



# Sedna policy document

## Sedna Standard Terms and Conditions

### Abstract

This is a policy document of Sedna's standard terms and conditions.

### Change control

Date	Changes	Changed by
April 2013	Created	Darryl Mitchell

## Standard conditions of agreement of Sedna Industrial IT Solutions (Pty) Ltd (hereinafter referred to as “Sedna”)

### 1.Quotes

1.1 All quotes will remain valid for a period of 30 days from the date of the quote.

1.2 All quotes are subject to the availability of the goods and services and the prices quoted are subject to any increases in the cost price, including currency fluctuations, of Sedna before dispatch of goods and commencement of services. The amount of such increase shall be certified by any independent auditor appointed by Sedna and such certificate shall be final and binding on the Customer.

### 2.Orders, Deliveries and Invoices

2.1 The parties specifically agree that any terms and conditions imposed by the Customer in any order, enquiry, specifications, acceptance or in any other manner whatsoever which are in conflict with the terms of this Standard Conditions of Agreement will be void and of no force or effect.

2.2 Subject to 2.1 above, all orders or variations to orders by the Customer will be binding and subject to these Standard Conditions of Agreement once they have been accepted by Sedna and may not be cancelled. Sedna is not bound by any variation to any order unless such variation is set out in writing and signed by the authorised representative of Sedna.

2.3 The Customer waives the requirement to receive notice of the acceptance by Sedna of any offer or order made by the Customer and furthermore agrees that a binding and enforceable agreement will come into existence upon acceptance by Sedna of the Customer's order, which acceptance shall take place or be deemed to take place at the head office of Sedna in Johannesburg and will be subject to the provisions of clause 2.1 above;

2.4 The Customer shall pay all costs incurred as a result of any act or omission on the part of the Customer including suspension of work, modifications of requirements, failure or delay in giving particular requisites to enable work to proceed on schedule or requirements that work be completed earlier than agreed. Time spent by Sedna as a result of the same shall be charged at Sedna's standard charge rate for the type of work and services in question and in respect of work to be done on an urgent basis at the rate normally charged by Sedna for urgent work.

2.5 The Customer agrees to the standard rates of Sedna for any goods and services rendered where no rate has been agreed, which rates may be obtained on request.

2.6 Sedna shall be entitled to cancel any contract or order if it cannot perform due to force majeure from any cause beyond the control of Sedna, including (without restricting this clause to these instances): inability to secure labour, power, materials or supplies, or by reason of an act of God, war, civil disturbance, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation.

2.7 Sedna shall be entitled to cancel any contract or order and claim any damages if the Customer breaches any term of this contract or makes any attempt to compromise its estate or if the Customer is placed under liquidation (whether provisionally or finally), or is sequestrated (whether provisionally or finally), or is placed under judicial management or if any judgment is recorded against the Customer, or any of its principals.

2.8 The Customer agrees that Sedna will be immediately and irrevocably released from any liability (contractual or delictual) to the Customer should clauses 2.6 or 2.7 apply.

2.9 Sedna shall be entitled to invoice separately each delivery / performance actually made.

2.10 Delivery, installation and performance times given are merely estimates and are not binding on Sedna.

2.11 All goods taken on an evaluation basis by the Customer shall be deemed to have been sold to the Customer if the same are not returned to Sedna in perfect condition, in the original packaging and with all accessories and manuals intact within 14 (fourteen) days of the goods being taken by the Customer.

2.12 If Sedna agrees to engage a third party to transport the goods, Sedna shall do this on behalf of the Customer and is hereby authorised to engage such third party on the Customer's behalf, the Customer hereby authorising and ratifying any reasonable decisions made by Sedna on its behalf in regard to such contract of transport.

2.13 The Customer indemnifies Sedna against any claims that may arise against Sedna from the agreement referred to in 2.13.

2.14 The Customer hereby agrees that the goods and services on the tax invoice issued have been checked by it and are deemed to be the goods and services ordered by the Customer at the prices agreed to by the Customer and that no errors can be corrected later. Where delivery / performance has already taken place the Customer agrees that the goods and services are deemed to have been inspected by the Customer and that the Customer is satisfied that the goods and services conform in all respects to the quality ordered and are free from any defects and that all goods reflected in the tax invoice are deemed to have been delivered to the Customer and received by the Customer.

2.15 Any delivery note (copy or original) signed by the Customer shall be conclusive proof that delivery was made to the Customer.

### 3. Payment Terms

3.1 The Customer shall pay the amount on the tax invoice at the offices of Sedna by (a) Bank Guaranteed cheque on order; or (b) if the Customer is a Credit Approved Customer, within 30 days after a tax invoice is issued by Sedna.

3.2 The Customer is not entitled to withhold payment for any reason whatsoever and agrees that no extension of payment terms of any nature will be extended to the Customer and if any such extension of any nature is extended to the Customer, any such extension will not be applicable or enforceable unless agreed to by Sedna, reduced to writing and signed by the Customer and a duly authorised representative of Sedna,

3.3 The Customer is not entitled to set off any amount due to the Customer by Sedna against any debt or amount due by Sedna or any claim against Sedna.

3.4 All discounts will be forfeited if payment in full is not made on the due date.

3.5 The Customer agrees that interest shall be payable on any monies due to Sedna at the maximum legal interest rate permitted in Law (and if no maximum amount is permitted in Law, at the rate of the

prime overdraft rate as charged by the bankers of Sedna from time to time), from the date they fall due.

