

General Terms and Conditions

1. Definitions

In these general terms and conditions the following words will have the meanings assigned to them unless the context indicates otherwise –

- 1.1. **Additional Services** means all services of any nature whatsoever supplied by us in addition to the Services or the Installation Services, pursuant to a request by you;
- 1.2. **Agreement** means these general terms and conditions which constitute an agreement between you and us;
- 1.3. **Bank Account** means your bank account, the details of which are specified in the Contract Schedule, or such other bank account communicated to us in writing in terms of clause 8 and/or the requirements of any Financier;
- 1.4. **Contract Period** means the Initial Contract Period plus any Renewal Period;
- 1.5. **Contract Schedule** means the Contract schedule appearing on the cover of this Agreement;
- 1.6. **Credit Application** means a credit application approved by us in writing;
- 1.7. **Effective Date** means the date upon which the conditions precedent in clause are fulfilled or waived by us;
- 1.8. **Financier** means any financier of the Products from time to time, if any;
- 1.9. **Initial Contract Period** means the period as set out in the Contract Schedule excluding any Renewal Period;
- 1.10. **Installation Date** means the date upon which the Products has been installed at the Installation Site and is capable of fulfilling its intended purpose;
- 1.11. **Installation Charges** means the charges as set out in the Contract Schedule for the set-up and installation of the Products at the Installation Site;
- 1.12. **Installation Services** means the services required in order to install the Products at the Installation Site;
- 1.13. **Installation Site** means the place at which we will install the Products and deliver the Products as specified in the Contract Schedule as the "Installation Site";
- 1.14. **Landlord** means the owner of the property on which the Installation Site is situated and from whom you Contract the premises within which the Installation Site is situated;
- 1.15. **Manufacturer** means the manufacturer of any of the Products or the owner of any Software;
- 1.16. **Payment Date** means the date upon which payment of any Invoice is to be made by you;
- 1.17. **Products** means the products specified in the Contract Schedule and/or the Proposal including all accessories thereto and software required for the operation thereof and such other software, devices, equipment or accessories which a necessary or incidental to the proper performance of the Services from time to time which are not reflected in the Contract Schedule;
- 1.18. **Renewal Period** means the period for which this Agreement continues on a month to month basis after the Contract Period;
- 1.19. **Rental** means the monthly Products rental payable for the lease of the Products by us to you in terms of this Agreement as specified in the Contract Schedule;
- 1.20. **Services** means the services, excluding the Installation Services, to be performed by us for the Contract Period, as set out in the Contract Schedule;
- 1.21. **Services Charges** means the monthly services charge set out in the Contract Schedule;
- 1.22. **Signature Date** means the date upon which you sign the Contract Schedule;
- 1.23. **Software** means any software, software application or like intellectual property whether imbedded or not, which is provided by us together with the Products under license, sublicense or otherwise or which is required in the performance of the Services;
- 1.24. **Telecommunications Service Provider** means any authorised provider of telecommunications services including fixed line operators, cellular operators, wireless operators or any other operator that provides network access and/or network services;
- 1.25. **Usage Charges** means all charges levied by any Telecommunications Service Provider in relation to the operation of the Products for its intended purpose;
- 1.26. **Warranties** means the warranties in relation to the Products if any which are supplied to us by the Manufacturer.

2. Interpretation

In this Agreement the following words will have the meanings assigned to them unless the context indicates otherwise –

- 2.1. any reference to the singular includes the plural and *vice versa*, any reference to a natural person includes a juristic person, and *vice versa*;
- 2.2. any reference to a "clause" is a reference to a clause of this Agreement;
- 2.3. any reference to "us" is a reference to Blue Diamond Trading 226 CC trading as "BVS Telecom", a close corporation with registration number 2006/086444/23;
- 2.4. any reference to "you" is a reference to the Customer, whose details appear in the Contract Schedule and any of your branches or persons or entities related or interrelated to you as these terms are defined in the Companies Act, 2008;
- 2.5. any reference to a "business day" is a reference to every Gregorian calendar day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 2.6. any reference to "business hours" is to be construed as being the hours between 08h00 and 16h30 on a business day based on South African Standard Time;
- 2.7. where any number of days is prescribed, such number will exclude the first and include the last day, unless the last day falls on a non-business day, in which case the last day will be the next succeeding business day;

- 2.8. the use of the word "including" followed by a specific example or specific examples is not to be construed as limiting the meaning of the general wording preceding it;
- 2.9. the rule of construction that this Agreement will be interpreted against the Party responsible for its drafting is not to apply;
- 2.10. all amounts are exclusive of Value Added Tax and are payable in South African Rand free of exchange, deduction or set-off by way of electronic funds transfer to such bank account communicated to you in writing;
- 2.11. clause headings have been inserted for convenience only and shall not be taken into account in its interpretation.

