

TENACENT SA

STANDARD TERMS AND CONDITIONS OF TRADE

Tenacent SA - [www.tenacent.net](http://www.tenacent.net)

1. In these terms and conditions the goods means the goods as indicated on any company forms, price lists, quotations, orders or invoices.

## 2. PRICES AND QUOTATIONS

2.1 The price of the goods sold or services rendered shall be the usual price as set out in the Tenacent SA price list or quotation at the time of the sale of the goods.

2.2 Tenacent SA has the right to change the prices of the goods from time to time without prior notice to the customer.

2.3 All quotes remain valid for 7 (seven) days from the date of the quote, or until the date of issue of a new price, whichever occurs first. The validity of any price quoted is subject to availability.

2.4 Any quote may be changed at any time in the event of any increase in the cost price of the goods, including currency fluctuations. Price increases will only be effected if the goods have not yet been dispatched to the customer.

2.5 Unless otherwise expressly stated, prices are exclusive of value added tax, which shall be for the account of the customer. The customer shall pay or reimburse to the supplier the amount of any value added tax simultaneously with the purchase price.

## 3. PAYMENT

3.1 The customer shall pay the amount on the tax invoice at the offices of Tenacent SA or directly into the advertised bank account accompanying any invoice or quotation. Payment is due immediately save for credit-approved customers, in which event payment is due within the terms as specified in the client's credit agreement.

3.2 Where the customer uses a postal service or courier service to effect payment or to deliver or return goods such services shall be deemed to be the agent of the customer. Likewise, where the customer uses Internet banking, the bank shall be deemed to be the agent of the customer.

3.3 The customer has no right to withhold payment or make set offs or deductions from any payment due by it for any reason whatsoever. No extension of payment of any nature will be granted unless reduced to writing and signed by the customer and a duly authorised representative of Tenacent SA.

3.4 Tenacent SA shall have the right to suspend deliveries and to exercise its rights in terms of clause 4 if any amount due by the customer is unpaid.

3.5 If any amount owed is not settled in full (a) on due date (b) on demand. Tenacent SA is entitled to, without prejudice to any of its rights;

3.5.1 Immediately institute action against the customer and/or

3.5.2 Cancel the sale and take possession of any goods delivered to the customer, including goods sold or disposed of by the customer which have not been paid for in full, and claim damages.

3.6 Should any amount not be paid by the customer on due date, the full outstanding amount in respect of all purchases by the customer shall become due and payable, and the customer shall be liable to pay interest in respect of amounts unpaid at the compound rate of a 5% (five per cent) above the prime overdraft rate of Standard Bank Limited on all overdue amounts from due date until date of payment, calculated and payable monthly in advance.

3.7 Tenacent SA reserves the right to suspend service and repairs of goods including warranty services to a customer if any amount due by the customer is unpaid or overdue.

## 4. WITHDRAWAL OF CREDIT FACILITIES

4.1 Tenacent SA' decision to grant credit facilities to the customer and the nature and extent thereof is at the sole discretion of Tenacent SA.

4.2 Tenacent SA reserves the right to withdraw, increase or decrease any credit facilities at any time without prior notice.

## 5. ORDERS

5.1 The customer hereby confirms that the goods and services on the tax invoice issued duly represent the goods and services ordered by the customer at the prices agreed to by the customer and where performance/delivery has already taken place that the services and goods 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.

5.2 Tenacent SA will accept all written and verbal orders. All such orders and any variations to orders will be binding, subject to these standard terms and conditions and may not be varied or cancelled without prior written consent from Tenacent SA. Tenacent SA will not be responsible for any errors or misunderstandings occasioned by the customer's failure to make the order in writing. Tenacent SA may require the customer to confirm verbal orders in writing before acceptance of such orders by Tenacent SA.

5.3 Orders shall constitute irrevocable offers to purchase the goods in question at the usual prices of Tenacent SA as at the date when the customer places the order of the goods, subject to clause 2.4 above, and shall be capable of acceptance by Tenacent SA by the delivery of the goods, written acceptance or confirmation of the order.

## 6. DELIVERY

6.1 Any delivery note (copy or original) signed by the customer and/or its authorised representative and/or its nominated agent and held by Tenacent SA, shall be prima facie proof that delivery was made to the customer.

