

# Terms and Conditions of Sale of Simpology Technology Services CC

## TERMS AND CONDITIONS OF SALE OF SIMPOLOGY TECHNOLOGY SERVICES CC

Reg No CC\2006\2826

### 1. **INTERPRETATION**

1.1 In this agreement:-

1.2 clause headings are for convenience and shall not be used in its interpretation;

1.3 unless the context clearly indicates the contrary intention:-

1.3.1 an expression which denotes:-

1.3.1.1 any gender includes the other genders;

1.3.1.2 a natural person includes an artificial person and vice versa;

1.3.1.3 the singular includes the plural and vice versa;

1.3.2 the following expression shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings:-

“customer” – shall mean the person whose name appears on the customer application which is annexed hereto, or if no such application is annexed hereto, or no name appears

1.3.2.1 thereon, or in any other circumstances, any person or persons at whose request or on whose behalf the supplier undertakes to supply any goods, do any business, or provide any advice or service;

1.3.2.2 “signatory” – shall mean the individual who signs this agreement and the annexed customer application on behalf of the customer;

1.3.2.3 “supplier” – shall mean Simpology Technology Services CC.

1.3.2.4 “goods” – shall mean any items of whatsoever nature that are supplied to the customer in terms of this agreement.

### 2. **THESE TERMS AND CONDITIONS PREVAIL**

It is recorded that the only basis upon which the supplier is prepared to do business with the customer is that, notwithstanding anything in the customer’s enquiry, specification,

2.1 acceptance, order or other documentation or any other documentation or discussion/s to the contrary, the terms and conditions contained herein shall operate in respect of any and all business between the customer and the supplier.

2.2 All and any business undertaken, provided whether gratuitously or not by the supplier is and shall be subject to the terms and conditions contained herein and each term and

condition shall be deemed to be incorporated in and to be a term and condition of any agreement between the supplier and the customer.

### **3. QUOTATIONS**

3.1 Any quotation given is not an offer by the supplier to sell the goods but constitutes an invitation by the supplier to the customer to do business with the supplier.

3.2 A quotation may be revoked at any time by the supplier.

3.3 The supplier may accept or reject in whole or in part any order placed upon it by the customer pursuant to the quotation. Accordingly, a contract shall only come into force between the supplier and the customer if after receipt by the supplier of the customer's order or acceptance of the quotation, the supplier confirms to the customer that such a contract has been concluded or if the supplier supplies, or tender to supply, the goods in question to the customer.

3.4 A quotation is only valid of 24 hours from the date and time the supplier transmitted said quotation via facsimile or electronic mail.

3.5 The quotation is based on rates of exchange, freight charges, insurance, railage, costs of labour and materials and other charges ruling at the date of the quotation. Any variation occurring subsequent to the date of the quotation in any of the aforesaid rates or charges, as the case may be, shall entitle the supplier to vary the amount of the quotation accordingly.

### **4. PLACING OF ORDERS**

4.1 If telephone orders are placed by the customer, the supplier may require such orders to be confirmed in writing by the customer, prior to acceptance by the supplier.

4.2 An order may not be withdrawn until accepted or rejected by the supplier. Any such order shall upon acceptance thereof by the supplier be irrevocable by the customer.

### **5. PURCHASE PRICE AND PAYMENT**

5.1 Orders are accepted by the supplier only on the basis that the prices charged will be those ruling at the date of dispatch of the goods, unless otherwise expressly stated. A copy of the suppliers ruling price from time to time may be obtained from the supplier by the customer on request.

5.2 Unless otherwise expressly stated, prices are exclusive of value added tax which shall be for the account of the customer. The customer shall pay or reimburse to the supplier the amount of any value added tax simultaneously with the purchase price.

5.3 The customer shall be obliged to pay to the supplier in addition to the contract price herein:-

5.3.1 the amount of any tax, duty or other charge of any nature whatsoever imposed by any law, regulation or enactment of whatsoever nature which comes into force on the date after the date on which any price charged is determined;

5.3.2 any other additional costs of any nature whatsoever arising due to factors beyond the control of the supplier.

5.4 In particular, but without limiting the generality of the foregoing, the supplier shall be entitled to increase the purchase prices in respect of any goods supplied in order to make provision for any increases in costs arising as a result of or during the period of any delay caused by the customer.

5.5 Any expense incurred by the supplier at the instance of the customer in modifying or otherwise altering or making additions to the design, quantities or specifications for standard goods, and any expenses arising as a result of suspension of work by the supplier due to instructions given, or a failure to give instructions by the customer, shall be added to the purchase price in respect of the relevant goods.

