

QBS Software (Pty) Limited

Monte Circle Office Park, Building A, Ground Floor
178 Montecasino Blvd, Fourways, Sandton, 2191

+27 (0) 11 803 6635 | sadc.sales@qbssoftware.com

PO. Box 69938, Bryanston, 2021, South Africa



QBS Software Africa Terms and Conditions of Sale

The Customer's attention is particularly drawn to the provisions of Clause 17 (Limitation of Liability).

1. DEFINITION AND INTERPRETATION

1.1. The following terms, when used in a Contract, unless inconsistent with the context within which used, shall be interpreted in accordance with the meaning ascribed thereto as follows, and cognate expressions shall bear corresponding meanings:

1.1.1. **"Business Day"** means any day which is not a Saturday, Sunday or official public holiday in terms of the Public Holidays Act, 36 of 1994 as well as any promulgations made in terms thereof, and where a Business Day is prescribed in calculating a period within which a Party is expected to perform, such performance shall be calculated excluding the first and including the last Business Day, unless either the first or last Business Day falls on a Saturday, Sunday or public holiday, in which case the last day shall be deemed the next day which is not a Saturday, Sunday or official public holiday.

1.1.2. **"Business Hours"** means the period between 08h30 and 17h00 of any Business Day.

1.1.3. **"Conditions"** means these terms and conditions as amended from time to time.

1.1.4. **"Confidential Information"** means, all information, disclosed by the Disclosing Party, or its Representatives, to a Receiving Party pursuant to a Contract, including but not limited to, financial, business, technical or other data, know-how, proprietary information and all other commercially sensitive information (whether written, oral, visual or in electronic form or in magnetic or other media):

1.1.4.1. Concerning the business and affairs of a Party including their respective sub-contractors, suppliers, customers, clients or other contacts (as applicable) that the other Party obtains or receives; or

1.1.4.2. Which it has access to as a result of any discussions or dealings or which is learned by a Party through observations made during visits to any premises of the other Party.

1.1.5. **"Contract"** means the contract between QBS SOFTWARE AFRICA and Customer for the sale of Products and/or the supply of Services and/or Software collectively or individually consisting of an Order, whilst always including these Conditions, and any other documents (or parts thereof) specified in the Order and expressly agreed to by QBS SOFTWARE AFRICA in writing.

1.1.6. **"Customer"** the Entity purchasing the Products and/or Services from QBS SOFTWARE AFRICA pursuant to the Contract.

1.1.7. **"Data Protection Legislation"** means the POPIA, as may be amended from time to time, which relates to the protection of Personal Information.

1.1.8. **"Data Subject"** means the Entity to whom Personal Information relates and includes reference to Representatives of Entities and End Users, where applicable.

1.1.9. **"Disclosing Party"** means a party to the Contract who discloses Confidential Information.

1.1.10. **"Documentation"** means documentation, if any, required or supplied for the use of the Products and/or Services.

1.1.11. **"End User"** means an Entity which acquires Products and/or Services through either QBS SOFTWARE AFRICA or the Customer for use in the regular course of their business and not with a view towards further distribution.

1.1.12. **"ESD"** means Subscription Software that is delivered by electronic means including, but not limited to, by download from a website.

1.1.13. **"Fees"** means the aggregate of the price paid by the Customer to QBS SOFTWARE AFRICA for the supply of Products and/or the fees paid by the Customer to QBS SOFTWARE AFRICA for the supply of Services.

1.1.14. **"Entity"** means reference any natural or juristic person, firm, company, corporation, government, state, state-owned company, agency or organ of a state, association, close corporation, co-operative, trust, sole proprietor or partnership (whether or not having separate legal personality) as well as any artificially created juristic person.

1.1.15. **"EULA"** means the end user licence agreement (or any agreement performing a substantially similar function to an end user licence agreement) applicable to the relevant Product entered into between the Manufacturer of that Product and the End User, whether by express or implied consent.

1.1.16. **"Hardware"** means information technology, computer and communications hardware, peripheral hardware and hardware accessories to be supplied to the Customer by the QBS SOFTWARE AFRICA pursuant to the Contract.

1.1.17. **"Intellectual Property Rights"** means rights of any nature whatsoever, whether registered or unregistered, including any patent, right in a design, copyright, trade mark, utility model, design right, service mark, database right and other intellectual property right whether or not capable of registration as may exist anywhere in the world, now or in the future.

1.1.18. **"Legal Disability"** means a Party:

1.1.18.1. Being placed under liquidation, business rescue or judicial administration, whether voluntarily or by court application;

1.1.18.2. Who attempts to compromise obligations due and owing to a Party's creditors, albeit provisionally or finally;

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- 1.1.18.3. Who is or becomes deregistered;
- 1.1.18.4. Where Party means reference to the Customer, who is in breach of their payment obligation in terms of the Contract;
- 1.1.18.5. Who is or becomes unable to pay their debts as they arise; and/or
- 1.1.18.6. Whose directors, officers or controllers (as understood in the Companies Act, 71 of 2011) are charged with a crime of dishonesty, as regulated by the Prevention of Organised Crime Act, 121 of 1998, as regulated by the Protection of Constitutional Democracy against Terrorist and related Activities Act, 34 of 2004 or the Financial Intelligence Centre Act, 31 of 2001;
- 1.1.19. **“Order”** means a written or oral offer, quotation, agreement and/or delivery relating to the supply of Products by or on behalf of QBS SOFTWARE AFRICA .
- 1.1.20. **“Manufacturer”** means:
- 1.1.20.1. In relation to Hardware, its manufacturer; and
- 1.1.20.2. In relation to Software, its publisher or licensor.
- 1.1.21. **“Operator Undertaking”** means a contract in terms of which a person who Processes Personal Information for or on behalf of a responsible party agrees to comply with the relevant Data Protection Legislation as depicted in POPIA and this Contract.
- 1.1.22. **“Parties”** means a collective reference in this Agreement to both QBS SOFTWARE AFRICA and the Client as the context may allow.
- 1.1.23. **“Party”** means a reference in this Agreement to either QBS SOFTWARE AFRICA or the Client as the context may allow.
- 1.1.24. **“Personal Information”** means information relating to a Data Subject, as described in section 1 of POPIA, and which includes special personal information, as defined in section 1 of POPIA, and for the purposes of a Contract (and these Conditions”), constitutes a reference to the Personal Information of a Data Subject provided to the other.
- 1.1.25. **“Process” / “Processed”** means any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information of a Data Subject, including the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use, dissemination by means of transmission, distribution or making available in any other form, or merging, linking, as well as restriction, degradation, erasure or destruction of Personal Information.
- 1.1.26. **“Product(s)”** means any Hardware, Software, or other goods supplied by QBS SOFTWARE AFRICA to the Customer, or procured by QBS SOFTWARE AFRICA on behalf of the Customer pursuant to an Order (and where relevant, a Contract).
- 1.1.27. **“Receiving Party”** means a Party that receives or obtains Confidential Information, directly or indirectly, under or in connection with this Contract.
- 1.1.28. **“Representatives”** means, with reference to a Party, such a Party's employees, officers, directors, shareholders, advisers or agents.
- 1.1.29. **“Services”** means any services provided by QBS SOFTWARE AFRICA , the Manufacturer or a third party on behalf of QBS SOFTWARE AFRICA to the Customer or End User pursuant to an Order.
- 1.1.30. **“Software”** means the pre-packaged software or the means to download and/or activate ESD supplied to the Customer by QBS SOFTWARE AFRICA pursuant to the Contract, including the renewal of any Software and the Manufacturer's maintenance and support of any Software as specified in a Contract from time to time.
- 1.1.31. **“Subscription Software”** means Software that is provided by QBS SOFTWARE AFRICA to the Customer on the basis that the price of the Software will be based upon number of users and/or usage and the licence fees will be invoiced by QBS SOFTWARE AFRICA to the Customer monthly or otherwise periodically with supplementary invoices where there is excess usage.
- 1.1.32. **“Specification”** means the specification for the Products and Services set out in an Order and/or the EULA.
- 1.1.33. **“Third Party”** means Entity not being QBS SOFTWARE AFRICA or the Customer and excludes reference to an End User.
- 1.1.34. **“QBS Software Africa”** means QBS Software (Pty) Limited is a company registered in the Republic of South Africa with registered number 1988/001326/07 whose registered address is Monte Circle Office Park, Montecasino Boulevard, Sandton, Gauteng, 2191.
- 1.2. The following shall be applicable to a Contract in assisting with the interpretation of a Contract:
- 1.2.1. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.2.2. Any words following the terms “including”, “include”, “in particular”, “for example” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.2.3. “In writing” and “signed”, when used together, will exclude any form of “writing” and “signature” as envisaged in the Electronic Communications Transactions Act, 25 of 2002 (as amended) whereas “writing” shall mean hand-written and “signature” shall mean a hand-written signature, again, when something is required to be “in writing” and “signed” by the Parties. “Writing” and “signature” shall exclude any form of a data message.

