

STANDARD TERMS AND CONDITIONS SALES

1. Definition

- 1.1. 1.1 **'Agreement'** means the Quotation or LOE (Letter of Engagement) as the case may be, the terms and conditions below and all attachments hereto;
- 1.2. **'Confidential Information'** means (but not limited to) any and all strategic, sensitive and/or confidential business, private, personal and/or privileged information, in whatsoever format and, without limitation, includes information concerning the disclosing party's operations, business affairs, relationships, contracts, clients, suppliers, plans, ideas, employees, expressed thoughts, processes, techniques, trade secrets, know-how, experience, goodwill, reputation and financial status and any part and/or element of the foregoing
- 1.3. **'Customer'** is the person or business reflected in the Letter of Engagement or Agreement.
- 1.4. **'Effective Date'** means the date on which a representative of the customer signs the Proposal / Letter of Engagement/ Issues the Purchase order or on receipt of instructions from customer to commence Services in accordance with the Proposal;
- 1.5. **'Fees'** means the charges payable by the Customer, taking into consideration the rates as per the proposal, time spend by Cyanre, the Computer Forensic Lab Pty (Ltd) (**hereinafter Cyanre**) in providing the Services and complexity of the Services;
- 1.6. **"Intellectual Property Rights"** means, but shall not be limited to, concepts, know-how, data processing techniques, Confidential Information, copyrights, patents, designs, inventions, trademarks, which are created, invented and/or developed;
- 1.7. **'Letter of Engagement' or 'Proposal'** means the terms of reference agreed between the Customer and Cyanre detailing the services that are to be rendered by Cyanre to the customer;
- 1.8. **'Services'** means the services that are to be rendered by Cyanre to the customer in accordance with the Letter of Engagement or such additional requirements as may be instructed by the Customer subsequent to the Effective Date.
- 1.9. **'Scope briefing'** refers to the Letter of Engagement where relevant.
- 1.10. **'Terms and conditions'** means the standard terms and conditions below, that forms part of any engagement with Cyanre, unless expressly excluded in writing and agreed upon by both parties.

2. Duration of the Agreement

- 2.1. This quote is valid for 14 (fourteen) days from date of quotation

3. Fees and payments

- 3.1. For products, Customer shall pay to Cyanre before delivery unless agreed to in writing on an alternative agreed date.
- 3.2. All prices and/or costs quoted by Cyanre shall be inclusive of all applicable taxes but excluding South African Value Added Tax, which shall be shown clearly and separately on the final invoice in terms of this Agreement;
- 3.3. Price quoted is linked to forward exchange rate as products are ordered from the International suppliers, and final price must be confirmed prior to acceptance of the order
- 3.4. Any Fee stated in a currency other than South African Rand or products subject to exchange rate fluctuation shall be paid in South African Rands by using the exchange rate applicable **on the date of** the invoice, as obtained from: <http://www.xe.com/>.
- 3.5. Unless otherwise stated and agreed in writing, all Invoices are payable in advance. Payment strictly COO (cash on order) unless credit facilities authorised **in writing** by our Accounts Department.
- 3.6. Where otherwise agreed invoices will be due and payable within 30 days of date of invoice.
- 3.7. Prices exclude configuration, installation, training, etc. unless otherwise indicated. Please call for pricing should you require our expert assistance.
- 3.8. Customer may not, for any reason whatsoever, defer, adjust, set-off or withhold any payment due to Cyanre in terms of or arising out of this Agreement; If Customer fails to make any payment or portion of a payment due in terms of this Agreement, Cyanre may, without prejudice to Cyanre's rights in terms of this Agreement or at law, charge:-
 - 3.8.1. interest on any unpaid amount from the date the account became due until the date of payment, at the prevailing prime overdraft rate of ABSA Bank Limited, plus 2% (two per centum) per annum; and
 - 3.8.2. collection charges of R80.00 per follow up communication.

- 3.8.3 The Customer agrees that no notice in terms of section 129 of the National Credit Act is required if Customer default on any
- 3.8.4. payment and Cyanre will be entitled to the aforesaid interest and collection fees on default of payment;

- 3.9. In the event of a dispute over an amount of fees, the amount not in dispute shall be paid on presentation of an invoice without any set off or counter claim, which may be alleged.
- 3.10. Cyanre reserves the right to suspend any service until all amounts are paid in full.

