

## GENERAL TERMS AND CONDITIONS

Of: *Viafrica Tanzania Ltd. by Guarantee*

### Article 1 Definitions

In these General Terms and Conditions, the terms below will be understood to have the following meanings, unless the contrary is explicitly indicated.

The User :	Viafrica Tanzania Ltd. by Guarantee, the user of these General Terms and Conditions, the service provider, the seller;
The Other Party :	the User's counter party, the principal, the buyer;
The Order/Agreement:	the agreement concluded between the User and the Other Party.

### Article 2 General

- 2.1 These Terms and Conditions will apply to all Orders, offers and Agreements between the User and the Other Party, to the extent that these Terms and Conditions have not been explicitly deviated from by the parties in writing.
- 2.2 The current Terms and Conditions will also apply to all Agreements with the User for the performance of which the User uses the services of third parties.
- 2.3 The applicability of any terms and conditions of the Other Party is hereby explicitly excluded.
- 2.4 In the event that the User concludes Agreements with the Other Party more than once, the present Terms and Conditions will apply to all subsequent Agreements, irrespective of whether or not same have been explicitly declared applicable.
- 2.5 If one or more provisions in these Terms and Conditions are null and void or are nullified, the remaining provisions of these Terms and Conditions will continue to apply.

### Article 3 Offers, Orders and Agreements

- 3.1 All offers, in whatever form, will be free of obligation, unless a term for acceptance is stated in the offer.
- 3.2 Agreements to which the User is a party will only be deemed to have been concluded:
  - a) after an Agreement drafted for that purpose has been signed by both parties;
  - b) following receipt and approval of the written notice of acceptance by the Other Party of an offer made by the User; and
  - c) in the absence thereof, pursuant to the delivery of the goods to the Other Party and the Other Party taking delivery of same;
- 3.3 In the event of an oral Agreement, the invoice will be deemed to contain a correct and complete representation of the Agreement, unless a complaint is lodged within 30 days of the invoice date.
- 3.4 In the event that a natural person concludes an Agreement on behalf of or for the account of another natural person, he/she will be deemed to declare – by signing the Agreement – that he/she is authorised to do so. This person, in addition to the other natural person, will be jointly and severally liable for all obligations ensuing from the Agreement.
- 3.5 The User reserves the right to refuse orders/assignment without stating its reasons.
- 3.6 If the acceptance by the Other Party deviates from the offer included in the quotation, the User will not be bound to that acceptance. In that case, the Agreement will not be concluded in accordance with that deviating acceptance, unless the User states otherwise.
- 3.7 The prices in the offers will be stated in Tanzanian Shilling, exclusive of VAT and other government levies, charges, taxes, as well as exclusive of storage, shipment, and possible transport, repair, assembly, disassembly and packaging costs, unless the contrary has been explicitly agreed upon.
- 3.8 The prices are based on the rates, wages, taxes, fuel prices, levies, prices, etc. as such apply on the date of the offer or the Agreement's conclusion, as the case may be, under normal circumstances and during normal working hours (Monday to Friday from 9 a.m. to 5 p.m.). In the event that work is performed outside normal working hours, the hourly rate will be increased.
- 3.9 In the event of an instruction to perform repairs, the Other Party must present the good to the User. The User will not be able to state in advance the amount of time and money the repairs will cost. The User will therefore always provide an estimate of the price and the time that the repairs will have been completed. The Other Party shall tolerate a 20% margin with respect to the price. In the event that the estimated price is exceeded by more than 20 %, then the User will inform the Other Party of that circumstance by telephone. Should the Other Party decide against the repairs, then the Other Party must collect the good within 72 hours and must pay the User Tsh 5.000 investigation costs, in default of which a right of retention will be vested in the User. In the event that the Other Party agrees to the performance of additional work and the does not collect the good within 72 hours, the User may charge the Other Party additional costs in that respect.
- 3.10 In the event that the User is to provide for the shipment/transport of the purchased or repaired goods, it will do so at the Other Party's expense and risk.
- 3.11 In the event that delivery is effected C.O.D. (Cash on Delivery), the User can charge the Other Party C.O.D. charges.
- 3.12 A composite quotation will not oblige the User to perform part of the Order for a corresponding part of the stated price.
- 3.13 Offers or quotations will not apply to follow-up orders.

