



AGERA GROUP

**AGERA GROUP I WIRES & WIRELESS**

3 Autumn Street, Rivonia, Johannesburg, 2128

**Tel:** +27 11 8836410

**Directors:** A Hicks, B Silbermann

[www.wires.co.za](http://www.wires.co.za)

## CLIENT ASSESSMENT

### TERMS AND CONDITIONS

IN CONSIDERATION OF THE COVENANTS & AGREEMENTS CONTAINED IN THIS AGREEMENT THE PARTIES TO THIS AGREEMENT AGREE AS FOLLOWS:

#### 1. DEFINITIONS:

- 1.1 In this agreement the headings of clauses are for reference purposes only and shall not be considered when construing the contents hereof; the singular form includes the plural form and vice versa; one gender includes the other genders and vice versa; a natural person includes a juristic person and vice versa; and unless inconsistent with the content, the following words will have the meanings ascribed to them herein:
- 1.1.1 **“Agreement”** means this agreement comprising of Wires & Wireless' terms and conditions of business as set out herein
- 1.1.2 **“Client”** means the person and/or business whose name appears on the Application Form as the person in whose name the Business Account will be operated in and who entered this agreement with Wires & Wireless.
- 1.1.3 **“Wires & Wireless”** means Wires & Wireless (Pty) Ltd (registration number 1972/010589/07), and all its subsidiary or affiliated companies and duly authorised representatives.
- 1.1.4 **“goods”** means the equipment and/or any other items stipulated in any documentation or electronic correspondence which includes but is not limited to tax invoices, sales orders, *proforma* invoices, delivery notes, repair notes, quotations, credit notes and statements issued to the Client by Wires & Wireless, including but not limited to the fittings, accessories, and modifications to it from time to time, and all components and replacement parts that may at any time be added to it or substituted in or on it, in terms of this agreement;
- 1.1.5 **“services”** means the all the services stipulated in any documentation or electronic correspondence which includes but is not limited to tax invoices, sales orders, *proforma* invoices, delivery notes, repair notes, quotations, credit notes and statements issued to the Client by Wires & Wireless, including but not limited to installation services, repair and/or maintenance services as well as all variations and amendments to installation services and repairs services in terms of this agreement;
- 1.1.6 **“Signatory”** means the natural person who signs this agreement on behalf of the client.

#### 2. INTERPRETATION AND APPLICATION:

- 2.1 The Client agrees and confirms that this Agreement:
- 2.1.1 will govern all future contractual relationships between the parties.
- 2.1.2 is applicable to all existing debt between the parties.
- 2.1.3 is final and binding and is not subject to any suspensive or resolutive conditions whatsoever.
- 2.1.4 Supersedes all previous conditions of agreement without prejudice to any securities or guarantees held by Wires & Wireless and applies to all employees and subcontractors of Wires & Wireless.
- 2.2 Wires & Wireless shall at its sole and absolute discretion be entitled, after completion of the Application Form by the Client to.
- 2.2.1 make any enquires as it may deem necessary to evaluate the Application Form for a Purchase Facility.
- 2.2.2 determine whether or not to grant the Client a Purchase facility on the terms as applied for by the Client, or on any other terms, or at all;
- 2.2.3 inform the Client of the determination made pursuant to the above;
- 2.2.4 the Client agrees and understands that Wires & Wireless is under no obligation whatsoever, purely by reason of the Clients application or otherwise, to decide and/or to approve a Purchase Facility for the Client.
- 2.3 The Client agrees that any contract for the supply of goods and/or services, including any variation to the said contract requested by the Client and agreed to by Wires & Wireless, is subject to this Agreement.
- 2.4 The parties agree and record that any apparent or purported or attempted exclusion, substitution or variation of any of these terms and conditions by the Client in its purchase order or in any other way whatsoever shall have no effect on this Agreement, nor shall it amend this Agreement in any manner whatsoever, nor shall it be binding on Wires & Wireless. Furthermore, irrespective of the fact that Wires & Wireless may have accepted a purchase order from the Client which appears to purport or to attempt such exclusion, substitution or variation, these Terms & Conditions shall stand unaffected thereby as if such apparent or purported or attempted exclusions, substitution or variation was *pro non scripto*.



**3. QUOTATIONS:**

- 3.1 Any quotation given by Wires & Wireless shall not be construed under any circumstances whatsoever to be an offer by Wires & Wireless to supply the goods and/or services to the Client, but instead constitutes an invitation by Wires & Wireless to the Client to do business with Wires & Wireless.
- 3.2 Wires & Wireless may accept or reject in whole or in part any order placed upon it by the Client pursuant to a quotation by Wires & Wireless. Accordingly, a contract shall only come into force between Wires & Wireless and the Client if:
  - 3.2.1 after the receipt by Wires & Wireless of the Clients' official signed Purchase Order Number from the Clients financial department, and/or;
  - 3.2.2 Wires & Wireless confirms to the Client in writing that such a contract has been concluded, and/or;
  - 3.2.3 Wires & Wireless supplies, or tender to supply, the goods and/or services in question to the Client.
- 3.3 Any and all quotations by Wires & Wireless are based on rates of exchange, freight charges, insurance, railage, costs of labour and materials and other charges ruling at the date of the quotation. Any variation occurring subsequent to the date of the quotation in any of the aforesaid rates or charges, as the case may be, will immediately affect the quotation price and shall entitle Wires & Wireless to vary the amount of the quotation accordingly.
- 3.4 All quoted prices are subject to the availability of goods and resources and are subjected to correction of the good faith errors by Wires & Wireless. Acceptance thereof is to be confirmed in writing by the Client.
- 3.5 Wires & Wireless shall not be held liable for errors or omissions in quotations, including but not limited to, transposition errors, errors in cast, decimal errors or any errors that are unintentional human input errors.
  - 3.5.1 The party discovering such errors or omissions, misunderstanding and/or oversight, or an act resulting from such error or omissions, misunderstanding and/or oversight, will notify the other party in writing promptly upon discovery thereof, and the parties shall act to correct such error or omission, misunderstanding and/or oversight within 7 business days of such other party's receipt of such notice.
  - 3.5.2 The above clause shall not be constructed as a waiver by either party of its right to enforce strictly the terms of this agreement.

