

STANDARD TERMS AND CONDITIONS OF SALE

1 INTERPRETATION AND DEFINITIONS

In this agreement, unless clearly stated otherwise,

- 1.1 These terms and conditions of sale of goods ("Contract") apply to all goods supplied via www.Switchcom Distribution.co.za ("Website") or directly by Switchcom Distribution (Pty) Ltd, Switchcom Distribution herein ("Switchcom Distribution") whose registered office is at 49 Galaxy Avenue, Linbro Business Park, Johannesburg, South Africa.
- 1.2 the Standard T's and C's shall apply to and form part of any and all agreements entered into between the parties, and shall further be applicable to any and all dealings that the parties may have with each other.
- 1.3 the Standard T's & C's and all agreements entered into by the parties are exclusively governed by, and interpreted according to, the laws of the Republic of South Africa, except to the extent to which the laws of another country compulsorily apply. Nothing in this agreement must be so interpreted or construed as to limit any right afforded to any party in terms of any Law or Legislation of the Republic of South Africa, including the CPA. Where mentioned Law or Legislation affords a different or additional right to the parties, such rights will be afforded to that particular party, and the parties will work together on an amicable basis to assure that the right is afforded to the party to which it is afforded.
- 1.4 all headings are for convenience only and shall not be used in its interpretation;
- 1.5 an expression which denotes: -
 - 1.5.1 any one gender, whether masculine, feminine or neuter, includes a reference to the other two genders;
 - 1.5.2 the singular includes the plural and vice versa;
 - 1.5.3 a natural person includes a juristic person and vice versa.
- 1.6 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail.
- 1.7 Any notice period will be calculated by excluding the first day and including the last day of that period, and If any notice period prescribed in the agreement expires on a day that is not a business day, the notice period will be deemed to have expired on the next business day immediately thereafter.
- 1.8 Words or expressions defined in any particular clause in the agreement must bear the meaning so assigned to them throughout the agreement unless the context specifically indicates otherwise.
- 1.9 The following rules of construction and interpretation will not apply to the agreement:
 - 1.9.1 the contra proferentem rule -the rule of construction which entitles that the agreement shall be interpreted against or to the disadvantage of the party who drafted or prepared the agreement);
 - 1.9.2 The eiusdem generis rule -whenever specific words of a particular class are used in conjunction with general words, the specific words will then not limit the scope of the general words. If any provision is followed by the word "including" and specific examples, such examples must not be construed so as to limit the general ambit of the provision concerned;
- 1.10 Any illustrations and/or drawings, price lists, specifications and/or dimensions, performance figures and/or other technical data provided by SWITCHCOM DISTRIBUTION in relation to the agreement, and whether in writing or not, are provided only on the basis that it does not form part of the Agreement, and is not to be relied upon by the Buyer for any purpose unless it is expressly warranted or guaranteed, in writing, by SWITCHCOM DISTRIBUTION, and it is further expressly stated by SWITCHCOM DISTRIBUTION to form part of the agreement.

