



Tel: 078 657 6379 / 082 345 8007 / 083 236 3968 / 072 679 7867 / 082 203 3447 • Fax: 086 680 1123 • Sales Email: sales@fliber.co.za • Support Email: support@fliber.co.za

# Terms & Conditions of Service

## 1. Introduction

- 1.1 With effect from the date of acceptance hereof by Fliber (Pty) Ltd ("Fliber"), ("the subscriber") identified on the face page hereof appoints Fliber (Pty) Ltd to provide telecommunications and related services requested by the subscriber and from time to time ("the services") to and/or on behalf of the client in accordance for the provisions hereof.
- 1.2 The subscriber agrees to be bound by the provisions contained in any notice, directive or applicable tariff plan issued or derived by Fliber (Pty) Ltd from time to time.
- 1.3 The subscriber acknowledges that this document constitutes an offer by the subscriber, which may be accepted or refused by Fliber (Pty) Ltd in its sole discretion. The offer will be considered once received by email to accounts@fliber.co.za or alternatively by fax to 086 680 1123 – originals may also be delivered to our offices at 11 Dwars Street, Newcastle, Kwazulu-Natal, 2940. Connection of the subscriber shall be deemed to constitute acceptance of the offer by Fliber (Pty) Ltd and commencement of this agreement. This agreement shall become binding between Fliber (Pty) Ltd and the subscriber whether or not the subscriber was notified of the acceptance of the offer. The subscriber herewith expressly dispenses with notification of acceptance of the offer by Fliber (Pty) Ltd.

## 2. Duration

- 2.1 This agreement shall continue for the relevant contract period reckoned from the date of acceptance hereof by Fliber (Pty) Ltd ("the initial period") and thereafter shall continue unless terminated by either party by the giving of 30 (thirty) days written notice of termination.
- 2.2 Any notice of termination or any other notice whatsoever by the subscriber to Fliber (Pty) Ltd shall be in writing via email to accounts@fliber.co.za or alternatively by fax to 086 680 1123 – it remains the subscribers sole responsibility to confirm receipt of this termination request from our offices. Requests will be confirmed by reply email, if no confirmation is received,
- 2.3 In the event of death of the subscriber or in the event that either party is provisionally or finally liquidated, wound up or declared insolvent or in the event that either party enters into a scheme of arrangement or compromise with its creditors or allows a judgment to be entered against the name of the party and does not take steps for the rescission thereof within a period of 21 (twenty one) business days after the date of the judgment then the other party shall be entitled immediately to terminate this agreement.
- 2.4 Termination of this agreement does not relieve the subscriber from the liability to pay charges for the initial period plus notice period.
- 2.5 The subscriber may discontinue a service before the relevant contract period has expired by advising Fliber (Pty) Ltd of such discontinuation with at least 30 (thirty) days' notice in writing in which event such service shall be discontinued on the required termination date specified in the said notice. In such event Fliber (Pty) Ltd shall invoice and the subscriber shall pay to Fliber (Pty) Ltd an early cancellation charge ("the early cancellation charge") calculated as set out in 2.6 and 2.7 below.
- 2.6 The early cancellation charge shall be calculated as follows: using the service charges applicable to the contract period option corresponding to the number of completed years since the activation date for the relevant service, the total amount that would have been paid by the subscriber, had the subscriber originally subscribed to such contract period option, and based on the actual period for which the service had been available to the subscriber, is calculated.
- 2.7 Should the subscriber give notice of discontinuation of a service before the expiry of 1 (one) year, the early cancellation charge shall be the difference between the service charges applicable to the 1 (one) year contract period calculated over a period of 12 (twelve) months, and the service charges invoiced by Fliber (Pty) Ltd as from the actual activation date up to the date of calculating the early cancellation charge.

