

DDS GENERAL TERMS AND CONDITIONS-RESELLER CREDIT APPLICATION**1. INTRODUCTION**

- 1.1 Direct Distribution Services ("the Company") sources computer hardware and software ("the goods") from various overseas suppliers and manufacturers which it then distributes and sells throughout South Africa.
- 1.2 The parties expressly agree that their business relationship will be governed by the terms and conditions of this agreement.

2. PAYMENT

- 2.1 Any tax invoice presented by the Company to the Customer in respect of orders placed with the Company between:
- 2.1.1 the first and fifteenth day of any month are payable at the end of that month;
 - 2.1.2 the fifteenth and last day of any month are payable on the fifteenth day of the subsequent month.
- 2.2 The Company will consider crediting a Customer's account only if goods delivered are:
- 2.2.1 Returned within 14 (fourteen) days from the date of the invoice;
 - 2.2.2 The goods have not been tampered and/or altered and/or damaged in any way;
 - 2.2.3 The goods are in their original saleable condition and original packaging; and
 - 2.2.4 Accompanied by the original tax invoice.
- 2.3 Should the Company decide to credit a Customer's account, credit will be granted at the Company's current price of the goods or the original purchase price, whichever is the lesser.
- 2.4 A 10 % handling fee will be charged on all goods not returned to the Company within 48 hours after delivery.
- 2.5 No interest will be payable to the Company by the Customer unless the Customer fails to pay an amount on due date. In such instance the Company will be entitled to charge interest at a rate of 2% per annum above the prime overdraft rate charged by Absa Bank from time to time and such interest will be calculated from the due date of payment to the date of actual payment, both days inclusive, compounded monthly in arrears.

3. DELIVERY AND RISK

- 3.1 The Company will use its best endeavours to meet any specific delivery times discussed. However, any delivery times given are merely estimates and are not binding on the Company.
- 3.2 A copy of the Company's delivery note, signed by a duly authorised employee of the Customer, whose authority need not be proved by the Company, will be sufficient proof that the goods were delivered to the Customer.
- 3.3 All costs relating to the delivery of the goods will be paid by the Customer or as agreed to between the parties.
- 3.4 An invoice will be issued to the Customer either before, upon or after delivery has taken place stating the description of the goods, and the quantity delivered. If there is a discrepancy between what is stated on the invoice and the description and quantity of the goods actually delivered to the Customer, the Customer must notify the Company in writing of any such discrepancies within 48 (forty eight hours). The Company will then investigate and remedy any such discrepancies raised. Should the Customer not give the required notice timeously or at all, the invoice will be deemed to be correct in all respects.
- 3.5 Upon acceptance of delivery of the goods by the Customer or a duly authorised employee of the Customer, all risk of damage and destruction to the goods will pass to the Customer, and the Customer undertakes to comprehensively insure the goods against all risk until they have been paid for in full.

4. OWNERSHIP

All goods sold and delivered by the Company remain the property of the Company until the said goods have been paid for in full.

5. PRODUCT LIABILITY

- 5.1 Should a Consumer intend using the goods for a particular purpose, other than the general purpose of the goods, the Customer must specifically inform the Company in writing, when placing an order, of the particular purpose for which the Consumer wishes to acquire any goods, or the use to which it intends to apply to those goods. Should the Customer fail to do so, the Company will not be held responsible for harm or loss arising from the failure of the goods delivered to meet any particular purpose or satisfy any particular use to which they are applied.
- 5.2 In the event of a Consumer returning goods to the Company on the basis that the goods are alleged to be either defective, hazardous or have failed to perform; the Customer must return the goods to the Company within 7 (seven) days from the date that the Customer received the goods from the Company.
- 5.3 The Company will be entitled to inspect the goods and take any steps which the Company deems necessary to determine whether the goods are defective, hazardous and/or dysfunctional.
- 5.4 The costs relating to the return of these goods will be paid by the Customer.
- 5.5 The Company will not be held liable or responsible for any loss or damage suffered by the Customer or any third party as a consequence of any defect, hazard or failure of the goods which is caused by the negligence of the Customer or any third party, and/or to the misuse and abuse of the goods, and/or failure to comply with the instructions provided by the Company and/or the manufacturer, and/or the alteration of the goods contrary to the instructions, or after leaving the control, of the Company.
- 5.6 A manufacturer's warranty will be of no force and effect in the event of one or more of the following:
 - 5.6.1 The goods have been tampered with and/or altered in any way;
 - 5.6.2 The seals have been broken by anyone other than the Company or its duly authorised representative;
 - 5.6.3 The goods are operated outside the manufacturer's specifications.
- 5.7 The Customer will not in selling the goods make any representations or give any warranties other than those contained in the Company's terms and conditions.
- 5.8 In the event of a Customer giving additional warranties, representations or guarantees to a third party the Company will not be held liable or responsible for any loss or harm suffered by any third party arising from the breach of those warranties, representations or guarantees.

