

## Westcon Namibia Distribution (Pty) Ltd Terms and Conditions of Sale

### DEFINITIONS AND INTERPRETATIONS

- a. Where used in these Terms and Conditions of sale:
    - i. **"Authorised Representative"** means any person who holds the job title and office of General Manager, Finance Director or Vice-President.
    - ii. **"Customer"** means any individual, person, entity, company, firm, partnership or organization that purchases Products from the Seller for use in its business or the business of a third party end-user or other customer and not for use as a Consumer.
    - iii. **"Consumer"** means any individual, person, entity, company, firm, partnership or organization who is acting as a consumer (as defined by applicable law) and/or for purposes not related to his or her trade, business or profession.
    - iv. **"Terms and Conditions"** means these Terms and Conditions of Sale or any such successor terms and conditions that the Buyer is notified are in full force and effect as of the date of a Contract and are concurrently available on Westcon's website located at the following URL:  
<https://www.westconcomstor.com/global/en/legal/Legal/terms-and-conditions.html>.
    - v. **"E-System"** means the Product ordering website operated by Westcon currently located at the following URL: <https://online.westcongroup.com/>
    - vi. **"Seller"** shall mean WND
    - vii. **"WND"** means Westcon Namibia Distribution (Pty) Ltd, registered in Namibia under company number (Company registration number: 2004/0173) VAT number 3776239-01-5, or, as appropriate, any of its subsidiaries.
  - b. As used in these Conditions, (i) any reference to a statute shall be construed as a reference to that statute as amended, re-enacted or otherwise modified from time to time, (ii) the term "including" will always be deemed to mean "including, without limitation", (iii) a definition is equally applicable to the singular and plural forms of the feminine, masculine and neuter forms of the term defined, and (iv) any headings in the Conditions are for convenience only and shall not affect the interpretation of any terms.
- ### 1. APPLICATION OF TERMS, PRICES & QUOTATIONS
- 1.1 Unless the Seller indicates in writing that it does not require a Deed of Suretyship to be provided in respect of the Customer, the Seller requires that the Deed of Suretyship included as Annexure B hereto be filled in, signed correctly and returned. All fields must be completed correctly, then all pages must be initialled and the document signed in full on the last page. Please return a signed copy to [arfinance.za@westcongroup.com](mailto:arfinance.za@westcongroup.com) and the original to 47C (corner of) Church Street and Schmerenbeck Street, Windhoek West, Windhoek, Windhoek, Namibia, marked for attention: Accounts Receivable Manager.
  - 1.2 Subject to any variation under 1.3 any contract between the Seller and the Customer for the sale and purchase of goods, licences and/or materials ("**Goods**") or services ("**Services**"), shall be on these Terms and Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document). For the avoidance of doubt, if and to the extent that certain of the provisions of the National Credit Act (Act 34 of 2005) ("**NCA**") are or become applicable to the Customer or to the matters dealt with in these Terms and Conditions, these Terms and Conditions shall at all times be subject to the provisions of the NCA and nothing in these Terms and Conditions shall operate to exclude or limit any right that the Customer may have or any obligation that the Seller may have toward the Customer in terms of the NCA.
  - 1.3 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the agreement between the Seller and the Customer simply as a result of such document being referred to in the Customer's documents.
  - 1.4 These Terms and Conditions apply to all the Seller's sales and any variation to these Terms and Conditions and any

representations about the Goods or Services shall have no effect unless expressly agreed in writing and signed by the Seller. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the relevant contract for the sale and purchase of the Goods and/or Services. Nothing shall exclude or limit the Seller's liability for fraudulent misrepresentation.

- 1.5 Each order or acceptance of a quotation for Goods or Services by the Customer from the Seller shall be deemed to be an irrevocable offer by the Customer to buy Goods or Services subject to these Terms and Conditions.
- 1.6 No order placed by the Customer shall be deemed to be accepted by the Seller until a written acknowledgement of order is issued by the Seller or (if earlier) the Seller delivers the Goods or Services to the Customer.
- 1.7 The Customer shall ensure that the content of any order and any applicable specification are complete and accurate.
- 1.8 Any quotation is given on the basis that no contract shall come into existence until the Seller dispatches an acknowledgement of order to the Customer. Any quotation is valid for a period of 48 (forty eight) hours only from its date, provided that the Seller has not previously withdrawn it. All quotations are subject to availability of Goods and Services.
- 1.9 Unless otherwise agreed by the Seller in writing, the price for the Goods or Services shall be the price quoted on the official quote provided by the Seller.
- 1.10 The price of the Goods sold or Services supplied to the Customer is strictly net and not subject to any discounts unless otherwise agreed.
- 1.11 Discounts, agreed to in writing by the Seller, shall only apply if payment is received by the Seller by the due date. The agreed discount will be on the net price of the Goods or Services only, and not (to the extent applicable) in respect of value added tax, transport costs, storage charges, packaging and packing costs, insurance and other charges, duties or taxes.
- 1.12 Special discounts requested from Original Equipment Manufacturers ("OEM") are subject to Seller receiving such OEM approval for the applicable discount.
- 1.13 The price for the Goods and Services shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Customer shall pay in addition when it is due to pay for the Goods or Services.
- 1.14 Any Purchase Orders submitted and automatically accepted through the E-System which contain Buyer's terms or conditions shall be deemed a rejection of such Buyer's terms or conditions and an offer by Buyer to purchase Products subject to the Conditions.
- 1.15 In respect of the E-System Buyer is solely responsible for the use of any User ID, password or other forms of identification (collectively "Buyer ID") for accessing the E-System, and in maintaining the confidentiality of the Buyer ID. Buyer shall immediately notify WAUK in the event it should lose or misplace or suspect any abuse (actual or attempted) of the Buyer ID. Buyer shall maintain appropriate security policies and procedures to ensure proper use of the Buyer ID. Absent notice from Buyer otherwise, WAUK shall have the right to rely absolutely on any Purchase Orders submitted through the E-System and treat any Purchase Order submitted through the E-System as a valid and binding offer to purchase Buyer is solely responsible, at its sole cost and expense, for securing and maintaining its own Internet access, facilities, hardware and software requisite to access the E-System. Buyer agrees that WAUK cannot guarantee the security or integrity of any data or information exchanged through the Internet or the E-System.

