. REPRESENTATIONS AND WARRANTIES

The Customer represents and warrants that:

- 4.1. it has the power and authority to enter into any contract for the supply of any Hardware in an Order;
- 4.2. the Customer has read and understands the legal import and extent of these Terms;
- 4.3. It has taken all necessary corporate and other action (where applicable) to authorise its entry into these Terms.



5. STATUS OF A QUOTATION AND AN ORDER

- 5.1. Any Quotation issued by the Supplier to the Customer, even if it states a period during which the Quotation is valid shall not constitute a binding offer for any supply which shall only become legally binding on the issue of an Order or as otherwise agreed to between the Supplier and the Customer.
- 5.2. Following the issue of a Quotation, the Supplier will only place an order for a supply of Hardware with its supplier once an Order has been placed and an Order number issued by the Supplier to the Customer.

6. CHANGES

Either Party may request a Change to a supply in an Order at time to time. If accepted in writing by the other Party and on such terms and conditions as specified by the other Party, such Change shall be governed by these Terms.

7. DELIVERY

- 7.1. The Supplier shall deliver the Hardware to the delivery address on the Delivery Date as set out in the Order;
- 7.2. Delivery shall only take place during Business Hours.
- 7.3. Each party shall inform the other of any delay in delivery of which it becomes aware and seek in good faith to agree an alternative date for delivery.
- 7.4. Time shall not be of the essence in the performance of any obligations of the Supplier in respect of any Order.

8. FEES AND COSTS

- 8.1. The Customer shall pay the Fees and Costs for the supply of any Hardware as set out in the Order.
- 8.2. Where the Customer has a pre-existing trading relationship with the Supplier and has agreed trade terms with the Supplier, the Customer shall pay the Fees and Costs without set-off or deduction within 30 (thirty) days of the date of the tax invoice issued by the Supplier to the Customer relating to the relevant Order.
- 8.3. Where the Customer has not pre-agreed trade terms with the Supplier, the Fees and Costs shall be payable without deduction or set-off on delivery of the Hardware in accordance with the Order.
- 8.4. Any Fees and Costs **exclude** any applicable VAT at the prevailing rate.

- 8.5. The Customer agrees to pay Cancellation Costs if an Order is cancelled or is subject to a material Change 9as determined by the Supplier acting reasonably). The Parties agree that the Cancellation Costs are a fair and reasonable pre-estimate of the losses that may result therefrom and may include:

- 8.5.1. costs relating to any Hardware already procured for the Customer which the Supplier cannot cancel or re-direct to another Customer;
- 8.5.2. costs relating to commitments to third party suppliers/partners.

- 8.6. Notwithstanding clause 8.5 above, no Cancellation Costs will be charged for any cancellation or material Change to an Order if the Order is cancelled by the Customer in writing on notice to the Supplier within 7 (seven) days of placing the Order.

- 8.7. If the Customer fails to pay any Fees and Costs within 30 (thirty) days of the due date, interest shall apply at the Prime Rate plus two percent (2%) per annum calculated daily and compounded monthly and will be calculated from the date the payment was due until such amount is actually paid.

9. HARDWARE INSTALLATIONS

- 9.1. Any supply of Hardware shall exclude Installation unless otherwise agreed to between the Parties in writing and on such terms and conditions contained in such agreement. For the avoidance of doubt the Fees and Costs associated with any supply of IT Hardware only will be included in the Quotation.
- 9.2. The Customer shall at its own cost and expense ensure that optimum environmental conditions are maintained for the proper maintenance and/or functioning of the relevant IT Hardware, including adequate ventilation, lighting and wall/rack space etc, and in accordance with the conditions of the relevant manufacturer warranty pertaining to the IT Hardware.
- 9.3. The Customer shall ensure that the Supply the will only be used for the purposes for which it is provided.

10. SAFETY, USE AND MAINTENANCE OF HARDWARE

ANY HARDWARE SUPPLIED MUST BE INSTALLED, USED, AND MAINTAINED STRICTLY IN ACCORDANCE WITH THE PRODUCT DOCUMENTATION.