4. Protection of Confidential Information

- 4.1. Each of the parties undertakes not to use or disclose to any other party, any Confidential Information disclosed by the disclosing party during the period of or arising out of the relationship between them, unless such Confidential Information is:
 - 4.1.4. within the public domain, except where same is in the public domain by reason of any breach by either of the parties to this agreement; or
 - 4.1.5. already and independently known to the party to whom it was disclosed, prior to signature of this agreement; or
 - 4.1.6. obtained lawfully through a third party and not through the party to whom it was disclosed, or an employee of such party.
- 4.2. Each party agrees:
 - 4.2.4. to take reasonable steps to maintain the confidentiality of such Confidential Information as is disclosed to them, it being agreed that it is valuable asset and that the disclosing party would be severely prejudiced and suffer damages in the event of it being disclosed to any third party or used by the third party for whatever purpose;
 - 4.2.5. it will not make the disclosing party's Confidential Information available to any of its employees except strictly on a need to know basis, and then only after each of such employees has signed and agreed to be bound by a confidentiality agreement containing at the least the same terms and conditions as this clause.
- 4.3. Cyanre reserves the right to use the name of the customer as a reference in proposals, presentations or similar submissions to other prospective customers, unless the customer expressly forbids such disclosure on reasonable grounds and only if no information regarding the matter is placed in the public domain.

5. Dispute resolution

- 5.1. If the Parties are unable to resolve any dispute resulting from this Agreement by means of joint co-operation or discussion between the individuals directly involved with the execution of this Agreement, within (five) days after a dispute arises or such extended time period as the Parties may in writing allow, then such a dispute shall be submitted to the most senior executives of the Parties who shall endeavour to resolve this dispute within 5 (five) days after it has been referred to them.
- 5.2. Should the dispute not be resolved in the aforesaid manner, then it shall be resolved by way of arbitration in accordance with the provisions of 7 below.
- 5.3. Any dispute referred to arbitration pursuant to clause 5.2 shall be determined by arbitration in terms of this clause.
- 5.4. This clause shall not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction.
- 5.5. The arbitration shall be held:
 - 5.5.4. at Pretoria in the Republic of South Africa;
 - 5.5.5. with only the legal or other representatives of the Parties to the dispute present thereat;
 - 5.5.6. mutatis mutandis in accordance with the provisions of the Supreme Court Act, No 59 of 1959, the rules made in terms of that Act and the practice of the division of the High Court referred to in 0;
 - 5.5.7. otherwise in terms of the Arbitration Act, No 42 of 1965, it being the intention that the arbitration shall be held and completed as soon as possible.
- 5.6. The arbitrator shall be, if the matter in dispute is principally:
 - 5.6.4. a legal matter, a practising advocate or attorney of Pretoria of at least 15 (fifteen) years standing;
 - 5.6.5. an accounting matter, a practising chartered accountant of Pretoria of at least 15 (fifteen) years standing;
 - 5.6.6. any other matter, an independent person, agreed upon between the Parties to the dispute.
- 5.7. Should the Parties to the dispute fail to agree whether the dispute is principally a legal, accounting or other matter within 7 (seven) days after the arbitration was demanded, the matter shall be deemed to be

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a legal matter.

- 5.8. Should the Parties fail to agree on an arbitrator within 14 (fourteen) days after the giving of notice in terms of 5.2, the arbitrator shall be appointed at the request of either Party to the dispute by the President for the time being of the Law Society of the Northern Provinces according to the provisions of 5.6;
- 5.9. The decision of the arbitrator shall be final and binding on the Parties to the dispute and may be made an order of the court referred to in 0 at the instance of any of the Parties to the dispute.
- 5.10. The Parties hereby consent to the jurisdiction of the High Court of South Africa (Witwatersrand Local Division) in respect of the proceedings referred to in 5.4.
- 5.11. The Parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration
- 5.12. confidential and not to disclose it to anyone except for purposes of an order to be made in terms of 5.9.
- 5.13. The provisions of this clause:
 - 5.13.1. constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw there from or claim at any such proceedings that it is not bound by such provisions;
 - 5.13.2. are severable from the rest of this Agreement and shall remain in effect despite the termination of or invalidity for any reason of this Agreement.

Each party will bear their own costs of arbitration

6. Warranties

- 6.8. Each Party warrants to the other Party that:
 - 6.8.1. it has full capacity and authority and all necessary licences, permits and consents to enter into and to perform this Agreement;
 - 6.8.2. this Agreement is executed by a duly authorised representative of that Party; and
 - 6.8.3. the execution and delivery of this Agreement, and the performance by the warranting Party of its obligations under it, will not:
 - 6.8.3.1. result in a breach of any provision of the Memorandum or Articles of Association or Partnership Deed, if applicable, of the warranting Party; or
 - 6.8.3.2. result in a breach of or constitute a default under any instrument or agreement to which the warranting Party is a Party to or by which the warranting Party is bound; or
 - 6.8.3.3. result in a breach of any order, judgement or decrees of any court or Governmental agency to which the warranting Party is a Party or by which the warranting Party is bound.
 - 6.8.3.4. Cyanre warrants that the Services shall be supplied by appropriately experienced, qualified and trained personnel and in a professional manner with reasonable care, skill and diligence.
- 6.9. Except as expressly stated in this Agreement all conditions and warranties whether express or implied, statutory or otherwise (including but not limited to any conditions or warranty for, fitness for particular purpose, satisfactory quality, usefulness or timeliness) are excluded.

