

# DIGITAL WORKS GLOBAL (PTY) LTD TERMS AND CONDITIONS

## 1. ACCEPTANCE AND APPLICABILITY OF TERMS AND CONDITIONS

- 1.1 All Goods (as defined below) supplied and/or Services (as defined below) rendered as well as quotations furnished by or on behalf of Digital Works Global (Pty) Ltd, Registration Number 2016/286186/07 (hereinafter referred to as “the Supplier”) to any third party (“the Client”) as well as the use of the Suppliers websites [www.digital-works.co.za](http://www.digital-works.co.za) and [www.dwgglobal.co.za](http://www.dwgglobal.co.za) (“the Websites”) shall be subject to these Terms and Conditions (hereinafter “the Agreement” or “Terms and Conditions”).
- 1.2 The Client expressly agrees that these Terms and Conditions shall apply to:
  - 1.2.1 The use of the Websites and functionalities of the Websites (including those as a registered user);
  - 1.2.2 All goods supplied and/or services rendered as well as quotations furnished by or on behalf of the Supplier.
- 1.3 Any reference in these Terms and Conditions to:
  - 1.3.1 A clause is, subject to any contrary indication, a reference to a clause of these Terms and Conditions;
  - 1.3.2 law means any law including common law, statute, constitution, judgment, regulation, directive, by-law, order or any other measure of government, statutory or regulatory body or court having the force of law; and
  - 1.3.3 A person is a reference to any natural or juristic person, firm, company, corporation, government, state, agency or organ of a state, association, trust or partnership (whether or not having separate legal personality); and
  - 1.3.4 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning; and
  - 1.3.5 The headings do not govern or affect the interpretation of these Terms and Conditions; and
  - 1.3.6 If any provision in a definition confers rights, or imposes obligations on any Party, effect is given to it as a substantive provision of these Terms and Conditions; and
  - 1.3.7 Unless the context indicates otherwise, an expression which denotes any gender includes both the others; reference to a natural person includes a juristic person; the singular includes the plural, and the plural includes the singular; and
  - 1.3.8 The words “including” and “in particular” are without limitation; and
  - 1.3.9 A reference to a party includes that party’s successors-in-title and permitted assigns; and
  - 1.3.10 To the extent permissible by law, the rule of interpretation that, in the event of ambiguity, the contract must be interpreted

against the party responsible for the drafting of the contract does not apply.

- 1.3.11 A "Party" or "Parties" shall mean the Supplier or the Client or both as the context requires.

## **2. SCOPE OF SERVICES**

2.1 The Supplier conducts itself as:

2.1.1 An installer of, *inter alia*, personalised Smart Home Automation and Business Automation systems, setup and integration with existing infrastructure, system configuration and related services cabling ("the Services");

2.1.2 A reseller of various smart home and business automation and related products including, but not limited to Smart Home Controllers, Access Control, Alarm Security Devices, CCTV, IP Networking, Audio and Visual Equipment, Lighting controls, Boardroom audio, cabling, wiring and visual equipment.

2.2 The Supplier is not a manufacturer of the Goods it resells or markets.

## **3. QUOTATION**

3.1 Any quotation supplied by the Supplier to the Client shall be valid and open for acceptance for the period as stipulated in the quotation, failing such, the quotation will be valid for a period of 24 (twenty-four hours).

3.2 The client agrees that any quotation supplied may be accepted in writing, online, by paying a deposit as stipulated in the quotation or as stipulated herein.

3.3 To the extent permissible by law, the Client shall not be entitled to cancel an order after the Goods have been procured for the Client, given that such Goods are procured specifically for the Client's personalised needs and installation. The Client agrees that it shall be liable for any damages suffered by the Supplier as a result of cancellation of an Order.

3.4 The Client acknowledges that the Supplier procures and imports Goods from various Jurisdictions, should the Supplier allow the cancellation of an order in its sole discretion, the Client agrees that it shall be liable for a handling fee as well as any and all transportation and storage costs.

3.5 Any quotation supplied is limited to those Goods and Services quoted for and does not include any "unforeseen" work, issues with the Client's existing infrastructure, errors or inferior work by other contractors, storage costs and the like.

3.6 The price of the Goods and Services supplied by the Supplier are subject to fluctuation due to various factors including, but not limited to, exchange rate fluctuation, import duties, taxes, value added tax and the like.

3.7 Should the Supplier provide recommendations in respect of suitability of Goods but the Client insists on other Goods, Goods of limited functionality or Goods not suitable for the intended purpose, the Supplier shall not be liable for any damages whatsoever which may arise

where such Goods fail, cause damage to any property or injury to person, result in failure of other goods or systems or have limited functionality.

