

Terms of trade

1. The Customer agrees that (a) this Agreement represents the entire Agreement between the Customer and Netcom Enterprises CC (hereinafter called Netcom)) and that no alterations or additions to this Agreement may be effected unless agreed to by both parties, reduced to writing and signed by the Customer and a duly authorized representative of Netcom; (b) this Agreement will govern all future contractual relationships between the parties; (c) this Agreement is applicable to all existing debts between the parties; (d) this Agreement is final and binding and is not subject to any suspensive or dissolution conditions; (e) any conflicting conditions stipulated by the Customer are expressly excluded; (f) these terms supersede all previous conditions of agreement without prejudice to any securities or guarantees held by Netcom and (g) these terms apply to all servants and subcontractors of Netcom.

2. This Agreement only becomes final and binding on receipt of the acceptance of any order by Netcom at its business address in Walvis Bay.

3. The signatory hereby binds himself/herself in his / her personal capacity as Shareholder (in the case of a company), Member (in the case of close corporations) or Owner or Partner as co-debtor jointly and severally for the full amount due to Netcom and agrees that these Standard Conditions will apply in the exact same way to him/her.

4. The Customer acknowledges that it does not rely on any representations made by Netcom regarding the goods and services or any of its qualities leading up to this Agreement other than those contained in this Agreement. All specifications, price lists, performance figures, advertisements, brochures, and other technical data furnished by Netcom in respect of the goods or services orally or in writing will not form part of the Agreement in any way unless agreed to in writing by Netcom.

5.1 The Customer agrees that neither Netcom nor any of its employees will be liable for any negligent or innocent misrepresentations made to the Customer.

5.2 It is the sole responsibility of the Customer to determine that the goods or services ordered are suitable for the purposes of intended use.

5.3 The Customer agrees to pay all costs resulting from any acts or omissions of the Customer including suspension of work, modification of requirements, failure or delay in giving particular requisite to enable work to proceed on schedule or requirements that work be completed earlier than agreed.

5.4 Netcom reserves the right at its sole discretion to provide alternative goods at the prevailing prices to those ordered by the Customer should such goods be superseded, replaced or its manufacture terminated.

6.1 All quotations will remain valid for a period of 7 days from the date of the quotation or until the date of issue of a new Price List or until the rate of exchange changes more than 2% against the US

Dollar, whichever occurs first.

6.2 All quotations are subject to the availability of the goods or services and subject to correction of good faith errors by Netcom and the prices quoted are subject to any increases in the cost price, including currency fluctuations, of Netcom before acceptance of the order.

6.3 If the Customer disputes the amount of increase, the amount of the increase may be certified by any independent auditor and such certificate shall be final and binding on the Customer.

6.4 The Customer hereby confirms that the goods or services on the Tax Invoice issued duly represent the goods or services ordered by the Customer at the prices agreed to by the Customer and, where delivery/performance has already taken place, that the goods or services were inspected and that the Customer is satisfied that these conform in all respects to the quality and quantity ordered and are free from any defects.

6.5 Notwithstanding the provisions of section 1 above, all orders or agreed variations to orders, whether oral or in writing, shall be binding and subject to these standard conditions of the agreement and may not be canceled.

6.6 Netcom shall be entitled in its sole discretion to split the delivery/performance of the goods or services ordered in the quantities and on the dates it decides.

6.7 Netcom shall be entitled to invoice each delivery/performance actually made separately.

6.8 Any delivery note or waybill or job card (copy or original) signed by the Customer or a third party engaged to transport the goods and held by Netcom shall be conclusive proof that delivery was made to the Customer.

6.9 The risk of damage to, destruction or theft of goods shall pass to the Customer on acceptance of any order placed in terms of this Agreement and the Customer undertakes to comprehensively ensure the goods until paid for in full. Netcom may recover insurance premiums from the Customer for such uninsured goods.

6.10 Delivery, installation and performance times quoted are merely estimates and are not binding on Netcom.

6.11 If Netcom agrees to engage a third party to transport the goods, Netcom is hereby authorized to engage a third party on the Customer's behalf and on the terms deemed fit by Netcom.

6.12 The Customer indemnifies Netcom against any claims that may arise from such agreement in clause 6.11 against Netcom.

6.13 Repair times and repair costs given are merely estimates and are not binding on Netcom

6.14 Any item handed in for repair may be sold by Netcom to defray the cost of such repairs if the item remains uncollected within 30 days of the repairs being completed.

