

# ICLIX CC

## STANDARD TERMS AND CONDITIONS OF SALE

In these terms and conditions:-

1. The goods means the goods as indicated on any company forms, price lists, quotations, orders or invoices.
2. **PRICES AND QUOTATIONS**
  - 2.1 The price of the goods sold or services rendered shall be the usual price as set out in the Iclix CC price list at the time of the sale of the goods.
  - 2.2 Iclix CC has the right to change the prices of the goods from time to time without prior notice to the customer.
  - 2.3 All quotes remain valid for 7 (seven) days from the date of the quote, or until the date of issue of a new price, whichever occurs first. The validity of any price quoted is subject to availability.
  - 2.4 Any quote may be changed at any time in the event of any increase in the cost price of the goods, including currency fluctuations. Price increases will only be affected if the goods have not yet been dispatched to the customer.
3. **PAYMENT**
  - 3.1 The customer shall pay the amount on the tax invoice at the offices of Iclix CC. Payment is due immediately save for credit approved customers, in which event payment is due within 30 days of date of the tax invoice.
  - 3.2 Where the customer uses a postal service to effect payment to deliver or return goods such postal services shall be deemed to be the agent of the customer. Likewise, where the customer uses Internet banking, the bank shall be deemed to be the agent of the customer.
  - 3.3 The customer has no right to withhold payment or make set offs or deductions from any payment due by it for any reason whatsoever. No extension of payment of any nature will be granted unless reduced to writing and signed by the customer and a duly authorized representative of Iclix CC.
  - 3.4 Iclix CC shall have the right to suspend deliveries and to exercise its rights in terms of clause 4 if any amount due by the customer is unpaid.
  - 3.5 If any amount owed is not settled in full (a) on due date (b) on demand. Iclix CC is entitled to, without prejudice to any of its rights;
    - 3.5.1 immediately institute action against the customer and/or
    - 3.5.2 cancel the sale and take possession of any goods delivered to the customer, including goods sold or disposed of by the customer which have not been paid for in full, and claim damages.
  - 3.6 Should any amount not be paid by the customer on due date, the full outstanding amount in respect of all purchases by the customer shall become due and payable, and the customer shall be liable to pay interest in respect of amounts unpaid at the compound rate of a 5% (five per cent) above the prime overdraft rate of Standard Bank Limited on all overdue amounts from due date until date of payment, calculated and payable monthly in advance. A certificate from Standard Bank Limited, signed by any manager of such bank, whose authority and capacity it shall not be necessary to prove, shall be *prima facie* proof of the interest rate charged.
  - 3.7 Iclix CC shall not bear any risk associated with the loss of cheques sent via post by the customer.
4. **WITHDRAWAL OF CREDIT FACILITIES**
  - 4.1 Iclix's decision to grant credit facilities to the customer and the nature and extent thereof is at the sole discretion of Iclix CC.
  - 4.2 Iclix CC reserves the right to withdraw, increase or decrease any credit facilities at any time without prior notice.
5. **ORDERS**
  - 5.1 The customer hereby confirms that the goods and services on the tax invoice issued duly represent the goods and services ordered by the customer at the prices agreed to by the customer and where performance/delivery has already taken place that the services and goods were inspected and that the customer is satisfied that these conform in all respects to the quality and quantity ordered and are free from any defects.
  - 5.2 Iclix CC will accept all written and oral orders. All such orders and any variations to orders will be binding, subject to these standard terms and conditions and may not be varied or cancelled without prior written consent from Iclix CC. Iclix CC will not be responsible for any errors or misunderstandings occasioned by the customer's failure to make the order in writing.
  - 5.3 Orders shall constitute irrevocable offers to purchase the goods in question at the usual prices of Iclix CC as at the date when the customer places the order of the goods, subject to clause 2.4 above, and shall be capable of acceptance by Iclix CC by the delivery of the goods, written acceptance or confirmation of the order.
  - 5.4 The customer shall provide Iclix CC with an order number when placing an order.
  - 5.5 Any order marked for "Collections" and not collected within 3 days of placing the order will automatically be credited back into the system.
6. **DELIVERY**
  - 6.1 Any delivery note (copy or original) signed by the customer and/or its authorized representative and/or its nominated agent and held by Iclix CC, shall be *prima facie* proof that delivery was made to the customer.
  - 6.2 Iclix CC shall be entitled to split the delivery of the goods ordered in the quantities and on the dates it decides with the prior consent of the customer, which consent shall not be unreasonably withheld.