### Article 4 Models/illustrations

- 4.1 In the event that the Other Party has been shown a model, a demo or an illustration, same must be assumed to have been shown as an indication only, unless it has been explicitly agreed that the good to be delivered will be completely identical.
- 4.2 The models, illustrations, specifications, figures, measurements, weights or descriptions included in catalogues/offers/advertisements must be deemed to be a mere indication.

### Article 5 Performance of the Agreement



- 5.1 The User will perform the Agreement to the best of its knowledge and ability and in accordance with the requirements of good workmanship. Such performance will be effected on the basis of state-of-the-art technology in Tanzania at that time.
- 5.2 The User will determine the manner in which the Agreement is to be performed, to the extent that no provisions to the contrary have been explicitly agreed upon by the parties.
- 5.3 The User will not be liable for damage, of whatever nature, resulting from the fact that the User has operated on the basis of incorrect and/or incomplete data provided by the Other Party, unless the User should have been aware of this incorrectness or incompleteness.
- 5.4 In the event and to the extent necessary for a satisfactory performance, the User will be entitled to have certain work performed by third parties.
- 5.5 In the event that the Other Party has reserved the right to supply certain materials and/or to perform certain parts of the work, the Other Party will be liable for any non-timely supply or performance in that connection.
- 5.6 The Other Party shall ensure that all information and permits which the User indicates are necessary or which the Other Party should reasonably understand are necessary for the performance of the Agreement are provided to the User in good time. If the information and permits necessary for the performance of the Agreement are not provided to the User on time, the User will be entitled to suspend performance of the Agreement and/or to charge the Other Party the additional costs arising from the delay in accordance with its usual rates.
- 5.7 In the event that the commencement or the progress of the work is delayed due to factors for which the Other Party is responsible, the User will be compensated by the Other Party for any damage and costs ensuing from the delay.
- 5.8 In the event that work is performed by the User or by third parties engaged by the User on site at the Other Party or at a location designated by the Other Party in the context of the assignment, the Other Party will provide any facilities reasonably required by the User's employees or by those of the relevant third party free of charge.
- 5.9 The Other Party shall ensure that the User will have at its disposal in good time:
  - the building where the work is to be performed;
  - sufficient facilities for supply, storage and removal of materials and equipment; and
  - safe connection facilities for electrical equipment.
- 5.10 The Other Party shall indemnify the User against any claims of third parties that may incur damage relating to the performance of the Agreement and which is attributable to the Other Party.

#### **Article 6 Delivery**

- 6.1 Unless provisions to the contrary have been agreed upon, goods will be delivered at the User's address, or at the location where the User will perform the work.
- 6.2 In the event that the User is to deliver the goods, it will always do so at the delivery address most recently communicated to the User by the Other Party.
- 6.3 The Other Party must take delivery or possession of the goods immediately after they have become available. In the event that the goods are available to the Other Party or are offered to the Other Party for delivery but are not taken possession of, for whatever reason, delivery will be effected by means of a written notification from the User.
- 6.4 In the event that the Other Party refuses to take delivery of the goods or has neglected to provide information or instructions that are necessary for the delivery, the User will be entitled to store the goods at the Other Party's expense and risk. In the event that the Other Party does not take delivery of the good within one week, the User will be entitled to sell the good to another party, and, if it is unable to do so, to destroy the good within two weeks. Any ensuing damage will be borne by the Other Party.
- 6.5 In the event that the Other Party refuses to take delivery of the goods, the User's claims vis-à-vis the Other Party, including any transport and storage costs, will become immediately due and payable.
- 6.6 In the event that the User requires information from the Other Party within the context of the agreement's performance, the delivery period will commence after the Other Party has made such information available to the User.
- 6.7 If the User has stated a delivery period, such delivery period will be indicative. A stated delivery date may therefore never be deemed to be a firm deadline. In the event that a term is exceeded, the Other Party must give the User written notice of default and grant it a reasonable period of time to comply as yet.
- 6.8 The User will be entitled to charge the Other Party an advance. After payment of the advance has been effected, delivery will be made to the Other Party or the Agreement will be performed, unless the parties have agreed otherwise.
- 6.9 The User will be entitled to deliver in parts and to invoice such partial deliveries separately.