**4. SALE:**

- 4.1 The sale of any equipment is subject to the completion and signing of this agreement by the Client, the passing of the relevant credit check and acceptance thereof by Wires & Wireless, in its sole and absolute discretion, and this agreement shall not be valid and binding on Wires & Wireless until such time as Client has completed and signed these terms and conditions in full and Wires & Wireless is satisfied with the information provided. This condition is stipulated for the benefit for Wires & Wireless and may therefore be waived by Wires & Wireless at any time in writing to the Client.
- 4.2 For so long as Wires & Wireless is in the process of supplying and/or installing goods and/or services and the Client is paying the instalment amounts to Wires & Wireless in respect of the goods and/or services, ownership of the goods shall vest in Wires & Wireless, and the Client shall have no claim of whatsoever nature to the goods.
- 4.3 Should the Client fail to pay any instalment amount in terms of this and any other agreement between Wires & Wireless and the Client, Wires & Wireless reserves the right to enter the Clients premises without a court order on which the goods have been installed and remove all the goods and discontinue any services. In which case any amounts which have been paid in part by the Client to Wires & Wireless shall be treated as rental payments for the use and enjoyment of the goods and/or services.

**5. ORDERS AND PURCHASE ORDER NUMBER:**

- 5.1 Wires & Wireless will not begin to process any orders and/or schedule any Jobs without a signed Purchase Order document issued by the Clients' financial department.
- 5.2 It is the sole responsibility of the Client, and the Client is obligated to determine and ensure that the goods and/or services ordered are suitable for the purposes of the intended use. No liability whatsoever shall accrue to Wires & Wireless should goods be found not suitable for their intended purpose.
- 5.3 All orders need to be placed in writing by the Client. Wires & Wireless will not be held responsible for incorrect telephonic or verbal orders placed by the Client. The Client will be liable for any charges incurred by Wires & Wireless in resolving the incorrect orders that are processed on telephonic or verbally communicated instructions from the Client.

**6. CLIENT OBLIGATIONS:**

For so long as any amounts owing by the Client to Wires & Wireless in terms of any agreement, the Clients shall:

- 6.1 Provide accurate and detailed information, as requested by Wires & Wireless in this credit application and warrants that all information which it has provided is current and accurate and may be relied upon by Wires & Wireless.



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- 6.2 Pay any and all fees, including installation fees as well as any other amount which may become due and owing in terms of any agreement between Wires & Wireless and the Client, in full and on time.
- 6.3 Use its reasonable endeavours to keep and maintain the goods in a good state of repair and not do, or omit to do, anything which may result in damage or destruction of the goods until the goods have been paid in full.
- 6.4 Not tamper or interfere with the equipment in any way or for any reason whatsoever until the goods have been paid for in full.
- 6.5 Secure all necessary rights and/or authorisations from the relevant property owner prior to the installation by Wires & Wireless of any goods and/or services and hereby warrants that it has obtained such rights and/or authorisations.
- 6.6 Not remove or move any goods from the premises in or on which the goods and/or services were delivered and/or installed, without obtaining the prior, written consent of Wires & Wireless, which consent may reasonably be withheld.
- 6.7 Not do anything which may vitiate any insurance cover taken out over the goods, alternatively result in the repudiation of any claim by the insurer of the goods.
- 6.8 Ensure that, to the extent that the goods are installed on property which is not owned by the Client, the Client shall ensure that the owner of the property on which the goods are installed/delivered, as well as any contractors working on such property, are aware that the goods remains the property of Wires & Wireless until paid for in full and the Client shall take all such steps necessary to ensure the goods are not damaged, destroyed or subject to attachment. Should the Client fail in ensuring that all such third parties are properly apprised of the ownership of delivered/installed goods, the Client shall be liable for all the costs incurred in the recovery and/or replacement of such goods.
- 6.9 Bring to Wires & Wireless' attention, as soon as possible but in any event within seven (7) days, any damage or defect to any of the goods by dispatching written notice of such damage or defect to the Clients account manager at Wires & Wireless and thereafter make all arrangements reasonably necessary to allow Wires & Wireless to attend at the premises where the goods are present in order to repair and/or replace any defective or damaged goods.
- 6.10 Within seven (7) days of payment of the final instalment amount and transfer of ownership of the goods by Wires & Wireless to the Client, advise Wires & Wireless of any defect or deficiency in the goods or installation thereof, failing which Wires & Wireless shall be deemed to have handed over the goods in working order and in a good state of repair. This is subject to clause [8.8 and 8.9](#). *(click to refer to clause)*
- 6.11 Provide all access reasonably required by Wires & Wireless on order to collect and/or remove the goods in circumstances where the agreement has terminated and the goods has not been acquired by the Client, or the Client has otherwise failed to make payment of any amounts contemplated in any agreement between Wires & Wireless and the Client

