

Comb Communications Standard Terms & Conditions

1. Interpretation

- 1.1. That for the purpose of this agreement the following terms and expressions shall have the respective meanings set out hereunder:
 - 1.1.1. "The/This Agreement" means the Agreement as set out herein together with attached annexures or any other document attached thereto;
 - 1.1.2. "Comb" means Comb Communications
 - 1.1.3. "End User(s)" means the legal entity or persons utilising the product;
 - 1.1.4. "Telephone Access Equipment" means physical hardware or field device unit;
 - 1.1.5. "Telephone Access Software" means software loaded onto the field device to initiate functionality;
 - 1.1.6. "Internet Based Services" means the web site used to program, maintain and manage the software;
 - 1.1.7. "B1000" means the Telephone Access Equipment, Telephone Access Software and Internet Based Services;
 - 1.1.8. "Initial Period" means the Twenty Four month contractual period;
 - 1.1.9. "Commencement Date" means the date of system activation on Comb Communications Website.
 - 1.1.10. "Cellular Networks" means the current cellular service providers being Vodacom, MTN, Virgin and Cell C;
 - 1.1.11. "GSM" means the Global System for mobile communications;
 - 1.1.12. "GPRS" means the General Packet Radio Services – data transmission;
 - 1.1.13. "Manufacturers Suggested Retail Price" means the suggested price of sale to the End User.
 - 1.1.14. "Complex Signup Form" attached as Annexure A
 - 1.1.15. "Annual Maintenance Fee" means the fee charged to the End User.
- 1.2. Unless the context otherwise requires, words importing companies or corporations shall include persons and vice versa, words importing the masculine gender shall include the other two genders and words importing the singular shall include the plural and vice versa
- 1.3. The clause headings in this agreement have been inserted for convenience only and shall not be taken into account in its interpretation;
- 1.4. This agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa;

2. Duration

- 2.1. This Agreement shall commence on the commencement of the initial period and shall continue for a period of 24 months and then indefinitely thereafter until terminated by the parties giving the other prior written notice to that effect (1 calendar month).

3. Provision of Products & Services

- 3.1. "Comb" provides the "End User" with "B1000" that uses the "Cellular Networks".
- 3.2. "Comb" provides the "End User" with a licence to use the "Telephone Access Software" that operates on the "B1000". The "Telephone Access Software" provides a database that can be updated via an "Internet Based Service".
 - 3.2.1. Comb owns all proprietary rights to the software on their "B1000" and the "End User" acknowledges "Comb's" unlimited right to control and upgrade the version of the said software.
 - 3.2.2. The "End User" acknowledges and agrees that these upgrades may require the "B1000" to be brought to a certified "Comb" repair centre by the "End User" for upgrade.
- 3.3. "Comb" provides the "End User" with "Internet Based Services" in accordance with the Subscription package that they purchase.
- 3.4. The "End User" acknowledges that the "B1000" utilises systems and software that are not operated or produced by "Comb". This includes, but is not limited to:
 - 3.4.1. Internet systems and telephone networks used to provide "Internet Based Services"
 - 3.4.2. "Cellular Network" systems. Specifically "GSM" and "GPRS" services.
 - 3.4.3. Internet web browser's software, PDF document reading software, spreadsheet software and other software systems.
- 3.5. "Internet Based Services" are dependent upon Internet server computers managed by "Comb". Although "Comb" strives to make these server computers available the majority of the time, it does not warrant the operational uptime of these servers. The "End User" acknowledges and agrees that from time-to-time they may not be able to access the "Internet Based Services" and that they are not entitled to deduct any portion of the charges pursuant to the interruption of the service.

4. Subscription of "Internet Based Services"

- 4.1. "Comb" provides a standard "Internet Based Service" that is required for the normal operation of the "B1000".
- 4.2. From time-to-time "Comb" may offer additional "Subscription Based Services", which the "End User" may choose to subscribe to.

5. Data Access & Archiving

- 5.1. "Comb" maintains data on the Internet servers for operating both the "Telephone Access Equipment" and the "Internet Based Services".
 - 5.1.1. The "End User" acknowledges and agrees that while "Comb" makes every effort to maintain, secure and back up this information, the onus and responsibility is on the "End User" to maintain backups of any of the said data that they require.
 - 5.1.2. The "End User" acknowledges that "Comb" cannot provide historical data indefinitely, and that "Comb" will archive data after every 3 (three) month period. This data may still be available to the "End User" after the 3 (three) month period, but a charge will be incurred for the "End Users" account in any attempt to retrieve it.

