

## TERMS & CONDITIONS

### APPLICATION SOFTWARE LICENSE AGREEMENT

#### RECITALS

- (a) Whereas Compusoft South Africa (Pty) Ltd (hereinafter referred to as “the Licensor”) has developed application software; and
- (b) Whereas the Licensee wishes to obtain a license to use the application software;

**NOW THEREFORE** the Licensor and the Licensee hereby agree to the following:

#### 1 Definitions

Unless the contrary is clearly indicated, the following words and/or phrases used in this agreement shall have the following meaning:

- 1.1. “**order**” shall mean the attached “Order Form”;
- 1.2. “**commencement date**” shall mean the date of signature hereof;
- 1.3. “**copyright**” shall mean all rights of copyright whether existing now or in the future in and to the software including initial drawings, sketches, flow charts and designs relating thereto;
- 1.4. “**currency**” shall mean South African Rand;
- 1.5. “**designated area**” shall mean: The premises of operation of the Licensee;
- 1.6. “**dongle**” shall mean: program key or hasp.
- 1.7. “**intellectual property rights**” shall mean all present and future rights in the software and other rights which may in the future be based thereon, including but not limited to copyright;
- 1.8. “**license**” shall mean a non-transferable and non-exclusive right granted to the Licensee to use the Software and to make sufficient copies of the software for backup purposes;
- 1.9. “**service fee**” shall mean the amount stipulated on the order;
- 1.10. “**software documentation**” shall mean the written document(s) containing detailed instructions pertaining to the use of the software and setting out the operation of the software;
- 1.11. “**use**” shall mean that the Licensee is entitled to allow the Software to operate for the benefit of the Licensee on the designated area on the Licensee’s own internal operating systems or central processors;

- 1.12. “**notice**” shall mean a notification done in writing by means of e-mail, registered post or hand-delivered and acknowledged to the other party;
- 1.13. “**purchase price**” shall mean the amount stipulated on the order, payable annually in advance;
- 1.14. “**payment date**” shall mean the date arranged in respect of the order.
- 1.15. “**software**” includes the following:
  - 1.15.1. The software disks, CD disks, software dongle, and all documentation;
  - 1.15.2. The right to the installation and the use of the software on one work station placed at the Licensee’s identified sales outlet;
  - 1.15.3. The use of the software by the Licensee for sales purposes only.

#### 2 Issue and nature of license

- 2.1. The Licensor herewith issues a license at the stipulated purchase price and service fee to the Licensee to use the software items described in the order and herein.
- 2.2. Only when the full payment plan, including but not limited to the service fee/s, are paid in full, does the Licensee have the right to use the license.
- 2.3. The license issued to the Licensee authorises the Licensee to make use of the software only at the designated area until the agreement is terminated.
- 2.4. The Licensee shall not have the right to sub-license or transfer the software in any way, either in whole or in part, to any third party.
- 2.5. The Licensee shall not copy, nor permit any other party to copy the software, except to make sufficient copies solely for backup or storage purposes.
- 2.6. The Licensee warrants that the software will be stored in such a way to avoid copying thereof and that any attempts to make copies of the software will be curtailed so far as reasonably possible.
- 2.7. The Licensee shall not modify, de-compile, disassemble or otherwise reverse-engineer the software, or attempt to do any of these, or allow any other person to do so.



### 3 Delivery

- 3.1. The Licensor shall use its best efforts to deliver the software to the place of delivery stipulated in writing by the Licensee on the face of the order on or before the estimated date of delivery also specified on the face of the order.
- 3.2. The Licensor makes use of a third-party courier and cannot be held responsible for delay in delivery due to unforeseen circumstances by the Licensor, or the 3<sup>rd</sup> party courier.
- 3.3. The software license comes standard with a Validation “Soft” key. Any physical USB dongle is quoted and invoiced for as a separate item, when required by the Licensee.

### 4 Commencement and duration

- 4.1. This agreement shall commence on the date the Licensee receives the signed and completed documentation from the Licensee.
- 4.2. The agreement will remain in force for a consecutive period of 12(twelve) months from the commencement date.
- 4.3. After 12(twelve) months, the agreement between the Licensor and the Licensee will automatically convert to a standard month-to-month rental agreement, after which the agreement can be terminated at any time by either party with 20(twenty) business days’ notice in writing to either party.

