

NETWORK ALLIANCE | TERMS AND CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION

- 1.1. In this Agreement, unless inconsistent with or otherwise indicated by the contrary, the following terms shall have the following meanings:
 - 1.1.1. **“Customer”** means any party with whom Network Alliance contracts for the sale of any Goods.
 - 1.1.2. **“Goods”** means the products and/or services including but not limited to hardware, software and networking equipment, as indicated on or in any Network Alliance, price lists, quotations, proposals, orders or invoices.
 - 1.1.3. **“Network Alliance”** means Network Alliance (Pty) Ltd, Registration Number 2002/027041/07, with its head office located at 137 Akkerboom Street, Zwartkop Ext. 4, Centurion, 0157, Gauteng, Republic of South Africa.
 - 1.1.4. **“Parties”** means Network Alliance and the Customer.
- 1.2. The headings in this document are included for convenience and are not to be taken into account for the purpose of interpreting this contract.
- 1.3. When any number of days is prescribed in this Agreement, the same shall be reckoned exclusively of the first and inclusive of the last day, unless the last day falls on a Saturday, Sunday or statutory public holiday in the Republic of South Africa, in which case the last day shall be the next succeeding day other than a Saturday, Sunday or statutory public holiday. When reference is made to a “business day” however, the period shall be exclusive of Saturdays, Sundays or statutory public holidays.
- 1.4. Where figures in this Agreement are described both in numerals and in words, the words shall prevail in the event of any conflict between the two.
- 1.5. Words importing the singular shall include the plural, and vice versa, and words importing the masculine gender shall include the feminine and neuter genders, and vice versa, and words importing persons shall include partnerships, trusts and bodies corporate, and vice versa.

2. NATIONAL CREDIT ACT 34 OF 2005 AND CONSUMER PROTECTION ACT 68 OF 2008

- 2.1 The Parties acknowledge that the National Credit Act 34 of 2005 and/or the Consumer Protection Act 68 of 2008 came into effect prior to the Effective Date of this Agreement. To the best of their knowledge and belief the Parties agree that the provisions of the aforementioned Acts - to the extent lawfully permitted by aforementioned Acts - do not apply to the Terms and Conditions of this Agreement and/or the transactions contemplated herein, by virtue of the fact that the Customer constitutes a juristic person whose asset value or annual turnover exceeds the stated threshold value as per the corresponding sections of the Acts.
- 2.2 In the event that it transpires that this Agreement is subject to the provisions of the National Credit Act 34 of 2005 and/or the Consumer Protection Act 68 of 2008, the Parties to this Agreement shall cooperate with one another in order to give effect to the intent and purpose of the Act(s). To this end, the Parties to this Agreement will:
 - 2.2.1 Enjoy the protection afforded by the Act(s); and
 - 2.2.2 Execute in good faith their respective obligations as stipulated in the corresponding provisions of the Act(s).

3. PRICES AND QUOTATIONS

- 3.1. The price of the Goods sold shall be the usual price as set out in the Network Alliance price list at the time of the sale of the Goods.
- 3.2. Prices are subject to change due to factors outside the reasonable control of Network Alliance, including but not limited to currency fluctuations and price increases passed on by suppliers/distributors. To this end, Network Alliance reserves the right to change the prices of the Goods from time to time without prior notice to the Customer.

- 3.3. All quotes remain valid strictly until 17:00 (GMT +2) on the date the original quote was prepared. Network Alliance reserves the right, in its sole and absolute discretion, to revise and/or amend the quotation and/or withdraw an offer in respect of any quotation for which an order and/or payment was not received during the aforementioned validity period. The validity of any price quoted is subject to product and/or stock availability.

