

## **STANDARD TERMS AND CONDITIONS OF SALE**

### **INTERPRETATION**

**1.1.** Unless the context requires otherwise, these terms will have the following meaning:

**BUYER:** The individual or juristic person (with an asset/annual turnover which does not exceed R3 million); or a juristic person with an asset/annual turnover which exceeds R3 million) who purchases Goods from the Company.

**COMPANY:** DYNAMIC BUSINESS SYSTEMS CC (Company registration number 1993/032835/23) whose registered office is at:

*58 Bompas Road*

*Dunkeld*

*Johannesburg 2196, Gauteng*

*South Africa*

### **INTRODUCTION**

I/We (hereinafter below referred to as "the customer") apply for incidental credit facilities to be granted to me/us by Dynamic Business Systems cc (hereinafter below referred to as "DBS") in respect of goods to be supplied and/or services to be rendered, upon the following terms and conditions:

Notwithstanding the grant of incidental credit facilities to me/us, DBS shall be entitled at any time, and in DBS's sole discretion to withhold such facilities and require repayment for any account.

I/We authorise DBS to conduct a credit search in my/our credit profile with one or more of the registered credit bureaus, when assessing my /our application for credit, to monitor my/our payment behaviour, to use new information and data obtained from a credit bureau in respect of my / our application and / or future applications for credit, to record the existence of my / our account with a credit bureau, to record and transmit details of how I / We have performed and how the account is conducted by me / us in meeting our obligations on the account.

In the event of any default by me / us of any provisions of this agreement, I / We hereby consent and authorise DBS to furnish the name, credit record and repayment history of me / us to any credit bureau as a defaulting debtor.

I/We undertake to be bound by all the terms and conditions as contained herein, which I /We warrant that we have read and understood and consider the same to be binding on me / us.

### **OWNERSHIP AND RISK**

1. The risk in and to any goods purchased from DBS shall pass to and vest in the customer from the time the goods are signed for and / or, immediately upon delivery to the customer or to the address nominated by the customer for delivery as set out on the Sales Tax Invoice. In the case of delivery by any other party including delivery by freight, liability for the goods passes to the customer at the time the goods leave DBS. The customer further acknowledges that unless it notifies DBS within 10 days of delivery in writing of any defect, it acknowledges that the goods were delivered in good condition.
2. Ownership in all goods purchased by the customer shall remain vested in DBS until all amounts due and owing have been paid in full and DBS may retake possession of any goods in which ownership has not passed or for which payment is overdue.

### **DELIVERY**

3. Delivery shall be effected at the customer's nominated address, as supplied by the customer when ordering the goods.
4. The customer acknowledges that he/she may inspect the goods that are to be delivered to him/her in terms of this agreement. The customer further acknowledges, that should he/she

fail to inspect the goods, signature of the delivery note accompanying the goods constitutes an acknowledgment by the customer that the goods have been delivered, inspected, and received by the customer in good condition.

5. In the event of DBS being unable to effect a delivery to the customer at the address nominated due to any fault of the customer, the customer shall be liable to pay an reasonable costs associated in connection with the attempted delivery.
6. The delivery dates agreed to are given in good faith and all reasonable effort will be made to comply with them. In the event that delivery cannot take place at the agreed time, the customer and DBS shall agree to a reasonable extended time period.
7. In the event that delivery does not take place at the agreed time and location the customer shall have the option to accept the goods at an alternative location to be agreed upon or to terminate the agreement. The customer acknowledges that should delivery not take place as agreed due to any of his actions, then DBS shall have the right to enforce the terms of this agreement.
8. In the event of the customer failing to take immediate delivery of the goods purchased, the goods will be stored by DBS for a maximum period of two weeks from the date which appears on the invoice where after storage will be charged at the rate of 1% of the value of the goods invoiced for every day. DBS reserves the right to resell the goods in order to defray costs, should the goods not be collected from DBS within 120 days of purchase.

