



Standard Terms and Conditions



1. SERVICES/PRODUCTS

- 1.1. The Contracting IDU Entity, as defined in the software license agreement (the "License Agreement"), which is available for perusal on www.idusoft.com/license, shall license the products and provide the services described in the schedules thereto and these terms and conditions shall form an integral part thereof. The License Agreement, including the Maintenance and Support Agreement forming part thereof and which is available for perusal on www.idusoft.com/maintenance and all other schedules thereto, as read together with these terms and conditions shall constitute the "Agreement".

2. PURCHASE PRICE AND PAYMENT

- 2.1. The CLIENT shall pay the purchase price for the products set out on the Proposal / Quote signed by the CLIENT ("the Purchase Price").
- 2.2. The Purchase Price excludes GST, Value Added Tax or any other local taxes.
- 2.3. IDU may increase the Purchase Price with any additional or increased duties or taxes that might be levied or by the impact of any exchange rate fluctuations arising at the date of issue of an invoice, without any prior notice to the CLIENT.
- 2.4. All payments by the CLIENT in terms of or arising out of this Agreement shall be made:
 - 2.4.1. within 30 (thirty) calendar days from the date of IDU's invoice, by direct transfer into such account as IDU may advise in writing from time to time;
 - 2.4.2. in cash, in the currency designated on the invoice, free of conditions, set-off, bank or other exchange, commission or any other deduction (it being agreed that no post-dated cheques shall be accepted by IDU); and
 - 2.4.3. the CLIENT may not defer, adjust or withhold any payment due to IDU in terms of this Agreement or obtain deferment of judgment for such amounts or any execution of such judgment by reason of any set-off or counterclaim.
- 2.5. All payments made shall be applied chronologically, i.e.: first against the oldest outstanding invoice due which is not the subject of arbitration as noted in clause 6.
- 2.6. The amount due and payable by the CLIENT to IDU in terms of this Agreement at any time, shall be determined and proved by a certificate signed by one of IDU's directors, whose appointment, qualification and authority need not be proved. Such certificate shall be deemed to be a liquid document for the purpose of obtaining summary judgment, provisional sentence and/or any other judgment against the CLIENT.

3. INTELLECTUAL PROPERTY

- 3.1. You acknowledge:
 - 3.1.1. that existing and future Intellectual Property rights in and to the Software and Software Documentation inclusive of inventions, Know-How, Copyright and Confidential Information including source code shall at all times vest in IDU (as defined in the License Agreement);
 - 3.1.2. that any enhancements, modifications or improvements made to the Software by any IDU group entity (as described in clause 17 of the License Agreement) will be owned by such IDU group entity, referred to in general terms herein as IDU;
 - 3.1.3. that the Software was developed and designed by an IDU group entity and that you shall acknowledge this in all your dealings by including, inter alia, reference to IDU as the developer and the designer in all written documentation and/or verbal communications relating to the Software and Software Documentation;
 - 3.1.4. that IDU is entitled to sell or transfer in whatsoever manner any and all of the Intellectual Property vested in IDU or any of its rights or obligations under this Agreement;
 - 3.1.5. You shall not at any time in any way question and/or dispute the ownership of IDU of any such Intellectual Property and undertake not to infringe or prejudice any rights of IDU in and to the Software or Software Documentation.
 - 3.1.6. All Intellectual Property developed by IDU during the course of this Agreement shall belong to IDU.