#### **Article 7 Delivery, inspection, complaints**

- 7.1 The Other Party will be obliged to inspect the purchased goods or the assignment performed, as the case may be, or have others do so, at the time of delivery or transfer. The Other Party must notify the User in writing of any complaints regarding the goods delivered within five (5) days. The notice of default must specify the defect in as much detail as possible, so that the User is able to respond adequately.
- 7.2 Any damage to the packaging or the goods must be mentioned in the packing list/consignment note and be reported to the User in writing.
- 7.3 The work will be deemed to have been completed when the good delivered has been made available to the Other Party in working order or has been taken into use by the Other Party.
- 7.4 After receiving a complaint, the User will deal with same forthwith. The Other Party must make the good delivered available to the User for that purpose, so that the User may investigate the defect.
- 7.5 In the event that a timely complaint is submitted, the Other Party will remain obliged to take delivery of and pay for the purchased goods. In the event that the Other Party wishes to return defective goods, it may only do so following the written permission from the User and in the manner indicated by the User. Return shipments must be effected carriage paid, undamaged and in the original packaging, and will be at the Other Party's expense and risk.
- 7.6 The following situations will under no circumstances justify the lodging of a complaint:
  - deviations in colour, weight, specifications and measurements of less than 10%;
  - any typesetting, printer's or typographical error in the catalogue, on the website or in the offer.
- 7.7 In the event that a complaint is well-founded, the User will replace or adjust the delivered good, unless this has become demonstrably pointless to the Other Party by that time. If this is the case, the Other Party must communicate this to the User by means of a written notification. The User will, however, in all events only be liable within the limits of the provisions laid down in the Articles 'Warranty' and 'Liability'.



#### **Article 8 Passing of risk**

- 8.1 The risk of loss of or damage to the goods that are the subject of the Agreement will pass to the Other Party at the time at which these items are legally and/or actually delivered to the other party and therefore come under the control of the Other Party or are placed under the control of a third party designated by the Other Party, or at the time when the items are ready for delivery, after the Other Party has been informed thereof.
- 8.2 In the event that the User is to provide for the transport of the goods that are the subject of the agreement, this will be fully at the Other Party's expense and risk. The Other Party will be responsible for taking out proper insurance.
- 8.3 The Other Party must, before presenting the good for repair, make a back-up/copies/ duplicate files of the files present in the good. The User cannot guarantee the preservation of such files.
- 8.4 Insurance of whatever nature will only be taken out at the Other Party's expense and risk following a written instruction to that effect and written acceptance thereof by the User. The instruction to take out insurance must contain a detailed statement of the risks against which insurance must be taken out, in the absence of which the instruction will be deemed not to have been issued or accepted. The User/Carrier will at all times be entitled to reject an instruction to take out insurance if it has serious cause to do so.
- 8.5 Acceptance or refusal of the risk offered for insurance will be at the insurer's discretion. The User and Carrier will not have any say in that matter.

#### **Article 9 Force majeure**

- 9.1 Either party will not be obliged to fulfil any obligation if it is prevented from doing so due to a circumstance which cannot be attributed to gross negligence or an intentional act or omission on its part, nor be for its account pursuant to the law, a juristic act or generally prevailing opinion.
- 9.2 In these Terms and Conditions, the term 'force majeure' will be taken to mean – in addition to its definition in law and legal precedent – all external causes, foreseen or unforeseen, which the User cannot influence, but as a result of which the User is unable to perform its obligations. This will include strikes at the User's company, computer and power failures, fire, theft, traffic congestion, export impediments and delays in the supply of raw materials/parts by suppliers.
- 9.3 In so far as the User has partly performed or will be able to partly perform its obligations arising from the agreement at the time when the situation of force majeure occurs, and that part performed or to be performed is of independent value, the User will be entitled to invoice the part performed or to be performed separately.

#### **Article 10 Suspension and dissolution**

- 10.1 The User will be entitled to suspend performance of its obligations or to dissolve the Agreement in the event that:
  - the Other Party fails to perform the obligations ensuing from the agreement or fails to perform them in good time or in full;
  - circumstances of which the User has learned following the Agreement's conclusion provide good reason for fearing that the Other Party will not perform its obligations, or will not perform such in good time or in full; in the event that there is good reason to fear that the Other Party will only perform its obligations in part or will not perform such properly, suspension will only be permitted to the extent that such is justified by the relevant failure;
  - the Other Party was requested upon the Agreement's conclusion to provide security for the performance of its obligations ensuing from same Agreement and such security has not been provided or is insufficient.
- 10.2 In addition, the User will be entitled to dissolve the Agreement or have it dissolved if circumstances arise of such a nature that performance of the Agreement is impossible or can no longer be required pursuant to standards of fairness and reasonableness, or if any other circumstances arise of such a nature that continued unamended maintenance of the agreement can no longer reasonably be expected.
- 10.3 In the event that the Agreement is dissolved, the User's claims vis-à-vis the Other Party will become immediately due and payable. In the event that the User suspends performance of its obligations, it will retain its rights and claims pursuant to the law and the Agreement.
- 10.4 The User at all times reserves the right to claim damages.