### 7. CONTRACT PRICE AND TERMS OF PAYMENT:

- 7.1 All amounts owing from the Client shall become due payable thirty (30) days from invoice date.
- 7.2 All prices are exclusive of Value Added Tax (VAT) and shall be for the account of the Client, unless otherwise expressly stated in writing, and any VAT arising in respect of any amounts due and payable by the Client under this agreement, shall be paid by the Client to Wires & Wireless simultaneously with payment of any and all of the purchase prices.
- 7.3. The Client agrees that it shall be obligated to pay to Wires & Wireless in addition to the purchase price herein:
  - 7.3.1 The amount of any tax, duty or other charge of any nature whatsoever imposed by any law, regulation or enactment of whatsoever nature which comes into force on the date other than the date on which any price or change is determined; and
  - 7.3.2 Any other direct costs arising from factors beyond the control of Wires & Wireless subject to clause 3.5.
- 7.3 Subject to any prevailing legislation, Wires & Wireless shall charge, and the Client shall be liable for payments in terms of, but not limited to:
  - 7.4.1 All amounts, as and when same falls due, owing and payable in terms of this, along with all other agreements between Wires & Wireless and the Client, which amounts shall include the cost of, or a portion of the costs of, any and all goods delivered by Wires & Wireless as well as the costs of installation thereof;
  - 7.4.2 Repair and/or replacement costs of any goods that is damaged, lost or stolen from the Client (or the Clients' appointed) premises, if applicable;
  - 7.4.3 Any adjustment fee, as and when demanded by Wires & Wireless, prior to Wires & Wireless supplying and installing any additional goods, such adjustment fee to be communicated to and accepted in writing by the Client; and,
  - 7.4.4 A handling and/or administrative fee of 10% in respect of specific items ordered by the Client which orders are subsequently cancelled and/or returned by Wires & Wireless' agreement.



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7.5 In particular, and without limiting the generality of the foregoing, Wires & Wireless shall be entitled to increase the purchase price in respect of any ordered goods, to make provision for any increases in costs arising as a result of any delay whatsoever caused by the Client.



- 7.6 The Client agrees that costs incurred by Wires & Wireless at the instance of the Client in modifying or otherwise altering or making additions to the design, quantities or specifications for standard goods and/or services, and direct costs arising as a result of suspension of work by Wires & Wireless due to instructions given by, or failure to give instructions by the Client, shall be added to the purchase price in respect of the relevant goods and/or services, as the case may be. Wires & Wireless will make every effort to mitigate and/or minimise the costs thereof.
- 7.7 Wires & Wireless reserves the right, at its sole discretion, to provide alternative goods at the prevailing prices to those ordered by the Client should such goods be unavailable, superseded, replaced, or their manufacture terminated.
- 7.8 Any Tax Invoice, Delivery note and/or Courier Waybill, when signed by the Client, will be deemed to be a certification by the Client of the correctness of the prices reflected therein as well as that the goods and/or services ordered by the Client has been duly delivered and that Wires & Wireless has duly performed and completed its obligations under the Agreement. A signed Tax Invoice, Delivery note and/or Courier Waybill will furthermore be conclusive proof that the goods and/or services were inspected by the Client and/or its duly authorised servants, agents or representatives, and that the Client is satisfied with the goods and/or services conform in all respects to the quality and quantities ordered, and the goods and/or services are free from any defects.
- 7.9 The Client agrees that all amounts due and owing by the Client to Wires & Wireless, as evidenced by any Tax Invoice issued by Wires & Wireless to the Client in terms of this agreement and any other agreement between Wires & Wireless and the Client, shall be payable by the Client to Wires & Wireless;
- 7.9.1 On order in cash, or by way of Electronic Funds Transfer (EFT);
- 7.9.2 Unconditionally and without deduction or set off - at no time during the currency of this agreement shall the Client be entitled to withhold, defer or set-off any payments due to Wires & Wireless under any circumstances whatsoever.
- 7.9.3 Shall make all payments to Wires & Wireless at the address for Wires & Wireless as per under DOMICILIUM CITANDI ET EXECUTANDI.
- 7.9.4 The risk of payment by EFT made by the Client, vests in, and remains with, the Client, and Wires & Wireless accepts no responsibility or liability whatsoever as a result of any losses or damages which may be occasioned thereby and suffered by the Client.
- 7.10 Non-payment in full of the amount due, inclusive of VAT, strictly in terms to this agreement will entitle Wires & Wireless, at its election to cancel this agreement and any other agreement between Wires & Wireless and the Client, without notice. It's been agreed that payment in full is a material term of this agreement and Wires & Wireless shall under those circumstances be entitled forthwith to recover all items in their original condition as supplied in terms of this and/or any other agreements between the Client and Wires & Wireless in addition to any other rights which Wires & Wireless might have at Law inclusive of the right to claim damages Wires & Wireless might suffer as a result of the Clients' breach.
- 7.11 Where payment of the full contract price is to be effected by the Client procuring finance therefore, written notification from such financial institution to Wires & Wireless shall be a prerequisite to the initiation and execution of the Clients' order.
- 7.12 Should the Client extend an offer of employment to a Wires & Wireless employee, or subcontractor, a recruitment fee of 35% of the annualised contract fee or 40% of the employees' annual remuneration, whichever is greater, will become immediately payable to Wires & Wireless.
- 7.13 Wires & Wireless reserves the right to approve credit to Clients at its sole discretion and the approval is ultimately deemed approved by the Directors of Wires & Wireless.
- 7.14 Should the Client breach any of the terms of this and/or any other agreements set out between the Client and Wires & Wireless, the Clients' credit will be revoked.
- 7.15 The Client shall complete and submit a Client Assessment form to be considered for the credit system of Wires & Wireless.
- 7.16 The Client shall grant consent to Wires & Wireless, at its sole discretion, or its assignees and/or third party to confirm the information accuracy of the assessment form by means of verbally, electronically and/or in writing.
- 7.17 Credit will only be considered if the Client makes purchases monthly with Wires & Wireless and/or spends a minimum of R250 000.00 in a 12-month period.
- 8. REPAIRS AND MAINTENANCE:**
- 8.1 The instalment amounts for the repairs and/or maintenance shall include all amounts owing in respect of the goods being acquired, installation, repairs, maintenance, processing and administration costs, interest and miscellaneous fees and disbursements incurred by Wires & Wireless.
- 8.2 Repairs to goods shall be carried out by Wires & Wireless (or its duly appointed nominee) only, and the Client shall not, under any circumstances, be entitled to appoint third parties to effect repairs to the goods. However, should the Client claim defective workmanship against Wires & Wireless, the Client may appoint a third party to repair the goods. Wires & Wireless will not be held liable for any costs of, or damages caused by the third party.