- 3.8 Any additional site visits not quoted for shall be for the Client's account, at the sole discretion of the Supplier.
- 3.9 The Supplier reserves the right to substitute the Goods as specified in any quotation supplied, with a similar product, should the manufacturer's models change, or for any other reason whatsoever.

#### **4. PAYMENT**

- 4.1 Unless otherwise stated in the quotation payment in respect of Goods ordered or Goods required for the installation process is required to be paid upfront and on presentation of an invoice therefor without setoff, deduction or demand. Goods will not be ordered for the Client unless the Supplier receives full payment upfront in respect of Goods ordered.
- 4.2 Unless otherwise stated in the quotation, all Services quoted shall be required to be paid, without setoff deduction or demand as follows:
  - 4.2.1 80% (eighty per cent) of the quoted amount upfront;
  - 4.2.2 the remaining 20% (twenty per cent) on completion.
- 4.3 "Completion" for purposes of paragraph 5.2.2 shall be the earlier of:
  - 4.3.1 Signature by the Client or his/her/its duly authorised representative of the Supplier's job card;
  - 4.3.2 Completion of the Services as set out in the quotation in accordance therewith.
- 4.4 Any additional Goods or Services supplied or change in scope of work shall be subject to a separate quotation and the provisions of clause 4.1 and 4.2 shall apply to the payment thereof.
- 4.5 In the event that the Client fails to make timeous payment, the Supplier reserves the right to stop all works, cancel the agreement and/or claim damages and/or claim specific performance as the case may be and without prejudice to any other of the Supplier's rights at law.
- 4.6 In the event that the Client fails to make payment, the latter agrees that he/she/it will be liable for:
  - 4.6.1 All legal costs on the scale as between attorney and own client, including counsel fees as charged, tracers fees, collection commission and the like;
  - 4.6.2 Interest on the outstanding amount at the maximum permissible rate.

#### **5. SUPPLY, DELIVERY, INSTALLATION AND OWNERSHIP**

- 5.1 Delivery of Goods is dependent on the relevant supplier's availability. In consequence, any delivery date estimate is not binding on the Supplier and is merely an estimate. The Supplier shall, under no circumstances whatsoever, be liable to the Client for any damages which may arise from the Goods not being supplied by the estimated delivery date.

- 5.2 Any completion date for the installation of the Goods or provision of the Services are estimates and are not binding on the Supplier. The Supplier shall, under no circumstances whatsoever, be liable to the Client for any damages which may arise from the Services not being supplied or the Goods not being installed by the estimated completion dates.
- 5.3 The risk in and to the Goods shall pass to the Client on delivery thereof.
- 5.4 Ownership in and to the Goods and Services shall pass to the Client on receipt of full payment therefor.
- 5.5 Signature by or on behalf of the client of a delivery note or job card shall be *prima facie* proof that the Goods have been received by the client without defect and in good order and that the installation has been completed free from defects.
- 5.6 In the event that the Client requires the Supplier to store the Goods on behalf of the Client, the Client agrees that he/she/it shall be liable for reasonable storage costs in relation thereto.
- 5.7 The Client acknowledges that he/she/it is not entitled to effect repairs of or modifications to the Goods whilst they are under warranty. This will constitute unauthorised repairs/ modifications and will void any warranty. In such circumstances, the Client agrees to be liable for all costs in relation to repairs of such Goods.

## **6. COMMISSIONING**

- 6.1 The Supplier, if part of the quotation supplied, will commission the system in accordance with the Client's instructions and within the limits of the infrastructure and the system capabilities. The Client understands that if additional capabilities are required, such will be the subject matter of a separate quotation.
- 6.2 The Client will be entitled, after the initial commissioning, to one free call out to reprogram the installed system in accordance with the Client's needs and within the capabilities of the system as at the installation date. Any further reprogramming of the system shall be subject to additional costs.