## 4.Warranties

4.1 New goods are guaranteed according to the Manufacturer's product specific warranties only and all other guarantees including common law guarantees are hereby specifically excluded. Services carry no guarantees.

4.2 Liability under clause 4.1 is restricted to the cost of repair or replacement of faulty goods and services or granting of a credit to the value of such goods or services at the sole discretion of Sedna.

4.3 The Customer will have no claim under this contract unless Sedna has received by hand or prepaid registered post within 7 (seven) days of the alleged breach or defect occurring, a written notice from the Customer specifying the alleged breach or defect and requesting Sedna to remedy the same within 30 (thirty) days of receipt of such written notice.

4.4 All guarantees are immediately null and void should any equipment be tampered with or should the seals on equipment be broken by anyone other than Sedna or should the goods be operated outside the Manufacturer's specifications.

## 5.Liability of Sedna

5.1 Under no circumstances will Sedna be liable for any consequential damages or for any delictual liability of any nature whatsoever.

5.2 Under no circumstances will Sedna be liable for any damage arising from any misuse or abuse of the goods.

## 6.Default

6.1 The Customer agrees that if an account is not settled in full on due date, Sedna shall be entitled to:

6.1.1 immediately institute action for recovery of the monies due together with any damages suffered; or

6.1.2 cancel the agreement, take repossession of any goods delivered to the Customer and claim damages.

These remedies are without prejudice to any other right Sedna may be entitled to in terms of this agreement or in law

6.2 A Credit Approved Customer will no longer be entitled to any credit in the event that any payment is not made in accordance with the terms and conditions of this contract or in the event of any payment not being made on due date.

6.3 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 appointed by Sedna after such

repossession and such valuation will be conclusive proof of the value. If the goods are not recovered for any reason whatsoever, the value shall be deemed to be nil.

6.4 The Customer irrevocably authorises Sedna to enter its premises to repossess any goods delivered and indemnifies Sedna completely against any damages whatsoever relating to the removal of repossessed goods.

6.5 The Customer agrees that the amount due and payable to Sedna may be determined and proven by a certificate issued and signed by any independent auditor. Such certificate shall be prima facie proof of the indebtedness of the Customer.

6.6 The Customer shall be liable to Sedna for all legal expenses incurred by Sedna on the attorney-and-own client scale in the event of (a) any default by the Customer or (b) any litigation in regard to the validity and enforceability of this agreement. The Customer will also be liable for any tracing, collection or valuation fees incurred as well as for any costs, including stamp duties and for any form of security that Sedna may demand.

6.7 The Customer shall pay into court an amount sufficient to cover all costs for which the Customer may be liable to Sedna or its attorneys in respect of any actions instituted by the Customer against Sedna or by Sedna against the Customer.

6.8 The Customer agrees that Sedna will not be required to furnish security in terms of rule 62 of the rules of Court of the Magistrate's Courts or in terms of rule 47 of the Law of the High Court 59 of 1959.

6.9 The Customer hereby agrees that Sedna shall have the right to institute any legal action in either the Magistrate's Court or the High Court at its sole discretion.

6.10 This Agreement and its interpretation are subject to South African law and the Customer consents to the exclusive jurisdiction of the South African Courts.

## 7. Ownership

7.1 All goods supplied by Sedna remain the property of Sedna until such goods and all other goods and services supplied or rendered by Sedna to the Customer have been paid in full by the Customer whether such goods are attached to other property or not.

7.2 The Customer is not entitled to sell or dispose of any goods unpaid for without the prior written consent of Sedna.

7.3 If any goods supplied to the Customer are of generic nature and have become property of the Customer by operation of law (confusion or commission) the Customer shall be obliged on notice of cancellation of the agreement to retransfer the same quantity of goods in ownership to Sedna.

## 8. Domicilium and service of documents

8.1 Any document will be deemed duly presented to the Customer within

8.1.1 3 days of dispatch by prepaid registered mail to any of the Customer's business or postal addresses or to the personal address of any director, member or owner of the Customer or the domicilium citandi et executandi



8.1.2 within 24 hours of being faxed to any of the Customer's fax numbers or any director's member's or owner's fax numbers; or

8.1.3 on being delivered by hand to the Customer or any director, member or owner of the Customer; or

8.1.4 within 48 hours if sent by overnight courier to any of the addresses referred to in (i) above; or

8.1.5 any document sent by e-mail.

8.2 The Customer chooses as its domicilium citandi et executandi the address reflected as being its physical address on the first page hereof

## 9. Copyright

9.1 The Customer acknowledges that all copyrights vest in Sedna and shall not duplicate any copyrighted materials.

9.2 The Customer specifically agrees that it will pay the full prevailing price to Sedna in respect of any material which it attempts to copy and in addition will pay a penalty for the same in the sum of R20 000,00 in respect of each item duplicated (whether successfully or not).

## 10. Representations

### 10.1 The Customer

10.1.1 acknowledges that no representations were made by Sedna in regard to the goods or services or any of its qualities other than those contained herein;

10.1.2 acknowledges that neither Sedna nor any of its employees or agents will be liable for negligent or innocent misrepresentations made to the Customer;

10.1.3 acknowledges that it is its sole responsibility to determine that the goods and services ordered are suitable for the purposes of the intended use.