4. BREACH

- 4.1. If a Party to this contract:
 - 4.1.1. commits any breach of this Agreement other than a breach of a payment obligation and fails to remedy the breach within 30 (thirty) calendar days after receipt from the other Party of written notice calling upon it to do so;
 - 4.1.2. commits a breach of any payment obligation in terms of this Agreement and fails to make payment within 7 (seven) calendar days after receipt from the other Party of written notice calling upon it to do so;
 - 4.1.3. commits or is deemed to have committed an act of insolvency within the ambit of the Insolvency Act, or is unable or deemed to be unable to pay its debts within the ambit of the Companies Act or Close Corporations Act, as the case may be, or ceases business, or is subject to an application for its winding up, or is subject to business rescue proceedings, or is dissolved and/or deregistered or applies for dissolution or deregistration under the Companies Act or Close Corporations Act, as the case may be;
 - 4.1.4. has judgment granted against it and fails to satisfy or apply to have same set aside within 7 (seven) calendar days of becoming aware thereof; or
 - 4.1.5. without the prior written consent of the other Party, which consent will not be unreasonably withheld, undergoes a change in its shareholding or members' interest or participation rights so that a new person or persona owns the majority of its voting share capital or members' interest, or otherwise takes over control of the affairs of such Party;
 - 4.1.6. then in all or any such events, and without prior notice, the other Party shall be entitled, in addition to and without prejudice to any other claims or rights it may have in law or in terms of this Agreement, to: a) enforce specific performance of the terms of this Agreement; or b) subject to clause 4.2, cancel this Agreement; and c) in either event (subject to clause 4.4), recover such damages as it may have sustained.
- 4.2. An aggrieved Party may only cancel this Agreement in terms of clause 4.1.1 if the breach is material and is not capable of being remedied by payment of money or, if it is capable of remedy by payment of money, if the other Party fails to make payment within 10 (ten) calendar days after final determination of the amount.
- 4.3. No action for any claim against IDU arising from the terms of this or any other agreement or IDU's performance in terms thereof may be instituted in any Court unless the dispute resolution proceedings referred to in clause 6 below are instituted in terms of this agreement by the client within one year of such purported cause of action arising.
- 4.4. Notwithstanding cancellation or termination of this Agreement for whatever reason, any provisions contemplated to continue after termination of this Agreement shall be deemed

to have survived the termination of the Agreement, which provisions shall include, without limitation, any outstanding payment obligations, duties of confidentiality and all rights to Intellectual Property.

- 4.5. Any amount due by any Party which is not paid on its due date shall attract interest at Prime Rate, plus 2 (two) percentage points. For the purposes of this clause 4, "Prime Rate" means the interest rate (expressed as a % per annum, compounded monthly) from time to time published by an agreed major high street branch in the region as being its minimum overdraft rate at which it lends to its most valued customers in the corporate sector, as certified by any manager of such bank, whose appointment or authority it shall not be necessary to prove, and which certificate shall, save manifest error of calculation, be prima facie proof of the contents thereof.

5. FORCE MAJEURE AND LIMITATION

- 5.1. Neither Party shall have any claim against the other Party ("the Affected Party") for any delay or failure of the Affected Party to carry out any of its obligations under this Agreement arising from or attributable to acts of God, war, terrorism, government, labour action or unrest, failure of suppliers or contractors or any other cause whatsoever beyond the control of the Affected Party ("force majeure").
- 5.2. The performance of the obligations of the Affected Party shall, subject to clause 5.3, be suspended for the duration of the force majeure, which shall be deemed to commence only upon the date of written notice by the Affected Party to the other Party. Upon cessation of the force majeure, this Agreement shall again become fully operative and the Affected Party shall immediately resume its performance.
- 5.3. If the suspension of performance continues for more than 60 (sixty) consecutive calendar days, then either Party may summarily terminate this Agreement by written notice to the other Party, prior to the cessation of the force majeure.
- 5.4. Any claim by the CLIENT against IDU howsoever arising shall in the aggregate be limited to a) in respect of the sale and/or distribution of products, CLIENT agrees that except for IDU's indemnification obligation arising under Section 9 of the Software License agreement, IDU's total liability to CLIENT or any third party for damages, regardless of the form of action, shall, in any event, be limited to the total of the Software license fees and On-Going Support fees received from CLIENT under this Agreement less an amount deemed reasonable for use of the product; and b) in respect of the rendition of services the lesser of the service charges paid by the CLIENT to IDU for the month preceding the date of institution of the claim against IDU and the total amount paid by the CLIENT to IDU in terms of the License Agreement. In no event shall IDU be liable for any consequential, indirect, special, punitive or incidental damages (including, without limitation, lost revenues or profits), whether or not foreseeable and whether arising out of breach of any express or implied warranty, breach of contract, negligence, misrepresentation, strict liability in delict or otherwise, and whether based on this Agreement or any transaction performed or undertaken under or in connection with this Agreement. The provisions of this clause are also stipulated for the benefit of the employees, agents and/or contractors of IDU.