### 2. PAYMENT

- 2.1 Payment terms are strictly Cash on Delivery ("**COD**"), save where the Customer is a credit approved customer in which event payment of the full amount invoiced will be due within 30 (thirty) calendar days of the date of the Seller's statement whether or not delivery has taken place. No interest, fee or other charge whatsoever shall be levied by the Seller on a credit approved customer where payment of the full amount invoiced is made by the Customer on or by the 30 (thirty)

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- calendar-day due date.
- 2.2 In respect of COD Customers, payment shall be due on collection or before delivery of Goods or rendering of Services. If the Customer fails to collect or accept delivery of the Goods or Services, payment shall automatically become due 14 (fourteen) calendar days after the Seller has provided written or verbal notification to the Customer that Goods or Services are available for delivery or collection.
- 2.3 The Customer agrees to pay the amount reflected on the Seller's invoice and shall not be entitled to claim set off or deduction in respect of any payment due by the Customer to the Seller for Goods supplied or Services rendered.
- 2.4 The Seller may appropriate and/or allocate all payments made by the Customer to such accounts as the Seller, in its sole and absolute discretion, decides.
- 2.5 The Seller shall have the right to suspend deliveries without notification and to exercise its rights in terms of clause 3 if any amount due by the Customer is unpaid.
- 2.6 The Customer agrees that if any amount owed by it is not settled in full by the due date for payment the Seller will be entitled to:-
- 2.6.1 immediately institute action against the Customer; and/or
- 2.6.2 cancel the sale and, subject to the Seller fulfilling any requirements imposed by law, take possession of any Goods delivered to the Customer, including Goods sold, disposed of or installed by the Customer, which have not been paid for in full, and claim damages.
- 2.7 These remedies are without prejudice to any of the Seller's other rights.
- 2.8 Should any amount not be paid by the Customer on due date, then the full outstanding amount in respect of all purchases by the Customer shall immediately become due, owing and payable irrespective of the dates when the Goods or Services were purchased, and the Customer shall be liable to pay interest in respect of amounts unpaid at the Seller's banker's prime lending rate plus 2% or such lesser rate as may be prescribed in compliance with the NCA (where applicable), as amended. Interest shall be calculated from the calendar day immediately following the due date of such payment to the date of final payment thereof.
- 2.9 The following terms in relation to all payments apply:
- 2.9.1 Electronic transfers must reflect on the Seller's bank account, regardless of value, before Goods or Services are released/ rendered (in the case of a COD Customer).
- 2.9.2 Acceptable methods of payment are:
- 2.9.2.1 Electronic Funds Transfer
- 3. WITHDRAWAL OF CREDIT FACILITIES**
- 3.1 The Seller reserves the right to withdraw any credit facility, at any time without prior notice, and the nature and extent of such facility shall at all times be at the Seller's sole discretion.
- 3.2 Despite the fact that the Seller may grant the Customer a credit limit or a credit facility up to a certain amount, the Seller reserves the right to increase or decrease this amount at its sole discretion. The credit limit shall not be deemed to be the limit of a Customer's indebtedness to the Seller.
- 4. ORDERS**
- 4.1 The Seller will accept written orders only. All such orders must have a unique reference number. All such orders and any variations to orders agreed in writing will be binding, subject to these Terms and Conditions, and may not be cancelled without written consent from the Seller, which consent shall be deemed to have been granted where the Customer has a right in terms of any consumer laws (including the Consumer Protection Act (Act 68 of 2008)) to cancel an advance order. A reasonable cancellation penalty may be imposed by the Seller for cancelled orders.
- 4.2 Should the Customer purport to attach any conditions to or in respect of any business conducted from time to time which vary, amend or are in conflict with any of these Terms or Conditions, then notwithstanding anything to the contrary stipulated by the Customer, these Terms and Conditions shall prevail and be of full force and effect.
- 4.3 Any term contained in the purchase order which seeks to provide for cancellation in the event of the Seller's failure to deliver within a specified period of time shall be of no force and effect.
