

Standard Terms and Conditions

1 Composition of Agreement

The “**Agreement**” between the parties comprises of the Proposal to which these terms and conditions are attached, these terms and conditions and any subsequent offer to purchase entered into between the parties (if any).

2 Interpretation

2.1 Any reference in these terms and conditions to:

- (1) a clause is, subject to any contrary indication, construed as a reference to a clause of these terms and conditions;
- (2) law is construed as any law including common law, statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other measure of any government, local government, statutory or regulatory body or court having the force of law; and
- (3) person is construed as a reference to any natural or juristic person, firm, company, corporation, government, state, agency or organ of a state, association, trust or partnership (whether or not having separate legal personality).

2.2 The headings do not govern or affect the interpretation of these terms and conditions.

2.3 Any number of days prescribed in these terms and conditions excludes the first day and includes the last day and any relevant action or notice may be validly done or given on the last day.

2.4 The rule of interpretation that, in the event of ambiguity, the contract must be interpreted against the party responsible for the drafting of the contract does not apply.

2.5 The termination of the Agreement does not affect those of its provisions which expressly provide that they will operate after termination, or which must continue to have effect after termination, or which must by implication continue to have effect after termination.

3 Binding agreement

Subject to the provisions of clause 4 below, upon signature of the Proposal by the customer stated therein, this Agreement will become a binding agreement between the Parties and may not be cancelled by customer without the prior written consent of BHBW. In the event that BHBW consents to the cancellation of the Agreement, BHBW reserves the right to levy a reasonable penalty against such cancellation. Where BHBW elects to exercise this right it shall notify the customer of such fact in writing, which written notification will, at a minimum, include the amount of the penalty. Any penalty amount levied by BHBW against the customer in accordance with this clause shall be paid by the customer immediately upon receipt of an invoice therefor.

4 Resolutive condition

The customer and BHBW agree that should:

4.1 the customer have advised BHBW that it requires financing in order to purchase the equipment referred to in the Proposal; and

4.2 the customer be unable to obtain the requisite financing within a period of 14 business days after the date of signature of the Proposal by the customer, then notwithstanding the provisions of clause 3, this Agreement shall automatically lapse and cease to be of any further force or effect (unless agreed in writing and signed by both parties prior to expiry of the aforementioned period).

5 Sale of the Sale Equipment

5.1 Subject to clause 4 above and to the customer complying with its obligations in terms of clause 6 below, BHBW hereby sells to the customer, who hereby purchases the equipment referred to in the proposal in accordance with the terms of this Agreement.

5.2 Upon the customer having complied with its obligations in terms of clause 6 below in full, ownership in and to the equipment referred to in the Proposal shall transfer to the customer. Until such time however, ownership in and to such equipment shall remain exclusively with BHBW, notwithstanding any other provision of this Agreement.

5.3 Notwithstanding what is stated in clause 5.2 above, all risk in and to the equipment referred to in the Proposal shall transfer to the customer with effect from the date on which such equipment is delivered to the customer in accordance with the provisions of clause 7.

6 Purchase consideration and payment

6.1 The purchase consideration payable by the customer to BHBW for the equipment referred to in the Proposal shall be price of the equipment less the price of any trade in equipment (if any).

6.2 The customer shall make all payments in terms of this Agreement by electronic funds transfer to such bank account nominated by BHBW to the customer in writing from time to time.

6.3 In the event of the customer failing to comply with the provisions of this clause 6 in any manner whatsoever and/or failing to effect payment of the purchase consideration within any agreed time period, same shall constitute a material breach entitling BHBW to terminate this Agreement on written notice to the customer (notwithstanding the provisions of clause 13 below).

6.4 In all cases where the customer uses a postal, banking, electronic or similar method or service to make payment, the supplier of such method or service shall be deemed to be the agent of the customer.

6.5 The customer shall not be entitled to claim set off or deduction in respect of any payment due by the customer to BHBW arising in terms of this Agreement or otherwise.

7 Delivery

7.1 It is recorded that while BHBW will use its reasonable endeavours to deliver the equipment referred to in the Proposal to the customer on the delivery date stated in the Proposal, such date is only an estimate and time shall not be of the essence in the delivery of the equipment. In light of the above, in the event that BHBW fails to deliver the equipment to the customer on the stated delivery date, such failure shall not be deemed to be a breach by BHBW of this Agreement.

7.2 BHBW does not, as far as is permissible in law, accept liability or responsibility for unforeseeable delays due to factors beyond BHBW's control. Such factors would typically

include, inter alia, uncontrollable delays on the part of suppliers, shippers, customs, railway and road transporters and the like. Accordingly, BHBW does not, as far as permissible in law, accept liability or penalties or direct or consequential damages or losses incurred by the customer which are as a result of a failure to deliver the equipment on the stated delivery date.