## **7. EXISTING INFRASTRUCTURE**

- 7.1 The Client agrees that if he/she/it uses existing infrastructure including (but not limited to) wiring, equipment, networks, conduit, electronics, power supply and the like for the installation:**
- 7.1.1 Any additional repairs required shall be for the Client's cost and shall be paid upfront;**
- 7.1.2 The Supplier shall not be liable for any damages whatsoever to the Goods or installation, equipment, person or item as well as any damages, loss of profit, incidental damages, indirect damages or consequential damages which are directly or indirectly related to faulty or substandard existing infrastructure (including but not limited to) wiring, equipment, networks, conduit and the like;**

- 7.1.3 **May void any warranties furnished in respect of the Goods and Services;**
- 7.1.4 **The Client is to ensure that the existing infrastructure, wiring, equipment, networks, conduit and the like are free from fault.**
- 7.2 **The Client hereby indemnifies the Supplier from any damages which may occur, indirectly or directly, as a result of the use by the Supplier of the Client's existing infrastructure (including but not limited to) wiring, equipment, networks, conduit and the like.**

## **8. CLIENT'S OWN CONTRACTORS OR EQUIPMENT**

- 8.1 **The Client agrees that he/she/it uses their own contractor or their own equipment for any part of the system installation including, but not limited to, electrical, network, security, multimedia and the like, the Supplier cannot be held liable for the system's performance, functionality, or stability.**
- 8.2 **The Supplier shall not be liable for any damages whatsoever to any Goods, equipment, property or person which may arise directly or indirectly from the use of the Client's equipment or the involvement of the Client's elected contractors.**
- 8.3 **It is the Client's responsibility to ensure that any work done by contractors appointed by the latter is checked by the Client and is free from defects and poor workmanship.**
- 8.4 **Any call-outs to address any issues with the system due to the use of Client's elected contractor or equipment shall be for the Client's expense.**
- 8.5 **The Client hereby indemnifies the Supplier from any damages which may occur, indirectly or directly, as a result of the use of the Client's own equipment or work done by a contractor elected by the Client.**

## **9. WARRANTY**

- 9.1 **The Supplier warrants that its workmanship and installation will be free from any material defect for a period of 6(six) months.**
- 9.2 **The warranty in respect of the Goods supplied by the Supplier shall be the same as the manufacturer's warranty. It is the Client's responsibility to properly and timeously complete the necessary Warranty documents so as to activate the aforesaid Warranty, and to ensure that same is posted/delivered to the manufacturer.**
- 9.3 **The warranties as aforesaid do not cover issues arising from misuse, unauthorised modifications, not using the Goods in accordance with manufacturer instructions, power surges or acts of nature.**
- 9.4 **Should any Goods require replacement and reinstallation, this will be subject to a separate service fee payable by the Client.**
- 9.5 **The client acknowledges that any repairs which may be required to effected to Goods under warranty may need to be returned to the manufacturer who may not be within the borders of the Republic of South Africa or where the Goods were installed. The Client agrees that**

it shall not be held liable for any damages whatsoever for any delays occasioned during repairs done under warranty.

## **10. LIMITATION OF LIABILITY**

- 10.1 To the extent permissible by law, the Supplier shall not be liable for any damages (including indirect, consequential or incidental damages as well as loss of profit) which may arise as a consequence of the negligence of the Supplier (excluding gross negligence), system instability, power surges, delays in the installation or delivery of the Goods, acts of god, force major, state of emergency, breaking required by the installation procedure, faulty equipment or power supplied by the client, contractor's elected by the Client, insufficient or defective existing infrastructure, improper use, misuse of Goods.**
- 10.2 The Supplier is not liable for any issues, damages, or malfunctions caused by improper use, handling, tampering, or alterations of cabling infrastructure of the home automation system. Systems must be used strictly in accordance with the manufacturer's guidelines and instructions. Non-compliance may void warranties and exclude liability. For detailed instructions, please refer to the manufacturer's documentation or contact our support team for assistance.**
- 10.3 If the Supplier is held liable by a Court of Law for any damages, the parties agree that the Supplier's liability shall be limited to the amount paid by the Client for the Supplier's Services.**
- 10.4 The Supplier shall not be liable for any indirect, incidental, or consequential damages arising out of or in connection with the Goods and Services from any cause whatsoever, excluding gross negligence.**

## **11. CONSENT TO SUBCONTRACT**

- 11.1 The Client consents to any part of the Services being subcontracted by the Supplier.**
- 11.2 The Client may not assign or transfer or purport to assign or transfer all or any of his/her/its rights or obligations under this Agreement unless consented to in writing by the Supplier, signed in manuscript.**
- 11.3 The Client agrees that the Supplier may at any time assign or transfer all or any of its rights under this Agreement.**

## **12. THE WEBSITES**

- 12.1 The Websites, content, functionality and features are only for use by users who are 18 (eighteen) years of age or older.**
- 12.2 By using the Websites the Client (or its duly authorised representative – as the case may be) warrants that it is 18 (eighteen) years of age or older and are able to enter into a binding agreement without the assistance of a third party.**
- 12.3 The Websites, functionality, features, accounts, content, materials are provided on an "as is" and "as available" basis, to the full extent permitted by law, and the use thereof is at your own risk.**