- 6.3 In the event of the customer choosing to engage its own third party to transport the goods, the customer indemnifies Iclix CC against any claims of any nature whatsoever that may arise from such an agreement.
- 6.4 Iclix CC is entitled to engage a third party on its behalf to transport all goods purchased by the customer to the delivery address stipulated by the customer.
- 6.5 Should the customer wish to receive delivery of the goods by a more expensive method of transportation than that normally used by Iclix CC, the customer shall make such request in writing and, in the event that Iclix CC agrees to arrange such special delivery the additional charges shall be debited to the customer's account and shall be payable by the customer.
- 6.6 Iclix CC does not guarantee that the goods will be dispatched or delivered on any particular date and time, and the customer shall have no claim against Iclix CC in respect of any loss occasioned by any reasonable delay in dispatch or delivery of any goods ordered and/or services rendered, nor may the customer cancel any order by reason of such reasonable delay.
- 6.7 Short deliveries must not be accepted and all the goods must be given to the driver of the delivery vehicle for return to the company.
- 6.8 Goods received in a damaged condition must either be rejected or accepted and a note of the item and type of damage made on the front of the invoice. Were the goods are rejected, the entire delivery must be returned as per 6.7, above.
- 6.9 All goods taken on an evaluation, approval, demonstration basis or all goods taken on consignment by the customer are deemed sold to the customer within 5 (five) working days of issue if not returned to Iclix CC in a perfect condition in the original packaging and with all accessories and manuals intact.
- 6.10 Iclix CC reserves the right to charge delivery charges, as and when necessary (R25 delivery charge for any order under R1 000).

## 7. OWNERSHIP AND RISK

- 7.1 All risk in and to all goods sold by Iclix CC to the customer shall pass to the customer on delivery thereof. Ownership in all goods sold and delivered shall remain vested in Iclix CC until the full purchase price has been paid, and in the event of a breach of these terms and conditions by the customer, or if the customer is sequestered or placed under liquidation or judicial management or commits any act of insolvency or enters into any compromise with its creditors or fails to satisfy a judgement granted against it within 7 (seven) days of the date of judgement or changes the structure of its ownership, Iclix CC shall be entitled to take possession of the goods without prejudice to any further rights vested in Iclix CC, and is hereby irrevocably authorized to enter upon the customer's premises to take possession of such goods without a Court order.
- 7.2 Goods in the possession of the customer bearing Iclix's name, trademark, labels and/or serial no are deemed to be those for which payment has not yet been made, and should any breach of these terms occur, may be re-possessed by Iclix CC in terms of paragraph 7.1 above. The customer shall fully insure the goods purchased from Iclix CC against loss or damage until the customer has paid the full purchase price for such goods. Pending payment to Iclix CC for goods purchased, all benefits in terms of the insurance policy relating to the insurance of such goods, shall be ceded to Iclix CC.
- 7.3 The customer shall inform the landlord of the premises at which the goods are kept that such goods are the sole and absolute property of Iclix CC until such time as the customer has paid the full purchase price to Iclix CC.

