

Terms and Conditions

1. DEFINITIONS FinComp Technologies

- For the purposes hereof, unless the context otherwise requires, the following expressions have the following meanings:
- "FinComp" means Phillip Nel t/a FinComp Technologies
- "the Customer" means the person who accepts a written or oral quotation of FinComp for the sale of the Products or whose order for the Products is accepted by FinComp;
- "the Products" means any products forming the subject matter of the Contract including parts and components of or materials incorporated in them;
- "the Contract" means a contract for the sale by FinComp to the Customer of the Products, which shall incorporate these terms and conditions of sale;
- "the Price" means the price for the Products;
- "Third Party Products" means those of the Products not manufactured or assembled or authorized by FinComp and supplied to FinComp and/or to FinComp by third parties for resale.

2. FORMATION OF CONTRACT

- 2.1 FinComp shall sell, and the Customer shall purchase, the Products as principals only, to the intent and with the effect that no other party shall have any rights or obligations, or be entitled to sue or liable to be sued, under the Contract.
- 2.2 FinComp shall sell and the Customer shall purchase the Products in accordance with these Terms and Conditions which shall override anything contained in:
- i. any of FinComp's catalogues and/or price lists and/or other documents furnished to the Customer prior to the conclusion of the Contract;
 - ii. the Customer's enquiry, specification, acceptance, order or other documentation or discussion to the contrary, this being the only basis upon which FinComp is prepared to do business with the Customer.
- 2.3 No Contract shall come into existence until the earliest of:
- i. FinComp's quotation being accepted by the Customer; or
 - ii. the Customer's order (however given) being accepted by the earliest of:
 - a. FinComp's written or oral acceptance;
 - b. delivery of the Products; or
 - c. the receipt by the Customer of FinComp's invoice.

3. PRICE AND PAYMENT

- 3.1 Unless credit terms have been expressly agreed by FinComp in the Contract, payment for the Products shall be made in full on pick-up.

- 3.2 All invoices are payable without discount of any kind in South African Rand within 30 (thirty) days of the date of FinComp's invoice and in no circumstances shall the Customer be entitled to make any deduction or withhold or set off payment for any reason at all.
- 3.3 The Price of the Products shall be FinComp's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in FinComp's published price list current at the date of the conclusion of the Contract.
- 3.4 All Prices quoted in writing are valid for 7(seven) days only or until earlier acceptance by the Customer. If the quotation is not accepted within the 7(seven) day period, the Prices may be altered by FinComp without giving notice to the Customer. Oral quotations made by FinComp are valid only to the end of the business day upon which they are given.
- 3.5 FinComp reserves the right to adjust the Price of the Products to reflect any increase in the cost to FinComp which is due to any factor beyond the control of FinComp (such as, without limitation, any foreign exchange fluctuation, increase in cost of Third Party Products, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Products which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give FinComp adequate information or instructions.
- 3.6 Time for payment shall be of the essence of the Contract. If any sum payable under the Contract is not paid within 7 (seven) days after the date due then, without prejudice to FinComp's other rights and remedies, FinComp reserves the right to charge interest on such sum, as well after as before any judgment, from the date or last date for payment thereof to the date of actual payment (both days inclusive) at the rate of 2% (two per cent) above the publicly quoted basic rate per annum ruling from time to time at which National Bank of Southern Africa Limited lends on overdraft compounded monthly in arrear. Such interest shall be paid on demand.

4. TITLE AND RISK

- 4.1 No ownership to the Products shall pass to the Customer until payment in full and in cleared funds of the Price for the Products and any other sums which may be due under the Contract, whether for the rendering of services or otherwise, have been received by FinComp.
- 4.2 Until ownership passes, the Customer shall store or mark the Products so that they can at all times be identified as the property of FinComp.
- 4.3 FinComp shall be entitled at any time before ownership passes to repossess and dismantle (without being liable for any damage caused by so doing), use or sell all or any of the Products and so terminate (without any liability to the Customer) the Customer's right to use or otherwise deal in them and for that purpose (or determining what if any of the Products are held by the Customer and inspecting them) to enter any premises of the Customer. Nothing contained herein shall entitle the Customer to sell or otherwise dispose of the Products in respect of which ownership has not passed.
- 4.4 If in breach of the restriction in selling or otherwise disposing of the Products before ownership has passed to the Customer, it sells the Products or any part, then without limiting the remedies of FinComp, any proceeds of the disposal of the Products shall be held in trust for FinComp and shall not be mingled with other monies or paid into any overdrawn bank account and shall be at all times identifiable as FinComp's money.

