

Any quotation provided to a customer (each, a "Quotation") shall be valid for a period of 7 (seven) days from the date stipulated in such Quotation, unless otherwise indicated in writing.

#### Exchange Rate Fluctuations

Notwithstanding the amount payable in any Quotation, each such Quotation is and shall remain subject to the then-prevailing exchange rate between South African Rand (ZAR) and the currency specified in the Quotation, which exchange rate will be that determined from time to time by a duly authorised manager of First National Bank, a division of FirstRand Bank Limited. The customer furthermore acknowledges that any and all Quotations for hardware, software, IT systems, infrastructure items, routing and switching equipment, wireless, network and/or storage systems, network security and/or other IT and related products and equipment (individually or together, the "Goods") are and shall remain subject to the then-prevailing exchange rate as at the date of such Quotation. As such, any fluctuations or variances in exchange rates between the date of Quotation and the date of confirmation by THREE6FIVE of such order, shall be for the account of the customer.

THREE6FIVE accordingly reserves the right to provide the customer with an updated Quotation, in the event that the pricing set out in the original Quotation (or any item listed therein) is affected by any exchange rate fluctuations.

#### Placing an Order

Any and all purchase orders relating to a Quotation (each, a "Purchase Order") are and shall continue to be unconfirmed unless and until accepted and acknowledged in writing by a duly authorised representative of THREE6FIVE's Accounts Department or the authorised THREE6FIVE Account Manager. In addition, the provisions of these T&C's shall apply to the exclusion of any other terms and conditions which the customer seeks to impose or incorporate and/or which may be implied by trade, custom, practice and/or course of dealing (including any terms and conditions which the customer purports to apply under any Purchase Order, request for quotation, confirmation, order, specification and/or other document).

#### Terms of Payment

- New customers, customers which have registered offices outside of South Africa and/or customers which have not been verified and approved for credit purposes by THREE6FIVE will be required to make payment, in full, within 1 (one) business day of the date when an authorised representative of THREE6FIVE confirms such customer's order in writing.
- Existing customers will be required to settle any and all invoices within 30 (thirty) calendar days of the invoice date, unless otherwise expressly agreed in writing between the customer and THREE6FIVE (each, a "Party" and together, the "Parties").
- Customers shall ensure that any and all payments due to THREE6FIVE are made in South African Rands (ZAR) or, where relevant, in the other currency specified in the Quotation, in each case, free of any and all deductions, costs, exchange and/or set-off (including, for the avoidance of doubt, any bank charges, costs and/or fees), which will all be for the customer's account.
- Notwithstanding the previous provisions above, interest, calculated at the prime rate of interest charged from time to time by First National Bank, a division of FirstRand Bank Limited, to its customers on overdraft, plus a margin of 2% (two percent) per annum shall accrue on any balance which has been outstanding for 7 (seven) days or more and which is due and payable but unpaid by the customer in terms of any Quotation and/or confirmed Purchase Order. Such interest shall be calculated on a daily basis from the due date for payment thereof up to and including the actual date of payment and shall be paid by the customer to THREE6FIVE immediately upon demand. The provisions of this clause shall be without prejudice to any of THREE6FIVE's rights that it may have in law, including its rights in relation to breach of contract and its rights for the recovery of any and all fees, costs and/or expenses incurred by THREE6FIVE in bringing any action for the payment of any outstanding amounts plus interest (including, for the avoidance of doubt, any sheriff's and court fees, collection agent's fees, attorneys' fees calculated on an attorney and own client basis and any and all other fees, costs and/or charges relating to such recovery), which may arise from the failure by the customer to make payment of any amount due pursuant to this clause.

## **Invoicing Terms**

The customer will be invoiced upon delivery for all Goods purchased together, where relevant, with all relevant packaging, handling, insurance and shipping costs and/or fees.

The Parties acknowledge and confirm that, except where otherwise agreed between them in writing, for each relevant project, installation and/or solution deployment (a) 50% (fifty percent) of any and all installation services, professional services and/or project management hours expected to be incurred by THREE6FIVE personnel for or on behalf of the customer, will be invoiced upfront; and (b) the remaining 50% (fifty percent) will be invoiced immediately following the completion of such project, installation and/or deployment.