7. Notices

- 7.1. The Parties choose as their *domicilia citandi et executandi* for all purposes the addresses as set out in the communication between the parties at the time of the effective date unless specified otherwise.
- 7.2. Either Party shall be entitled from time to time, by written notice to the other, to vary its address to any other address which is not a post office box or *poste restante*.

- 7.3. Any notice to either Party which is -
 - 7.3.1. sent by prepaid registered post in a correctly addressed envelope to the address specified above shall be deemed to have been received, unless the contrary is proved, within 14 (fourteen) days from the date on which it was posted; or
 - 7.3.2. delivered to the Party by hand, shall be deemed to have been received on the day of delivery, provided that it has been delivered to a responsible person during ordinary business hours.
- 7.4. Notwithstanding anything to the contrary contained in this clause, a written notice or other communication actually received by either Party and for which written receipt has been obtained, shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.

8. Conflicts of interest

Cyanre provides a wide range of services to a large number of customers. Cyanre attempts to identify such situations but cannot guarantee that it has identified all those situations that exist or may exist. The parties agree to notify each other in the event of conflicts arising. No service or products provided by Cyanre can be considered by the client to be exclusive and by accepting an assignment or order Cyanre does not accept any restriction of trade.

9. Breach and Termination

- 9.1. Neither party will be liable for failure to fulfil its obligations when due to causes beyond its reasonable control including, without limitation, the insolvency or breach of any supplier, acts of God, strikes or lockout.
- 9.2. Any failure or delay by either party in exercising any right or remedy will not constitute a waiver.
- 9.3. If either party is in default or breach of this agreement, the aggrieved party should notify the defaulting party in writing to remedy the default within 10 (ten) days. If the defaulting party fails to remedy such default then without prejudice to any other rights it may have in terms hereof or in law, the aggrieved party shall be entitled to:
 - 9.3.1. claim specific performance
 - 9.3.2. cancel this Agreement which shall be effective when the defaulting Party receives a written notice of such cancellation
 - 9.3.3. claim any monies due in terms of this Agreement and, claim damages from the defaulting Party.
- 9.4. Notwithstanding anything to the contrary in this agreement, either party shall be deemed to be default if it:
 - 9.4.1. is placed in provisional or final liquidation/sequestration or
 - 9.4.2. is placed under judicial management, whether subject to a provisional or final order.
- 9.5. No part may cancel this Agreement on the grounds of a breach of a term of this Agreement unless the breach is material.
- 9.6. Without prejudice to the aforesaid right, where such breach is the result of non payment from the Customer and Customer does not execute payment after notice as set out above, Cyanre may suspend Services until the amount due and outstanding has been paid in full. Aforesaid suspension shall not be seen as a cancellation or termination unless Cyanre specifically indicate cancellation of the Agreement;

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10. General

- 10.1 These terms and Conditions may not be amended or added to except in writing signed by a duly authorised representative of each party.
- 10.2 No failure by either Party to enforce any provision of this Agreement shall constitute a waiver of such provision or affect in any way a Party's right to require performance of any such provision at any time in the future, nor shall the waiver of any right arising from any subsequent breach nullify the effectiveness of the provision itself, or be used as an estoppel against any Party in respect of its rights under this Agreement;
- 10.3 Neither party shall be entitled to cede or assign any of its rights or obligations in terms of this agreement without the prior written consent of the other party. Any cession or assignment prohibited by this clause will be void. Each paragraph and provision of this Agreement is severable and if one or more paragraphs or provisions are declared invalid, the remaining provisions of this agreement will remain in full force and effect.
- 10.4 Unless further limited elsewhere in this agreement, the entire liability of Cyanre and the Customer's exclusive remedy for damages from any cause related to or arising out of or in connection with this agreement, regardless of the form of action, whether in contract or in delict, will not exceed a refund of the fees paid to Cyanre for the Services relating to the Terms of Reference which are the subject matter of or directly related to the causes of action asserted.
- 10.5 Under no circumstances will Cyanre be liable for:
- 10.5.1 any incidental, indirect, special or consequential losses or damages, including, but not limited to, loss of use, revenues, profits, or savings; or
- 10.5.2 any claims, demands, or actions against the Customer by any third party
- 10.6 The headings in this agreement shall not in any way affect or govern the interpretation of construction of the Terms and Conditions.
- 10.7 This Agreement will be governed by the laws of the Republic of South Africa.
- 10.8 Each Party hereby consents to the jurisdiction of the Pretoria Magistrate's court.
- 10.9 Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement, shall survive any termination or expiration of this Agreement

Acceptance Signature:

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