4. PAYMENT

- 4.1. The Customer shall pay the amount on the tax invoice at the offices of Network Alliance. Payment is due immediately save for Customers with approved credit facilities, in which case payment is due within 30 days of date of the tax invoice.
- 4.2. Where the Customer uses a postal service to effect payment or to deliver or return Goods, such postal service shall be deemed to be the agent of the Customer. Likewise, where the Customer uses Internet banking, the bank shall be deemed to be the agent of the Customer. Network Alliance shall not bear any risk associated with the loss of cheques sent via post by the Customer.
- 4.3. The Customer has no right to withhold payment or make set offs or deductions from any payment due by it for any reason whatsoever. No extension of payment of any nature will be granted unless reduced to writing and signed by the Customer and a duly authorised representative of Network Alliance.
- 4.4. Network Alliance shall have the right to suspend deliveries and to exercise its rights in terms of clause 5 below in the event that any amount due by the Customer is unpaid.
- 4.5. In the event of breach of these Terms and Conditions by the Customer, which breach may include failure and/or refusal to pay in full any amount owed in terms of 4.1 above, Network Alliance will notify the Customer in writing of such breach. Should the Customer fail and/or refuse to remedy such breach within two (2) business days from receipt of written demand, Network Alliance shall be entitled without prejudice to its rights in law or in terms of this agreement to:
- 4.5.1. Immediately institute legal proceedings against the Customer; and/or
- 4.5.2. Cancel the sale and/or suspend the provision of goods/services for which Network Alliance has not received payment; and/or
- 4.5.3. Claim damages and/or seek any other legal remedy it may deem appropriate.
- 4.6. Should any amount not be paid by the Customer on the due date, the full outstanding amount in respect of all purchases by the Customer shall become immediately due and payable and the Customer shall be liable to pay interest in respect of amounts unpaid at the compound rate of a 5% (five percent) above the prime overdraft rate of Standard Bank of South Africa Limited on all overdue amounts from due date until date of payment, calculated and payable monthly in advance. A certificate from Standard Bank of South Africa Limited, signed by any manager of such bank, whose authority and capacity it shall not be necessary to prove, shall be prime facie proof of the interest rate charged.

5. WITHDRAWAL OF CREDIT FACILITIES

- 5.1. Network Alliance's decision to grant credit facilities to the Customer and the nature and extent thereof is at the sole discretion of Network Alliance.
- 5.2. Network Alliance reserves the right, in its sole and absolute discretion, to amend, withdraw, suspend or otherwise cancel any credit facilities granted to the Customer, at any time and without prior notice to the Customer.

6. ORDERS

- 6.1. The Customer confirms that the Goods on the tax invoice issued duly represent the Goods ordered by the Customer at the prices agreed to by the Customer and where performance/delivery has already taken place that the Goods were inspected and that the Customer is satisfied that these conform in all material respects to the quality and quantity ordered and are free from any defects.
- 6.2. Only written orders, accompanied by a corresponding Purchase Order number, will be accepted by Network Alliance. All such orders and any variations to orders will be binding, subject to these standard Terms and Conditions and may not be varied or cancelled without prior written consent from Network Alliance. Network Alliance will not be responsible for any errors or misunderstandings occasioned by the Customer's failure to make the order in writing.

- 6.3. Orders shall constitute irrevocable offers to purchase the Goods in question at the usual prices of Network Alliance as at the date when the Customer places the order of the Goods, subject to clause 2 above, and shall be capable of acceptance by Network Alliance by the delivery of the Goods, written acceptance, or confirmation of the order.
- 6.4. The Customer shall provide Network Alliance with an order number when placing an order.
- 6.5. Any order marked for "Collections" and not collected within 3 days of placing the order will automatically be delivered to the Customer with a delivery charge set out in clause 7.10 below.

7. DELIVERY

- 7.1. Any Tax Invoice and/or delivery note (copy or original) signed by the Customer and/or its authorised representative and/or its nominated agent and held by Network Alliance, shall be prima facie proof that delivery was made to the Customer.
- 7.2. Network Alliance shall be entitled to split the delivery of the Goods ordered in the quantities and on the dates it decides with the prior consent of the Customer, which consent shall not be unreasonably withheld.
- 7.3. In the event of the Customer choosing to engage its own third party to transport the Goods, the Customer indemnifies and holds harmless Network Alliance against any and all claims of any nature whatsoever that may arise from such an agreement.
- 7.4. Network Alliance 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.
- 7.5. Should the Customer wish to receive delivery of the Goods by a more expensive method of transportation other than that normally used by Network Alliance, the Customer shall make such request in writing and, in the event that Network Alliance agrees to arrange such special delivery, the additional charges shall be debited to the Customer's account and shall be payable by the Customer.
- 7.6. Network Alliance does not guarantee that the Goods will be dispatched or delivered on any particular date and time, and the Customer shall have no claim whatsoever against Network Alliance in respect of any loss occasioned by any reasonable delay in despatch or delivery of any Goods ordered, nor may the Customer cancel any order by reason of such reasonable delay.
- 7.7. Short deliveries must not be accepted and all Goods must be given to the driver of the delivery vehicle for return to Network Alliance.
- 7.8. Goods received in a damaged condition must either be rejected or accepted and a note of the item and type of damage made on the front of the invoice. Where the Goods are rejected, the entire delivery must be returned as per 7.7 above.
- 7.9. All Goods taken on an evaluation, approval or demonstration basis or all Goods taken on consignment by the Customer are deemed to be sold to the Customer within three (3) business days of issue if not returned to Network Alliance in perfect condition and in the original packaging and with all accessories and manuals intact.
- 7.10. All orders below R 4, 000.00 (four thousand Rand) will be subject to a delivery fee of R75 within 50km and R150 above 50km.