THE CUSTOMER ACKNOWLEDGES AND UNDERSTANDS THAT THE HARDWARE MAY



CONSTITUTE ELECTRICAL GOODS WHICH MUST BE INSTALLED, USED AND MAINTAINED STRICTLY IN ACCORDANCE WITH THE SAFETY INFORMATION CONTAINED THEREIN.

11. MANUFACTURER AND SUPPLIER WARRANTIES

11.1. Any Hardware supplied to the Customer shall be subject to any manufacturer warranties as set out in the Product Documentation which may require the Customer to register the Hardware with the manufacturer before benefits under the warranty can be claimed.

11.2. THE SUPPLIER PROVIDES NO WARRANTIES OF ANY KIND, WHETHER WRITTEN, ORAL, EXPRESS OR IMPLIED, UNLESS THE CUSTOMER IS A "CONSUMER" UNDER THE CPA AND OF SO ONLY TO THE EXTENT PROVIDED FOR IN THE CPA.

12. RETURNS

12.1. When seeking to return any Hardware covered by a manufacturer warranty, the Customer shall comply with the returns procedure of the manufacturer as set out in the Product Documentation.

12.2. If the manufacturer warranty is not a fetch, repair and return warranty, the Customer agrees to pay all courier fees in connection therewith.

12.3. Unless the Customer is a "consumer" as defined under the CPA, the Customer shall have no right to a refund. If such Customer is a consumer, refunds shall be in accordance with the CPA.

13. FACTORS BEYOND SUPPLIER'S CONTROL

13.1. Timeous delivery of any Hardware depends on various factors including the availability of spares parts and shipping delays. Accordingly, the Supplier shall make reasonable endeavours to meet the Delivery Date in an Order but the Supplier shall not be liable for any losses or damages whatsoever or howsoever arising as a result of any delay.

13.2. Should the Supplier be delayed or prevented from performing its obligations due to a Force Majeure Event, the Supplier shall notify the Customer of such delay and the details thereof.

13.3. After notification of a delay, the Supplier shall be entitled to adjust any Delivery Date to a date mutually agreed between the Parties, and in the absence of agreement delivery shall be on such later date as is reasonable in the circumstances.

13.4. The Supplier reserves the right to cancel any Order, which is delayed for a period exceeding ninety (90) days due to a Force Majeure Event and in such case, the Supplier shall be entitled to cancel the Order and the Customer's sole rights shall be for a refund of any amounts paid by the Customer in relation to such Order.

14. TITLE AND RISK OF LOSS

The risk of loss or damage to any Hardware shall pass to the Customer on physical delivery of the Hardware to the Customer in accordance with the Order, regardless of whether the Customer has requested installation of the Hardware.

15. EXCLUSION AND LIMITATION OF LIABILITY, AND INDEMNITY

15.1. Neither the Supplier (nor any of its directors, officers, employees, contractors, agents, affiliates or subsidiaries) shall be liable in contract, delict or tort for any losses, claims or damages ("Losses") arising out of these Terms and the Supply of the IT Hardware (whether incurred directly or indirectly by the Customer or a third party), except to the extent caused by the proven gross negligence or wilful default of the Supplier.

15.2. The Customer further indemnifies and holds harmless the Supplier (including its any of its directors, officers, employees, contractors, agents, affiliated or subsidiaries) in respect of any direct or indirect Losses incurred by the Supplier or a third party arising out of or in connection with the performance of these Terms.

15.3. Should the Supplier be held liable by a court of law or tribunal to be liable, notwithstanding clauses 15.1 and 15.2 above, the total liability of the Supplier under these Terms (whether arising under contract, delict, tort or otherwise) shall be limited to the aggregate of the Fees and Charges paid by the Customer to the Supplier in the six (6) months preceding such claim.

15.4. Any indirect, special, incidental or consequential damages are expressly excluded from these Terms.

15.5. The provisions of this clause 15 shall survive the termination of these Terms.

16. INTELLECTUAL PROPERTY

16.1. Neither Party shall acquire any rights, title or interest of any kind in any Intellectual Property owned by the other Party or a third party.