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- 1.2.4. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.2.5. The clause headings in this Agreement have been inserted for convenience yet may be taken into account in the interpretation of the subsequent sub-clause to ascertain the true meaning of the words within the context, interpretation or understanding as well as, or in the alternative to, ascribe the ordinary meanings of the words used.
- 1.2.6. The expiry or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provided that they will operate after any expiration or termination, or, which of necessity must continue to effect such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.2.7. The inclusion of any in-text definitions, identified using an upper case of the first letter of the defined term, will be utilised to assist with the interpretation of the same term used throughout the Contract, and notwithstanding that such a term is not included under clause 1.1, unless the context in which the term is used requires a different interpretation premised on the context in which used.
- 2. TERMS AND CONDITIONS OF SALE**
- 2.1. These Conditions apply to a Contract between QBS SOFTWARE AFRICA and a Customer. Save where otherwise expressly agreed by QBS SOFTWARE AFRICA in writing, they apply to the exclusion of all other terms and conditions irrespective of the date of any alternative terms and conditions which may be sent to QBS SOFTWARE AFRICA or otherwise purportedly applied.
- 2.2. The Conditions shall become binding on the Customer on the earlier of:
- 2.2.1. The Customer signing or agreeing in writing to these Conditions (which may include electronic mail, being the transmission of data accepting these Conditions) or acceptance through electronic method or deemed acceptance through the Customer's conduct;
- 2.2.2. The Customer placing an Order with QBS SOFTWARE AFRICA ;
- 2.2.3. An Order from the Customer being accepted by QBS SOFTWARE AFRICA ;
- 2.2.4. The Customer paying any amount towards any item specified in an Order; or
- 2.2.5. QBS SOFTWARE AFRICA delivering, installing, or facilitating access to the use or control (where applicable) any Product or Service.
- 3. BASIS OF CONTRACT**
- 3.1. These Conditions apply to the Contract (which, for avoidance of doubt, includes any Order):
- 3.1.1. To the exclusion of any other terms and conditions that the Customer seeks to impose or incorporate (including any standard terms and conditions of the Customer); and
- 3.1.2. To the fullest extent permitted by law, to the exclusion of any other terms and conditions which are implied by law, trade custom, practice or course of dealing.
- 3.2. Acceptance of an Order by QBS SOFTWARE AFRICA does not constitute acceptance of any terms and conditions set out or referred to in the Order.
- 3.3. Unless agreed in writing in advance, QBS SOFTWARE AFRICA ' policy is to supply Products and Services only to business customers (being those customers who are not private consumers). In accepting these Conditions, the Customer warrants that it is not purchasing the Products or Services as a private consumer.
- 3.4. Each Order constitutes an irrevocable offer by the Customer to purchase the Products or procure the Services in accordance with these Conditions, the use of any Software regulated by the Manufacturer's EULA. The Customer is responsible for ensuring that the terms of the Product or Service specification submitted by the Customer in or with the Order is correct, complete and accurate, and shall ensure each End User enters into the EULA and uses the Product in accordance with the EULA.
- 3.5. An Order shall only be deemed to be accepted when QBS SOFTWARE AFRICA transmits a written acceptance of the Order signed by or issued by a Representative.
- 3.6. All Orders for ESD and for any Products not held in stock by QBS SOFTWARE AFRICA are accepted subject to the availability of the relevant Product at normal pricing. QBS SOFTWARE AFRICA shall not be liable for failure to fulfil an Order where this is attributable to the Manufacturer or any other supplier to QBS SOFTWARE AFRICA declining or failing to supply either at all or on normal commercial terms.
- 3.7. A quotation for the Products given by QBS SOFTWARE AFRICA shall not constitute an offer and shall not bind QBS SOFTWARE AFRICA to accept any Order. A quotation shall be valid on the Business Day of issue only unless withdrawn or amended by QBS SOFTWARE AFRICA prior to an Order being made. All quotations are issued subject to the applicable rate of exchange relevant to the sovereign jurisdiction of the Manufacturer.
- 4. FURTHER CONDITIONS**
- 4.1. Unless otherwise specified in the Contract, QBS SOFTWARE AFRICA shall only deliver non-modifiable and executable run-time versions of any Software. Upgrades and the latest versions of all Software is subject to availability by the Manufacturer, and furthermore subject to the Customer, where applicable, procuring a maintenance subscription.
- 4.2. Products shall be supplied by QBS SOFTWARE AFRICA subject to the Manufacturer's EULA and/or the terms and conditions of use for such Products as defined by the Manufacturer at the time of delivery. The Customer acknowledges that

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the Manufacturer may unilaterally amend the EULA and/or terms of service from time to time, whether during the subscription period or not, the use of Software being subject to the End User accepting the EULA and/or terms of service as and when updated.

4.3. QBS SOFTWARE AFRICA may accept an Order subject to the Customer accepting "pass through" of additional, yet, not supplementary terms and conditions stipulated by the Manufacturer ("Pass Through Conditions"). Where this applies, the Customer may be advised by QBS SOFTWARE AFRICA that Pass Through Conditions apply and QBS SOFTWARE AFRICA shall use reasonable endeavours to give the Customer a copy of the Pass Through Conditions or advise in writing where a copy may be obtained. In respect of Pass-Through Conditions, the Customer:

4.3.1. Together with the End User, are bound by the Pass Through Conditions; and

4.3.2. Where relevant, shall only resell the relevant Products on terms that the Customer's client is bound by the Pass Through Conditions and that the Customer's client can only itself resell the relevant Products on the same terms as if it were the Customer for the purposes of this clause 4.3.

4.4. QBS SOFTWARE AFRICA may accept an Order subject to the Customer accepting a requirement from the Manufacturer to obtain and retain and/or supply QBS SOFTWARE AFRICA or the Manufacturer with documentation evidencing that the End User has accepted the EULA and/or any applicable Pass Through Conditions (a "Documentation Requirement"). Where a Documentation Requirement applies, the Customer will be advised and the Customer shall supply any documentation needed by QBS SOFTWARE AFRICA to satisfy the Documentation Requirement and/or procure that the End User does so.

4.5. The Customer will use all reasonable endeavours to ensure that the End User enters into any EULA that applies to the Product(s).

4.6. Unless QBS SOFTWARE AFRICA expressly agrees in writing to provide Services whose scope expressly includes advising a Customer and/or End User on the Products and/or Services which it recommends to meet a particular requirement, the Customer acknowledges that it is relying solely upon its own skill and judgement and/or that of the End User, and not that of QBS SOFTWARE AFRICA, in determining the suitability of any Products and/or Services and their fitness for any general or specific purpose. QBS SOFTWARE AFRICA does not, to this extent, warrant that the Product and/or Service it fit for use, and/or will result in the outcome for which the Product and/or Service was procured by or through QBS SOFTWARE AFRICA.

4.7. The Customer shall maintain complete and accurate records of all Products and Services sold or returned (where permitted by the OEM) or traded in (where permitted by the OEM) and the names and addresses of all Third Parties to whom software has been resold and shall provide such information (including, but not limited to activity reports) in connection with the sale of the Products and Services as QBS SOFTWARE AFRICA shall reasonably request from time to time. Failure to do so shall constitute a material breach of these Conditions,

in which case, QBS SOFTWARE AFRICA may procure that the Manufacturer revoke the End User's access to, and use of the Product.