6. ARBITRATION

- 6.1. The Parties shall first use reasonable endeavours to resolve any disputes that may arise under this Agreement through good faith negotiations. This entails one of the Parties inviting the other in writing to meet, either in person or by means of telephone or video conferencing facilities, and to attempt to resolve the dispute within 5 (five) Business Days from date of written invitation. In the event that such negotiations do not result in a mutually acceptable resolution within 5 (five) Business Days of the commencement thereof, the dispute shall be handled in accordance with clause 6.2.
- 6.2. Subject to clause 6.1, any dispute or difference arising out of or relating to this Agreement, its termination or cancellation shall be referred to arbitration and finally resolved in accordance with the rules of the region as defined in the License Agreement (www.idusoft.com/license), and conducted in the English language before one arbitrator appointed in accordance with the said rules. Any award will be final and not subject to appeal. This agreement to arbitrate shall be enforceable in, and judgement upon any award may be entered in, any court of any country having appropriate jurisdiction. A dispute shall be deemed to have arisen when either Party notifies the other Party in writing to that effect. These provisions shall not prevent either Party from approaching any court or other judicial forum in any country having appropriate jurisdiction to obtain timely interim or other relief in cases of urgency.

7. CONFIDENTIALITY, PRIVACY AND SECURITY

- 7.1. The Parties shall hold in confidence all Confidential Information received from each other and not divulge the Confidential Information to any person, including any of its employees, save for employees directly involved with the execution of this Agreement.
- 7.2. The Parties shall prevent disclosure of the Confidential Information, except as may be required by law.
- 7.3. Within one (1) month after the termination of this Agreement, for whatever reason, the recipient of Confidential Information shall return same or at the discretion of the original owner thereof, destroy such Confidential Information, and shall not retain copies, samples or excerpts thereof.
- 7.4. It is recorded that the following information will, for the purpose of this Agreement, not be considered to be Confidential Information:
 - 7.5. information known to either of the Parties prior to the date that it was received from the other Party; or
 - 7.5.1. information known to the public or generally available to the public prior to the date that it was disclosed by either of the Parties to the other; or
 - 7.5.2. information which becomes known to the public or becomes generally available to the public subsequent to the date that it was disclosed by either of the Parties to the other, through no act or failure to act on the part of the recipient of such Information; or
 - 7.5.3. information which either of the Parties, in writing, authorises the other to disclose.
- 7.6. For the purpose of this clause, the Party who makes the allegation carries the burden of proof thereof.
- 7.7. IDU and the CLIENT will each comply with all laws and regulations applicable to them including those relating to privacy and security. IDU will not however be responsible for compliance with any laws or regulations applicable to the CLIENT or its industry that are not generally applicable to information technology service providers. CLIENT consents to the processing of personal information by IDU and its agents to facilitate