## 8. BREACH OF CONTRACT

- 8.1 In the event of a breach by the customer, should the customer fail to remedy such breach within 48 (forty eight) hours after receipt of notice to that effect from Iclix CC, or should the customer repeatedly breach this agreement in such manner that the customer's conduct is inconsistent with the intention or ability of the customer to carry out the terms of the agreement, or if the customer is sequestered or placed under liquidation or enters into judicial management or any act of insolvency or enters into a compromise with its creditors or fails to satisfy a judgement granted against it within 7 (seven) days of the date of judgement or changes the structure of its ownership, Iclix CC shall be entitled without prejudice to its rights in law or in terms of this agreement to take possession of the goods and is hereby irrevocably authorized to enter upon the customer's premises to take delivery of such goods without Court order.
- 8.2 No claim, from customer, under these terms and conditions will arise unless the customer has, within 7 (seven) days of the alleged breach or defect occurring, given Iclix CC 30 (thirty) days written notice by pre-paid registered post to rectify any defect or breach of contract.

## 9. LEGAL PROCEEDINGS

- 9.1 These terms and conditions shall be governed and construed under and in accordance with the laws of the Republic of South Africa
- 9.2 Iclix CC shall, at its option and notwithstanding that the amount of its claim or the nature of the relief sought exceeds the jurisdiction of the Magistrate's Court be entitled to institute action out of such court.
- 9.3 A certificate issued and signed by any director or manager of Iclix CC, whose authority need not be proved, in respect of any indebtedness of the customer to Iclix CC or in respect of any other fact, including but without limiting the generality of the foregoing, the fact that such goods were sold and delivered, shall be *prima facie* proof of the customer's indebtedness to Iclix CC and *prima facie* proof of delivery of the goods in terms of this contract.
- 9.4 Any print out of computer evidence tendered by Iclix CC shall be admissible evidence and the customer shall not be entitled to object to the admissibility of such evidence purely on the grounds that such evidence is computer evidence.
- 9.5 The customer's address in Section A, of the credit application form shall be recognized as the customer's domicilium for all purposes in terms of this contract whether in respect of the serving of any court process, notices that payment of any amount or communications of whatever nature.

- 9.6 In the event of the customer breaching any of its obligations and/or failing to timeously make payment of any amount to Iclix CC, the customer agrees to pay, and shall be liable to pay, all legal costs incurred by Iclix CC in enforcing its rights in terms of these terms and conditions on the attorney/own client scale including collection charges, tracing agent's fees, air fares and export fees.
- 9.7 Any document will be deemed duly received by the customer within:
- 9.7.1 3 (three) working days of pre-paid registered mail to any of the customer's business or postal addresses or the domicilium address of the customer, or to the personal address of any director, member or owner of the customer; or;
  - 9.7.2 24 (twenty four) hours of being faxed to any of the customer's fax number's or any director, member of owner's fax number's; or
  - 9.7.3 on being delivered by hand to the customer or any director, member of the customer; or
  - 9.7.4 48 (forty eight) hours if sent by overnight courier; or
  - 9.7.5 24 (twenty-four) hours of being telexed to the customer's telex number.
- 9.8 The customer agrees that neither Iclix CC nor any of its employees will be liable for any negligent or innocent misrepresentations made to the customer, nor shall the customer be entitled to resile from these terms and conditions on those grounds.

## 10. ARBITRATION

- 10.1 Iclix CC may refer any dispute arising from or in connection with this contract to arbitration which arbitration award shall be final and binding on the customer and Iclix CC.
- 10.2 The arbitrator will be a person agreed upon by the parties or failing agreement, appointed by the Arbitration Foundation of Southern Africa, who shall then finally resolve the dispute or issue in accordance with the Rules of the Arbitration Foundation of SA.
- 10.3 The arbitration must be held at the place and in accordance with whatever procedures, the arbitrator considers appropriate.

## 11. NEGOTIABLE INSTRUMENTS

- 11.1 Acceptance of a negotiable instrument from the customer shall not be deemed to be a waiver of Iclix's rights under this contract. In relation to cheques furnished by the customer to Iclix CC, the customer waives its right to insist on notice of dishonour or protest being given to it on the event that the cheque is dishonoured.