6.15 All goods taken on an evaluation or demonstration basis by the Customer are deemed sold if not returned within 7 days of issue in the original condition, in the original packaging and with all accessories and manuals intact.

6.16 The Customer acknowledges all copyrights and shall not duplicate copyrighted material and that each infringement attempt shall immediately render the full prevailing price payable to Netcom.

6.17 The Customer shall indemnify Netcom against any claims, costs, and expenses arising out of the infringement of copyright, patent, trademark or design supplied by the Customer.

7.1 New goods are guaranteed according to the Manufacturer's product specific warranties only and all other guarantees including common law guarantees are hereby specifically excluded

Services carry no guarantee.

7.2 No claim under this Agreement shall arise unless the Customer has, within 3 days of the alleged breach or defect occurring, given Netcom 30 days written notice by prepaid registered post to rectify any defect or breach of Agreement.

7.3 To be valid, claims must be supported by the original Tax Invoice.

7.4 The Customer shall return any defective moveable goods to the premises of Netcom at the Customer's own cost and packed in the original or suitable packaging and all risks for the duration of repair remain with the Customer.

8.1 Under no circumstances shall Netcom be liable for any consequential damages or for any delictual liability of any nature whatsoever.

8.2 Under no circumstances shall Netcom be liable for any damage arising from any misuse, abuse or neglect of the goods or services.

9. Delivery of the goods or services to the Customer shall take place at the place of business of Netcom.

10.1 The Customer agrees that the amount contained in a Tax Invoice issued by Netcom shall be due unconditionally (a) cash on order, or (b) if the Customer is a Credit Approved Customer,

within the granted credit period as specified on the Credit Application after a Tax Invoice has been issued by Netcom

10.2 The Customer agrees to pay the amount on the Tax Invoice at the offices of Netcom or at such other place Netcom may designate in writing.

10.3 The risk of payment by cheque through the post rests with the Customer.

11.1 The Customer has no right to withhold payment for any reason whatsoever and agrees that no extension of payment of any nature shall be extended to the Customer and any such extension will not be applicable or enforceable unless agreed to by Netcom, reduced to writing and signed by the Customer and a duly authorized representative of Netcom.

11.2 The Customer is not entitled to set off any amount due to the Customer by Netcom against this debt.

11.3 All discounts shall be forfeited if payment in full is not made on the due date.

12.1 The Customer agrees that the amount due and payable to Netcom may be determined and proven by a certificate issued and signed by any director or manager or member or partner. Such certificate shall be binding and shall be prima facie proof of the indebtedness of the Customer.

12.2 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 computer evidence or that the requirements of the Computer Evidence Act have not been met.

13.1 The Customer agrees that interest shall be payable at the maximum legal interest rate prescribed in terms of the Usury Act on any amounts of money past due date to Netcom and that interest shall be calculated daily and compounded monthly from the date of acceptance of the order.

13.2 The Customer expressly agrees that no debt owed to Netcom by the Customer shall become prescribed before the passing of a period of ten years from the date the debt falls due.

14.1 The Customer agrees that if an account is not settled in full (a) against order; or (b) within the period agreed in clause 10.1 above in the case of a Credit Approved Customer; Netcom is: (i) entitled to immediately institute action against the Customer at the sole expense of the Customer; or (ii) to cancel the agreement and take possession of any goods delivered to the Customer and claim damages. These remedies are without prejudice to any other right Netcom may be entitled to in terms of this agreement or in law. Netcom reserves its right to stop supply immediately on cancellation or on non-payment.

14.2 A Credit Approved Customer will forthwith lose this approval when payment is not made according to the conditions of 10.1(b) and all amounts then outstanding shall immediately become due and payable.

15.1 In the event of cancellation, the Customer shall be liable to pay (a) the difference between the

selling price and the value of the goods at the time of repossession and (b) all other costs incurred in the repossession of the goods. The value of repossessed or retained pledged goods shall be deemed to be the value placed on them by any sworn valuator after such repossession and such valuation shall be conclusive proof of the value. If the goods are not recovered for any reason whatsoever, the value shall be deemed to be nil.

15.2 The Customer irrevocably authorizes Netcom to enter its premises to repossess any goods delivered and indemnifies Netcom completely against any damage whatsoever relating to the removal of repossessed goods.

15.3 In the event of cancellation Netcom is entitled not to produce any unmade balance of a contract and to recover any loss sustained thereby from the Customer.

16.1 All goods supplied by Netcom remain the property of Netcom until such goods have been fully paid for whether such goods are attached to other property or not.