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- 1.11 If any term, condition, agreement, requirement or provision contained in this agreement is held by any court having jurisdiction to be illegal, void, unenforceable, or contrary to public policy, such term, condition, agreement, requirement or provision shall have no effect whatsoever upon the binding force or effectiveness of any of the remainder of this agreement, it being the intention and declaration of the parties hereto that had they or either of them known of such unenforceability, illegality, invalidity or that the provision was contrary to public policy, they would have entered into a contract, containing all the other terms and conditions as set out in this agreement.
- 1.12 the following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings
- 1.12.1 “Agreement”: Collective term referring to the sale agreement between the parties, whether the sale agreement is in the form of a CF Sale Agreement or COD sale agreement, together with the Standard T’s and C’s and the SWITCHCOM DISTRIBUTION Application Form.
- 1.12.2 “Business Day”: Any day other than a Saturday, Sunday or public holiday in the Republic of South Africa;
- 1.12.3 “Buyer”: The natural person or juristic person who has entered into an agreement with SWITCHCOM DISTRIBUTION in terms whereof goods are sold to this person or juristic person by SWITCHCOM DISTRIBUTION, and who’s full details for purposes of this agreement appears on the SWITCHCOM DISTRIBUTION APPLICATION FORM
- 1.12.4 “Calendar Month”: A period of 30 or 31 days, as the case may be, which period forms part of the 12 named months of a year, commencing on the first calendar day of that particular month and ending upon the last calendar day of such month;
- 1.12.5 “CF Sale Agreement”: The agreement of sale concluded between SWITCHCOM DISTRIBUTION and the Buyer, in terms whereof the Buyer agrees to purchase Goods from SWITCHCOM DISTRIBUTION, through use of a credit facility that has been pre-approved by SWITCHCOM DISTRIBUTION and backed by Credit Guarantee, and this agreement includes the standard terms and conditions of sale;
- 1.12.6 “CPA” The Consumer Protection Act, 68 of 2008, as amended, from time to time, together with its regulations, as amended or replaced from time to time;
- 1.12.7 “COD Sale Agreement” The agreement of sale concluded between SWITCHCOM DISTRIBUTION and the Buyer, in terms whereof the Buyer agrees to purchase Goods from SWITCHCOM DISTRIBUTION, and where the purchase price of the Goods must be paid to SWITCHCOM DISTRIBUTION via Electronic Fund Transfer (EFT) upon placing the order, and this agreement includes the standard terms and conditions of sale;
- 1.12.8 “Credit expiry date”: The date upon which the credit period, as agreed upon between the parties in the CF Sale Agreement, comes to an end, and upon which date the full outstanding purchase price of the Goods as purchased by the Buyer becomes due and owing to SWITCHCOM DISTRIBUTION;
- 1.12.9 “Credit Facility”: The facility provided to the Buyer in terms whereof the Buyer is able to purchase Goods from SWITCHCOM DISTRIBUTION, and payment of the purchase price of the Goods are deferred to a date in the future as agreed between the Buyer and SWITCHCOM DISTRIBUTION. This facility is provided to the Buyer at SWITCHCOM DISTRIBUTION’s discretion, and the Buyer has no right to demand that this facility is to be made available to the Buyer;
- 1.12.10 “Day”: A calendar day, spanning from 00:00 to 24:00;
- 1.12.11 “Delivery Address”: The physical address as chosen by the Buyer where SWITCHCOM DISTRIBUTION will make the Goods available to the Buyer.
- 1.12.12 “Delivery Date”: The date on which the Goods are scheduled to be made available through delivery to the Buyer by SWITCHCOM DISTRIBUTION.
- 1.12.13 “Goods”: Any items or products as indicated on any of SWITCHCOM DISTRIBUTION’s forms, pricelists, quotations, sale orders, tax invoices and that are supplied to the Buyer in terms of this agreement.

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- 1.12.14 “Tax Invoice”: The document provided to the Buyer by SWITCHCOM DISTRIBUTION stipulating the date upon which payments must be made.
- 1.12.15 “Normal Business Hours”: The hours between 8am and 5pm on business days during which SWITCHCOM DISTRIBUTION operates and conducts its business;
- 1.12.16 “Parties”: SWITCHCOM DISTRIBUTION and the Buyer, and the expression “party” shall have reference to either SWITCHCOM DISTRIBUTION or the Buyer as the case may be;
- 1.12.17 “SWITCHCOM DISTRIBUTION”: SWITCHCOM DISTRIBUTION, a private company, duly incorporated in the Republic of South Africa, with registration number 2015/334722/07, having its registered office/principal place of business at 49 GALAXY AVENUE, LINBRO BUSINESS PARK, SANDTON, 2090, being the seller of the goods subject to this agreement;
- 1.12.18 “SWITCHCOM DISTRIBUTION Application Form” The application form completed by the Buyer and containing the Buyer’s details, which will form part of this agreement for all intent and purposes.
- 1.12.19 “Standard T’s & C’s”: The standard terms and conditions of sale as appearing on SWITCHCOM DISTRIBUTION’s website at www.Switchcom Distribution.co.za
- 1.12.20 “Year”: A period consisting of 365 consecutive days, and for the purpose of this agreement, a leap year will be ignored.