5. SERVICES

5.1. Where QBS SOFTWARE AFRICA agrees to provide Services, any estimate or indication by QBS SOFTWARE AFRICA as to the number of days or hours required by QBS SOFTWARE AFRICA or any Third Party provider of the Services to undertake a specific task shall be construed as being an estimate only. QBS SOFTWARE AFRICA shall in no circumstances be liable for a delay or for any other loss, damage or other cost of whatsoever nature suffered or incurred by the Customer and/or the Customer's client and/or End User where such estimate or indication is incorrect.

5.2. Unless expressly agreed otherwise, the Fees agreed for the Services do not include travel, accommodation and subsistence expenses, nor the cost of time spent travelling incurred in the provision of the Services for which QBS SOFTWARE AFRICA shall charge the Customer at its or at the Third Party provider's (as applicable) then current rates, which QBS SOFTWARE AFRICA shall confirm to the Customer on request.

5.3. QBS SOFTWARE AFRICA will normally carry out the Services during Business Hours but may, on reasonable notice, require the Customer to provide access to the Customer's premises or procure access to the End User's premises at other times.

5.4. At the Customer's request, QBS SOFTWARE AFRICA may agree to (but unless otherwise expressly agreed in writing shall not be bound to) provide Services outside Business Hours. However, QBS SOFTWARE AFRICA shall have the right to charge reasonable additional Fees for complying with such request.

5.5. The Customer warrants that it has adequate inspection, testing and approval processes in relation to any Services provided and it shall, on completion of the provision by QBS SOFTWARE AFRICA of any Services, confirm to QBS SOFTWARE AFRICA that the rendering of the Services has been completed. This confirmation by the Customer shall be considered the Customer's absolute acceptance of the satisfactory completion of such Services. In the event that the Customer has not confirmed its acceptance of the Services, nor raised any concerns about them, within 5 Business Days of QBS SOFTWARE AFRICA notifying the Customer that the rendering of the Services is complete, Customer acceptance of the Services, including acceptance that they have been completely rendered, will be deemed to have occurred.

5.6. Should the Customer become dissatisfied with the performance of any personnel assigned by QBS SOFTWARE AFRICA or by any Third Party providing Services on behalf of QBS SOFTWARE AFRICA to perform the Services, the Customer shall notify QBS SOFTWARE AFRICA in writing with details of the unsatisfactory performance and, provided that QBS SOFTWARE AFRICA is satisfied that the Customer's dissatisfaction is reasonable, QBS SOFTWARE AFRICA shall re-assign personnel as soon as reasonably practicable.

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- 5.7. No liability shall accrue to QBS SOFTWARE AFRICA as a result of any defects in the delivery of the Services unless:
- 5.7.1. A reasonably detailed inspection and testing procedure has been undertaken by the Customer to ascertain whether the Services had been undertaken correctly and in full, and
- 5.7.2. Such inspection either identified or confirmed the defect-causing loss or could not have been expected to identify or confirm the defect-causing loss due to the latent and uncheckable nature of such defect.
- 5.8. QBS SOFTWARE AFRICA will only be responsible for providing support and/or maintenance Services in respect of Products supplied to the Customer where it has expressly agreed to do so in writing in a Contract. Unless otherwise set out in a Contract, this will generally comprise reasonable assistance in the resolution of queries via a telephone call originated by the Customer's or the End User's personnel. If QBS SOFTWARE AFRICA is unable to resolve the query during a telephone call, the Customer may be required to contact the Manufacturer of the Product directly, the Manufacturer's resolution being determined by the EULA.
- 5.9. The Customer may from time to time wish to vary the scope of a Service. QBS SOFTWARE AFRICA will use reasonable commercial endeavours to accommodate any such variation request. Any changes in the Fees and/or timescales as a result of such variation shall be negotiated between the Customer and QBS SOFTWARE AFRICA, and where such negotiation has not concluded at the time the Customer confirms the variation is required, the Customer accepts any increase in work required pursuant to the variation shall be provided on a time and materials basis at QBS SOFTWARE AFRICA's or its Third Party provider's (as applicable) then current rates for the same, which QBS SOFTWARE AFRICA shall confirm to the Customer on request.
- 5.10. Although Services are undertaken with reasonable skill and care, QBS SOFTWARE AFRICA cannot guarantee the accuracy of any advice, design or report.
- 5.11. QBS Software Africa shall have the option to require the Customer to engage directly with the Manufacturer or its authorised representative in circumstances where it is required to do so by the Manufacturer to fulfil its contractual obligations. The Customer agrees to cooperate with the Manufacturer in such circumstances, including providing necessary access and information, provided that such engagement is limited to the scope of the affected Products or Services.
6. **PHYSICAL DELIVERY OF PRODUCTS**
- 6.1. If QBS SOFTWARE AFRICA fails to deliver the Products, which failure shall exclude any negligence or where the failure is by means of force majeure, and moreover subject to the Product being made available by the Manufacturer, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Products. QBS SOFTWARE AFRICA shall have no liability for any failure to deliver the Products to the extent that such failure is caused by
- the Customer's failure to provide QBS SOFTWARE AFRICA with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 6.2. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.
- 6.3. If the Customer fails to accept delivery of the Products within 3 Business Days of QBS SOFTWARE AFRICA notifying the Customer that the Products are ready, then, except where such failure or delay is caused by QBS SOFTWARE AFRICA's failure to comply with its obligations under the Contract:
- 6.3.1. Delivery of the Products shall be deemed to have been completed at 09h00 on the third Business Day after the day on which QBS SOFTWARE AFRICA notified the Customer that the Products were ready; and
- 6.3.2. QBS SOFTWARE AFRICA shall store the Products until delivery takes place and charge the Customer for all related costs and expenses (including insurance and storage costs).
- 6.4. If ten Business Days after the day on which QBS SOFTWARE AFRICA notified the Customer that the Products were ready for delivery the Customer has not accepted actual delivery of them, QBS SOFTWARE AFRICA may resell or otherwise dispose of part or all of the Products and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Products or charge the Customer for any shortfall below the price of the Products.
- 6.5. QBS SOFTWARE AFRICA may deliver the Products by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 6.6. The Customer shall note any claim for short delivery and/or damage to components or packaging on the delivery schedule at the time of delivery and shall confirm such claims in writing to QBS SOFTWARE AFRICA within 5 Business Days from the date of delivery. All Products are deemed delivered and completed if such notice is not received within such period.
- 6.7. QBS SOFTWARE AFRICA shall be entitled to assume that any person signing a delivery note or sending a delivery receipt by email in respect of the Products on behalf of the Customer or the Customer's customer (if QBS SOFTWARE AFRICA has agreed to deliver direct) appearing or claiming to have authority to accept delivery on behalf of the Customer or the End User (as the case may be) shall in fact have the authority. In relation to deliveries of ESD by e-mail, QBS SOFTWARE AFRICA shall be entitled to assume that a delivery receipt and/or email read receipt appearing to have been issued from the Customer's or the End User's email system has been so issued.
7. **HARDWARE AND OTHER PHYSICAL PRODUCTS**
- 7.1. QBS SOFTWARE AFRICA shall procure that:
- 7.1.1. A Delivery Note for physical Products shows any special storage instructions; and