8. OWNERSHIP AND RISK

- 8.1. All risk in and to all Goods sold by Network Alliance to the Customer shall pass to the Customer on delivery thereof. Ownership in all Goods sold and delivered shall remain vested in Network Alliance until the full purchase price has been paid, and 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 judgement granted against it within seven (7) business days of the date of judgement or changes the structure of its ownership, Network Alliance shall be entitled without prejudice to its rights in law or in terms of this agreement to:
 - 8.1.1. Immediately institute legal proceedings against the Customer; and/or

- 8.1.2. Cancel the sale and/or suspend the provision of goods/services for which Network Alliance has not received payment; and/or
- 8.1.3. Claim damages and/or seek any other legal remedy it may deem appropriate.
- 8.2. The Customer shall fully insure the Goods purchased from Network Alliance against loss or damage until the full purchase price has been paid by the Customer for such Goods. Pending payment to Network Alliance for Goods purchased, all benefit in terms of the insurance policy relating to the insurance of such Goods, shall be ceded to Network Alliance.
- 8.3. 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 Network Alliance until such time as the full purchase price has been paid to Network Alliance by the Customer.

9. BREACH OF CONTRACT

- 9.1. In the event of a breach by the Customer, should the Customer fail to remedy such breach within two (2) days following receipt of notice to that effect from Network Alliance, or should the Customer repeatedly breach this agreement in such manner that the Customer's conduct is inconsistent with the intention or ability of the Customer to carry out the terms of the agreement, or if the Customer is sequestered or placed under liquidation or enters into judicial management or commits any act of insolvency or enters into a compromise with its creditors or fails to satisfy a judgement granted against it within 7 (seven) business days of the date of judgement or changes the structure of its ownership, Network Alliance shall be entitled without prejudice to its rights in law or in terms of this agreement to:
 - 9.1.1. Immediately institute legal proceedings against the Customer; and/or
 - 9.1.2. Cancel the sale and/or suspend the provision of goods/services for which Network Alliance has not received payment; and/or
 - 9.1.3. Claim damages and/or seek any other legal remedy it may deem appropriate.
- 9.2. No claim from the Customer under these Terms and Conditions will arise unless the Customer has, within seven (7) days of the alleged breach or defect occurring, given Network Alliance 30 (thirty) days written notice by pre-paid registered post to rectify any defect or breach of contract.

10. LEGAL PROCEEDINGS

- 10.1. These Terms and Conditions shall be governed and construed under and in accordance with the laws of the Republic of South Africa.
- 10.2. Network Alliance shall, in its sole and absolute discretion and notwithstanding that the amount of its claim or the nature of the relief sought exceeds the jurisdiction of the Magistrate's Court, be entitled to institute action out of such court.
- 10.3. A certificate issued and signed by any director or manager of Network Alliance or in respect of any other fact, including without limiting the generality of the foregoing, the fact that such Goods were sold and delivered, shall be *prima facie* proof of delivery of the Goods in terms of this contract and *prima facie* proof of the Customer's indebtedness to Network Alliance.
- 10.4. Any printout of computer evidence tendered by Network Alliance shall be admissible evidence and the Customer shall not be entitled to object to the admissibility of such evidence purely on the grounds that such evidence is computer evidence.
- 10.5. The Customer's address in Section 1, of the credit application form shall be recognised as the Customer's *domicilium citandi et executandi* for all purposes in terms of this contract whether in respect of the serving of any court process, notices of any amount or communications of whatever nature.
- 10.6. In the event of the Customer breaching any of its obligations and/or failing to timeously make payment of any amount to Network Alliance, the Customer agrees to pay, and shall be liable to pay, all legal costs incurred by Network Alliance 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 export fees.
- 10.7. Any document and/or communication will be deemed duly received by the Customer:

- 10.7.1. Within three (3) business 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;
 - 10.7.2. Within 24 (twenty four) hours of being faxed to any of the Customer's fax numbers or any director, member or owner's fax numbers; or
 - 10.7.3. On being delivered by hand to the Customer or any director, member or owner of the Customer; or
 - 10.7.4. 48 (forty eight) hours if sent by overnight courier; or
 - 10.7.5. as contemplated in section 23(1)(b) of the Electronic Communications and Transactions Act 25 of 2002 in the event that such document and/or communication is sent by data message (email).
- 10.8. Notwithstanding anything to the contrary contained in this clause, a written notice or other communication actually received by either party and for which written receipt has been obtained, shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.
- 10.9. The Customer agrees that neither Network Alliance nor its employees will be held liable for any bona fide misrepresentation(s). The Customer further agrees that, in the event of such bona fide misrepresentation(s), it shall not be entitled to cancel the agreement/contract, and that it shall afford Network Alliance and/or its employees an opportunity to rectify such misrepresentation(s) within a reasonable time frame.
- 10.10. The Customer records, acknowledges and agrees that, in the event of its sequestration and/or liquidation – provisionally or otherwise - the full outstanding amount in respect of all purchases by the Customer shall become immediately due and payable and Network Alliance shall be classified as a preferential creditor.

11. ARBITRATION

- 11.1. Network Alliance may refer any dispute of whatsoever nature arising in respect of a matter regulated by this agreement, or the implementation thereof, to the Arbitration Foundation of South Africa for confidential arbitration in terms of the expedited rules and procedures of said forum.
- 11.2. The arbitration proceedings shall be held in Pretoria in English and the decision shall be final and binding on the Parties and the unsuccessful Party shall pay the costs of the successful Party on the scale as between attorney and own client; and
- 11.3. Nothing in this clause shall prevent a Party from approaching a court of competent jurisdiction in South Africa for urgent or interim relief, where applicable.

12. RETURNED GOODS

- 12.1. Whilst Network Alliance is under no obligation to accept the return of Goods, the Customer may apply to Network Alliance for permission to return Goods and if written permission is given –
- 12.1.1. The Customer may return any defective Goods to the premises of Network Alliance or its nominee at the Customer's own cost.
 - 12.1.2. Any item delivered to Network Alliance will form the object of a pledge in favour of Network Alliance for present and past debts of the Customer to Network Alliance and Network Alliance will be entitled to retain such pledge as a volume determined as follows:
 - 12.1.2.1. The difference between the selling price and the value of the Goods at the time that the debt became due.
 - 12.1.2.2. The value of any repossessed Goods or retained pledge Goods will be deemed to be the value placed on them by any sworn valuator after such repossession and such valuator will be prima facie proof of the value.
 - 12.1.2.3. In the event of a cancellation of an order by the Customer for Goods accepted for return by Network Alliance, Network Alliance reserves the right to charge a

handling fee of up to 15% (fifteen) on the value of the order cancelled or Goods returned.

- 12.1.2.4. The credit control department must be notified of the relevant invoice number(s) before any claim will be considered.

13. WARRANTIES AND INDEMNITY

- 13.1. Goods are guaranteed under the manufacturer's product specific warranties only, and all other guarantees and warranties including common law guarantees and warranties in relation to Goods are hereby specifically excluded by Network Alliance.
- 13.2. All guarantees are immediately null and void should any equipment be tampered with or should the "seals" on the equipment be broken by anyone other than Network Alliance or its appointed nominee, or should the Goods be operated outside the manufacturer's specifications.
- 13.3. 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 must be intact. All items must be returned in "as new" condition.
- 13.4. No warranties, whether express or implied, shall apply, other than those provided in this contract. Network Alliance specifically disclaims the implied.
- 13.5. The Customer records, acknowledges and agrees that Network Alliance acts merely as a supplier of the Goods, which goods are procured directly from Original Equipment Manufacturers and/or from their duly appointed agents or distributors. To this end, the Customer indemnifies and holds harmless Network Alliance (including its directors, employees, subcontractors or subsidiaries) against all claims of whatsoever nature that may be brought or threatened against Network Alliance by any third party arising from or in connection with the supply of Goods by Network Alliance to the Customer, including but not limited to Goods that are:
- 13.5.1. Defective as a result of latent or other defects.
 - 13.5.2. Not suitable for the intended purpose.
 - 13.5.3. Faulty for whatsoever reason.
 - 13.5.4. Unsafe or hazardous for whatsoever reason.
- 13.6. The Customer indemnifies and holds harmless Network Alliance for any claims of whatsoever nature arising from the negligence of, without limitation, the Customer's employees, suppliers, independent contractors or sub-contractors, or the incorrect use by the Customer's employees of any Goods supplied to the Customer by Network Alliance.