5.6 The purchase price in respect of any goods sold by the supplier to the customer in terms of this agreement shall be payable:-

5.6.1 by the customer to the supplier, at the supplier's head office or at such other place as the supplier may direct from time to time;

5.6.2 in Namibian currency without deduction or set-off and free of any exchange;

5.6.3 during or before the expiry of the credit period indicated on the customer application which is annexed hereto, which period shall commence upon the issuing of an invoice by the supplier, or if there is no credit period indicated, or no credit period has been approved, or no customer application is annexed, cash on order.

5.7 After the completion of the customer application by the customer the supplier shall at its own discretion be entitled to:-

5.7.1 make such enquires as it may deem necessary to determine whether or not to grant the customer credit as applied for in the customer application, or on any other terms, or at all;

5.7.2 determine whether or not to grant the customer credit as applied for in the customer application; and

5.7.3 inform the customer of the determination made pursuant to 5.7.2 above.

5.7.4 The Customer herewith authorises the Supplier to contact and request information from any person, credit bureau or business to obtain information relevant to the Customer's credit assessment.

5.8 Until a determination is made by the supplier as contemplated in 5.7.2 above and to the extent that it does not, any goods supplied by the Supplier to the Customer shall be supplied on cash on order basis only.

5.9 The purchase price does not include charges for off-loading of the goods at the customer's premises. The customer shall provide at its cost the necessary labour, equipment or facilities required for all loading of the goods.

5.10 The customer has no right to withhold payment for any reason whatsoever. The customer is not entitled to set off any amount due to the customer by the supplier against any debt owed by the customer to the supplier nor shall any payment be withheld by virtue of any alleged counterclaim against the supplier by the customer.

5.11 The customer hereby agrees that any item handed in for repair may be sold by the supplier to defray the cost of such repairs if the item remains uncollected within 30 days of the repair being completed.

## 6. **INTEREST**

6.1 All overdue amounts shall attract interest at the prescribed rate in terms of the National Credit Act and shall be compounded monthly in arrears on all amounts owing by the customer to the supplier which have not been paid on the due date thereof, reckoned from the due date thereof until date of payment. Such interest shall be payable on demand.

## 7. **DELIVERY**

7.1 Unless otherwise agreed, goods shall be delivered to the customer, at the supplier's premises.

7.2 The customer shall be responsible for procuring and arranging the transportation of the goods from the supplier's premises to any destination required by the customer.

7.3 Delivery shall be completed when the goods are handed to the customer or its agent at the supplier's premises and before loading commences.

7.4 After completion of delivery, the supplier shall not be responsible for the arrival of the goods at their destination or for any loss or damage to the goods from any cause whatsoever, while in transit.

7.5 Should the supplier at the customer's request agree to engage a carrier to transport the goods for the customer then:-

7.5.1 the supplier is authorized to engage a carrier on such terms and conditions as it deems fit;

7.5.2 the customer shall indemnify the supplier against all demands and claims, which may be made against it by the carrier so engaged and all liability, which the supplier may incur, to the carrier arising out of the transportation of the goods.

7.6 The risk in the goods ordered by the customer shall pass to the customer upon delivery.

7.7 If the customer fails to take delivery of the goods when delivery falls due, the supplier shall be considered to have tendered and the customer to have refused to accept delivery. In this event, the costs of storing the goods shall be for the customer's account and shall

be paid by the customer to the supplier on demand and the risk in the goods shall pass to the customer (if for any reason it has not yet passed to the customer).

7.8 The supplier does not guarantee timeous delivery for the supply of the goods on any specified date, but will endeavor to give delivery on the date stated in the contract.

7.9 Notwithstanding any other provision in the contract to the contrary, the supplier's obligation to deliver the goods shall in all cases be subject to the following conditions precedent:-

7.9.1 the availability to the supplier of all materials and supplies required for the manufacture of the goods or their components, where the goods or components in question are being manufactured by the supplier;

7.9.2 the timeous receipt by the supplier from its own suppliers of the goods or their components, where the goods or components in question are being purchased by the supplier;

7.10 Time shall not be of the essence of the contract and the delivery dates shall be treated as approximate only and the supplier does not guarantee the supply of the goods on any specified date. Under no circumstances shall the customer be entitled to withdraw from or terminate the contract on account of any delay in delivery or have any claim of any nature whatsoever against the supplier arising from late delivery.

7.11 The customer shall sign the supplier's delivery note in respect of each delivery made unless the customer disputes that the goods delivered do not accord with the quantity, or specification reflected thereon or does not accord with the order.