In the event that any project, installation, solution deployment and/or other professional services to be rendered by THREE6FIVE are delayed (including, for the avoidance of doubt, where any such delay occurs at the customer's request), and such delay continues for longer than **10 (ten)** days beyond the agreed commencement date, then a 1 (one) hour project management fee (calculated on the basis of the aggregate of the relevant hourly charge-out rates for each member of THREE6FIVE's team who has been allocated to such project, installation, deployment and/or to render professional services) (each, an "**Penalty Fee**"), which Penalty Fee shall be charged by THREE6FIVE to the customer for every period of **10 (ten)** days (or part thereof) in respect of which such delay continues. In addition, VAT and other applicable costs, fees and/or charges shall also be added to such Penalty Fee, as and where applicable.

## **Passing of Risk and Title to Goods**

The risk in and to the Goods shall pass to the customer on the date of delivery of the Goods by or on THREE6FIVE's behalf to the customer's designated delivery address or, where relevant, by the collection of the Goods by or on the customer's behalf.

Title in and to the Goods shall not pass to the customer until THREE6FIVE has received payment in full for (i) the Goods; (ii) if applicable, any and all relevant packaging, handling, insurance and shipping costs and/or fees; and (iii) any other Goods and/or services that THREE6FIVE has supplied to the customer, and in respect of which payment has become due but is still outstanding.

Until title in and to the Goods has passed to the customer, the customer shall (a) hold the Goods on a fiduciary basis as THREE6FIVE's agent; (b) not remove, deface or obscure any identifying mark, label or packaging which has been placed on, supplied with and/or which relates to the Goods; (c) maintain the Goods in a satisfactory condition and keep them insured against any and all risks, for their full replacement value, from the date of delivery or collection thereof; and (d) give THREE6FIVE such further information relating to the Goods as THREE6FIVE may reasonably require from time to time.

If before title in and to the Goods passes to the customer, the customer (a) suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits an inability to pay its debts; (b) suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially all of its business; (c) effects or attempts to effect any arrangement, compromise or composition with its creditors generally; or (d) takes steps to place itself or is placed in liquidation, whether provisionally or finally, or under judicial management or under receivership or under business rescue, whether provisionally or finally (or, in each case, under the equivalent of any of the foregoing), or THREE6FIVE reasonably believes that any such event is about to happen and notifies the customer accordingly then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy that THREE6FIVE may have, THREE6FIVE may at any time require the customer to deliver up the Goods and, if the customer fails to do so promptly, enter any premises of the customer or of any third party where the Goods are stored in order to recover and/or re-possess such Goods.

In the event that THREE6FIVE has remote or other access to the Goods and/or any services, it may also deny the customer access to, use and/or enjoyment of such Goods and/or services due to non-payment, such denial being permitted for so long as the customer's non-payment continues.

## Exclusions

- All prices included in a Quotation shall exclude any and all relevant packaging, handling, insurance and shipping costs and/or fees, together with all relevant customs clearance costs and charges, unless the contrary is clearly specified in writing.
- Any shipping costs and/or fees included in a Quotation shall only refer to shipping on a CIP (*Carriage and Insurance Paid*) basis, where the Goods are delivered to an African country. In such circumstances, any and all customs, VAT and/or duties required to clear the Goods shall be payable by the customer and/or receiver, as the case may be.
- Notwithstanding the previous clause, where the Parties have agreed to this in advance and in writing, THREE6FIVE will ship the Goods on a DDP (*Delivered Duties Paid*) basis, but in such circumstances, any and all DDP customs, VAT and/or duties will be billed upfront by THREE6FIVE to the customer.
- Obvious errors and/or omissions included in any relevant Quotation shall also be excluded.
- In the event that any Quotation is incorrect, THREE6FIVE reserves the right to amend, update and/or rectify any errors and/or omissions made in such Quotation and shall not be bound to any such errors or omissions.

## Cancellation of Orders

Any order placed by a customer is and shall be subject to cancellation by THREE6FIVE, in the event that the fulfilment of such order has become impossible for any reason whatsoever. In such circumstances, the impossibility of performance should be outside the reasonable control of THREE6FIVE.

In circumstances where the customer elects to cancel its order after such order has been confirmed by THREE6FIVE, THREE6FIVE reserves the right to charge the customer for any and all reasonable out-of-pocket costs and/or expenses incurred by THREE6FIVE in relation thereto, which costs shall be regarded as a reasonable cancellation fee and shall include, but shall not be limited to, any hours worked by THREE6FIVE's employees, agents and/or contractors in relation to the investigations, preparation, fulfilment and/or proposed delivery of Goods and/or rendering of any services due under such order.

