



## Product Terms

### Hardware

#### 1. INTERPRETATION

- 1.1 Unless the context clearly indicates the contrary, any term defined in the General Terms when used herein, shall bear the same meaning as defined in the General Terms.
- 1.2 To the extent that there is any contradiction between the General Terms and these Product Terms the following order of precedence shall apply: (i) these Product Terms; and (ii) the General Terms.
- 1.3 For the sake of compatibility with the Agreement and more specifically the General Terms and where applicable, any reference made to payment of any amount in terms of this Equipment Purchase shall be deemed to be payment of Service Fees, as defined in the General Terms.
- 1.4 For the sake of compatibility with the Agreement and more specifically the General Terms and where applicable, any reference made to the sale of Equipment shall be deemed to be Services rendered by MWEB Business.
- 1.5 By using or subscribing to the Equipment Purchase Customer agrees that he/she/it has read, understand and are bound by:
  - 1.5.1 the General Terms and Conditions and Use Policies under “**General Terms**” and other notices under “**Notices**” on MWEB Business’ Legal Website; and
  - 1.5.2 the Product Terms set out herein;(collectively the “**MWEB Business Terms**”).
- 1.6 Customer’s use of the Equipment Purchase indicates Customer’s acceptance without modification of the MWEB Business Terms, which will constitute a legal agreement between Customer and MWEB Business.
- 1.7 Unless the context clearly indicates to the contrary, the following words bear the meanings ascribed thereto:
  - 1.7.1 “**Application Form**” means the application form/s completed and signed by Customer for the initiation of the Equipment Purchase agreement;
  - 1.7.2 “**Equipment**” means any computer, laptop, printer, router, switches, gateway, server, security device, telecommunications equipment and/or any other equipment selected by Customer in the Application Form to be the subject of the Equipment Purchase and shall include any relevant, peripherals, carry cases or other accessories, software, hardware, cables, connectors, programmes, interfaces, associated media, printed materials, and/or on-line or electronic documentation accompanying it;
  - 1.7.3 “**Equipment Purchase**” means the sale of Equipment to Customer by MWEB Business in accordance with Customer’s selections as indicated by Customer in the Application Form under such heading or description;



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- 1.7.4 “**Extended Warranties**” means an additional or extended warranty provided by the Supplier. These warranties extend the period of the Supplier's standard warranty and shall not be "double coverage";
- 1.7.5 “**General Terms**” means the terms and conditions set out in the general terms and conditions for MWEB Business’ customers, which is available at <http://www.mwebbusiness.co.za/legal/GeneralTerms.aspx> under the heading “General Terms”; and
- 1.7.6 “**Supplier**” means the company supplying the Equipment to MWEB Business, including the manufacturer of the Equipment or a vendor or selling agent of such manufacturer.

## 2. SALE OF EQUIPMENT

- 2.1 MWEB Business sells the Equipment to Customer at the price set forth in the Application Form and/or any addendum thereto. Any Equipment sold by MWEB Business to Customer shall be deemed to be sold subject to the Terms and the Supplier’s terms and conditions, which will be provided to you on request.
- 2.2 Ownership in the Equipment supplied shall pass to Customer upon payment of the full purchase price inclusive of VAT (and all applicable taxes, rates or governmental levies, if any) and any other charges levied by MWEB Business in terms of the Agreement. Risk in the Equipment shall pass to Customer upon delivery of the Equipment at Customer’s premises or collection of the Equipment at MWEB Business’ offices by Customer or his/her/its employee, representative or carrier agent, whichever is applicable.
- 2.3 Customer shall upon submission of the duly signed Application Form and/or any addendum thereto not be entitled to withdraw and/or cancel the order without MWEB Business’ prior written approval. Notwithstanding the aforesaid, the provisions of this clause 2.3 are subject to Customer's termination rights detailed in clauses 7.5, 7.6 and 7.11 of the General Terms where clauses 7.5, 7.6 and 7.11 of the General Terms are applicable to Customer.

