

1. DEFINITION AND INTERPRETATION

In these terms and the annexures hereto, the words and terms defined in this clause 1 will have the meanings ascribed to them below and cognate expressions bear corresponding meanings, unless inconsistent with or otherwise required by or indicated in the context –

- **"Authorised Order"** the order form to which these terms are attached;

- **"business day"** - a calendar day other than a Saturday, Sunday or an official public holiday in the Republic of South Africa;
 - **"the Customer"** - the entity specified as the Customer on the Authorised Order;
 - **"the Supplier"** - **SITECH SA (Proprietary) Limited (registration number 2004/035456/07);**
 - **"intellectual property rights"** – all patents, trade names, trademarks, logos, service marks, designs, design rights, copyright (including all copyright in any designs and software), source code, inventions, trade secrets, confidential information and all other intellectual property rights and rights of a similar character in and to, or the subject matter of which relates to, the software (whether or not same are registered or capable of registration) and all applications and rights to apply for protection of such rights, and including without limitation copyright in the software, all the usual documentation associated with the software and all upgrades and enhancements of the software from time to time;
 - **"parties"** – SITECH SA (Pty) Ltd and the Customer;
 - **"prime rate"** - the publicly quoted basic rate of interest per annum (as certified by any general manager of ABSA Bank of South Africa Limited whose authority and/or appointment and/or qualification it shall not be necessary to prove) compounded monthly at which ABSA Bank of South Africa Limited lent in South African Rands to First Class Corporate borrowers in general in South Africa on overdraft, calculated on a 365 day year basis (irrespective of whether the year is a leap year or not);
 - **"products"** – the products to be purchased by the Customer from the Supplier specified in the Authorised Order;
 - **"software"** – the software more fully described in the authorised order either installed on the products or installed separately on a computer.
 - **"specifications"** - the specifications detailing the features and facilities of the software and other products as set out in the manufacturer's user manuals supplied with the product and/or software;
 - **"support services"** - the support services to be rendered by the Supplier to the Customer in terms of these terms, more fully described in paragraph 11;
 - **"these terms"** - this document and all annexures hereto, as amended from time to time in writing and in accordance with the provisions hereof;
 - **"upgrade"** – a major revision of the software/product effected by the Supplier/or its licensor, whatever the case may be, and which incorporated additional or enhanced functionality is included in later versions of the software/product;
 - **"user documentation"** - instruction manuals, user guides and other information in respect of the use of the software/product as supplied by the Supplier to the Customer from time to time, together with the software/product, either in printed or machine readable form and as may be amended from time to time;
 - **"VAT"** – Value-Added Tax levied in terms of the Value-Added Tax Act 89 of 1991 (as amended from time to time);
 - In these terms unless the context clearly indicates otherwise, words importing the singular include the plural and vice versa, any gender includes the other gender, and a natural person includes an artificial or juristic person and vice versa.
 - Words and phrases defined in any clause will, for the purpose of that clause and in any other clause of the agreement where appropriate, bear the meaning therein assigned to them.
 - Headings to clauses or sub-clauses in these terms are for the purpose of information and identification only and shall not be used in the interpretation of these terms.
 - Reference to "clauses" and "sub-clauses" will be clauses and sub-clauses of these terms, unless otherwise indicated.
 - Any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the date of the Authorised Order, and as amended or substituted from time to time.
 - If any provision in a definition is a substantive provision conferring a right or imposing an obligation on any party then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of these terms.
 - Where any number of days is to be calculated from a particular day, such number shall be calculated as excluding such particular day and commencing on the next day. If the last day of such number so calculated falls on a day which is not a business day, the last day shall be deemed to be the next succeeding day which is a business day.
 - Any reference to days (other than a reference to business days), months or years shall be a reference to calendar days, months or years, as the case may be.
 - The use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the eiusdem generis rule shall not be applied in the interpretation of such general wording or such specific example/s.
- 2. PRICING AND PAYMENT**
- All prices stated on the Authorised Order are for the products and the software and shall be paid by the customer in South African Rand or such other currency as is indicated on the authorised order.
 - Price quotations excludes VAT and are valid only for fourteen (14) days after the date of quotation and valid only if signed by an area sales or marketing manager of the Supplier and does not accept liability for any price quotations made over the telephone.
 - Any Shipments within South Africa less than R5000.00 will incur a R350.00 levy for Economy Freight. Overnight and Next day Service will be quoted separately for all orders.
 - On exports the quoted price of the products does not, unless otherwise specifically stated in writing, include the costs of delivery of the products to the Customer, which costs of delivery shall be for the account of the Customer.
 - Price quotations are subject to variation due to exchange rate fluctuations, which fluctuations the Supplier shall not need to prove.
 - Prices do not include, and payments shall be made free and clear of and unreduced by, any income, consumption, property, export, excise, sales and use, or other taxes, custom duties, or similar charges, levies or assessments, or by any related withholding obligations or withholding taxes, all of which shall be paid solely by the Customer.
 - The Supplier shall have the continuing right to approve the Customer's credit and may in its sole and absolute discretion, change the Customer's credit terms, and without limiting the foregoing may at any time demand advance payment, satisfactory security (such as, but not limited to, a confirmed, irrevocable letter of credit acceptable to the Supplier, or a guarantee of prompt payment), prior to delivery. Unless otherwise provided by the Supplier in writing, payment terms are strictly Payment on Order. For account holders all amounts due by the Customer in terms of the Authorised Order, unless paid on the due date, bear interest from the due date to date of payment. Such interest shall be calculated at the prime rate +2% and shall be capitalized monthly in arrears.