Notwithstanding the previous provisions set out above, no customer shall be permitted to cancel any confirmed order where such order is for Goods which incorporate semiconductors, microchips and/or any other form of transistor chip technology (individually or together, the "Chips"), since the terms and conditions imposed on THREE6FIVE by its suppliers thereof also include similar non-cancellation provisions relating to the supply of Chips and/or Goods which incorporate Chips. In such circumstances, the customer shall indemnify and hold THREE6FIVE harmless from and against any and all claim, loss, liability, damage and/or expense which THREE6FIVE's supplier may bring and/or seek to impose on THREE6FIVE as a result of the cancellation and/or attempted cancellation of an order for or incorporating any Goods which contain Chips, in each case, together with any and all consequential costs and expenses relating thereto.

## Discounts and Exclusions


Any and all discounts offered and/or applied to a customer's confirmed order are and shall remain subject to approval and/or confirmation by (a) a duly authorised representative of THREE6FIVE; or (b) THREE6FIVE's supplier of those Goods to which such discounts relate. As such, any discount offered to a customer may be reduced or revoked in its entirety, in circumstances where THREE6FIVE's authorised representative or its supplier refuses to confirm or requires a reduction, in either case, of any such discount.

Unless clearly specified otherwise in writing by THREE6FIVE, THREE6FIVE's project management fees, support costs and/or other professional fees are not included in any Quotation, but such fees and/or costs shall be available to each customer upon request.

## Service Delays

The customer acknowledges that (a) Quotations which include the rendering of certain professional and other services by THREE6FIVE are subject to a seamless deployment process; and (b) where delays are caused by parties other than THREE6FIVE, such delays will directly result in a prolonged deployment timeline and, consequently, additional fees, costs and/or charges being incurred, all of which will be charged by THREE6FIVE to the customer.

In addition and where relevant, the customer confirms that it will ensure that THREE6FIVE is afforded reasonable access to the customer's premises, and to such other amenities, personnel, resources and/or infrastructure as are reasonably necessary in order to enable THREE6FIVE to render the relevant services to such customer.



In circumstances where the customer adds additional requirements, different specifications and/or other changes to the project or implementation, once it is already underway, any such changes will be regarded as a service delay, which service delay will be subject to a change request which needs to be considered and approved by THREE6FIVE. The customer further acknowledges and agrees that THREE6FIVE shall be entitled to provide the customer with a variance order which may, in THREE6FIVE's sole and absolute discretion, include certain additional fees, costs and/or charges that have arisen as a result thereof.

THREE6FIVE reserves the right to suspend and/or cease the rendering of certain professional and other services to the customer, if the customer unduly delays the deployment and/or otherwise causes service delays.

#### **Delivery of Goods**

THREE6FIVE will take all reasonable steps to ensure the delivery of any Goods ordered, within the shortest practicable period from the date of acceptance of the relevant Purchase Order. Despite the above, any date specified and/or any estimated time of delivery (each, an "ETD") provided by THREE6FIVE for the delivery of such Goods shall be an estimate only and time shall not be of the essence for the delivery thereof.

THREE6FIVE cannot and shall not be held liable for any damages, of whatsoever nature, incurred or sustained by the customer as a result of and/or relating to delays with the delivery of any Goods ordered.

The ETD for the supply of Goods which are not in stock with THREE6FIVE's relevant supplier at the time of order, will be subject to such time estimate provided on the date upon which such order is confirmed by a duly authorised representative of THREE6FIVE, since the fulfilment of such order may well be dependent upon the importation of the relevant Goods specified in such order.

#### **Limitation of Liability**

Except as otherwise provided for in these T&C's, neither of the Parties shall under any circumstances whatsoever be liable to the other Party and/or any third party for loss of contract or profits or for any loss of anticipated contract or profits or for any indirect, special or consequential losses and/or damages of any nature whatsoever, arising out of these T&C's or anything done or not done pursuant hereto.


#### **Confidentiality**

The customer acknowledges that the content of and any pricing contained in each Quotation received from THREE6FIVE is the proprietary and confidential information of THREE6FIVE. The customer shall accordingly treat such information as strictly confidential and shall safeguard it using at least the same degree of security measures as the customer utilises to safeguard and secure its own proprietary and/or confidential information (which, for the avoidance of doubt, shall never be less than a reasonable degree of security measures) and shall not share or make available any such information to any of its directors, officers, employees and/or agents except for such of them who have a need to know and/or to have access to such information. The above confidentiality obligations will be effective and binding on the customer and all of its directors, officers, employees and/or agents, even in the absence of a Non-Disclosure Agreement having been entered into by and between the Parties.