## 12. RETURNED GOODS

- 12.1 Whilst Iclix CC is under no obligation to accept the return of goods, the customer may apply to Iclix CC for permission to return goods and if written permission is given -
- 12.2 the customer may return any defective goods to the premises of Iclix CC or its nominee at the customer's own cost.
- 12.2.1 any item delivered to Iclix CC will form the object of a pledge in favour of Iclix CC for present and past debts of the customer to Iclix CC and Iclix CC will be entitled to retain such pledge as a value determined as follows:
    - 12.2.1.1 the difference between the selling price and the value of the goods at the time that the debt became due.
    - 12.2.1.2 the value of any repossessed goods or retained pledge goods will be deemed to be the value placed on them by any sworn valuator after such repossession and such valuator will be *prima facie* proof of the value.
  - 12.2.2 in the event of a cancellation of an order by the customer for goods accepted for return to Iclix CC, Iclix CC reserves the right to charge a handling fee of up to 15% (fifteen) on the value of the order cancelled or goods returned.
  - 12.2.3 the credit control department must be notified of the relevant invoice, packing slip and batch numbers before any claim will be considered.

## 13. WARRANTIES AND INDEMNITY

- 13.1 Goods may be guaranteed under the manufacturer's product specific warranties only, and all other guarantees and warranties including common law guarantees and warranties in relation to goods and services are hereby specifically excluded by Iclix CC.
- 13.2 All guarantees are immediately null and void should any equipment be tampered with or should the "seals" on the equipment be broken by anyone other than Iclix CC or its appointed nominee, or should the goods be operated outside the manufacturer's specifications.
- 13.3 To be valid, guarantee claims must be supported by the original tax invoice and the goods must be in their original packaging and must be accompanied by all accessories and manuals must be intact. All items must be returned in "as new" condition.
- 13.4 No warranties whether express or implied shall apply, other than those provided in this contract. Iclix CC specifically disclaims the implied warranty of merchantability and fitness for a particular purpose. No representation or warranty, including but not limited to statements of capacity, suitability for use or performance made by employees of Iclix CC shall be considered to be a warranty by Iclix CC. Any such statements made shall not give rise to any liability or whatsoever nature on the part of Iclix CC, its employees, subcontractors or subsidiaries. Iclix CC will not be liable to the customer for any loss, damage or expense of any nature, whether direct, special, indirect or consequential, including but not limited to loss or profits arising out of Iclix's performance or customers' use of the goods or services rendered.

13.5 The customer indemnifies and holds Iclix CC (including its employees, subcontractors or subsidiaries) harmless against all claims of whatsoever nature that may be brought or threatened against Iclix CC by any third party arising from or in connection with any defect, latent or otherwise in any goods supplied and/or services rendered by Iclix CC.

13.6 The customer shall not duplicate copyrighted material. In the event of the customer duplicating copyrighted material, each attempt to do so will immediately render the full prevailing price in respect thereof payable to Iclix.

#### **14 REPAIRS**

14.1 Iclix's liability in terms of a manufacturer's warranty is restricted to, in Iclix CC or the manufacturer's discretion, the cost of repair or replacement of faulty goods or services or the granting of credit.

14.2 In the case of repairs undertaken by Iclix CC repair quotes given are merely estimates and are not binding on Iclix CC.

14.3 The customer hereby agrees that any item returned for a repair may be sold by Iclix CC to defray the cost of such repair if the item remains uncollected for a period of 30 (thirty) days after the repairs have been completed.

#### **15 GENERAL**

15.1 Iclix CC reserves the right in its sole discretion to vary or amend these terms and conditions from time to time and any such amended or varied terms and conditions shall be binding on the customer from the time that the customer is notified thereof.

15.2 This contract represents the entire agreement between Iclix CC and the customer and shall govern all future contractual relationships between Iclix CC and the customer.