3. DELIVERY

- The Supplier will use its best commercially reasonable endeavours to deliver the products within the delivery time specified on the Authorised Order unless the Customer is in default with any payments it is required to make to the Supplier in terms of the Authorised Order.
 - The Supplier shall not be liable for late or delayed delivery. The Supplier will deliver the products using its selected method of delivery, to the address specified on the Authorised Order unless otherwise instructed by the Customer. All shipments within the boundaries of South Africa under the value of R500, 000.00 will be insured by the Supplier for goods in transit. Any additional cost of insurance shall be borne by the Customer and such cost shall be added to the amount payable by the Customer for the applicable products. The above does not apply when goods are transported on the Customer's account with his own contracted transporter.
 - Title and risk of loss or damage to each of the products covered by these terms shall pass to the Customer upon delivery of the products by the Supplier (except for title to software products, in which case only title to the media shall pass). Ownership is reserved on any products purchased by the Customer until such time as payment is made in full to the Supplier for such products.
 - With regards to products to be delivered to the Customer outside the Republic of South Africa all products and software will be sent CIF, port/airport of destination. The cost of the insurance and freight will be for the customer's account.
 - Any delivery note (copy or original) signed by the Customer or its authorised agent (i.e. courier) shall be conclusive proof that delivery was made to the Customer.
 - The Customer confirms that its signature, or that of his authorised agent or any other authorised person, of the delivery note, constitutes prima facie proof that the products and services delivered comply with the order and that he read and understood the terms and conditions of sale.
- 4. BINDING CONTRACT**
- Signature by the Customer of the Authorised Order shall be deemed to be acceptance of the offer on the terms recorded in the Authorised Order and these terms shall give rise to a binding contract as between the Supplier and the Customer. The Customer may not cancel all or any part of the Authorised Order without the Supplier's prior written consent, which may be withheld at the Supplier's sole discretion.
 - Any approved order cancellations will incur a surcharge of 5% of the value of the original order, excl. VAT.

5. INSPECTION AND ACCEPTANCE

- The Supplier shall perform such test procedures or programs as the Supplier, in its business judgment, deems appropriate for the products covered by these terms.
- The Customer shall inspect the products immediately upon delivery and shall notify the Supplier within five (5) working days of any nonconformance with the specifications and/or Invoice values/details . If the Customer has not notified the Supplier with written notice of non-conformance within the 5 day period, the Customer will be deemed to have accepted the products/invoice and to have waived its right to return the products. Should any product fail to conform to the requirements of this paragraph, the Supplier may, at its option, repair or replace that product, or refund the purchase price paid by the Customer in relation to that specific product. In no event shall any item be returned, reworked, or scrapped by the Customer without the Supplier's express written authorisation.

6. SUBSTITUTIONS AND MODIFICATIONS

- The Supplier may at any time substitute or modify any products covered by these terms, provided that such substitution or modification will not materially adversely affect the overall performance of the item as stated in the relevant published specifications.