6. INDEMNITY

- 6.1 The Customer will not have any claims of whatsoever nature or kind against the Company, its officials, employees, agents and assigns for any loss or damage whatsoever regardless of how same arose and even in circumstances where such loss and damage arose out of the negligence of the Company and/or its employees, agents, officials or assigns.

7. INTELLECTUAL PROPERTY

- 7.1 The Customer acknowledges that any and all right, title and interest in and to the intellectual property rights used or embodied in or in connection with the goods are and will remain the sole property of the Manufacturer.
- 7.2 The Company records that, to the best of its knowledge, the goods do not infringe upon or violate any intellectual property rights of any third party.

8. CANCELLATION

- 8.1 The Company will be entitled to cancel this agreement and any order placed by the Customer, for any reason whatsoever, upon 7 (seven) days written notice to the Customer.
- 8.2 The Customer is not entitled to cancel any orders placed with the Company.
- 8.3 If, at any time, any amount of money due by the Customer to the Company is overdue, the Company will be entitled to suspend all deliveries to the Customer, until all amounts are settled in full.

8.4 Should the Company elect to suspend deliveries and/or cancel outstanding orders in terms of clause 8.3 above; the Customer will have no claim against the Company.

9. FORCE MAJEURE (ACT OF GOD)

9.1 Neither party will be liable for any delay in performing or any failure to perform any obligations under this agreement where their delay or failure is due to any cause beyond their control.

9.2 This will include, but without being limited to, any delays or failure caused by strikes, lock outs or other industrial action; sabotage, terrorism, civil commotion, riot, invasion, war, threat of or preparation for war; fire, explosion, storm, flood, subsidence, epidemic or other natural physical disaster; impossibility of the use of any mode of transport, interruption of electricity supply, any act or policy of any state or government or other authority having jurisdiction over either party, sanctions, boycott or embargo.

9.3 Upon the occurrence of any delay or failure referred to in this clause, the provisions of this agreement which are affected will be suspended for as long as the cause in question continues to operate, provided that if that cause has not ceased to operate within 3 (three) months from when it first arose, this agreement may be terminated by either party.

9.4 If the agreement is terminated in terms of clause 9.3, both parties will retain the right to be compensated for any performance rendered by them to that point.

10. BREACH

10.1 Should the Customer fail to pay any amount that is due and owing to the Company, or breach any of the further terms of this agreement, and fail to remedy such breach within a period of 7 (seven) days after receiving such notice to do so; or should the Customer be placed in provisional or final liquidation or sequestration, judicial management, enter into any compromise arrangements with its creditors, or fail to satisfy a judgment taken against it within 10 (ten) days, then the Company will be entitled to, without prejudice to any other rights it may have in law to:

- 10.1.1 terminate this agreement between the parties and immediately retake possession of any goods not yet paid for by the Customer; and
- 10.1.2 claim any arrear amounts that have not been paid at the date of termination; and
- 10.1.3 claim any further loss it may have suffered as a result of the Customer's breach.

10.2A certificate signed by any manager of the Company, whose authority need not be proved, will be prima facie proof of the Customer's indebtedness to the Company and will be sufficient for the purposes of obtaining Summary Judgment or provisional sentence.

11. CHOSEN ADDRESS AND NOTICES

11.1 The parties choose as their address ("domicilium") for purposes of giving notice, serving of any process and for any other purpose arising from this Agreement the following addresses:

The Company: Unit 41 Woodridge Business Park, Koeberg Road, Milnerton, Cape Town.

The Customer:

11.2 Each of the parties will be entitled, by written notice to the others, to vary its domicilium to any other address within the Republic of South Africa, which is not a post office box or poste restante.

