

Trade References:				
	Company	Telephone	Contact	Credit Limit
1.		()		R
2.		()		R
3.		()		R

Ownership Details: <i>(Details of Directors/Members or Owners)</i>					
	Full Names	Identity Number	Address	Tel No.	Mobile No.
1.				()	
2.				()	
3.				()	

I/We the undersigned hereby accept and confirm that:

- I/we have read and accept the standard conditions of agreement as published below. **NB The standard terms and conditions of agreement must be initialled on each page and signed in full on the last page.**
- The information stated herein is both true and correct in every aspect and represents a true reflection of my financial position/the financial position of the Company.
- In the event of any dispute resolution and or the institution of legal action, the aforesaid information can and will be used, unless this information has been amended in writing by the Individual or Company, as the case may be, on notice to ASBIS AFRICA.
- I agree on my own behalf/on behalf of the Company that this information can be provided to Credit Bureaus or Data Capturing services in the event that the account is in arrears or any term/provision or clause of the standard conditions of agreement is breached.
- I certify that I am duly authorised to submit this application and that my submission will be binding on me/the Company, as the case may be.

Thus done and agreed at _____ on this the ____ day of _____ 20____ .

NAME: _____

DESIGNATION: _____

SIGNATURE: _____

Client to initial _____

ASBIS AFRICA
STANDARD AGREEMENT TERMS AND CONDITIONS

1. General:

- 1.1 These terms and conditions:
- (a) are the standard ASBIS AFRICA agreement which is entered into at Paulshof, and no alterations or additions may be effected unless agreed to by both parties, reduced to writing and signed by the Customer and a duly authorised representative of ASBIS AFRICA;
 - (b) will govern transactions in terms of which the Customer purchases goods or services from ASBIS AFRICA;
 - (c) are final and binding and are not subject to any conditions;
 - (d) supersede all previous terms and conditions but without prejudice to any securities or guarantees held by ASBIS AFRICA in relation to the Customer;
 - (e) inure for the benefit of ASBIS AFRICA assigns, subsidiaries and holding companies; and
 - (f) apply to both credit and cash customers.
- 1.2 Time is not of the essence of this agreement as far as ASBIS AFRICA's obligations are concerned, unless expressly agreed upon in writing by ASBIS AFRICA.
- 1.3 ASBIS AFRICA may supply goods and/or services and references to "goods" shall include "services" except where the context indicates otherwise.
- 1.4 Use of the goods shall constitute acceptance of the goods, without prejudice to the Customer's rights (if applicable) to return the goods under the Consumer Protection Act (CPA), under clause 12.

2. Prices and orders:

- 2.1 All quotes will remain valid for a period of 7 (seven) days from the date of the quote or until the date of issue of a new price, whichever occurs last. After 7 (seven) days, price is subject to availability and to any increases in the cost price, including currency fluctuations affecting ASBIS AFRICA prior to dispatch of goods.
- 2.2 In the absence of a quote, the Customer agrees to the standard prices of ASBIS AFRICA for any goods, as published in its ruling price list.
- 2.3 Orders may be placed telephonically but ASBIS AFRICA reserves the right to require written confirmation of any order. Telephonic orders will be recorded.
- 2.4 Only written variations to and cancellations of orders will be accepted, provided that variations and cancellations will not be accepted if the goods have been dispatched (from source) or delivered (to the Customer or the Customer's representative) and the Customer remains liable in this case for the full price of the goods and any other charges that may apply. Where orders are cancelled and the cancellation is accepted, ASBIS AFRICA may charge an administration fee in its discretion.

3. Fit for purpose:

- 3.1 It is ASBIS AFRICA intention to make goods available that are free of defects, of a high quality, usable and durable. It is the responsibility of the Customer to determine that the goods or services ordered are suitable for the purpose of intended use, except where the CPA applies.
- 3.2 **On delivery, the Customer should always confirm that the goods and services on the tax invoice issued duly represent the goods ordered by the Customer at the prices agreed to by the Customer and that the Customer is satisfied that these conform in all respects to the quality and quantity ordered.**
- 3.3 If the goods are not fit for the purpose for which they are intended, or if they later are found to be defective or hazardous or unsafe or if they fail to work properly or at all and the Customer is protected by the CPA, then the Customer may return the goods to ASBIS AFRICA at ASBIS AFRICA's cost within 6 (six) months of the date on which they were bought. Customers may not return goods that have been taken apart, used, or damaged in any way.