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- 7.1.2. If QBS SOFTWARE AFRICA requires the Customer to return any packaging materials to QBS SOFTWARE AFRICA, that same is clearly stated on the delivery note and/or Order. The Customer shall make any such packaging materials available for collection at such times as QBS SOFTWARE AFRICA shall reasonably request. Returns of packaging materials shall be at QBS SOFTWARE AFRICA's expense.
- 7.2. QBS SOFTWARE AFRICA shall deliver the Products to the location set out in the Order or such other location as the Parties may agree (the "Delivery Location") at any time after QBS SOFTWARE AFRICA notifies the Customer that the Products are ready.
- 7.3. QBS SOFTWARE AFRICA will deliver as near as possible to the Delivery Location as safe hard road permits and to the ground floor only of such Delivery Location premises. The Customer shall provide, at its own expense, the necessary labour for unloading Products and the Customer shall unload with reasonable despatch. Where such labour is not made available, QBS SOFTWARE AFRICA shall be entitled to charge the cost of labour in unloading. Damage caused due to inadequate delivery access or careless unloading shall be at the Customer's risk.
- 7.4. Delivery is completed on the completion of unloading of the Products at the Delivery Location.
8. **ESD (INCLUDING SUBSCRIPTION SOFTWARE)**
- 8.1. QBS SOFTWARE AFRICA will, where Software is procured by means of ESD, deliver:
- 8.1.1. The Software electronically; or
- 8.1.2. Download instructions and activation key(s) which together enable the Software to be downloaded from an internet website and activated or renewed to an electronic mail address specified in the Order; or
- 8.1.3. Deliver instructions and activation key(s) which together enable the Software to be downloaded from an internet website and activated or renewed to a Customer procurement manager who shall distribute the activation key(s) to the End Users.
- 8.2. QBS SOFTWARE AFRICA shall not be liable for any loss caused by the Customer's failure to provide a correct, working electronic mail address that will accept delivery of the Product(s).
- 8.3. The Customer undertakes to provide QBS SOFTWARE AFRICA with an electronic mail address delivery and read receipt for any electronic mail that delivers ESD.
9. **WARRANTY FOR PRODUCTS**
- 9.1. QBS SOFTWARE AFRICA warrants it has the right to provide or procure the provision of the Products and Services but does not warrant that the Customer's or the End User's use of any Products or Services will be uninterrupted and error-free. Save in relation to Hardware assembled by QBS SOFTWARE AFRICA from component parts ("QBS SOFTWARE AFRICA Assembled Hardware"), the Customer acknowledges that QBS SOFTWARE AFRICA is not the Manufacturer of the Products and that, save as set out in this clause 9, does not offer any warranty or guarantee in relation to the Products. To the maximum extent permissible in law, all conditions and warranties which are to be implied by statute or general law into these Conditions or relating to the Products or the Services are excluded. Other than in relation to QBS SOFTWARE AFRICA Assembled Hardware, the only warranties/guarantees that are available are as follows:
- 9.1.1. No warranty is given in respect of any Documentation or Products or Services not provided and/or compiled by QBS SOFTWARE AFRICA ;
- 9.1.2. A warranty or guarantee may be provided by the Manufacturer directly to the End User. This is the normal situation and where such warranties/guarantees are provided, QBS SOFTWARE AFRICA shall have no responsibility beyond advising the Customer upon request of the details of the warranties/guarantees provided by the Manufacturer or of where such details can be obtained; and
- 9.2. QBS SOFTWARE AFRICA offers a warranty on QBS SOFTWARE AFRICA Assembled Hardware (the "Warranty") as follows:
- 9.2.1. To the maximum extent permissible by law, all conditions and warranties which are to be implied by statute or general law into these Conditions or relating to the Products or the Services are excluded;
- 9.2.2. Subject to this clause 9.2, QBS SOFTWARE AFRICA warrants to the Customer that the QBS SOFTWARE AFRICA Assembled Hardware will be free from defects in material and workmanship for a period of twelve (12) calendar months from the date of delivery, or deemed delivery, whichever is applicable.
- 9.2.3. QBS SOFTWARE AFRICA shall not have any direct liability to End Users client under the warranty.
- 9.2.4. At QBS SOFTWARE AFRICA's option, its liability under the warranty shall be limited to the repair or replacement of defective QBS SOFTWARE AFRICA Assembled Hardware or parts returned by the Customer. Replacement QBS SOFTWARE AFRICA Assembled Hardware or parts supplied by QBS SOFTWARE AFRICA under this clause 9.2.4 will be guaranteed for the remainder of the warranty period on the QBS SOFTWARE AFRICA Assembled Hardware or parts being replaced. Where QBS SOFTWARE AFRICA is liable under the warranty and it provides replacement QBS SOFTWARE AFRICA Assembled Hardware or parts under this clause 9.2.4, QBS SOFTWARE AFRICA will bear the cost of returning the defective QBS SOFTWARE AFRICA Assembled Hardware or parts and shipping the replacement QBS SOFTWARE AFRICA Assembled Hardware or parts to the Customer's or the End User's Delivery Location, and will bear any taxes, duties or fees, and the Customer shall account to QBS SOFTWARE AFRICA for any rebated taxes, duties or fees arising from the return to QBS SOFTWARE AFRICA of any QBS SOFTWARE AFRICA Assembled Hardware or parts that are to be replaced under this Clause 9.2.
- 9.3. QBS SOFTWARE AFRICA shall have no liability under the Warranty if:
- 9.3.1. The QBS SOFTWARE AFRICA Assembled Hardware has been used otherwise than in the ordinary manner it is intended to be used; or
- 9.3.2. The QBS SOFTWARE AFRICA Assembled Hardware has been used for an application other than that for which it is intended; or

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- 9.3.3. The QBS SOFTWARE AFRICA Assembled Hardware has been modified by the Customer or any Third Party (otherwise than strictly in accordance with the prior written approval of a QBS SOFTWARE AFRICA REPRESENTATIVE); or
- 9.3.4. The QBS SOFTWARE AFRICA Assembled Hardware has failed due to installation, service or repair work undertaken by or on behalf of the Customer, unless the Customer has incorrectly installed the QBS SOFTWARE AFRICA Assembled Hardware; or
- 9.3.5. The QBS SOFTWARE AFRICA Assembled Hardware has suffered accidental or malicious damage.
- 9.4. These warranties shall be the only warranties given by QBS SOFTWARE AFRICA in relation to any QBS SOFTWARE AFRICA Assembled Hardware. To the fullest extent permissible by applicable law, no other warranty shall be given by QBS SOFTWARE AFRICA as to the merchantability of any QBS SOFTWARE AFRICA Assembled Hardware or its fitness for purpose, and QBS SOFTWARE AFRICA shall have no liability for the quality and performance of any QBS SOFTWARE AFRICA Assembled Hardware other than the Warranty, provided that nothing in this clause 9.4 shall limit any liability for death or personal injury, same to be directly causal to the QBS SOFTWARE AFRICA Assembled Hardware.
- 9.5. The Customer acknowledges that Products (including QBS SOFTWARE AFRICA Assembled Hardware) are by their nature susceptible to imperfections in operation and subject to clauses 9.1 and 9.2 no warranty is given in respect thereof.
- 9.6. QBS SOFTWARE AFRICA 's obligations and liabilities in respect of the Products shall be limited to those set out expressly herein and QBS SOFTWARE AFRICA specifically excludes without limitation the implied conditions of satisfactory quality and fitness for any particular use or purpose. Save and to the extent expressly agreed in writing in a specification for the provision of Services contained in an Order which is incorporated into a Contract, QBS SOFTWARE AFRICA shall, to the fullest extent permitted by law, have no liability in respect of any advice and/or information which may be given to the Customer by QBS SOFTWARE AFRICA relating to Products, configuration or otherwise.
- 9.7. The Customer shall ensure that any warranty and maintenance service performed on Products (including QBS SOFTWARE AFRICA Assembled Hardware) is performed by a qualified representative authorised by the Manufacturer to offer warranty and maintenance on those Products.
- 9.8. Except in respect of death or personal injury of any person caused by QBS SOFTWARE AFRICA 's negligence, which death or personal injury is causal to the Products and/or Services and/or QBS SOFTWARE AFRICA Assembled Hardware's correct and Manufacturer's prescribed use, QBS SOFTWARE AFRICA ' liability in respect of any warranty provided under clauses 9.1 or 9.2 above for defects in or failure of Products (including QBS SOFTWARE AFRICA Assembled Hardware) or for the loss or damage attributable thereto or to the negligence of its employees in connection with the performance of their duties hereunder, shall be limited to the making good by replacement or repair of such Products which upon inspection by QBS SOFTWARE AFRICA appear to be defective and in any event QBS SOFTWARE AFRICA 's maximum
- aggregate liability arising in respect of the supply of Products or Services shall be limited to the original VAT exclusive price for such Products.
- 9.9. Save as may be expressly agreed in writing, QBS SOFTWARE AFRICA makes no representation and gives no warranty in respect of the sources of origin of manufacture or production of any Hardware or any parts thereof.
10. **TITLE AND RISK**
- 10.1. The risk in the Products shall pass to the Customer on completion of delivery.
- 10.2. Title (i.e. right of access) to ESD shall pass on delivery.
- 10.3. Title to Hardware and other physical Products shall not pass to the Customer until:
- 10.3.1. QBS SOFTWARE AFRICA receives payment in full (in cash or cleared funds) for all monies due from the Customer, in which case title to the Products shall pass at the time of payment of all such sums; or, if earlier
- 10.3.2. The Customer resells the Products.
- 10.4. Whilst any amount remains outstanding to QBS SOFTWARE AFRICA from the Customer in relation to any Hardware and/or other physical Products which have not been resold by the Customer:
- 10.4.1. The Customer shall keep the Hardware and/or other physical Products as fiduciary agent for QBS SOFTWARE AFRICA and shall store the Hardware and/or other physical Products separately from its other goods and in a manner that clearly shows that they are owned by QBS SOFTWARE AFRICA ;
- 10.4.2. The Customer shall encumber or cause any of the Hardware and/or other physical Products that remain the property of QBS SOFTWARE AFRICA to be encumbered, by way of either a special or general notarial bond;
- 10.4.3. In the event that payment for the relevant Hardware and/or other physical Products is overdue, the Customer will deliver up or have delivered up to QBS SOFTWARE AFRICA the Hardware and/or other physical Products upon demand and QBS SOFTWARE AFRICA may without limiting any other rights or remedies available to it at law in equity or by statute seize repossess and/or resell the Hardware and/or other physical Products at its discretion and in exercise of such rights QBS SOFTWARE AFRICA may enter any premises in which it reasonably believes from time to time any Hardware and/or other physical Products are located;
- 10.4.4. The Customer may only sell transfer or otherwise dispose of the Hardware and/or other physical Products to its clients in the ordinary course of its business and in accordance with the provisions of these Conditions; and
- 10.4.5. The Customer shall take all due care (or ensure that all due care is taken) of the Hardware and/or other physical Products and the Customer shall bear the sole liability for insurance of the Hardware and/or other physical Products and shall indemnify QBS SOFTWARE AFRICA for any loss whatsoever suffered or incurred by QBS SOFTWARE AFRICA arising out