- 4.4 The Seller is under no obligation to accept any such offers made by the Customer to purchase its Goods or Services, even where the Seller and the Customer have reached agreement on a price for the particular Goods or Services.
- Only upon the issue of a written acknowledgement of the order will the Seller be deemed to have accepted the order (or in the absence of written acknowledgement of the order, upon actual delivery of the Goods or the rendering of the Services by the Seller to the Customer), although no obligation rests on the Seller to do so.
- 5. DELIVERY/ COLLECTION**
- 5.1 Unless the Seller receives written notice to the contrary, as provided for in clause 5.9, the Customer and/or its authorised representative and/or its nominated agent, in signing the delivery note, thereby confirms that the Goods and/or Services were indeed delivered/collected and inspected or rendered, and that the Customer is satisfied and confirms that the Goods or Services delivered or rendered duly represent, in quantity and quality, the Goods or Services ordered by the Customer at the prices agreed as reflected on the invoice issued, and that the Customer is satisfied that the Goods are free from any defects. This does not affect any rights that the Customer may have in relation to defective products in terms of any consumer law.
- 5.2 Any delivery note (copy or original) in the possession of the Seller and purportedly signed by the Customer and/or its authorised representative and/or its nominated agent, shall be *prima facie* (legitimate) proof for the purposes of any litigation on its mere production in evidence.
- 5.3 The Seller shall be entitled to split the delivery of the Goods or Services ordered in the quantities and on the dates it decides, with the prior consent of the Customer, which consent shall not be unreasonably withheld.
- 5.4 The Seller is entitled to engage a third party on its behalf to transport all Goods purchased by the Customer to the delivery address stipulated by the Customer.
- 5.5 Should the Customer wish to receive delivery of the Goods by a more expensive method of transportation than that normally engaged by the Seller, the Customer shall make such request in writing and, if the Seller agrees to arrange such special delivery, the additional charges shall be debited to the Customer's account and shall become payable by the Customer on delivery of the Goods.
- 5.6 The Seller does not guarantee that the Goods will be delivered/ available for collection on any particular date or time, and the Customer shall not have any right of action against the Seller in respect of any loss occasioned by any reasonable delay in delivery of any Goods and/or Services rendered, nor may the Customer cancel any order by reason of such reasonable delay.
- 5.7 **Whilst every effort will be made to dispatch Goods or render Services as advised, the Seller does not guarantee dispatch or supply on any specific date or time and shall not be liable for any damages of any nature whatsoever for failure to effect delivery or timeous dispatch for any reason beyond the Seller's reasonable control, including but not limited to:**
- 5.7.1 inability to secure transport, labour, power, materials, equipment or supplies;
- 5.7.2 delays caused by any supplier or manufacturer;
- 5.7.3 by any reason of any act of God, fire, flood, drought;
- 5.7.4 civil disturbance, war, riot, state of emergency;
- 5.7.5 strike, lock out or other labour dispute;
- 5.7.6 legislation; or
- 5.7.7 any other reason not intended by the Seller.
- The Customer shall not be entitled to cancel any order by reason of such delay.
- 5.8 Short delivery of any Goods or Services and/or any claim that the Goods or Services are not of the type or quality ordered have to be notified in writing to the Seller's head office within 7 (seven) calendar days of delivery or collection of the Goods, failing which the Seller will not be liable to entertain any such claim.
- 5.9 Where the Seller is requested by the Customer to withhold or postpone delivery/collection, if the Seller agrees to do so, all the risk in and to all ordered Goods shall pass to the Customer on the date of the Seller agreeing to such a request and the Customer shall pay the costs of storage, demurrage, interest, insurance and any other charges occasioned by the postponement of delivery.
- 5.10 The Seller may, at its sole discretion, provide a no-charge delivery service for orders in excess of R5,000 per order in the following areas:
- 5.10.1 Johannesburg City, Sandton, Randburg, Braamfontein,