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- 8.3 All repairs and maintenance shall be carried out by Wires & Wireless once the Client has advised Wires & Wireless in writing that certain goods are in need of maintenance and/or repair and all repairs shall be carried out during office hours. Emergency or after hour repairs shall result in additional fees being charged.
- 8.4 All such repairs and maintenance including any emergency repairs and maintenance, shall be carried out by Wires & Wireless (or its duly appointed nominee) at its earliest availability, depending on backlog and capacity.
- 8.5 The Client shall bear all costs involved of any repairs and/or maintenance. This excludes latent defects or repairs as a result of an act of negligence or omission by Wires & Wireless. Should there be a dispute regarding the liability of either Wires & Wireless or the Client then either party shall utilise the dispute resolution channels available.
- 8.6 Should Wires & Wireless be called out in order to conduct repair and/or maintenance work, and should Wires & Wireless determine that no such repair and/or maintenance work is necessary or required alternatively that the damage was caused as a result of intentional or negligent misuse by the Client, Wires & Wireless reserves its rights to charge a reasonable call out fee and the costs of materials and labour, which costs and charges the Client shall settle on presentation of a valid tax invoice by Wires & Wireless.
- 8.7 To the extent that the Client desires or is required to move, remove or reinstall the goods during the existence of any rental and/or maintenance agreement between Wires & Wireless and the Client, the Client shall be required to obtain Wires & Wireless prior written consent before any equipment is removed and, to the extent that Wires & Wireless is required to uninstall and reinstall any equipment, the Client shall be liable for all costs incurred by Wires & Wireless in doing so.
- 8.8 The Client shall, within seven (7) days of becoming aware of any loss, damage and/or defect in respect of any of the equipment, advise Wires & Wireless, by dispatching notice to [support@wires.co.za](mailto:support@wires.co.za), of the nature of the loss, damage and/or defect in order to enable Wires & Wireless to attend to the repair and/or replacement of equipment.
- 8.9 Wires & Wireless shall not be liable for any damage or loss suffered by the Client resulting from damaged and/or defective equipment. This excludes out of box defects or proven negligence caused by Wires & Wireless.