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	of any failure to insure such Hardware and/or other physical Products.	11.10.	Time is of the essence with regard to payment of any sums due to QBS SOFTWARE AFRICA .
11.	<u>PRICE AND PAYMENT - PRODUCTS OTHER THAN SUBSCRIPTION SOFTWARE</u>	11.11.	The Customer shall not be entitled to withhold payment of any amount due to QBS SOFTWARE AFRICA in respect of any claim for damage to Products or any alleged breach of contract by QBS SOFTWARE AFRICA , nor shall the Customer be entitled to any right of set-off and/or service credits.
11.1.	The price of the Products shall be the price set out in the Order or quotation, or, if no price is quoted, the price set out in QBS SOFTWARE AFRICA ' published price list in force as at the date of delivery, subject to the below.	11.12.	Without prejudice to QBS SOFTWARE AFRICA 's other rights, if the Customer fails to pay any amount on the due date:
11.2.	Where applicable, value-added tax in terms of the Value Added Tax Act 89 of 1991, as amended from time to time, will be added to the price of the Products or Services.	11.12.1.	QBS SOFTWARE AFRICA shall have the right to cancel any Order made with the Customer and/or to suspend deliveries of pending Orders;
11.3.	Any other indirect taxes, customs duties, tariffs or similar fees or charges arising on the sale and/or delivery by QBS SOFTWARE AFRICA to the Customer of the Products or Services shall be the responsibility of the Customer.	11.12.2.	The Customer acknowledges that QBS SOFTWARE AFRICA shall be entitled to charge and administrative fee on all overdue amounts at a rate of 2% per month, compounded daily, provided that the QBS SOFTWARE AFRICA shall be entitled in its sole and absolute discretion, to vary the rate of interest without notice to the Customer;
11.4.	QBS SOFTWARE AFRICA may, by giving notice to the Customer at any time up to 1 Business Day before delivery, increase the price of the Products to reflect any increase in the cost of the Products that is due to:	11.12.3.	The Customer shall indemnify QBS SOFTWARE AFRICA and keep QBS SOFTWARE AFRICA indemnified in respect of all costs (including legal fees on an attorney and own client scale, and moreover, scale C thereof (as determined in terms of the Uniform Court Rules, as well as any analogue rules of the forum in which such claim is made) as well as collection costs) reasonably incurred in attempting to recover such overdue amounts;
11.4.1.	Any factor beyond QBS SOFTWARE AFRICA ' control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);	11.12.4.	The whole of the balance then outstanding to QBS SOFTWARE AFRICA by the Customer on any account whatsoever shall become immediately due and payable; and
11.4.2.	Any request by the Customer to change the delivery date(s), Delivery Location, quantities or types of Products ordered, or the specification of the Products; or	11.12.5.	Notwithstanding any agreed payment terms, QBS SOFTWARE AFRICA reserves the right to require the Customer to pay for any Products in advance and/or to recharge any discount or rebate previously agreed and/or to cancel any agreed rebate or discount arrangement with immediate effect.
11.4.3.	Any delay caused by any instructions of the Customer or failure of the Customer to give QBS SOFTWARE AFRICA adequate or accurate information or instructions.	12.	<u>PRICE AND PAYMENT -SUBSCRIPTION SOFTWARE</u>
11.5.	Subject to Clause 11.6, QBS SOFTWARE AFRICA may invoice the Customer for the Products on or at any time after the completion of delivery.	12.1.	Subject to clauses 12.2 and 12.3, the initial pricing of the Products and the basis for determining the future pricing of the Products shall be as set out in an Order.
11.6.	If the Customer has no approved payment terms in writing by QBS SOFTWARE AFRICA , QBS SOFTWARE AFRICA may issue an invoice or a pro forma invoice and such invoice or pro forma invoice shall be payable in full before delivery of the Products.	12.2.	The period of subscription applicable to the Product(s) and any termination or cancellation provisions shall be as set out in the Order.
11.7.	Unless the Customer has approved payment terms, all invoices shall be paid cash on order. If the Customer has approved payment terms, all invoices are payable in accordance with the payment terms agreed by QBS SOFTWARE AFRICA or within such other period as may otherwise be expressly agreed in writing in advance.	12.3.	Save and to the extent otherwise expressly agreed in writing, QBS SOFTWARE AFRICA may, by giving 5 Business Days' notice to the Customer, increase the price of the Products to reflect any increase in the cost of the Products that is due to:
11.8.	QBS SOFTWARE AFRICA reserves the right to withdraw or alter the terms of any payment terms with the Customer for any Products delivered with effect from the date QBS SOFTWARE AFRICA notifies the Customer of such withdrawal or alteration.	12.3.1.	The Manufacturer or other supplier to QBS SOFTWARE AFRICA increasing its pricing;
11.9.	Amounts payable to QBS SOFTWARE AFRICA under clauses 11.5 and 11.6 above shall be paid in cleared funds and in the currency stipulated in the Contract to a bank account nominated by QBS SOFTWARE AFRICA .	12.3.2.	Any other factor beyond the QBS SOFTWARE AFRICA 's control (including foreign exchange fluctuations, increases in taxes and duties, and increases any other costs); or

