

DFM Software Solutions CC

Highly Specialized End-User Applications for the Agricultural Market

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Terms and Conditions: Continuous Logging Soil Moisture Probes and Irrigation Automation Scheduling Products

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- 1 These terms and conditions (a) represent the entire DFM Software Solutions CC trading conditions and no alterations or additions may be effected unless agreed to by both parties, reduced to writing and signed by the Customer and a duly authorized managerial representative of DFM Software Solutions CC (hereinafter called “DFM”) (b) will govern all present and future sales relationships between the parties whereby the Customer purchases goods or services from DFM; (c) are applicable to all existing debts between the parties; (d) are final and binding and are not subject to a suspensive or dissolutive condition; (e) expressly exclude any conflicting conditions stipulated by the Customer; (f) supersede all previous conditions without prejudice to any securities or guarantees held by DFM and (g) apply to all servants, agents and sub contractors of DFM.
 - 2 The Customer hereby acknowledges that he/she has read and understood each term of this agreement and accepts them as binding and acknowledges that the content reflects the true meaning of both parties and that this agreement has been entered into for the benefit of both the Customer and DFM.
 - 3.1 The customer agrees that neither DFM nor any of its employees will be liable for any negligent or innocent misrepresentations made to the Customer nor shall the customer be entitled to resile from any contract on those grounds.
 - 3.2 It is the sole responsibility of the Customer to determine that the goods or services ordered are suitable for the purpose of the intended use.
 - 4.1 All quotes will remain valid for the period indicated on them from the date of the quote or until the date of issue of a new price, whichever occurs first. The validity of any price is subject to availability and to any increases in the cost price, including currency fluctuations, of DFM before dispatch of goods.
 - 4.2 The Customer hereby confirms that the goods and services on the Tax invoice issued duly represent the goods and services ordered by the Customer at the prices agreed to by the Customer and where performance / delivery has already taken place that the services and goods were inspected and that the Customer is satisfied that these conform in all respects to the quality and quantity ordered and are free from any defects.
 - 4.3 Any delivery note or waybill or job card (copy or original) signed by the customer or a third party engaged to transport the goods and held by ASBIS shall be prima facie proof that delivery was made to the Customer and are in accordance with the quality and quantity reflected thereon.
 - 4.4 All orders and variations to orders are subject to these terms and conditions. Only written orders and variations to orders will be accepted by DFM. This notwithstanding, DFM may, at its sole discretion, elect to accept and act upon telephonic orders and any variations to orders. DFM however reserves the right to refuse delivery or

collection of any order until placed in possession of a written order form. Orders that are not accompanied by purchase order or order numbers will be invoice as is.

- 4.5 DFM Software Solutions shall be entitled to split the delivery of goods ordered in the quantities and on the dates it decides, with the prior consent of the Customer, which consent shall be unreasonably withheld.
- 4.6 DFM shall be entitled to invoice each delivery actually made separately.
- 4.7 The risk of damage to or destruction of goods is passed to the Customer on signature of the delivery note upon delivery to the Customer or the Customer's nominated representative (which must be put forth in writing) and the Customer undertakes to insure the goods fully, until paid in full. DFM may recover insurance premiums from the Customer for such ordered goods that remain uninsured.
- 4.8 In the case of repairs undertaken by DFM, repair times given are merely estimates and are not binding on DFM; time is not of the essence of this agreement unless expressly agreed upon in writing by DFM. DFM shall not be liable for any loss or damage whatsoever that the Customer may suffer as a result of any unforeseen costs and / or delayed repairs.
- 4.9 DFM is hereby authorized to engage a third party on its behalf and on the terms deemed fit by DFM to transport all goods purchased.
- 4.10 If the Customer chooses to engage in its own third party to transport the goods, the Customer indemnifies DFM against any claims of whatsoever nature that may arise from such an agreement.
- 4.11 Delivery, installation, commencement and performance times given are merely estimates and are not binding on DFM. DFM warrants that it will use its best endeavours to meet such delivery times; time is not of the essence of this agreement unless expressly agreed upon in writing by DFM. DFM shall not be liable for any loss or damage of whatsoever that the Customer may suffer as a result of any incorrect or delayed delivery, installation, commencement or performance.
- 4.12 The Customer acknowledges all copyrights and shall not duplicate copyrighted material and that each attempt will immediately render the full prevailing price payable to DFM.
- 5.1 New goods are guaranteed according to the manufacturer's product specific warranties only and all other guarantees and warranties including common law guarantees are hereby specifically excluded. Services carry no guarantee. As stipulated on all quotes that are issued, all DFM products have a twelve (12) month quality guarantee. Products supplied have a three (3) month money back guarantee, if they do not comply with their purposed functionality.
- 5.2 The Customer agrees that guarantees will become terminated by reason of an act of God, war, civil disturbance, riots, state of emergency, strikes, lockout or other labour disputes, fire, flood, drought or legislation.
- 5.3 Liability under clause 5.1 is restricted to the cost of repair or replacement of faulty goods or services or granting of a credit at the sole discretion of DFM.
- 5.4 It is the duty of the customer to return any defective goods to the premises of DFM's nominee at the Customers own cost, unless otherwise in compliance with the Agent Guidelines as drafted by DFM.
- 5.5 Any item delivered to DFM will form the object of a pledge in favour of DFM for present and past debts of the Customer to DFM and DFM will be entitled to retain such a pledge at the value as determined in 13.1
- 5.6 All guarantees are immediately terminated should any equipment be tampered with or should anyone other than DFM or its appointed nominee break the seals on equipment, or should the goods be operated outside the

Manufacturer's specifications. This may include the lack of appropriate maintenance as outlined in the DFM Agent Guidelines (Section 9) and is not restricted to this.