## 3. PAYMENT

- 3.1 Customer shall pay to MWEB Business in advance the full amount set out in the Application Form and/or any addendum thereto, which amount is reflected to be exclusive of value added tax (“VAT”) on such form plus VAT within 7 (seven) days of submission of the signed Application Form and/or any addendum thereto, without deduction or set-off of any amount of whatsoever nature or for whatsoever reason. Such amount shall be deposited into MWEB Business’ account set out in the Application Form and/or any addendum thereto, unless specifically otherwise advised in writing by MWEB Business from time to time. No Equipment will be delivered to Customer unless the full amount set out in the Application Form and/or any addendum thereto has been paid to MWEB Business and MWEB Business reserves the right to terminate the Agreement should payment as state above not be made within 7 (seven) days of submission of the signed Application Form.



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- 3.2 All applicable taxes, rates or governmental levies, if any, and VAT shall be for the account of Customer.
- 3.3 Customer acknowledges: (i) that the price for Equipment is affected by the Rand and Dollar exchange and as such MWEB Business will be entitled to adjust the price for Equipment at any time should there be a change in the Rand and Dollar exchange; and (ii) agrees to allow MWEB Business to debit his/her/its account with the applicable price for Equipment for that month and/or to invoice him/her/it with the applicable price for Equipment.
- 3.4 Customer further acknowledge that the price for Equipment may be changed by the Supplier at any time and as such MWEB Business will be entitled to adjust the price for Equipment at any time should the Supplier increase the price for Equipment.

## 4. DELIVERY AND COLLECTION OF EQUIPMENT

### 4.1 Collection

- 4.1.1 Unless otherwise agreed by the Parties in writing, Customer will collect the Equipment at MWEB Business offices situated at MWEB Business House, Greenacres Office Park, Cnr Barry Hertzog/Rustenburg and Victory Roads, Victory Park, within 7 (seven) days of payment or such other period as the Parties may agree in writing, on business days and during business hours. Upon collection of any Equipment, MWEB Business' representative and Customer, (including his/her/its employees, representative or carrier agent) will inspect the Equipment in order to determine if such Equipment is free from damages, (including but not limited to damages to the packaging material, labels, writing directly on the packaging, re-taping and/or shrink-wrapping). A signed collection note shall constitute prima facie proof that the Equipment has been collected and received by Customer in good condition, whether signed by Customer, his/her/its employee, representative or carrier agent.

### 4.2 Delivery and Installation (If requested)

- 4.2.1 Should the Agreement include delivery of the Equipment, MWEB Business or its agents will deliver the Equipment to Customer's premises at Customer's cost. A signed delivery note by Customer (including his/her/its employee, representative, carrier, agent or nominee) shall constitute prima facie proof that the Equipment was delivered to and received by Customer in good condition.



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- 4.2.2 Should the Agreement include installation and/or set-up and/or configuration of the Equipment MWEB Business and/or its agents shall attend to it during business hours and the relevant Service Fees shall be applicable. Customer shall allow MWEB Business or its agents, all reasonable access to its premises for the purposes of the installation and/or set-up and/or configuration of the Equipment. A signed confirmation by Customer (including his/her/its employee, representative, carrier, agent or nominee) that installation and/or set-up and/or configuration, whichever is/are applicable, of the Equipment was done shall constitute prima facie proof of that it was done according to specification and agreement.
- 4.2.3 MWEB Business shall use its reasonable endeavours to comply with the agreed delivery and/or installation and/or set-up and/or configuration date/s, whichever is/are applicable, but Customer shall not be entitled to cancel this Equipment Purchase or refuse to accept delivery, installation, set-up and or configuration because of MWEB Business' failure to do so on such date/s. The provisions of this clause are subject to Customer's termination rights detailed in clauses 7.11 of the General Terms where clause 7.11 of the General Terms is applicable to Customer.
- 4.2.4 Customer shall, without limiting the generality of the General Terms, not be able to hold MWEB Business or its agents liable under any circumstances, for any loss, damage, costs, expense or injury, including without limitation direct, indirect, incidental, special, punitive or consequential loss, loss of profit loss of anticipated savings, loss of goodwill, loss of revenue, loss of customers or clients caused or arising in any manner whatsoever from the delivery and/or installation and/or set-up and/or configuration and/or use of the Equipment or failure to do so on the agreed date/s.