7. WARRANTIES

- New products carry the warranty in accordance with the manufacturer's product specific warranty. Services carry no warranty.
- No warranties, guarantees or representations, express or implied or tacit whether by law, a contract or otherwise and whether they induced the contract or not, which are not set forth in these terms, shall be binding on the Supplier.
- Subject to the remaining provisions of this clause 7 and to clause 8, the Supplier warrants that the products shall be free from defects in material and workmanship under normal use for a period of one (1) year starting from the date of delivery of the products by the Supplier to the Customer ("**the Warranty**").
- The Supplier shall not be responsible for defects or performance problems that arise from the operation of the products in conjunction with any software or equipment not specifically supplied by the Supplier and shall furthermore not be responsible for any costs incurred by the Customer in dismantling or fitting replacement parts or reassembling the products where it is found that the defect arose as a result of the negligent or wilful conduct of the Customer. In order to be valid, a claim in terms of the Warranty must be in writing, specifying the alleged defect, and supported by a copy of the delivery note.
- The Warranty shall only apply in the event and to the extent that the products are properly and correctly installed, configured, interfaced, maintained, stored and operated in accordance with the Manufacturer's applicable operator manual and specifications; and the products are not modified or misused.
- The Supplier's sole liability and the Customer's exclusive remedy under the Warranty shall be limited to the repair or replacement of any products that fail to conform to the Warranty ("Nonconforming Items") or refund of the Customer's purchase price for any such Nonconforming Item, at the Supplier's option; conditioned on the following: the Customer shall return the Nonconforming Item to the Supplier at the address designated by the Supplier on the Authorised Order together with a detailed and complete description of the reason for return; any Nonconforming item or component parts which has been replaced by the Supplier shall become the Supplier's property; and the Customer shall pay the Supplier's customary charges for repair or replacement of the products, and related shipping expenses, to the extent that the Warranty coverage does not apply.
- The Warranty shall not apply to software products covered by these terms, which shall be subject to the relevant Software License Agreement included with the software.
- All Warranty claims/repairs are based on a "Carry In Basis", which means that the Supplier will only carry the courier costs to return the goods to the Customer.
- Warranty repairs/replacements to products to be delivered to the Customer outside the Republic of South Africa, will be returned or sent on a CIF Basis, and any clearing charges, taxes and duties will be for the customer's account

8. WARRANTY EXCLUSIONS

- The Supplier shall have no liability to the Customer, and the provisions of clause 7 shall not apply, to the extent that any claim of infringement arising from the following - any modification, servicing or addition made to the products by anyone other than the Supplier or its authorised representative; the use of the products as a part of, or in combination with, any devices or software not provided to the Customer by the Supplier; compliance with the Customer's design requirements or specifications; use of the products and the software to practice any method or process which does not occur wholly within the scope of the products use and specifications; or any damage the Customer may suffer as a result of the improper use of the products

9. SOFTWARE

- Subject to these terms, the Supplier grants the Customer a non-transferable and non-exclusive right and license to use one copy of the software.
- Unless otherwise agreed in writing, all software which comprises or which is embodied in the products is supplied under the license referred to in clause 9, bullet 1.
- In relation to the software, the Customer agrees that it will not, whether as proprietor, partner, director, shareholder, natural or juristic person, association of persons, employee, consultant, contractor, financier, agent, licensor, distributor, representative, assistant or in any other capacity whatsoever, whether directly or indirectly: sell, lease, license or sub-license the software or any part, variation, modification, copies, releases, versions and/or enhancements thereof; use the software or any component of the software otherwise than as authorised in terms of these terms; provide, disclose, divulge or in any other manner make available or permit the use of the software or any component thereof by any person other than the Customer's employees who are required thereto by virtue of the nature of their employment with the Customer and then at no time use more than one copy; or reverse engineer, decompile or translate the software to another computer language, in whole or in part, and/or make copies of media translations of the software.
- The Supplier shall deliver to the Customer a copy of the software (as well as any user documentation) simultaneously with the delivery of the products in terms of clause 3.

10. INTELLECTUAL PROPERTY

- The Customer acknowledges that any product and/or software supplied in terms hereof is subject to the proprietary rights of The Supplier and/or its licensor. The Supplier and/or its licensor will retain full intellectual property rights associated with the products and/or software and will also retain full title to the software.
- The Customer will not copy or duplicate, or permit anyone else to copy or duplicate, any part of the software, neither will the Customer create or attempt to create, or permit anyone else to create or attempt to create, by use of reverse engineering, the source programs or any part thereof from the object programs. The Customer shall not directly or indirectly sell, transfer, offer, disclose, lease or license any intellectual property in the products and/or the software to any third party, or otherwise infringe the intellectual property rights of the Supplier and/or its licensor.

11. TRAINING AND SUPPORT SERVICES

- The Supplier within the time specified and agreed upon by both parties shall make a suitably qualified expert available to the Customer to assist the Customer with the installation and use of the software and related products at the relevant site of the Customer. The Customer shall ensure that a nominated representative of the Customer ("**the Customer Representatives**") be available on site, on the agreed date upon which the Supplier and/or its authorised agent visits the premises of the Customer, and the Supplier shall ensure that the Customer Representatives receive training from the Supplier's expert, so as to ensure that the Customer Representatives are able to operate the product/s supplied. ("**Operating Training**") and use the software and the products. The Supplier shall further train the Customer Representatives, if applicable, on how to use the products for surveying purposes ("**Surveying Training**"). A training fee, as specified on the Authorised Order, shall be payable to the Supplier. The fee shall vary depending on the site and/or premises of the Customer which the Supplier has to visit in order to train the Customer's Representatives. The Supplier shall be entitled to be compensated in respect of any and all expenses it might incur in visiting the premises.