#### **EXCLUSION OF LOSS, LIABILITIES AND WARRANTIES**

9. DBS shall not be liable for any loss or damage by reason of the non-delivery of goods or for any delay in executing delivery caused by force majeure, acts of God, war, riots, civil commotion, strikes, lock outs, restrictions by Government and without in any way being limited by the foregoing generally by any other cause beyond the control of the company.
10. DBS shall not be liable to the customer or any third party for any damages suffered by the customer or any third party whether general, special, incidental or consequential damages of any nature whatsoever arising out of the use of any of the goods purchased or any defects thereto where the said defect causing damage did not exist in the goods at the time it was supplied by DBS to the customer.
11. The customer warrants and represents that it hereby indemnifies DBS against all liability and any claims whatsoever by any person whatsoever for:
  - 11.1 Any loss or damages arising from loss of market or attributable to delay in forwarding or in transit or failure to carry out fully or in part thereof any instructions given to it for any other consequential loss howsoever arising.
  - 11.2 All legal costs arising out of any dispute in terms of this agreement will be determined and claimed on the scale as between attorney and own client.
12. The customer agrees that any equipment sold to them carries a warranty against defective components and manufacturing for a period of twelve months after delivery and that such warranty is valid only if the customer has properly operated, maintained and serviced the equipment. The customer agrees that DBS liability shall be strictly limited to the replacement or repair of any equipment at DBS discretion for any goods or equipment returned after six months from the date of delivery.
13. The customer acknowledges and understands that after delivery, the goods shall have left the control of DBS and that he/she shall be responsible for the unpacking of and connection/installation of the goods. The customer acknowledges that it is his/her further responsibility to ensure that a fully qualified *and* fully trained technician must be used in order to install the goods to ensure their effective operation. Failure by the customer to ensure the installation of the goods, as instructed by DBS, by a fully trained and qualified technician, may result in the failure of the goods, injury, loss or damages to *the* customer.

Accordingly, and in this event, DBS accepts no responsibility for any loss or damages that might arise by reason of death or personal injury to any person engaged in the installation or use of the goods thereafter and subject to the provisions of the Consumer Protection Act 68 of 2008.

14. All manufacturers standard warranty terms and conditions will apply, notwithstanding the fact that any goods or components purchased may purport to include certain limited warranties as given by the manufacturer of such goods or components.
15. In the event of the customer requiring DBS to collect any goods, the customer shall be liable for the reasonable costs associated to such collection.

#### **PAYMENT AND PRICING**

16. The customer shall not be entitled under any circumstances to withhold payment for any goods purchased.
17. Payment terms are strictly C.O.D (cash on delivery) / upfront payment for all goods purchased on a cash sale basis. Payment terms for goods purchased on credit/account in accordance with the terms and conditions of DBS credit application are strictly 25 or 30 days reckoned from date of statement, as determined by DBS.
18. The customer agrees to pay interest on all overdue accounts at the rate of 2% (two percent) per month on all overdue amounts.
19. Any discount offered or allowed by DBS to the customer is always subject to payment within 30 days of statement or as otherwise determined by DBS, failing which any discount received falls away.
20. All prices are subject to change by DBS should there be any legitimate error made by any Employee, agent, servant of DBS in relation to any prices quoted to the customer, the customer shall be notified of any price changes.
21. DBS accepts payment by way of cash, debit card and electronic fund transfers/deposits into DBS nominated bank account. No goods will be released by DBS unless full payment in respect thereof has been cleared.

#### **RETURNS AND REFUNDS**

22. All and any returns and/or refunds shall be determined strictly with the terms and conditions as contained herein.
23. No exchange, credit or refund will be done without the original invoice being presented to DBS.
24. Goods returned for credit or refund must be returned in the original condition and original packaging and are to be returned within 10 days of delivery. All goods returned that are repackaged in the original packaging are subject to a reasonable handling fee in respect of any consumption or depletion thereof. The customer acknowledges that the right to return the goods shall be limited to DBS's discretion, in the event that the goods are partially or entirely disassembled, physically altered, permanently installed, affixed, attached, joined or added to, blended or combined with, or embedded within, other goods or property.
25. It is further agreed that no goods will be accepted for return/exchange and/or refund by DBS after the lapse of six months from date of purchase.
26. All electronic goods will be tested before any exchange, credit or refund will be issued.
27. DBS will not be held liable for any loss or costs incurred due to the failure of a product once installed or for any damages suffered by the customer or a third party due to malfunction of products purchased where the product has been materially altered or has been used contrary to any instructions given by DBS.
28. Any damage caused by abuse, misuse, unauthorized modifications, incorrect installation, insect infestation, liquid ingress, lightning, power surges, any acts of God or force majeure or tampering will not be covered by DBS.