3. Conditions Precedent

- 3.1. This Agreement is subject to the conditions precedent that within a period of 30 days from the Signature Date –
 - 3.1.1. you make payment of the upfront payment set out in the Contract Schedule;
 - 3.1.2. you provide us with a duly completed Credit Application in a form approved by us;
 - 3.1.3. we conduct over-indebtedness and reckless credit checks as envisaged in the National Credit Act, 2005 (Act No. 34 of 2005), in relation to your business and advise you in writing that we are satisfied with the outcome thereof;
 - 3.1.4. you provide us with a certificate from your auditor or accountant confirming your asset value and annual turnover;
 - 3.1.5. you provide us with a letter signed by the Landlord (if any) on a company letterhead (in the case of a company or corporation) acknowledging that the Products is owned by us and is not subject to any Landlord's hypothec or other right of retention;
 - 3.1.6. where you are a company, trust or close corporation you provide us the necessary resolutions evidencing your representative's authority to conclude this Agreement;
 - 3.1.7. where you are a company, trust or close corporation you provide us with written and signed suretyship agreements in a form approved by us in terms whereof your directors/members/trustees (as the case may be) bind themselves with you as sureties and co-principal debtors in our favour as security for the due and punctual performance by you of your obligations under this Agreement,

(the **Conditions Precedent**).

- 3.2. If the Conditions Precedent are not fulfilled on or before their due dates for fulfilment none of the provisions of this Agreement will become of any force or effect.
- 3.3. The Conditions Precedent have been inserted for our benefit and we may waive them at any time in our discretion.
- 3.4. You undertake to provide us with such information as we may reasonably require to enable us to conduct the over-indebtedness and reckless credit checks under clause 3.1.1.
- 3.5. In order to enable us to conduct the over-indebtedness and reckless credit checks under clause 3.1.1, you consents to us making enquiries and conducting searches in relation to your credit record with any credit agency and any other party.

4. Contract Period

4.1. This Agreement shall commence on the Installation Date thus signed and confirmed by the customer that all services are operational and shall endure for the Initial Contract Period.

4.2. At the end of the Initial Contract Period this Agreement shall be renewed on a month to month basis on the same terms and conditions provided that either of us may terminate this Agreement at any time during the Renewal Period, by providing the other with at least 3 (three) calendar months notice in writing.

4.3. You shall not be entitled to cancel this Agreement before the Expiry of the Initial Contract Period, however if the Consumer Protection Act, 2008 is applicable to this Agreement and you cancel pursuant to a right afforded thereunder, a cancellation penalty equal to all amounts which would have been payable by you in terms of this Agreement had you not cancelled shall immediately become due and payable by you which penalty you acknowledge is reasonable.

5. Installation of Products

5.1. In return for payment of the Installation Charges we will install the Products at the Installation Site as soon as possible after the Effective Date provided that we shall not be liable for the costs of any electrical installation requirements.

5.2. You will not hold us liable for any damages of any nature whatsoever incurred by you as a consequence of the installation of the Products and hold us harmless against any claims made against us by any other person which may arise due such installation.

6. Rental of Products

6.1. In return for the Rental, we will rent the Products to you and you will hire the Products from us with effect from the Installation Date, for the Contract Period and subject to the terms and conditions contained in this Agreement.

6.2. We will remain the owner of the Products and you warrant that you will not in any manner whatsoever attempt to alienate, dispose of, encumber or pledge any of the Products.

7. Services and Installation Services

7.1. In return for payment of –

7.1.1. the Installation Charges, we will perform the Installation Services as soon as possible after the Effective Date; and

7.1.2. the Services Charges, we will, from the Installation Date and for the Contract Period, perform the Services.

7.2. All Additional Services shall be performed at our discretion and shall be reimbursed against presentation of an invoice therefore.

7.3. You undertake to, at your sole cost and expense, do all or anything necessarily required to enable us to render the Services and the Installation Services.