- 5.7 To be valid, guarantee claims must be supported by the original tax invoice and the goods must be accompanied with a delivery note and / or written correspondence stating their faults and / or grievances that the Customer may have. All items must be returned in an "as new" condition as far as possible within and not restricted to its delivery standard.
- 6.1 Under no circumstances will DFM be liable for any consequential or indirect damages or loss of profit or for any delictual liability for any nature whatsoever.
- 6.2 Under no circumstances will DFM be liable for any damages rising from any misuse or abuse of the goods. This may include and is not restricted to damages resulting in third party transits. The Customer will assume responsibility for third party freighting. In the event that freighting has been done of goods returned and the package(s) have not been insured, reference to clause 6.1 will take affect. This is also outlined in the Agent Guidelines (Section 6).
- 7 No claim under these terms and conditions will arise unless the Customer has, within 7 days of the alleged breach or defect occurring, given DFM 30 days written notice by prepaid registered post to rectify any defect or breach of contract.
- 8 The Customer agrees to pay the amount on the Tax invoice at the offices of DFM (a) cash on demand; or (b) within the terms as reflected on the invoice and / or statement issued by DFM.
- 9.1 The Customer has no right to withhold payment for any reason whatsoever and agrees that no extension of payment of any nature will be extended to the Customer and any such extension will not be applicable or enforceable unless agreed to by DFM, reduced to writing and signed by the Customer and a duly authorized representative of DFM. DFM has a seven (7) day cash on delivery standard and as such, the Customer is to abide by such standards as laid out in these terms and conditions, unless otherwise agreed upon by a representative of management of DFM.
- 9.2 The Customer is not entitled to set off any amount due to the Customer by DFM against his debts.
- 9.3 The Customer hereby agrees that any item handled in for repair may be sold by DFM to de fray the cost of such repairs if the item remains uncollected within 30 days of the repairs being completed.
- 10.1 The Customer agrees that the amount due and payable to DFM may be determined and proven by a certificate issued by any independent auditor. Such a certificate shall be binding and shall be prima facie proof of the indebtedness of the Customer.
- 10.2 Any printout of computer evidence tendered by any party shall be admissible evidence and no party shall object to the admissibility of such evidence purely on grounds that such evidence is computer evidence.
- 11.1 The Customer agrees that interest shall be payable on any moneys due to DFM at 2% above the Prime Overdraft rate quoted by Standard Bank Ltd., on which interests shall be calculated on a daily balance and capitalized monthly from the date the moneys fell due to payment. A certificate under hand of any manager of the Standard bank Ltd. shall be prima facie proof of the interest charged and that it shall not be necessary to prove the signature or capacity of such manager.