5. DELIVERY

- 5.1 The Products are delivered to the Customer when FinComp makes them available to the Customer or its agent or any carrier (who shall be the Customer's agent whoever pays its charges) at FinComp's premises or other delivery point agreed by FinComp in the Contract.
- 5.2 FinComp may, at its discretion, deliver the Products by installments in any sequence.
- 5.3 Where the Products are delivered by installments, each installment shall be deemed to be the subject of a separate contract and no default or failure by FinComp in respect of any one or more installments shall vitiate the Contract in respect of Products previously delivered or undelivered Products.
- 5.4 FinComp may deliver to the Customer and the Customer shall accept in satisfaction of the Contract a lesser number than the number of Products ordered. For the avoidance of doubt the Customer shall only be obliged to pay for such of the Products that are delivered.
- 5.5 Any dates quoted by FinComp for the delivery of the Products are approximate only and shall not form part of the Contract and the Customer acknowledges that in the performance expected of FinComp no regard has been paid to any quoted delivery dates.
- 5.6 The Customer shall not be entitled to resale from the agreement nor to withhold or defer any payment nor to a reduction in the Price nor to any other right or remedy against FinComp, its servants, agents or any other persons for whom it is liable in law (in whose favor this constitutes a stipulation alteri) whether for losses, costs, damages, expenses, interest or otherwise (not limited eiusdem generis) on account of delays in effecting delivery, partial delivery or non-delivery, whether occasioned by any negligent (including grossly negligent) act or omission on the part of FinComp, its servants, agents or any other persons for whom it is liable in law, or not.
- 5.7 Notwithstanding that the ownership in the Products shall not pass to the Customer until payment of the entire Price in respect of the Products in question has been effected, the Products shall be at the risk of the Customer (who will be responsible for all loss or damage thereto howsoever arising), upon delivery thereof (and if delivery is to be made to the premises of the Customer, before off-loading at the premises notwithstanding that FinComp may be in possession thereof for the purposes of installation or commissioning upon the installation of Products).
- 5.8 Should delivery have to be effected other than at the premises of FinComp and should FinComp be unable to obtain access to the delivery address in order to deliver and install the Products, or should the Customer fail to take delivery of the Products or fail to furnish the information, instructions, documents, licenses, consents or authorizations necessary to enable delivery thereof to be effected, the risk in such Products shall pass to the Customer and the Products shall be deemed to have been delivered upon notification by FinComp that the Products are ready for delivery and FinComp shall be entitled to store or arrange for the storage of the Products at the cost of the Customer.

6. ACCEPTANCE OF PRODUCTS

- 6.1 Unless the Customer notifies FinComp to the contrary by facsimile transmission or e-mail on the day of delivery and such notification is confirmed in writing within 24 hours, the Products shall be deemed to have been accepted by the Customer as being in good condition and in accordance with the Contract.
- 6.2 The Customer shall bear the onus of proving that upon delivery, any Products are missing or damaged.

- 6.3 The Customer shall not be entitled to withhold payment of all or any of the Prices of the Products whilst any claim is being investigated by FinComp.

