

TERMS AND CONDITIONS OF SALE

The following terms and conditions of sale are applicable to all equipment and airtime supplied by Satellite Communication CC (hereinafter referred to as “SatComm”), unless expressly agreed in writing to the contrary and shall govern any contracting between the Customer and SatComm. The Customer is deemed to have signified its acceptance of these conditions by inter alia, placing any order with SatComm or otherwise contracting with SatComm.

A. EQUIPMENT**1. PRICES**

- (a) SatComm reserves the right to vary prices and charges without notice.
- (b) Prices are net and any taxes or duties levied by the relevant authorities will be added to the invoices and are payable by Customer to SatComm.

2. DELIVERY

Whilst every endeavour will be made to supply the equipment on the date stipulated, under no circumstances will liability be accepted for any loss or damage suffered by the Customer or any third party by reason of failure to meet delivery commitments.

3. OWNERSHIP

- (a) The equipment shall remain the property of SatComm until the contract price has been paid in full.
- (b) Items short supplied will be back-ordered and delivered on arrival of stock, unless previously cancelled by the Customer.

4. DAMAGE AND LOSS TO EQUIPMENT

- (a) Equipment should be examined immediately on receipt. No claim in respect of shortages, damage or apparent defect in the equipment will be considered by SatComm unless full details of such shortage, damage or apparent defect have been furnished in writing by the Customer to SatComm within 48 hours of the receipt of the equipment.
- (b) In all cases where the equipment is sent by independent carrier, the equipment is at the risk of the Customer from the time the equipment is handed by SatComm to the carrier, and SatComm is not responsible for any loss of damage that may occur thereafter.

5. LIABILITY

- (a) The Customer shall have no claim against SatComm whatsoever for any loss or damage of any nature whatsoever, whether direct or indirect, consequential or otherwise, in contract or delict, sustained as a result of any equipment supplied or any installation effected or any maintenance undertaken by SatComm being in any way defective or absent or not conforming to the description thereof or as a result of any other cause whatsoever.
- (b) The Customer does hereby indemnify and hold SatComm harmless against any claim by any third party arising directly or indirectly out of any defect/s in the equipment supplied and or any installation effected or any maintenance undertaken by SatComm.

6. FORCE MAJEURE

SatComm will not be liable for failure to fulfil its obligation if such failure is due to war, civil disturbances, riot, act of terrorism, fire, storm, tempest, industrial dispute, breakdown of plant, transport or equipment, Act of G-d or any event or circumstances beyond SatComm’s reasonable control.

8. PAYMENT TERMS

Where no other terms of payment have been specified by SatComm in writing, payment shall be made on the date of delivery of the equipment.

9. COSTS

The customer shall repay to SatComm on demand all costs SatComm actually incurs as a result of the customer's failure to comply with these terms and conditions, including without limitation costs in connection with the tracing of the customer, all legal costs on the attorney and own client scale and collection commission that may legally be recovered from the customer by SatComm's attorneys on amounts collected.

10. CERTIFICATE

A certificate signed by any member or accountant of SatComm (whose appointment and authority shall not be necessary to prove) as to the existence of any facts and, in particular, without limiting the foregoing generality, as to the amount of the indebtedness of the customer, shall constitute *prima facie* proof of such facts for any purpose and, more particularly, for the purpose of provisional sentence proceedings or their equivalent in any court of competent jurisdiction.

11. JURISDICTION

The customer hereby consents to the jurisdiction of the Magistrates Court having jurisdiction over its person in respect of any action by SatComm. This consent does not oust the jurisdiction of any other competent Court and SatComm shall be entitled, in its discretion, to institute action against the customer in any court of competent jurisdiction. The parties agree that this consent shall apply even if this agreement is cancelled.

12. DOMICILIUM

The customer chooses its registered address as its domicilium citandi et executandi for all purposes in terms of this agreement. The customer may change its domicilium by giving fourteen (14) days written notice to SatComm of its new domicilium

13. SEVERABILITY

In the event of any one or more of these terms and conditions being unenforceable, same will be deemed to be severable from the remainder of these terms and conditions, which will nevertheless be binding and enforceable.