The customer further acknowledges that in the event of a breach by the customer of its confidentiality obligations set out herein, THREE6FIVE may suffer losses and/or damages. In such circumstances, the customer acknowledges and agrees that it may be liable to THREE6FIVE for such losses and/or damages, due to any breaches of its confidentiality obligations set out herein.

By requesting a Quotation, ordering Goods and/or services from and/or dealing with THREE6FIVE pursuant hereto, the customer acknowledges that it will become a customer of THREE6FIVE's and that THREE6FIVE shall accordingly have the right to collect and use any and all personal or other information gathered from the customer and/or its directors, officers, employees and/or agents, in each case, for marketing purposes, all such use taking place in accordance with THREE6FIVE's then-prevailing marketing policies and being in compliance with South Africa's Protection of Personal Information Act 2013, as amended (the "POPI Act").

If at any stage the customer and/or any of its directors, officers, employees and/or agents decide that they do not wish for their personal or other information to be used in the ways referred to above and/or should any of them wish to amend or remove their personal or other information from THREE6FIVE's marketing database, such individuals



shall (a) have the option to unsubscribe from emails sent to them by clicking on the “unsubscribe” button contained in such emails; and (b) be entitled to request the amendment or removal of their personal or other information from THREE6FIVE’s relevant database, by contacting THREE6FIVE at [vmc@three6five.com](mailto:vmc@three6five.com)

#### **Force Majeure Event**

For the purposes of this clause, “**Force Majeure Event**” shall mean any Act of God, strike, war, warlike operation, rebellion, riot, civil war, lockout, interference of trade unions, suspension of labour, fire, accident or (without regard to the foregoing enumeration) of any circumstances arising or action taken beyond or outside the reasonable control of the Parties hereto preventing them or either of them from the performance of any obligation hereunder.

Any delays in performance by either Party under these T&C’S shall not be considered a breach of these T&C’S if and to the extent caused by a Force Majeure Event. The Party suffering the occurrence of a Force Majeure Event shall immediately notify the other Party as soon as practicable of such inability and any time for performance hereunder shall be extended by the actual time of delay caused by such Force Majeure Event, provided that the Party suffering such Force Majeure Event uses reasonable efforts to mitigate any such delay. The Party giving such notice shall thereupon be excused from such of its obligations under these T&C’s as it is thereby disabled from performing, and shall have no liability for such non-performance, for so long as it is so disabled and for a further period of **15 (fifteen)** business days thereafter.

#### **Assignment**

Neither Party shall be entitled to cede, assign and/or delegate any of its rights and/or obligations arising in terms of these T&C’s, without the prior written consent of the other Party, such consent not being unreasonably withheld or delayed.

#### **Non-Solicitation**

From the later of (i) the date of delivery of any Goods; and/or (ii) the date of completion of any services to be rendered pursuant to the Quotation to which these T&C’s relate and, in either case, for a further period of 18 (eighteen) months after such date, neither of the Parties will directly or indirectly solicit and/or attempt to solicit any director, officer, employee, and/or agent of the other Party, whether for full or part-time employment and/or for the rendering by such person of any services to such Party.

#### **Invalidity**

If any clause or term of these T&C’s is found to be invalid, unenforceable, defective or illegal for any reason whatsoever, then the Parties shall negotiate in good faith to replace such clause with a clause which is valid, enforceable and legal but maintaining the essential provisions of that clause to the extent possible, provided that if the Parties should fail to reach agreement on such replacement clause, then the remaining terms and provisions of these T&C’s shall be deemed to be severable therefrom and shall continue in full force and effect unless such invalidity, unenforceability, defect or illegality goes to the root of these T&C’s.

#### **Governing Law**

These T&C’s shall be governed by and construed in accordance with the laws of South Africa.

The Parties furthermore agree that any legal action or proceedings which arise out of or in connection with these T&C’s, may be brought against either Party in the Gauteng Local Division of the High Court, Johannesburg, Gauteng, South Africa (or any successor of that court), and both Parties irrevocably submit to the non-exclusive jurisdiction of such court.