6. Limited Warranty

- 6.1. "Comb" warrants that the "Telephone Access Equipment" will perform substantially in accordance with paragraph 3 for a period of 1 (one) year.
- 6.2. The "End Users" acknowledges and agrees that their exclusive remedy for any breach of limited warranty is the replacement at no cost of the "Telephone Access Equipment" which needs to be brought in to a certified "Comb" repair centre by the "End User".
- 6.3. The limited warranty above is the only express warranty made to the "End User" and is provided in lieu of any other express warranties or similar obligations (if any) created by any advertising, documentation, packaging, or other communication. Except for the limited warranty and to the maximum extent permitted by the law, "Comb", its agents, employees and representatives, provide the "B1000" as is and with all faults, and hereby disclaim all other warranties and conditions, whether express, implied or statutory, including, but not limited to any (if any) implied warranties, duties or conditions of merchantability, of fitness for a particular purpose, of reliability or availability, of accuracy or completeness of the "B1000", of responses, of results, of workmanlike effort, of lack of viruses, and of lack of negligence, all with regard to the content of the "B1000" or otherwise arising out of the use of the "B1000".

7. Acts Of God

- 7.1. "Comb" shall not be liable to the "End User" for any breach of these terms and conditions or failure on "Comb's" part to perform any obligation as a result of an act of God, Government control, legislative restriction or prohibitions or any other, Government act or omission whether local or national, act or default of any supplier, agent, or sub-contractor, industrial disputes of any kind or any other similar or dissimilar cause outside of "Comb's" control.

8. Liability

- 8.1. The "End User" acknowledges and agrees that the "B1000" is a telephone system that controls ancillary devices. What is connected to the said system is under the control of the "End User" and "Comb" has no control over how the "B1000" is connected.
- 8.2. Comb shall not be liable (including liability for negligence) for any loss or damage or injury to the "End User" or any third party whatsoever no matter when or how, arising out of the provision of the services or otherwise, whether direct or indirect, consequential or contingent and whether foreseeable or not and in particular not be liable for financial loss or loss of profits, contracts, business anticipated, savings use or goodwill.
- 8.3. The "End User", further irrevocably indemnifies and holds "Comb" harmless against all and any actions (including direct, indirect, special or consequential damages), suits, proceedings, claims, demands, costs, loss of income and, expenses or whatsoever nature and howsoever incurred which may be taken or made against them or be incurred or become payable by the "End User" or any third party, arising out of this agreement.
- 8.4. This indemnity applies for Comb's benefit and all companies directly or indirectly owned, wholly or partly owned or controlled by Comb, and all officers, employees, contractors, subcontractors, agents or anyone else to whom Comb or these parties are responsible for.
- 8.5. The "End User" indemnifies Comb against any damage, action, cost or liability (including by Comb's negligence) arising from any illness or personal injury suffered by the "End User" and or any 3rd party as a result of the use of the equipment, irrespective of when or how, and whether foreseeable or not, together with all legal costs relating to any claim arising there from.
- 8.6. Any known or unknown risk attached to the use of the "B1000" shall be deemed to have passed to the "End User" on the "Commencement Date".

9. Charges

- 9.1. "Comb" publishes from time to time a "Manufacturers Suggested Retail Price". This is a suggested purchase price to the "End User" for the "Telephone Access Equipment" and licence to use the "Telephone Access Software" on a single piece of said equipment.
- 9.2. "Comb" charges an "Annual Maintenance Fee" for maintenance of the "Telephone Access Software" and maintenance and access to the standard (section 4.1) "Internet Based Service".
 - 9.2.1. This charge is specified in the current standard "Comb" price list.
 - 9.2.2. This charge is subject to an annual escalation at a rate to be determined by Comb at its sole discretion
- 9.3. "Comb" will from time to time make available additional "Internet Based Services" which the "End User" may choose to subscribe to. Charges for these services will be published at the time when they are made available.
- 9.4. The "End User" acknowledges that any charges incurred on the "Cellular Network" through regular use of the "B1000" or through faults in the "Telephone Access Equipment" or "Telephone Access Software" or any other means, are for the account of the "End User" and that the "End User" indemnifies "Comb", its agents, employees or representatives against any such charges.

