



Standard Terms and Conditions

For all agreements between

GoIntell (Pty) Ltd

Registration: 2000/025570/07

A company duly registered and incorporated with limited liability under the laws of the Republic of South Africa, having its registered office and its domicile for the purposes of this Agreement at:

22 Sacks Circle, Bellville South, Cape Town, 7530
(Hereinafter referred to as "the Supplier")

and

<Customer Name>

Registration: <Customer Company Registration Number>

A company duly registered and incorporated with limited liability under the laws of the Republic of South Africa, having its registered office and domicile for the purposes of this Agreement at:

<Customer physical address>

(Hereinafter referred to as "the User")

STANDARD TERMS AND CONDITIONS

1. Unless the context clearly indicates otherwise, in this document:
 - a. "Agreement" means this agreement and includes the statement of work, these terms and conditions and all Annexures and Schedules hereto;
 - b. "Commencement Date" means the commencement date set out in the statement of work;
 - c. "Signature Date" means the date on which this Agreement is signed by the last signing party hereto;
 - d. "Super User/s" refers to those individuals appointed as such by the User.
 - e. "Services" has the meaning given to that term in the statement of work, and are subject to the "Project Caveats" set out in the statement of work.
2. This Agreement shall in all aspects, including its validity and interpretation, be governed in accordance with the laws for the time being of the Republic of South Africa, excluding its conflict of laws rules.
3. These terms and conditions include the general provisions attached as Annexure A and agreement to the one includes agreement to the other.
4. The Supplier agrees to supply the User with the Services, in accordance with this Agreement and in consideration for the Services the User agrees to pay to the Supplier the Support Fee as set out in the statement of work read together with these Standard Terms and Conditions. The User shall be obligated to provide the Supplier with all reasonable assistance in the performance of the Services.
5. The User shall be obliged to purchase all its Microsoft Dynamics software from the Supplier, unless the user is at the Signature Date a party to any existing written supply agreements with another certified Microsoft Dynamics NAV solutions supplier which agreement precludes the User from so doing.
6. Unless approved by the Supplier, the User shall ensure that no upgrades, alterations, customizations or maintenance are carried out on the Microsoft Dynamics NAV solution other than by persons duly authorized by the Supplier.
7. The User shall, on an uninterrupted basis during the term of this Agreement, regularly and systematically back-up all of its data and information. Under no circumstances shall the Supplier be responsible, whether in terms of this Agreement or at law, for loss of the User's data or restoration of lost User information, or lost working hours, irrespective of the cause of such loss, and the User undertakes to inform the Supplier of any apparent problems forthwith upon becoming aware thereof. This clause shall not apply where the loss of data and/or information is due to the negligence or willful misconduct of the Supplier.
8. Except as otherwise contemplated in this clause, this Agreement shall be applicable to the Services only. Without derogating from the generality of the foregoing, this Agreement does not apply to any support requirements for other software, design facilities or programming, and if the Supplier supplies the User with any additional services, the User's liability to the Supplier shall be calculated on an hourly basis at the Supplier's standard billing rates as set out in the Statement of work. Should the User require any additional services it shall give the Supplier at least two weeks prior written notice thereof, which notice shall specify the scope of the additional services required, provided that the Supplier shall not be obliged to provide such additional services unless agreed to.
9. In the event the User requires the Supplier to add additional Microsoft Dynamics NAV software and/or Users any fees payable in terms thereof shall be increased accordingly.
10. Save as otherwise expressly provided for in this Agreement, all monetary amounts expressed in this Agreement are expressed exclusive of Value Added Tax and any Value Added Tax arising in respect of any amounts payable by the User in terms of this Agreement shall, on the issue of a valid tax invoice in respect of the same, be paid to the Supplier by the User.
11. All amounts owing by the User to the Supplier in respect of the Services shall become due, owing and payable on the first day of each month, in respect of that month.
12. All amounts owing by the User to the Supplier in respect all additional services provided by the Supplier shall be due owing and payable 30 days from presentation of invoice.
13. All amounts owing by the User to the Supplier in respect of software provided by the Supplier shall be due owing and payable 7 days from presentation of invoice.
14. Unless otherwise specified in a statement of work, quote, proposal or other communication, the User or Supplier may terminate any ongoing work and any related licensing with one month's calendar notice. Where the User's license fees have not been quoted on a month-to-month basis, early cancellation may attract a penalty fee as specified in the quote or other supporting communication. All work completed before and until the end of this notice period shall remain fully billable. Any penalty or cost chargeable for early license cancellation by Microsoft shall be for the account of the User
15. If the User fails to make any payment to the Supplier timeously, the Supplier shall be entitled to decline, refuse and /or halt the Services (and/or additional services as the case may be) until payment is received in full and this right to decline, refuse and /or halt the Services shall not be grounds for the User to withhold or reduce any payment due to the Supplier in terms hereof nor shall the User be entitled to cancel this agreement.