#### **9. DEED OF SURETYSHIP:**

- 9.1 To the extent that this agreement is to be concluded on behalf of an entity, Wires & Wireless may, in its sole and absolute discretion, require that the signatory, or any other shareholder, member, director and/or representative of the Client, bind themselves as Surety for the due and timeous fulfilment of any of the Clients' obligations arising in terms of this agreement, by concluding the Surety attached hereto as Schedule to the Client Assessment Application Form, and such representative, by its signature hereto, agrees to be bound by the terms of such surety.
- 9.2 The Surety hereby binds itself/himself/herself as surety and co-principal debtor, jointly and severally with the Client (meaning that both can be held liable, either jointly in equal shares, or separately for the whole amount) in favour of Wires & Wireless, for the due fulfilment by the Client of all its obligations to Wires & Wireless of any nature and howsoever arising, whether already incurred or which may be incurred in the future, as a continuing suretyship, despite any change in or temporary extinction of such obligations.
- 9.3 The Surety renounces the benefit of being able to demand that Wires & Wireless first proceed against the Client (**excussion**), the benefit of being able to insist that the Surety is only liable for a portion of the debt where there is more than one surety (division), and the benefit of being able to demand that she/he be ceded the other sureties debts should the Surety make payment of the full debt (cession of action). (The effect of this clause being that the Surety may no longer require the above to occur before paying the debt owing to Wires & Wireless.)
- 9.4 Without limiting the foregoing, the Surety agrees:
  - 9.4.1 That all admissions and acknowledgements of liability by the Client will be binding on the Surety. (The effect of this clause is that if the Client makes any acknowledgment or admission, it will apply as if the Surety had made that acknowledgment or admission.)
  - 9.4.2 That in the event of the Client being liquidated or subject to business rescue, or a compromise being effected with its creditors, no dividends or payments received by Wires & Wireless will prejudice Wires & Wireless' rights to recover from the Surety the full amount owing by the Client at the date of liquidation of the Client.
  - 9.4.3 That this Suretyship is in addition and without prejudice to any securities held now or in the future by Wires & Wireless and will remain in full force and effect as a covering Suretyship for as long as any amounts whatsoever are owed by the Client to Wires & Wireless and despite the fact that for certain periods nothing may be owing by the Client to Wires & Wireless.
  - 9.4.4 That no variation or cancellation of this Deed of Suretyship clause will be of any force or effect unless reduced to writing and signed by both the Surety and Wires & Wireless.
  - 9.4.5 That any indulgence or extension of time for payment granted by Wires & Wireless to the Client is without prejudice to any of the other rights of Wires & Wireless, and that no indulgence or extension will in any way affect the Surety's liability. (The effect of this clause is that even if Wires & Wireless grants an indulgence to the Client or an extension of the payment, it does not have to grant that same indulgence or extension to the Surety and can claim from the Surety as if that indulgence or extension had not been granted to the Client.)





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- 9.4.6 To submit to the jurisdiction of the Magistrates' Court in terms of Section 45(1) of the Magistrates' Court Act 32 of 1944, despite the amount being claimed may exceed the jurisdiction of such court; and further, despite this, Wires & Wireless may, in its discretion, institute proceedings in any division of the High Court of South Africa.
- 9.4.7 That the address of the Surety as listed above is chosen as domicilium citandi et executandi for all purposes related to this Suretyship. (This being the address that the SURETY chooses for service of any notices or documents in terms of this Suretyship).
- 9.4.8 That in the event that any of the terms of this Suretyship are found to be invalid, unlawful or unenforceable, that such terms will be severable from the remaining terms, which will continue to be valid and enforceable.
- 9.4.9 To be bound by all the Standard Terms and Conditions of the Company, as contained in the credit application signed by the Client.
- 9.4.10 That should Wires & Wireless cede its claim against the Client to any third party, then this suretyship shall be deemed to have been given by the Surety to such cessionary/ies, who shall be entitled to exercise all rights in terms of this suretyship, as if such cessionary/ies were Wires & Wireless.

#### 10. DELAY IN PAYMENT:

- 10.1 The Client hereby acknowledges that should any amount not be paid on the due date, the full amount owing by the Client to Wires & Wireless shall immediately become due and payable without notice of whatever nature, notwithstanding that any amount may, as at that date, not yet be due. The Client shall pay 2% above the prime rate charged by Standard Bank of South Africa (Pty) Ltd on all overdue amounts from the due date of the payment till the actual payment.
- 10.2 The Client further agrees that Wires & Wireless may carry out a credit enquiry with a credit bureau of its choice. In the event of its default in any respect whatsoever towards Wires & Wireless, Wires & Wireless shall be entitled to place the Client on "stop supply" after providing reasonable notice of at least 7 (seven) days, notwithstanding that the Client may have placed an order for the supply of goods prior to the "stop supply" date. The Client also agrees that after twenty-eight (28) days written notice, the conduct of the account may be forwarded to a credit bureau.
- 10.3 In the event of Wires & Wireless instructing its attorneys to collect any amounts, all legal fees and collection charges and tracing agents' fees, as between attorney and client, shall be borne by the Client. All payments made shall firstly be allocated towards such fees and charges, thereafter interest and finally capital. A certificate certifying the amount owed issued by a director of Wires & Wireless shall be sufficient proof of the amount owing.

#### 11. DELIVERY AND RISKS:

- 11.1 Delivery of the items purchased in terms hereof shall be affected expeditiously as possible subject to circumstances beyond the control of Wires & Wireless and subject to acts of God and Casus Fortuitus.
- 11.2 The Client confirms that the items delivered were ordered by it and that in the event of the Client not reporting any defect in any of the items purchased in terms hereof within three (3) days of the delivery thereof, same shall be deemed to have been inspected and that same conform to the quality and quantity ordered.
- 11.3 If delivery, installation or performance of any particular order is to be affected in consignments or in stages, Wires & Wireless shall not be obligated to deliver, install or perform any part of the order until the contract price, which is due in respect of that part of the order which has already been delivered, installed or performed, has been paid in full. Wires & Wireless shall be entitled to invoice the Client separately for each delivery, installation and performance made. For each phase of completion/delivery a signed delivery note, or job card will serve as proof of acceptance of good delivered/services provided.
- 11.4 Save for any warranties expressly contained in this agreement and/or any other agreements between the Client and Wires & Wireless and/or direct proven damages, Wires & Wireless shall not be liable for any consequential damages, indirectly suffered and/or sustained by and party as a result of any act of commission or omission and/or any negligence on the part of Wires & Wireless and/or any of its representatives and/or employees, and/or its subcontractors, and/or the failure of Wires & Wireless to complete any task within any particular time period;
- 11.5 Wires & Wireless reserves to itself the right to split the delivery of the items purchased in terms hereof in the quantities and on the dates as may be determined by Wires & Wireless.
- 11.6 Should there be any delays due to no fault of Wires & Wireless and additional labour and/or materials are required, the Client acknowledges that they will be charged accordingly.
- 11.7 Any delivery note or waybill or job card (copy or original) signed by the Client or an employee or agent of the Client, shall be prima facie proof on its mere production that delivery was duly affected to the Client and that the goods and/or services delivered thereunder accorded with the quantity reflected thereon and with that ordered.