10. Software

- 10.1. Ownership in and to the software utilised by "Comb" in respect of any of its systems shall vest in "Comb"

11. Maintenance and Access

- 11.1. The "End User" shall allow "Comb" or its approved representatives to carry out such work as is necessary to effect the maintenance of the "B1000"; The "End User" shall allow "Comb" or its approved representatives access to carry out such work as is necessary to effect the efficient deployment of the telephone access equipment, telephone access software and internet based services (if necessary) and indemnifies "Comb", its directors, Employees, Agents or approved representatives against all damages, costs and expenses incurred or suffered by such entities in doing so as well as against any claims of whatsoever nature that the "End User" might have against "Comb" as a result thereof.

12. Payment

- 12.1. All charges and prices set out in this agreement and annexures attached hereto are exclusive of value added tax;
- 12.2. All charges shall be paid within 14 (fourteen) days after the presentation of an invoice in respect thereof.
- 12.3. All charges shall be paid by means of a direct transfer, free of exchange and bank charges. The "End User" shall not, for whatever reason, withhold payment of any charges.
- 12.4. "Comb" reserves the right to suspend all services and seek legal action against the "End User" in respect of non-payment of any account.
- 12.5. Any amount due by the "End User" to "Comb" which remains unpaid on the due date shall bear interest at the maximum rate allowable in terms of the Usury act 1968 as amended, calculated on the date payment falls due to date of actual payment compounded monthly, any amounts payable shall be allocated first to costs, collection commission, interest and then capital.

13. Suspension of Services & Termination

- 13.1. "Comb" shall be entitled to discontinue, suspend, disconnect any or all services provided to the "End User" without notice and free of liability in the following circumstances: -
 - 13.1.1. Should "Comb" be unable to provide the services, in whole or in part, whether due to force majeure or otherwise through no fault of its own; or
 - 13.1.2. Should such suspension of service be necessary in order to facilitate repairs, modifications, maintenance, improvements or remedial works in respect of the "B1000".
 - 13.1.3. If any amount due by the "End User" remains unpaid at the due date
 - 13.1.4. Should the end user be liquidated being provisionally or finally
 - 13.1.5. Should Comb have a reasonable suspicion of any fraudulent act having been or about to be committed by the "End User" in respect of this agreement
 - 13.1.6. Should the "End User" have failed to disclose material information upon the signature of this agreement.
- 13.2. Should the services be suspended pursuant to 13.1.1 or 13.1.2, "Comb" will use all reasonable endeavours to provide an alternate service. Should "Comb" fail to provide alternate services within 60 (sixty) days from the commencement of suspension of services, either party shall be entitled by written notice to terminate this agreement with immediate effect.

14. Deactivation and Reactivation

- 14.1. With regard to clause 13, "Comb", shall charge a reactivation fee for deactivation and reactivation of the "B1000" from and to the "B1000" if and when applicable.

15. Termination / Breach

- 15.1. In the event that the "End User" breaches any term of this agreement or any warranty given by it hereunder or fails to fulfil any obligation resting upon it, then without prejudice to Comb's other rights in terms of this agreement or the common law, Comb may forthwith and after 3 days written notice to the "End User", either terminate this agreement or call for specific performance of all the "end user's" obligations and immediate payment of all sums owing by the "End User", whether or not then due, in either event without prejudice to Comb's right to recover pre-estimated damages.
- 15.2. Comb may, without notice, terminate this agreement immediately in any of the following circumstances:
 - 15.2.1. If the "End User" fails to pay an amount owing to Comb on due date;
 - 15.2.2. If the "End User" makes or offers any composition with its creditors or commits any act of insolvency in terms of the Insolvency Act, 1936, or any act which would have been an act of insolvency had it been committed by a natural person or if any petition or application for sequestration, liquidation, winding-up or judicial management is presented by or made against the "End User", or if any resolution to wind-up the "End User" is passed or if a receiver, trustee or curator is appointed over the whole or any part of the "End User's" assets or estate or if Comb anticipates that any of the events as set out in this clause are imminent; or
 - 15.2.3. If the "End User" does or allows to be done anything which in Comb's opinion will or may have the effect of negatively affecting the operation of the services;
- 15.3. Upon termination of this agreement Comb shall disconnect the terminal equipment from the system.
- 15.4. After disconnection of the terminal equipment from the system consequent upon termination of this agreement, the "End User" shall pay on demand all charges outstanding at the time of disconnection, including the balance of the monthly access charges described in clause 5.2.