7.4. We shall be entitled to –

7.4.1. sub-contract all or a part of the Services or the Installation Services provided that we shall at all times remain responsible for the performance thereof in accordance with this Agreement; and

7.4.2. alter the routing of any traffic at any time in pursuit of the supply of Services.

8. Payment

- 8.1. You undertake to pay –
- 8.1.1. the Installation Charges on the later of the Installation Date or the date of presentation of an invoice therefore;
 - 8.1.2. for the monthly service charge and/or all other maintenance charges and insurance charges, if applicable, and of all other relevant periodic charges (including monthly and annual charges) either in arrears or in advance, as specified in the agreement, on the later of the 7th day after the start of each month or within 7 (seven) days from the date of presentation of an invoice therefore;
 - 8.1.3. Usage Charges within 7 (seven) days from the date of presentation of an invoice therefore; and
 - 8.1.4. Rental and / or Licenses monthly in advance within 7 (seven) days from the date of presentation of an invoice,
 - 8.1.5. Unless you notify us in writing within 3 (three) days of receipt of an invoice to the contrary, the contents of such invoice shall be deemed to be correct, due and payable
- 8.2. You consent to us making enquiries and conducting searches in relation to your credit record with any credit agency and any other party.
- 8.3. On each anniversary of the Signature Date the Rental shall increase by the percentage stated in the Contract Schedule and the Service Charges shall increase or decrease on each anniversary of the Signature Date in line with any increases or decreases to the consumer price index published from time to time by Statistics South Africa.
- 8.4. Usage Charges shall increase commensurately with any increases thereto by the relevant Telecommunications Service Providers.
- 8.5. Unless you notify us in writing within 3 days of receipt of an invoice to the contrary, the contents of such invoice shall be deemed to be correct.
- 8.6. According to the terms of this rental agreement, the non-receipt of invoices does not constitute non-payment.
- 8.7. For Fixed mobile services (i.e. Fixed LTE and other mobile services procured under this agreement) on activation of services by the respective network provider and not on the installation date.
- 8.8. For all other services procured under this agreement on installation date.
- 9. Your obligations**
- In addition to the general obligations set out in this Agreement you will at your cost and expense–
- 9.1. be responsible for the care and safekeeping of the Products and ensure that no person damages or misuses the Products in any way;
 - 9.2. not modify or alter the Products in any way, allow any person other than us to repair the Products or allow any person other than us to install any other systems, equipment or devices intended to interface with the Products without our prior written consent;
 - 9.3. comprehensively insure the Products against any loss, theft or damage, at the value and on terms acceptable to us and comply at all times with the provisions of such insurance policy including the prompt payment of any premiums thereunder;
 - 9.4. furnish us with proof of the payment of each and every insurance premium paid under clause 9.2 as and when paid;
- 9.5. at the end of the Contract Period return the Products to us in the condition it was in at the Effective Date, fair wear and tear excepted;
- 9.6. ensure that the Products is kept safe and in good working order and is used for its intended purpose and strictly in accordance with the Manufacturer's guidelines and manuals;
- 9.7. immediately report any faults or defects in the Products to us;
- 9.8. ensure that all services and installations are in place in order to enable us to install the Products at the Installation Site;
- 9.9. provide or procure the provision of programming or configuration to or on any of existing networks, internet protocols or voice systems where the Products is required to interface with or connect to it;
- 9.10. provide us with –
- 9.10.1. access to the Installation Site, all existing network, internet protocol and voice systems equipment, software and telephone ports (the **Existing Equipment**) for the purposes of installing the Products and monitoring and correcting the Existing Products and enabling the monitoring of performance of your obligations hereunder;
 - 9.10.2. all plans, organ grams, structural diagrams, architectural diagrams, block diagrams, user lists, company procedures and any other form of information that we may reasonably require for the proper supply of the Services and/or the Installation Services;
 - 9.10.3. such assistance as may be required by us in order to install the Products; and
- 9.11. pay all costs for the repair or replacement of the Products caused as a direct or indirect consequence of a breach by you of your obligations hereunder;
- 9.12. keep the Products installed at the Installation Site and refrain from relocating the Products to any other place without our prior written consent which may be given conditionally or withheld without giving reasons;
- 9.13. ensure that security procedures and measures are implemented so as to ensure the integrity of your Existing Products;
- 9.14. be responsible for obtaining all necessary approvals and authorities imposed by any competent authority and required for the installation of the Products and the performance by us of the Services,
- and you indemnify us and hold us harmless against all or any claims of any nature brought by any person as a direct or indirect consequence of any breach by you of your obligations hereunder.
- 10. Our obligations**
- In addition to the general obligations set out in this Agreement we will at our cost and expense –
- 10.1. install the Products as soon as possible after the Effective Date; and
 - 10.2. perform the Services with due care and skill.
- 11. Software**
- You shall –
- 11.1. use the Software only for the purposes for which it is intended and licensed in terms hereof;