- the subject matter of the Agreement, any online services subscription or enrolment and any other related and supplemental terms of service.
- 7.8. If the CLIENT chooses to provide personal information to IDU on behalf of third parties in connection with, relating to, or arising from the Agreement and any related services, CLIENT must, and undertakes to, first obtain all required consents from such parties under applicable privacy and data protection laws.
- The personal information that CLIENT provides in connection with the Agreement or any related IDU services will be processed according to IDU's Privacy Policy and Data protection Policy which are available for perusal on www.idusoft.com/privacy-policy and www.idusoft.com/popia, respectively. Personal data collected through the online or other services may be transferred, stored and processed in South Africa and any other country in which IDU or its service providers maintain facilities and, by entering into the Agreement and/or using the online or other services, CLIENT consents to the foregoing. IDU abides by all laws and regulations regarding the collection, use and retention of data from all relevant jurisdictions.
- 8. PUBLICITY**
- 8.1. IDU shall be entitled to publish any announcement of this transaction through any of the media and shall be entitled, from time to time, to publish notification of the existence of this agreement in any list indicating the identity of customers of IDU utilising the software.
- 9. DOMICILIUM AND NOTICES**
- 9.1. The Parties choose their respective domicilium addresses for all purposes hereunder at the following addresses: for IDU - the address set out in the License Agreement; and for the CLIENT – the address set out in the Schedule thereto (www.idusoft.com/license).
- 9.2. Any Party shall be entitled from time to time, by written notice to the other(s), to vary its domicilium address to any other address which is not a post office box or poste restante.
- 9.3. All notices given in terms of this Agreement shall be in writing and any notice given by any Party to another ("the addressee") which –
- 9.3.1. is delivered by hand or transmitted by telefacsimile, shall be deemed to have been received by the addressee on the first working day after the date of delivery or transmission, as the case may be;
- 9.3.2. is posted by pre-paid registered post from an address within the Republic of South Africa to the addressee at its domicilium address for the time being shall be deemed to have been received by the addressee on the 10th (tenth) working day after the date of such posting;
- 9.3.3. is posted by pre-paid registered post from an address outside the Republic of South Africa to the addressee at its domicilium address for the time being shall be deemed to have been received by the addressee on the 15th (fifteenth) working day after the date of such posting;
- 9.3.4. is delivered by email shall be deemed to have been received on the next working day after despatch, provided that it shall not be permissible to give any notice relating to a dispute, demand, renewal, cancellation or termination by email.
- 10. GENERAL**
- 10.1. No alteration or variation to, or consensual cancellation of this Agreement shall be of any force or effect, unless it is recorded in writing and signed by all the Parties.
- 10.2. No failure or delay by a Party to enforce any provision of this Agreement shall constitute a waiver or suspension of such provision or affect in any way a Party's right to require performance of any such provision at any time in the future, nor shall the waiver of any right arising from any subsequent breach nullify the effectiveness of the provision itself.
- 10.3. The CLIENT may not cede its rights and/or delegate its obligations under this Agreement without the prior written consent of IDU which consent will not be unreasonably withheld, provided that IDU shall be entitled to cede its rights and/or delegate its obligations under this Agreement to any company in the IDU Group without the consent of the CLIENT. For the purposes of this Agreement, "IDU Group" means those entities defined in the License Agreement (www.idusoft.com/license).
- 10.4. Unless otherwise agreed in writing between the Parties, no Party shall for the duration of this Agreement and for a period of 12 (twelve) months after expiry or termination thereof for its own benefit, whether directly or indirectly, or as a representative of or agent for any third party, persuade, induce, encourage, procure or solicit (or procure such persuasion, inducement, encouragement, procurement or solicitation of) the personnel of the other Party or of the IDU Group:
- 10.4.1. to become employed, or interested, directly or indirectly in any manner whatsoever, by it or in any business which is in competition with the business carried on by the other Party or by the IDU Group; or
- 10.4.2. to terminate his/her employment with the other Party or with the IDU Group; or
- 10.4.3. to disclose any Intellectual Property of the other Party or the IDU Group to any person not authorised by the owner of the Intellectual Property to receive it.
- 10.5. Each Party acknowledges that it does not enter into this Agreement on the basis of and does not rely on any representation, warranty or other provision, whether express or implied, except as expressly provided in this Agreement. All conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by the law of the Republic of South Africa.
- 10.6. Each Party warrants that it is acting as principal and not as agent for any other person, whether disclosed or otherwise.
- 10.7. This Agreement shall be governed by, construed and interpreted in accordance with the laws as defined in the License Agreement (www.idusoft.com/license). The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.
- 10.8. If any Party is awarded costs by an arbitrator or court, he shall be entitled to be reimbursed by the other Party on the basis of Attorney and own CLIENT charges.
- 10.9. If the CLIENT fails to pay any undisputed amount due and payable to IDU in terms of this Agreement then IDU may, without prejudice to any other rights it may have, suspend the rendering of further services or provision of products until payment thereof.
- 10.10. If any conflict arises in respect of the provisions contained in these terms and conditions and the attached License Agreement, the provisions contained in the License Agreement shall prevail.
- 10.11. The CLIENT shall bear all risk of damage to or loss of the products as set out in the License Agreement from the delivery of the products to the CLIENT.
- 10.12. Notwithstanding delivery and invoice of the products as set out in the License Agreement to the CLIENT, ownership in and to such products shall not pass to the CLIENT until the purchase price of such products has been paid in full to IDU.
- 10.13. The terms and conditions contained on the CLIENT's purchase order, order acceptance forms and/or invoices shall not apply to supplement or supersede any provision of this Agreement.
- 10.14. The CLIENT shall be responsible for and control all activities in which IDU is involved which activities shall remain under the supervision, management and control of the CLIENT.
- 10.15. Insofar as more than one contract is entered into in this Agreement, each such contract shall be deemed to be divisible from the other(s) in all respects.
- 10.16. The Protection of Personal Information is very important to IDU. To provide a seamless and effective service to our clients we need to hold and maintain the contact details of Client staff. This information is held in our CRM and Finance systems. We only use these details to communicate business information to the recipient and the Client agrees to IDU holding and using the same for the purposes described.
- 10.17. For Clients using the IDU Cloud hosting service, this is delivered in conjunction with Microsoft Azure and are subject to the Microsoft Azure terms and conditions as detailed on <https://azure.microsoft.com/en-us/support/legal/> and www.idusoft.com/cloud.