

TERMS AND CONDITIONS OF SALE



NEDBANK WILL EXPLAIN THE TERMS AND CONDITIONS CONTAINED HEREIN TO YOU IN PLAIN ENGLISH LANGUAGE AND SIMPLE TERMS. SHOULD YOU NOT UNDERSTAND ENGLISH YOU ARE HEREBY INFORMED THAT YOU HAVE THE RIGHT AND OPPORTUNITY TO PROVIDE AN INTERPRETER OF YOUR CHOICE TO ASSIST US IN EXPLAINING THE CONTENT AND SUBSTANCE OF THESE TERMS AND CONDITIONS TO YOU. YOU ARE HEREBY FURTHER AFFORDED WITH THE RIGHT AND OPPORTUNITY TO READ, UNDERSTAND AND NEGOTIATE, IF NECESSARY, THE SUBSTANCE OF THIS AGREEMENT, WITHIN FIVE (5) BUSINESS DAYS FROM DATE OF RECEIPT AND WISH TO EXERCISE THIS RIGHT.

1. DEFINITIONS AND INTERPRETATION

- In this Agreement, unless a contrary intention clearly appears:
- 1.1. Words denoting any one gender include the other two genders, the singular includes the plural and vice versa, and natural persons include juristic persons and vice versa;
 - 1.2. When any number of days is prescribed in this Agreement, the first day will be excluded and the last day included, unless the last day falls on a Saturday, Sunday or public holiday in the Republic of Namibia, in which case the last day will be the next Business Day;
 - 1.3. The following terms will have the meanings assigned to them hereunder and similar expressions will have corresponding meanings:
 - 1.3.1. **"Act"** means the Credit Agreements Act, Act 75 of 1980, including the regulations thereunder, as amended from time to time;
 - 1.3.2. **"Agreement"** means and includes the Instalment Sale Agreement to which these terms and conditions are affixed, these terms and conditions, together with the Instalments Sale Application form, delivery receipt and all documents or Annexures attached to this Agreement and signed by the Parties from time to time;
 - 1.3.3. **"Business Day"** means any day that is not a Saturday, Sunday or public holiday in the Republic of Namibia, and "days" will be construed as a reference to calendar days;
 - 1.3.4. **"Buyer"** means the purchaser of the Goods, as more fully identified in the Instalment Sale Agreement to which these terms and conditions are affixed;
 - 1.3.5. **"Goods"** means the goods / items as described in the Instalment Sale Agreement to which these terms and conditions are affixed;
 - 1.3.6. **"Party"** means either the Buyer or the Seller and "Parties" shall refer to both the Buyer and the Seller;
 - 1.3.7. **"Seller"** means Nedbank Namibia Limited, Registration Number: 73/04561;
 - 1.3.8. **"Supplier"** means the person or vehicle dealership who supplied the Goods;
 - 1.3.9. **"Usury Act"** means the Usury Act, Act 73 of 1968, including the regulations thereunder, as amended from time to time.
 - 1.3.10. The General Terms and Conditions should be read in conjunction with these terms and conditions. The provisions of this agreement will take precedence only insofar where there is conflict with the General Terms and Conditions.

2. DEPOSIT AND BALLOON PAYMENTS

- 2.1. The Buyer shall, on or before signature of this Agreement, make the initial payment referred to overleaf, which payment shall be made either directly to the Seller or to the Supplier.
- 2.2. The initial payment shall be as specified in the Act.
- 2.3. The Buyer shall effect payment of the balance of the purchase price (as indicated overleaf) in equal instalments, with the exception of any balloon payments referred to overleaf (if applicable), as authorised by the Act. If applicable, the balloon payment referred to overleaf means the final amount payable by the Buyer under this Agreement, which is normally substantially greater than the Buyer's ordinary monthly instalment.
- 2.4. The Buyer acknowledges that, in terms of the provisions of the Act, the maximum period for repayment of the instalments shall be seventy-two (72) months. In light hereof, the Buyer understands that the balloon payment (if any) may not be refinanced or restructured.