29. All faulty goods returned within six months of purchase by the consumer will be refunded, replaced or repaired at the customer's election (subject to point 26, 27, 23, 29, 30 and 31).
30. DBS reserves the right to refuse any warranty claim if the damage is caused by any factors beyond the specifications or performance levels of the product.
31. A repair or exchange of a product within the warranty period will carry a further warranty period of three months, such repair however will not extend the duration of the original warranty period.
32. In the event that external repairs are necessary, DBS will offer a warranty of repair for an equivalent period to that of the supplier.
33. Repairs conducted by DBS repair department will carry a 3month warranty on that specific repair. Any other faults occurring will be treated as a separate repair.
34. Repaired items will not be released to the customer until any payment due in respect thereof has been received.
35. DBS reserves its rights to charge a handling fee of up to 10% of invoice value on any items that are received for repair that are found to be free of fault or defect, or where reports beyond that of the job card are requested.
36. DBS reserves its rights to sell/resell all repaired goods which are not collected within 120 days of repair, in order to defray costs.
37. In the event that DBS does not have stock of goods which have been purchased, then DBS shall procure the same or similar goods from an alternative source at the same price subject to the customer's consent. DBS shall not be liable for shortage of stock in circumstances that are beyond *the* control of DBS.

#### **DEFAULT AND BREACH**

38. If the customer fails to perform any of its obligations when due, DBS may decline to accept further orders or make further deliveries to the customer or may revoke and/or withdraw and/or suspend and/or cancel and/or close the customer's credit facility/account at any time and any future purchases shall be on terms and conditions as determined by DBS in its absolute and sole discretion.
39. Should the customer default in making payment of any overdue amounts owing, DBS shall be entitled, but not compelled, to forthwith demand that the whole amount outstanding on the account be paid, notwithstanding that a portion of the amount would not be owing in accordance with the agreed terms of payment.
40. In the event of DBS having to institute any legal proceedings against the customer for breach, repudiation, specific performance or for any other reason whatsoever in terms hereof, the customer undertakes and agrees to pay the company's legal costs on scale as between Attorney and own Client, including collection commission, tracing charges and any other charges *incurred by* DBS in enforcing its rights in terms hereof.
41. Any dispute arising in terms of this agreement may be referred to arbitration in accordance with the rules of the Arbitration Foundation of South Africa or to the Consumer Commission which may have jurisdiction in terms of this agreement, or directly to a court having the requisite jurisdiction.

#### **GENERAL**

42. The customer chooses domicilium citandi et executandi ("chosen address for service of all correspondence, notices *and legal process*") at the address set out by the customer on his order. The customer agrees to notify DBS in writing within seven (7) days of any change of address.
43. It is agreed that these standard terms and conditions of sale shall be governed by the laws of the Republic of South Africa.

44. No addition to, variation or cancelation of these standard terms and conditions of sale shall be of any force or *effect* unless contained in writing and signed by or on behalf of both parties. In particular, the customer agrees that any term or condition which may on any order, written or verbal and which is at variance with the terms of this agreement, shall be of no force or *effect* unless incorporated in a document signed by a director of DBS and the customer and which has been prepared specifically for the purpose of varying the terms of these conditions.
45. The customer hereby consents in terms of Section 45 of the Magistrates court Act No 1944, as amended, to the jurisdiction of the Magistrates Court in respect of any action instituted against the customer by the company. It shall nevertheless be entirely within the discretion of DBS as to whether to proceed against the customer in such court or any other court of competent jurisdiction.
46. Any relaxation or indulgence which DBS may show or allow to the customer shall operate only in respect of the issue in which it was given and shall in no way constitute a novation or waiver or estoppel against or by DBS or in any way prejudice DBS in respect of its rights against the customer.
47. No terms, warranties or representations other than:
  - 47.1 those expressly contained in this document; or
  - 47.2 reduced to writing and signed on behalf of both DBS and the customer, or
  - 47.3 incorporated in DBS standard terms and conditions of sale from time to time will be of any force or effect as between the parties. The customer acknowledges that it has not relied on any warranties or representations made by DBS in influencing its decision to contract with DBS.

**DYNAMIC BUSINESS SYSTEMS CC**

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**REG: 1993/032835/23**