- 12.4 The information contained on the Websites may contain errors, omissions, outdated information, typographical errors, inadequate and incomplete information and the Supplier does not guarantee the accuracy thereof. The Supplier shall not be held liable for any damages of whatsoever nature (including delictual, contractual, special, incidental, general, consequential, direct, indirect and loss of profit) which result from your reliance thereon or your use of the Websites. You understand that it is your obligation to ascertain the veracity and/or accuracy of the contents of the Website.
- 12.5 The Supplier cannot guarantee continued, error and failure free, uninterrupted and virus free access and use of the Websites. The Supplier cannot guarantee that there shall be no security breach of the Websites or your Personal Information.
- 12.6 To the maximum extent permissible by law, the Supplier shall not be liable for damages of whatsoever nature (including delictual, contractual special, incidental, general, consequential, direct, indirect and loss of profit) which may arise from:
- 12.6.1 Errors, omissions, outdated information, typographical errors, inadequate and incomplete information on the Websites their related features, online store and account;
  - 12.6.2 Interruption, failure, delayed or failed transmission in respect of the Websites, their related features, online store and account;
  - 12.6.3 Viruses, trojans, malware, spyware and destructive files alleged to have been obtained from the Website and security breaches of the Websites their related features, online store and account or your Personal Information;
  - 12.6.4 Links to other websites as contained in the Websites;
  - 12.6.5 The discontinuation, denial of access to or withdrawal of the Websites.
- 12.7 The Supplier shall be entitled at any time whatsoever, without notice and for any reason whatsoever to withdraw, amend, disallow use to specific users including registered users.
- 12.8 The Websites and the elements comprising of the Websites including (but not limited to) layout, content, downloads, online store, images, texts, graphics, logos, identifying marks, videos and audio belong to and are run by the Supplier, its licensors or service providers unless expressly stated otherwise.
- 12.9 Unless allowed in terms of this Agreement or by a further agreement concluded to such effect, the Websites and all its contents and functionality may not be copied or transmitted in any way whatsoever. The Client agrees that it/he/she shall not be entitled to reproduce, distribute, modify, republish or create derivative works of the Websites, all its contents and functionality.
- 12.10 The Client is prohibited from using the Websites for unlawful purposes, furthermore, you are prohibited from using the Websites as follows:
- 12.10.1 Logging in or pretending to be another person;

- 12.10.2 Uploading data which is abusive, sexual, amounts to hate speech, the promotion of violence, is against the law or calculated to harm or violate the rights of others;
- 12.10.3 In order to gain unauthorised access to Personal Information.
- 12.11 The Client agrees that any unauthorised use of the Websites may lead to a claim against you for damages inclusive of general, special, incidental, direct and indirect damages as well as loss of profit.
- 12.12 The Client is able to register an online account on the Websites. It is to be noted that by registering an account or making, making a purchase or completing any data boxes, the Client will share Personal Information, which is dealt with in accordance with the Privacy Policy. The Client warrants that all information supplied is accurate and up to date. **Furthermore, by supplying such information, the Client consents to receive marketing material, promotions and updates telephonically, via SMS and email, which the Client may elect to opt out of at any time.**
- 12.13 It is the Client's obligation to ensure his/her/its login details, inclusive of user names and passwords, are kept secret and that Client does not allow anyone else access to the account through its/his/her login details. At all times material hereto, the Client will be deemed to be the user accessing your account, making a purchase and completing data boxes. The Client agrees to log out of the account after each session.
- 12.14 The Client is only permitted to have one online account; multiple accounts will result in termination of all accounts.
- 12.15 **The Supplier reserves the right, in its sole discretion, to terminate the Client's access to the online account and the Website, for any reason whatsoever and the Client hereby indemnifies the Supplier from any damages of whatsoever nature (including delictual, contractual, special, incidental, general, consequential, direct, indirect and loss of profit) which may arise from such termination or suspension of an account and/or access to the Websites.**
- 12.16 The Client undertakes to notify the Supplier immediately in writing of any unauthorised access to his/her/its online account or compromise of security.
- 12.17 Payments in respect of any quotations or invoices supplied may be made using the online platform or by bank transfer into the Supplier's bank account, the details of which are provided in the quotation and/or invoice and/or *via* point of sale in the Supplier's possession.
- 12.18 Online transactions will be acquired for the Supplier *via* Paystack Payments Limited.
- 12.19 The Client's details will be stored by the Supplier separately from card details. For more detail on Paystack refer to [www.paystack.com](http://www.paystack.com).
- 12.20 When making payment, you warrant that you are duly authorised to make use of the said card or bank account and that there are sufficient funds to pay for the quoted Goods and/or Services.

