



## Comms Buyer Network – Terms & Conditions of Sale

### 1. General

1.1 These Conditions are the only conditions upon which we, The Comms Buyer Network (“the Supplier”) are prepared to deal with you, the Buyer, and they shall govern the contract between us to the entire exclusion of any other express or implied conditions.

1.2 In these Conditions: “Goods” means the goods (including any instalment of the goods or any parts for them) which the Supplier is to supply; “Specification” means the specification agreed between the Supplier and the Buyer. “Contract” means the contract for the sale and purchase of the Goods.

1.3 These Conditions may only be modified by a variation in writing signed by an authorized officer of the Supplier and no other action on the part of the Supplier (whether delivery of the Goods, or otherwise) shall be construed as an acceptance of any other conditions.

1.4 These Conditions (as modified in accordance with condition 1.3 and together with the matters referred to in the Specification and in the Supplier’s quotation and/or acceptance of order) embody the entire understanding of the parties and supersede any prior promises, representations, undertakings or implications. This condition shall not exclude any liability in respect of any statement made fraudulently by either party prior to the date of the Contract.

1.5 The employees and agents of the Supplier are not authorized to make any representations concerning the Goods unless confirmed by the Supplier in writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

1.6 A contract is only concluded when the Supplier dispatches an acceptance of order to the Buyer. Any quotation in whatever form given to the Buyer is given subject to these Conditions and does not constitute an offer to sell.

### 2. Performance

2.1 The Supplier warrants that the Goods shall at the time of delivery be free from defects in workmanship and materials. If any Goods do not conform to this warranty the Supplier will at its option:- 2.1.1 replace the Goods found not to conform to the warranty; 2.1.2 take such steps as the Supplier thinks necessary to bring the Goods into a state where they are free from such defects; or 2.1.3 take back the Goods found not to conform to the warranty and refund the appropriate part of the purchase price; Provided that the Supplier’s liability shall in no event exceed the price of the Goods, and performance of any one of the above options shall constitute an entire discharge of the Supplier’s liability under this warranty.

2.2 The above warranty is subject to the following conditions:- 2.2.1 the Buyer must give written notice to the Supplier of the alleged defect in the Goods within seven days of the time when the Buyer discovers or ought to have discovered the defect, and in any event within three months of delivery of the Goods; and 2.2.2 the Buyer must give the Supplier a reasonable opportunity to inspect the Goods and, if requested by the Supplier, returns the allegedly defective Goods to the Supplier’s works, carriage pre-paid, for inspection to take place there; and 2.2.3 the Goods have not been altered or modified in any way whatsoever and have not been subjected to misuse or unauthorized repair; and 2.2.4 the Goods have been properly installed and connected; and 2.2.5 the Buyer has complied with its obligations under this or any other contract made with the Supplier.

2.3 Except as provided in condition 2.1 and in Section 12 of the Sale of Goods Act 1979 and Section 2 of the Supply of Goods and Services Act 1982:- 2.3.1 all conditions and warranties, express or implied, as to the quality or fitness for any purpose of the Goods are expressly excluded; and 2.3.2 the Supplier shall not under any circumstances be liable in contract, tort, statute or otherwise for any direct, indirect or consequential loss or for increased costs or expenses, or loss of profit, business, contracts, revenues or savings howsoever arising which may be suffered by the Buyer (except in respect of death or personal injury caused by the Supplier’s negligence).

2.4 If, notwithstanding the above provisions of this Condition, the Supplier is found liable for any loss or damage suffered by the Buyer, that liability shall in no event exceed the price of the Goods.

2.5 The Supplier reserves the right to make any changes to the Specification of the Goods or to the components within the Goods provided that these do not materially affect the quality or performance of the Goods.

### 3. Price

3.1 The price for the Goods [and Services] will be the Supplier’s list price last published on the date on which that consignment of Goods is dispatched to the Buyer [or the Services are provided].

3.2 The Supplier reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Supplier which is due to any factor beyond its control (such as without limitation, foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour materials or other costs of manufacture) any changes in deliver dates, quantities or the Specifications for the Goods which is requested by the Buyer or any delay caused by any of the Buyer’s instructions or his failure to give the Supplier adequate information or instructions.

3.3 The contract price is exclusive of value added tax or any similar taxes, levies or duties, which will be added to or charged on invoices at the appropriate rates.

### 4. Payment

4.1 Unless otherwise agreed in writing, the Buyer shall pay the price for the Goods within 30 days of the date of the Supplier’s invoice.

4.2 If any payment that is to be made by the Buyer to the Supplier is overdue, interest will be chargeable on the sum due before and after judgement on a day to day basis at an annual rate of 4 per cent above Barclays Bank Plc’s base rate from time to time applicable, until the sum due is paid.

4.3 Where any sum owed by the Buyer to the Supplier under this or any other contract is overdue the Supplier may withhold any deliveries of Goods due to be made under this contract until arrangements as to payment or credit have been established which are satisfactory to the Supplier.

### 5. Lien

The Supplier will (without prejudice to any other remedy available to it) have in respect of all unpaid debts due from the Buyer a general lien on all the Buyer’s property in the Seller’s possession for whatever purposes and whether worked upon or not and be entitled, on the expiration of not less than 14 days notice in writing to the Buyer, to dispose of such property and to apply the proceeds towards the satisfaction of such debts.

