



1994/12900/23

78 Mangold Street, Newton Park, Port Elizabeth
P.O. Box 34269, Newton Park, 6055

 (041) 365 0465  (041) 365 3733

STANDARD TERMS AND CONDITIONS OF NETCONNECT Annexure A

Any contract for the supply of goods and services between Netconnect and The Client shall be subject to the following terms and conditions:

1. COMMENCEMENT AND TERMINATION

- 1.1 This Agreement shall commence on the date of Netconnect informing the Client in writing to its domicilium address as referred to in clause 8 below of its granting of the credit facility applied for by the client and shall continue in force indefinitely thereafter unless it is terminated for reasons set out below of by one of the parties giving the other party 3 months written notice of its intention to terminate this Agreement (without the cancelling party having to give any reasons for such terminations).
- 1.2 Netconnect shall be entitled to terminate this Agreement immediately upon notice in writing to the Client:
 - 1.1.1 If there is no activity in the account for a period of eight months;
 - 1.1.2 If the client fails to pay Netconnect by the due date any monies due to Netconnect in terms of this Agreement;
 - 1.1.3 If the Client fails to remedy the breach within 7 days of the date of Netconnect's notice calling for such remedying of the breach;
 - 1.1.4 If the Client does anything in contemplation of insolvency or a material change occurs in the management or control of the Client's business;
 - 1.1.5 If the Client fails to ensure that its business conforms with reasonable industry standards of business ethics or quality of service;
 - 1.1.6 If the client suffers any civil judgement to be taken or entered against it.

2. SUPPLY OF GOODS AND SERVICES

- 2.1 The supply of goods to the Client may include, but not necessarily be limited to, computer hardware and/or computer software (the "Goods").
- 2.2 The supply of services to the Client may include, but not necessarily be limited to:
 - 2.2.1 the ordering and delivery of Goods purchased by the Client;
 - 2.2.2 the installation and maintenance of the Goods;
 - 2.2.3 the installation and maintenance of network facilities;
 - 2.2.4 the installation of backup services;
 - 2.2.5 the provision of training services(paragraphs 2.2.1 – 2.2.5 are hereafter collectively referred to as the "Services").

3.

PRICE, PAYMENT AND INTEREST

- 3.1 Unless otherwise stated, all prices for Goods and/or Services quoted by Netconnect exclude delivery charges, import duties, levies or like charges, all of which shall be paid by the Client.
- 3.2 Payment of Goods and/or Services supplied to the Client shall be made within 30 days of date of invoice, without deduction and at such address as Netconnect may nominate in writing from time to time.
- 3.3 If any amount is not paid within the agreed period the Client shall be liable for interest at the prime overdraft lending rate offered by Netconnect's bankers to its most preferred commercial clients plus 1%. Such interest shall be calculated and paid monthly in advance, provided that if the interest is not paid as aforesaid, the interest shall be added to the principal sum.
- 3.4 Post-dated cheques will not be accepted as payment.
- 3.5 The Client shall not be entitled to offset any amounts claimed by the Client against any money owing by the Client to Netconnect.
- 3.6 The Client agrees that in the event of any portion of an invoiced indebtedness being disputed, then the Client shall nevertheless forthwith pay the undisputed amount of such indebtedness according to the agreed terms of payment.

4. DISCOUNTS

The price of the Goods sold to the Client is strictly nett and not subject to any discounts unless otherwise agreed to in writing. If any discount is agreed to in writing it shall only be allowed if payment is received by Netconnect strictly by the due date and shall only apply to the actual price of the Goods and not to any Services, value added tax, transport or delivery costs, insurance, storage charges or other duties or taxes.

5. OWNERSHIP

Ownership of Goods obtained from Netconnect by the Client shall remain the sole and absolute property of Netconnect until payment has been received in full by Netconnect from the Client.