#### **Article 11 Cancellation**

- 11.1 In the event that, following the conclusion of an Agreement, the Other Party wishes to cancel same before delivery has been effected, 10% of the order price (inclusive of Tanzanian VAT) will be charged in cancellation costs, without prejudice to the User's right to full damages, including loss of profit.
- 11.2 In the event that, following cancellation, the Other Party refuses to take delivery of the goods manufactured or altered by the User especially for the Other Party, the Other Party will be obliged to pay the User all ensuing costs.
- 11.3 In the event that a good cannot be supplied, temporarily or permanently, the Other Party will receive notification of this fact from the User no later than one month after receipt of the order. In that event, the Other Party may cancel the Order free of charge. In the event that the Other Party has already effected payment to the User for the good in question, the Other Party will be reimbursed that amount or set-off will be effected.
- 11.4 Cancellation must be effected by registered letter.

#### **Article 12 Price and costs**

- 12.1 The User may increase the price if it emerges during the performance that the amount of work originally agreed or expected will be exceeded by 10% or more, so that the User may not reasonably be expected to perform the agreed work for the price originally agreed.
- 12.2 The User may pass on price rises after three months in the event that, between the time of the offer or quotation and the performance of the Agreement or delivery, price changes exceeding 10% have occurred with respect to, for instance, national insurance contributions, turnover tax, exchange rates, wages, raw materials, semi-manufactured goods or packaging materials.
- 12.3 The User shall inform the Other Party in writing of any intended price or rate increase. In so doing, the User will state the size of the price or rate increase and the date on which same increase is to take effect.

#### **Article 13 Payment**

- 13.1 Payment must be effected in cash, by means of an advance payment, or within 21 days of the invoice date, in a manner to be indicated by the User, in the currency stated in the invoice. Objections to the amounts stated in invoices will not suspend the



corresponding payment obligations.

- 13.2 In the event that the Other Party fails to effect payment within the period of time agreed upon, the Other Party will be in default by operation of law. In that event, the Other Party will owe 1.5% in interest per month or part of a month, unless the statutory interest or the statutory commercial interest is higher, in which case the highest interest will apply. The interest with respect to the payable amount will be calculated from the time that the Other Party is in default until the time of full payment.
- 13.3 In the event that the Other Party is wound up, is declared bankrupt or files for bankruptcy, is placed under guardianship, attachment is levied against it or is granted a suspension of payments, provisionally or otherwise, the User's claims vis-à-vis the Other Party will become due and payable forthwith.
- 13.4 Payments will first be used to cover the costs, then to cover any interest due and finally to cover the principal sum and the accrued interest.
- 13.5 The Other Party will not be entitled to set-off, unless the parties have explicitly agreed on such set-off.

#### **Article 14 Collection costs**

- 14.1 In the event that the User has incurred higher costs which were reasonably necessary, such costs will also qualify for compensation. Any judicial and enforcement costs will also be borne by the Other Party.

#### **Article 15 Warranty**

- 15.1 The equipment processed, assembled and cleaned by the User will meet the technical specifications stated by the User for the duration of five (5) days following delivery.
- 15.2 In the event that repairs are performed, the User will issue a warranty to its direct counter party with respect to the equipment's operation after the repairs have been performed which will apply for 30 days, unless provisions to the contrary have been agreed by the parties in writing.
- 15.3 This warranty may only be invoked in the event that the Other Party reports the defect to the User within 48 hours of discovering same defect, so as to allow the User to respond adequately.
- 15.4 Any warranties must be agreed upon in writing.
- 15.5 An invocation of a warranty must be submitted in writing, together with the sales receipt and/or the receipt relating to the repairs. The Other Party must furthermore present the purchased good to the User for inspection, so that the User may ascertain whether the relevant defect is covered by the warranty. Shipment and return of the good will always be at the Other Party's expense and risk.
- 15.6 This warranty will be limited to:
  - manufacturing defects and will therefore not include any damage resulting from improper, negligent or inexperienced use by the Other Party or third parties;
  - deliveries to Other Parties within the Netherlands;
  - the repair or replacement of the good; and
  - the manufacturer's warranty with respect to parts.
- 15.7 This warranty will lapse:
  - in the event of resale by the consumer to a third party of the goods supplied, unless the parties have explicitly agreed otherwise;
  - in the event of adaptations of, alterations of, confusion of, changes to or repairs to the good supplied effected by a third party; and
  - if the good supplied is not used and maintained in accordance with the operating instructions.
  - If the ID number stickers are removed after purchase.
- 15.8 As long as the Other Party fails to perform its obligations ensuing from the Agreements concluded between the parties, it cannot invoke this warranty provision.