## 3. Provision of Services

- 3.1 The subscriber acknowledges that Fliber (Pty) Ltd is a service provider that operates and manages the network and the functioning, operation, regulation and coverage area of the network and certain related services provided to the subscriber in terms hereof.
- 3.2 The subscriber shall have no claim of whatsoever nature and howsoever rising against Fliber (Pty) Ltd or to withhold payment of any monies due in terms hereof should any of the networks temporarily or otherwise fail, malfunction, provide no or poor coverage or should any of the services or facilities provided by any network operator or Fliber (Pty) Ltd be temporarily unavailable.
- 3.3 The subscriber shall not be entitled to set-off or deduct any monies in respect of temporarily unavailable services and other services.
- 3.4 Fliber (Pty) Ltd shall be entitled in its sole discretion to suspend, cancel, vary or terminate this agreement or any part thereof, without Fliber (Pty) Ltd incurring any liability whatsoever in the event of non-availability of the service or if any agreement giving Fliber (Pty) Ltd the right to render the service, or any part thereof, or giving Fliber (Pty) Ltd access to anything relating to the service, is suspended, cancelled, varied or terminated.

## 4. Charges

- 4.1 The subscriber shall pay to Fliber (Pty) Ltd: upon commencement hereof, the initial installation and set-up charge and any other introductory or commencement charges; and monthly in advance, the monthly subscription charges; and monthly in arrears, or as and when billing is passed on, the total usage charges and/or generated by the subscriber in conjunction with each billing period and any other charges payable in respect of the services requested by the subscriber or other charges levied by Fliber (Pty) Ltd from time to time; and upon demand, a deposit of an amount determined by Fliber (Pty) Ltd in its sole discretion which shall not bear interest; and Value Added Tax at the applicable rate on all VAT charges and services. All charges, unless otherwise stated include Value Added Tax if applicable.
- 4.2 The charges for monthly billing.

- 4.3 The charges payable by the subscriber to Fliber (Pty) Ltd for the provision or facilitation of the services shall be stipulated in any notice, directive, promotion or applicable tariff plan issued or derived by Fliber (Pty) Ltd.
- 4.4 The subscriber agrees that Fliber (Pty) Ltd shall be entitled from time to time to vary the charges payable by the subscriber to Fliber (Pty) Ltd for the services.
- 4.5 The subscriber acknowledges that data and other services are rendered to the subscriber by means of which are issued to the subscriber personally and which facilitates access to the network and the services. The subscriber will be liable for all charges applicable to hardware issued to the subscriber, irrespective of whether or not such hardware has been used by the subscriber or whether any other has been requested by the subscriber. Until Fliber (Pty) Ltd has received notification in writing from the subscriber and confirmed such notification that the equipment has been stolen or destroyed, the subscriber shall be liable for all data and other charges howsoever and by whomsoever for the replacement costs thereof.
- 4.6 Fliber (Pty) Ltd's monthly statement of charges shall be prima facie proof of the amounts owed by the subscriber to Fliber (Pty) Ltd in terms hereof and of the other facts stated therein and should the subscriber dispute the number, duration or amount charged in respect of any services rendered by Fliber (Pty) Ltd, then the subscriber shall bear the onus of proving that Fliber (Pty) Ltd statement is incorrect in respect of such charges.
- 4.7 Notwithstanding anything to the contrary contained in this Agreement, the subscriber shall be entitled to cancel an order prior to the provision of a particular service by Fliber (Pty) Ltd. Upon such cancellation, Fliber (Pty) Ltd shall be entitled to charge the subscriber such costs and expenses as have been incurred by Fliber (Pty) Ltd up to the date of receipt of such notice of cancellation.