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- Rosebank, Pretoria, Bedfordview;  
5.10.2 Durban Metropolitan area;  
5.10.3 Cape Peninsula and Northern Suburbs;  
5.10.4 Port Elizabeth Metropolitan,  
5.11 A charge may be levied for deliveries for orders under R5,000 or for deliveries to other areas. This charge may be determined and amended from time to time based on courier cost increases at the sole discretion of the Seller.  
5.12 This charge can be levied, at the Seller's sole discretion, even if not included on the quote as the delivery details may not be available at the time of quote.  
5.13 The Seller will use its best endeavours to accommodate any other delivery requirements of the Customer at the cost of the Customer.
- 6. OWNERSHIP AND RISK**  
6.1 All risk in and to all Goods sold by the Seller to the Customer shall pass to the Customer on delivery/collection, however, ownership in all Goods sold and delivered/ collected shall remain vested in the Seller until the full purchase price has been paid. In the event of a breach of these Terms and Conditions by the Customer, or if the Customer is sequestered or placed under liquidation or judicial management or commits any act of insolvency or enters into any compromise with its creditors or fails to satisfy a judgment granted against it within 3 (three) calendar days of the date of judgment or changes the structure of its ownership, the Seller shall, subject to having complied with any further legal requirements, be entitled to take possession of the Goods irrespective of whether or not the Goods have been installed, without prejudice to any further rights vested in the Seller. The Customer hereby indemnifies the Seller against all claims, losses, damages, liabilities and expenses of whatsoever nature including consequential claims, should the Seller remove Goods as a result of non-payment on the part of the Customer. Nothing contained in this clause precludes the Seller from proceeding in terms of this clause with a Court order.  
6.2 Goods in the possession of the Customer bearing either the Seller's name or trade mark or labels shall be deemed to be those for which payment has not yet been made, and should any breach of these Terms and Conditions occur, may be re-possessed by the Seller in terms of clause 6.1 above.  
6.3 Prior to delivery, the Customer shall adequately insure the Goods to be delivered and or supplied by the Seller against any form of loss or damage until the full purchase price has been paid by the Customer to the Seller for such Goods. Pending payment to the Seller for Goods purchased, all the benefits in terms of the insurance policy relating to the insurance of such Goods are hereby ceded to the Seller.  
6.4 The Customer shall inform the landlord of the premises at which the Goods are kept that such Goods are the sole and absolute property of the Seller until such time as the full purchase price has been paid to the Seller by the Customer and ownership passes to the Customer. The Customer shall keep the Goods free from any lien, hypothec or other security interest until ownership in the Goods passes to the Customer.  
6.5 The Customer hereby indemnifies the Seller against all claims, losses, damages, liabilities and expenses of whatsoever nature, including consequential claims, arising from or in connection with, the Customer failing to comply with its obligations in terms of this clause 6
- 7. RETURNED GOODS AND ORDER CANCELLATIONS**  
7.1 The Customer may have further rights in terms of applicable consumer laws to return Goods and cancel orders. These rights may be in addition to and different from these Terms and Conditions. These Terms and Conditions are subject to any such rights.  
7.2 The Seller is under no obligation to accept the return of Goods, except if the Customer has a right in terms of any consumer law to return Goods. If, however, the Goods are defined by the Seller as stocked items, and were purchased from the Seller, then the Customer may apply to the Seller for permission to return Goods. If written permission is given by the Seller for such return, then it will be on the following basis:  
7.2.1 Goods, save for the Goods dealt with in clause 7.2.4 below, will be accepted for credit, subject to a restocking charge of 15% (fifteen percent) of the invoice price of the Goods so returned, if the Goods are delivered to the Seller's Head Office, Customer Services, within 21 (twenty one) calendar days of delivery, unused, with sealed disk packs, original contents and shrink wrapping intact.  
7.2.2 No Goods returned to the Seller after a period of 21 (twenty one) calendar days from delivery will be accepted for credit.  
7.2.3 Goods returned for credit will only be accepted from those Customers who initially purchased the stock from the Seller.  
7.2.4 Goods defined as non-stocked items or Goods specifically ordered for the Customer (Back-to-Back orders) will not be accepted by the Seller for credit.  
7.2.5 If on inspection of the returned Goods, the Seller's Customer Services determine that the Goods have been opened or used or that the sealed disk packs, contents and shrink wrap are not intact, the Seller will be under no obligation to accept the returned Goods, however, the Seller may at its sole and absolute discretion agree to accept the Goods and a restocking charge of 50% (fifty percent) of the invoice price of the Goods so returned will be payable by the Customer to the Seller.
- 7.3 Purchase orders issued to the Seller by the Customer may not be cancelled or changed by the Customer. The Seller may at its sole and absolute discretion agree to the cancellation or change of an order received from the Customer. Such a decision will be based on whether the Seller is in a position to cancel or change its order with the Manufacturer for the supply of those Goods and if the item is a regularly stocked item. Any relaxation of this no cancellation policy in any one instance should not be construed as a change to the standard Terms and Conditions.  
7.4 The Seller may without incurring liability to the Customer, terminate a purchase order for Goods or Services at any time, with or without cause, and in those instances where Seller terminates without cause, then it shall refund all amounts already paid by the Customer to the Seller in respect of such purchase order.
- 8. NEGOTIABLE INSTRUMENTS**  
8.1 Acceptance of a promissory note, bill of exchange or any other negotiable instrument by the Seller from the Customer shall not be deemed to be a waiver of the Seller's rights under these Terms and Conditions. In relation to cheque(s) furnished by the Customer to the Seller, the Customer waives its rights to insist on notice of dishonour or protest being given to it in the event of the cheque being dishonoured.
- 9. BREACH**  
9.1 Subject to the provisions of clauses 2 and 6 above, in the event of a breach by the Customer of any of these Terms and Conditions, and should the Customer fail to remedy such breach within 48 (forty eight) hours after receipt of notice, verbally or in writing, to that effect from the Seller; or should the Customer repeatedly breach any of these Terms and Conditions in such manner so as to justify the Seller in holding, in its sole discretion, that the Customer's conduct is inconsistent with the intention or ability of the Customer to carry out these Terms and Conditions; or if the Customer is sequestered or placed under liquidation or enters judicial management or commits any act of insolvency or enters into a compromise with its creditors or fails to satisfy a judgment granted against it within 3 (three) calendar days of the date of judgment or changes the structure of its ownership, without notifying the Seller, the Seller shall be entitled to cancel any (or all) agreement(s) to grant credit or for the sale and supply of Goods or Services with the Customer forthwith and without prejudice to its right to claim specific performance and/or damages.  
9.2 The Seller shall, at any time, be entitled to terminate any agreement to grant credit by giving the Customer with immediate effect  
9.3 The Seller's rights in terms of clause 9.1 shall not be exhaustive and shall be in addition to its common law rights or any other right it has in terms of these Terms and Conditions.  
9.4 No claim, except as provided in clause 7, against the Seller, pursuant to these Terms and Conditions, will arise unless the Customer has, within 7 (seven) calendar days of the alleged breach or defect occurring, given the Seller 30 (thirty)

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calendar days written notice to rectify any defect or breach of these Terms and Conditions.