## 5. SUPPLIER'S WARRANTIES

- 5.1 Without derogating from the provisions of clause 10 of the General Terms, the Customer agrees, that the Equipment is sold on the condition that the Supplier's limited warranties apply. MWEB Business does not warrant workmanship, performance, suitability or compatibility of the Equipment. The Customer must familiarise him/her/it with the scope and cover of such limited warranty, which includes provisions relating to the does not cover damages caused by a failure to adhere to the Supplier's instructions and/or use by an unqualified person.
- 5.2 All guarantees or warranties will be null and void should any Equipment be tampered with or should the seals on the Equipment be broken or should the Equipment be operated outside the manufacturer's specifications.
- 5.3 All guarantee and/or warrantee 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.
- 5.4 Customer shall be responsible to deliver and collect the defective Equipment to and from the Supplier's offices at Customer's own expense and risk, (including risk while the Equipment is in possession of the Supplier during repairs).



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#### 6. EXTENDED WARRANTIES

- 6.1 Extended Warranties shall only apply to Customers that have selected to purchase the package from MWEB Business on the Application Form.
- 6.2 Customer acknowledges and agrees that Extended Warranties relating to the Equipment is sold to Customer as an additional service and subject to the Supplier's limited warranties and terms and conditions, as well as MWEB Business' Terms.
- 6.3 Customer agrees and acknowledges that MWEB Business is not in any way responsible or liable for any work performed by the Supplier on the Equipment. Customer hereby indemnifies MWEB Business and holds it harmless against any loss, damage, costs, expense or injury, including without limitation direct, indirect, incidental, special, punitive or consequential loss, loss of profit loss of anticipated savings, loss of goodwill, loss of revenue, loss of customers or clients caused or arising in any manner whatsoever from work performed by the Supplier on the Equipment or failure to do so.

#### 7. SUPPORT SERVICES

Except if specifically agreed in terms of the Agreement nothing set out in this Equipment Purchase places any obligation on MWEB Business with regard to the maintenance and support of the Equipment and any such services shall only be rendered by MWEB Business to Customer if indicated in the Application Form and by the payment of the relevant Service Fees.

#### 8. LICENSING AND INTELLECTUAL PROPERTY RIGHTS

- 8.1 Where applicable, MWEB Business grants to Customer a non-transferable, personal, non-exclusive sub-license to use any software provided with the Equipment and shall use such software solely on and in conjunction with the Equipment on the terms and conditions as provided by the vendor/manufacturer/supplier of the Equipment or MWEB Business, whichever is applicable. Customer shall not copy, translate, modify, adapt, decompile, disassemble or reverse engineer the software or convert the whole or any part of the software from object code into source code.
- 8.2 MWEB Business will not be responsible for the licensing of any software unless such software forms part of the Equipment or is specified in the Application Form.
- 8.3 All rights, title and interest in and to all intellectual property relating to any Equipment owned by the any Party/ vendor/ manufacturer/ and/or supplier shall at all times remain the sole property of such persons.
- 8.4 Customer warrants that the use of the Equipment shall not infringe any intellectual property rights of any third party.

#### 9. RETURNED GOODS

- 9.1 MWEB Business is under no obligation to accept the return of the Equipment. However, Customer may apply to MWEB Business for permission to return the Equipment and if written permission is given -



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- 9.1.1 Customer may return any defective Equipment to the premises of MWEB Business or its nominee at the Customer's own cost.
- 9.1.2 any item delivered to MWEB Business will form the object of a pledge in favour of MWEB Business for present and past debts of Customer to MWEB Business and MWEB Business will be entitled to retain such pledge at a value determined as follows:
- 9.1.2.1 the difference between the selling price and the value of the goods at the time that the debt became due;
- 9.1.2.2 the value of any repossessed goods or retained pledge goods will be deemed to be the value placed on them by any sworn valuator after such repossession and such valuator will be *prima facie* proof of the value.
- 9.1.3 in the event of a cancellation of an order by the customer for goods accepted for return by MWEB Business, MWEB Business reserves the right to charge a handling fee of up to 15% (fifteen percent) of the value of the order cancelled or Equipment returned.
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