**12. OWNERSHIP:**

- 12.1 Ownership of the goods shall not pass to the Client until the purchase price in respect of the goods in question has been paid in full. The provisions hereof shall apply notwithstanding the installation of such goods in the Clients' premises or the accession thereof to any of the Clients' property (whether movable or immovable) or that the goods may have been incorporated into or form a part of other goods or changed their essential character. All goods, whether fixed to immovable property or not, shall be deemed to remain movable property and severable from such immovable property.
- 12.2 The Client shall, prior to taking delivery of the goods and/or services and until the entire contract price and all other amounts due to Wires & Wireless in terms of this agreement and any other agreements between Wires & Wireless and the Client, have been paid in full, insure the goods, at its own expense, against risk of loss, damage, destruction and hereby cedes, assigns and makes over unto and in favour of Wires & Wireless all if its rights, title and interest in and to the policy of insurance and the proceeds thereof to Wires & Wireless as security for the Clients' obligations to Wires & Wireless. The Client will procure that Wires & Wireless' interest in the relevant policies of insurance is duly noted and shall furthermore attend to punctually pay and renew all premiums accruing to such policies and deliver proof of such payment or renewal when required to do so by Wires & Wireless. In the event of the Client failing or refusing to make payment of such premiums as aforesaid, Wires & Wireless shall be entitled, without notice to the Client to make payment of such premiums, at such rate as may be required, and shall thereafter be entitled to recover and reclaim any amounts so expended on behalf of the Client, who remains liable for the payment thereof, from the Client.
- 12.3 The Client hereby agrees and irrevocably authorises Wires & Wireless to enter its premises without a court order to repossess any goods delivered in the event that the Client is in default of any payment pertaining to the goods in question, or in breach of any of the provisions of this agreement and any other agreements between Wires & Wireless and the Client, and the Client indemnifies Wires & Wireless completely against any damage of whatsoever nature, howsoever and by whomsoever caused in relation to the removal of the repossessed goods. Should the goods be installed, Wires & Wireless will take due care to mitigate any damage or inconvenience to the client. Due procedure must be followed by Wires & Wireless.

**13. NOTICE TO END CLIENT / PROPERTY OWNER:**

- 13.1 Notwithstanding that certain equipment may be attached or affixed to any part of the structure on the Clients premises (or any other premises indicated by the Client), for so long as such equipment has not been paid for in full, all such equipment shall be considered movable and shall not accede to the Clients' (or any third party's) premises.
- 13.2 To the extent that the Client is not the owner of the premises in or on which the equipment is installed/kept, the Client shall prior the commencement date, inform the end client and landlord/property owner, in writing, that the equipment is owned by Wires & Wireless and is not capable of attachment in satisfaction of any debt owing by the Client to the end client and/or property owner.
- 13.3 It shall be the Clients obligation to ensure that the owner of the premises on which the equipment is installed, is aware that the equipment remains the property of Wires & Wireless until paid for in full, and that Wires & Wireless retains the right to remove its equipment should the Client default on any of its obligations in terms with this and all agreements between Wires & Wireless and the Client. The Client hereby agrees to indemnify and hold Wires & Wireless harmless against any and all legal costs which Wires & Wireless may incur in order to recover its equipment in circumstances where the end client and/or property owner was not adequately informed in terms with this clause.
- 13.4 For the purpose of this clause, the Client shall provide Wires & Wireless with all information which it may require in order to contact the end client and/or property owner and shall be entitled, without restriction or limitation, to communicate with such end client and/or property owner in order to ensure that Wires & Wireless' rights are protected.

**14. WARRANTIES:**

- 14.1 The Client acknowledges that the Clients' products upon which any quote given by Wires & Wireless, has been acquired from a source other than Wires & Wireless and consequently no claim shall lie against Wires & Wireless in respect for any losses, which the Client might suffer after installation.
- 14.2 No warranties, guarantees or representation, express or implied or tacit whether by law, contract or otherwise, and whether they induced the contract or not, which are not set forth in this agreement, shall be binding on Wires & Wireless and the Client irrevocably waives any right (common law or otherwise) it may have in this regard, and the Client acknowledge that the goods are purchased on the basis that the goods are taken voetstoots and with the exclusion of all common law remedies and all other remedies whatsoever.
- 14.3 Warranty is subject to manufacturers' terms and conditions. Any warranty provided by product suppliers is subject to manufacturers' warranty.
- 14.4 Workmanship is guaranteed for a period of twelve (12) months from date of completion or as stated otherwise. This warranty explicitly excludes maintenance work.