3. PAYMENTS AND INTEREST

- 3.1. The Buyer shall pay to the Seller at the address nominated by the Seller the instalments shown in the Schedule. All payments shall be made without any deduction of whatsoever nature and by way of such instruments of payment as the Seller may nominate and which shall not be a novation of any of the Seller's rights.
- 3.2. In the event that there are insufficient funds available in the account designated by the Buyer for payment of the instalments, the Buyer hereby expressly authorises the Seller to debit the said account from time to time with the amount of monies due until the debit order has been successfully completed / executed.
- 3.3. The Seller is entitled to appropriate any payments received from or on behalf of the Buyer to any indebtedness of the Buyer to the Seller from whatever cause arising.
- 3.4. All amounts of whatever nature, due in terms of this Agreement and not paid when due, shall bear interest at a variable finance charge rate equal to the maximum finance charge rate permissible by law, from the date on which such amount fell due until the date paid. Interest on all amounts owed to the Seller shall be calculated daily, compounded monthly and shall be capitalised each month in arrears. This shall not detract from the other remedies available to the Seller on breach.
- 3.5. If the word "fixed" or "non-variable" does not appear next to the finance charges overleaf the following conditions shall apply:
 - 3.5.1. Should the prime lending rate publicly quoted by Nedbank Namibia Limited from time to time (evidenced by means of a certificate of any manager of Nedbank Namibia Limited, whose authority need not be proved) be increased or decreased, the finance charges yet to accrue and the unpaid instalments payable in terms of the Schedule will be increased or decreased commensurately with the change in the prime lending rate. The period over which the instalments are payable shall remain unchanged;
 - 3.5.2. In the event of this Agreement being subject to the provisions of the Usury Act (Act 73 of 1968) as amended, the finance charge rate arising from (3.5.1) above shall not exceed the maximum permissible rate in terms of the said Usury Act.

4. COLLECTION / DELIVERY

- 4.1. The Buyer shall collect the Goods from the Supplier or from the Seller (if agreed) at its own cost and shall, upon collection of the Goods, sign a Delivery Receipt acknowledging delivery of the Goods.
- 4.2. The Buyer shall inspect the Goods for any defects or errors before or upon collection thereof. If the Goods are defective or incorrect (ie. not according to specification) the Buyer shall immediately inform the Seller thereof and shall not take delivery of the Goods. The Buyer acknowledges and understands that, upon signature by him of the Delivery Receipt, he accepts the Goods in its current condition and state and the Seller shall not be liable for any such defects or errors.
- 4.3. The Buyer acknowledges that, notwithstanding his collection of the Goods from the Supplier directly, as per clause 4.1 above, the collection / delivery of the Goods is made by the Buyer on behalf of the Seller and the Seller shall retain ownership thereof, as more fully set out at clause 5 below.

5. OWNERSHIP AND RISK

- 5.1. Ownership in the Goods shall remain vested in the Seller until the Buyer has paid all amounts due in terms of this Agreement.
- 5.2. All risk in the goods from whatever cause arising shall pass to the Buyer upon delivery (in accordance with clause 4) or signing of this Agreement, whichever occurs first.

6. USE OF THE GOODS

- 6.1. The Buyer shall, at all times, keep the Goods in his possession and control, and exercise care in the use thereof and shall at his own cost and expense maintain the Goods in proper working order and if a motor vehicle, in a roadworthy condition and shall protect them from loss or damage and keep the Goods free from attachment, hypothec, or other legal charge or process and shall not, without prior written consent of the Seller, sell, encumber or in any way deal in the Goods.
- 6.2. The Goods shall be operated at the Buyer's cost and only by competent and properly trained, licensed and qualified persons, and shall be used only for the purpose for which they were intended and the Buyer shall himself comply and procure compliance with the specifications, instructions and recommendations of the manufacturer and/or supplier of the Goods and/or any person or company nominated by the manufacturer or supplier.
- 6.3. The Buyer shall not make any material alteration or modification to the Goods without the prior written consent of the Seller. Any part or accessory added to the Goods, or any improvements to the Goods, shall become part of the Goods and shall become the Seller's property without compensation. The Buyer shall therefore have no claim against the Seller for such improvements.
- 6.4. The Seller or its designated employees or agents shall at all reasonable times be entitled to examine the Goods wherever located.
- 6.5. The Buyer acknowledges and agrees that the Goods are movable property and that, should the Goods be installed, they will be installed with the intention that they remain movable property howsoever they may be installed.
- 6.6. The Buyer takes responsibility for the payment of all regulatory fees, including but not limited to, registration and license fees, as well as traffic fines. If any regulatory fees are paid by the Seller as a result of default on the part of the Buyer, the Seller shall claim repayment of the said fee, together with all reasonable disbursements made, directly from the Buyer.