## 5. Payment

- 5.1 Should the subscriber send any monies, cheques, orders or bills by means of the postal services, then the postal authority shall be deemed to be the agent of the subscriber and the subscriber shall bear all risk of loss, theft and delay in and to any such monies, cheques, orders or bills sent by post and, without derogating from the aforesaid, the subscriber shall draw all cheques, postal orders and bills payable to "Fliber (Pty) Ltd" and marked "not transferable".
- 5.2 The subscriber agrees that payment shall only have been made to Fliber (Pty) Ltd when the monies remitted by the subscriber have been received into Fliber (Pty) Ltd bank account.
- 5.3 Should any debit order or cheque payment be returned unpaid or stopped or should any charge card account or credit card account of the subscriber be rejected for whatsoever reason or should Fliber (Pty) Ltd exercise its right to suspend the provision of the services due to late or non-payment of any monies due in terms hereof by the subscriber, then the subscriber shall pay an administration charge as may be levied by Fliber (Pty) Ltd from time to time for each such non-payment, suspension or any other breach of this agreement which amount shall be payable upon demand and recoverable by Fliber (Pty) Ltd.
- 5.4 All monies payable by the subscriber to Fliber (Pty) Ltd in terms hereof shall be paid timorously on due date, free of deduction or setoff to Fliber (Pty) Ltd's principal place of business.
- 5.5 All payments must be effected within 7 (seven) days of invoice date or where payment is effected by debit order then such payment must be effected on Fliber (Pty) Ltd's direct debit date. Non-receipt of invoices by the subscriber will not be considered as a valid basis for late or non-payment.
- 5.6 All arrear payments shall attract interest at the rate of the prime lending rate of First National Bank as it may be from time to time, calculated from due date to date of payment.
- 5.7 Fliber (Pty) Ltd shall be entitled to apply the deposit as per clause 4.1.4 or any portion thereof towards any monies which are owing by the subscriber. The subscriber shall upon demand reinstate the deposit.
- 5.8 The subscriber agrees and acknowledges that a certificate given under the hand of a financial manager or controller of Fliber (Pty) Ltd whose status and authority need not be proved shall be considered prima facie proof of the amount due and shall entitle Fliber (Pty) Ltd to apply for judgement against the subscriber and to obtain summary judgement or provisional sentence, as the case may be.

## 6. Credit Limit

- 6.1 Fliber (Pty) Ltd shall be entitled in its sole and absolute discretion from time to time to determine and amend the maximum amount of fees and charges ("credit limit") which may be used and/or accumulated by the subscriber during each billing period and Fliber (Pty) Ltd shall be entitled to suspend the services should the subscriber exceed such maximum amount.
- 6.2 Fliber (Pty) Ltd shall be entitled to demand that the subscriber pay a deposit in an amount determined at Fliber (Pty) Ltd's sole discretion. Any portion of such deposit not consumed shall be credited towards the subscriber's future liabilities for amounts owed in terms of this agreement.
- 6.3 subscriber to Fliber (Pty) Ltd in terms hereof shall be paid timorously on due date, free of deduction or set-off to Fliber (Pty) Ltd's principal place of business.
- 6.4 All payments must be effected within 7 (seven) days of invoice date or where payment is effected by debit order then such payment must be effected on Fliber (Pty) Ltd's direct debit date. Non-receipt of invoices by the subscriber will not be considered as a valid basis for late or non-payment.
- 6.5 All arrear payments shall attract interest at the rate of the prime lending rate of First National Bank as it may be from time to time, calculated from due date to date of payment.
- 6.6 Fliber (Pty) Ltd shall be entitled to apply the deposit as per clause 4.1.4 or any portion thereof towards any monies which are owing by the subscriber. The subscriber shall upon demand reinstate the deposit.
- 6.7 The subscriber agrees and acknowledges that a certificate given under the hand of a financial manager or controller of Fliber (Pty) Ltd whose status and authority need not be proved shall be considered prima facie proof of the amount due and shall entitle Fliber (Pty) Ltd to apply for judgment against the subscriber and to obtain summary judgment or provisional sentence, as the case may be.