### 5 Payment

- 5.1. In consideration of the license being issued, the Licensee shall pay the Licensor the purchase price and the service fee, on the payment date/s as per the agreement stipulated on the order.
  - 5.1.1. All prices increase annually on the 1<sup>st</sup> of January. The service fee increase annually and is linked to the applicable inflation rate.
  - 5.1.2. The service fees on all once-off purchase options are renewed annually on the 1<sup>st</sup> of January. Service fees are invoiced for 12(twelve) months in advance and payable monthly, quarterly or yearly, depending on the applicable agreement.
  - 5.1.3. The service fee may be adjusted annually by the Licensor in own discretion, in accordance with the South African Consumer Price Index, without any notice in advance to the Licensee.
- 5.2. The service fees agreement may be terminated by the Licensee, with 90(ninety) days’ written notice to the Licensor or on/before 30 September of the year of termination. The Licensee acknowledges that no support or

- updates on the software will be received until all arrears are settled for the licensed year.
- 5.3. The service fee, as well as any other funds due by either of the parties to the other, shall exclude any taxes and/or levies due as a result of a requirement by any governmental organization (which shall include, but not be limited to any value added tax, importation tax, withholding tax and general sales tax) and all these taxes and/or levies, shall be paid by the Licensee.
- 5.4. Purchasers outside the Republic of South Africa will be responsible to pay any tax as imposed by the Government, including import duty / surcharges, etc.
- 5.5. Rental agreements are not liable for service fees. All program updates and support will be received as part of the rental fee. Catalogues are not included in the rental fee and must be purchased separately. All rental fees increase each January for the year in advance.
- 5.6. All rental agreements, if not terminated in writing prior to the completion of the agreed rental period in 5.3, will automatically be renewed on a month-to-month basis, after which the rental contract can be terminated with a 20(twenty) business days’ written notice period.
- 5.7. An administration fee of R300, excluding VAT, will be invoiced to the Licensee for every payment not made on the agreed payment date. Any outstanding payments in excess of 60(sixty) days or more may be handed to debt collectors. All collection fees by the debt collectors will be for the Licensee’s expense, on an attorney and own client scale.
- 5.8. The Licensee acknowledges that, failure to make payment 30 days after required payment due date, may result in termination of any services, licenses and software.
- 5.9. The Licensee acknowledges that interest may become due and payable once in default of payment obligations.
- 5.10. All amounts in this agreement are in South African Rand unless stipulated otherwise and excludes any foreign or local taxes and fees that may be imposed from time to time by the relevant governmental organizations.

## 6 Training

- 6.1. All Training courses on the Software are quoted for separately, and not included in the License fees. A quotation for training would be supplied by the Licensor upon request from the Licensee.
- 6.2. A participant's seat is booked only after all documents are completed, signed and received by the Licensor and full payment has been made by the Licensee
- 6.3. Training regions and dates are set by the Licensor. The Licensees in the applicable region are notified by e-mail when an upcoming training is scheduled.

## 7 User Support

- 7.1. The Licensee is entitled to receive assistance in the use of the software directly from the Licensor, during the operating hours of the Licensor, only if the full amount due, including service fees, have been paid in full.
- 7.2. User support is given by way of telephone and electronic mail, and if the Licensee cannot reach the Licensor, it remains the obligation of the Licensee to initiate contact and exhaust all possibilities to do so.
- 7.3. Where required and if possible, support can be given by remote session. Software used to do so will always be at the discretion of the Licensor. Remote sessions are initiated upon the approval of the Licensee, and the Licensor cannot be held responsible for any loss or damage that may occur during the connection.

## 8 Updated Versions

- 8.1. Updated versions of the software will be made available to the Licensee at no extra cost, provided that the Licensee's account is paid in full.
- 8.2. Updated versions include improvements and amendments which are the result of the development of the software. Should the Licensee require further alterations or improvements to the software, this will be arranged and paid for under a separate agreement.
- 8.3. Catalogue updates are not included in the service fee and will be invoiced on a separate agreement.