14. GENERAL

The parties acknowledge and agree that

- a. These terms and conditions constitutes the entire agreement between them and save as is herein set forth there are no terms and conditions, rights and liabilities between them and no warranties or representations have been made by any of them or on behalf of them which may have had the effect of inducing any of the parties to conclude any agreement or at all. The parties hereby expressly waive any rights which they may have had as a result of any such terms, conditions, warranties and representations.
- b. No relaxation or indulgence which either of the parties may afford to any of the other shall in any way prejudice the rights of the firstmentioned party nor shall such firstmentioned party be estopped from exercising any such rights by reason thereof.

B. AIRTIME

1. DEFINITIONS AND INTERPRETATIONS

- 1.1. The following words shall have the meaning ascribed.
 - 1.1.1. "billing increment" means the number of seconds to which a call duration will be rounded up by the network operator;
 - 1.1.2. "call charge" means the charge for a specified unit of time or volume of data;
 - 1.1.3. "connection charge" means the charge for connection, disconnection or reconnection (whichever is applicable) of the service;
 - 1.1.4. "equipment" means any mobile, transportable or portable digital satellite mobile apparatus or terminal which is capable of connection by radio interface to the system which is approved by the regulatory authority and under any applicable legislation concerning such equipment, used by the customer;
 - 1.1.5. "IMN" means an identification number issued by Inmarsat to the owner or user of the terminal, which is linked to the terminal and is used for purposes including billing for the Services.
 - 1.1.6. "monthly access charge" means the monthly charge for the customer to remain connected to the system;
 - 1.1.7. "SIM Card" means a Subscriber Identity Module card, which contains subscriber information and, when used with the equipment, enables access to the service.
 - 1.1.8. "SIM card and activation charge" means the charge for the SIM card and for the activation of the connection to the system;
 - 1.1.9. "the interest rate" means the maximum permissible interest rate set out from time to time or prescribed from time to time in terms of the Usury Act;
 - 1.1.10. "the network operator" means Inmarsat and/or Iridium and/or any other operator who offers the service from time to time.
 - 1.1.11. "the regulatory authority" means the relevant regulatory authority vested with the power and authority to regulate the operation of the system in the Republic of South Africa;
 - 1.1.12. "the service" means a basic telecommunication service providing two-way communication of voice and/or data by satellite via the system and such other additional telecommunication service as SatComm may at its option choose to make available from time to time by means of the system;
 - 1.1.13. "the system" means the satellite communication system provided by the International Mobile Satellite Organisation ("Inmarsat") and/or the Iridium mobile satellite communication services as offered by Iridium Satellite LLC ("Iridium") and/or any other satellite or telecommunication service offered by any other network operator from time to time;
- 1.2. The clause headings have been inserted for convenience only and shall not be taken into account in its interpretation.

2. CONNECTION TO THE SYSTEM AND PROVISION OF THE SERVICE

- 2.1. The service is made available to the customer or other authorised users. The customer shall inform himself and shall use the service in compliance with all applicable national and local laws. Only equipment approved by all applicable governmental authorities (in so far as governmental authorities are required to approve equipment by legislation) and meeting the requirements and operating procedures of the network operator shall be used to obtain the service. SatComm reserves the right to terminate the service without advance notice if SatComm becomes aware that the customer has violated any such laws, requirements or procedures while using the service.

- 2.2. It is recorded that the customer is aware and accepts that the service may be temporarily interrupted or suspended because of suspected fraudulent activities or because of equipment modifications, upgrades, relocations, repairs and similar activities necessary for the proper or improved operation of the service.
- 2.3. The customer agrees to comply with any terms and conditions imposed by the network operator relating to the utilisation of the service by the customer.
- 2.4. Subject to the terms and conditions, SatComm shall connect and maintain the connection of the equipment to the system and SatComm shall use its reasonable endeavours to make the service available to the customer, save and except, for circumstances beyond the control of SatComm.
- 2.5. The customer agrees to make use of the service with equipment approved by SatComm from time to time.