7. WARRANTY

- 7.1 FinComp warrants that the Products (excluding Third Party Products) will be free from defects in materials, workmanship and design for a period Of 90 days after the date of delivery ("the Warranty Period").
- 7.2 As stated above, the warranty given by FinComp does not extend to Third Party Products. In respect of Third Party Products, the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer or supplier to FinComp.
- 7.3 If FinComp receives written notice from the Customer of any breach of the said warranty then FinComp shall as its sole obligation, at its own expense and within a reasonable time after receiving such notice, repair or, at its option, replace the Products or such part of them as are defective or otherwise remedy such defects provided that FinComp shall have no liability or obligations under the said warranty unless it shall have received written notice of the defects in question no later than the expiry of the Warranty Period. Title to the Products and/or any faulty or defective parts shall revert to FinComp upon replacement of such Products or faulty or defective parts. Products replaced under the FinComp Warranty are subject to the original Warranty Period and do not obtain a new warranty period merely by virtue of having been supplied by FinComp under its warranty obligations.
- 7.4 If FinComp shall fail to comply with its obligations in clause 7.3 the maximum amount of its liability for such failure shall be limited in the aggregate for all claims to a sum equal to the Price. The foregoing states the entire liability of FinComp whether in contract or in tort for defects in the Products other than the liability assumed under Clause 9.
- 7.5 The said warranty is contingent upon proper use of the Products by the Customer and does not cover any part of the Products which have been modified without FinComp's prior written consent, which have been subjected to unusual physical or electrical stress or upon which the original identification marks have been removed or altered. Nor will such warranty apply if repair or parts replacement is required as a result of causes other than ordinary use including without limitation, accident, hazard, misuse or failure or fluctuation of electric power, air conditioning, humidity control or other environmental conditions.
- 7.6 FinComp does not give any warranty that the Products are fit for any particular purpose and the warranties provided herein and the obligations of FinComp hereunder are in lieu of, and the Customer waives, all other warranties, guarantees, conditions or liabilities, express or implied, arising by law or otherwise, including without limitation, any obligation of FinComp in respect of any injury, loss or damage (direct, indirect or consequential) arising out of the use of, or inability to use, the Products and whether or not occasioned by FinComp's negligence (gross or otherwise) or any act or omission on its part. Without limiting the foregoing FinComp does not warrant that the Products will be fit for the purposes for which they are to be used by the Customer (notwithstanding that the use to which the Customer intends to put the Products is known to FinComp). For the purposes hereof, any reference to FinComp shall include its servants, agents or contractors or any other person for whose acts or omissions FinComp may be liable in law. This also constitutes a stipulatio alteri in favor of such persons the benefits of which may be accepted by them at any time.

8. REPRESENTATIONS

The Customer hereby warrants to FinComp that it has not been induced to enter into the Contract by any prior representations whether oral or in writing except as specifically contained in the Contract and the Customer hereby waives any claim for breach of any such representations which are not so specifically mentioned.

9. LIABILITY

- 9.1 FinComp shall indemnify the Customer and keep the Customer fully and effectively indemnified against any loss of or damage to any property or injury to or death of any person caused by any willful misconduct of FinComp, its employees, agents or sub-contractors.
- 9.2 The aggregate liability of FinComp under clause 9.1 above in respect of each event or series of connected events shall not exceed the Price.
- 9.3 Under no circumstances whatsoever, including as a result of its negligent (including grossly negligent) acts or omissions or those of servants, agents or contractors or other persons for whom in law it may be liable, shall FinComp or its servants (in whose favor this constitutes a stipulatio alteri) be liable for any indirect, extrinsic, special or consequential loss or damage of any kind whatsoever or howsoever caused (whether arising under contract, delict or otherwise and whether the loss was actually foreseen or reasonably foreseeable), sustained by the Customer, its directors and/or servants, including but not limited to any loss of profits, loss of operation time, corruption or loss of information and/or loss of contracts.

10. FORCE MAJEURE

Neither party shall be liable for any delay in performing any of its obligations under the Contract if such delay is caused by circumstances beyond the reasonable control of the party so delaying and such party shall be entitled to a reasonable extension of time for the performance of such obligations.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 FinComp will indemnify the Customer and keep the Customer fully and effectively indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with any claim that the normal use or possession of the Products infringes the intellectual property rights (including without limitation any patent, copyright, registered design, design right or trade mark) of any third party subject to the following conditions:
- i. the Customer shall promptly notify FinComp in writing of any allegations of infringement of which it has notice and will not make any admissions without FinComp's prior written consent;
 - ii. the Customer, at FinComp's request and expense, shall allow FinComp to conduct and/or settle all negotiations and litigation resulting from any such claims;

- iii. the Customer shall, at the request of FinComp, afford all reasonable assistance with such negotiations or litigation and shall be reimbursed by FinComp for any out of pocket expenses incurred in so doing.
- 11.2 The indemnity given under clause 11.1 above will not apply to infringement arising out of the use of the Products or any part thereof in combination with any equipment and/or computer programs not supplied or approved by FinComp for use with the Products.
- 11.3 If the Customer's normal use or possession of the Products is held by a Court of competent jurisdiction to constitute an infringement of a third party's intellectual property rights or if FinComp is advised by leading counsel that such use or possession is likely to constitute such an infringement then FinComp shall promptly and at its own expense:
 - i. procure for the Customer the right to continue using and possessing the Products; or
 - ii. modify or replace the Products (without detracting from their overall performance) so as to avoid the infringement (in which event FinComp shall compensate the Customer for the amount of any direct loss and/or damage sustained or incurred by the Customer during such modification or replacement); or
 - iii. if 11.3.1 or 11.3.2 cannot be accomplished on reasonable terms collect the Products from the Customer's premises and refund the Price.
- 11.4 The foregoing states FinComp's entire liability to the Customer in respect of the infringement of the intellectual property rights of any third party.