16. The User shall be liable to the Supplier for interest on all overdue amounts at a rate of 2% above the prime overdraft rate of First National Bank Limited, a South African commercial bank, calculated and compounded monthly in arrears from due date to date of payment.
17. The liability of the Supplier for faulty execution of the Services as well as all damages suffered by the User, whether arising directly or indirectly as a result of the Services, will be limited to the Supplier rectifying, within a reasonable time and free of charge, any damage caused by the Supplier as a result of such faulty execution, provided that the Supplier is notified in writing within 30 days of the damage or faulty execution of the Services. The limitation of liability of this clause shall not apply in instances where the User has suffered damage or loss arising directly or indirectly as a result of gross negligence or willful misconduct of the Supplier.
18. The Supplier shall not be liable for any damages arising from faulty execution of any services if the User attempts to correct, or allows any third party to attempt to correct such faulty execution of the services or any damage arising therefrom.
19. The Supplier shall not be liable to the User for loss of profits or for incidental, special or consequential damages arising out of or in connection with the Services (or additional services as the case may be) rendered by the Supplier in terms of this Agreement or the delivery, installation, servicing, performance or use of the Computer System, and the User hereby irrevocably indemnifies the Supplier against any claims of any third party arising in connection with same. The limitation of liability of this clause shall not apply in instances where the User has suffered damage or loss arising directly or indirectly as a result of gross negligence or willful misconduct of the Supplier.
20. The User warrants and represents to the Supplier that it is the owner of, and/or has the right to be in possession of and/or is licensed to use all the software, data, and information contemplated in this Agreement and the User will defend at its expense, and hereby indemnifies and holds the Supplier harmless against any damages or expenses the Supplier may incur (including reasonable attorney and own client legal fees and costs incurred), and pay any costs, damages or legal fees and costs awarded against the Supplier resulting from a breach by the User of the warranty and representation in this clause.
21. The User shall not, during this agreement and for a period of 12 months after the termination or expiry of this Agreement for any reason, recruit an employee or contractor of the Supplier to perform services directly or indirectly for the User, whether as an employee of the User or otherwise.
22. If either party:
- fails to pay any amount due owing and payable in terms of this Agreement;
 - breaches any of its obligations under this Agreement and fails to remedy such breach within 7 days after the receipt of written notice from the other Party;
 - commits any act which, if such party was a natural person, would constitute an act of insolvency;
 - endeavors to compromise generally with its creditors or does or cause anything to be done which may prejudice the other Parties rights hereunder; or
 - allows any judgment against it to remain unsettled for more than 10 days without taking immediate steps to have such judgment rescinded;
 - is placed in liquidation (whether provisionally or finally) or is subject to the commencement of business rescue proceedings,
- then without prejudice to any other rights which the aggrieved party may have in terms of this Agreement or at law, the aggrieved party shall be entitled to claim such amounts in arrears (including interest thereon in accordance with clause 15) and to cease performance of its obligations hereunder until the defaulting party has paid the aforesaid amounts and remedied the failure; or to forthwith cancel this agreement, without prejudice to the aggrieved party's rights at law, including but not limited to the aggrieved party's right to claim damages.
23. Call Centre facilities will be available to the User from 08h00 to 17h00 South African time (excluding South African Public holidays), and requests for Support shall be placed by Super Users through the Supplier's help desk at support@goglobal.group. Travel time to and from site will be charged at the normal hourly rate applicable for the appropriate resource.

Signed at: _____ on _____

For the Supplier

who warrants that s/he is duly authorized hereto

Signed at: _____ on _____

For the User

Annexure A: General Provisions

Force Majeure

1. Subject to the remaining provisions of this Annexure A, the performance by a party to this Agreement of its obligations in this Agreement shall be temporarily excused to the extent that such performance is hindered, delayed, or made impractical by:
 - a. the acts or omissions of the other party;
 - b. flood, fire, strike, war, riot or other act of God;
 - c. unavailability of parts or software; and/or
 - d. any other cause beyond the reasonable control of that party, collectively "force majeure".
2. A party temporarily excused from performance in accordance with clause 1 of this Annexure A shall promptly resume performance when the relevant hindering circumstance/s is removed.
3. If any event of force majeure prevents performance of any obligation under this Agreement by a party for a period of more than 30 days, the other party may terminate this Agreement by written notice.

