

**1. DEFINITIONS**

- In this Agreement, unless clearly inconsistent with or otherwise indicated by the context:
- 1.1 "the/this Agreement" means the Agreement set out in the Quotation and these Terms and Conditions together with any schedules and annexures hereto, any agreed written amendments hereto as well as the limited specific terms of the Order, referred to in clauses 1.8, 1.10 and 12.1.1;
- 1.2 "Customer" means the Party who has placed an Order with Checkit or on whose behalf an order has been placed with Checkit;
- 1.3 "Installation Fee" means the installation fee set out in the Quotation, as adjusted by Checkit in terms of clause 3.8;
- 1.4 "Intellectual Property" means all copyright, rights in business names, trade marks, trade names, service marks, patents, designs and/or inventions as well as all rights to source codes, trade secrets, confidential information, know-how and all other rights of a similar character (regardless of whether such rights are registered and/or capable of registration) and all applications and rights to apply for protection of any of the same;
- 1.5 "Order" means a written order (including an order in electronic format) placed by the Customer with Checkit after delivery by Checkit of the Quotation, which Order is accepted by Checkit in accordance with clause 2;
- 1.6 "Parties" means Checkit and the Customer;
- 1.7 "Party" means any one of the Parties as the context may indicate;
- 1.8 "Place of Delivery" means the place of delivery stipulated in the Order or otherwise agreed between the Parties in writing;
- 1.9 "Prime Rate" means the interest rate (expressed as a % per annum, compounded monthly) from time to time published by Standard Bank Limited as being the minimum overdraft rate at which it lends to the corporate sector, as certified by any manager of such bank, whose appointment or authority it shall not be necessary to prove, and which certificate shall, save manifest error of calculation, be prima facie proof of the contents thereof;
- 1.10 "Products" means the hardware and software products purchased by the Customer from Checkit, as set out in the Quotation and the Order;
- 1.11 "Purchase Price" means the purchase price set out in the Quotation, as amended in terms of clauses 4.2 and/or 4.4;
- 1.12 "Quotation" means the written quotation (including a quotation in electronic format) submitted by Checkit to the Customer setting out, *inter alia*, the Products and the Purchase Price;
- 1.13 "Signed" or "signature" means a hand-written signature, excluding any signature appended by electronic communication. "Electronic communication" has the meaning assigned to it in the Electronic Communications and Transactions Act, no. 25 of 2002;
- 1.18 "Supplier" means the Supplier of a specific item of the Products to Checkit;
- 1.19 "Supplier Warranties" means the warranties with respect to the Products given by the Supplier to Checkit;
- 1.20 "these Terms and Conditions" means the terms and conditions set out in this document;
- 1.21 "VAT" means value added tax in terms of the Value Added Tax Act, 1991 or any similar tax on the supply or sale of goods and/or services;
- 1.22 "Warranty Period" means the period for which a specific Product is under warranty from the Supplier; and
- 1.23 "Writing" or "written" includes any hand-written, typewritten, facsimile or e-mail communications unless e-mail has been expressly excluded.

2. ACCEPTANCE OF ORDER

- 2.1 Checkit shall deliver on the Order in accordance with clause 3, it being agreed that the Customer may not cancel, withdraw, terminate or vary any Order after placing same with Checkit.
- 2.2 For administrative purposes only, the Customer may issue an Order for the Products using its standard forms, which Order is deemed to be subject to these Terms and Conditions and the Quotation. Only the matters referred to in clauses 1.8, 1.10 and 12.1.1, as set out in an Order, shall be binding on the Parties and all other terms and conditions attached to or contained in such Order are hereby waived by the Customer and shall have no force and effect.