### 6. Delivery

6.1 Delivery of each consignment of Goods shall be made to the place designated by the Buyer when placing the order.

6.2 Unless otherwise agreed in writing, the price quoted by the Supplier for the Goods shall be exclusive of the costs of delivery for which the Buyer will be invoiced separately. Such delivery charges shall include the costs of freight and insurance and the Supplier’s handling charge.

6.3 Any dates quoted for delivery of the Goods are business estimates only and the Supplier will not be liable for any loss or damage (whether direct, indirect or consequential) or loss of profit, business, contracts, revenues, or savings howsoever arising sustained by the Buyer as a result of the Supplier’s failure to comply with such delivery times. Time for delivery shall not be of the essence.

6.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Supplier to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.5 If the Buyer fails to take delivery of the Goods without good cause then the Supplier (without prejudice to any other rights or remedy it may have)

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may either:- 6.5.1 store the Goods as set out in clause 8; or 6.5.2 sell the Goods and after deduction of the Supplier's reasonable storage and sale expenses charge the Buyer for any shortfall below the Price due under the Contract.

### 7. Risk and Property

7.1 The risk in the Goods shall pass to the Buyer upon delivery of the Goods to the Buyer or any carrier acting on its behalf. If the Buyer fails to collect the Goods from the Supplier's premises on the date specified or it fails to take delivery or the Supplier is unable to despatch the Goods because of the Buyer's acts or omissions, the risk in the Goods shall still pass to the Buyer at the time when it should have collected the Goods or taken delivery.

7.2 The property in the Goods shall not pass to the Buyer until the full price of the Goods, and goods which are the subject of any other contract between the Supplier for which payment is due, is paid.

7.3 Until such time as the property in the Goods passes to the Buyer:- 7.3.1 they shall be held by the Buyer in a fiduciary capacity and stored by the Buyer at its premises in such a manner that they are clearly identifiable as the Supplier's Goods [including by reference to the relevant serial numbers] and shall be kept separate from any other goods, whether or not supplied by the Supplier, but the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business; and 7.3.2 the Buyer shall insure the Goods to the full replacement value of the Goods and shall note the Supplier's interest on the policy; and 7.3.3 the Buyer shall not pledge or charge the Goods and if the Buyer breaches this clause 7.3.3 the Price shall become immediately due and payable, notwithstanding any previous agreement or arrangement to the contrary; and 7.3.4 they shall be handed over to the Supplier on demand and the Supplier shall be entitled to re-take possession of them without prejudice to any of its other rights against the Buyer, and the Supplier is granted a licence to enter into the Buyer's premises for the purpose of recovering the Goods.

7.4 If the Buyer fails to pay for the Goods in accordance with these terms the Supplier will have the right to bring an action against the Buyer for the price of the Goods at any time notwithstanding that property in the Goods has not passed to the Buyer.

### 8. Storage

8.1 The Supplier shall be entitled to store the Goods (or any of them) at the Buyer's expense at the Supplier's premises or elsewhere if:- 8.1.1 where the Buyer is required to collect the Goods from the Seller's works, it fails to take delivery at the time specified; 8.1.2 where the arrangement is for the Goods to be delivered by the Supplier, either it is unable to despatch the Goods by reason of the acts or omissions of the Buyer, or the Seller has despatched the Goods but the Buyer fails to take delivery; 8.1.3 the Supplier withholding delivery of the Goods pursuant to Conditions 4.3. 8.2 The expenses that the Supplier may re-claim from the Buyer include all reasonable costs incurred by the Supplier (whether by way of storage, insurance or otherwise) in respect of the Goods. It is expressly declared that it shall be reasonable for the Supplier to take out insurance in respect of the Goods notwithstanding that the risk in the Goods has passed to the Buyer.

### 9. Intellectual Property

The Buyer acknowledges that the Supplier retains ownership of any intellectual property rights in the Goods.

### 10. Cancellation

10.1 Orders which have been accepted by the Supplier can only be cancelled by the Buyer with the prior written agreement of the Supplier and on condition that the Buyer shall indemnify the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by it as a result of cancellation.

10.2 If the Buyer enters into any voluntary arrangement with its creditors, becomes subject to an administration order, has a petition presented or an order made for its winding-up, has a receiver, administrator or

administrative receiver appointed over all or any part of its undertaking or assets, goes into liquidation or ceases or threatens to cease to trade, then without prejudice to any other remedy available to the Supplier, the Supplier shall have the right to cancel the Contract or suspend further deliveries under the Contract without any liability to the Buyer. If the Goods have been delivered but not paid for, the price shall become immediately due and payable, notwithstanding any previous agreement or arrangement to the contrary.

### 11. Force Majeure

The Supplier shall have the right to cancel or to reduce the volume of the Goods delivered if the Supplier is prevented from or hindered in delivery of the Goods through any circumstances beyond its control (including, but not limited to, strike, lock-out or other industrial action, war, fire, Act of God, or prohibition or enactment of any kind), without incurring any liability whatsoever.

### 12. Set-Off

The Buyer will have no right of set-off statutory or otherwise.

### 13. Governing Law

The contract is governed by English Law and the parties submit to the exclusive jurisdiction of the English Courts. Note : The Supplier's prices are calculated on the basis that the above Conditions will apply. If the Buyer requires prices to be quoted on a basis it should inform the Supplier.