12.21 There may be links or images which link to third party websites contained on the Websites or herein. The Supplier is not in control of the content on third party websites and does not endorse or warrant the accuracy of the information supplied on the third party websites. The links to third party websites are provided for convenience only and are to be used at your own risk.

### **13. UNSOLICITED COMMUNICATIONS**

13.1 **The Supplier will not request you to provide personal information via email such as your card details, ATM pin, ccv number, password or username. You are to report any unsolicited communications purporting to be from the Supplier immediately to hello@dwglobal.co.za**

14.2 **The Supplier shall not be held responsible for any losses or damages suffered as a consequence of you supplying your details in response to unsolicited communications.**

### **15. FORCE MAJEURE**

15.1 If any Party to these Terms and Conditions is delayed in performing or fails to perform any of its obligations in terms of this agreement as a consequence of a *force majeure* event, then those obligations shall be deemed to have been suspended to the extent that and for so long as the affected Party is so prevented from fulfilling them and the corresponding obligations of the unaffected Party shall be suspended to the corresponding extent.

15.2 For the purpose of these Terms and Conditions, the expression "force majeure event" means, in respect of the Supplier or Client, any event or circumstances, or combination of events or circumstances, occurring, the occurrence of which is beyond the reasonable control (directly or indirectly) of the Supplier or Client, and could not have been avoided by steps which might reasonably be expected to have been taken by such party acting as a reasonable and prudent Party. Without prejudice to the generality of the foregoing, such events or circumstances shall include:

15.2.1 An act of nature, act of public enemy, act or threat of terrorism, war, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, explosions, lightning, fire, flood, storm, drought, earthquake or extreme weather;

15.2.2 Breakdown of transport carriers or public transport, denial of the use of railway or other means of public transport, plant breakdown, major breakdown of machinery or equipment which could not have been prevented by a reasonable and prudent Party;

15.2.3 Governmental restraint or other legislation, by-law, regulation or directive (such restraint, Act, other legislation, by-law or directive arising or coming into effect after the Effective Date hereof) of any authority having jurisdiction over such party or any inability to obtain or cancellation of any consent, approval or licence rendering it unlawful for such party to comply with its obligations hereunder;

15.2.4 Strikes, lockout, work stoppage or other industrial action or disturbance by workers or employees irrespective of whose employees are involved; and

- 15.2.5 The declaration of a state of disaster, a pandemic, lockdown or similar state of affairs.
- 15.3 During the continuance of a *force majeure* event the affected Party shall as soon as practicable give written notice of the occurrence of the *force majeure* event to the other Party, such notice including information about the circumstances, the likely duration of such circumstances (if known), the extent to which the Party giving such notice shall be prevented from or impeded in carrying out any of its obligations under this agreement and a statement of the steps necessary to remedy such occurrence (in any steps are possible).

## **16. GENERAL**

- 16.1 These Terms and Conditions contain all the express provisions agreed on by the Supplier and Client with regard to the subject matter thereof and each party waives the right to rely on any alleged express provision not contained herein.
- 16.2 No contract varying, adding to, deleting from or cancelling these Terms and Conditions, and no waiver of any right under these Terms and Conditions, shall be effective unless reduced to writing and signed by or on behalf of each Party (or their duly authorised representative as the case may be) in manuscript.
- 16.3 No indulgence granted by a Party shall constitute a waiver or abandonment of any of that Party's rights under this Agreement, accordingly, that Party shall not be precluded as a consequence of having granted that indulgence from exercising any rights against the other Party which may have arisen in the past or which may arise in the future.
- 16.4 The Parties agree to act in good faith in relation to one another at all times in giving effect to the provisions of the Agreement.
- 16.5 Any unenforceable provision of these Terms and Conditions may be severed and the remaining Terms and Conditions shall continue in force.
- 16.6 This Agreement shall be governed by South African Law.
- 16.7 Should any dispute arise between the Supplier and the Client, the Parties agree that the High Court of South Africa, Gauteng Division, Johannesburg shall have exclusive jurisdiction to adjudicate such a dispute.
- 16.8 The Client hereby consents and grants the Supplier remote access to any system installed for purposes of assessing faults, reprogramming, fault finding and the like.