

TERMS AND CONDITIONS OF PURCHASE OF GOODS AND/OR SERVICES

1. DEFINITIONS AND INTERPRETATION

The following words and expressions shall, unless the context indicates otherwise bear the meanings assigned to them below:

- 1.1 **"Approval"** means any permission, permit, approval, consent, licence, authorisation, registration, grant, acknowledgement or agreement required to be obtained from any Competent Authority under any Laws relating to the supply of the Goods and/or the provision of the Services in accordance with an approved PO and the provisions of these terms and conditions;
- 1.2 **"Business Day"** means any day that is not a Saturday, Sunday or a public holiday gazetted in the Republic of South Africa from time to time;
- 1.3 **"Massmart"** means Masstores (Pty) Ltd (registration number 1991/006805/07) trading as Massmart Services, whose registered address is situated at 16 Peltier Drive, Sunninghill, 2157;
- 1.4 **"Competent Authority"** means a government or any division thereof and any ministry or governmental, quasi-governmental, transport or road traffic regulator or other regulatory department, body, instrumentality, agency or authority or any division thereof having jurisdiction over (a) any Party to these terms and conditions, (b) the supply of the Goods and/or provision of the Services under these terms and conditions or (c) any transaction contemplated by these terms and conditions;
- 1.5 **"Confidential Information"** includes any confidential information of a Party including trade secrets, know-how, processes, systems, business methods, marketing methods, methods of operating, promotional plans, diagrams, plans, drawings, information of a strategic nature and all other information of either Party but does not include information which is lawfully in the public domain at the time of disclosure, or which subsequently and lawfully becomes part of the public domain by publication or otherwise;
- 1.6 **"Goods"** means the items of goods and products manufactured for sale and/or supplied by the Supplier to Massmart as specified in the PO;
- 1.7 **"Instruction"** means a written notice in whatever form issued to the Supplier by Massmart from time to time instructing it to supply the Goods and/or render the Services specified in the instruction in accordance with the provisions of these terms and conditions, which may specify the time, place and the manner in which such Goods shall be supplied and delivered and/or Services shall be rendered, the Service Levels, and which may contain such other instructions or directions as Massmart may require from time to time and **"Instructions"** shall have a similar meaning;
- 1.8 **"Intellectual Property"** means the trademarks, service marks, trade and business names, rights in designs, patents, copy right, database rights, moral rights and rights in know-how and other Intellectual Property rights in each case whether registered or unregistered and includes applications for the grant of any rights or forms of protection which may subsist anywhere in the world;
- 1.9 **"Laws"** means all constitutions, statutes, regulations, by-laws, codes, ordinances, decrees, rules, judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, rulings or awards, policies, voluntary restraints, guidelines, directives, compliance notices, abatement notices, agreements with, requirements of, or instructions by any governmental body, and the common law, and **"Law"** shall have a similar meaning;
- 1.10 **"Official Massmart SAP Purchase Order Number"** means a purchase order number generated by Massmart's SAP ERP system;
- 1.11 **"Party"** means each of Massmart and the Supplier, and **"Parties"** will refer to both of them;
- 1.12 **"POPI"** means the Protection of Personal Information Act 4 of 2013 and all definitions in POPI will carry the same meaning if referred to in these terms and conditions;
- 1.13 **"Purchase Order or PO"** means the purchase order, containing an Official Massmart SAP Purchase Order Number issued by Massmart to the Supplier for the sourcing and purchase of Goods and/or Services, to which these standard terms and conditions are attached and incorporated by reference;
- 1.14 **"Services"** means any and all services to be provided by the Supplier to Massmart, as specified in the Purchase Order and/or in the form of an Instruction, which will be subject to and rendered in accordance with these terms and conditions hereof;

- 1.15 "Supplier" means any legal entity, appointed by Massmart to supply the Goods and/or render the Services and/or Products in accordance with the terms and conditions of the PO;
- 1.16 Where appropriate, meanings ascribed to defined words and expressions will impose substantive obligations on the Parties.

1 THESE TERMS AND CONDITIONS

- 2.1 These terms and conditions shall:
 - 2.1.1 apply to and shall form the basis of an agreement between, and/or be supplementary to any written agreement in force and effect between the Supplier and Massmart;
 - 2.1.2 replace and supersede any agreement between Massmart and the Supplier, which is not reduced to writing;
 - 2.1.3 prevail over any terms or conditions contained in the Supplier's quotation, proposal, acceptance, correspondence, implied by trade custom, practice or course of dealing in the supply of Goods and/or provision of Services;
 - 2.1.4 together with any written agreement duly signed by both Parties, be considered the whole agreement between the Parties in relation to the subject matter of the PO.
- 2.2 In the event that there is a written agreement already in force and effect between the Supplier and Massmart and there is any inconsistency and/or ambiguity and/or conflict between these terms and conditions and the written agreement, then in such event, the written agreement shall prevail.
- 2.3 No amendment or modification to these terms and conditions shall be effective unless in writing and signed by authorised signatories on behalf of the Parties.