16. No Reliance

- 16.1. The "End User" acknowledges and agrees that: -
 - 16.1.1. It is not acting as an agent on behalf of any other party;
 - 16.1.2. It is not reliant on any representations or undertakings made by "Comb";
 - 16.1.3. In entering into this agreement it has made its own judgment and has not relied on any views expressed by "Comb", its agents, employees and representatives;
 - 16.1.4. It has consulted with its own legal advisers to the extent that it deems necessary; and
 - 16.1.5. It is entering into this agreement with a full understanding of the terms, conditions and risks thereof and is capable of and willing to assume those risks.

17. Cession

- 17.1. "Comb" shall be entitled to cede, assign and delegate all or any of its rights and obligations in terms of this agreement to a third party, in which event "Comb" shall give written notice to the "End User" thereof.
- 17.2. The "End User" shall not be entitled to cede, assign and delegate any of its rights or obligations in terms of this agreement to a third party.

18. Costs

The "End User" shall on demand pay all expenses incurred by "Comb" either on behalf of the "End User", or as a result of the "End User's" failure to comply with the provisions of this agreement, including tracing costs and all legal costs calculated on the scale as between attorney and own client.

19. Force Majeure

- 19.1. In the event that any party is affected by force majeure it/he/she shall forthwith notify the other parties of the nature and extent and in such circumstances no party shall be deemed to be in breach of this agreement, or otherwise be liable to any other party, by reason of any delay in performance or non-performance, if the delay in performance or non-performance is due to any force majeure and the other parties have been notified;
- 19.2. In the event that the force majeure in question prevails for a continuous period in excess of ninety (90) days, the parties shall enter into bona fide discussions with a view to alleviating its affects, or to agreeing on such alternative arrangements as may be fair and reasonable to all the parties;
- 19.3. In the event that the force majeure in question prevails for a continuous period in excess of one hundred and eight (180) days and has a material adverse effect on the business of the company, then any party not subject to the force majeure shall have the right to terminate this agreement by notifying the other parties in writing;

20. Magistrates Court Jurisdiction

- 20.1. The parties hereby consent to the jurisdiction of the magistrates court have jurisdiction over its legal person in respect of any action by the other party arising from the terms of this agreement or the cancellation thereof

21. Dom ciliu Citandi Et Executandi

- 21.1. For the purpose of this agreement, including the giving of notices in terms hereof and the serving of legal process, the parties choose the *domiciliu citandi et executandi* ("domicilium") as follows:
 - a. "Comb" at Unit B17, Allandale Park, Morkels Close
 - b. "End User" as stated in Annex A
- 21.2. A party may at any time change its *domicilium* by notice in writing, provided that the new *domicilium* is in the Republic of South Africa and consists of, or includes, a physical address at which process can be served;
- 21.3. Any notice given in connection with this agreement may be delivered by hand, or be sent by prepaid telegram or cablegram, or be sent by telex or telefax if the *domicilium* includes a telex or telefax number, to the *domicilium* chosen by the party concerned. Any notice or process delivered on any party in connection with any matter or subject arising out of this agreement or any party in connection with any matter or subject arising out of this agreement or any notice shall be deemed to have been delivered if handed to any responsible person at the *domicilium* chosen by any party and if shall not be necessary to hand such process or notice to any party personally.
- 21.4. A notice as set out above shall be presumed to have been duly delivered:
 - 21.4.1. On the date of delivery if delivered by hand, telex or telefax;
 - 21.4.2. On the seventh day from the date of posting including the date of posting if posted by pre-paid registered post from within the Republic of South Africa; and
 - 21.4.3. On the fourteenth day from the date of posting including the date of posting if posted from outside the Republic of South Africa;