7. NOTIFICATION OF ADDRESS AND LANDLORD AND RESTRICTION ON MOVEMENT OF GOODS

- 7.1. The Buyer shall advise the Seller of the full name and address of the Landlord where the Goods are kept and any subsequent Landlord so that the Seller may notify the Landlord of its ownership in the Goods.
- 7.2. The Goods shall not, without the prior written consent of the Seller, be used elsewhere other than the Republic of Namibia.

8. LICENCE & INSURANCE

- 8.1. The Buyer must at all times keep the Goods comprehensively insured with a registered insurer against all insurable risks, loss and damage for a value not less than the total current value of the Goods. Please note the following:
 - 8.1.1. The Buyer must ensure that the Seller's interest is noted in writing by the insurance company;
 - 8.1.2. Before taking delivery of the Goods the Buyer must provide the Seller with written confirmation of the insurance cover taken out over the Goods, with evidence that the Seller's interest has been duly noted, as per 8.1.1.
 - 8.1.3. The Buyer must give the Seller proof of insurance within 7 days of the Seller requesting the Buyer, but in any event at least once a year, as well as proof that all premiums have been paid.
 - 8.1.4. If the Buyer does not give the Seller proof that he/she has insured the Goods, the Seller shall be entitled to insure the Goods and recover the costs from the Buyer or add such costs to the Buyer's account and to recover such costs in instalments over the remaining period of the Agreement;
 - 8.1.5. If the cost of the insurance is added to the balance due by the Buyer in terms of this Agreement, it will bear interest at the same rate as specified in the schedule;
 - 8.1.6. Where the Seller's interest has been noted against the insurance policy, the Buyer confirms that his rights in terms of the insurance policy have been ceded to the Seller as security for all his obligations to the Seller in terms of this Agreement and the Buyer agrees to sign any further documentation required to give effect to this cession;
 - 8.1.7. If any of the insurance policies described herein are cancelled or lapse during the term of this Agreement, or if the Buyer fails to comply with the provisions of this clause or the conditions of the insurance policies, it will constitute a material breach of the Agreement and the Seller shall have the right to cancel this Agreement.
 - 8.1.8. If required, the Buyer will transfer his/her rights in respect of any comprehensive or life insurance policy to the Seller as security for the payment of any amount still due by the Buyer to the Seller.
- 8.2. The Buyer will be responsible for the licensing and registration (if applicable) of the Goods where these consist of a vehicle, together with all costs of doing this, and proof thereof will be provided to the Seller upon request.

9. THE RIGHT TO TERMINATE

- The Buyer's attention is drawn to section 13 of the Credit Agreements Act, 1980, which reads:
- "13(1) When any credit Agreement in respect of which the initiative emanated from any credit grantor or his manager, agent or employee, is signed by any credit receiver at a place other than the business premises where the credit grantor or his manager, agent or employee ordinarily carries on business, the credit receiver may within five days after the date of the credit Agreement terminate it by notice in writing delivered or sent by prepaid registered mail to the credit grantor, and by tendering the return of any goods delivered to him in terms of the credit Agreement.*
- (2) *The period of five days contemplated in subsection (1) shall be calculated with the exclusion of the day upon which the credit Agreement was entered into and of any Saturday, Sunday or public holiday.*
 - (3) *When any credit Agreement is terminated by any credit receiver in accordance with subsection (1), the credit grantor shall within 10 days of the date upon which the relevant notice of termination was delivered or sent to him by mail, refund to such credit receiver the amount of all payments made to him in terms of the credit Agreement."*