**10. WARRANTIES, REPRESENTATIONS, INDEMNITIES AND LIABILITY**

10.1 The Customer may have additional rights and warranties in terms of applicable consumer laws that cannot be changed or excluded by contract. These Terms and Conditions are subject to any such rights and warranties.

10.2 **The Seller makes no warranties or representations to the Customer regarding the Goods or Services or their fitness for a particular purpose other than those contained in the manufacturer's product specific warranty as at the time of delivery or collection of the Goods.**

10.3 Goods are guaranteed according to the manufacturer's product specific warranties only, as at the time of delivery or collection of the Goods.

10.4 Services rendered carry no guarantee whatsoever.

10.5 All guarantees are immediately null and void, should any equipment be tampered with, or should the "seals" on equipment be broken by anyone other than the Seller or its appointed nominee, or should the Goods be operated outside the manufacturer's specifications.

10.6 To be valid, guarantee claims must be supported by the original tax invoice, and the Goods must be in their original packaging and must be accompanied by all accessories and manuals, which must be intact.

10.7 No warranties other than those provided in these Terms and Conditions, express or implied, shall apply. The Seller specifically disclaims the implied warranty of merchantability or fitness for a particular purpose, except to the extent that this is prohibited by any consumer laws. No representation or warranty, including but not limited to statements of capacity and suitability for use or performance, made by employees of the Seller shall be considered to be a warranty by or binding on the Seller. Any such statements shall not give rise to any liability of whatsoever nature on the part of the Seller. The Seller, its employees, subcontractors or subsidiaries renounce and disclaim all liability in respect of the Seller's special, indirect or consequential damages including but not limited to loss of profits.

10.8 **Under no circumstance will the Seller be liable for any damage arising from:**

10.8.1 any misuse of the Goods supplied and/or Services rendered;

10.8.2 damage caused by force majeure, lighting and/ or power surges;

10.8.3 negligence on the part of the Customer to fully understand and comply with the correct installation procedures.

10.9 The Customer agrees that neither the Seller nor any of its employees will be liable for any negligent or innocent misrepresentations made to the Customer, nor shall the Customer be entitled to cancel any contract on those grounds.

**11. REPAIRS**

11.1 Any liability arising in terms of the manufacturer's warranty is restricted to the cost of repair or replacement of faulty Goods or the granting of a credit note. It is in the sole discretion of the Seller as to which remedy will be afforded to the Customer.

11.2 In the case of repairs undertaken by the Seller, repair times given are merely estimates and are not binding on the Seller.

11.3 The Customer hereby agrees that any item handed in for repair may be sold by the Seller to defray the cost of the such repairs if the item remains uncollected for a period of 30 (thirty) days after notification that the repair is complete.

**12. TECHNICAL SUPPORT**

Technical support on the Goods may be available from the Seller upon agreement thereof. This is a billable service and requires an order number to be issued by the Customer to the technical services group of the Supplier.

**13. LIMITATION OF LIABILITY**

13.1 **Except to the extent prohibited by any consumer laws, the Seller shall not be liable for any loss, injury, death, damage, costs, expenses, loss of profits or other special damages or any consequential loss or other damages arising from any cause whatsoever (whether or not the Seller is negligent or grossly negligent) suffered or incurred by the Customer and/or its employees, contractors, sub-contractors, agents, authorized**

**representatives and/or any third party in connection with any Goods or Services supplied by the Seller.**

13.2 **The Customer indemnifies and holds harmless the Seller for any claims described in clause 13.1 above instituted by the Customer and/or its employees, contractors, sub-contractors, agents, authorised representatives and/or any third party.**

13.3 The maximum aggregate liability of the Seller in respect of any and all claims which may arise out of or in connection with a particular purchase order, whether based in contract (including breach, warranty or indemnity) or delict (including fault, negligence or strict liability), or otherwise, shall not exceed the price reflected on the Sellers invoice for that particular purchase order, at which price the Goods / Services were purchased by the Customer from the Seller.

**14. LEGAL PROCEEDINGS**

14.1 In the event of either party, being the Customer or the Seller, breaching any of its obligations and/or failing to timeously make payment of any amount due to the other party, the breaching party agrees to pay, and shall be liable to pay, all legal costs incurred by the other party in enforcing its rights in terms of these Terms and Conditions on the attorney/own client scale including collection charges, tracing agent's fees, air fares and expert witness fees.

14.2 The Seller shall have the right at its sole discretion to institute any action arising out of or in connection with these Terms and Conditions and/or any business dealings with the Customer in any Magistrate's Court having jurisdiction, notwithstanding that the cause of action may exceed the jurisdiction of that court and the Customer hereby consents to the jurisdiction of the Magistrate's Court for this purpose. Nothing herein contained, however, shall preclude the Seller from electing to institute action in the appropriate High Court having jurisdiction.