- 7.3 Unless otherwise agreed, the customer is liable for any transport costs of the equipment from the premises of BHBW to any delivery address of the customer.
- 7.4 As far as permissible in law, in the event that BHBW or BHBW's carrier transports the equipment to the customer, delivery and passing of the risk in the equipment shall be deemed to have taken place when the equipment is delivered at the customer's premises. The signature of any employee or representative of the customer on BHBW's delivery note or invoice shall be prima facie proof of proper delivery.
- 7.5 Should BHBW, at the customer's request, agree to engage a third party carrier to transport the equipment to the customer, such carrier shall be the customer's agent and BHBW shall engage the carrier on such terms and conditions as it deems fit and the customer indemnifies BHBW against all demands and claims which may be made against it by the carrier so engaged and all liability which BHBW may incur. Delivery to such carrier by BHBW shall be deemed to be delivery to the customer. The signature of any employee or representative of the carrier shall be prima facie proof of proper delivery to the customer.
- 7.6 As far as permissible in law, delivery of the equipment to any delivery address given by the customer shall constitute proper delivery of the equipment, despite the fact that such address may not have been the address or premises of the customer.
- 7.7 If the customer fails to take delivery of the equipment when delivery of the same is offered by BHBW, or should the customer in any way delay the delivery of the equipment, then as far as permissible in law, the risk in the equipment shall immediately pass to the customer and the customer shall be liable to pay BHBW the reasonable costs of storing, insuring, and handling the equipment, from the date that BHBW offered delivery or the customer failed to take delivery, until the date of actual delivery.
- 7.8 As far as permissible in law, the customer shall be barred from lodging any claim in respect of discrepancies in the equipment unless the customer has specified on the delivery note the nature of the discrepancy when taking delivery.
- 7.9 The customer agrees to adhere to and follow the delivery and handover processes which BHBW requires and agrees to have all intended operators (where applicable) of the equipment present at the delivery and handover.
- 7.10 Where the customer is providing trade in equipment to BHBW, such trade in equipment must be delivered by the customer to BHBW, at its nominated address, by no later than **[INSERT]**. Notwithstanding any other provision of this Agreement, BHBW shall not be obliged to deliver the equipment referred to in the Proposal to the customer unless and until such time as the customer has delivered the trade in equipment to BHBW in accordance with this clause. Upon delivery of the trade in equipment to BHBW, all risk, benefit and ownership thereof shall automatically transfer to BHBW. To the extent that the customer is required to sign any document or do any other thing in order for the aforementioned risk and ownership in the trade in equipment to transfer, the customer hereby irrevocably and unconditionally agrees to do or sign same upon receipt of a request therefor by BHBW.

8 Handover

- 8.1 Upon delivery of the equipment referred to in the proposal to the customer, BHBW and the customer shall conduct a full handover and inspection of the equipment. The customer undertakes to attend such handover with all intended operators of the equipment.
- 8.2 The customer agrees that it may not commence using the equipment until the formal handover process has been completed to the satisfaction of BHBW. In the event that the customer commences using the equipment prior to this, the customer indemnifies and holds harmless BHBW in respect of any and all claims brought against BHBW under the Consumer Protection Act, 2008 (CPA).

9 Warranty

- 9.1 Subject to South African law, the equipment referred to in the Proposal is warranted in terms of the original manufacturer's standard warranty, provided the equipment is maintained and serviced by an authorised representative of the original manufacturer as per the warranty terms and conditions.
- 9.2 As far as permissible in law, it is expressly agreed that BHBW provides no warranty that the equipment will be fit for the purposes for which they may be intended by the customer. BHBW does however warrant that the equipment is fit for the purposes as recommended and intended by the original equipment manufacturer, and set out in the operations manual for the equipment.
- 9.3 Save for the above, BHBW provides no other warranties to the customer (whether implied or explicit) regarding the equipment, its capabilities and/or its fitness for a particular purpose, it being hereby agreed that the manufacturer's warranties, indemnities or representations constitute the full extent of BHBW's liability towards the customer or any third party.

10 Fitness for purpose

- 10.1 The customer acknowledges that it is solely responsible for determining whether the equipment referred to in the Proposal is fit for the purposes required by the customer, based on the restrictions on use as contained in the original equipment manufacturer's specifications.
- 10.2 The customer further acknowledges that, where it has any queries about the capabilities of the equipment, it has canvassed such questions with BHBW prior to signing this Agreement and is satisfied with BHBW's responses to such queries. Accordingly, the customer hereby waives any and all claims of any nature whatsoever and howsoever arising which it may have against BHBW in relation to the equipment not being fit for a particular purpose intended by the customer.

11 Customer's obligations

- 11.1 The customer shall ensure that only a trained, licensed and authorised person may operate the equipment described in the Proposal.
- 11.2 With effect from the date of delivery of the equipment, the customer shall be solely responsible for:
 - (1) comprehensively insuring such equipment against all risks; and

(2) servicing, maintaining and repairing the equipment in accordance with the original equipment manufacturer's specifications.