6.2 Tenacent SA shall be entitled to split the delivery of the goods ordered in the quantities and on the dates it decides with the prior consent of the customer, which consent shall not be unreasonably withheld.

6.3 In the event of the customer choosing to engage its own third party to transport the goods, the customer indemnifies Tenacent SA against any claims of any nature whatsoever that may arise from such an agreement.

6.4 Tenacent SA is entitled to engage a third party on its behalf to transport all goods purchased by the customer to the delivery address stipulated by the customer.

6.5 Should the customer wish to receive delivery of the goods by a more expensive method of transportation than that normally used by Tenacent SA, the customer shall make such request in writing and, in the event that Tenacent SA agrees to arrange such special delivery the additional charges shall be debited to the customer's account and shall be payable by the customer.

6.6 Tenacent SA does not guarantee that the goods will be dispatched or delivered on any particular date and time, and the customer shall have no claim against Tenacent SA in respect of any loss occasioned by any reasonable delay in dispatch or delivery of any goods ordered and/or services rendered, nor may the customer cancel any order by reason of such reasonable delay.

6.7 Short deliveries or goods damaged in transport must be reported to Tenacent SA within 24 (twenty-four) hours of receipt.

6.8 All goods taken on an evaluation, approval or demonstration basis or all goods taken on consignment by the customer are deemed sold to the customer within 14 (fourteen) working days of issue if not returned to Tenacent SA in a perfect condition in the original packaging and with all accessories and manuals intact.

6.9 Tenacent SA reserves the right to charge delivery charges, as and when necessary.

## 7. OWNERSHIP AND RISK

7.1 All risk in and to all goods sold by Tenacent SA to the customer shall pass to the customer on delivery thereof. Ownership in all goods sold and delivered shall remain vested in Tenacent SA until the full purchase price has been paid, and in the event of a breach of these terms and conditions by the customer, or if the customer is sequestered or placed under liquidation or judicial management or commits any act of insolvency or enters into any compromise with its creditors or fails to satisfy a judgement granted against it within 7 (seven) days of the date of judgement or changes the structure of its ownership, Tenacent SA shall be entitled to take possession of the goods without prejudice to any further rights vested in Tenacent SA, and is hereby irrevocably authorised to enter upon the customer's premises or the customer's customer to take possession of such goods without a Court order.

7.2 Goods in the possession of the customer bearing Tenacent SA' name, trademark, labels and/or serial numbers are deemed to be those for which payment has not yet been made, and should any breach of these terms occur, may be repossessed by Tenacent SA in terms of paragraph 7.1 above. The customer shall fully insure the goods purchased from Tenacent SA against loss or damage until the customer has paid the full purchase price for such goods. Pending payment to Tenacent SA for goods purchased, all benefits in terms of the insurance policy relating to the insurance of such goods, shall be ceded to Tenacent SA.

7.3 The customer shall inform the landlord of the premises at which the goods are kept that such goods are the sole and absolute property of Tenacent SA until such time as the customer has paid the full purchase price to Tenacent SA.

#### 8. BREACH OF CONTRACT

8.1 In the event of a breach by the customer, should the customer fail to remedy such breach within 48 (forty eight) hours after receipt of notice to that effect from Tenacent SA, or should the customer repeatedly breach this agreement in such manner that the customer's conduct is inconsistent with the intention or ability of the customer to carry out the terms of the agreement, or if the customer is sequestered or placed under liquidation or enters into judicial management or any act of insolvency or enters into a compromise with its creditors or fails to satisfy a judgement granted against it within 7 (seven) days of the date of judgement or changes the structure of its ownership, Tenacent SA shall be entitled without prejudice to its rights in law or in terms of this agreement to take possession of the goods and is hereby irrevocably authorised to enter upon the customer's premises to take delivery of such goods without Court order.

#### 9. LEGAL PROCEEDINGS

9.1 These terms and conditions shall be governed and construed under and in accordance with the laws of the Republic of South Africa

9.2 Tenacent SA shall, at its option and notwithstanding that the amount of its claim or the nature of the relief sought exceeds the jurisdiction of the Magistrate's Court be entitled to institute action out of such court.

9.3 A certificate issued and signed by any director, member or manager of Tenacent SA, whose authority need not be proved, in respect of any indebtedness of the customer to Tenacent SA or in respect of any other fact, including but without limiting the generality of the foregoing, the fact that such goods were sold and delivered, shall be prima facie proof of the customer's indebtedness to Tenacent SA and prima facie proof of delivery of the goods in terms of this contract.