14.3 These Terms and Conditions shall be governed and construed according to the laws of the Republic of South Africa and shall be subject to the exclusive jurisdiction of the courts of the Republic of South Africa.

**15. NOTICES & DOMICILIUM CITANDI ET EXECUTANDI**

15.1 Any document will be deemed duly received by the Customer within:

15.1.1 3 (three) working days of pre-paid registered mail to any of the Customer's business or postal addresses or the *domicilium* address of the Customer, or to the personal address of any director, member or owner of the Customer; or

15.1.2 24 (twenty four) hours on being delivered by hand to the Customer or any director, member or owner of the Customer; or

15.1.3 48 (forty eight) hours if sent by overnight courier; or

15.1.4 24 (twenty four) hours of being e-mailed to the Customer's e-mail address.

15.2 The Customer hereby chooses its *domicilium citandi et executandi* (physical address for serving of court notices, other legal documentation or communications) for all purposes under these Terms and Conditions as the physical address as set out on Page 1 of the reseller application document to which these Terms and Conditions are attached. The Seller hereby chooses its *domicilium citandi et executandi* (physical address for serving of court notices, other legal documentation or communications) for all purposes under these Terms and Conditions as **47C (corner of) Church Street and Schmerenbeck Street, Windhoek West, Windhoek, Windhoek, Namibia.**

**16. DISCLOSURE OF INFORMATION**

16.1 The Customer understands that the information given in this Application is to be used by the Seller for the purposes of assessing the Customer's credit worthiness for extended payment terms. **The Customer confirms that the information given by him in this Application is accurate and complete. The Customer further agrees to update the information supplied, as and when necessary, in order to ensure the accuracy of the above information, failing which, the Seller will not be liable for any errors or mistakes resulting there from.**

16.2 The Seller has the Customer's consent, at any time, to contact and request information from any persons, credit bureaux or businesses, including those mentioned in the Application and to obtain any other information relevant to the Customer's credit assessment.