10. BREACH

- 10.1. Should the Buyer:
 - 10.1.1. default in the punctual payment of any instalment or any other amount falling due; or
 - 10.1.2. fail to observe and perform any other of the terms, conditions and / or obligations of this Agreement; or
 - 10.1.3. commit any act of insolvency or, being a natural person, surrender his estate or die; or
 - 10.1.4. suffer any default judgement against him to remain unsatisfied for seven days or be refused rescission within 14 days of any default judgement; or
 - 10.1.5. be sequestered or placed under judicial management or be wound up, whether provisionally or finally; or
 - 10.1.6. abandon the Goods; or
 - 10.1.7. compromise with his creditors or attempt to do so; or
 - 10.1.8. have made any inaccurate statement or representation in connection with this Agreement or his financial position; or
 - 10.1.9. do or suffer to be done anything which might prejudice the Seller's rights under the Agreement; or
 - 10.1.10. allow the Goods to be seized under any legal process issued against the Buyer; or
 - 10.1.11. apply for assistance in terms of the Agricultural Credit Act, 1966 (as amended); then, and upon the happening of any of these events, the Seller shall be entitled at its election and without prejudice to any other rights to:
 - 10.1.11.1. claim immediate payment of all amounts payable in terms hereof, irrespective of whether or not such amounts are due at that stage; or
 - 10.1.11.2. cancel this Agreement, take repossession of the Goods (without the need to first obtain a court order), retain all payments already made in terms hereof by the Buyer and to claim as liquidated damages, payment of the difference between the balance outstanding and the resale value of the Goods determined in accordance with clause 10.2.
- 10.2. Whenever it is necessary in terms of this Agreement to determine the market value of the Goods, such value shall be determined at the expense of the Buyer by an appraiser appointed by the Seller, whose valuation shall be final and binding on the Buyer. Should the Seller thereafter sell or lease the Goods on such terms and conditions as the Seller in his sole discretion deems reasonable, at an amount exceeding the value determined, the price at which the Goods are sold or leased shall be deemed to be the value.

11. TERMINATION ON TOTAL LOSS

- 11.1. This Agreement shall terminate forthwith in respect of such Goods as are lost or stolen or any event that renders the Goods inaccessible to the Seller and not recovered within a period of 21 days; or are destroyed or damaged beyond repair. The Goods shall be deemed beyond repair only if the insurer of such Goods elects to treat them as a total loss or if in the opinion of the Seller the Goods have been damaged beyond repair. The Buyer shall notify the Seller in writing within 24 hours if the Goods have been damaged and/or destroyed and/or is lost or stolen or in any way inaccessible to the Seller.
- 11.2. On termination of this Agreement pursuant to this clause, the Buyer shall forthwith pay to the Seller the balance outstanding at the date of such termination, together with all other amounts payable under this Agreement, and the Seller shall reimburse the Buyer as far as possible out of the proceeds (if any) received by the Seller from any insurance policy in respect of the Goods. If the insurer of the Goods elects to treat the same as a total loss and take over the Goods, the Buyer shall deliver the Goods to the insurer at the Buyer's cost and expense.

12. EARLY TERMINATION

- 12.1. The Buyer may settle this Agreement earlier than envisaged herein, without penalty, provided that the Buyer gives 90 (Ninety) days written notification to the Seller of his intention to settle the Agreement before the expiry date.
- 12.2. The notice referred to in clause 12.1 above may only be served on the Seller after 90 (Ninety) days from the date of this Agreement. The Buyer shall therefore not be able to settle the Agreement unless the Agreement has been valid and active for at least a minimum of six months (ie. 3 months before notice of settlement is provided, plus the 3 month notice period itself).
- 12.3. The Buyer shall effect payment of the total outstanding balance due at date of settlement, inclusive of interest accrued thereon, when effecting settlement of the Agreement.
- 12.4. However, should the Usury Act not be applicable to this Agreement then the Buyer will not be entitled to any reduction in finance charges if he/she pays any amount before it becomes due.