3. SUPPLY OF GOODS AND PROVISION OF SERVICES

- 3.1 The Supplier's acceptance of a PO from Massmart is subject to these terms and conditions.
- 3.2 The nature and type of the Goods ordered, the quantity and the date of delivery thereof shall be deemed to be of the essence as quoted on the PO and fit for purpose.
- 3.3 The Supplier represents and warrants to Massmart that it has the required skill, experience and expertise to supply the Goods to and/or perform the Services for Massmart and shall deliver all the Goods in working order free from defects, whether latent or patent.
- 3.4 The Supplier must immediately inform Massmart in writing of any foreseeable delays in delivering the Goods and/or performing the Services. The Parties' account managers shall resolve all queries raised in relation to the PO. Amendments to the PO may require the cancellation of the PO and the re-issue of a new PO.
- 3.5 The Supplier acknowledges that its appointment and rights with respect to the supply of Goods and/or the provision of the Services is not exclusive, and that Massmart is under no obligation to source the Goods from the Supplier or appoint the Supplier to render the Services.
- 3.6 The Supplier is an independent contractor and these terms and conditions shall not be construed as creating any relationship of agency, partnership or joint venture between the Parties.

4 QUALITY AND DEFECTS

- 4.1 Massmart shall have the right to inspect and/or test the Goods at any time.
- 4.2 Following the inspection and/or testing, if Massmart is of the opinion that the Goods do not perform or conform to the specifications agreed between the Parties, Massmart shall inform the Supplier, who shall immediately take such action to ensure conformance and/or performance at the agreed level. Massmart shall have the right to request further testing and inspection and reserves the right not to accept such Goods.
- 4.3 If any of the Goods do not comply with the provisions and/or specifications contained in the PO or as advised by Massmart to the Supplier from time to time, Massmart shall have the right, without prejudice to any other rights and remedies available to it in law, to cancel any PO and/or any written agreement or to claim specific performance of any obligation, whether or not the due date for performance has arrived.
- 4.4 Defective Goods in respect of which Massmart becomes aware of after delivery and once ownership has passed to Massmart may result in the Supplier incurring the obligation to replace such Goods at the Supplier's cost. Goods that are not fit for purpose, and cannot be replaced, shall entitle Massmart at its election to set off the value of such Goods

against the amount owing by it to the Supplier under the PO or claim damages. It is agreed that damages shall be calculated at the invoice value of such defective Goods as determined by Massmart's Finance Director whose decision shall be final.

5 DELIVERY

- 5.1 The Goods and/or Services shall be delivered to and/or rendered at Massmart's place of business or such other place as agreed by the Parties in writing. The Supplier shall offload the Goods at its own risk as directed by Massmart.
- 5.2 The price quoted by the Supplier for Goods shall include delivery. The PO may specify the date of delivery. The Supplier shall invoice Massmart on delivery of the Goods to Massmart.
- 5.3 The Supplier shall ensure that each delivery is accompanied by a delivery note containing the PO number, date of the PO, number of packages and contents and, in the case of part delivery, the balance to be delivered.
- 5.4 Unless otherwise stipulated by Massmart in the PO, deliveries shall be made during business hours i.e. between 08h00 and 17h00 on weekdays, excluding public holidays.
- 5.5 If excess Goods are delivered to Massmart, Massmart shall not be liable to pay for the excess and any excess shall be received at the Supplier's sole risk and be returned at the Supplier's sole risk and expense.
- 5.6 It is recorded that time is of essence in respect of the supply and delivery of the Goods and/or provision of the Services. If any Goods or Service, or any part thereof are not delivered or performed timeously, Massmart shall have the right to cancel the PO in respect of the Goods undelivered or Services not yet performed.
- 5.7 Massmart shall be entitled to reject any Goods delivered and/or Services provided by the Supplier, on the grounds as set out in these terms and conditions, including but not limited to any Goods failing to comply with Massmart's specifications and/or Instructions and/or such Products and/or not being fit for purpose. If any of the Goods and/or Services are rejected by Massmart then in such event, the Supplier shall promptly issue a formal credit note to Massmart and collect the rejected Goods (as applicable), within a reasonable time of Massmart advising the Supplier of such rejection.
- 5.8 Massmart shall be deemed to have accepted the Goods and/or Services 60 (sixty) days from the date of delivery and/or performance, provided that Massmart has the right to reject any of the Goods where any latent defect in the Goods has become apparent even following the 60 (sixty) day period.