11.3 Any notice given by one party to the other ("the addressee") which:-

- 11.3.1 Is posted by prepaid post from an address within the Republic of South Africa to the addressee at the addressee's domicilium, will be presumed, until the contrary is proved, to have been received by the addressee on the fourth day after the date of posting;

12. JURISDICTION AND COSTS

12.1 The Customer consents to the jurisdiction of any Magistrate's Court having jurisdiction over its person in respect of all legal proceedings arising out of these terms and conditions however, the Company will be

entitled to institute proceedings against the Customer in any division of the High Court of South Africa, having jurisdiction.

12.2 Should either party incur any costs in successfully enforcing any of its rights in terms of this agreement, the defaulting party will be liable to pay all such costs, including legal costs on the attorney and own client scale, collection commission and Sheriffs fees.

13. GENERAL

13.1 The Customer acknowledges that the provisions of the Consumer Protection Act 68 of 2008 are not applicable to the business relationship between the parties.

13.2 This Agreement constitutes the whole agreement between the parties and no agreements, representations or warranties between the parties other than those set out in this Agreement are binding on the parties.

13.3 No addition to and/or variation of this Agreement will be of any force or effect unless in writing and signed by or on behalf of the parties.

13.4 If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable, neither the legality, validity or enforceability of the remaining provisions will, in any way, be affected or impaired and such provision will be severable from the rest.

13.5 No indulgence which the Company may grant to the Customer will constitute a waiver of any rights of the Company, who will not be precluded from exercising any rights against the Customer which may have arisen in the past or which might arise in the future.

13.6 The Company reserves the right to amend its terms and conditions without any notice to the Customer, provided that the Customer will be entitled to receive a copy of the amended terms and conditions as soon as they are to be given effect to.

14. SURETYSHIP

14.1 The Company will only consider a Customer's application for credit once the attached Deed of Suretyship is completed by the Customer.

14.2 Notwithstanding signature of the Deed of Suretyship the Company reserves the right to grant credit to the Customer within its sole discretion.

I, THE UNDERSIGNED HAVE READ AND UNDERSTOOD THE TERMS AND CONDITIONS AND I EXPRESSLY AGREE TO THE ABOVE.

Accepted and signed at _____ on this the _____ day of _____ **20**

For and on behalf of the Company:

As witnesses:

1. _____
2. _____
(who warrants that he is duly authorised thereto)

For and on behalf of the Customer:

As witnesses:

1. _____
2. _____
(who warrants that he is duly authorised thereto)

Suretyship

The Surety expressly agrees that the Company’s General Terms and Conditions, in addition to these terms and conditions are binding upon them:

I/we the undersigned do hereby bind myself/ourselves jointly and severally as surety(ies) and co-principal debtor/s for each and every amount which.....("Applicant/Reseller"), his/her successor-in-title or assigns, is at present indebted to Bouvest 2158 cc t/a Direct Distribution Services("The Creditor") or may in the future become indebted to the Creditor, whether in terms of the reseller agreement, other agreements, purchases or from whatsoever cause arising and not withstanding any fluctuation in the amount of indebtedness or even temporary extinction thereof.

I/we choose as my/our address ("domicilium") for purposes of giving notice and serving of any process the following address:

.....

I/we hereby renounce the benefits of division, exclusion, cession of action, the meaning and effect of which I/we are fully acquainted with. No extension of time or indulgence that maybe granted to the Applicant/Reseller at anytime, nor any release of any other security of suretyship given in connection with the agreement will in any way affect or vitiate my/our liability hereunder. This Suretyship will not be cancelled save with the written consent of the Creditor.

I/we agree to make payment of any legal costs that may be awarded against me/us on an attorney and own client scale. I/We indemnify and hold Bouvest 2158 cc t/a Direct Distribution Services harmless against any claim arising out of or incidental to the agreement, or its breach of termination for any reason whatsoever.

Signed at _____ on this the _____ day of _____ **20**

As witnesses:

1. _____
2. _____
SURETY

Full Name: _____
ID No: _____
of (street address) _____

Signed at _____ on this the _____ day of _____ **20**

As witnesses:

1. _____
2. _____
SURETY

Full Name: _____
ID No: _____
of (street address) _____

Bouvest 2158 cc t/a Direct Distribution Services reserves the right to offer credit accounts, at its discretion and based on its terms and conditions, and only if the above suretyship has been duly signed by the owner(s)/shareholder(s) of the above company/reseller.

NOTE: This application will only be considered if fully completed.