13. INDEMNITY

13. The Buyer hereby indemnifies the Seller against any claim arising from the use and / or possession of the Goods.

14. SUBSTITUTION

- 14.1. If, after delivery of the Goods, the Parties have agreed that other Goods be substituted for all or part of the Goods so described, this Agreement will apply to the substituted Goods rather than the Goods originally described from the date of delivery of the Goods.
- 14.2. The Seller shall prepare an amended Agreement describing the substituted Goods. However, the remaining provisions of the Agreement will remain in force and continue to apply in respect of such substituted Goods.

15. CREDIT BUREAU

- 15.1. The Buyer consents to the Seller periodically checking and reporting the Buyer's credit status with any registered credit bureau or credit reference agency. By doing so the Buyer consents to the Seller disclosing such information as may be necessary or required to check and/or report such credit status of the Buyer, in terms of the applicable laws, and in this regard:
 - 15.1.1. The Buyer confirms that the Seller may transmit to all relevant credit bureaus data about the application for, opening and termination of this facility, as well as your conduct of / under this Agreement;

TERMS AND CONDITIONS OF SALE

- 15.1.2. The Buyer acknowledges that information on non-compliance with the terms and conditions of this Agreement is transferred to such credit bureaus;
- 15.1.3. the credit bureaus provide credit profiles and possibly credit scores on your credit worthiness, subject to the credit record;
- 15.1.4. The Buyer have the right to have the credit record disclosed and to correct inaccurate information by contacting the credit bureaus directly.
- 16. INDULGENCE AND WAIVER**
- 16.1. No relaxation or indulgence granted by the Seller to the Buyer shall be deemed to be a waiver of any of the Seller's rights, nor shall any such relaxation or indulgence be deemed to be a novation of any of the terms and conditions of this Agreement.
- 16.2. No waiver by the Seller of any term or condition of this Agreement shall be binding or effectual unless contained in writing and signed by the Seller, and any such waiver will be effective only in the specific instance and for the purpose given.
- 16.3. No failure or delay on the part of the Seller in exercising any right, power or privilege will operate as a waiver thereof, nor will any single/partial exercise of any right, power or privilege preclude any exercise thereof or the exercise of any other right, power or privilege. Should the Seller thus allow the Buyer any latitude or extension of time, it is not and should not be understood as a novation or waiver of its rights in respect of this Agreement, and it will also not be, or be the cause of, an estoppel against the Seller.
- 17. ENTIRE CONTRACT**
- 17.1. Excluding prior documents duly signed by the parties, this Agreement is the whole Agreement between the parties and no variation shall be of any force or effect unless agreed to by the Seller in writing.
- 17.2. Notwithstanding the above, the Buyer acknowledges and accepts that NedBank Namibia Limited may from time to time amend or replace such terms and conditions insofar as they relate to the facility and publish such revised terms and conditions on its website.
- 17.3. Any such amendment or replacement shall not amount to a novation of this Agreement or of any of the Buyer's previous/ existing obligations to the Seller.
- 17.4. The Buyer acknowledges that it remains his / her responsibility to keep him/herself informed of the terms and conditions.
- 18. CESSION, ASSIGNMENT AND WAIVER**
- 18.1. The Buyer shall not cede any of his rights nor assign any of his obligations hereunder without the prior written consent of the Seller.
- 18.2. The Buyer hereby consents to the Seller ceding, assigning and / or transferring all or any of its rights, title or interest in and to this Agreement, as well as any security whatsoever held by the Seller in respect of the Buyer's indebtedness hereunder, to and in favour of any third party/ies. This includes the right to delegate any obligation in terms of this Agreement and / or security or other security mutatis mutandis.
- 19. SELLER'S INTERVENTION TO PROTECT HIS RIGHTS**
- If the Buyer fails to comply with any of the provisions of this Agreement, the Seller shall have the right to effect such compliance on behalf of the Buyer. All costs and expenses incurred by the Seller in so doing or otherwise in protecting his title to the Goods shall be paid by the Buyer to the Seller on demand.
- 20. COSTS AND OTHER CHARGES**
- 20.1. All duties and levies payable in respect of this Agreement or any suretyships or securities given in respect hereof shall be paid by the Buyer on demand.