6 RISK AND OWNERSHIP

- 6.1 All risk in the Goods shall remain with the Supplier until actual delivery thereof to Massmart is complete (including offloading and stacking). Ownership of and all benefits attaching to the Goods shall pass to Massmart on acceptance of delivery and against full payment in respect thereof by Massmart. Partial delivery shall only be accepted by prior written agreement of Massmart.
- 6.2 The Supplier irrevocably waives any and all liens and/or rights of retention it may have, or acquire, over any item of the Goods, property, data or documents used in connection with the Goods by Massmart or any other entity belonging to the Massmart group of companies, or created or collected during the course of the supply of the Goods or rendering of the Services.

7 INSURANCE

The Supplier shall maintain adequate public liability and professional indemnity insurance, and any and all other insurance policies as (i) are required by applicable Laws; (ii) should reasonably be procured in accordance with good industry practice in connection with the supply of the Goods and/or provision of the Services, throughout the period that it supplies the Goods and/or renders the Services to Massmart.

8 PRICING AND PAYMENT

- 8.1 Payment by Massmart in respect of the Goods supplied and/or Services rendered shall be made against an approved PO. Massmart shall not be obligated to make payment where an approved PO is not issued. The price or fees in respect of the Goods and/or the Services as quoted on the PO shall, in the absence of a manifest error, be fixed and not be subject to any escalation unless stated otherwise in writing. The price or fees shall be denominated in South

African Rand irrespective of the currency of the respective country in which the Goods are sourced or manufactured and shall be expressed as exclusive of VAT where applicable.

- 8.2 On or before the first business day of each month, the Supplier shall send Massmart all tax invoices depicting the full details of the Goods supplied and/or Services rendered and payment due in respect thereof for the preceding month, with a statement reflecting the price or fees, and any discounts or allowance applicable and disbursements incurred, and VAT payable where applicable.
- 8.3 The Supplier's invoices must be addressed to Massmart, reflect each PO number and comply with VAT regulations laid down by the South African Revenue Service i.e. they must reflect the party's VAT numbers, trading addresses, trade names and company registration numbers.
- 8.4 Payment in respect of Goods delivered and/or Services rendered shall be made within [45 (forty-five) days] from the date of receipt by Massmart of a valid tax invoice (as contemplated in clause 8.3) in respect thereof. At the end of each month the Supplier shall deliver to Massmart a month end statement together with the corresponding invoices in respect of Goods supplied and/or Services rendered during the preceding month.

9 SERVICES RENDERED ON A TIME-AND-MATERIALS BASIS

- 9.1 The fees payable to the Supplier for the Services shall be calculated in respect of each individual personnel of the Supplier's team according to the hourly rate or be a fixed amount as quoted and agreed to by Massmart.
- 9.2 The Supplier shall invoice Massmart monthly in arrears for its fees for the month concerned. The invoice shall set out the time spent by each of the Supplier's personnel, which shall be subject to Massmart's written approval, expenses incurred, materials utilised for the month concerned.
- 9.3 For fixed payments, the fee shall be paid to the Supplier as per the PO in respect of Services rendered, and where fees are payable for each completed project activity, with the payment by Massmart of each tranche being conditional on the Supplier achieving the corresponding project milestones.
- 9.4 The Parties expressly acknowledge and agree that, unless otherwise agreed between the Parties in writing, the fee includes:
 - 9.4.1 the costs of accommodation, subsistence, travelling and any other ancillary expenses that may be incurred by the Supplier's personnel related to rendering the Services; and
 - 9.4.2 the cost of any materials or services provided by third parties required by the Supplier for the provision of the Services and/or supply of the Goods, provided that, where the Parties otherwise agree, the costs and expenses recoverable by the Supplier from Massmart shall be limited to those costs and expenses reasonably and properly incurred by the Supplier and approved in advance by Massmart as relates to the provision of the Services and/or supply of the Goods and only in respect of:
 - 9.4.2.1 economy-class air travel;
 - 9.4.2.2 hotel accommodation of 4-star status or below;
 - 9.4.2.3 Group B vehicle rental (as such class is defined by Avis Rent a Car (South Africa); and
 - 9.4.2.4 vehicle travel expenses at the prevailing Automobile Association of South Africa running cost rate per kilometre for an 1800cc (eighteen hundred cubic centimetres) petrol passenger car, or such other amount as approved by Massmart in writing from time to time, where the Supplier utilises its own vehicle.
- 9.5 The Supplier shall obtain Massmart's written approval before incurring any expenses. The expenses shall be invoiced by the Supplier and reimbursed by Massmart, provided that each relevant invoice is accompanied by the original receipt or supporting voucher pertaining to the expenses in question.