## 9 SA Dynamic catalogue subscription

- 9.1. The SA Dynamic catalogue has an optional Microsoft Excel price calculator which is provided and maintained by the Licensor, for each major update.
- 9.2. To calculate cabinet prices the Licensee needs to complete the supplied CSV file. All prices added are excluding VAT and mark-ups.
  - 9.2.1. Material prices per square meter.
  - 9.2.2. Edging prices per meter.
  - 9.2.3. Hinges and drawer runners per item
- 9.3. Cabinet prices are calculated based on the square meterage for each unit listed. This includes the internal, external, and backing components of the carcass. Component pack and hardware prices required to assemble the cabinets are added individually on the file.
- 9.4. The prices listed in the catalogue are per unit-based prices. No board optimisation and or cutting list are formulated.
- 9.5. The structure on the SA Dynamic catalogue is fixed, no product listed will be altered in anyway. Any alterations to a catalogue will be quoted and registered as a custom catalogue.
- 9.6. Price listed in catalogue:
  - 9.6.1. The Licensee needs to conduct parallel price comparison tests to ensure all prices and relevant mark-ups and or discounts listed in the catalogue are correct and in line with their company standards;
  - 9.6.2. Prices may be updated by the Licensee as often as need. Making use of the calculator and import tools available;
  - 9.6.3. The Licensor will not be held liable for outdated or incorrect prices in the catalogue.
- 9.7. Catalogue updates:
  - 9.7.1. The Licensor will endeavour to update the SA Dynamic catalogue half yearly to include the latest colour ranges from applicable material suppliers;
  - 9.7.2. Major updates are supplier dependent and cannot be guaranteed;
- 9.8. Any cancellation should be done in writing at least two months prior to the end of the contract period. Penalty fees will be charged for the Licensee should the contract be cancelled prior to the contract period.

## 10 Limitation of liability

- 10.1. The liability of the Licensor for faulty execution of the software, as well as all damages suffered by the Licensee, whether direct or indirect, as a result of the malfunctioning of such software, will be limited to the Licensor rectifying the malfunction, within a reasonable time and free of charge, provided that the Licensor is notified immediately of the damage or faulty execution of the software.
- 10.2. This liability is completely excluded if the Licensee attempts to correct or allows third parties to correct or attempt to correct the Software without the prior written approval of the Licensor.
- 10.3. Any other liability on the part of the Licensor arising from any cause whatsoever is specifically excluded. Without limiting the generality of the foregoing, the Licensor shall not be liable for any delay, failure, breakdown, damage or injury caused by:
  - 10.3.1. software, programs, and support services supplied by or obtained by the Licensee without the consent or knowledge of the Licensor; or
  - 10.3.2. software or programs modified by the Licensee or any third party not authorised to do so in terms of the Agreement; or
  - 10.3.3. the actions or requirements of any telecommunications authority or a supplier of telecommunications services or software.
- 10.4. In no event shall the Licensor be liable to the Licensee for loss of profits or for incidental, special or consequential damages arising out of or in connection with the software or the delivery, installation, servicing, performance or use of it in combination with other computer software.

## 11 Intellectual Property Rights

- 11.1. The Licensee acknowledges that any and all of the intellectual property rights used or embodied in or in connection with the software are and will remain the exclusive property of the Licensor or his principal.
- 11.2. The Licensee shall not question or dispute the ownership of such rights at any time during the continuation in force of the agreement or thereafter.
- 11.3. The Licensor warrants that, to the best of its knowledge, the software does not infringe upon or violate any intellectual property rights of any third party.
- 11.4. The Licensee shall as promptly as reasonably possible notify the Licensor of any claim or suit involving the Licensee in which said infringement is alleged, and, if the Licensor is affected, the Licensee shall permit the Licensor to have control of the defence and all related meetings.

## 12 Licensor's duties and responsibilities

- The Licensor is bound to:
- 12.1. Further develop and maintain the software;
  - 12.2. Be available to give assistance within the Licensor's operating hours of the Licensor;
  - 12.3. Investigate and correct defects reported by the Licensee;
  - 12.4. Provide the Licensee with updates when errors or defects are corrected. For defects of a less serious nature, updates will be distributed with upgrades of the software in intervals from time to time.

## 13 The Licensee's duties and responsibilities

- The Licensee is bound to:
- 13.1. Use the latest provided version / release of the software;
  - 13.2. Prevent every form of copying the software;
  - 13.3. Return all software stated in this agreement should usage rights for some reason cease. Forwarding must take place by registered, insured, parcel post or courier and be at the Licensor's premises within 30(thirty) days after usage rights have ceased.