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- 12.3.3. Any delay caused by any instructions of the Customer or failure of the Customer to give QBS SOFTWARE AFRICA adequate or accurate information or instructions. invoiced by QBS SOFTWARE AFRICA to the Customer in advance of the rendering of the Services it relates to; and
- 12.4. QBS SOFTWARE AFRICA shall be entitled to recover from the Customer any excess usage charges that are applicable under the pricing formula set out in the Order and/or the EULA. The amount of such excess usage charges will be based on the agreed pricing in the Order and information about excess usage provided to QBS SOFTWARE AFRICA by the Manufacturer. 13.2.2. Any fees in addition to any fixed element will be invoiced by QBS SOFTWARE AFRICA to the Customer monthly in arrears or at such less frequent intervals as QBS SOFTWARE AFRICA shall determine.
- 12.5. Unless otherwise expressly agreed in writing: 13.3. If the Customer does not have approved payment terms, any invoice issued by QBS SOFTWARE AFRICA to the Customer under clauses 13.1 and 13.2 shall be payable in full on presentation.
- 12.5.1. Subscription charges shall be invoiced and be payable in advance for the full initial subscription period; 13.4. The provisions of clauses 11.5 to 11.12 are applicable to payment of Services other than subscription Software *mutatis mutandis*.
- 12.5.2. Excess usage for each month shall be calculated by QBS SOFTWARE AFRICA and invoiced unto the Customer, which excess usage shall be recovered in the month following such usage, and payable on demand; 14. **RETURNS POLICY**
- 12.5.3. Following any reported excess usage, QBS SOFTWARE AFRICA may increase the subscription amount to reflect the level of continuing excess usage; and 14.1. QBS SOFTWARE AFRICA does not accept return of any Products unless:
- 12.5.4. QBS SOFTWARE AFRICA may issue further invoices from-time-to-time for excess usage or any other applicable extra charges that have not been included on the regular monthly invoice. 14.1.1. They are faulty and incapable of being repaired under the Manufacturer's warranty or, in the case of QBS SOFTWARE AFRICA Assembled Hardware, the warranty permits such return; or
- 12.6. Unless the Customer has agreed payment terms, all invoices are payable by direct debit on the first day of the month or such other date in the month as may be agreed between QBS SOFTWARE AFRICA and the Customer. 14.1.2. They are faulty and the Manufacturer's warranty policy provides for a replacement or refund; or
- 12.7. If the Customer has an approved payment term, all invoices are payable in full within 30 calendar days net of the date of invoice or within such other period as may otherwise be expressly agreed in writing in advance. 14.1.3. The returns policy of the Manufacturer or other supplier to QBS SOFTWARE AFRICA permits returns and the Products are returned to QBS SOFTWARE AFRICA within such timescale and in such condition that they can be returned by QBS SOFTWARE AFRICA to the Manufacturer or supplier; and
- 12.8. Clauses 11.5 to 11.12 shall be applicable to payment of subscription Software *mutated mutandis*. 14.1.4. The Products are returned in accordance with the further provisions of this clause 14.
- 12.9. To ensure uninterrupted access to the Products or Services, invoicing for subsequent subscription periods may be initiated at the earlier of: (i) the anniversary of the initial subscription Order being fulfilled; or (ii) a date that ensures that the Manufacturer's payment requirements for the subsequent subscription period are fulfilled and payment is received prior to the commencement of the next subscription term. 14.2. Products shall be deemed accepted by the Customer unless rejected by notice in writing to QBS SOFTWARE AFRICA within 5 Business Days of delivery. Any such notice shall give detailed reasons for such rejection.
13. **PRICE AND PAYMENT -SERVICES OTHER THAN SUBSCRIPTION SOFTWARE** 14.3. Save where otherwise required by applicable law, any payment, credit or refund following return of such rejected Products to the Customer shall only be given once a corresponding refund of the cost price has been received by QBS SOFTWARE AFRICA from the Manufacturer, supplier or insurer as the case may be.
- 13.1. The fees for the provision of any Services shall be the amounts set out in the Order, or, if no fees are set out, the amounts determined in accordance with the charging scale set out in the Order. 14.4. Before returning any Products which the Customer is seeking to reject in accordance with Clause 14.1, the Customer shall comply with QBS SOFTWARE AFRICA 's returns procedure (details of which QBS SOFTWARE AFRICA will provide on request) and in particular, but without limitation, shall obtain from QBS SOFTWARE AFRICA a designated return merchandise authorisation number ("RMA Number") and which, in the case of Hardware and other physical Products, shall be affixed by the Customer to the packaging of the Products to be returned in a prominent position. The issue of an RMA number is solely for administrative purposes and shall not be taken as an admission of any fault and/or liability whatsoever on the part of QBS SOFTWARE AFRICA in relation to the Products being returned.
- 13.2. Unless otherwise expressly agreed in writing:
- 13.2.1. If any fixed fee or fixed element of a fee is set out in the Order, that fixed fee or fixed element of the fee will be

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- 14.5. No Hardware or other physical Products shall be returned without prior arrangement with QBS SOFTWARE AFRICA . In such event the Customer agrees that QBS SOFTWARE AFRICA shall be entitled to a handling charge of an amount equivalent to 10% of the selling price of the goods returned.
- 14.6. If QBS SOFTWARE AFRICA has agreed to accept the return of any Hardware or other physical Products other than for the purpose of carrying out repair or replacement of those Products, they must be returned in their original packaging and in a clean resalable condition, failing which QBS SOFTWARE AFRICA may refuse to accept their return.
- 14.7. Where expressly agreed in writing, QBS SOFTWARE AFRICA may accept the receipt of Products from a Customer in connection with a trade-in offer from a Manufacturer. Where QBS SOFTWARE AFRICA accepts such Products, it does so as agent for the Customer and at the Customer's risk and expense.
15. **DATA PROTECTION**
- 15.1. A copy of QBS SOFTWARE AFRICA 's Privacy Policy is available upon request. Each Party undertakes to comply with the Data Protection Legislation (where applicable to such Party) when performing its respective obligations under these Conditions.
- 15.2. The Parties hereby acknowledge and agree that in the course and scope of the relationship envisaged in terms of these Conditions, they shall be required, from time to time, to Process Personal Information of each other.
- 15.3. The Parties hereby respectively consent to the Processing of their Personal Information by the other (to the extent applicable) and hereby confirm that any Personal Information provided by each of them to the other shall have been obtained and otherwise Processed in accordance with the provisions of POPIA. To this extent, where QBS SOFTWARE AFRICA Services and/or the delivery of any Product or Software requires QBS SOFTWARE AFRICA to Process the Personal Information of an End User, then the Customer shall procure that the End User consents to the Personal Information being Processed for this purpose.
- 15.4. Pursuant to the provisions of clauses 15.2 and 15.3, each Party hereby warrants that it shall –
- 15.4.1. Ensure that it secures the confidentiality and integrity of all Personal Information obtained and/or Processed by it or on its behalf in accordance with the provisions of the POPIA;
- 15.4.2. Ensure that Processing of Personal Information of the other Party and/or End User shall be for no other purposes than that required to comply with its duties under and otherwise give effect to this Contract, and shall make no such Personal Information available to any Third Party save as provided for in these Conditions and unless it is required for the performance of a Contract;
- 15.4.3. Maintain industry standard administrative, physical and technical safeguards for the protection, security, confidentiality and integrity of the other Party's Personal
- Information in its custody and control for the duration of this Contract and thereafter (to the extent that such Personal Information is not deleted or destroyed) and shall ensure that it remains compliant with the provisions of POPIA; and
- 15.4.4. Adhere to all applicable data protection regulations, including in particular to any applicable provisions of POPIA, as well as all directives and guidance issued by the Information Regulator in terms of the provisions of POPIA.
- 15.4.5. To the extent that a Third Party, being a Manufacturer or supplier to QBS SOFTWARE AFRICA , performs Processing activities of Personal Information received as the result of a purchase by the Customer from QBS SOFTWARE AFRICA of the Products or Services, QBS SOFTWARE AFRICA will: and
- 15.4.6. Require that Third Party to meet the obligations set out in clause 15.4.
- 15.5. To the extent that a Third Party, being a client of the Customer or an End User, performs Processing activities of Personal Information received as the result of a purchase by the Customer from QBS SOFTWARE AFRICA of the Products or Services, the Customer will:
- 15.5.1. Require that Third Party to meet the obligations set out in clause 15.4; and
- 15.5.2. Enter into an Operator Undertaking Agreement with the Third Party.
- 15.6. Each Party hereby indemnifies the other from any liability or loss incurred by such Party of whatsoever nature as a result of the other Party's breach of the obligations bestowed on it in terms of POPIA and this clause 15.
- 15.7. The obligations in this clause 15 shall survive the termination of the Contract.
16. **INTELLECTUAL PROPERTY RIGHTS**
- 16.1. The title to and the Intellectual Property Rights in the Products and in the media containing such Products does not pass to the Customer or End User, unless otherwise specified in the EULA. The Customer or the End User is licensed to use such Products in accordance with these Conditions and the EULA applicable to the relevant Products.
- 16.2. The Customer and End User shall ensure that they are aware of any opensource Software provision in the applicable EULA, and shall use the Software cognisant of, and subject to the opensource Software provisions. Any Intellectual Property Rights created in terms of opensource Software is subject to the EULA terms regulating same. The Customer shall have no claim against QBS SOFTWARE AFRICA with respect to opensource Software and the Intellectual Property Rights created and/or transferred and/or assigned and/or ceded in respect thereof.
- 16.3. Each Party grants to the other Party a non-exclusive, limited, revocable licence to use its Intellectual Property