12. CONFIDENTIALITY

Each party shall treat as confidential all information obtained from the other pursuant to the Contract which either is marked as being confidential or has the necessary quality of confidence about it and shall not divulge such information to any persons (except to such party's own employees and then only to those employees who need to know the same) without the other party's prior written consent provided that this clause shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to the Contract, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause) or which is trivial or obvious. Each party shall ensure that its employees are aware of and comply with the provisions of this clause. If FinComp shall appoint any sub-contractor then FinComp may disclose confidential information to such sub-contractor subject to such sub-contractor giving an undertaking in similar terms to the provisions of this clause. The foregoing obligations as to confidentiality shall survive any termination of the Contract.

13. BREACH

- 13.1 Subject to clause 16.2, if the Customer breaches any of the terms or conditions hereof or any other agreement with FinComp or fails to pay any amount payable by it on due date or commits any act of insolvency or endeavors to compromise generally with its creditors or does or causes to be done anything which may prejudice FinComp's rights hereunder or at all, or allows any judgment against it to remain unsatisfied for 7 (seven) days or is placed into provisional or final liquidation or judicial management or under provisional or final sequestration or if his estate is voluntarily surrendered, FinComp shall have the right, without prejudice to any other right which it may have against the Customer, to elect to:

- i. 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 as well as any other amounts in arrear including interest and to cease performance of its obligations hereunder as well as under any other contract with the Customer until the Customer has remedied the breach:
 - ii. cancel this agreement and retake possession of any of the Products sold.
- 13.2 FinComp shall not be obliged to comply with its obligations hereunder in any respect whatsoever for so long as the Customer is indebted to FinComp in any amount whatsoever in respect of any cause whatsoever or fails to comply with any other obligations to FinComp, whether arising out of this contract or otherwise. In particular, without limiting the generality of the foregoing, if delivery of any particular order is to take place in stages, FinComp shall not be obliged to deliver any part of the order until the Price which is due in respect of the part of the order which has already been delivered, has been paid.

14. LIABILITIES OF PARTNERS/SIGNATORIES

- 14.1 If the Customer is a partnership, then the individual partners of the Customer shall be bound as a partnership as well as in their individual capacities jointly and severally for the entire Customer's obligations, notwithstanding that only one partner may have signed on behalf of the Customer.
- 14.2 The person signing on behalf of the Customer warrants that he is duly authorized to represent and bind the Customer to this agreement.

15. SECURITY FOR OBLIGATIONS

FinComp reserves the right to require satisfactory security from the Customer for the due performance of any of the Customer's obligations hereunder including but not limited to the payment of the Price. If FinComp so requires, the Customer shall deliver to FinComp prior to FinComp complying with any of its obligations hereunder, confirmed irrevocable letters of credit by financial institutions acceptable to FinComp. If such security or guarantees or letters of credit are not furnished within 7 (seven) days after any such demand, FinComp shall be entitled to withdraw from the contract in whole or in part.

16. ENTIRE AGREEMENT

- 16.1 This agreement constitutes the whole agreement between the Customer and FinComp relating to the subject matter hereof.
- 16.2 No amendment or consensual cancellation of this agreement or any provision or term thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this agreement and no settlement of any disputes arising under this agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this agreement shall be binding unless recorded in a written document signed by an authorized representative of FinComp. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

- 16.3 No extension of time or waiver or relaxation of any of the provisions or terms of this agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this agreement, shall operate as an estoppel against FinComp in respect of its rights under this agreement, nor shall it operate so as to preclude FinComp thereafter from exercising its rights strictly in accordance with this agreement.
- 16.4 FinComp shall not be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract between FinComp and the Customer or not.
- 16.5 No person other than FinComp has any authority to delete, amend or in any respect vary any of these conditions or accept any other conditions or agree to a consensual cancellation hereof.

17. ASSIGNMENT

Neither party shall cede or assign or otherwise transfer this Agreement or any of its rights and obligations hereunder whether in whole or in part without the prior written consent of the other.

18. SEVERANCE

If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of this Agreement and the remainder of the provisions in question shall not affect thereby.

19. HEADINGS

The headings to the clauses of these Terms and Conditions are for ease of reference only and shall not affect the interpretation or construction of the Contract.

20. GOVERNING LAW.

The Contract shall be governed by and construed in accordance with the laws of South Africa and shall be subject to the exclusive jurisdiction of the South African Courts.