2 VARIATION AND AMENDMENTS.

- 2.1 The agreement encompasses the whole agreement between SWITCHCOM DISTRIBUTION and the Buyer, and contains all the provisions as agreed to by the parties about its subject matter.
- 2.2 SWITCHCOM DISTRIBUTION shall be entitled to amend these standard terms and conditions from time to time, whether by removing from, adding to or varying their current form (“the amendment”). In the event of such amendment, SWITCHCOM DISTRIBUTION shall notify the Buyer in writing by electronic mail of the exact nature and content of the amendment. If the Buyer does not indicate in writing by electronic mail to SWITCHCOM DISTRIBUTION within a period of 30 days of delivery of the amendment that it does not accept the amendment, then the amendment shall ipso facto upon the expiry of the said 30 day period become effective and binding between the parties.
- 2.3 If the Buyer does indicate in writing by electronic mail that it does not accept the amendment, then SWITCHCOM DISTRIBUTION shall have the right to cancel the agreement(s) then extant between it and the Buyer upon 30 days written notice, to be sent by electronic mail. Failing such cancellation by SWITCHCOM DISTRIBUTION, these terms and conditions shall continue to be of full force and application and shall not be affected by the amendment.
- 2.4 In the event of SWITCHCOM DISTRIBUTION receiving a delivery receipt or read receipt of the amendment notification referred to in 2.2 above and/or the cancellation notice referred to in 2.3 above, then the Buyer shall be deemed to have received notification of the amendment and/or cancellation.
- 2.5 Save as provided for to the contrary in 2.2 and 2.3 above, no variation, amendment or consensual cancellation of the agreement, these terms and conditions or any provision or term thereof will be valid or effective unless recorded in writing and signed by the Buyer and a director or general manager of SWITCHCOM DISTRIBUTION. No extension of time, waiver or relaxation or suspension of any of the provisions or terms of the agreement shall be binding unless recorded in writing and signed by the Buyer and a director or general manager of SWITCHCOM DISTRIBUTION.
- 2.6 No extension of time or relaxation or waiver of any of the provisions or terms of the agreement shall operate as an estoppel against the other party in respect of its rights under the agreement, nor shall it operate so as to preclude the party thereafter from exercising its rights strictly in accordance with this agreement.

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2.7 SWITCHCOM DISTRIBUTION shall not be bound by any representation, warranty, express or implied term, promise or the like not recorded herein, whether it induced the contract between the parties or not.

2.8 No person other than a duly authorized representative of SWITCHCOM DISTRIBUTION has any authority to amend, vary or delete in any way any of these conditions, or accept any other conditions or agree to a consensual cancellation hereof.

3 QUOTATIONS

3.1 Any quotation provided by SWITCHCOM DISTRIBUTION to the Buyer does not constitute an offer by SWITCHCOM DISTRIBUTION to sell Goods but rather constitutes an invitation by SWITCHCOM DISTRIBUTION to the Buyer to do business with SWITCHCOM DISTRIBUTION and the quotation can be revoked at any time by SWITCHCOM DISTRIBUTION.

3.2 The quotation is valid for 1 (one) working day from the date of issue thereof.

3.3 The quotation is based on rates of exchange, freight charges, insurance, labour and materials costs and other charges ruling at the date of the quotation. Any variation occurring subsequent to the 1 (one) working day period mentioned in 3.2, in any of the aforesaid rates or charges shall entitle SWITCHCOM DISTRIBUTION to vary the amount of the quotation accordingly.

3.4 A contract shall only come into force between SWITCHCOM DISTRIBUTION and the Buyer if, after receipt by SWITCHCOM DISTRIBUTION of the Buyer's order or acceptance of the quotation, SWITCHCOM DISTRIBUTION confirms to the Buyer that such a contract has been concluded or if SWITCHCOM DISTRIBUTION supplies, or tenders to supply, the Goods in question to the Buyer.

3.5 SWITCHCOM DISTRIBUTION may accept or reject in whole or in part any order placed by the Buyer pursuant to the quotation.

4 ORDERING OF GOODS

4.1 Switchcom Distribution will accept written (including via the Website) and verbal Orders. Switchcom Distribution will not be responsible for any errors or misunderstandings occasioned by the Customers' failure to place a written Order.

4.2 If orders are placed with Switchcom Distribution telephonically by the Buyer, Switchcom Distribution may require such orders to be confirmed in writing by the Buyer, prior to acceptance same.

4.3 SWITCHCOM DISTRIBUTION will not be responsible for any misunderstandings or errors occasioned by the Buyer's failure to record the order in writing.

4.4 Orders placed by the Buyer shall constitute irrevocable offers to purchase the Goods in question at the usual prices of SWITCHCOM DISTRIBUTION as at the date when the Buyer places the order of the Goods, subject to clauses 3.2 and 3.3 above, and shall be capable of acceptance by SWITCHCOM DISTRIBUTION by the delivery of the Goods, written acceptance or confirmation of the order.

4.5 If an order is placed with SWITCHCOM DISTRIBUTION for goods that are not in stock ("Special Order Goods") (local or international) and Orders for large quantities of Goods will require the Customer to pay a 30% (thirty per cent) deposit of the estimated Order value to Switchcom Distribution. In the event that the Customer cancels the Order for Special Order Goods or Order for large quantities at any time after acceptance thereof by Switchcom Distribution, Switchcom Distribution shall be entitled to charge the Customer a reasonable penalty fee in accordance with the Consumer Protection Act. The penalty fee payable will be equivalent to the 30% (thirty per cent) deposit paid.