## 14 Insurance

- 14.1. Each software dongle is valued at a rate supplied to the Licensee by the Licensor and must be insured by the Licensee from the day of installation. This fee may increase each year and it is the obligation of the Licensee to request the necessary value. In the event of theft or loss, or being damaged or deformed, the programme dongle shall be replaced upon payment of the replacement fee by the Licensee.
- 14.2. Any damaged or deformed dongle is to be returned to the Licensor within a reasonable period upon replacement thereof.
- 14.3. There are no costs to replace an existing Validation "Soft" key, or a USB dongle for a new Validation "Soft" key, up to 4(four) times per year. Upon the replacement exceeding 4(four) times per year, the Licensee will be invoiced accordingly.

## 15 Validity

- 15.1. If any provision of this agreement is found or held to be invalid or unenforceable, the validity and enforceability of all the other provisions of this agreement will not be affected thereby and remains valid and in force and effect.



## 16 Breach and termination

- 16.1. Should either of the parties breach any stipulation contained in the agreement the suffering party may:
- 16.1.1. give notice to the party in breach to rectify such breach within 7(seven) days after receipt of written notice;
  - 16.1.2. terminate the agreement by giving 20(twenty) business days' notice to the other party, after expiry of the period mentioned in 16.1.1, if such breach had not been rectified, and claim all damages that it might have suffered as a result of the breach;
  - 16.1.3. claim specific performance of the Agreement, after expiry of the period mentioned in 16.1.1, from the other party to the agreement, and all damages that it might have suffered as a result of the breach;
- 16.2. Only in the event of a breach of contract may either of the parties terminate the agreement at any stage by giving the other party 20(twenty) business days' written notice of its intention to do so.

## 17 Dispute Resolution

- 17.1. If the parties are unable to resolve any dispute resulting from this agreement by means of joint co-operation or discussion between the individuals directly involved with the execution of this agreement, within 1(one) week after a dispute arises or such extended time period as the parties may in writing allow, then such a dispute shall be submitted to the most senior executives of the parties who shall endeavour to resolve this dispute, within 5(five) business days after it having been referred to them.
- 17.2. Should the parties be unable to resolve the dispute in the aforesaid manner, the parties' consent to the jurisdiction of the relevant Magistrate's Court to resolve the dispute in any way necessary.
- 17.3. The Licensee agrees that costs of any legal proceedings may be charged on an attorney and own client scale.

## 18 Governing Law

- 18.1. The validity and interpretation of this Agreement will be governed by the laws of the Republic of South Africa.

## 19 Protection of Information

- 19.1. The parties agree that all information of and relating to the other party will be treated as private and confidential and accepts that legal proceedings may be instituted against the other party should this provision be breached, except where same is breached as a result of court order.

## 20 Domicilium Citandi et Executandi

- 20.1. The Licensee elects the address completed in the order as its *domicilium citandi et executandi* for the purpose of serving documents pertaining to this agreement and agree to inform the Licensor in writing immediately should the address change.

## 21 Banking Details

- 20.1. The Licensee accepts that the Licensor will never change or amend their banking details via e-mail or other electronic forum.
- 20.2. The Licensee agrees to contact the offices of the Licensor for formal verification should it receive any correspondence of such nature.
- 20.3. The Licensee agrees not to act on any such correspondence purportedly from the Licensor, changing their bank details, without formal verification and proof thereof.

## 21 Operating Hours

- 21.1. The Licensee takes note of the operating hours of the Licensor, being on Mondays to Fridays, 08h00 – 13h00 and 13:30 - 16h00 and agree to contact the Licensor during such hours, when necessary. I accept that e-mail correspondence will be responded to during of-ice hours.

The Licensee agrees not to contact the Licensor via Whatsapp messages, SMS's or any other form of social media, unless a situation arises in respect of which the Licensee requires immediate assistance, and other means of contact have been exhausted. The Licensee accepts that the Licensor will not respond to or be held liable to messages of any other nature.

## 22 Amendments

- 22.1. Any amendments hereto or any additional agreements hereto must be reduced to writing, or it shall be invalid.