7.12 The supplier's delivery note, waybill or the debit note of any authorized carrier signed by the customer or an employee or agent of the customer shall be prima facie proof (meaning proof at face value) on its mere production that the goods delivered thereunder accorded with the quantity reflected thereon and with that ordered. The onus shall then be on the customer to prove the contrary.

## 8. **RESERVATION OF OWNERSHIP**

8.1 Ownership of the goods shall not pass to the customer until the contract price (including interest if any) in respect of the goods in question has been paid. The provisions hereof shall apply notwithstanding the installation of such goods in the customer's premises or the accession thereof to any of the customer's goods or that the goods may be incorporated into or form part of other goods or change their essential character. All goods, whether fixed to immovable property or not, shall be deemed to remain movable property and be deemed to be severable.

## 9. **WARRANTIES, GUARANTEES and RETURN OF GOODS**

9.1 No warranties, guarantees or representations, express or implied or tacit whether by law, contract or otherwise and whether they induced the contract or not, which are not set forth in this agreement shall be binding on the supplier, the customer irrevocably waiving any right (common law or otherwise) it may have to rely thereon, and the goods are purchased

on the basis that they are taken voetstoots and with the exclusion of all common law and other remedies including aedelitian remedies, whether as to the suitability of the goods sold for any specific purposes or (without limiting the generality of the foregoing) otherwise.

9.2 To the extent that goods supplied by the supplier are in any way defective, the customer shall be entitled, within 6 months of the delivery of the relevant goods, to claim the replacement or repair of the goods to eliminate any defect in workmanship or materials found to be due exclusively to any acts or omissions on the part of the supplier, in the supplier's sole opinion (which shall be binding on the customer), of which defects the supplier shall have been notified in writing by the customer within 10 days after the defect arises (which notice shall specify the alleged defect), provided that the supplier shall have been given a reasonable opportunity of inspecting any alleged defect. The supplier's liability shall be limited on return to the supplier of the goods or parts thereof, to what is set out above in this subparagraph.

9.3 In order to be valid, a claim in terms of the guarantee as set out in clause 9.2 must be in writing, specifying the alleged defect, and supported by the original tax invoice. In addition the goods must be returned by the customer to the supplier at the customer's expense, packaged in their original undamaged packaging material.

9.4 The parties agree that the supplier shall have no liability in respect of any injury, loss or damage (direct, indirect or consequential) arising out of the use of, or inability to use, the goods and whether or not occasioned by the supplier's negligence (gross or otherwise) or any act or omission on its part. Without limiting the foregoing the supplier does not warrant that the goods will be fit for the purposes for which they are to be used by the customer (notwithstanding that the use to which the customer intends to put the goods is known to the supplier). For the purposes hereof, any reference to the supplier shall include its servants, agents, contractors or any other person for whose acts or omissions the supplier may be liable in law. This also constitutes a stipulation altering in favour of such persons the benefits of which may be accepted by them at any time.

9.5 The supplier shall be relieved of all obligations in terms of this clause, if:-

9.5.1 repairs or modifications have been made by persons other than the supplier, unless such repairs or modifications are made with the prior written consent of the supplier;

9.5.2 any goods are operated with any accessory, equipment or part not specifically supplied or approved in writing by the supplier;

9.5.3 the goods shall not have been operated or maintained in accordance with the supplier's instruction, or under normal use; the goods shall not have been properly installed.

9.6 If repairs or replacements are effected by the supplier, only the parts actually working on and not the complete goods shall be subject to a new guarantee, if any, hereunder.

9.7 Repair times and repair costs given are merely estimates and are not binding on the Supplier; time is not of the essence of this agreement unless expressly agreed upon in writing by the Supplier. The Supplier shall not be liable for any loss or damage of

whatsoever nature which the Customer may suffer as a result of any unforeseen costs and/or delayed repairs.

9.8 Any item handed in for repair may be sold by the Supplier to defray the cost of such repairs if the item remains uncollected within 30 days of the repairs being completed.

9.9 Any item delivered to the Supplier shall serve as a pledge in favour of the Supplier for present and past debts and the Supplier shall be entitled to retain or realise such pledges as it deems expedient. The sworn or realised value of pledged goods will be offset against the Customer's debts and any excess balance will be paid to the Customer.

9.10 Customers who acquire goods for the purpose of on-selling those goods, whether that customer is permitted to do so or not (and nothing herein contained shall be deemed to allow the customer to on-sell goods acquired from the supplier whilst ownership vests in the supplier), shall not advertise or issue or in any other way give or make any warranties, guarantees or representations as to the goods in any form whatsoever or offer to do so, which could result in liability being imposed upon the supplier.