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5 PAYMENT OF GOODS ORDERED

- 5.1 The Buyer shall pay the amount as reflected on the SWITCHCOM DISTRIBUTION Tax Invoice or Sales Order, as the case may be, which amount will be due immediately upon placement of the order unless the Buyer has previously applied for a credit facility which has been approved by SWITCHCOM DISTRIBUTION, in which event payment is due as per the terms and conditions and dates as specified in the Buyer's credit facility agreement.
- 5.2 Payment can be made by electronic funds transfer ("EFT") directly into Switchcom Distribution's bank account as specified by Switchcom Distribution's Tax Invoice. No Cash will be accepted in store.
- 5.3 Switchcom Distribution will provide the Customer with a Tax Invoice with delivery of the Goods.
- 5.4 The purchase price payable to Switchcom Distribution by the Buyer for the Goods must be paid to Switchcom Distribution:
- 5.4.1 in the currency stated on the Switchcom Distribution Tax Invoice or Sales Order, as the case may be;
- 5.4.2 free from any deductions, bank charges, or any other charges, and without any set-offs or withholding of any amount
- 5.5 Despite Switchcom Distribution having approved the method of payment as referred to in clause 5.2, all risk in and to this particular method of payment shall at all times remain with the Buyer.
- 5.6 The payment is only deemed to have been made by the Buyer once the full amount of that payment is available to Switchcom Distribution as freely available funds in the bank account nominated on the Switchcom Distribution Tax Invoice.
- 5.7 Switchcom Distribution does not accept payment via cheque.
- 5.8 No discount or extension is allowed unless agreed to in writing by a duly authorized representative of Switchcom Distribution.

6 OVERDUE PAYMENTS

- 6.1 In the event that the Buyer fails to pay any amount for which it has been invoiced by Switchcom Distribution upon the due date as indicated on the invoice or the credit facility application, as the case may be, or fails to pay any other amount (whether owed under the agreement or otherwise) that is due, owing and payable to Switchcom Distribution then, until the amount is paid in full together with any applicable interest:
- 6.1.1 all amounts owed to Switchcom Distribution by the Buyer will become immediately due owing and payable upon Switchcom Distribution notifying the Buyer of this effect in writing, and/or
- 6.1.2 Switchcom Distribution may withhold delivery of any and all Goods sold and not yet delivered to the Buyer, and the Buyer shall be liable for any and all storage and other holding costs incurred by Switchcom Distribution in this regard, and/or
- 6.1.3 Switchcom Distribution may withhold or immediately suspend the performance of any of its obligations to Buyer in terms of the agreement and/or any other agreement that it may have with the Buyer, and/or
- 6.1.4 Switchcom Distribution may immediately terminate any and all the credit facilities that has been approved and granted to the Buyer, whether approved or granted under the contract or not, and/or hand the Customer over to its attorneys for collection of the outstanding debt, the Customer shall be liable for any legal costs incurred related to such collection; and/or
- 6.1.5 list the defaulting Customer as a defaulter with credit bureau in line with Regulation 19(4) of the
- 6.1.6 National Credit Act 34 of 2005.

7 CREDIT FACILITIES

- 7.1 Switchcom Distribution will only consider credit applications from Dealers.
- 7.2 All purchases of Goods by the Buyer from Switchcom Distribution will be strictly on a cash on order basis only, unless the Buyer has applied for a credit facility with Switchcom Distribution and has been approved by Switchcom Distribution.

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- 7.3 All credit facilities must be backed by Credit Guarantee.
- 7.4 It is at the sole discretion of Switchcom Distribution to decide whether to grant a credit facility to the Buyer or not, and the Buyer will have no right to insist on a credit facility being made available to it.
- 7.5 Should Switchcom Distribution decide to grant a credit facility to the Buyer, the nature and extent thereof will be at the sole discretion of Switchcom Distribution, and Switchcom Distribution reserves the right to withdraw, increase or decrease any credit facilities at any time without prior notice.
- 7.6 In the event that credit facilities are granted, it will be on the basis of and subject to the terms and conditions as set out in the Switchcom Distribution credit facility application.
- 7.7 Where credit facilities of the Dealer have been withdrawn by Switchcom Distribution, the Dealer agrees to make payment on a COD basis.