## 7. Equipment

- 7.1 All risk of loss, theft, destruction or damage to or malfunction of the equipment, being the property of Fliber (Pty) Ltd, and which is provided to the subscriber, shall vest in the subscriber.
- 7.2 Where the subscriber purchased equipment from Fliber (Pty) Ltd then the manufacturer's warranty will apply to such equipment. Such warranty is normally for 12 months from date of purchase and normally covers defective equipment as a result of faulty design, manufacture or workmanship provided that such equipment has not been misused, over-loaded, modified or repaired by an unauthorised party. Fliber (Pty) Ltd may require the subscriber to make available the equipment to Fliber (Pty) Ltd or its nominee for inspection of the equipment at a time and place to be arranged by Fliber (Pty) Ltd or its nominee.
- 7.3 Should Fliber (Pty) Ltd accept the equipment for repairs and maintenance it shall be deemed to do so as agent on behalf of the manufacturer or local supplier of the equipment and Fliber (Pty) Ltd shall not be liable for any loss, damage, destruction, theft or negligent workmanship howsoever or by whomsoever caused.
- 7.4 Should the subscriber fail to pay any monies due in respect of equipment or accessories purchased, leased or loaned from Fliber (Pty) Ltd then Fliber (Pty) Ltd shall be entitled without prejudice to any other rights it may have at law forthwith and without notice to suspend, interrupt or disconnect the services or any part thereof.
- 7.5 Should Fliber (Pty) Ltd loan equipment to the subscriber whilst the subscriber's owned or leased equipment is being repaired, then the subscriber shall upon demand return the equipment to Fliber (Pty) Ltd and all risk in and to such loaned equipment shall vest in the subscriber until the subscriber returns it to Fliber (Pty) Ltd at the subscriber's own cost. Should the subscriber fail to return the equipment to Fliber (Pty) Ltd when asked to, then Fliber (Pty) Ltd shall be entitled to charge and recover from the subscriber (who shall pay such charges upon demand) a rental of R1 000 (one thousand rand) per day reckoned from the due date of return or demand, whichever is the earlier, until the loaned equipment is returned to Fliber (Pty) Ltd. The provisions of this agreement shall mutatis mutandis apply to such loaned equipment and its use.

## 8. Limitation of Liability

- 8.1 Fliber (Pty) Ltd shall not be liable under any circumstances whatsoever for any loss or damage of any nature whatsoever (including loss of profit or any other special damages or indirect or consequential loss or damages) which the subscriber or any other person may suffer, whether caused directly or indirectly by the subscriber's equipment or the use thereof, or any other circumstance whether caused by any person, animal or naturally occurring event, which causes any of the networks to temporarily or otherwise fail, malfunction, provide no or poor coverage, or should any of the services or facilities provided by any network operator or Fliber (Pty) Ltd be temporarily unavailable for any reason beyond Fliber (Pty) Ltd's control.

## 9. Breach

- 9.1 Should the subscriber breach any provision of this agreement including failing to pay Fliber (Pty) Ltd any monies due in terms of hereof on due date, then Fliber (Pty) Ltd shall be entitled, without prejudice to any of its other rights arising out of this agreement forthwith and without any liability towards the subscriber, to suspend its provision to the subscriber of the services in whole or in part and/or to disconnect the subscriber and/or the equipment from the network and/or to render the equipment inoperable by whatever means.

## 10. Legal Costs

- 10.1 Should Fliber (Pty) Ltd instruct its attorneys to enforce any of Fliber (Pty) Ltd's rights arising from this agreement or to institute action against the subscriber, then the subscriber shall be liable for all legal costs on attorney and own client scale including any collection commission incurred by Fliber (Pty) Ltd and the subscriber shall upon demand pay such costs.

## 11. Domicilium

The parties choose as domicilium citandi et executandi ("domicilium") the address set out as follows: Fliber (Pty) Ltd, 11 Dwars Street, Hutten Heights. Newcastle, 2940.

- 11.1 The subscriber appoints his/her physical or residential address specified on the face hereof.  
 11.2 Either party shall be entitled from time to time, by written notice to the other, to vary its domicilium to any other address within the Republic of South Africa which is not a post office box or poste restante.

## 12. Undertaking as co-principal debtor on behalf of the subscriber by the signatory

- 12.1 If the subscriber as identified on the face page hereof is a company, close corporation, trust or a division or entity thereof or any other entity with juristic personality, then the signatory hereto who signs on behalf of the subscriber ("the signatory") warrants that he is duly authorised to enter into this agreement on behalf of the subscriber and, if applicable, to sign the debit authorization on the subscriber's bank account. By his signature hereto, the signatory hereby binds himself as co-principal debtor for the subscriber unto and in favour of Fliber (Pty) Ltd for the due and punctual fulfilment of all of the subscriber's obligations to Fliber (Pty) Ltd arising out of this agreement including the payment of all charges, fees, penalties and liquidated damages. The signatory as coprincipal debtor hereby renounces and waives the benefits of the legal defenses of excursion, division and cession of actions and hereby acknowledges that he understands the full meaning of such defenses and the effect of such renunciation and waiver.