15.3 No amendment and/or alteration and/or variation and/or deletion and/or addition and/or cancellation of these terms and conditions, whether consensual or unilateral or bilateral shall be of any force and effect unless reduced to writing and signed by a director of Iclix CC. No agreement, whether consensual or unilateral or bilateral, purporting or obligate Iclix CC to sign a written agreement to amend, alter, vary, delete, add or cancel these terms and conditions shall be of any force and effect unless reduced to writing and signed by a director of Iclix CC.

15.4 No relaxation or indulgence with Iclix CC may grant the customer shall prejudice or be deemed to be a waiver of any Iclix's rights in terms of these terms and conditions.

15.5 The customer shall not cede its rights nor assign its obligations under these terms and conditions.

15.6 Iclix CC shall at any time in its sole discretion be entitled to cede all or any of its rights in terms of this terms and conditions to any third party without prior notice to the customer.

15.7 The customer undertakes to notify Iclix CC within 7 (seven) days of any change of address or change of in director, shareholder, address or the information as set out in this contract.

15.8 The headings in this document are included for convenience and are not to be taken into account for the purpose of interpreting this contract.

15.9 Each of the terms herein shall be a separate and divisible terms and if any such term becomes unenforceable for any reason whatsoever, then that term shall be severable and shall not affect the validity of the other terms.

15.10 The customer undertakes to inform Iclix CC in writing at least 14 (fourteen) days prior to the intended selling or alienating of the whole of or any part of the customer business and failure to do so will constitute a material breach of this contract entitling Iclix CC to cancel the contract without further notice to the customer.

15.11 Sales of certain goods are subject to the US Government enhanced proliferation control initiative (EPCI) which states that these goods may not be sold to or be used for the purpose of nuclear weapons/explosive devices, for chemical or biological weapons including key components for the production of such weapons, or for the purpose of missiles or missile systems which deliver weapons for mass destruction. The customer undertakes to exercise due care to ensure that no such restrictions are breached by it.

15.12 Goods are manufactured for standard commercial use, and are not intended for use in critical safety systems or nuclear facilities.

#### **16. DISCLOSURE OF PERSONAL INFORMATION**

16.1 The customer understands that the personal information given in this credit application form is to be used by Iclix CC for the purposes of assessing credit worthiness. The customer confirms that the information given in this credit application form is accurate and complete. The customer further agrees to update the information supplied as and when necessary in order to ensure the accuracy of the above information failing which Iclix CC will not be liable for inaccuracies.

16.2 Iclix CC has the customer's consent at all times to contact and request information from any persons, credit bureau or businesses including those mentioned in the credit application form and to obtain any information relevant to the customer's credit assessment, including but not limited to information regarding the amounts purchased from suppliers per month, length of time customer has dealt with each supplier, type of goods purchased and manner and time of payment.

16.3 The customer agrees and understands that information given in confidence to Iclix CC by a third party on the customer will not be disclosed to the customer.

16.4 The customer hereby consents to and authorizes Iclix CC at all times to furnish credit information concerning the customer's dealing with Iclix CC to a credit bureau and to any third party seeking a trade reference regarding the customer in his dealings with Iclix CC.

I/We the undersigned do hereby warrant that all the information recorded in this application is true and correct and I/we agree that all transactions concluded with Iclix CC shall be subject to the standard terms and conditions specified herein and agree to be bound by all such terms and conditions, and without limiting the generality thereof.

I/We acknowledge that I/we has/have read and understood each term of this contract and accept them as binding and acknowledges that the content reflects the true intention of both parties and that this agreement has been entered into for the benefit of both the customer and Iclix CC.

THUS DONE AND SIGNED BY THE CUSTOMER AT \_\_\_\_\_

ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 20 \_\_\_\_\_

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

PHYSICAL ADDRESS AND DOMICILIUM

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for and on behalf of the customer being authorized hereto.

\_\_\_\_\_ Print name and position here