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- 16.3 The Customer agrees and understands that information pertaining to the Customer and given in confidence to the Seller by a third party will not be disclosed to the Customer.
- 16.4 The Customer hereby consents and authorizes the Seller, at any time, to furnish credit information concerning the Customer's dealing with the Seller to a credit bureau and to any third party seeking a trade reference regarding the Customer in his dealings with the Seller.
17. **CESSION OF DEBTORS**
- 17.1 The Customer hereby irrevocably cedes, assigns and transfers makes over, unto and in favour of the Seller, all the Customer's right, title and interest in and to its claims against its debtors, both present and future and from whatsoever cause arising, as security for all or any of the amounts which the Customer may now, or at any time in the future owe to the Seller.
- 17.2 The Customer irrevocably and in terms hereof authorises the Seller in its absolute discretion to claim from all or any of the Customer's debtors the whole or any portion of the indebtedness or give a valid receipt for discharge for such indebtedness; to take any action in its name in any court of competent jurisdiction and to proceed in execution thereunder against all or any of the said debtors; to cede, transfer, negotiate, pledge or otherwise deal with all or any of the said debtors; to exchange promissory notes, cheques, agreements, documents of title or any other security held by the Customer.
- 17.3 The security created by the cession shall be a continuing one notwithstanding any fluctuation in the amount of indebtedness of the Customer to the Seller.
- 17.4 The Customer hereby undertakes on demand to furnish the Seller with such information concerning its debtors as may be reasonably required, to enable the Seller to give effect to the provisions of this clause.
- 17.5 Should it transpire that the Customer entered into prior deeds of cession, then this cession shall operate as a cession of all the Customer's reversionary rights.
18. **COMPLIANCE WITH EXPORT CONTROL LAWS.**
- 18.1 Customer acknowledges that the Goods and any technical data related thereto is licensed or sold subject to and controlled by the export laws of the United States ("US") including its export administration regulations, the European Union ("EU") and countries within the European Free Trade Area ("EFTA") (collectively the "Export Control Laws") and Customer hereby agrees not to export, re-export, otherwise distribute Goods, or direct goods thereof, in violation of any Export Control Laws. Customer agrees to advise its customers/purchasers that the Goods are subject to and controlled by such Export Control Laws and that the US Government and/or the member states of the EU and EFTA may require licensing or other authorisation prior to export.
- 18.2 Customer warrants that it will not export or re-export any Goods with knowledge that they will be used in the design, development, production, or use of chemical, biological, nuclear, or ballistic weapons, or in a facility engaged in such activities, unless Customer has obtained prior written approval from the appropriate department of the US Government or any other government with jurisdiction. Customer further warrants that it will not export or re-export, directly or indirectly, any Goods to embargoed countries or sell Goods to companies or individuals listed on the Denied Persons List published by the US Department of Commerce.
- 18.3 It is Customer's sole and exclusive responsibility to obtain any and all appropriate approvals of from the US Government and/or member states of the EU and EFTA prior to exporting such Products, or any technical data related thereto, from the United Kingdom. Seller shall not be responsible for any costs, liabilities or damages resulting from Customer's failure to obtain any such required authorisation. Customer understands that the Export Control Laws may change from time to time. It is Customer's sole and exclusive responsibility to obtain guidance of counsel or other appropriate channels to ensure its compliance with these laws.
- 18.4 Customer warrants that it will not take any action or permit or authorize any action which will render Seller liable for a violation of the US Foreign Corrupt Practices Act (the "Act"), which prohibits the offering, giving or promising to offer or give, directly or indirectly, money or anything of value to any official of a government, political party or instrumentality thereof in order to assist it or Seller in obtaining or retaining business and (a) will not violate or cause Seller to violate such Act in connection with the sale and distribution of the goods; and (b) will notify Seller in writing if any of its owners, partners, principals, directors or officers are or become officials, officers or representatives of any government or political party or candidate for political office.
- 18.5 Customer shall comply with EU Directives 2002/95/EC (Restriction on Hazardous Substances) and 2002/96/EC dated January 27, 2003 (Waste Electrical and Electronic Equipment) ("WEEE") generally and as instated within each country into which goods are imported, exported or otherwise distributed by Customer, such obligation which shall include registering as a "producer" under applicable WEEE legislation. Customer shall notify Seller in the event it should export any of the goods outside of the United Kingdom.
- 18.6 Customer shall indemnify, defend and hold Seller harmless from any violation or alleged violation by Customer of the terms of this clause. Upon Seller's request, Customer agrees to confirm, in writing, its compliance with applicable Export Control Laws and the Act.
19. **GENERAL**
- 19.1 These Terms and Conditions shall govern all future contractual relationships between the Seller and the Customer and shall also be applicable to all debts which the Customer may owe to the Seller prior to the Customer's signature hereto.
- 19.2 No amendment and/or alteration and/or variation and/or deletion and/or addition and/or cancellation of these Terms and Conditions, whether consensual or unilateral or bilateral shall be of any force and effect unless reduced to writing and signed by a director of the Seller.
- 19.3 No warranties, representations or guarantees have been made by the Seller or on its behalf which may have induced the Customer to sign this document.
- 19.4 No relaxation or indulgence that the Seller may give at any time in regard to the carrying out of the Customer's obligations in terms of any contract shall prejudice or be deemed to be a waiver of any of the Seller's rights in terms of these Terms and Conditions.
- 19.5 The Customer shall not be entitled to cede any of its rights or delegate any of its obligations contained herein or relating to the sale and purchase of any Goods or Services without the prior consent in writing of the Seller.
- 19.6 The Seller shall at any time in its sole discretion be entitled to cede all or any of its rights and delegate all or any of its obligations contained herein or relating to the sale and purchase of any Goods or Services to any third party without prior notice to the Customer.
- 19.7 The Customer undertakes to notify the Seller within a period of 7 (seven) calendar days of any change of address or any changes in the information as set out in this Application.
- 19.8 Each of the terms herein, shall be separate and divisible and if any provision of these Terms and Conditions, which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 19.9 The Customer may not sell or alienate the whole of or any part of its business without first obtaining the written consent of the Seller. Any sale or alienation or any change in Control of the Customer which takes place in absence of consent by the Seller will constitute a material breach of these Terms and Conditions entitling the Seller to cancel any agreement it has with the Customer including in relation to the grant of credit or the sale and supply of Goods or Services, without further notice to the Customer. For the purposes of this clause, "Control" means the power to direct or cause the direction of the management and policies of an entity whether through the ownership of voting securities, by contract or otherwise.
- 19.10 The Customer confirms that all Goods purchased in terms of these Terms and Conditions are for the purposes of resale and not for use by the Customer.
- 19.11 The Seller has the right, from time to time, to amend the Terms and Conditions.
- 19.12 In the event that there are any provisions in these Terms and Conditions or any sale and purchase of Goods or Services which may qualify as a penalty in terms of the Conventional Penalties Act (Act 15 of 1962) (as amended) in relation to any

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act or omission by the Customer, such provisions shall not be deemed to preclude the Seller from recovering damages in lieu of the relevant penalty.

- 19.13 The grant of credit and any sale and purchase of Goods or Services is an agreement between the Seller and Customer only and no rights are stipulated for the benefit of any third party.
- 19.14 If any loss or damage arising out of or in connection with any grant of credit or any sale and purchase of Goods or Services

is caused partly by the fault of the Customer, and partly by the fault of the Supplier, the damages recoverable shall be reduced to such an extent as may be just and equitable, having regard to the degree in which each party was at fault in relation to the damage as if the provisions of the Apportionment of Damages Act of 1956, as amended from time to time, were applicable to a claim for breach of the grant or purchase and sale.