Dispute Resolution

4. If any dispute arises from or in connection with this Agreement, or its termination, the parties [to the dispute] shall endeavour to settle the dispute by mediation in accordance with the Arbitration Foundation of Southern Africa ("AFSA") mediation guidelines.
5. Each party undertakes to cooperate in good faith with the mediator in the conduct of the mediation of the dispute.
6. If a settlement agreement is not reached in the mediation of the dispute –
 - a. the submission of the dispute to mediation shall not prejudice any of the parties' rights; and
 - b. the dispute (or such part thereof which is not settled pursuant to the mediation) shall, if so requested by any party be finally resolved in accordance with the remaining provisions of this Annexure A.
7. Any dispute arising from or in connection with this Agreement or its termination and not resolved in accordance with the mediation procedure set out in the foregoing provisions of this Annexure A shall, if so requested by either party, be finally resolved by an arbitrator agreed to between the parties and failing such agreement within 3 days of a request therefor by a party, appointed by the chairman for the time being of the local Bar Council. The arbitration shall be conducted in accordance with the AFSA Rules for Expedited Arbitrations or such other rules as may be determined by the arbitrator, provided that there shall be no appeal against the award of the arbitrator.
8. The parties agree that the written demand by a party to the dispute in terms of this Annexure A that the dispute be submitted to arbitration is to be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act 68 of 1969.
9. Notwithstanding anything to the contrary contained in this Annexure A, neither party shall be precluded from instituting any injunctive or mandatory or similar proceedings in any appropriate court of competent jurisdiction and, if successful, being granted appropriate injunctive or mandatory relief.
10. The provisions of clauses 4 to 10 of this Annexure A:
 - a. are severable from the rest of this Agreement and shall, notwithstanding the termination, cancellation, invalidity or alleged invalidity of this Agreement or any part of it for any reason, remain in full force and effect;
 - b. constitute an irrevocable consent by the parties to any proceedings in terms hereof and no party shall be entitled to withdraw therefrom or to claim in any such proceedings that it is not bound by the foregoing provisions of this Annexure A. For the purposes of this clause 10b "proceedings" shall include proceedings referred to in 8.

Domicile

11. The parties choose *domicilium citandi et executandi* for all purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purpose arising from this agreement, the addresses set out on the cover page.
12. Either party shall be entitled from time to time, by written notice to the other/s, to vary its domicile to any other physical address within the Republic of South Africa,
13. Any notice given and any payment made by a party to another party which is delivered by hand during the normal business hours of the addressee at the addressee's domicile shall be rebuttably presumed to have been received by the addressee at the time of delivery.

14. Notwithstanding anything to the contrary in this Annexure A, a written notice or other communication actually received by a party shall be adequate notice to it notwithstanding that the notice was not delivered to its given domicile or in the manner contemplated by the foregoing provisions of this Annexure A.

DRAFT

Confidentiality

15. The Supplier may use any of the User's information for the purpose of fulfilling its obligations in terms of this Agreement, and will otherwise hold the User's information in the strictest confidence, provided that the foregoing confidentiality obligation shall not apply to any information, know how or other intellectual property (whether registered or not) which:
 - a. at the time of disclosure is published or is otherwise in the public domain;
 - b. after disclosure becomes part of the public domain otherwise than through a breach of confidentiality on the part of the Supplier;
 - c. was known to the Supplier prior to receipt from the User;
 - d. is disclosed to the Supplier by a third party;
 - e. is independently developed by the Supplier;
 - f. the Supplier is requested to deploy to another client user site.