#### **Article 16 Liability and indemnification**

- 16.1 In the event that the User is liable, this liability will be limited to the provisions laid down in this Article.
- 16.2 Under no circumstances will the User be liable for:
  - deviations, damage, faults and defects that have gone unnoticed in goods approved by the Other Party;
  - deviations, damage, faults and defects resulting from incorrect assembly, maintenance or use by the Other Party or third parties;
  - indirect damage, including consequential damage, loss of profit, loss of turnover or savings or any damage due to an interruption of business operations;
  - damage resulting from raw materials that have been declared unfit because the environmental legislation has changed since the agreement's conclusion;
  - wrongful, improper or unprofessional use of the good supplied by the Other Party or third parties;
  - damage as a consequence of use that is not in accordance with the operating instructions;
  - damage caused by the installed software or viruses;
  - the loss of data; or
  - damage caused by the use of a modem connected to the telephone network.
- 16.3 Should the User be liable for damage, same liability will be limited to the amount paid by its insurer, or at least to the amount of the invoice, or to the amount of that part of the invoice to which the liability pertains.
- 16.4 The User will under no circumstances be liable for damage ensuing from any advice given. Advice will always be given on the basis of the facts and circumstances known to the User and of mutual consultations, in which respect the User will always use the Other Party's intention as a guideline and starting point.
- 16.5 Any claims for damages must be submitted to the User in writing immediately after the damage has occurred.
- 16.6 The limitations of liability for damage laid down in these General Terms and Conditions will not apply in the event that the damage is attributable to an intentional act or omission or gross negligence on the User's part or on that of its employees.

#### **Article 17 Intellectual property and copyrights**

- 17.1 Without prejudice to the provisions in these General Terms and Conditions, the User reserves the rights and powers vested in it pursuant to intellectual property law.
- 17.2 All goods sold and/or manufactured by the User, as well as any designs, demo's, sketches, calculations, drawings, models and



brochures provided by the User, are exclusively intended for use by the Other Party, and may not be multiplied, resold, adapted, changed, copied, reproduced, made public or brought to the attention of third parties by the Other Party without the User's prior permission, unless the contrary ensues from the nature of the goods sold or the documents provided.

17.3 The Other Party will not be entitled to remove the User's trademark from the goods supplied.

**Article 18 Retention of title/right of retention**

- 18.1 All goods delivered by the User will remain the User's property until the Other Party has fulfilled all its obligations ensuing from the agreements concluded with the User.
- 18.2 The Other Party will not be allowed to pledge or encumber in any other way the goods covered by the retention of title.
- 18.3 In the event that third parties levy attachment on the supplied goods covered by the retention of title or wish to create or enforce rights with respect to same, the Other Party will be obliged to inform the User thereof as soon as may reasonably be expected.
- 18.4 The Other Party undertakes to insure and keep insured the goods supplied under retention of title against fire, explosion and water damage and against theft, and to allow inspection of the insurance policy in question at the User's first request.
- 18.5 Should the User wish to exercise its proprietary rights as referred to in this Article, the Other Party hereby grants its unconditional and irrevocable permission to the User or any third parties to be designated by the User to enter those places where the User's goods are located and to recover those goods.
- 18.6 The User will be entitled to retain any goods the delivery of which is desired by any party at the expense and risk of the Other Party and/or of the owner until all the User's or Carrier's exigible claims have been paid. Under no circumstances may the Other Party invoke vis-à-vis the User any postponement of payment granted to it, explicitly or otherwise, with respect to prior assignments.

**Article 19 Disputes**

- 19.1 All disputes arising from the agreement concluded between the parties will be settled in the first instance by the District Court of Kilimanjaro Region, Tanzania. Nevertheless, the User will be entitled to submit such disputes to the competent court according to the law or to an arbitration board.

**Article 20 Applicable law**

- 20.1 All agreements between the User and the Other Party will be governed by Tanzanian law. Applicability of the United Nations Convention on the International Sale of Goods is hereby explicitly excluded.