3. DELIVERY AND INSTALLATION

- Delivery:**
- 3.1 Checkit shall deliver the Products to the Place of Delivery, which delivery shall, subject to the provisions of clauses 3.2, 3.3 and 3.4, be at the cost of Checkit.
- 3.2 The Products shall be deemed to have been delivered to the Customer when:
- 3.2.1 the Customer signs the delivery note of Checkit; or
- 3.2.2 where delivery is by a carrier appointed by Checkit, upon the Customer signing the delivery note of the carrier, it being agreed that the carrier is deemed to be the agent of Checkit and Checkit is liable for taking out insurance coverage with regard to the full replacement value of the Products, as from the time when the carrier takes possession of the Products from Checkit; or
- 3.2.3 where delivery is by a carrier appointed by the Customer, upon the carrier taking possession of the Products, it being agreed that the carrier is deemed to be the agent of the Customer and the Customer is liable for taking out insurance coverage with regard to the full replacement value of the Products, as from the time when the carrier takes possession of the Products from Checkit.
- 3.3 The Purchase Price has been calculated on the basis that the Place of Delivery is within South Africa and Checkit reserves the right to increase the Purchase Price by any additional cost occasioned by delivery outside of South Africa, if such delivery is required by the Customer.
- 3.4 The Customer shall bear all risk of damage to or loss of the Products as from the delivery of the Products to the Customer in accordance with clause 3.2.
- 3.5 Notwithstanding delivery and invoice of the Products to the Customer, ownership in and to the Products shall not pass to the Customer until the Purchase Price of such Products has been paid in full to Checkit.
- Installation:**
- 3.6 Unless otherwise agreed between the Parties in writing, whether by means of the Order or other written agreement, Checkit shall install the Products in accordance with clause 3.7 at the Place of Delivery.
- 3.7 Checkit's only obligations in regard to the installation of the Products shall be the unpacking and assembly of the Products and the conducting of a power-on-test with regard to the Products, subject to payment by the Customer of any standard installation costs indicated as such in the Quotation.
- 3.8 Where installation is not in terms of clause 3.7, all costs of installation, and the Installation Fee (exclusive of VAT) which is payable by the Customer to Checkit, is only an estimate, which may be adjusted by Checkit in its sole discretion, should:
- 3.8.1 the scope of the work required for the installation differ from the scope anticipated by Checkit at the time of the Quotation;
- 3.8.2 the installation take longer or need to be conducted outside of a period of 9 (nine) consecutive hours between 08h00 and 17h00 on a Business Day; and/or
- 3.8.3 the Place of Delivery be outside a 100 km radius of a service centre of Checkit, and, Checkit may refuse to install the Products if the Customer refuses to accept the adjusted Installation Fee in terms hereof.

4. PURCHASE PRICE AND PAYMENT

- 4.1 Provided the Order is placed with Checkit prior to the quote expiry date set out in the Quotation, the quoted Purchase Price may not be changed, except in terms of clauses 4.2, 4.3 and/or 4.4.
- 4.2 The Purchase Price may be adjusted to accommodate changes in the exchange rate of the foreign currency if applicable and indicated on the Quotation ("the Exchange Rate").
- 4.3 Should the Supplier change its prices of the Product prior to the quote expiry date, Checkit may amend the quoted Purchase Price.
- 4.4 The Purchase Price excludes VAT and Checkit may increase the Purchase Price with any additional duties or taxes that might be levied at the date of issue of an invoice for the Products, without any prior notice to the Customer.
- 4.5 All payments by the Customer in terms of or arising out of this Agreement shall be made:
- 4.5.1 within 14 (fourteen) calendar days from the date of Checkit's invoice, by direct transfer into such account as Checkit may advise in writing from time to time;
- 4.5.2 in cash, in South African Rands, free of conditions, set-off, bank or other exchange, commission or any other deduction (it being agreed that no post-dated cheques shall be accepted by Checkit); and
- 4.5.3 the Customer may not defer, adjust or withhold any payment due to Checkit in terms of this Agreement or obtain deferment of judgment for such amounts or any execution of such judgment by reason of any set-off or counterclaim.
- 4.6 Any certificate issued under the signature of a director of Checkit certifying any amount due hereunder, shall constitute *prime facie* proof of such indebtedness, save manifest error of calculation, sufficient to enable Checkit to obtain summary judgment or provisional sentence against the Customer for the amount stated in such certificate. The Customer accepts the onus of disproving the correctness of the amount so stated.
- 4.10 All amounts to be paid in terms of this Agreement do not include taxes, including but not limited to sales, excise and withholding taxes, or any similar tax or any government imposed fees or surcharges which may be applicable thereto and the Customer agrees to pay all such applicable taxes or fees, which will be invoiced to the Customer in accordance with the law where the Customer is domiciled. The Customer agrees to pay or reimburse Checkit for all such taxes. In respect of withholding tax, the Customer will pay such additional amounts as may be necessary, such that Checkit receives the amount it would have received has no withholding been imposed.