- 14.5 The parties agree that Wires & Wireless shall have no liability in respect of any injury, loss or damage (direct, indirect or consequential) arising out of the use of, or inability to use, the goods whether or not occasioned by Wires & Wireless' negligence or any act or omission on its part. Without limiting the aforesaid Wires & Wireless does not warrant that the goods will be fit for the purpose for which they are to be used by the Client (notwithstanding that the use to which the Client intends to put the goods is known to Wires & Wireless). For the purposes hereof, any reference to Wires & Wireless shall include its servants, agents, subcontractors or any other person for whose acts or omissions Wires & Wireless may be liable in law. This also constitutes a *stipulatio alteri* in favour of such persons benefits of which may be accepted by them at any time.

**15. CANCELLATION:**

- 15.1 Any order is subject to cancellation by Wires & Wireless due to impossibility to perform which results from force majeure or any cause whatsoever beyond the control of Wires & Wireless.
- 15.2 Any order is subject to cancellation by Wires & Wireless if the Client breaches any terms of this agreement or makes any attempt of compromise, liquidation, sequestration, termination or if judgement is recorded against the Client or any of its principles.
- 15.3 Upon the occurrence of any of the above mentioned events which entitles Wires & Wireless to cancel the transaction, Wires & Wireless shall have the right to, but not obliged to cancel the transaction; and in the event that Wires & Wireless elects to cancel the transaction, then and in such event (without limiting the generality of foregoing) all goods shall be returned to Wires & Wireless and any outstanding payments shall immediately become due and payable.

**16. BREACH:**

- 16.1 In the event that:
- 16.1.1 The Client fails to pay any amount payable, with the exception of a bona fide dispute by the Client to Wires & Wireless on the due date thereof; or
- 16.1.2 Either party breaches any of the terms and conditions of this agreement, all of which are considered material and binding upon both parties; or
- 16.1.3 Either party commits any act of insolvency, or being a natural person, assign, surrender or attempt to assign or surrender its estate; or
- 16.1.4 The Client compromises with any of its creditors or endeavour or attempt to do so; or
- 16.1.5 Either party allows any judgement against it to remain unsatisfied for a period of seven (7) days; or
- 16.1.6 Either party is sequestrated or placed under judicial management or is liquidated (whether provisionally or finally); or placed into business rescue or.
- 16.1.7 The Client does or causes to be done anything which might prejudice Wires & Wireless' rights under this agreement; then and in that event Wires & Wireless shall be entitled, at its sole discretion and without prejudice to any other right in terms of this agreement or in law which Wires & Wireless may have against the customer, to.
- 16.1.8 Immediately revoke any Purchase and/or Credit Facility (should the Client be a Purchase and/or Credit Approved Client) and all the amounts then owing by the Client shall become immediately due and payable to Wires & Wireless.
- 16.1.9 Claim specific performance from the Client, which shall include, but not be limited to, immediate payment by the Client of all amounts owing to Wires & Wireless, whether or not such amounts have already become due and payable, failing which Wires & Wireless shall be entitled to obtain provisional sentence or summary judgement against the Client.
- 16.1.10 Immediately cancel the contract with the Client, to retake possession of any and all of the delivered goods from the Client, and to claim any and all damages suffered by Wires & Wireless as a result of the Client's aforementioned actions.
- 16.1.11 Immediately cease or suspend supply of any ordered goods and/or services to the Client, and the Client shall not be entitled to withhold or reduce full payment of any amounts owing to Wires & Wireless solely based on the ceasing or suspending of supply by Wires & Wireless.
- 16.1.12 Same shall constitute a material breach of this agreement and, without prejudice to any other rights which Wires & Wireless may have in law, shall entitle Wires & Wireless, without providing any notice to the Client, to terminate this agreement and recover any and all damages which may have suffered as a result of such termination, specifically including, but not limited to, immediate payment of the balance of any amounts owing for the remainder of the term of any and all agreements;



- 16.2 The Client agrees that in the event that the Client defaults on payment to Wires & Wireless, with the exception of a bona fide dispute, Wires & Wireless reserves the right to notify the relevant credit bureaus which may negatively affect the Clients credit rating, further to the above Wires & Wireless will add compound interest calculated monthly to the Clients account.
- 16.3 The Client agrees further that in the event that the Client defaults on payment to Wires & Wireless, with the exception of a bona fide dispute, the Client will be responsible for the legal costs incurred by Wires & Wireless on an Attorney/Own client scale.
- 16.4 Termination of any and all agreements at any time prior to the expiry of the terms of the agreements shall entitle Wires & Wireless to recover any and all equipment utilised on the Client's site that are not part of the sale, and the Client shall provide (or shall procure from the owner of the relevant premises) Wires & Wireless access to the equipment immediately upon demand by Wires & Wireless.