16.2. Unless specifically authorised in these Terms or in writing by both Parties and then only to the extent so agreed, the Parties shall have no right to use the other Party's Intellectual Property in any manner whatsoever.

17. DATA PROTECTION

17.1. Terms used in this clause 17 mean:

17.1.1. **"Connected Persons"** means any persons connected to a Party including their employees, consultants, agents, directors, shareholders, affiliates and key controllers;

17.1.2. **"Information"** means any Personal Information, or where necessary, any Special Personal Information pertaining to a Party, or its Connected Persons;

17.1.3. **"Personal Information"** shall bear the meaning given to this term in POPIA and includes, identification numbers, passport numbers, dates of birth, addresses etc.;

17.1.4. **"POPIA"** means the Protection of Personal Information Act 2013;

17.1.5. **"Processing"** shall bear the meaning given to this term in POPIA and includes the collection, storage and transfer of the Information;

17.1.6. **"Purposes"** means the processing of the Information for lawful purposes as envisaged under POPIA including: (i) the management and operation of these Terms and the supply of the Hardware, (ii) conducting background, criminal and credit checks, (iii) compliance with relevant legislation including the Financial Intelligence Centre Act (FICA); and (iii) analytical purposes;

17.1.7. **"Special Personal Information"** shall bear the meaning given to this term in POPIA and may include details of religious or philosophical beliefs, race or ethnic origin, trade union membership, political persuasion, health or sex life, criminal behaviour, or biometric information of a Party and its Connected Persons.

17.2. Accordingly, the Parties agree and consent to:

17.2.1. the collection of Information for the Purposes from sources other than the other Party or its Connected Persons, including collection from open sources;

17.2.2. the sharing and other Processing of the Information for the Purposes in accordance with POPIA., including to the following persons:

17.2.2.1. Connected Persons;

17.2.2.2. agents or professional advisers of the Parties;

17.2.2.3. third party service providers (including cloud providers) used by the relevant Party in connection with the performance of these Terms; and

17.2.2.4. where required to be disclosed by law following a request by a regulator or a court of law.

17.3. The Parties further agree that such Information, may be transferred offshore and to offshore cloud providers, including to jurisdictions which may not have the same level of data protection as South Africa, provided that in such circumstances, the relevant Party shall have received data protection undertakings from such offshore recipients.

17.4. Where any Information pertaining to a Connected Person is provided by a Party, the Party providing the Information warrants that it is authorised by the relevant Connected Person to Process the Information in accordance with these Terms.

18. CONFIDENTIALITY OF INFORMATION

18.1. The Supplier and the Customer will from time to time exchange such Confidential Information as is reasonably necessary for the performance of their obligations under these Terms.

18.2. Except as set forth in clause 18.3 below, any Confidential Information of a Party (the **"Disclosing Party"**) disclosed by it or which comes to the attention of the other Party (the **"Receiving Party"**) shall not be disclosed to any third party without the prior written consent of the Disclosing Party.

18.3. Notwithstanding clause 18.2 above, the Receiving Party shall be permitted to disclose any portion of the Confidential Information pertaining to the Disclosing Party to the following persons:

18.3.1. any Staff of the Receiving Party who reasonably need to have access to the Confidential Information and who are bound by confidentiality undertakings;



- 18.3.2. any affiliates of the Receiving Party;
 - 18.3.3. any legal, tax, accounting or business advisers of the Receiving Party;
 - 18.3.4. any person legally entitled to request the information (including any regulator, court of law or tribunal pursuant to a valid request, subpoena or order of such regulator, court or tribunal);
- 18.4. A Receiving Party will not be bound by the confidentiality provisions in this clause 18 where the Receiving Party can demonstrate that such Confidential Information:
- 18.4.1. was in the public domain at the time it was received or subsequently entered the public domain through no fault of the Receiving Party;
 - 18.4.2. was known to the Receiving Party or was in the possession of the Receiving Party at the time of receipt of the Information;
 - 18.4.3. became known to the Receiving Party from a source other than the Disclosing Party without breach of an obligation of confidentiality.
- 18.5. In the event of any legal action or proceeding for disclosure of Confidential Information, the Receiving Party shall promptly notify the Disclosing Party and, upon the request and at the expense of the Disclosing Party, shall co-operate with the Disclosing Party (to the extent legally permissible) in lawfully contesting such disclosure.
- 18.6. All Confidential Information pertaining to the Disclosing Party shall remain the property of the Disclosing Party.
- 18.7. At the Disclosing Party's written request, the Receiving Party (subject to its legal and corporate governance obligations to retain such Confidential Information), promptly return, destroy or expunge from its systems (to the extent practicable) such Confidential Information, together with all copies made by the Receiving Party or by anyone to whom such Confidential Information was made available.
- 18.8. This clause 18 shall survive the termination of these Terms for a period of 3 (three) years.