- 20.2. All costs and disbursements, including legal costs on the attorney and client scale (including collection commission and any other sundry charges), incurred by the Seller in recovering possession of the Goods, or in tracing the Buyer and/or the Goods and in disposing of the goods, collecting or endeavouring to collect all or any amounts payable by the Buyer to the Seller, or otherwise, and all collection commissions, storage charges, costs of valuation of the Goods, costs of sale including costs of restoring the Goods to a saleable condition, selling commissions, dismantling and removal charges and all other fees and charges of a like nature shall be payable by the Buyer to the Seller on demand.
- 20.3. NedBank Namibia Limited shall have the right to debit the Buyer's account with the costs and charges listed above and with the charges in respect of its standard service, as well as any other fees and charges payable from time to time by the Buyer, and including costs or charges incurred by NedBank in presenting the Buyer's debit order for payment from time to time (if any), and the Buyer hereby authorises NedBank to debit any of his / her accounts held with NedBank in respect of such costs and charges.
- 21. DISCHARGE**
- 21.1. The Parties to this Agreement may agree and consent in writing to the discharge and substitution of this Agreement. Such substituted agreement shall be on similar terms and conditions to this Agreement.
- 22. GOVERNING LAW**
- This Agreement and the relationship between the Buyer and the Seller shall be governed by and construed and interpreted in accordance with the applicable laws of the Republic of Namibia.
- 23. JURISDICTION**
- 22.1. The Buyer hereby consents to the jurisdiction of the Magistrate's Court having jurisdiction over the person in respect of all legal proceedings connected with this Agreement, notwithstanding that the value of the matter in dispute might exceed the Court's jurisdiction.
- 22.2. Notwithstanding the foregoing the Seller shall be entitled to institute all or any proceedings against the Buyer connected with this Agreement in any division of the High Court of Namibia having jurisdiction.
- 22.3. Any certificate signed by any manager of the Seller (whose authority need not be proved) shall be prima facie evidence of the matter therein stated for all purposes.
- 24. DOMICILIUM**
- 24.1. The parties hereby choose domicilium citandi et executandi for all notices and processes at their respective addresses given overleaf. Any notice of any change in such address shall be given in writing by the party concerned and delivered by hand or sent by registered mail to the other party. Such change of address will be effective seven days after receipt of notice of the change of domicilium.
- 23.2. All notices to be given in terms of this Agreement will:
- 23.2.1. be given in writing;
- 23.2.2. be delivered or sent by prepaid registered post;
- 23.2.3. if delivered, be presumed to have been received on the date of delivery;
- 23.2.4. if sent by registered post, be presumed to have been received on the tenth business day following the date of posting unless the contrary is proved.
- 23.3. Notwithstanding the above, any notice actually received by the party to whom the notice is addressed will be deemed to have been properly given and received notwithstanding that such notice has not been given in accordance with the provisions of this clause.
- 24. FATCA POLICY**
- The Foreign Account Tax Compliance Act (the "Act") forms part of this Agreement governing the Buyer's relationship with NedBank. The Act shall be binding on the Buyer and the Buyer hereby agrees to comply with and adhere thereto. Should there be any conflict or inconsistency between the Act and the Agreement, the contents of the Act shall prevail.
- 25. SANCTIONED TRANSACTIONS / ANTI-MONEY LAUNDERING / COUNTER-TERRORISM FINANCING / EXCHANGE CONTROL**
- 25.1. In order to comply with and/or to meet its reporting requirements in terms of all applicable laws, regulations, requests by authorities, directives, international best practice and policies relating to anti-money laundering, counter-terrorist financing, exchange control, and sanctioned transactions, NedBank may be:
- 25.1.1. prohibited from entering into certain foreign exchange transactions unless the conditions of approval by Bank of Namibia are first complied with; and/or
- 25.1.2. prohibited from entering or concluding transactions involving certain countries, entities, banks, vessels and/or individuals (e.g. a person or entity that is itself sanctioned, or connected to or dealing with – directly or indirectly – any person or entity that is sanctioned under economic and trade sanctions imposed by any supranational organisation, international organisation, official body, the United States of America, Her Majesty's Treasury, the United Nations, the European Union or any country); and/or