- 11.2. not reverse engineer, decompile, modify, vary, enhance, copy, sell, lease, license, sub-license or otherwise deal with the Software or any part, variation, modification, release or enhancement thereof or have any software or any program written or developed for it based on the Software;
- 11.3. not nor permit any third party to reverse engineer, decompile, modify or tamper with the Software; and
- 11.4. implement upgrades to the Software as and when required by us.

12. Suspension

- 12.1. We shall be entitled upon 5 days' written notice to you and in any manner whatsoever, suspend the Services or your ability to use the Products in the event that –
 - 12.1.1. any modification, maintenance or remedial work is required to be undertaken pertaining in any manner whatsoever to the services; and/or
 - 12.1.2. you fail to perform any of your obligations or breach any term/s of this Agreement; and/or
 - 12.1.3. you exceed the credit limit which we, in our absolute discretion, may set from time to time.
- 12.2. We may require that you effect payment of any applicable reconnection charges pursuant to the restoration of the Services suspended in the circumstances contemplated in this Agreement.
- 12.3. You shall remain liable for the applicable charges payable by it in terms of this Agreement during any period of suspension contemplated above.

13. Force Majeure

If either party is prevented or restricted directly or indirectly from carrying out all or any of its obligations during the installation process under this Agreement by reason of any event occurring beyond the reasonable control of either party, including without limitation the unavailability of any communications lines and/or network operator facilities (**Force Majeure Event**), then that party shall be relieved of its obligations hereunder during the period that such event continues, and shall not be liable for any delay and/or failure in the performance of its obligations under this Agreement during such period, provided that if the Force Majeure Event continues for a period longer than 90 days, either party may cancel this Agreement before the installation date.

Once the services have been activated or installed on the Installation Date and signed by the customer as operational no **Force Majeure** can be declared in the event of diseases, illness, epidemic, pandemic, lockdown or shutdown in the Republic of South Africa.

Abuse of Services and Personal Information

- 13.1. In the event that we receive complaints from third parties with respect to the use of the Services by you, we reserve the right, in our sole discretion, in addition to terminating, cancelling or suspending this Agreement and/or the your use of the Services, to disclose any and all information relating to you, to the third party complaining of such abuse, any applicable authority or any other party and you hereby consents to such disclosure.
- 13.2. Furthermore, you warrant and undertake in our favour that you will not use nor allow the Services to be used for any improper, immoral or unlawful purpose, including, without limitation, attempting to utilize the Services to route (or assist another party to route) transit traffic from other networks to us, nor in any way which may cause injury or

damage to persons or property or an impairment or interruption of the services.

14. Ownership and risk

- 14.1. Notwithstanding anything to the contrary herein contained, ownership in the Products shall remain with us.
- 14.2. Risk in and to the Products will pass to you on the Effective Date.
- 14.3. You are therefore required to comprehensively insure the Products for its replacement value against any loss or damage including SASRIA at your cost.

15. Warranties

The Products is supplied with the Warranties, provided that if there the Manufacturer therefore does not give any Warranties the Products is supplied voetstoots.

16. Cession in Securitatum debiti

As security for the due and punctual performance by you of your obligations in terms of this Agreement, you pledge and ceded to us all your right, title and interest in and to any claims which you might now have or in future obtain against any person and warrant that you will, on a monthly basis provide us with details of all your debtors including their contact details, the cause of their respective debts and the amounts owing by them.

17. Limitation of Liability

We shall not be liable to you for any damages arising directly or indirectly as a consequence of the rental of the Products, the performance of the Services or the Installation Services and therefore you waive all or any claims of any nature whatsoever which you might now have or in the future obtain as a consequence of the rental of the Products or the supply of the Services or the Installation services.