4. Delivery:

- 4.1 Any delivery notes or waybill or job card (copy or original) signed by the Customer or the Customer's representative shall be prima facie proof that delivery was made to the Customer.
- 4.2 ASBIS AFRICA shall be entitled to:
- (a) split the delivery of goods ordered as to the quantities and dates, with the prior consent of the Customer, which consent shall not be unreasonably withheld; and
 - (b) invoice each delivery actually made separately at the Customer's request.
- 4.3 The risk of damage to or destruction of goods is passed to the Customer on signature of the delivery receipt upon delivery to the Customer or the Customer's representative.
- 4.4 ASBIS AFRICA may engage a third party on its behalf to deliver goods to Customers. If a Customer chooses to collect the goods or nominates a third party to effect delivery to it (**third party delivery**), the Customer indemnifies ASBIS AFRICA against any claims of whatsoever nature that may arise either directly or indirectly from the third party delivery.
- 4.5 If a Customer is in arrears, ASBIS AFRICA may delay delivery without liability, until such time as the Customer has settled its account in full.
- 4.6 Where the CPA applies, the Customer may determine the date and time for delivery and ASBIS AFRICA will use its reasonable commercial endeavours to deliver at the time and on the date selected.

5. **Intellectual property:**

The Customer acknowledges all copyright, trademarks and patents comprised in the goods registered or unregistered and whether pending or final in ASBIS AFRICA or the manufacturer or licensee, as the case may be, (**ASBIS AFRICA IP**) and shall not duplicate material containing ASBIS AFRICA IP or the ASBIS AFRICA IP itself, nor use the ASBIS AFRICA IP in any way without ASBIS AFRICA's prior written consent.

6. **Warranties and repairs:**

6.1 The terms in this clause 6 apply unless the CPA provides otherwise.

6.2 New goods are guaranteed according to the manufacturer's product-specific warranties only and all other guarantees and warranties including common law guarantees are hereby specifically excluded. Services carry no guarantee. Some parts of the goods may not be warranted, such as batteries.

6.3 **Except where the CPA applies**, ASBIS AFRICA's liability under warranty is restricted to the cost of repair or replacement of faulty goods or services or granting of a credit at the sole discretion of ASBIS AFRICA. All guarantees are immediately null and void should any goods or equipment forming part of goods be tampered with, damaged (by water or otherwise) or should the seals on goods or equipment comprised in goods (being seals within the goods and not on the packaging) be broken by anyone other than ASBIS AFRICA or its appointed nominee, or should the goods be operated outside the manufacturer's specifications. Guarantees do not apply for fair wear and tear. To be valid, guarantee claims must be supported by the original tax invoice and the goods in the original packaging of the goods and with all accessories and manuals included. All items must be returned in an "as new" condition, fair wear and tear excepted.

6.4 It is the duty of the Customer to return any defective goods to the premises of ASBIS AFRICA or its nominee at the Customer's own cost.

6.5 No claim under guarantee will be accepted unless the Customer has, within 7 (seven) days of the alleged defect or failure of the goods, notified ASBIS AFRICA of the defect or failure and within a further 14 (fourteen) days, returned the goods to ASBIS AFRICA as set out above.

6.6 In the case of repairs undertaken by ASBIS AFRICA, repair times given are merely estimates and are not binding on ASBIS AFRICA. ASBIS AFRICA shall not be liable for any loss or damage of whatsoever nature which the Customer may suffer as a result of any unforeseen costs in relation to repairs, and/or delayed repairs. ASBIS AFRICA will use its reasonable commercial endeavours to repair faulty goods with the minimum delay and cost. ASBIS AFRICA shall not charge for a quote for repairs.

6.7 Clause 3 shall take effect where the CPA applies in relation to returns. In this case, repairs and replacements are guaranteed for 3 (three) months.

7. **Liability:**

7.1 **Under no circumstances will ASBIS AFRICA be liable for any consequential or indirect damages or loss of profit or for any delictual liability of any nature whatsoever, unless a claim for economic loss or damage to physical property, or for illness or death results directly from the supply of goods by ASBIS AFRICA that are of inferior quality, unsafe, hazardous or defective.**

7.2 **In this case, ASBIS AFRICA shall, at the Customer's election and in addition to paying proven damages, refund, replace or repair defective, failed or unsafe goods.**

7.3 ASBIS AFRICA will not be liable for any damage to goods or consequential damage resulting from misuse or abuse of the goods.

8. **Payment:**

8.1 All goods supplied by ASBIS AFRICA remain the property of ASBIS AFRICA until such goods have been fully paid for.

8.2 The Customer agrees to pay the amount on the tax invoice at the offices of ASBIS AFRICA by way of:

(a) cash on demand if the Customer has not been accepted for credit terms (**cash customer**); or

(b) if the Customer is a credit customer, within the terms agreed with ASBIS AFRICA.

8.3 The Customer has no right to withhold payment for any reason whatsoever and agrees that no extension of time to make payment of any nature will be extended to the Customer unless agreed to by ASBIS AFRICA, reduced to writing and signed by the Customer and a duly authorised representative of ASBIS AFRICA. The Customer is not entitled to set off any amount due to the Customer by ASBIS AFRICA.