10 INDEMNITY

The Supplier hereby indemnifies and agrees to hold Massmart harmless from and against any damages or loss (whether directly or indirectly) suffered or incurred by Massmart or any of its directors, officers, employees, customers, agents, contractors due to any act, omission or negligence of the Supplier or its Personnel in connection with or resulting from the supply of the Goods and/or the provision of the Services.

11 WARRANTIES

- 11.1 The Supplier warrants and represents to Massmart that:
- 11.1.1 it shall strictly adhere to and comply with the terms and conditions of any and all Approvals, Laws and Instructions;
 - 11.1.2 not engage in any conduct calculated to bring or which brings or is likely to bring the reputation of Massmart into disrepute;
 - 11.1.3 it has the ability and capacity to supply the Goods and/or the skill, experience and expertise and is competent to undertake and perform the Services as specified in these terms and conditions or in any Instruction;
 - 11.1.4 any and all Goods supplied by it are of good quality and shall be free from defects;
 - 11.1.5 it will process and maintain any personal information obtained from Massmart in compliance with POPI and shall be stored and managed on private secure servers in accordance with good industry practices and all applicable Laws.
- 11.2 Massmart excludes and disclaims all warranties, whether expressed or implied, statutory or otherwise, except those warranties expressly made in any written agreement duly signed by both Parties.

12 ANTI-CORRUPTION

The Supplier is aware that Massmart belongs to a multinational retail group based in the United States of America, and is familiar with the Walmart Stores, Inc. Global Anti-Corruption Policy (the "Policy"), available at <https://walmartethics.com>. The Supplier agrees that its performance under these terms and conditions shall be in full compliance with the Policy and all applicable anti-corruption laws and regulations, including but not limited to the U.S. Foreign Corrupt Practices Act and the UK Bribery Act. Accordingly, the Supplier agrees that in connection with its activities under these terms and conditions, neither the Supplier nor any agent, affiliate, employee, or other person acting on its behalf will offer, promise, give, or authorize the giving of anything of value, or offer, promise, make, or authorize the making of any bribe, rebate, payoff, influence payment, facilitation payment, kickback, or other unlawful payment, to any government official, political party, or candidate for public office in order to obtain or retain business, gain any unfair advantage, or influence any act or decision of a government official.

13 INTELLECTUAL PROPERTY RIGHTS AND PROTECTION OF PERSONAL INFORMATION ACT

- 13.1 Each party shall retain all its rights, title and interest in and to its own Intellectual Property. The Parties specifically agree that any Intellectual Property developed and/or created for and unique to Massmart throughout the duration of these terms and conditions and/or in terms of any written agreement and thereafter shall remain the sole property of Massmart. The Supplier shall not use or divulge to any person confidential information of Massmart.
- 13.2 In addition to any rights which Massmart may have in terms of clause 13.1 above, Massmart shall have all rights to the Intellectual Property which is developed or generated for Massmart as part of the Services provided under these terms and conditions, including but not limited to all content, images, videos, audio, articles, fonts, backgrounds, coding, advertisements, domains, plain text, mark-up anchors, hyperlinks, plug ins, banners and graphic designs, drawings, plans, diagrams, specifications, reports, blue prints, costings, schematics and models as a result of the Supplier performing the Services and/or providing the Goods.
- 13.3 The Parties shall comply with the security and information protection obligations equivalent to those imposed on them in terms of POPI and other applicable data protection legislation, and failing such legislation, they shall take, implement and maintain all such technical and organisational security procedures and measures necessary or appropriate to preserve the security and confidentiality of the personal information in its possession and to protect such personal information against unauthorised or unlawful disclosure, access or processing, accidental loss, destruction or damage.

14 BREACH AND TERMINATION

- 14.1 In the event that either Party:
- 14.1.1 commits a breach of any provision of these terms and conditions which can be remedied and fails to remedy such breach within 7 (seven) Business Days after delivery by the other Party of a written notice requiring the Party in breach to do so;
 - 14.1.2 commits an act which would be an act of insolvency as defined in the Insolvency Act, No. 24 of 1936 as amended or replaced from time to time, if committed by a natural person;

14.1.3 effects or attempts to effect a compromise or composition with its creditors; or

14.1.4 takes steps to place itself or is placed in liquidation whether provisionally or finally, or takes steps to place itself or is placed under business rescue;

the other Party shall be entitled, without prejudice to any other rights or remedies which it may have under these terms and conditions or in Law, either to immediately terminate these terms and conditions and cancel the PO forthwith or to claim immediate specific performance of all of the obligations of the Party in breach, whether due for performance or not, and without prejudice to any of its rights to claim damages.

14.2 Upon expiry or termination of these terms and conditions for any reason whatsoever, the Supplier shall within 5 (five) business days of such expiry or termination and at its own cost, return to Massmart all copies of any documentation and Intellectual Property supplied by Massmart to the Supplier.