6. DELIVERY AND RISK

- 6.1 Unless otherwise agreed in writing, all Goods shall be delivered in such a manner as Netconnect shall determine in consultation with the Client.
- 6.2 All risk in the Goods shall pass to the Client upon the delivery of the Goods to the Client.
- 6.3 Where it has been agreed that the relevant Goods sold shall be delivered in more than one consignment, each consignment shall be deemed to be a separate sale. The Client shall be liable to pay the purchase price owing in respect of each consignment on due date and the validity of the sale of any consignment shall in no way be affected if the sale of any consignment fails for any reason.
- 6.4 If Netconnect is prevented from delivering any Goods at the time stipulated for delivery as a result of a default on the part of the Client, the Client shall be liable for all expenses incurred by Netconnect in consequence thereof, including expenses for the storing and handling of the Goods.
- 6.5
 - 6.5.1 All Goods installed by Netconnect shall be deemed to be operating satisfactorily unless Netconnect receives written notification of the contrary from the Client within 7 days of installation; and
 - 6.5.2 All Services provided by Netconnect shall be deemed to be in accordance with the Client's requirements unless Netconnect is notified of defects / problems with such Services within seven (7) days of delivery of the Services.
- 6.6 Netconnect reserves the right to levy a delivery charge on all Goods delivered and such delivery charge shall be in accordance with Netconnect's prevailing delivery charge rates from time to time.

6.7 Unless otherwise agreed to in writing, all Services shall be supplied during office hours of 08:30 to 16:30 Monday to Friday.

7. **WARRANTIES**

7.1 Subject to provisions of clause 6.5, Netconnect warrants that the Goods and Services supplied to the Client will comply with commercially acceptable standards.

7.2 The warranty in respect of Goods supplied by Netconnect is limited to the manufacturer's warranty in respect of such Goods.

7.3 All other warranties and representations, including the warranties of merchantability and fitness for a particular purpose are specifically excluded.

8. **LIMITATION OF LIABILITY**

8.1 Netconnect's liability for any loss or damage, howsoever arising, suffered by the Client as a result of Goods and/or Services supplied by Netconnect shall at all times be limited to the amounts paid by the Client to Netconnect in respect of such Goods and/or Services.

8.2 Netconnect shall not be liable to the Client or to any other person for any indirect or consequential damages or any nature whatsoever or any loss of profit or special damages of any nature whatsoever and whether in contemplation of the parties or not which the Client may suffer as a result of any breach by Netconnect of any of its obligations under these terms and conditions, or arising from the supply of Goods and/or Services by Netconnect hereunder or arising out of any other cause of action whatsoever.

9. **DOMICILIUM**

9.1 The parties select as their respective *domicilia citandi et executandi* for the purposes of legal proceedings and for the purposes of giving or sending any notice provided for or necessary in terms of this Agreement, the following address:

<u>Netconnect</u>	78 Mangold Street Newton Park PORT ELIZABETH, 6055 Fax No. (041) 365 3733
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The Client	Its physical and business address and telefax number as set out on the first page of this Agreement.
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or such other address or telefax number as may be substituted by written notice given as required. Each party will be entitled from time to time to vary its domicilium by written notice to any other address within the Republic of South Africa which is not a post office box or post restante.

9.2 Any notice addressed to a party at its domicilium address as aforesaid shall be sent by registered post, or delivered by hand, or sent by telefax.

10. **RETURN OF PRODUCTS TO NETCONNECT FOR CREDIT**

10.1 Goods shall only be accepted for return or credit if they are returned within 7 calendar day of delivery with sealed disk packs and the original shrink wrap intact, in which event Netconnect shall be entitled without the necessity of any further agreement to claim from the Client a handling charge of 10% (ten percent) of the invoice price of the Goods so returned.

10.2 Defective products as referred to in clause 6.5.1 may be returned if, the provisions of clause 6.5.1 are complied and the Goods are returned immediately together with all documentation, accessories and media pertaining to the Goods. Unless this is done Goods concerned will be deemed to have been delivered to the Client in good order and condition.