**17. DISPUTE RESOLUTION:**

- 17.1 The Client agrees and undertakes to adhere to the following payment dispute procedure:
- 17.1.1 Submit to Wires & Wireless a dispute on a queried item as soon as same has come to its attention but by no later than 7 (seven) days after Wires & Wireless having sent the invoice containing the disputed item to the Client at its nominated address;
- 17.1.2 Only submit genuine and bona fide disputes;
- 17.1.3 Submit the dispute in writing to the following email address: [support@wires.co.za](mailto:support@wires.co.za) and [accounts@wires.co.za](mailto:accounts@wires.co.za) which shall be acknowledged in writing and furnish the following information to Wires & Wireless :
- 17.1.3.1 Invoice number.
- 17.1.3.2 Reference and clear description of disputed item.
- 17.1.3.3 Clear and concise description of the reason for the query and supporting documentation if applicable.
- 17.1.4 The non-disputed items shall remain due and payable in accordance with the payment terms under this Agreement failing which Wires & Wireless shall suspend the Services in accordance with the provisions of clause **16.1.11** (click to refer to clause)
- 17.1.5 After fully complying with the Payment Dispute Procedure set out above, Wires & Wireless shall either amend the disputed invoice and/or the Client shall pay any amount due in the disputed invoice within 5 (five) Business Day of resolution.

**18. LIMITATION OF LIABILITY:**

- 18.1 The Client or Wires & Wireless will have no claim for damages, a remission of the purchase price, cancellation or otherwise, its servants, agents or other persons on whose behalf Wires & Wireless would be liable, in respect of any indirect loss or damage sustained by the Client This provision constitutes a *stipulatio alteri* in favour of such persons, the benefits of which may be accepted by them from time to time.

**19. DOMICILIUM:**

- 19.1 The Client hereby choose its *domicilium citandi et executandi* ("domicilium") for all purposes arising out of or in connection with these presents or the services of all legal processes at the under mentioned address whereat the Client shall be deemed to have received such notifications or process.

**20. GENERAL:**

- 20.1 The terms and conditions of this agreement shall govern all agreements, schedules and/or annexures (past or future) between the Client and Wires & Wireless and should the provisions of any other agreement concluded between the parties contradict the provisions of this agreement, the provisions of this agreement shall prevail, unless such other agreement is in writing, signed by the parties and specifically excludes the provisions of this agreement.
- 20.2 No amendment and/or variation and/or deletion and/or addition of these terms and conditions, whether consensual or unilateral and bilateral shall be of any force and effect unless reduced to writing and signed by Wires & Wireless. No agreement whether consensual or unilateral or bilateral, purporting to obligate the creditor to sign any 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 Wires & Wireless. No warranties, representatives or guarantees have been made by Wires & Wireless or on its behalf, which may have induced the Client and/or the surety to sign this document.
- 20.3 All items purchased and signed for by the Client shall be deemed to have been purchased and sold in terms of this agreement and/or any other agreement between the Client and Wires & Wireless, if not returned to Wires & Wireless within fourteen (14) days of delivery. This excludes any out of box defects.
- 20.4 Should the Client require additional work beyond the scope of any quotation while a team of Wires & Wireless employees are on site, it's the Clients responsibility to contact the account representative, sales manager, projects manager or operations manager to request the additional work and respective costs associated. Wires & Wireless undertakes to do all additional work at its discretion based on resource availability.



AGERA GROUP

**AGERA GROUP | WIRES & WIRELESS**

3 Autumn Street, Rivonia, Johannesburg, 2128

**Tel:** +27 11 8836410

**Directors:** A Hicks, B Silbermann

[www.wires.co.za](http://www.wires.co.za)

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- 20.5 Granting by the Client of an official company order constitutes and implies that the Client has read and accepts the terms and conditions as stated herein.
- 20.6 Any provision in this agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (i.e. *pro non scripto*) and severed from the balance of this agreement without invalidating the remaining provisions of this agreement or affecting the validity or enforceability of such provision in any other jurisdiction. Wires & Wireless requires a signed and dated resolution from the Clients Owners/Directors/Board Members stating that the signatory to this agreement for and on behalf of the Client warrants that he/she is duly authorised to enter into this agreement and any future agreements on behalf of the Client.
- 20.7 The signatory to this agreement for and on behalf of the Client binds himself/herself unto and in favour of Wires & Wireless as surety for and co-principal debtor *in solidum* with the Client for the full amount due to Wires & Wireless in terms of this agreement and all terms of this agreement are applicable to the signatory, *mutates mutandes*.
- 20.8 The parties specifically consent to the jurisdiction of the Magistrate's court in respect of any claim irrespective of whether the amount of such claim shall exceed the limit of jurisdiction of the Magistrate's court. Wires & Wireless may however in its discretion, institute action out of the high court. In the event of any such action, the Client shall be liable to pay legal costs on the scale as between attorney and own client.
- 20.9 No indulgence or relaxation whatsoever granted by Wires & Wireless to the Client will affect the terms of this agreement or any of the rights of Wires & Wireless and such indulgence shall not constitute a waiver by Wires & Wireless in respect of any of its rights herein and under no circumstances shall Wires & Wireless be stopped from exercising its rights in terms of this agreement and/or any other agreements between the Client and Wires & Wireless.

I have read through this agreement and understand and accept this agreement.

***By signing this document, you (principal debtor) have read, understood and agree to the terms and conditions herein, and confirm that the same will be binding on yourselves.***

Thus, done and Signed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

(Please print names)

1<sup>st</sup> Director Name: \_\_\_\_\_ Signature: \_\_\_\_\_

2<sup>nd</sup> Director Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Witness (name): \_\_\_\_\_ Signature: \_\_\_\_\_

Witness (name): \_\_\_\_\_ Signature: \_\_\_\_\_