- 25.1.3. prohibited from engaging in transactions that are subject to such sanctions as described above (including, but not limited to, the clearing of incoming / outgoing cheques drawn on / presented before all sanctioned banks); and/or
- 25.1.4. compelled to reject such transactions and/or block the related funds, as per sanctions, policies and legislation; and/or
- 25.1.5. required to report any suspicious transactions to the relevant authorities.
- 25.2. To this end NedBank or any of its employees shall be entitled to:
- 25.2.1. intercept and investigate any payment messages and/or other information or communications sent to or by the customer, and/or on the customer's behalf; and
- 25.2.2. delay, block and/or refuse to make any payment and payment screening, which in turn may cause a delay in the processing of certain information.
- 25.3. NedBank shall not be liable for any loss arising out of any action taken or any delay or failure by performing any of its duties or other obligations, caused in whole or in part by any steps taken as set out above. The customer agrees not to make any of the finance provided by NedBank to the customer, available to sanctioned individuals and/or entities or for the purposes of any sanctioned or illegal activity.
- 25.4. NedBank reserves the right, subject to applicable law, to terminate the services/account/product and the customer's right to use the account/product at any time and for any reason, including without limitation if the bank, in its sole judgment, believes the customer is/has engaged in conduct or activities that violate any of the T&C's or the rights of the bank, or if the customer provides the bank with false or misleading information, or as Nedbank may in its sole discretion deem necessary
- 26. CONFIDENTIALITY**
- The Buyer consents to the Seller disclosing confidential information about the Buyer to other divisions / associated companies within the Seller's group. The Buyer acknowledges that such consent amounts to a waiver, in the Seller's favour, of the Buyer-Seller confidentiality principle.
- 27. RIGHT OF SET-OFF**
- The Seller shall retain all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the Seller's option to withhold, without notice to the Buyer, and to set-off, any moneys due to the Buyer by the Seller, whether under this Agreement or otherwise, up to any amounts due and owing to the Seller with regard to this Agreement and/or any other Agreement with the Seller, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the Seller for any other reason, whether either such liability is liquidated or unliquidated, present or future, accrued or contingent. The Seller shall exercise its set-off rights in accordance with normal Banking practices.
- 28. UNILATERAL TERMINATION**
- As a condition of subscribing to the service and/or using the account/product, the Buyer warrants to NedBank that the Buyer will not use the service/account/product for any purpose that is unlawful or is not permitted, expressly or implicitly, by the terms of this Agreement or by any applicable law or regulation. NedBank reserves the right, subject to applicable law, to terminate the services/account/product and the Buyer's right to the service/account/product at any time and for any reason, including without limitation if Nedbank, in its sole judgment, believes the Buyer is/has engaged in conduct or activities that violate any of the T&C's or the rights of NedBank, or if the Buyer provides NedBank with false or misleading information.
- 29. FURTHER INFORMATION**
- The Buyer agrees to furnish the Seller, on request, with such information and / or documents as may be required from time to time, in respect of either the Buyer him/herself, or his / her spouse and / or any surety, guarantor or other person who has provided security in respect of the Buyer's indebtedness to the Seller.
- ADDITIONAL TERMS AND CONDITIONS IF THIS TRANSACTION IS NOT SUBJECT TO THE CREDIT AGREEMENTS ACT.**
- 30. ADDITION AND DELETION OF CLAUSES**
- 30.1. In the event of this transactions being outside the ambit of the Credit Agreements Act then:
- 30.1.1. The provisions of clause 9 above shall not apply; and
- 30.1.2. The additional provisions of clauses 31 and 32 below shall apply.
- 31. WARRANTIES/GUARANTEES**
- 31.1. The Buyer acknowledges and warrants that:
- 31.1.1. The Goods have been or will be purchased by the Seller from a Supplier at the Buyer's request and solely for the purpose of selling the Goods to the Buyer;