9.4 Any print out of computer evidence tendered by Tenacent SA shall be admissible evidence and the customer shall not be entitled to object to the admissibility of such evidence purely on the grounds that such evidence is computer evidence.

9.5 The customer's address in the Distributor application form or Quotation or Invoice shall be recognised as the customer's domicile

for all purposes in terms of this contract whether in respect of the serving of any court process, notices that payment of any amount or communications of whatever nature.

9.6 In the event of the customer breaching any of its obligations and/or failing to make payment of any amount to Tenacent SA in time, the customer agrees to pay, and shall be liable to pay, all legal costs incurred by Tenacent SA in enforcing its rights in terms of these terms and conditions on the attorney/own client scale including collection charges, tracing agent's fees and air fares.

9.7 Any document will be deemed duly received by the customer within:

9.7.1 3 (three) working days of pre-paid registered mail to any of the customer's business or postal addresses or the domicile address of the customer, or to the personal address of any director, member or owner of the customer; or;

9.7.2 24 (twenty four) hours of being faxed to any of the customer's fax numbers or any director, member of owner's fax numbers; or

9.7.3 on being delivered by hand to the customer or any director, member of the customer; or

9.7.4 48 (forty eight) hours if sent by overnight courier.

9.7.5 12 (twelve) hours on being notified by generally used e-mail address used to generally correspond with the customer representative or any personal e-mail address of a director, member or owner.

9.8 The customer agrees that neither Tenacent SA nor any of its employees will be liable for any negligent or innocent misrepresentations made to the customer, nor shall the customer be entitled to resile from these terms and conditions on those grounds.

#### 10. ARBITRATION

10.1 Tenacent SA may refer any dispute arising from or in connection with this contract to arbitration which arbitration award shall be final and binding on the customer and Tenacent SA.

10.2 The arbitrator will be a person agreed upon by the parties or failing agreement, appointed by the

Arbitration Foundation of Southern Africa, who shall then finally resolve the dispute or issue in accordance with the Rules of the Arbitration Foundation of SA.

10.3 The arbitration must be held at the place and in accordance with whatever procedures, the arbitrator considers appropriate.

#### 11. NEGOTIABLE INSTRUMENTS

11.1 Acceptance of a negotiable instrument from the customer shall not be deemed to be a waiver of Tenacent SA's rights under this contract. In relation to cheques furnished by the customer to Tenacent SA, the customer waives its right to insist on notice of dishonour or protest being given to it on the event that the cheque is dishonoured.

#### 12. RETURNED GOODS

12.1 Whilst Tenacent SA is under no obligation to accept the return of goods, the customer may apply to Tenacent SA for permission to return goods and if written permission is given – such goods must be returned to the offices of Tenacent SA at the Customer's own cost.

12.2 The customer may return any defective goods to the premises of Tenacent SA or its nominee at the customer's own cost. Tenacent SA undertakes to replace such goods with items of the same or similar specification. No refunds will be considered in respect of return of defective goods.

12.3 Tenacent SA reserves the right to offset the value of any goods accepted for return against any amounts due by the customer.

12.4 In the event of a cancellation of an order by the customer or goods accepted for return by Tenacent SA, Tenacent SA reserves the right to charge a handling fee of up to 15% (fifteen percent) on the value of the order cancelled or goods returned.

#### 13. WARRANTIES AND INDEMNITY

13.1 Goods may be guaranteed under the manufacturer's product specific warranties only, and all other guarantees and warranties including common law guarantees and warranties in relation to goods and services are hereby specifically excluded by Tenacent SA.

13.2 All guarantees are immediately null and void should any equipment be tampered with or should the "seals" on the equipment be broken by anyone other than Tenacent SA or its appointed nominee, or should the goods be operated outside the manufacturer's specifications. Equipment bought and used with 3<sup>rd</sup> party accessories not certified as fit for compatibility by the original equipment manufacturer will void any guarantees.

13.3 To be valid, guarantee claims must be supported by the original tax invoice and the goods must be in their original packaging and must be accompanied by all accessories and manuals must be intact. All items must be returned in "as new" condition.