11.3 The customer hereby irrevocably and unconditionally indemnifies BHBW in full against any failure by the customer to comply with the provisions of this clause 11.

12 Limitation of liability

12.1 To the fullest extent permissible by law, neither the customer nor any third party shall have any claim whatsoever for damages against BHBW (being direct or indirect, special or consequential damages) for any reason whatsoever arising out of this Agreement, which for the sake of clarity will include any damages of whatsoever nature arising from or related to the customer's use and possession of the equipment, but always subject to the protection given to the customer in respect of the equipment under section 61(2) of the CPA.

12.2 As far as is permissible in law, if BHBW is liable for any reason in connection with this Agreement whether under contract, negligence (delict) or any other legal theory, then the maximum aggregate liability in any circumstances (and even if BHBW was aware of the possibility of such loss or damage) shall be limited to direct damages in the amount of R100 000,00 (one hundred thousand Rand) and R50 000 (fifty thousand rand) in respect of indirect and consequential damages.

13 Breach

Should either Party (**Defaulting Party**) commit a breach of any of the provisions of this Agreement, then the other Party (**Aggrieved Party**) shall be obliged to give the defaulting party 7 (seven) days' written notice or such longer period as may be reasonably required in the circumstances, to remedy the breach. If the Defaulting Party fails to comply with such notice, the Aggrieved Party shall be entitled to cancel this Agreement on written notice or to claim immediate payment and/or specific performance by the Defaulting Party of its obligations due at the date of breach, in either event without prejudice to the Aggrieved Party's rights to claim damages.

14 Whole agreement

14.1 This Agreement contains the entire agreement between the Parties.

14.2 No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any agreement, bill of 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 writing and signed by the parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating solely to the matter in respect whereof it was made or given.

15 Legal proceedings and related matters

- 15.1 This Agreement and all modifications and amendments of this Agreement shall be governed by and decided upon and interpreted in accordance with the laws of the Republic of South Africa.
- 15.2 Either party to this Agreement shall be entitled to bring any action or proceedings to enforce its rights in terms of this Agreement in the Magistrates Court, notwithstanding the fact that any such actions or proceedings may otherwise have been beyond the jurisdiction of such Court. This clause shall constitute the consent to bring such proceedings in the Magistrates Court as contemplated in section 45 of the Magistrates Court Act, 1944, or any statutory modifications or re-enactments thereof for the time being in force, provided that nothing will preclude any party from instituting action in the High Court if it so elects.
- 15.3 The customer shall pay all legal costs, including attorney and own client costs, tracing agent's fees and collection charges which BHBW may incur in taking any steps due to any breach of this Agreement by the customer.
- 15.4 The customer's physical address as stated in the Proposal shall be recognised as the customer's Domicilium Citandi et Executandi (meaning, its physical address chosen for the serving of all legal documents) for all purposes in terms of this Agreement, whether in respect of the serving of any court process, notices or other communications of whatever nature.
- 15.5 Unless the customer objects to the correctness of any entry on any statement, delivery note or invoice in writing within five (5) business days of receipt of such statement, delivery note or invoice, it will be deemed that the customer accepts that the entries are correct and it does not dispute such entries.
- 15.6 It will not be necessary for BHBW to prove that the documents referred to in clause 15.5 were received by the customer. In the event of the customer not receiving any of the documents referred to in clause 15.5, the customer must timeously request these from BHBW, failing which it will be accepted that the documents were received by the customer.
- 15.7 The customer undertakes to notify BHBW within a period of seven (7) days of any change of address or any changes in the information of the customer as set out in this Agreement.
- 15.8 Should the customer:
- (1) fail to comply with any term or condition of this Agreement;
 - (2) be sequestered, or liquidated, or commences business rescue proceedings;
 - (3) enter into a settlement or negotiation with creditors;
 - (4) allow the granting of a judgement against it;
 - (5) fail to comply with such judgement within 7 (seven) days; and/or
 - (6) otherwise commit or allow any act that may endanger or prejudice the rights of BHBW, BHBW will immediately be entitled to terminate this Agreement and/or claim payment of the any amounts, plus interest and costs, payable by the customer in terms of this Agreement. The aforementioned shall not derogate from any other remedies which BHBW may have at law.
- 15.9 As far as permissible in law, should the customer breach this Agreement, then BHBW shall, in addition to any other rights which it might have in law, have the right to obtain an attachment order in any court with jurisdiction, placing the equipment referred to in the Proposal into the custody of BHBW pending the conclusion of any action instituted or to be instituted against the customer and the parties agree that BHBW need not serve a notice of demand on the customer before institution of proceedings to obtain an order for attachment of the equipment or an interdict against the customer.

16 General

- 16.1 Each party shall treat as strictly confidential this Agreement and all of its contents.
- 16.2 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any party in respect of its rights under this Agreement, nor shall it operate so as to preclude such party from exercising its rights strictly in accordance with this Agreement at a later stage.
- 16.3 As far as permissible by law, no party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the agreement and/or whether it was negligent or not.