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	Rights solely to the extent necessary for the other Party to perform its obligations under the Contract. The Parties agree that all Intellectual Property Rights which existed prior to the date of the Contract in relation to any items used in the performance of any Services shall remain the property of the existing owner of those Intellectual Property Rights:	17.1.3.	Any other liability which by law cannot be limited or excluded.
		17.2.	The restrictions on liability in this clause 17 apply to every liability arising under or in connection with a Contract or the supply by QBS SOFTWARE AFRICA of any Products or Services including liability in contract, delict (including negligence), misrepresentation, restitution or otherwise.
16.3.1.	Clause 16.3 is not applicable to any Software procured on a subscription basis, the licensing of which is regulated by the EULA.		
16.4.	Subject to clause 16.5, QBS SOFTWARE AFRICA (and/or any Third Party with whom QBS SOFTWARE AFRICA deals in delivering the Product, Services or Software) shall own and be fully entitled to use in any way QBS SOFTWARE AFRICA or the Third Party deems fit any Intellectual Property Rights, including skills, techniques, materials, concepts or know-how acquired, developed or used in the course of providing any Services and any improvements made or developed during the course of providing the Services. For the avoidance of any doubt, this shall include any improvements or modifications to Products during the duration of the Contract.	17.3.	The Parties agree that the limitations on liability in these Conditions are reasonable, given the Parties' respective commercial positions and their option to purchase appropriate insurance in respect of arising risks. Subject to clauses 17.1 and 17.4, the total liability which either Party shall owe to the other in respect of all claims arising under or in connection with Contracts or the supply by QBS SOFTWARE AFRICA of any Products and/or Services shall not exceed 100% of the Fees paid by the Customer in respect of the Products or Services to which the claim(s) relate.
16.5.	Nothing in clause 16.4 shall be construed or shall give effect to any transfer of right, title or interest in the Customer's or QBS SOFTWARE AFRICA 's Intellectual Property Rights.	17.4.	Subject to clause 17.1, neither Party shall have any liability to the other Party the following types of loss in connection with any Contracts or the supply by QBS SOFTWARE AFRICA of any Products:
16.6.	The Customer shall not, without QBS SOFTWARE AFRICA 's prior written consent, copy or reproduce in any way the whole or a part of the user manual or any other Documentation which has been supplied to the Customer relative to any Products or Services.	17.4.1.	Loss of profits;
16.7.	The Customer undertakes not to violate the Intellectual Property Rights of the Manufacturer in the Products or assist anyone else to do so or to breach the terms of the EULA. The Customer shall indemnify and hold harmless QBS SOFTWARE AFRICA from any claims from the Manufacturer that the Manufacturer's Intellectual Property Rights have been breached or the EULA has been breached where such breach is attributable to the actions or omissions of the Customer.	17.4.2.	Any account of profits;
16.8.	In relation to Products or Services supplied by QBS SOFTWARE AFRICA to the Customer, the Customer undertakes promptly to notify QBS SOFTWARE AFRICA if it becomes aware of any infringement of Intellectual Property Rights of QBS SOFTWARE AFRICA or the Manufacturer by any Third Party (including, but not limited to, any breach of the EULA by the End User) and shall use all reasonable endeavours to assist QBS SOFTWARE AFRICA and/or the Manufacturer in safeguarding their Intellectual Property Rights in the Products and Services.	17.4.3.	Loss of sales or business;
17.	<u>LIMITATION OF LIABILITY – THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CLAUSE.</u>	17.4.4.	Loss of agreements or contracts;
17.1.	Nothing in these Conditions shall limit or exclude any liability for:	17.4.5.	Loss of anticipated savings;
17.1.1.	Death or personal injury caused by negligence of QBS SOFTWARE AFRICA ;	17.4.6.	Loss of use or corruption of software, data or information;
17.1.2.	Fraud or fraudulent misrepresentation; or	17.4.7.	Loss of or damage to goodwill; and
		17.4.8.	Indirect or consequential loss.
		17.5.	This clause 17 shall survive termination of the Contract.
		18.	<u>BREACH</u>
		18.1.	In the event of either Party being in breach of any provision of this Agreement (the "Breaching Party") and failing to remedy such breach within a period of 5 (five) Business Days after receipt of a written notice by the innocent party (the "Non-Breaching Party") requiring the Breaching Party to remedy their breach, the Non-Breaching Party thereby shall be entitled, without prejudice to any other rights which it may have in terms of this Agreement or in terms of the law in general, to:
		18.1.1.	Claim specific performance, thus, requiring the Non-Breaching Party to fulfil its obligations, as well as or in the alternative to, a claim for damages and/or loss which the Breaching Party may have incurred;
		18.1.2.	Terminate in accordance with clause 19;

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- 18.1.3. Claim Damages and/or loss the Non-Breaching Party may have incurred as a result of the breach.
- 18.1.4. Notwithstanding anything to the contrary, the Customer shall not be permitted to declare a breach, and moreover, terminate these Conditions, any Contract or Order in such instance that any amount pursuant these Conditions is due and payable to QBS SOFTWARE AFRICA .
- 18.1.5. It shall not be considered a breach of these Conditions, any Order or Services where the Product, Services or Software:
- 18.1.6. Is defective;
- 18.1.7. Contains any destructive elements;
- 18.1.8. Causes the Customer damages; or
- 18.1.9. Is not fit for purpose as intended by the Customer.
- 18.2. QBS SOFTWARE AFRICA may compile a certificate setting out the monetary amount due and owing by the Customer from time to time. This certificate shall be *prima facie* evidence of the Customer's obligations to QBS SOFTWARE AFRICA and may be used by QBS SOFTWARE AFRICA in any legal proceedings to recover any amounts due and owing to QBS SOFTWARE AFRICA or compel the Customer to fulfil their obligations owed herein.
- 18.3. The Customer shall indemnify and hold harmless QBS SOFTWARE AFRICA and its suppliers and/or Manufacturers against any and all claims, losses, liabilities, damages, costs, and expenses (including reasonable legal fees) arising out of or in connection with any act or omission of the Customer and/or the End User or affected third party. This indemnity shall survive termination or expiry of the Contract.
19. **TERMINATION**
- 19.1. QBS SOFTWARE AFRICA shall be entitled to terminate any Order, as well as the Contract, and suspend all or any work on current or future deliveries and instalments of Products or the provision of any Services and, on written notice to the Customer, shall be entitled to cancel the undelivered or unperformed portion of any Contract and deem that the whole of the Fees due under the Contract or any other agreement shall be payable immediately in the event that:
- 19.1.1. The Customer commits a breach of any term of the Contract (including if the Customer fails to pay any amount due under the Contract on the due date for payment) and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of the Customer being notified in writing to do so or in the event that the Customer commits repeated material breaches of Contracts;
- 19.1.2. The Customer is subject to a Legal Disability.
- 19.2. Without limiting its other rights or remedies, QBS SOFTWARE AFRICA may suspend provision of Products and Services under any Order or any other Contract/Order between the Customer and QBS SOFTWARE AFRICA if the Customer becomes
- subject to a Legal Disability, or QBS SOFTWARE AFRICA reasonably believes that the Customer is about to become subject to a Legal Disability, or if the Customer fails to pay any amount due under these Conditions, a Contract or Order on the due date for payment.
- 19.3. On termination by QBS SOFTWARE AFRICA under Clause 19.1 above:
- 19.3.1. The Customer shall immediately pay to QBS SOFTWARE AFRICA all of QBS SOFTWARE AFRICA 's outstanding unpaid invoices and administrative costs and, in respect of Products and Services supplied but for which no invoice has been submitted, QBS SOFTWARE AFRICA shall submit an invoice, which shall be payable by the Customer immediately on receipt; and
- 19.3.2. Should the Customer have failed to make payment in full for any Software, the Customer shall immediately cease to use all such Software and, at its own expense, remove the Software from all computers, communications systems and other electronic devices under its control all copies of such Software and return or destroy them (certifying in writing to QBS SOFTWARE AFRICA that such destruction has taken place).
- 19.4. Termination or expiry of the Contract, however arising, shall not affect any of the Parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of an Order which existed at or before the date of termination or expiry.
- 19.5. Any provision in any Order or a Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
20. **FORCE MAJEURE**
- 20.1. Neither Party shall be liable to the other Party in any manner whatsoever for any failure or any delay or for the consequences of any delay in performing its obligations under any Order (save in respect of any obligation to pay money) due to any cause beyond the reasonable control of the Party in question, which for the avoidance of doubt (and without prejudice to the generality of the foregoing) shall include governmental actions, war, riots, civil commotion, fire, flood, epidemic, pandemic, labour disputes including labour disputes involving the work force or any part thereof of the Party in question, restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials, currency restrictions and acts of God.
- 20.2. Neither non-payment of Fees by the Customer, nor non-payment of the Customer by their customers, shall be considered a force majeure event for the purposes of this clause 20.
21. **EMBARGOED TERRITORIES**
- 21.1. The Customer hereby undertakes that it shall not:
- 21.1.1. Export or re-export any Products to any country or territory where such export or re-export may be