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**ANNEXURE B - Deed of Suretyship**

I/We, the undersigned do hereby unconditionally and irrevocably interpose and bind myself/ourselves unto and in favour of the Seller, its successors or assigns as surety/sureties and co-principal debtor/s jointly and severally *in solidum* for and with the Customer for the repayment on demand for any sum or sums of money owing to the Seller by the Customer on the terms and conditions set out below:

1. This Suretyship is for the due and punctual performance by the Customer to or in favour of the Seller for each and every indebtedness and obligation (past, present and future) of the Customer to the Seller of whatsoever nature and howsoever arising and also in respect of all charges and expenses of whatsoever nature (including any sum owing in respect of the agreed Terms and Conditions in Annexure A and including attorney and own client costs, collection charges and tracing expenses) incurred by the Seller in securing the implementation of any right or claim against the Customer, and this Suretyship shall remain of full force and effect notwithstanding any fluctuation in, or variation in, or any cessation of the Customer's indebtedness to the Seller.
2. I/We understand that my/our liability for amounts owing by the Customer to the Seller is not limited to any credit limit granted by the Seller to the Customer.
3. I/We further agree that the Seller shall be at liberty without affecting any of its rights hereunder against me/us to release, or to compound or make other arrangements with, the Customer or with us or any other surety/ies for the Customer and that in the event of the estate of the Customer being sequestrated (or if it be a company or Closed Corporation, being wound up) as insolvent, no dividends or payments which the Seller may receive from the Customer or other surety/ies or from me/us shall prejudice the right of the Seller to recover from me/us to the full extent of this Suretyship any sum which, after receipt of such dividends or payments, may remain owing by the Customer, but in any event, the fact that the Seller will or may receive any such dividend or payment shall not entitle me/us to any deferment of my/our immediate liability meanwhile to pay under this Suretyship.
4. Any leniency or extension of time which may be granted by the Seller to the Customer in respect of any payment or other obligation, and any cancellation, variation or modification of any of the indebtedness of the Customer to the Seller shall not prejudice or affect, novate or terminate this Suretyship or release me/us whether such leniency and/or extension and/or variation and/or modification be granted or take place prior or subsequent to the due date for any payment or obligation.
5. I/We hereby renounce the benefits of the legal exceptions including, but not limited to, "non numeratae pecuniae" (no value received), "non cause debiti", "errore calculi" (faulty calculation), excussion and division (the benefit of division of co-sureties) with the full force, meaning and effect of which I/we declare myself/ourselves to be fully acquainted.
6. In the event of any conflict between Annexure A and Annexure B, the terms of Annexure B shall prevail.

7. In the event of more than one surety signing this Suretyship, or in the event of any other surety or sureties having signed or subsequently signing a Suretyship in favour of the Seller in respect of any indebtedness in favour of the Seller, then each of us shall still remain fully bound jointly and severally hereunder, and any release by the Seller of any one or more of us and/or such other surety/ies shall in no way affect or reduce or delete the liability of us hereunder insofar as I/we have not been so released.
8. A certificate signed by a director of the Seller stating the amount at that date owing and delivered in writing to me/us at any time and from time to time shall constitute evidence in any legal proceedings, or for any other purpose whatsoever, and shall constitute *prima facie* evidence of its contents and of the amount then owing by me/us to the Seller.
9. In respect of any costs claimable by the Seller from us, such costs shall include attorney and client costs, on the scale as between attorney and own client.
10. For all purposes under this Suretyship, including any notice to us, I/we hereby choose *domicilium citandi et executandi* at my/our address stated below, and any notice or process delivered thereat shall be deemed to have been received by me/us on the date of such delivery, or if sent to me/us by telefax, to my/our chosen telefax number, shall be deemed to have been received on the date of dispatch.
11. I/We warrant that all contracts entered into and to be entered into by the Customer with the Seller were or will be at the time of conclusion thereof within the scope, authority, power and objects of the Customer and that the signatory thereto on behalf of the Customer was duly authorised.
12. This Suretyship shall be continuing covering security notwithstanding the death or legal incapacity of the surety until the Customer's obligation to the Seller has been fulfilled.
13. This Suretyship shall be interpreted and governed in all respects by the laws of the Republic of South Africa.
14. The Seller shall have the right at its sole discretion to institute any action against me/us arising out of or in connection with this Suretyship in any Magistrates Court having jurisdiction notwithstanding that the cause of the action may exceed the jurisdiction of that court and I/we hereby consent to the jurisdiction of the Magistrates Court for this purpose. Nothing herein contained, however, shall preclude the Seller from electing to institute action in the appropriate High Court having jurisdiction.
15. Where this Suretyship is signed by the signatory hereto on behalf of a company, close corporation, trust or other corporate entity, then such signatory warrants his authority to do so.
16. I/We acknowledge that I/we have read and understood each term of the Terms and Conditions of Sale (Annexure A) and accept them as binding and acknowledge that the content reflects the true intention of both parties and that this Agreement has been entered into for the benefit of both the Customer and the Seller

**EXECUTING THE DEED OF SURETYSHIP**

THUS DONE AND SIGNED AT _____ ON THIS THE _____ DAY OF _____ 20____		
SURETY PROVIDER 1: _____		
(Signature)		(Full Name)
Physical address and <i>domicilium citandi et executandi</i> _____		
		FAX NO. _____
WITNESS 1: _____		
(Signature)		(Full Name)
WITNESS 2: _____		
(Signature)		(Full Name)
THUS DONE AND SIGNED AT _____ ON THIS THE _____ DAY OF _____ 20____		
SURETY PROVIDER 2: _____		
(Signature)		(Full Name)
Physical address and <i>domicilium citandi et executandi</i> _____		
		FAX NO. _____
WITNESS 1: _____		
(Signature)		(Full Name)
WITNESS 2: _____		
(Signature)		(Full Name)