19. NON-SOLICITATION

- 19.1. For the duration of these Terms and for a period of 12 (twelve) months after termination of these Terms for any reason, the Customer shall not, directly or indirectly:

- 19.1.1. solicit, attempt to solicit, or otherwise interfere with or divert any Staff of the Supplier;
 - 19.1.2. induce or attempt to induce any Staff of the Supplier to terminate their contracts with the Supplier.
- 19.2. The provisions of this clause 19 apply to the territory of South Africa and shall survive termination of Agreement for any reason.

20. DOMICILIUM CITANDI ET EXECUTANDI

- 20.1. Each Party selects the addresses set out in the Order as the addresses for the purposes of notices under these Terms and the addresses at which it will receive legal process (or its *domicilium citandi et executandi* ("**Domicilium**")).
- 20.2. A Party may change its *Domicilium* by written notice to the other Party on 10 (ten) days written notice to the other Party, provided that the changed physical address is an address in South Africa).
- 20.3. All notices to be given under these Terms will be given in writing, in English, and will:
 - 20.3.1. be delivered by hand or sent by email;
 - 20.3.2. if delivered by hand during Business Hours, be presumed to have been received on the date of delivery failing which will be presumed to have been delivered on the following Business Day; and
 - 20.3.3. if successfully transmitted via email during Business Hours, be presumed to have been delivered on the date of successful transmission failing which will be presumed to have been delivered on the following Business Day.
- 20.4. Any notice actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause 20.

21. GENERAL

21.1. Entire Agreement

These Terms supersede all prior agreements between the Parties (whether oral or in writing) and constitutes the entire agreement between the Parties regarding the subject matter hereof and neither Party shall be bound by any undertakings, representations,



warranties, promises or the like not recorded herein.

21.2. Severability

To the extent that any provision of these Terms is or may become unenforceable for any reason it shall be severable from the remainder of these Terms which shall remain in force.

21.3. Non-Variation

21.3.1. The Supplier shall be entitled to amend these Terms from time to time by without notice to the Customer by placing the amended Terms on its website, provided that any confirmed Orders as at the date of such amendment will remain subject to the terms and conditions displayed on its website at the dates of placing such Orders.

21.3.2. The Customer shall not be entitled to amend These terms unless agreed to by the Supplier in writing.

21.4. Legal Costs

The Customer agrees to pay all legal costs incurred by in in connection with any dispute under these Terms on an attorney and own Customer scale.

21.5. Waiver

No delay or omission by a Party in exercising any right under these Terms shall operate as a waiver of that right or any other right under these terms. A waiver or consent given by a Party on any one occasion shall be effective only in that instance and shall not be construed as a waiver of any right on any other occasion.

21.6. Assignment

21.6.1. The Customer shall not be permitted to cede, assign or otherwise transfer its rights and obligations under these Terms without the prior written consent of the Supplier.

21.6.2. The Supplier shall be entitled to cede, assign or otherwise transfer its rights and obligations under these Terms without the consent of the Customer.

21.7. Governing Law and jurisdiction

These Terms shall be governed and construed in accordance with the laws of South Africa and the Parties consent to the jurisdiction of the Boksburg Magistrates'

Court (for disputes falling within the monetary jurisdiction of such court), and the High Court of South Africa (Gauteng Local Division: Johannesburg).