5. WARRANTIES

- 5.1 Checkit provides the Supplier Warranties during the Warranty Period.
- 5.2 The Customer shall give notice to Checkit of any breach of warranty as soon as reasonably possible after becoming aware thereof.
- 5.3 Checkit shall investigate any alleged breach of warranty and, in the case of a breach of warranty under clause 5.1, shall, in its absolute discretion, remedy the same by –
- 5.3.1 carrying out such repairs, modifications or alterations to the Products;
- 5.3.2 replacing the Products or such component parts; and/or
- 5.3.3 exchange the Product free of charge should the Product prove to be defective within 7 (seven) calendar days from the date of delivery thereof, provided that the Supplier has consented to an exchange free of charge, provided that:
- (a) the Customer shall be responsible to deliver and collect the Products to and from Checkit at the Customer's risk and cost (which shall include all risk while the Products are in possession of Checkit during repairs); and
- (b) the Supplier has consented to such repairs or replacements in accordance with its standard procedures and the Supplier Warranties.
- 5.4 No Products will be repaired, replaced or accepted for return if:
- 5.4.1 such Products are not covered by the Supplier Warranty and/or the Supplier does not consent to such return;
- 5.4.2 the Customer has modified the Products in any way; and/or
- 5.4.3 the Products have been used for any purpose other than that for which the Products were designed and/or the Products have been mis-used or neglected in any way.
- 5.5 Should Checkit be of the opinion that, despite notice from the Customer in terms of clause 5.2, Checkit is not in breach of the warranty set out in clause 5.1, the Customer shall be liable for all costs and fees incurred by Checkit in regard to the repair, transport, replacement and the like of such Products.
- 5.6 Any Products or parts thereof replaced by Checkit pursuant to clause 5.3.1 shall upon replacement become the property of Checkit. The Customer warrants that Checkit's title to such replaced Products shall be free and encumbered and that it shall have all necessary consents and authorities to part with possession of the replaced Products.
6. Save as provided for in these Terms and Conditions, Checkit makes no representations, whether express or implied, in respect of the Products, their performance criteria, calibration, serviceability, condition, state of quality, or to their fitness or suitability for any purpose and, accordingly, shall not be bound by any warranty, guarantee, representation or undertaking or by any term, whether express, implied or tacit or created by operation of law, to the contrary.
- 7. MAINTENANCE AND SUPPORT AND PROJECT MANAGEMENT**
- 7.1 Nothing set out in this Agreement places any obligation on Checkit with regard to the maintenance and/or support of the Products or with regard to the rendering of project consultancy services to the Customer. The maintenance charges set out in the Quotation shall be regarded only as an estimate for purposes of any potential agreement in terms of clause 7.2.
- 7.2 Any services in terms of clause 7.1 shall only be rendered by Checkit after the conclusion of a separate Maintenance Agreement or Project Agreement with the Customer.

**8. INTELLECTUAL PROPERTY**

All rights, title and interest in and to all Intellectual Property of whatever nature relating to any Products and/or the software used to implement such Products shall remain the sole property of the Parties, their vendors or suppliers, who own such Products and/or software.

9. BREACH

9.1 If either Party:

9.1.1 commits any breach of this Agreement other than a breach of a payment obligation and fails to remedy the breach within 30 (thirty) calendar days after receipt from the other Party of written notice calling upon it to do so;

9.1.2 commits a breach of any payment obligation in terms of this Agreement and fails to make payment within 7 (seven) calendar days after receipt from the other Party of written notice calling upon it to do so;

9.1.3 enters into liquidation, whether compulsorily or voluntarily, or compounds with its creditors, or takes or suffers any similar action in consequence of debt, or enters into any scheme or arrangement of compromise with its creditors; or

9.1.4 has judgment taken against it and fails to satisfy or apply to have same set aside within 7 (seven) calendar days of becoming aware thereof, then the other Party shall be entitled, in addition to and without prejudice to any other right it may have in law or in terms of this Agreement, to:

(a) enforce specific performance of the terms of this Agreement; or

(b) subject to clause 9.2, cancel this Agreement; and

(c) in either event (subject to clause 10.4), recover such damages as it may have sustained,

9.2 An aggrieved Party may only cancel this Agreement in terms of clause 9.1.1 if the breach is material and is not capable of being remedied by payment of money or, if it is capable of remedy by payment of money, if the other Party fails to make payment within 14 (fourteen) calendar days after final determination of the amount.

9.3 CheckIt shall incur no liability unless court or arbitration proceedings are instituted by the Customer within 1 (one) year of the cause of action arising. No claim may be instituted against CheckIt arising from the terms of this Agreement or performance by the Parties in terms thereof unless dispute resolution proceedings are instituted in terms of this Agreement by the Customer within 1 (one) year of such purported cause of action arising.

9.4 Any amount due by any Party which is not paid on its due date shall attract interest at Prime Rate, plus 2 (two) percentage points.