3. CHARGES AND PAYMENT

- 3.1. The customer shall pay to SatComm on a monthly basis, either in cash, by cheque, electronic funds transfer or telegraphic transfer within fifteen (15) days of the date of SatComm invoice, the aggregate of all charges levied by SatComm, from time to time, as set out on SatComm's invoices, including without limitation, the call charge, the monthly access charge, the connection charge and the SIM card and activation charge.
- 3.2. SatComm shall be entitled to request, payment of such deposit as it may deem fit, which deposit shall be paid by the customer immediately upon request by SatComm. If the customer has paid a deposit to SatComm, such deposit may be retained and appropriated in whole or in part by SatComm towards payment of any sums whatsoever due to SatComm by the customer.
- 3.3. All charges are exclusive of Value Added Tax.
- 3.4. The customer shall be liable for and shall pay the amount of Value Added Tax or any other tax or levy that may be imposed.
- 3.5. The customer shall not be entitled to set-off any amount owing to it by SatComm for any reason whatsoever, against any payment due by it to SatComm.
- 3.6. Until the theft or loss of any equipment and/or SIM card has been notified in writing by the customer to SatComm and SatComm has had a reasonable opportunity to disconnect the service in respect thereof, the customer shall be liable for all charges as a result of the use of the equipment and/or SIM card by any person whatsoever.

4. CONNECTION

Whilst SatComm shall make every reasonable effort to connect the customer to the service timeously, SatComm shall not be responsible for any consequences as a result of delay or liable for any damages (including consequential damages), costs or expenses whatsoever which the customer may incur or suffer if the connection is delayed.

5. CUSTOMER ACKNOWLEDGEMENT

The customer acknowledges and agrees that:

- 5.1. SatComm is only a service provider and should the network operator terminate, truncate or in any other way change the service it provides, the customer shall be obliged to accept such termination, truncation or change without this constituting a breach by SatComm of the contract and without this affecting the monthly access charge.
- 5.2. The billing records provided as part of SatComm's monthly account are supplied by the network operator. SatComm is obliged to pay the amount charged to it by the network operator and in the event that the customer disputes any usage of the service which appears on SatComm's invoice, the customer must pay the full amount charged by SatComm. Should the customer wish to claim a credit for the disputed usage, the customer shall within fifteen (15) days of the receipt of SatComm's invoice, submit full details on the dispute in writing. SatComm undertakes to use its reasonable commercial endeavours to have the charge reduced or reversed and on receipt of any credit from the network operator, it shall pass this on to the customer. If SatComm is unable to have the charge reduced or reversed, the customer shall have no claim against SatComm.
- 5.3. Service quality and coverage available to the customer shall be limited to that provided by the network operator and the service may from time to time be adversely affected by physical features such as buildings and underpass as well as atmospheric conditions and other causes of interference.

6. LIABILITY

- 6.1 SatComm shall not be liable (including liability for negligence or gross negligence or wilful misconduct), arising in contract or delict for any loss or damage or injury to the customer, its employees, agents or subcontractors or any one else who uses or is permitted to use the equipment and/or service, no matter when or how the said loss or damage occurred and whether the said loss or damage is direct and/or indirect and/or consequential and/or contingent.
- 6.2 The customer hereby indemnifies and holds SatComm harmless against any claim for damages and/or loss arising as set out in clause 6.1 including all costs, both party and party and attorney and own client.

7. SUSPENSION/DISCONNECTION

- 7.1 SatComm may from time to time and without notice suspend the service (and at SatComm's discretion disconnect the equipment from the system) in any of the following circumstances:
- i. during any technical failure, modification or maintenance of the system provided that SatComm, will use its reasonable endeavours to procure the resumption of the service as soon as reasonably practicable; or
 - ii. if the customer fails to comply with any of the terms and conditions (including failure to pay any charges due) until the breach (if capable of remedy) is remedied, or does, or allows to be done, anything which in SatComm's opinion may have negatively affected the operation of the service.
- 7.2 Notwithstanding any suspension of the service under this clause, the customer shall remain liable for all charges due hereunder throughout the period of suspension unless SatComm at its sole discretion determines otherwise in writing.