## 13. General

- 13.1 The subscriber hereby consents to Fliber (Pty) Ltd conducting an investigation into the creditworthiness of the subscriber utilising the information contained on the face page, which information the subscriber warrants is true and correct, and such information forms the basis of this agreement. The subscriber agrees that should such information turn out not to be correct in all respects, Fliber (Pty) Ltd shall be entitled to, immediately and without prejudice to any other rights that Fliber (Pty) Ltd may have, terminate this agreement in terms of clause 2
- 13.2 Any subsequent changes that affect the information supplied to Fliber (Pty) Ltd such as bank account details must be brought to the immediate attention of Fliber (Pty) Ltd.
- 13.3 The subscriber hereby agrees to abide by Fliber (Pty) Ltd's acceptable usage policy. Should Fliber (Pty) Ltd suspect or find evidence of violation of the acceptable usage policy or network traffic that interferes with Fliber (Pty) Ltd's network, the subscriber hereby agrees to be disconnected until the violation and / or interfering network traffic is removed.
- 13.4 The subscriber hereby agrees that Fliber (Pty) Ltd may, in addition to any of its other rights in terms of this agreement or otherwise, list any default information of the subscriber with any credit information bureau, and the subscriber agrees to the disclosure by Fliber (Pty) Ltd to any third party, of any information pertaining to the subscriber or this agreement, to the extent that such disclosure is necessary for the conduct of Fliber (Pty) Ltd's business, or is required by any relevant statute, regulation or license.
- 13.5 Fliber (Pty) Ltd shall be entitled to cede its rights and/or to delegate its obligations arising from this agreement and/or assign this agreement, wholly or partly, to any other third party. The subscriber shall not be entitled to cede or delegate his rights and/or obligations arising out of this contract, unless accepted in writing by the credit control manager or a director of Fliber (Pty) Ltd.
- 13.6 No alteration, variation, or addition to this agreement or this clause shall be of any force or effect unless reduced to writing and signed by the 13.7. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein or otherwise created by operation of to the other, shall in any way prejudice the grantor or preclude the grantor from exercising any of its rights in the future, law and no indulgence, leniency or extension of time which either party ("the grantor") may grant or show a subscriber and a director of Fliber (Pty) Ltd.
- 13.7 This document contains the sole and entire record of the agreement between the parties.
- 13.8 Where Fliber (Pty) Ltd is represented by any duly authorised representative, his authority need not be proved.
- 13.9 The subscriber agrees that this agreement, in particular the face page hereof, may be scanned and the paper version destroyed, and hereby agrees to the scanned version.

## 14. Force Majeure

- 14.1 A Party shall not be deemed in default of any of its obligations under this Agreement, if, and to the extent that, performance of such obligation is prevented or delayed by an event of force majeure, provided that such event is not caused by the negligence of that Party, and that Party has notified the other in writing of the event of force majeure. The notifying Party shall use all reasonable endeavours to avoid or minimise the effects and if an event of force majeure continues for a continuous period of more than 45 days, the other Party shall be entitled to terminate this Agreement.

## 15. Confidentiality

15.1 During the course of this Agreement, each Party may disclose to another Party certain proprietary information (including trade secrets, know-how, software, techniques, product plans, marketing plans, customers, inventions, improvements and research data) ("Confidential Information") of a character regarded by the disclosing Party as confidential. Each Party and each of its Associates, directors, officers, employees, representatives, agents or professional advisers to whom disclosure is made shall hold all Confidential Information and the terms of this Agreement in confidence, and shall not disclose such information to any third party or apply it to uses other than the recipient's performance of this Agreement.

## 16. Non-Solicitation

16.1 No Party shall, during the continuance of this Agreement and for a period of 2 years immediately following the date of termination of this Agreement, directly or indirectly offer employment or solicit any other form of contract for services to another Party's employees, or to the employees of an Associate of another Party.