18. Indemnity

You indemnify us against all or any claims of any nature whatsoever brought against us as a direct or indirect consequence of your use of the Products or the Services.

19. Related in inter-related Parties

If any of the Services are performed or the Products supplied by or at your direction whether expressly or tacitly to any person which is related or interrelated to you (as these terms are defined in the Companies Act, 2008), you warrant that such person will comply with the provisions of this Agreement and indemnify us against any damages suffered by any failure of such person to so comply.

20. Breach

- 20.1. Should you commit any breach of this Agreement and fail to remedy such breach within 7 days after having been called upon by us to do so, then and in such event we will be entitled in addition to any other rights and remedies that we may have in terms of this Agreement or otherwise, to cancel this Agreement and claim damages from you.
- 20.2. If we exercise our rights under clause 20.1 and we are successful in any proceedings against you, you will be liable for our costs, including legal costs on an attorney own client scale.

21. Cancellation

- 21.1. We will be entitled, without prejudice to any other rights which we may have, to cancel this Agreement if you –
 - 21.1.1. commit any act of insolvency;

- 21.1.2. compromise or endeavour to compromise with any of your creditors; or
- 21.1.3. any other person bring(s) an application for your liquidation or sequestration.
- 21.2. Upon cancellation all amounts due to us will become immediately due and payable and you will pay us an amount equal to all amounts which would have been payable by you at the end of the Initial Contract Period had it not been cancelled by us.
- 22. Notices And Domicilia**
- 22.1. You select as your *domicilia citandi et executandi* the physical address in the Republic of South Africa, and for the purposes of giving or sending any notice provided for or required to be sent under this Agreement, the email address as appearing in the Contract Schedule.
- 22.2. Any notice or communication required or permitted to be sent under this Agreement shall be valid and effective only if sent in writing and is signed by the Party by hand provided that it shall be competent to send notice by way of fax or email.
- 22.3. You may by notice to us change the physical address chosen as your *domicilium citandi et executandi* or your chosen postal address, telefax number or email address to another physical address within the Republic of South Africa, postal address, fax number or email address provided that such change shall become effective *vis-à-vis* us on the 5th business day from the receipt or deemed receipt of the notice by us.
- 22.4. Any notice –
- 22.4.1. sent by prepaid registered post in a correctly addressed envelope to your chosen *domicilium citandi et executandi* shall be deemed to have been received on the 5th business day after posting (unless the contrary is proved);
- 22.4.2. delivered by hand to a responsible person during ordinary business hours at the your chosen *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery;
- 22.4.3. sent by email to the email address chosen in terms of clause 22.1, shall be deemed to have been received on the date of dispatch (unless the contrary is proved).
- 22.5. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by you shall be deemed to be an adequate written notice or communication to you notwithstanding that it was not sent to or delivered at your chosen *domicilium citandi et executandi*.
- 23. Special conditions**
- This Agreement shall be subject to any special conditions/provisions set out in the Contract Schedule which shall take precedence over this Agreement insofar as there is any conflict between the provisions of this Agreement and such provisions.
- 24. General**
- 24.1. This Agreement constitutes the whole agreement between us relating to matters dealt with herein and save to the extent provided otherwise herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated herein will be binding on the Parties.
- 24.2. No addition to or variation of, deletion or agreed cancellation of any or all clauses of or provisions of this Agreement (including this clause) will be of any force or effect unless reduced to writing and signed by us.
- 24.3. No latitude, extension of time or other indulgence which may be given or allowed by us to you in respect of the performance of any obligation under this Agreement, and no delay or forbearance in the enforcement of any right of our rights arising from this Agreement and no single or partial exercise by us of any right under this Agreement, shall in any circumstances be construed to be an implied consent or election by us or operate as a waiver or novation of or otherwise affect any of our rights in terms of or arising by virtue of the provisions of this Agreement or estoppel or preclude us from enforcing at any time and without notice, strict, punctual and complete compliance with each and every provision or term hereof.
- 24.4. Failure or delay on our part in exercising any right, power or privilege under this Agreement will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 24.5. No waiver, suspension or postponement by us of any right arising out of or in connection with this Agreement shall be of any force or effect unless in writing and signed by us. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.
- 24.6. This Agreement shall be governed, interpreted and applied in accordance with the laws of the Republic of South Africa.
- 24.7. Except as otherwise specifically provided herein, each of us will bear and pay our own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.