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- 11.2 The Customer agrees that accounts not paid within a seven (7) day period as stated in clause 9.1 will be handed over to legal representation pending further debt collection of which the client will be held responsible for incurred fees as a result.
- 11.3 The Customer agrees that accounts that cannot be paid within the set time period must be put forward in writing within seven (7) days of the date issued on the delivery note and / or invoice, stating the reasons as to why the Customer cannot pay their account.
- 11.4 The Customer also agrees that this declaration can be denied, pending further investigation and / or full payment on the outstanding account.
- 11.5 The Customer agrees that management's decision is final and is not open to interpretation or negotiation.
- 12 The Customer agrees that if an account is not settled in full (a) against order; or (b) within the period agreed in clause 8 above in the case of an invoice and / or statement; or if the Customer commits a breach of any of these conditions, or being an individual, is provisionally or finally sequestered or surrenders his estate, or being a partnership, is being dissolved, or being a company or close corporation is placed under provisional or final order of judicial management or liquidation, or compromises or attempts to compromise generally with its creditors or if an order in terms of section 65 of the Magistrates Court Act 32 of 1944, as amended is issued against the Customer, or if he commits or permits any act that may prejudice the rights of DFM; then in any of these events DFM may in its sole discretion either; (i) entitled to immediately institute action against the Customer at the sole expense of the customer; or (ii) cancel the agreement and take possession of any goods delivered to the Customer by giving the Customer written notice to that effect; or (iii) claim damages. Furthermore, DFM shall be entitled to immediately suspend any delivery or service while the Customer is in breach of any of the terms of any contract between it and DFM. In the event of a breach and without restricting or revoking any other rights DFM may have in law, DFM shall have the right to claim from the Customer the following costs: if payment by cheque is referred to drawer for whatsoever reason, an amount of R60.00 per affected cheque; if the Customer's debit order is returned due to lack of funds, an amount of R60.00; if default necessitates the telephonic contact of the debtor by DFM, an amount of not more than R50.00 per call; if default necessitates a personal visit by DFM, an amount of R100.00 per visit; Cost of issuing a Letter of Demand at R16.50; subject to the maximum costs recoverable in terms of the Magistrates Court Act 32 of 1944 as amended, Attorneys Act 33 of 1979 and Debt Collections Act 114 of 1998. These remedies are without prejudice to any other right DFM may be entitled to in terms of this agreement or in law.
- 12.1 The Customer hereby consents, in terms of Section 45 of the Magistrates Court Act of 1944 as amended to DFM instituting any proceedings arising out of this contract in the Magistrates Court Act for the district of Cape Town otherwise having jurisdiction in terms of Section 28 of the Magistrates Court Act notwithstanding the fact that such proceedings are otherwise not within the jurisdiction of that court. DFM however reserves the right, in its sole discretion, to institute any action arising from this agreement in the High Court of South Africa.
- 12.2 In the event of any default by the Customer of any provision of this agreement, the Customer hereby consents and authorizes DFM to furnish the name, credit record and repayment history of the Customer to any credit bureau as a delinquent debtor.
- 13.1 In the event of cancellation, the Customer shall be liable to pay (a) the difference between the selling price and the value of the goods at the time of repossession and (b) all other costs incurred in the repossession of the goods. The

value of repossessed goods or retained pledged goods will be deemed to be the value placed on them by any sworn valuator after such repossession and such valuation will be prima facie proof of the value.

- 13.2 The Customer indemnifies DFM completely against any damage whatsoever relating to the removal of repossessed goods.
- 13.3 If any goods supplied to the Customer are of a generic nature and have become by operation of law (confusion or commixtio) the Customer shall be obliged on notice of cancellation of the agreement to retransfer the same quantity of goods in ownership to DFM.
- 14 All goods supplied by DFM remain the property of DFM until such goods have been paid for in full.
- 15 The Customer shall be liable to DFM for all legal expenses (including collection fees) on the attorney own client scale incurred by DFM in the event of (a) any default by the Customer (b) any litigation in regard to the validity and enforceability of this agreement. The Customer will also be liable for any collection or valuation fees incurred.
- 16 The Customer agrees that no indulgences whatsoever by DFM will affect the terms and conditions or any rights of DFM and such indulgences shall not constitute a waiver by DFM in respect of any of its rights herein. Under no circumstances will DFM be stopped from exercising any of its rights in terms of these conditions.
- 17.1 Any document will be deemed duly received by the Customer within (a) 3 working days of prepaid postage mail to any of the Customer's business or postal addresses or the domicilium address of the Customer or to the personal address of any director, member or owner of the Customer; or (b) within 24 hours of being faxed to any of the Customers fax numbers or any director, member or owner of the Customer; (c) on being delivered by hand to the Customer or any director, member or owner of the Customer (d) within 48 hours if sent by overnight courier; or (e) within 24 hours of being telefaxed to the Customer's telex number.
- 17.2 The Customer chooses as its domicilium citandi et executandi the business address as per the dealer application or such other address agreed upon between DFM and the Customer.
- 17.3 The Customer undertakes to inform DFM in writing within seven (7) days of any change of Director, Member, Shareholder or Owner address, or 14 days prior to selling or alienating the Customer business and failure to do so will constitute a material breach of this agreement.
- 18 The Customer agrees to the standard prices of DFM for any goods purchased or services rendered, as given upon request.
- 19 The invalidity of any part of these terms and conditions will not affect the validity of any other part, each clause agreement being severable from the rest.
- 20 Any order is subject to cancellation by DFM due to the force majeure from any clause beyond the control of DFM including (without restriction this clause to these instances): inability to secure labour, power, materials or supplies, or by reason of an act of God, war, civil disturbance, riots, state of emergency, strikes, lockout or other labour disputes, fire, flood, drought or legislation.
- 21 If at any time any amount of money due by the Customer to DFM is overdue for payment, DFM shall be entitled to suspend all deliveries to the Customer until all amounts are paid or, at the election of DFM, to cancel all outstanding orders in either of which events the Customer shall have no claim against DFM.
- 22.1 Prices are subject to change without prior notice.

22.2 All agents acting on behalf of DFM are to adhere to the DFM Agent Guidelines and having received them; are reviewed as being accepted unless otherwise negotiated with the management of DFM or an acting official as chosen by DFM management.

23 The signatory warrants that he is the duly authorized representative of the Customer and that he has full capacity, whether legal or otherwise, to enter into any contractual agreement with DFM.

24 This Agreement and its interpretation is subject to South African law and the Customer consents to the exclusive jurisdiction of the South African Courts referred to in clause 12.1