13.4 No warranties whether express or implied shall apply, other than those provided in this contract. Tenacent SA specifically disclaims the implied warranty of merchantability and fitness for a particular purpose. No representation or warranty, including but not limited to statements of capacity, suitability for use or performance made by employees of Tenacent SA shall be considered to be a warranty by Tenacent SA. Any such statements made shall not give rise to any liability or whatsoever nature on the part of Tenacent SA, its employees, subcontractors or subsidiaries. Tenacent SA will not be liable to the customer for any loss, damage or expense of any nature, whether direct, special, indirect or consequential, including but not limited to loss or profits arising out of Tenacent SA's performance or customers' use of the goods or services rendered.

13.5 The customer indemnifies and holds Tenacent SA (including its employees, subcontractors or subsidiaries) harmless against all claims of whatsoever nature that may be brought or threatened against Tenacent SA by any third party arising from or in connection with any defect, latent or otherwise in any goods supplied and/or services rendered by Tenacent SA.

#### 14. REPAIRS

14.1 Tenacent SA's liability in terms of a manufacturer's warranty is restricted to, in Tenacent SA or the manufacturer's discretion, the cost of repair or replacement of faulty goods or services or the granting of credit.

14.2 In the case of repairs undertaken by Tenacent SA repair quotes given are merely estimates and are not binding on Tenacent SA.

14.3 The customer hereby agrees that any item returned for a repair may be sold by Tenacent SA to defray the cost of such repair if the item remains uncollected for a period of 30 (thirty) days after the customer has been informed that such repairs have been completed.

## 15. GENERAL

15.1 Tenacent SA reserves the right in its sole discretion to vary or amend these terms and conditions from time to time and any such amended or varied terms and conditions shall be binding on the customer from the time that the amended or varied terms are published by Tenacent SA.

15.2 This contract represents the entire agreement between Tenacent SA and the customer and shall govern all future contractual relationships between Tenacent SA and the customer.

15.3 No amendment and/or alteration and/or variation and/or deletion and/or addition and/or cancellation of these terms and conditions, whether consensual or unilateral or bilateral shall be of any force and effect unless reduced to writing and signed by a director of Tenacent SA. No agreement, whether consensual or unilateral or bilateral, purporting or obligate Tenacent SA to sign a written agreement to amend, alter, vary, delete, add or cancel these terms and conditions shall be of any force and effect unless reduced to writing and signed by a director of Tenacent SA.

15.4 No relaxation or indulgence with Tenacent SA may grant the customer shall prejudice or be deemed to be a waiver of any Tenacent SA' rights in terms of these terms and conditions.

15.5 The customer shall not cede its rights nor assign its obligations under these terms and conditions.

15.6 Tenacent SA shall at any time in its sole discretion be entitled to cede all or any of its rights in terms of this terms and conditions to any third party without prior notice to the customer.

15.7 The customer undertakes to notify Tenacent SA within 7 (seven) days of any change of address or change in member, director, shareholder, address or the information as set out in this Agreement.

15.8 The headings in this document are included for convenience and are not to be taken into account for the purpose of interpreting this contract.

15.9 Each of the terms herein shall be a separate and divisible terms and if any such term becomes unenforceable for any reason whatsoever, then that term shall be severable and shall not affect the validity of the other terms.

15.10 The customer undertakes to inform Tenacent SA in writing at least 14 (fourteen) days prior to the intended selling or alienating of the whole of or any part of the customer business and failure to do so will constitute a material breach of this contract entitling Tenacent SA to cancel the contract without further notice to the customer.

## 16. DISCLOSURE OF PERSONAL INFORMATION

16.1 The customer understands that the personal information given in the Distributor Application form may be used by Tenacent SA for the purposes of assessing credit worthiness.

16.2 Tenacent SA has the customer's consent at all times to contact and request information from any persons, credit bureau or businesses including those mentioned in the Distributor Application form and to obtain any information relevant to the customer's credit assessment, including but not limited to information regarding the amounts purchased from suppliers per month, length of time customer has dealt with each supplier, type of goods purchased and manner and time of payment.

16.3 The customer agrees and understands that information given in confidence to Tenacent SA by a third party on the customer will not be disclosed to the customer.

16.4 The customer hereby consents to and authorises Tenacent SA at all times to furnish credit information concerning the customer's dealing with Tenacent SA to a credit bureau and to any third party seeking a trade reference regarding the customer in his dealings with Tenacent SA.