12. DEFAULT

- The Supplier reserves the right, by written notice of default, to immediately cancel an Authorised Order, without liability to the Supplier, in the event of the happening of any of the following - liquidation of the Customer or the Customer performing any act which is regarded as an act of insolvency in terms of the Insolvency Act No. 24 of 1936; the Customer applying for a voluntary liquidation; the Customer being placed into judicial administration; the Customer entering into a compromise or scheme of arrangement with its creditors; if the Customer fails to perform as specified herein; or if the Customer breaches any of the terms hereof.
- The Supplier reserves the right to either demand the return of any products and/or software which have been dispatched but not yet paid for and/or to claim all damages, losses and liability incurred by the Supplier directly or indirectly resulting from the Customer's breach of these terms.

13. ASSIGNMENT

- Neither these terms, the Authorised Order nor any rights or obligations herein may be assigned by the Customer nor may the Customer delegate the performance of any of its duties hereunder without, in either case, the Supplier's prior written consent, which may be withheld at the Supplier's sole discretion.

14. DISPUTES

- Any dispute arising under or in connection with these terms or the sale of the products shall be finally settled by arbitration before a single arbitrator appointed by agreement or (in default) nominated on the application of either party in accordance with the rules of the Arbitration Foundation of South Africa ("AFSA").
- Notwithstanding the above, in the event that the Customer is a peregrinus of South Africa, the Customer consents to the jurisdiction of AFSA to hear any dispute arising under or in connection with these terms or the sale of the products. The arbitration shall be conducted in the English language with the venue of the arbitration being, 352 Angus Crescent, Northlands Business Park, New Market Street, Northriding, Randburg, Gauteng.
- The arbitrator shall make an award in respect of the costs of the arbitration having regard to the substantial success of each party in the outcome of the proceedings.
- The parties irrevocably agree that the decision in the arbitration proceedings shall be final and binding on the parties; shall be carried into effect; and may be made an order of any court of competent jurisdiction.
- These terms or the Authorised Order shall not preclude either party from obtaining interim relief on an urgent basis from a court of competent jurisdiction within the Republic of South Africa, pending the outcome of the negotiations, mediation or decision of the arbitrator as the case may be from time to time.
- These terms and the Authorised Order shall be governed by the laws of the Republic of South Africa and excluding its conflict of law's provisions in the event of an international export transaction.

15. NOTICES

- Any notice required or permitted under these terms will be deemed given and served when personally delivered, or five (5) business days after sent by reputable international courier requiring signature for receipt, addressed to the party at its notice address. Either party may change its notice address by written notice to the other.

16. FORCE MAJEURE AND LIMITATION OF LIABILITY

- The customer shall not have a claim against the Supplier for any delay or failure of the Supplier to carry out any of its obligations under this agreement arising from or attributable to acts of God, war, terrorism, government, labour action or unrest, failure of suppliers or contractors or any other cause whatsoever beyond the control of the Supplier ("force majeure").
- The Supplier's aggregate liability to the Customer under, or for breach of, these terms or the Authorised Order will not exceed the amounts actually paid by the Customer to the Supplier under these terms or Authorised Order. Under no circumstances will the Supplier be liable for any consequential, direct, indirect, special, punitive or incidental damages, whether foreseeable or unforeseeable, based on claims of the Customer, including, but not limited to, claims for loss of data, goodwill, profits, loss of use of money or use of products or software, interruption in use or availability of new products; arising out of a breach or failure of expressed or implied Warranty, breach of contract, misrepresentation, negligence, strict liability in delict or otherwise, whether based on these terms, any commitment performed or undertaken under or in connection with these terms or otherwise except only in the case of personal injury where and to the extent that the applicable law requires such liability.

17. INCONSISTENT TERMS

- In the event of any conflict between the printed terms on these terms, the information on the Authorised Order, and any attachments thereto: (i) any terms on the Authorised Order shall have precedence over these terms; and (ii) any typed or written terms, initialled by both parties, shall have precedence over pre-printed terms.

18. INDEPENDENT CONTRACTORS

- The relationship of the Supplier and the Customer established by these terms is that of independent contractors, and neither party is an employee, agent, partner or joint venture of the other. Neither party shall voluntarily or involuntarily bind nor attempt to bind the other to any contract or to the performance of any obligation, nor represent to third parties that it has any right to enter into any obligation on the other's behalf.

19. NO INDULGENCE

- No indulgence which the Supplier may grant to the Customer, shall constitute a waiver of any of the rights of the Supplier which shall not thereby be precluded from exercising any rights against the Customer which might have arisen in the past or might arise in the future.

20. SEVERABILITY

- If any provision hereof is held to be illegal, invalid or unenforceable for any reason, such provision shall be deemed to be pro non scripto, but without affecting, impairing or invalidating any of the remaining provisions of this agreement which shall continue to be of full force and effect.

For and on behalf of SITECH SA (Pty) Ltd, previously SITECH Southern Africa (Pty) Ltd.