16.2 The Customer is not entitled to sell or dispose of any goods unpaid for without the prior written consent of Netcom. The Customer shall not allow the goods to become encumbered in any manner prior to the full payment thereof and shall advise third parties of the rights of Netcom in the goods.

16.3 If any goods supplied to the Customer are of a generic nature and have become the property of the Customer by operation of law (*confusio* or *commixtio*) the Customer shall be obliged on notice of cancellation of the agreement to retransfer the same quantity of goods in ownership to Netcom.

17.1 The Customer shall be liable to Netcom for all legal expenses on the attorney-and-own-client scale of an attorney and counsel incurred by Netcom in the event of (a) any default by the Customer or (b) any litigation in regard to the validity and enforceability of this agreement. The Customer shall also be liable for any tracing, collection or valuation fees incurred as well as for any costs, including stamp duties, for any form of security that Netcom may demand.

17.2 The Customer shall pay three thousand Namibia Dollar into court or furnish sufficient security in lieu of costs in any action instituted by or against the Customer.

17.3 The Customer agrees that Netcom will not be required to furnish security in terms of Rule 62 of the Rules of Court of the Magistrate's Courts or in terms of Rule 47 of the Law of the Supreme Court 59 of 1959.

18. The Customer agrees that no indulgence whatsoever by Netcom will affect the terms of this agreement or any of the rights of Netcom and such indulgence shall not constitute a waiver by Netcom in respect of any of its rights herein. Under no circumstances will Netcom be prevented from exercising any of its rights in terms of this Agreement.

19. The Customer hereby consents that Netcom shall have the right to institute any legal action in either the Magistrate's Court or the High Court at its sole discretion.

20.1 Any document shall be deemed duly presented to and accepted by the Customer (i) within 3 days of prepaid registered mail to any of the Customer's business or postal addresses or to the personal address of any director, member or owner of the Customer; or (ii) within 24 hours of being faxed to any of the Customer's fax numbers or any director, member's or owner's fax numbers; or (iii) on being delivered by hand to the Customer or any director, member or owner of the Customer; or (iv) within 48 hours if sent by overnight courier; (v) within 24 hours of being telexed to the Customer's telex number or (vi) within 7 days of being sent by surface mail

20.2 The Customer chooses its address for legal execution as the business address or the physical addresses of any Director (in the case of a company), Member (in the case of close corporations) or of the Owner(s) or Partner(s).

20.3 The Customer undertakes to inform Netcom in writing within 7 days of any change of Director, Member, Shareholder, Owner or Partner or address or 14 days prior to selling or alienating the Customer's business and failure to do so will constitute a material breach of this agreement. Upon receipt of such written notification, Netcom reserves the right, at its sole discretion, to withdraw any credit facility advanced to the Customer.

20.4 The Customer hereby consents to the storage and use by Netcom of the personal information that it has provided to Netcom for establishing its credit rating and to Netcom disclosing such information to credit control companies, banks, and other institutions involved in rating credit. The Customer agrees that Netcom will not be held liable for the good faith disclosure of any of this information to such a third party and that no further specific consent needs to be obtained for the transfer of such information to a specific third party.

20.5 The Customer hereby consents that Netcom can provide personal information of the Customer to third parties, if the Customer has indicated Netcom as a trade reference to third parties and the Customer agrees that Netcom will not be liable for the good faith disclosure of any of this information to such third parties.

20.6 The Customer hereby agrees that the credit facility is a variable credit facility and that Netcom shall be entitled to increase its credit limit from time to time.

21. The Customer agrees to the Standard Rates of Netcom for any goods or services rendered, which rates may be obtained on request.

22. The invalidity of any part of this Agreement shall not affect the validity of any other part.

23. Any order is subject to cancellation by Netcom due to Acts of God from any cause beyond the control of Netcom, including (without restricting this clause to these instances): inability to secure labour, power, materials or supplies, or by reason of an act of God, war, civil disturbance, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation.

24. Any order is subject to cancellation by Netcom if the Customer breaches any term of this Agreement or makes any attempt of compromise, liquidation, sequestration, termination or judgment is recorded against the Customer or any of its principals.

25. The Customer agrees that Netcom will be immediately and irrevocably released from any contractual damages and penalty obligations should any event in clauses 23 or 24 occur.

26. This Agreement and its interpretation are subject to Namibian law and the Customer consents to the exclusive jurisdiction of the Namibian Courts referred to in 19.