QBS Software (Pty) Limited

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prohibited by the laws and regulations of that country or territory or by the laws and regulations of England and Wales, any other part of the United Kingdom, the European Union, the United States of America, or by international law ("Embargoed Territories"); or

directly associated with QBS SOFTWARE AFRICA during the term of the Contract or for 12 months thereafter.

21.1.2. Re-sell the Products to any third party unless such re-sale is made on the condition that the Third Party will not export or re-export the Products and Services to any of the Embargoed Territories.

24.2. This shall not prevent the Customer employing any person who is employed or acting for QBS SOFTWARE AFRICA where that person responds to a bona fide public advertisement for employees.

22. ASSIGNMENT AND OTHER DEALINGS.

25. ENTIRE AGREEMENT

22.1. QBS SOFTWARE AFRICA may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under any Contract or delegate the burden of any Order and/or a Contract.

25.1. This Contract together constitute the entire agreement between the Parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

22.2. The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under any Contract without the prior written consent of the QBS SOFTWARE AFRICA .

25.2. Each Party agrees that, to the maximum extent permitted by law:

23. CONFIDENTIALITY

25.2.1. It shall have no remedy in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in a Contract; and

23.1. Each Party undertakes that it shall not, at any time during the duration of this Contract, and for a period of two years after termination of a Contract, disclose to any person any Confidential Information except as permitted by clause 23.2.2.2.

25.2.2. It shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in any Contract.

23.2. Each Party may disclose the other Party's Confidential Information:

26. RELATIONSHIP OF THE PARTIES

23.2.1. To its Representatives who need to know such information (each a "Permitted Disclosee") for the purposes of considering opportunities for the Parties to enter into Contracts, negotiating the terms of any Contract, the Representative(s) performing their duties in relation to any Contract or exercising a Party's rights or carrying out its obligations under any Contract (each a "Permitted Purpose"). Each Party shall ensure each Permitted Disclosee to whom it discloses the other Party's Confidential Information is aware of the confidentiality obligations set out in this clause 23.2 and shall procure that each Permitted Disclosee complies with them as if the Permitted Disclosee were a Party to the Contract; and

26.1. Save as may be expressly agreed in writing, nothing in a Contract is intended to, or shall be deemed to:

23.2.2. As may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

26.1.1. Establish any partnership or joint venture between the Parties;

23.2.3. Neither party shall use the other party's Confidential Information for any purpose other than a Permitted Purpose.

26.1.2. Constitute either Party the agent of the other Party;

24. NON-SOLICITATION

26.1.3. Authorise either Party to make or enter into any commitments for or on behalf of the other Party; or

24.1. The Customer undertakes that it will not, save as permitted by this clause 24, solicit, induce to terminate employment, or otherwise entice away whether directly or indirectly through another firm or company, any employee of QBS SOFTWARE AFRICA professionally or otherwise

26.1.4. Create any licence over any Intellectual Property Rights and on any resale of a Product or Service by the Customer, such resale shall be made by the Customer as principal.

27. VARIATION

27.1. No variation of any Contract shall be effective unless it is in writing and signed by the Parties (or their authorised representatives), whether the term "sign" means a handwritten or an advanced electronically generated signature. Notwithstanding the foregoing, QBS SOFTWARE AFRICA reserves the right to alter these Conditions at such time and in such manner as it sees fit and shall publish the then-current version of these Conditions at <https://www.maxtec.co.za/terms-and-conditions>. The version of the Conditions which is current at the time of the commencement of a Contract shall apply to that Contract, unless otherwise agreed in writing. QBS SOFTWARE AFRICA will supply a hard copy of these Conditions to the Customer on request.

28. WAIVER

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28.1. No failure or delay by a Party to exercise any right or remedy provided under any Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

29. SEVERANCE

29.1. All provisions of this Agreement are, notwithstanding the manner in which they have been grouped or linked grammatically, severable from each other. Any provision of this Agreement which is or becomes unenforceable (in any jurisdiction in which it applies or in which its enforcement is sought), whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, only to the extent that it is so unenforceable, be treated as *pro non scripto* (the script is to be deleted from the ambit of this Agreement) and the remaining provisions of this Agreement shall remain of full force and effect. The Parties declare that they intend that this Agreement may be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

30. NOTICES

30.1. Any notice or other communication given to a Party under or in connection with any Contract shall be in writing and shall be:

30.1.1. Delivered by hand at its registered office (if a company) or its principal place of business (in any other case); or

30.1.2. Sent by electronic mail to the address specified in the Order.

30.2. Any notice or communication shall be deemed to have been received:

30.2.1. If delivered by hand, on the actual date of delivery, irrespective of whether formal receipt thereof is acknowledged or not.

30.2.2. If sent by electronic mail, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt or falls on a public holiday in the place of receipt, when Business Hours (not falling on a public holiday in the place of receipt) resume.

30.3. This clause 30 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

31. THIRD PARTY RIGHTS

31.1. The Customer acknowledges that the Manufacturer is an intended third-party beneficiary and, at QBS's option, shall have the right to enforce the Contracts (including these Conditions) directly against Customer.

32. Un convention

32.1. The United Nations Convention on Contracts for the International Sale of Goods is expressly and entirely excluded.

32.1. The United Nations Convention on Contracts for the International Sale of Goods is expressly and entirely excluded.

33. GOVERNING LAW

33.1. The interpretation, applicability and enforcement of this Agreement shall be regulated by the relevant laws as they apply in the Republic of South Africa whereby the Parties nominate their *lex loci contractus* (law of the place where the contract is made) as South Africa.

34. JURISDICTION

34.1. The Parties consent to the jurisdiction of the High Court of South Africa, Gauteng Division, Pretoria.

35. AUTHORISATION

35.1. The Customer warrants, represents and guarantees that it is lawfully authorised to agree to these Conditions, any Contract or Order, and shall not be permitted to claim non-authorisation or the lack thereof to excuse their performance obligation in terms of any Contract and/or Order.

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