11. **INSURANCE**

The Client shall at all times keep the Goods sold to it adequately insured against all forms of loss pending payment to Netconnect for Goods purchased, all benefits in terms of the insurance policy relating to the insurance of such Goods are hereby ceded by the Client to Netconnect, which cession Netconnect hereby accepts.

12. **SURETYSHIP**

12.1 The signatories hereto bind themselves as sureties and co-principal debtors in solidum with the Client in favour of Netconnect for the due payment of all amounts which may at any time be payable to Netconnect from any cause of action whatsoever and whether acquired by Netconnect by way of cession or otherwise. They further waive the benefits of excussion and division and of the other legal exceptions *non numeratae pecuniae* and *non causa debiti* and acknowledge themselves to be fully acquainted with the meanings of these terms. The terms and conditions of this Agreement shall apply *mutatis mutandis* to this Suretyship.

12.2 Any admission by the Client as to the fact that it is indebted to Netconnect or as to the amount of any such indebtedness shall be binding upon the Surety/ies.

13. **GENERAL**

13.1 No relaxation or indulgence granted to the Client by Netconnect shall be deemed to be waiver of any of Netconnect's right in terms hereof, and such relaxation or indulgence shall not be deemed to be a novation of any of the terms or conditions set out herein, or create an estoppel against Netconnect.

13.2 Any printed condition on any of the Client's documents submitted to Netconnect, even if countersigned by Netconnect shall not apply, or be binding upon Netconnect and the Client agrees that the relationship between Netconnect and the Client shall be governed by the these terms and conditions, unless otherwise agreed to in writing by Netconnect.

13.3 These terms and condition constitute the whole of the Agreement between the parties relating to the subject matter thereof, and no amendment, alteration, addition, variation or consensual cancellation thereof shall be of any force or effect unless reduced to writing and signed by the parties. The parties agree that no other terms or conditions, whether oral or in writing, or whether express, tacit or implied, apply.

13.4 In the event of Netconnect instructing attorneys to collect from the Client any amounts due to Netconnect, or, in respect of any other dispute arising, the Client shall pay all costs on a scale as between attorney and own client including collection commission. The Client acknowledges that in the event should it defend any action instituted by Netconnect or defended by Netconnect, as the case may be, Netconnect shall, in the event of the costs being awarded in favour of Netconnect, be entitled to recover fees incurred with its attorneys at 80% of the maximum amount permissible in terms of the Non-Litigious Guidelines of the Cape Law Society or its successor in title.

13.5 In these terms and conditions words importing one gender shall include the other two, and words importing the singular, shall include the plural and vice versa.

WITNESSES:

1. _____

2. _____

For and on behalf of the Client, who hereby warrants his authority to sign and in his personal capacity as surety and co-principal debtor in solidum with the Client

FULL NAME: _____

ID NUMBER: _____

PHYSICAL ADDRESS: _____

(Which physical address is the domicilium address of the surety for purposes of legal proceedings and for the purposes of giving or sending any notice provided for or necessary in terms of this Surety).

WITNESSES:

1. _____

2. _____

Signing in his personal capacity as surety and
co-principal debtor in solidum with the Client

FULL NAME: _____

ID NUMBER: _____

PHYSICAL ADDRESS: _____

(Which physical address is the domicilium address of the surety for purposes of legal proceedings and for the purposes of giving or sending any notice provided for or necessary in terms of this Surety).

WITNESSES:

1. _____

2. _____

Signing in his personal capacity as surety and
co-principal debtor in solidum with the Client

FULL NAME: _____

ID NUMBER: _____

PHYSICAL ADDRESS: _____

(Which physical address is the domicilium address of the surety for purposes of legal proceedings and for the purposes of giving or sending any notice provided for or necessary in terms of this Surety).

WITNESSES:

1. _____

2. _____

For and on behalf of the NETCONNECT

FULL NAME: _____

ID NUMBER: _____