9.11 The above warranties are subject to the following conditions:-

9.11.1 the supplier shall be under no liability to the customer until the customer has paid the full amount due to the supplier in respect of the goods concerned;

9.11.2 the supplier shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the suppliers instructions (whether oral or in writing), improper use outside the suppliers specifications, damage to the goods caused by improper maintenance, service or repair by untrained personnel or technicians, and unauthorized alterations or modifications of the goods;

9.11.3 the supplier shall be under no liability in respect of parts, materials or equipment which are accepted in the industry to have a limited life expectancy or parts, materials or equipment, which need to be replaced at specified and published service intervals ("consumable parts");

9.11.4 the supplier shall be under no liability in the event that spare parts and consumable parts other than those recommended for use by the supplier are fitted, attached or used on the goods.

9.12 Notwithstanding anything to the contrary in this agreement, the supplier shall not be liable to the customer by reason of any representation or implied warranty, condition or other term or any duty at common law, or under the express terms of this agreement, for any consequential loss or damage (whether for loss or profit or otherwise occasioned by the negligence of the supplier or its employees or agents or otherwise) arising out of or in connection with any act or omission of the supplier relating to the supply of the goods, their resale by the customer or use by any third party.

## 10. **HANDLING FEE ON RETURN OF GOODS**

10.1 The supplier reserves the right to levy a handling fee of 15% of the purchase price of the relevant goods on such goods returned to and accepted by the supplier. The supplier is not obliged to accept the return of any goods and this clause shall not be used to imply that the supplier shall be obliged to accept the return of any goods.

## 11. **BREACH**

11.1 Subject to clause 11.2 if the customer breaches any of the terms or conditions hereof or any other agreement with the supplier or fails to pay any amount payable by it on due date or commits any act of insolvency or endeavours to compromise generally with its creditors or does or causes to be done anything which may prejudice the supplier's rights hereunder or at all, or allows any judgment against it to remain unsatisfied for 7 days or is placed into provisional or final liquidation or judicial management or under provisional or final sequestration or if his estate is voluntarily surrendered, the supplier shall have the right, without prejudice to any other right which it may have against the customer, to elect to :-

11.1.1 treat as immediately due and payable all outstanding amounts which are still not yet due and payable and to claim such amounts as well as any other amounts in arrears including interest and to cease performance of its obligations hereunder as well as under any other contract with the customer until the customer has remedied the breach;

11.1.2 forthwith cancel this agreement and retake possession of any of the goods sold and with full reservation of all rights to which the Supplier is entitled to in terms of this agreement and the common law including the right to institute a claim for damages against the Customer.

11.2 The supplier shall not be obliged to comply with its obligations hereunder in any respect whatsoever for so long as the customer is indebted to the supplier in any amount whatsoever in respect of any cause whatsoever or fails to comply with any other obligations to the supplier, whether arising out of this contract or otherwise. In particular, without limiting the generality of the foregoing, if delivery of any particular order is to take place in stages, the supplier shall not be obliged to deliver any part of the order until the purchase price which is due in respect of the part of the order which has already been delivered, has been paid.

11.3 No claim under this contract will arise against the supplier unless the customer has given the supplier 30 days written notice sent by prepaid registered post to rectify any defect or breach of contract.

11.4 The customer agrees that the amount of any indebtedness to the supplier shall be determined and proven by a certificate issued by the supplier and signed on behalf by any person duly authorized by the supplier, which authority need not be proven. Such certificates shall be binding and shall be prima facie proof (meaning proof at face value) of the indebtedness of the customer to the supplier and valid as a liquid document in any Court of competent jurisdiction for the purposes of obtaining provisional sentence or summary judgment or other judgment proceedings against it and the customer acknowledges its indebtedness in respect of any amount so certified.

11.5 The customer hereby indemnifies the supplier against any and all damage of whatsoever nature, howsoever and by whomsoever caused in relation to the removal of goods, and without derogating from the generality of the foregoing, the removal of repossessed goods from the premises of the customer.

## 12. **LAW AND JURISDICTION**

This agreement shall be governed by and construed in accordance with the laws of the Republic of Namibia and the parties hereby submit to the non-exclusive jurisdiction of the Namibia Courts.

