

AWCAPE STANDARD TERMS & CONDITIONS

1. DEFINITIONS AND INTERPRETATION

The following terms and expressions shall bear the meanings assigned to them below:

- 1.1 **“Agreement”** means this document, together with any relevant Proposal, Agreement, Annexures or Addendums, as each may be amended from time to time;
- 1.2 **“Business Day”** means any day, except a Saturday, Sunday or an official South African public holiday;
- 1.3 **“Confidential Information”** means any information or data which by its nature or content is identifiable as sensitive, confidential and/or proprietary and concerns or relates to the trade secrets, processes, operations, style of work, or to the production, sales, purchases, identification of customers, inventories or amount or source of any income, profits, losses or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, the disclosure of which is likely to cause substantial harm to the competitive position of the person, firm, partnership, corporation or other organization from which the information was obtained;
- 1.4 **“Losses”** means all direct losses, liabilities, damages and claims, and related costs and expenses (including legal fees on the scale as between attorney and client, tracing and collection charges, costs of investigation, interest and penalties;
- 1.5 **“Notice”** means a written document;
- 1.6 **“Parties”** means AWCape and the Customer and **“Party”** means either AWCape or the Customer.
- 1.7 **“Services”** means the Services that AWCape will provide to the Customer for purposes of the Agreement.

Clause headings are used for convenience only and shall not be considered in the interpretation of this Agreement.

Any reference to “Days” shall be construed as being a reference to calendar days unless a “Business Day” is specified.

2. VALIDITY OF QUOTATIONS

All quotes shall remain valid for a period of 30 (thirty) days from date of issue. The validity of any price quoted is subject to any increases in the price charged by AWCape suppliers.

3. ORDERS

- 3.1 All orders, whether oral or in writing, shall be binding and subject to this Agreement.
- 3.2 No order may be cancelled without the written consent of AWCape. Should the Customer cancel any order for whatever reason, the Customer will be liable for all costs incurred by AWCape in developing or preparing the product and/or Services ordered.

4. PROOF OF DELIVERY & INVOICING

- 4.1 Any delivery note, time sheet or invoice signed by the Customer and held by AWCape shall be conclusive proof that the delivery was made, and/or the Services were provided to the Customer.
- 4.2 AWCape shall be entitled in its sole discretion to split the delivery of goods ordered in quantities and on the dates, it so decides.
- 4.3 AWCape shall be entitled to invoice each delivery made separately.

5. RISK

- 5.1 The risk of damage to or destruction of goods passes to the Customer on conclusion of this Agreement.
- 5.2 All goods supplied by AWCape remain the property of AWCape until such goods have been fully paid for. The Customer is not entitled to sell any goods unpaid for without the prior written approval of AWCape.

6. PAYMENT

- 6.1 The Customer agrees to pay the amount on the invoice to AWCape -
 - 6.1.1 by cash on order for software or any equipment or goods;
 - 6.1.2 by debit or stop order for AWCloud Services;
 - 6.1.3 by EFT for pre-paid Services;
 - 6.1.4 or in a manner otherwise agreed to in writing by AWCape.
- 6.2 For Customers who are not on pre-paid Services, payment is to be made within 30 (thirty) days from date of invoice, unless otherwise agreed to by AWCape.
- 6.3 Interest shall be levied against any overdue amounts at the rate prescribed in terms of the Prescribed Rate of Interest Act 55 of 1975, from due date of debt.
- 6.4 The Customer has no right to withhold payment for any reason whatsoever.
- 6.5 The Customer is not entitled to set-off.
- 6.6 The Customer agrees that if an account is not settled in full against order or within the periods agreed to above, AWCape will be entitled, within 7 (seven) days after Notice has been given, to -
 - 6.6.1 forthwith suspend all Services to the Customer without further Notice;
 - 6.6.2 cancel the Agreement;
 - 6.6.3 take possession of any goods delivered to the Customer; and
 - 6.6.4 institute action against the Customer for the recovery of losses AWCape may have suffered resulting from such cancellation.
- 6.7 The Customer agrees that the amount due and payable to AWCape for Services rendered shall be determined and proven by a time sheet issued by AWCape and signed on its behalf by any authorized person, whose authority need not be proven. Such time sheet shall be binding and be *prima facie* proof of the indebtedness of the Customer.
- 6.8 In the event of cancellation, the Customer shall be liable to pay -
 - 6.8.1 the difference between the selling price and the value of the goods at the time of repossession; and
 - 6.8.2 all other costs incurred in repossession of the goods.
- 6.9 The value of repossessed goods will be deemed to be the value placed on them by any sworn valuator after such repossession and such valuation will be conclusive proof of value. The Customer indemnifies AWCape completely against any damage whatsoever relating to the removal of repossessed goods.

7. CONFIDENTIALITY

- 7.1 The Parties acknowledge the importance of any Confidential Information and recognise that the Parties and/or third-party proprietors may suffer irreparable harm or loss in the event of such information being disclosed or used otherwise than in accordance with this Agreement.
- 7.2 Both Parties therefore agree, except as permitted by this Agreement, not to disclose or publish any Confidential Information in any manner, for any reason or purpose whatsoever without the prior written consent of the other Party and provided that in the event of Confidential Information being proprietary to a third party, it shall also be incumbent on the Receiving Party to obtain the consent of such third party.
- 7.3 Both Parties furthermore agree to restrict the dissemination of the Confidential Information to only those of the staff who are actively involved in activities for which use of Confidential Information is authorised and then only on a “need to know” basis. Both Parties shall initiate, maintain and monitor internal security procedures to prevent unauthorised disclosure.
- 7.4 AWCape may retain Confidential Information to the extent required, and for the duration of any Services performed in terms of this Agreement, subject to the right of the Customer to recover the Confidential Information at any time.
- 7.5 The provisions of this clause shall survive the expiration, cancellation or termination of this Agreement.