General

16. No addition to, variation, novation or agreed cancellation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties.
17. No suspension of a right to enforce any term of this Agreement and no *pactum de non petendo* shall be of any force or effect unless in writing and duly signed by or on behalf of the parties.
18. No indulgence which a party may grant to the other party shall constitute a waiver of any of the rights of the grantor unless in writing signed by both parties.
19. All costs, charges and expenses of any nature whatever which may be incurred by a party in enforcing its rights in terms of this Agreement, including without limiting the generality of the foregoing, legal costs on the scale of attorney and own client and collection commission, irrespective of whether any action has been instituted, shall be recoverable on demand from the party against which such rights are successfully enforced and shall be payable on demand.
20. The provisions of this Agreement shall be binding upon the successors-in-title and the permitted assigns of the parties.
21. All provisions in this Agreement are, notwithstanding the manner in which they have been put together or linked grammatically, severable from each other. Any provision of this agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as pro non scripto and the remaining provisions of this agreement shall be of full force and effect. The parties declare that it is their intention that this Agreement would be executed without such unenforceable provisions if they were aware of such unenforceability at the time of its execution.
22. No remedy conferred by this Agreement is intended, unless a provision of this Agreement clearly expresses a contrary intention, to be exclusive of any other remedy which is otherwise available at law, by statute or otherwise. Each remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law, by statute or otherwise. The election of any one or more remedy by a party shall not constitute a waiver by such party of the right to pursue any other remedy available at law.
23. The User shall be entitled, on written notice, to cede or assign its rights or obligations under this agreement to any of its subsidiaries, Holding Company or Group Affiliates without the prior written consent of the Supplier. The Supplier shall be entitled, with the prior written consent of the User, which consent shall not be unreasonably withheld, to cede and delegate all or any of its rights and obligations under this Agreement to the successor in title of the undertakings of the Supplier or any shareholder of the Supplier or any subsidiary, Holding Company or Group Affiliate of the Supplier.
24. In this Agreement, when any number of days is prescribed, such number shall exclude the first and include the last day, unless the last day falls on a day which is not a business day in which case the last day shall be the next succeeding business day;
25. the use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s;
26. the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the agreement shall not apply (this Agreement being the product of negotiations between the parties) nor shall this agreement be construed in favour of or against any party by reason of the extent to which any party or its professional advisors participated in the drafting or preparation of this Agreement.

DATA PROTECTION

27. If as a result of this Agreement the Supplier is required to process personal data supplied to it by the User, then the Supplier will:
 - a. process such personal data in accordance with the data protection laws applicable in the Republic of South Africa from time to time and all subsequent legislation and regulations relating to the protection of personal information and the use and processing of data relating to living individuals and/or legal entities, and in accordance with the User's directions and policies which may be communicated to the Supplier from time to time; and

- b. implement appropriate technical and organisational measures to protect such personal data against accidental or unlawful destruction or loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing; and
- c. not disclose the personal data to any data subject or to a third party other than at the request of the User or as provided for in this Agreement; and
- d. forward any request to access, correct or cease processing personal data to the User within 7 (seven) days of receipt; and
- e. not transfer the personal data pertaining to any person or legal entity outside the Republic of South Africa without the prior written consent of the User; and
- f. notify the User immediately if it becomes aware of any unauthorised or unlawful processing, loss of, damage to or destruction of the personal data. The Supplier shall, as soon as reasonably practicable, discuss with the User if it becomes aware of any material advance in technology and methods of working which mean that the User should revise its security measures.

The User shall have the right to terminate this agreement with immediate effect should it have reason to believe the Supplier, its employees or representatives has acted, in breach of this clause without any further liability to the Supplier.

SECURITY AUDITS AND SCOPE

28. Scope

- a. The User and its representatives, including the User's selected outside auditors, will have the right, at any time, upon reasonable prior written notice to perform an audit, operational audit, attest engagement, or inspection with respect to the Suppliers performance of the Services, including, but not limited to, any obligation of the Supplier that affects the User's internal controls on financial reporting. For the avoidance of doubt, the Supplier agrees that the scope of such an audit may include:
 - i. verifying the accuracy of the Supplier invoices to the User and the Supplier's Subcontractors' invoices to the Supplier;
 - ii. examining the data processing environment, Systems and communications facilities used to provide the Services required under this Agreement; and
 - iii. Reviewing the Supplier compliance with the Service Levels and the protection of the User's data.
 - iv. Where the Supplier has access to the User's internal systems and data bases that, such access is secured in accordance with the User's acceptable standards.

29. Client Security Questionnaire

- a. The Supplier shall answer security questionnaires or conduct scans of servers, databases, and other network hardware at the User's reasonable written request.

The User shall have the right to terminate this agreement with immediate effect should the Supplier fail any audit conducted by the User or its auditors and fail to remedy such failure within the agreed time, without any further liability to the Supplier.