## 13. **SECURITY FOR OBLIGATIONS**

The supplier reserves the right to require satisfactory security from the customer for the due performance of any of the customer's obligations hereunder including but not limited to the payment of the purchase price. If the supplier so requires, the customer shall deliver to the supplier prior to the supplier complying with any of its obligations hereunder, confirmed irrevocable letters of credit by financial institutions acceptable to the supplier. If such security or guarantees or letters of credit are not furnished within 7 days after any such demand, the supplier shall be entitled to withdraw from the contract in whole or in part.

## 14. **EXEMPTION AND INDEMNITY**

The customer shall have no claim of any nature whatsoever for damages, a remission of the purchase price, cancellation or otherwise, against the supplier, its servants, agents or others on whose behalf the supplier would be liable, in respect of any loss or damage sustained by the customer of any nature whatsoever or any damage caused to the assets of the customer or assets kept on its premises by any third parties or in regard to the customer's business or sustained by any of its customers, howsoever caused including the negligent (including grossly negligent) acts or omissions of the supplier, its servants, agents or others for whom it may be liable in law. This constitutes also a stipulation altering in favour of such person the benefits of which may be accepted by them at any time.

## 15. **CONSEQUENTIAL LOSS**

Under no circumstances whatsoever including as a result of its negligent (including grossly negligent) acts or omissions or those of its servants, agents or contractors or other persons for whom in law it may be liable, shall the supplier be liable for any consequential loss sustained by the customer. This also constitutes a stipulation altering in favour of such persons and benefits of which may be accepted by them at any time.

## 16. **SEVERABILITY**

Each paragraph or clause in this agreement is severable the one from the other and if any paragraph or clause is found by any competent Court to be defective or unenforceable for any reason whatsoever, the remaining paragraphs or clauses shall be of full force and effect and continue to be of full force and effect.

17. **FORCE MAJEURE**

Any transaction is subject to cancellation by the supplier due to force majeure from any cause beyond the control of the supplier, including, without restricting the generality of the foregoing, inability to secure labour, power, materials or supplies, or by reason of an act of God, war, civil disturbances, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation.

18. **COSTS**

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

19. **DOMICILIUM AND NOTICES**

The Customer chooses as its domicilium citandi et executandi (in other words, the address at which the Customer and the Signatory will accept all Notices, legal documents and the like, whether or not the Customer and/or the Signatory is still at the address chosen) for the purposes of the giving of any notice, the payment of any sum, serving of any process and for any other purpose arising from this agreement the physical address as described in paragraph 3 of Section A on page 2 hereto.

20. **NOTIFICATION TO LANDLORD**

20.1 Pending payment in respect of the goods or any items comprising the goods (hereinafter collectively referred to as “the goods”) which have been delivered, to the customer, the customer:-

20.1.1 shall, if the goods are not to be kept at the customer’s physical address of the customer as reflected in paragraph 3 of Section A on page 2 forthwith notify the supplier in writing of the address of the premises in or upon which the goods will be kept;

20.1.2 acknowledge that the goods are movable property and that they shall so remain notwithstanding the means used to install them in any place or premises;

20.1.3 shall forthwith, and in the event that the premises where the goods are to be kept or utilized be rented, notify the landlord of the supplier’s reservation of ownership in the goods;

20.1.4 shall not, without the prior written consent of the company remove the goods beyond the borders of the Republic of Namibia as territorially constituted on the date of delivery of the goods.

20.2 The customer shall provide the supplier within a reasonable time with a written acknowledgement from the landlord to whom such notice as set out in 20.1.3 above, may have been given.

## 21. **NO VARIATIONS, AMENDMENTS OR INDULGENCES**

21.1 This agreement constitutes the whole agreement between the customer and the supplier relating to the subject matter hereof.

21.2 Subject to what is set out in clause 21.1 above, if there is any conflict between the provisions of this agreement and erstwhile customer ship agreements, at any time, the provisions of this agreement shall prevail.

21.3 No amendment or consensual cancellation of this agreement or any provision or term thereof, or of any agreement, bill or exchange or other document issued or executed pursuant to or in terms of this agreement and no settlement of any disputes arising under this agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this agreement shall be binding unless recorded in a written document signed by an authorized representative of the supplier.

## 22. **GENERAL**

22.1 This agreement is personal to the Customer, which may not without the written consent of the supplier assign, mortgage, charge or dispose of any of its rights hereunder, or subcontract or otherwise delegate any of its obligations hereunder.

22.2 The customer is an independent contractor and nothing in this agreement shall create, or be deemed to create, a partnership or the relationship of principal and agent or employer and employee between the parties.

22.4 The customer acknowledges that, in entering into this agreement, it does not do so on the basis of, and does not rely on, any representation, warranty or other provisions except as expressly provided herein, and all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.