8 DELIVERY

- 8.1 Deliveries will be made in accordance with Switchcom Distribution shipment policy, being the following:
- 8.1.1 Deliveries in the area of Johannesburg and Pretoria will be made at Switchcom Distribution expense and at no charge to the Buyer, provided that the single order to be delivered to the Buyer amounts to R2,500.00 (two thousand five hundred rand) (excluding VAT), or more.
- 8.1.2 For any other deliveries:
- 8.1.2.1 Switchcom Distribution will engage a third party to transport the Goods, and the Buyer hereby authorizes Switchcom Distribution to engage with such third party on the Buyer's behalf and on the terms and conditions as deemed fit by Switchcom Distribution;
- 8.1.2.2 In so far as permitted by law, the Buyer hereby indemnifies Switchcom Distribution against any claim that may arise from such agreement with the third party against Switchcom Distribution;
- 8.1.2.3 The Buyer shall be responsible for the delivery and/or shipment fees of the third party, and payment of these fees must be paid simultaneously with the purchase price of the Goods. Any documentation purporting to evidence the said delivery and/or shipment fees will be deemed to be prima facie proof thereof.
- 8.2 Partial deliveries will not affect any payment period where a credit period has been approved through a credit facility, and where no credit period has been approved the Buyer shall pay the full purchase price of the Goods, notwithstanding partial delivery.
- 8.3 Switchcom Distribution will notify the Buyer of the approximate date on which it will tender delivery of the Goods (the "Delivery Date"), however the delivery date must be regarded as an estimated date of delivery and shall not bind Switchcom Distribution to effect delivery on or near such date. Any failure for whatsoever reason on the part of Switchcom Distribution to deliver the goods in accordance with the estimated delivery date, shall neither constitute a reason to withhold, defer or set off, either in whole or in part the purchase price, nor give rise to a claim for damages.
- 8.4 Despite the disclaimer in clause 9.3, Switchcom Distribution will take every reasonable and necessary step to ensure that the goods are delivered as per the delivery date communicated to the Buyer.
- 8.5 The buyer will accept delivery upon the date that it is tendered by Switchcom Distribution, and shall not be allowed to resell from the agreement, nor withhold or defer payment, nor reduce the purchase price of the Goods so delivered.
- 8.6 Should delivery of any particular order be affected in consignments, Switchcom Distribution will not be obliged to deliver any part of mentioned order until the purchase price due in respect of that part of the order that has already been delivered, has been paid.

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- 8.7 The Buyer shall be responsible for off-loading the Goods at the delivery address, and the Buyer acknowledges that its authorized representative will be present at the handover of the Goods from Switchcom Distribution to the Buyer. To the extent that an authorized representative is not present at the handover, the Buyer acknowledges that such information will be given to the person collecting the Goods on its behalf, and further acknowledges that it is the Buyer's obligation to ensure that such information is effectively communicated to all necessary persons.
- 8.8 The Buyer shall be obliged to inspect all Goods upon delivery and shall endorse the delivery note as to any missing or damaged Goods. No claims for missing or damaged Goods shall be valid unless the delivery note has been endorsed as aforesaid and unless, in addition, the Buyer notifies Switchcom Distribution, in writing, within 7 (seven) working days from the delivery date of the missing or damaged Goods, furnishing full details in regard thereto. The Buyer shall bear the onus of proving that any Goods were missing or damaged upon delivery or that the Buyer's order was in any way not complied with.
- 8.9 If Switchcom Distribution is unable to deliver the Goods to the Buyer due to any act or any omission on the part of the Buyer, Switchcom Distribution will be entitled to charge from the Buyer storage fees for the Goods and/or additional transporting / shipping fees to have the Goods delivered to the delivery address.
- 8.10 Switchcom Distribution 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
- 8.11 All risk in the goods passes to the Customer when the Customer collects the goods from Switchcom Distribution. Should the Customer elect to use the preferred courier, Switchcom Distribution shall not be liable for any damage to, or loss of the goods once they leave the premises of Switch Distribution. All risk in the goods passes to the Customer once handed over to the preferred third-party courier. An invoice, signed by the courier shall be proof that the order was collected by the courier on behalf of the Customer. The Customer hereby indemnifies Switchcom Distribution from any claims of any nature whatsoever that might arise from engaging the preferred courier's services, unless such claim arises as a result of gross negligence on the part of Switchcom Distribution.
- 8.12 Ownership in all Goods sold and delivered shall remain vested in Switchcom Distribution until the full purchase price has been paid.