10. FORCE MAJEURE AND LIMITATION

10.1 Neither Party shall have any claim against the other Party ("the Affected Party") for any delay or failure of the Affected Party to carry out any of its obligations under this Agreement arising from or attributable to acts of God, war, terrorism, government, labour action or unrest, failure of suppliers or contractors or any other cause whatsoever beyond the control of the Affected Party ("force majeure").

10.2 The performance of the obligations of the Affected Party shall, subject to clause 10.3, be suspended for the duration of the force majeure, which shall be deemed to commence only upon the date of written notice by the Affected Party to the other Party. Upon cessation of the force majeure, this Agreement shall again become fully operative and the Affected Party shall immediately resume its performance.

10.3 If the suspension of performance continues for more than 60 (sixty) consecutive calendar days, then either Party may summarily terminate this Agreement by written notice to the other Party, prior to the cessation of the force majeure.

10.4 Any claim by the Customer against CheckIt howsoever arising shall in the aggregate be limited to 60 % (sixty percent) of the total amount actually paid by the Customer to CheckIt for the Products which were directly responsible for the loss and/or damage. In any event, CheckIt will not be liable to the Customer for: (a) indirect or special damages and/or (b) loss of income or profit, howsoever arising, whether or not caused by its employees, agents and/or contractors, and regardless of form or cause of action. The provisions of this clause are also stipulated for the benefit of the employees, agents and/or contractors of CheckIt.

11. ARBITRATION AND DISPUTE RESOLUTION

11.1 If any dispute arises out of or in connection with this Agreement the Parties may at any time, by agreement, refer the dispute for resolution by way of Arbitration.

11.2 If the Parties agree to refer the dispute to Arbitration, each Party:

11.2.1 agrees that the Arbitration will be held in Midrand in accordance with the then current rules of the Arbitration Foundation of South Africa ("AFSA") ("the Rules") by 1 (one) arbitrator appointed by agreement between the Parties. If the Parties cannot agree on the arbitrator within a period of 10 (ten) Business Days after the date on which the Parties agreed in writing to refer the dispute to arbitration the arbitrator shall be appointed by the Secretariat of AFSA;

11.2.2 expressly consents to any arbitration in terms hereof being conducted as a matter of urgency; and

11.2.3 irrevocably authorises the other Party to apply, on behalf of both Parties, in writing, to the Secretariat of AFSA, in terms of article 23(1) of the Rules, for the arbitration to be conducted on an urgent basis.

11.3 The decision or award resulting from the arbitration may be made an order of court at the instance of either Party. The Parties hereby irrevocably submit to the jurisdiction of the High Court of the Republic of South Africa should either Party wish to make the arbitrator's award an order of court.

11.4 There shall be a right of appeal as provided for in article 22 of the Rules.

11.5 The arbitration will be held *in camera*, in the English language and will be kept confidential by the Parties.

11.6 The provisions of this clause 11 shall not preclude any Party from access to an appropriate court of law for interim relief in the form of an interdict, *mandamus* or order for specific performance pending the outcome of the arbitration in terms of this clause 11 or in respect of such arbitration, for which purpose the Parties irrevocably submit to the jurisdiction of the High Court of the Republic of South Africa.

12. DOMICILIUM AND NOTICES

12.1 The parties choose their respective domicilium addresses for all purposes hereunder at the following addresses:

12.1.1 **CheckIt** at Suite 407, FNB House, 151 Musgrave Road, Durban, 4001; and

12.1.2 **the Customer** at the Customer's address set out in the Order.

12.2 Any Party shall be entitled from time to time, by written notice to the other(s), to vary its domicilium address to any other address within the Republic of South Africa which is not a post office box.

12.3 All notices given in terms of this Agreement shall be in writing and any notice given by any Party to another ("the addressee") which –

12.3.1 is delivered by hand or transmitted by telefacsimile, shall be deemed to have been received by the addressee on the first Business Day after the date of delivery or transmission, as the case may be;

12.3.2 is posted by pre-paid registered post from an address within the Republic of South Africa to the addressee at its domicilium address for the time being shall be deemed to have been received by the addressee on the 10th (tenth) Business Day after the date of such posting;

12.3.3 is delivered by e-mail shall be deemed to have been received by the addressee only once the addressee has acknowledged receipt thereof in writing, provided that it shall not be permissible to give any notice relating to a dispute, demand, breach, legal proceedings, renewal, cancellation or termination by e-mail.