8. WARRANTIES

Each Party represents and warrants that the execution and performance of this Agreement have been duly authorised by the requisite corporate action on the part of such Party and that it has not violated any applicable laws, regulations or policies.

9. LIMITATION OF LIABILITY

AWCape shall under no circumstances be liable to the Customer for any consequential or indirect losses or damages of whatsoever nature and howsoever arising.

10. PROHIBITION AGAINST SOLICITING STAFF

- 10.1 The Parties agree that they shall not during the term of this Agreement and for a period of 12 (twelve) months after termination or expiration of this Agreement in any capacity, whether directly or indirectly, without the written consent of the other Party offer employment to or cause employment to be offered to or cause to be employed any person employed or contracted by the other Party and engaged by the last-mentioned Party in the provision or receipt of the Services.
- 10.2 The Parties further agree that the aforesaid provisions are fair and reasonable and go no further than is necessary to protect the interests of the Parties in respect of their staff.
- 10.3 The provisions of this clause shall survive the cancellation or termination of this Agreement.

11. GOOD FAITH

It is recorded that the successful and expeditious fulfilment of the obligations under this Agreement shall require that the Parties observe, at all material times, the principles of good faith towards each other and in their dealings with each other and their staff.

12. BREACH AND TERMINATION

- 12.1 Should either Party (“the Defaulting Party”) -
- 12.1.1 be in breach of any material term of this Agreement and fail to remedy such breach within 30 (thirty) Business Days after receipt of a Notice that it be remedied;
 - 12.1.2 repeatedly or continuously breach any term of this Agreement;

- 12.1.3 commit an act allowing for the winding up of a company in terms of the Companies Act, 71 of 2008;
- 12.1.4 be placed under an order of provisional or final liquidation;
- 12.1.5 be affected by *force majeure* as contemplated in clause 13 which lasts more than 20 (twenty) Business Days;
- 12.1.6 infringe a copyright, trade secret or patent of the other Party or of any third party in order to meet all or some of its obligations under this Agreement;
- 12.2 Then and in any of such events, the other Party (“the Innocent Party”) shall, without prejudice to any claim, rights or remedies of any nature whatsoever which it might have in law against the Defaulting Party, including its right to claim such damages as it may have suffered resulting from the breach of contract, be entitled to forthwith terminate this Agreement on Notice with immediate effect.
- 12.3 The provisions of this clause shall not affect or prejudice any other rights / remedies which the Parties may have by law.

13. FORCE MAJEURE

- 13.1 Should *force majeure* render AWCape, whether wholly or in part, incapable of carrying out its obligations under this Agreement, AWCape shall promptly give Notice to the Customer of the commencement and nature of the *force majeure* and thereafter of its cessation.
- 13.2 The obligations of AWCape shall, to the extent that these are affected by *force majeure*, be reduced or suspended during the continuance of the *force majeure*. However, the Parties specifically agree that the period of this Agreement shall be extended in accordance with the duration of the *force majeure*.
- 13.3 For purposes of clauses 13.1 and 13.2 above, “*force majeure*” shall include but not be limited to an act of God, fire, strike, flood, riot, war, non-availability or rationing of electricity, inability to secure materials, labour or supplies, embargoes and restrictions by any governmental authority or other similar causes beyond the Parties’ control and for which it is not responsible.

14. NOTICES

- 14.1 Any Notice to any Party shall be addressed to it at its *domicilium* and either sent by pre-paid registered post, email or delivered by hand. In the case of any Notice -
 - 14.1.1. sent by pre-paid registered post, it shall be deemed to have been received, unless the contrary is proved, on the third business day after posting;
 - 14.1.2 sent by email, it shall be deemed to have been received on the 1st (first) Business Day following the date of sending thereof, in the absence of any administrator or mail server error messages;
 - 14.1.3 delivered by hand, it shall be deemed to have been received, unless the contrary is proved, on the date of delivery, provided such date is a Business day or otherwise on the next following Business day.
- 14.2 Any Party shall be entitled, by Notice in writing to the other, to change its *domicilium* to any other address within the Republic of South Africa, provided that the change shall only become effective fourteen (14) days after delivery of the Notice in question.

15. ENTIRE AGREEMENT

This Agreement comprises the entire agreement between the Parties pertaining to the subject matter hereof and shall supersede and replace any other documents, letters or representations, promises or the like not recorded herein.

16. AMENDMENT / VARIATIONS

No amendment of, variation or addition to or deletion from this Agreement, including this clause shall be of any force or effect, unless recorded in writing and signed by both Parties to this Agreement or their duly authorised representatives.

17. WAIVER

No indulgence, which either Party may grant to the other, shall constitute a waiver of or prejudice the right of the Party granting the indulgence.

18. SEVERABILITY

If any part of this Agreement is found to be invalid or unenforceable, it shall be severed from the remainder of this Agreement, which shall remain valid and enforceable.

19. CESSION AND DELEGATION

Neither Party may cede its rights or delegate its obligations in terms of this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

20. SURVIVAL

Any provision of this Agreement, which contemplates performance or observance subsequent to a termination or expiration of this Agreement, shall survive any termination or expiration of this Agreement and continue in full force and effect.

21. DISPUTES

21.1 The Parties shall attempt in good faith to promptly resolve any dispute or claim arising out of or relating to this Agreement through negotiations between their respective liaison personnel.

21.2 Should the Parties not resolve the dispute after such referral, the matter shall be referred to the High Court, Cape Town.

21.3 This clause shall survive the expiration, cancellation or termination of this Agreement.

22. APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with South African Law.