9 RETURN OF GOODS

- 9.1 Unless otherwise provided herein and subject to any applicable law, if after delivery of the Goods by Switchcom Distribution and upon the Buyer inspecting the Goods, the Buyer finds the Goods to be faulty or defective, the Buyer will have 7 (seven) working days from date of delivery of the Goods to notify Switchcom Distribution of this fault or defect. This notification must be in writing, detailing and specifying the alleged defect, and must further be supported by the original Switchcom Distribution invoice. Additionally, the Goods must be returned by the Buyer at their cost to Switchcom Distribution, packaged in their original packaging material together with all manuals and additional parts.
- 9.2 If the Buyer fails to notify Switchcom Distribution of the alleged defective or faulty nature of the Goods within the 7 (seven) working day period, Switchcom Distribution will have no further obligation or liability in respect of the alleged default.
- 9.3 The Buyer will afford Switchcom Distribution a reasonable opportunity to inspect the returned Goods and the alleged defect.

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- 9.4 Switchcom Distribution shall notify the Buyer of its decision regarding the alleged defect, which decision shall be binding on the customer. Switchcom Distribution liability shall, in any event, be limited to the return of the purchase price of the goods.
- 9.5 Switchcom Distribution shall be relieved of all obligations in terms of this clause 10, if:
- 9.5.1 any repairs or modifications have been made to the Goods by persons other than Switchcom Distribution, unless such repairs or modifications are made with the prior written consent of Switchcom Distribution;
- 9.5.2 any Goods are operated with any equipment, accessory, or part not specifically supplied or approved in writing by the Switchcom Distribution;
- 9.5.3 the Goods have not been operated or maintained in accordance with Switchcom Distribution instruction, or under normal use, or the Goods have not have been properly installed.
- 9.6 Return of defective Goods
- 9.6.1 All Goods sold have a 1 (one) year warranty against defects. The Customer must keep their proof of purchase to verify the date of purchase. Please note that, in terms of the Consumer Protection Act, this warranty may fall away if the Goods have been altered contrary to instructions or after leaving the control of Switchcom Distribution.
- 9.6.2 If the Goods are returned within 1 (one) year of purchase, and has been proven to be defective by a Switchcom Distribution's supplier, at its election, shall either replace, repair or refund the Goods.
- 9.6.3 Any Goods damaged due to power surges, black outs or lightning will not be exchanged under warranty.
- 10 BUYER'S IMPLIED WARRANTY ON GOODS SOLD BY SWITCHCOM DISTRIBUTION:**
- 10.1 The Buyer acknowledges that Switchcom Distribution is not the manufacturer of the Goods being sold under this agreement, and as such Switchcom Distribution is not in a position to open sealed packaging to inspect the Goods within, and therefore Switchcom Distribution cannot warrant or guarantee that the Goods will at all time be suitable for its intended purpose, are free of any defects and/or errors, are of a good quality and in good working order, will always be available and are fit for any purpose.
- 10.2 The Buyer further acknowledges that Switchcom Distribution provides the Goods as is (voetstoots), as available and when available.
- 10.3 All serialized products carry the original manufacturer's warranty and Switchcom Distribution will honor this warranty.
- 10.4 All non-serialized products will only carry a 7 (seven) working day warranty.
- 11 EXCLUSIONS AND LIMITATION OF LIABILITY**
- 11.1 Switchcom Distribution is not liable to the Buyer for any claims, losses, damages, costs (including costs on the attorney and own client scale and on a full indemnity basis) and/or any other liability (collectively referred to as "the claim") suffered or incurred by the Buyer and caused by, or arising from, Switchcom Distribution following the Buyer's instructions given in connection with any agreement (the "instructions"). The Buyer is liable for all consequences of any error, omission, discrepancy or defect in such instructions.
- 11.2 As far as is permissible in law, the Buyer hereby waives any claim it may have or acquire against Switchcom Distribution or Switchcom Distribution's Directors, Officers, Employees, Contractors and/or Agents:

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- 11.2.1 for any indirect, incidental, consequential or special damages (which include all loss of profit, loss of business, any loss or interruption of production or operations), suffered by the Buyer and which arise from, or in connection with, any cause of action including contract, delict, strict or statutory liability; and/or
- 11.2.2 arising from or in connection with any short delivery or defect of the Goods, or failure of the Goods to comply with the agreement, unless within 7 (seven) working days from date of delivery of the Goods, the Buyer notifies Switchcom Distribution thereof, in writing, and providing details of the defect or failure.
- 11.3 Switchcom Distribution shall be under no liability: -
 - 11.3.1 in respect of any defect arising from willful damage, negligence, fair wear and tear, abnormal working conditions, failure by the Buyer or any of its employees or agents to follow Switchcom Distribution's instructions (whether oral or in writing), improper use outside Switchcom Distribution's specifications, damage to the goods caused by improper maintenance, service or repair by untrained personnel or technicians, and unauthorized alterations or modifications of the goods;
 - 11.3.2 in respect of materials, equipment or parts which are accepted in the industry to have a limited life expectancy or materials, equipment or parts which need to be replaced at specified and published service intervals ("consumable parts"); and
 - 11.3.3 in the event that spare parts and consumable parts other than those recommended for use by Switchcom Distribution are fitted, attached or used on the goods.
- 11.4 Notwithstanding any other provision of the agreement, the Buyer's claim against Switchcom Distribution for any direct damages arising from any cause whatsoever is limited to the purchase price of the Goods purchased.
- 11.5 Switchcom Distribution is not liable for any failure or delay in performing any of its obligations under the agreement which is caused by any event or circumstances which: -
 - 11.5.1 is beyond Switchcom Distribution's reasonable control; or
 - 11.5.2 Switchcom Distribution could not reasonably have provided against before entering into the agreement; or
 - 11.5.3 having arisen, could not reasonably have been avoided or overcome by Switchcom Distribution.
- 11.6 The events or circumstances described in clause 12.4 include any strike, lock-out, shortage of labour or materials, delays in transport, accidents of any kind, any default or delay by any sub-contractor or supplier of Switchcom Distribution, riot, civil commotion, state or government or any other authority, disorder, labour dispute, war, invasion, hostilities, civil war and acts of terrorism, political or civil disturbances, the elements, inclement weather, natural catastrophes such as earthquakes, hurricanes, floods or droughts, or any act of any state or government or any authority.
- 11.7 The Buyer expressly agrees that, except for any written warranty or guarantee which is signed by both parties and which Switchcom Distribution expressly agrees in writing is part of the agreement, as far as permissible in law:
 - 11.7.1 The Goods are sold voetstoots (as they stand and where they stand), and subject to clauses 11.3 and 11.4, without any warranty and/or guarantee, including any implied or common law warranty; and
 - 11.7.2 Switchcom Distribution is not liable for any latent or patent defects in the Goods.
- 11.8 The Buyer acknowledges and accepts that the provisions of clause 13 have been brought to its attention, that it has read and understood those provisions and agrees to be bound by them.

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11.9 Switchcom Distribution shall have no duty to defend, indemnify or hold harmless the Buyer from and against any or all damages and costs incurred by the Buyer arising from the infringement of patents or trademarks or the violation of copyrights.

12 JOINT AND SEVERAL LIABILITY

12.1 In the event that the agreement is concluded between SWITCHCOM DISTRIBUTION and two or more Buyers, those Buyers are jointly and severally liable for the full amount payable to SWITCHCOM DISTRIBUTION in terms of this agreement.

13 TRANSFER (CESSION) OF RIGHTS AND OBLIGATIONS

13.1 The Buyer may neither transfer its right (cede), transfer its obligations (delegate) nor transfer both its rights and obligations (assign) in terms of this agreement without Switchcom Distribution's prior written consent, on each occasion.

13.2 The Buyer hereby agrees that Switchcom Distribution may transfer its right (cede), transfer its obligations (delegate) or transfer both its rights and obligations (assign) in terms of this agreement without giving notice to the Buyer.

14 WITHOUT PREJUDICE

14.1 In the event that the Buyer breaches the agreement, Switchcom Distribution may, in its sole discretion, select a preferred remedy without affecting any of its other rights in terms of the agreement or in terms of the law.

15 BREACH OF AGREEMENT AND TERMINATION

15.1 Switchcom Distribution may terminate the agreement with immediate effect after having provided the Buyer with written notice, in the event that the Buyer:

15.1.1 Fails to pay any amount due by it in terms of this agreement by the due date, and fails to remedy this breach within a period of 5 days from date of a written notice by Switchcom Distribution to do so; or

15.1.2 being a natural person, publishes a notice for the voluntary surrender of his estate, or dies, or has any application or other proceedings brought against him in terms of which he is sequestered or placed under curatorship or the whole or a major portion of his assets is alienated or encumbered;

15.1.3 being a partnership, is dissolved; or

15.1.4 being a juristic person, is wound-up, liquidated, deregistered or placed under judicial management or business rescue, whether provisionally or finally and whether voluntarily or compulsorily, or passes a resolution providing for any such event; or compromises or attempts to compromise with, or defers or attempts to defer payment of debts owing by it to its creditors generally, or alienates or encumbers the whole or a major portion of its assets; or

15.1.5 commits a material breach of any other provision of this agreement and fails to remedy such breach within a period of 5 days from date of a written notice by Switchcom Distribution to do so.