13. GENERAL

13.1 This Agreement constitutes the entire Agreement between the Parties with regard to the subject matter hereof.

13.2 The terms and conditions contained on either Party's purchase order, order acceptance forms and/or invoices shall not apply to, supplement or supersede any provisions of this Agreement.

13.3 No alteration or variation to, or consensual cancellation of this Agreement shall be of any force or effect, unless it is recorded in writing and signed by all the Parties.

13.4 The provisions of clauses 5 to 14 shall survive the expiry, cancellation or termination of this Agreement for any reason.

13.5 Nothing in this Agreement constitutes either Party as the agent, principal, representative or partner of the other, and no Party shall be entitled to hold out to any third party that the relationship between the Parties is that of a partnership, joint venture or the like.

13.6 No failure or delay by a Party to enforce any provision of this Agreement shall constitute a waiver or suspension of such provision or affect in any way a Party's right to require performance of any such provision at any time in the future, nor shall the waiver of any right arising from any subsequent breach nullify the effectiveness of the provision itself.

13.7 No Party may cede its rights and/or delegate its obligations under this Agreement without the prior written consent of the other Party, provided that CheckIt shall be entitled to cede its rights and/or delegate its obligations under this Agreement to any company in the CheckIt Group without the consent of the other Party.

13.8 In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining provisions, which shall remain of full force and effect. If any invalid term is capable of amendment to render it valid, the Parties agree to negotiate in good faith an amendment to remove the invalidity.

13.9 If any conflict arises in respect of the provisions contained in this Agreement and any annexure attached hereto, the provisions contained in this Agreement shall take precedence.

13.10 Unless otherwise agreed in writing between the Parties, no Party shall for the duration of this Agreement and for a period of 12 (twelve) months after expiry or termination thereof for its own benefit or as a representative of or agent for any third party, persuade, induce, encourage, procure or solicit (or procure such persuasion, inducement, encouragement, procurement or solicitation of) the personnel of the other Party:

13.10.1 to become employed, or interested, directly or indirectly in any manner whatsoever, by it or in any business which is in competition with the business carried on by the other Party; or

13.10.2 to terminate his/her employment with the other Party; or

13.10.3 to disclose any Intellectual Property of the other Party to any person not authorised by the owner of the Intellectual Property to receive it.

13.11 This Agreement may be signed in two or more counterparts and the signed counterparts, taken together, shall constitute a binding agreement between the Parties.

13.12 Each Party acknowledges that it does not enter into this Agreement on the basis of and does not rely on any representation, warranty or other provision, whether express or implied, except as expressly provided in this Agreement. All conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by the law of the Republic of South Africa.

13.13 Each Party warrants that it is acting as principal and not as agent for any other person, whether disclosed or otherwise.

13.14 This Agreement shall be governed by, construed and interpreted in accordance with the laws of the Republic of South Africa.

13.15 The Parties shall each pay their own costs of negotiating, drafting, preparing and implementing this Agreement and any annexure to it. If any Party is awarded costs by an arbitrator or court, he shall be entitled to be reimbursed by the other Party on the basis of Attorney and own Customer charges.

13.16 If the Customer fails to pay any undisputed amount due and payable to CheckIt in terms of this Agreement for the rendering of any services or the delivery of products, then CheckIt may, without prejudice to any other rights it may have, suspend the rendering of further services or provision of products until payment thereof.

13.17 Information or documents sent to CheckIt by e-mail shall be deemed to have been received by CheckIt only once CheckIt has acknowledged receipt thereof in writing.

14. INTERPRETATION

14.1 In this Agreement, unless the context requires otherwise:

14.1.1 words importing any one gender shall include the other two genders;

14.1.2 the singular shall include the plural and vice versa;

14.1.3 a reference to natural persons shall include created entities (incorporated or unincorporated) and vice versa;

14.1.4 "Business Day" means any day other than a Saturday, Sunday or any official public holiday within the Republic of South Africa;

14.1.5 any reference to an enactment is to that enactment as at the Date of Signature, as amended or re-enacted from time to time;

14.1.6 when any number of days (whether Business Days or calendar days) is prescribed in this Agreement, that number of days shall be reckoned exclusively of the first and inclusively of the last day, unless the last day (in the case of calendar days) falls on a Saturday, Sunday or official public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding Business Day; and

14.1.7 when any number of days is prescribed and it is not specified whether those days are Business Days or calendar days, they shall be deemed to be calendar days.

14.2 The headings in this Agreement have been inserted for convenience only and shall not be used for nor assist or affect its interpretation.

END OF TERMS AND CONDITIONS