14. REPAIRS

- 14.1. The Customer records, acknowledges and agrees that the Original Equipment Manufacturer and/or its duly appointed agent is solely responsible for any warranty claims of whatsoever nature in respect of the Goods supplied to the Customer by Network Alliance.
- 14.2. In the case of repairs facilitated by Network Alliance, repair quotes given by the manufacturer or its duly authorised agent are merely estimates and are subject to change.
- 14.3. The Customer hereby agrees that any item returned for a repair may be sold by Network Alliance to defray the cost of such repair if the item remains uncollected for a period of 30 (thirty) days after the repairs have been completed.
- 14.4. Network Alliance reserves the right to charge the Customer an assessment fee in respect of any out-of-warranty repairs to the Goods.
- 14.5. The Customer shall be responsible for delivery charges on carry-in repairs of Goods not originally purchased from Network Alliance or out-of-warranty repairs to the Goods.
- 14.6. Network Alliance shall not be held responsible for any delay in estimated repair times, whether as a result of stock availability or any reason whatsoever.

15. GENERAL

- 15.1. Network Alliance reserves the right, in its sole and absolute discretion, to vary or amend these Terms and Conditions from time to time and any such amended or varied Terms and Conditions shall be binding on the Customer from the time that the Customer is notified thereof.
- 15.2. These Terms and Conditions represent the entire agreement between Network Alliance and the Customer in respect of the sale of Goods. In the event that the Customer has not concluded a Services Agreement with Network Alliance that explicitly regulates the provision of Services by Network Alliance, this agreement shall govern all future contractual relationships between Network Alliance and the Customer.
- 15.3. No relaxation or indulgence which Network Alliance may grant the Customer shall prejudice or be deemed to be a waiver of any Network Alliance's rights in terms of these Terms and Conditions.
- 15.4. The Customer shall not cede its rights nor assign its obligations under these Terms and Conditions.
- 15.5. Network Alliance shall at any time in its sole and absolute discretion be entitled to cede all or any of its rights in terms of this Terms and Conditions to any third party without prior notice to the Customer.
- 15.6. The Customer undertakes to notify Network Alliance within seven (7) days of any change of address or change of director, shareholder, address of the information as set out in this contract.
- 15.7. Each of the terms herein shall be separate and divisible terms and if any such term becomes unenforceable for any reason whatsoever, then that term shall be severable and shall not affect the validity of the other terms.
- 15.8. The Customer undertakes to inform Network Alliance in writing at least 14 (fourteen) days prior to the intended selling or alienating of the whole of or any part of the Customer's business and failure to do so will constitute a material breach of this contract entitling Network Alliance to cancel the contract without further notice to the Customer.

16. DISCLOSURE OF PERSONAL INFORMATION

- 16.1. The Customer agrees that any personal information provided in the accompanying Credit Application may be used by Network Alliance for the purposes of assessing the Customer's credit worthiness. The Customer warrants that the information provided in the aforementioned Credit Application is accurate and complete in all material respects. 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 Network Alliance will not be liable for any inaccuracies.
- 16.2. The Customer irrevocably consents to Network Alliance contacting and/or requesting or otherwise obtaining from any persons, credit bureaus or businesses, including those mentioned in the Credit Application, any information relevant to the Customer's credit assessment, including but not limited to information regarding the amounts purchased from suppliers per month, length of time the Customer has dealt with each supplier, type of Goods purchased and manner and time of payment.
- 16.3. The Customer records, acknowledges and agrees that any and all information obtained in accordance with clause 16.2 above, may be confidential and may not be disclosed to or discussed with the Customer.
- 16.4. The Customer irrevocably consents to Network Alliance disclosing relevant credit information concerning the Customer's dealing with Network Alliance to a credit bureau and to any third party seeking a trade reference regarding the Customer in his dealings with Network Alliance.