8. BREACH AND TERMINATION

- 8.1. In the event that the customer breaches any term or condition, or any warranty given by it hereunder or fails to fulfil any obligation resting upon it, including to pay any amount owing to SatComm on due date, then without prejudice to SatComm's other rights in terms of this agreement and the Common Law, SatComm may three (3) days after sending written notice to the customer, either terminate the service or call for specific performance of all customer's obligations and immediate payment of all sums owing by the customer, whether or not then due, in either event without prejudice to SatComm's right to recover such damages as it may have suffered by reason of SatComm's election in terms of this clause. No action taken by SatComm shall affect its right to recover all arrears.
- 8.2. In addition to and without derogating from the generality of the foregoing, SatComm may, without notice, terminate the service immediately in any of the following circumstances:
- 8.2.1 if the customer makes or offers any arrangement or composition with its creditors or commits any act which in terms of the Insolvency Act would be an act of insolvency had it been committed by a natural person or if any petition or application for sequestration, liquidation, winding-up or judicial management is presented by or made against the customer, or if any resolution to wind-up the customer is passed or if a receiver, trustee or curator is appointed over the whole or any part of the customer's assets or estate or if SatComm anticipates that any of the events set out in this clause 8.2.1. are imminent; or
 - 8.2.2 If the customer does or allows to be done anything which in SatComm's opinion will or may have the effect of negatively affecting the operation of the service; or
 - 8.2.3 If any licence to operate or use the system is revoked, terminated or modified for any reason either in whole or in part; or
 - 8.2.4 If, for any reason, the network operator ceases to make the system available to SatComm or the service are substantially reduced for a continuous period exceeding sixty (60) days.
- 8.3. Upon termination of the service, SatComm shall disconnect the equipment from the system.
- 8.4. After disconnection of the equipment from the system consequent upon termination of the service, the customer shall pay a connection charge which SatComm may wish to charge at its sole discretion.

9. CESSION OR ASSIGNMENT

- 9.1. The customer shall not cede, assign, transfer, encumber or delegate any of its rights or obligations to any third party without SatComm's prior written consent.
- 9.2. SatComm shall be entitled, at any time, to cede, assign transfer, encumber or delegate any of its rights, title, interest or obligations to any third party without the customer's consent.

10. VARIATION OF CHARGES AND TERMS

- 10.1. SatComm reserves the right to vary the charges and the terms and conditions at its sole discretion, whether as a result of new legislation, statutory instruments, government regulations of licence requirements, amendments to the standard terms and conditions of SatComm, or any similar event, or not. SatComm shall notify the customer of any such variation in writing thirty (30) days prior to the .change being effective.
- 10.2. SatComm reserves the right without cost or penalty to itself, to alter any name, code or number allocated by SatComm from time to time for use in connection with the service and the customer indemnifies SatComm against any liability arising from such alteration.

11. COSTS

The customer shall repay to SatComm on demand all costs SatComm actually incurs as a result of the customers failure to comply with the terms and conditions, including without limitation costs in connection with the tracing of the customer, all legal costs on the attorney and own client scale and collection commission that may legally be recovered from the customer by SatComm's attorneys on amounts collected.

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A certificate signed by any member or accountant of SatComm (whose appointment and authority shall not be necessary to prove) as to the existence of any facts and, in particular, without limiting the foregoing generality, as to the amount of the indebtedness of the customer, shall constitute *prima facie* proof of such facts for any purpose and, more particularly, for the purpose of provisional sentence proceedings or their equivalent in any court of competent jurisdiction.

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16.1. These terms and conditions constitutes the entire agreement between them and save as is herein set forth there are no terms and conditions, rights and liabilities between them and no warranties or representations have been made by any of them or on behalf of them which may have had the effect of inducing any of the parties to conclude any agreement or at all. The parties hereby expressly waive any rights which they may have had as a result of any such terms, conditions, warranties and representations.

16.2. No relaxation or indulgence which either of the parties may afford to any of the other shall in any way prejudice the rights of the firstmentioned party nor shall such firstmentioned party be estopped from exercising any such rights by reason thereof.