- 31.1.2. Both the Goods and the Supplier of such Goods have been selected and approved by the Buyer and the Goods are hereby sold by the Seller to the Buyer as supplied by the Supplier;
- 31.1.3. The Seller does not guarantee the Buyer against eviction for any reason whatsoever;
- 31.1.4. Neither the Seller nor anyone on its behalf has given any warranties, guarantees or undertakings of whatever nature as to the quality of the Goods or their fitness for the purpose intended or has made any representation of whatever nature to induce the Buyer to enter into this Agreement and he is aware that the sale in terms hereof is "voetstoots" in all respects and that he shall have no claims of whatever nature (whether for consequential damages or otherwise) against the Seller and indemnities the Seller against any claims which may be made against the Seller by any third party from whatever cause arising;
- 31.1.5. Defective and/or incomplete delivery or the failure by the Supplier to make good any breach or fulfil any warranties, guarantees, representations or undertakings shall in no way affect the Buyer's obligations and the Buyer shall continue to perform all his obligations including paying the instalments as they fall due as if no such defective or incomplete delivery or failure had occurred.
- 32. LIABILITY**
- The Seller will not be liable to the Buyer for any damage or loss that the Buyer may suffer if:
- 32.1. incorrect information is given by the Seller in good faith to any person, including any credit bureau;
- 32.2. the Seller processes any information incorrectly received;
- 32.3. any person gains unauthorised access to the Buyer's information or data (whether correct or incorrect). The Buyer acknowledges that the Seller shall not be required to enquire into the validity of any information provided by the Buyer to it for purposes of the Agreement; and that once the Seller has received and implemented an instruction given by the Buyer, the Buyer shall not be entitled to countermand or amend such instruction but shall be obliged to follow such procedures as may be prescribed by the Seller from time to time.
- 33. SEVERABILITY**
- Every provision (including this clause) of this Agreement is deemed to be separate and severable. In the event of any of the provisions contained herein being in conflict with any Statute Law in force in the Republic of Namibia for the time being, then such provision shall be deemed to be amended only to the extent necessary to bring it into compliance with such law. Where it is not possible to bring such provision into compliance with such law, or where any provision is found to be defective or unenforceable for any reason, that provision shall be severed from the remaining provisions and the validity of the remaining provisions will continue to be of full force and effect.
- 34. EXCLUSIVE OFFERING**
- In the event that the Buyer has purchased the Goods subject to an Exclusive Offering, which shall be duly indicated on the Instalment Sale Agreement to which these Terms and Conditions are attached, the following additional clause shall apply to the Agreement:
- The Exclusive Offering is subject to and conditional upon the Buyer being a Nedbank Namibia Client who routes his / her salary through his / her Nedbank Namibia transactional banking account. Should the Buyer at any time during the currency of this Agreement move his / her salary account from Nedbank, such action will constitute a breach of the terms of the Agreement as the Buyer no longer meets the conditions precedent to qualify for the Exclusive Offering. In the event of the Bank becoming aware of the breach, the Bank reserves the right to amend the interest rate applicable to the Agreement to Prime plus 4% effective immediately, without any requirement on the Bank to provide the Buyer with notice of such amendment. The Bank shall not be liable to the Buyer for any claims whatsoever in respect of any amendment to the interest rate as, the Buyer hereby acknowledging that the interest rate under the Exclusive Offering is conditional upon the Buyer being a Nedbank Namibia client and routing his / her salary through his / her Nedbank account.
- DEBIT ORDER AUTHORISATION**
- I, the undersigned herewith give consent to any registered insurer chosen by myself to execute a Debit Order instruction on my behalf and collect such insurance premiums from any Banking Institution where I may have an account for the due and punctual payment of such premiums. I herewith indemnify and hold such Banking Institution harmless against any claim or deduction made on my account as a result of the said Banking Institution honouring such Debit Order instruction.