15.2 In addition to clause 16.1, Switchcom Distribution shall have the right, without prejudice to any other right which it may have against the Buyer, to elect to –

15.2.1 treat as immediately due and payable all outstanding amounts which would otherwise become due and payable over the unexpired period of the agreement and to claim such amounts together with any other amounts in arrears including any applicable interest and to cease performance of its obligations hereunder as well as under any other contract with the Buyer until the Buyer has remedied the breach; and / or

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- 15.2.2 cancel this agreement and retake possession of any of the Goods sold; and / or
- 15.2.3 claim damages from the Buyer
- 15.3 Switchcom Distribution shall not be obliged to comply with its obligations in terms of the agreement in any respect whatsoever for as long as the Buyer is indebted to Switchcom Distribution in any amount whatsoever in respect of any cause whatsoever or fails to comply with any other obligations to Switchcom Distribution, whether arising out of this agreement or otherwise.
- 15.4 In particular and without limiting the generality of clause 16.3, if delivery of any particular order is to take place in stages, Switchcom Distribution shall not be obliged to deliver any part of the order until the purchase price which is due in respect of the part of the order which has already been delivered, has been paid.
- 15.5 The Buyer agrees that the amount due and payable to Switchcom Distribution shall be determined and proven by a certificate issued and signed by a director or duly authorized person of Switchcom Distribution, who's authority need not be proven. Such certificates shall be binding on the Buyer and shall be prima facie proof of the indebtedness of the Buyer.

16 COSTS INCURRED DUE TO BREACHING

- 16.1 The Buyer will be liable for all legal costs incurred by Switchcom Distribution due to its breach of the agreement, on an attorney and own client scale as well as any tracing fees and collection commission.
- 16.2 The Buyer hereby indemnifies Switchcom Distribution against any and all damage of whatsoever nature, howsoever and by whomsoever caused in relation to the removal of Goods, and without derogating from the generality of a foregoing, the removal of repossessed Goods from the premises of the Buyer or any other premises where the Goods may be found.
- 16.3 The Buyer hereby agrees that Switchcom Distribution shall not be required to furnish security in terms of the relevant rules of the Rules of the Magistrate's Court and the relevant rules of the Rules of the High Court.

17 JURISDICTION

- 17.1 In terms of section 45 of the Magistrates' Court Act 32 of 1944, the parties hereby consent and submits to the jurisdiction of the Magistrates Court in respect of any proceedings pursuant to this agreement irrespective of whether the claim exceeds the monetary jurisdiction of the Magistrates Court.
- 17.2 Despite clause 18.1, it will nevertheless be entirely within the discretion of Switchcom Distribution as to whether to proceed against the Buyer in a magistrate's court, or any other court (including a division of the High Court of South Africa) having jurisdiction.

18 NOTICES AND DOMICILIA

- 18.1 Unless specified otherwise, any notice in terms of this contract must be:
- 18.1.1 in writing to constitute an effective notice;
- 18.1.2 delivered via hand or registered post to the party's physical address as stipulated hereunder, which address will be chosen as the party's domicilia citandi et executandi for all purposes arising out of or in connection with this agreement; or
- 18.1.3 sent via telefax to the number as stipulated hereunder by each party

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FOR SWITCHCOM DISTRIBUTION

PHYSICAL ADDRESS:

For the attention of:

Telefax Number:

FOR THE BUYER

PHYSICAL ADDRESS:

For the attention of:

Telefax Number:

- 18.2 If a written notice or document is
- 18.2.1 delivered by hand, it shall be deemed to have been duly received by the addressee on the date of delivery;
- 18.2.8 posted by registered post, it shall be deemed to have been received by the addressee on the 10th (tenth) business day following the date of such posting;
- 18.2.3 transmitted by facsimile, it shall be deemed to have been received by the addressee on the first business day after the date of dispatch.
- 18.3 Notwithstanding anything to the contrary contained in this agreement, any written notice or communication which has actually been received by a party is sufficient notice even if it has not been sent in the manner, or to the address, provided for in this clause 19.
- 18.4 Either party may change its physical address or telefax number, provided that such changes will only take effect upon receipt, or deemed receipt, of notice in writing given to the other party thereof and stipulating the new address or telefax number.

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