8.4 The Customer agrees that the amount due and payable to ASBIS AFRICA for any reason may be determined and proven by a certificate issued by any independent auditor appointed by ASBIS AFRICA whose capacity it shall not be necessary to prove. Such certificate shall be binding and shall be prima facie proof of the indebtedness of the Customer. Any printout of computer evidence tendered by any party shall be admissible evidence and no party shall object to the admissibility of such evidence purely on grounds that such evidence is electronic evidence.

8.5 The Customer agrees that interest shall be payable on any moneys due to ASBIS AFRICA at 2% (two percent) above the prime overdraft rate quoted by Standard Bank Ltd at the relevant time, which interest shall be calculated on a daily balance and capitalized monthly from the date the invoice was due for payment. A certificate under hand of any manager of the Standard Bank Ltd shall be prima facie proof of the prime rate charged nor shall it be necessary to prove the signature or capacity of such manager.

9. **Breach:**

9.1 The Customer shall be in breach of this agreement if:

(a) an account is not settled in full against order if the Customer is a cash customer; or

- (b) an account is not settled within the agreed period if the Customer is a credit customer; or
 - (c) the Customer commits a breach of any other of these conditions; or
 - (d) being an individual, is provisionally or finally sequestrated or surrenders his estate, or being a partnership, is being dissolved, or being a company or close corporation is placed under a provisional or final order of judicial management or liquidation; or
 - (e) compromises or attempts to compromise generally with its creditors; or
 - (f) if an order of a competent court is issued against the Customer which relates to a matter of payment or corporate status.
- 9.2 In each of these events ASBIS AFRICA shall give the Customer 14 (fourteen) days' written notice to remedy the breach, failing which ASBIS AFRICA may immediately institute action against the Customer at the sole expense of the Customer; or cancel the agreement and require return of any goods delivered to the Customer by giving the Customer written notice to that effect; and in each case, claim direct damages.
- 9.3 Furthermore, ASBIS AFRICA shall be entitled to immediately suspend any delivery or service while the Customer is in breach of any of the terms of this agreement.
- 9.4 These remedies are without prejudice to any other right ASBIS AFRICA may be entitled to in terms of this agreement or in law.
- 9.5 ASBIS AFRICA shall be in breach of this agreement if it fails to deliver the goods ordered by the Customer, or a reasonably equivalent product, without unreasonable delay, or if ASBIS AFRICA fails to comply with any other obligation under this agreement.
- 9.6 The Customer shall give ASBIS AFRICA 14 (fourteen) days' written notice to remedy the breach, failing which the Customer may cancel an order if the breach relates to an order and claim a refund of all monies paid in advance; or in any other case, invoke all such rights as are open to it under this agreement or in law.

10 Jurisdiction:

- 10.1 This agreement shall be interpreted and applied in accordance with the law of the Republic of South Africa.
- 10.2 The parties consent to the jurisdiction of the Magistrates Court for the district of Randburg for any matters falling within the ambit of the Magistrates Court, failing which the parties consent to the jurisdiction of the High Court of South Africa, South Gauteng Division.

11 Additional provisions:

- 11.1 No indulgence by either party in favour of the other will affect the terms and conditions or any of the rights of the party granting the indulgence, and such indulgence shall not constitute a waiver of the relevant party's rights .
- 11.2 Any document or notice sent by one party to the other will be deemed to have been received within 3 (three) working days if sent by prepaid registered mail to the usual address of the Customer or to its registered address if a Company, and to the address shown above of ASBIS AFRICA; within 48 (forty-eight) hours if sent by overnight courier and each of the address of the parties shall be its chosen domicilium (**domicilium**). The parties shall inform one another in writing of any change in their domicilium. Any document or notice actually received will constitute adequate written notice.
- 11.3 The invalidity of any part of these terms and conditions will not affect the validity of any other part, each clause in this agreement being severable from the rest.
- 11.4 The parties shall be excused a failure to perform in the event of force majeure from any cause beyond its reasonable control including (without restriction) inability to secure or delay in securing labour, power, materials or supplies, or an act of God, pandemic, ,war, civil disturbance, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or change in legislation.

12. CPA provisions:

- 12.1 **Customers who do not fall within the threshold designated by the Minister of Trade and Industry under the CPA (threshold) or who are juristic persons or registered companies, are subject to these terms and conditions in their entirety.**
- 12.2 **The provisions of the CPA take precedence over this agreement for Customers who fall within the threshold, to the extent that any conditions contained within this agreement would operate contrary to the requirements of the CPA, and the Customer is hereby advised that at the date of issue of this agreement the regulations to be implemented under the CPA are not yet in force.**

Thus done and agreed at _____ on this the ____ day of _____ 20____ .

NAME: _____

DESIGNATION: _____

SIGNATURE: _____

Client to initial _____