

Voice IP Comms Limited - Standard Conditions of Contract - Equipment

1. PRELIMINARY

- 1.1 In these Conditions:
"Company" means **Voice IP Comms Limited** or any associated company
"Contract" means the Contract between the Company and the Customer for the sale or supply of equipment "Customer" means the person, firm or company with whom the Contract is made by the Company
"Equipment" means any equipment, machinery, parts, spares, software and any other goods sold or supplied by the Company
"Warranty Period" means
(i) in the case of hardware a period of twelve months from the date of delivery or the balance of any warranty period provided to the Company by the manufacturer if greater or
(ii) in the case of cabling: all components of the cabling infrastructure are covered by a 25 year manufacturer's warranty
(iii) in any other case a period of ninety days from the date of delivery
- 1.2 These Conditions apply to all Contracts of the Company to sell or supply Equipment and shall prevail over any terms put forward by the Customer unless the Company expressly agrees to them in writing. No conduct by the Company shall be deemed to constitute acceptance of any terms put forward by the Customer and no concession made or latitude allowed by the Company to the Customer shall affect the strict rights of the Company under the Contract.
- 1.3 These Conditions may only be varied with the express written agreement of an authorized officer of the Company.

2. PRICES

- 2.1 Unless otherwise specified prices payable for the Equipment are exclusive of carriage and are subject to the Company's right to require payment of delivery charges, insurance costs, customs duties, special handling charges and/or packaging charges as appropriate.
- 2.2 The Company shall have the right at any time to revise prices to take into account increases in costs including (without limitation) costs of agreed changes in any taxes, duties, levies or exchange rates or costs arising as a result of site conditions, delays, interruptions, lack of information and any other factor beyond the Company's control.

3. ORDERS AND DELIVERY

- 3.1 Before acting upon an order or agreement the Company may require the Customer to confirm the same in writing, by email or by facsimile. If an order placed or agreed is not so confirmed, then the Company does not have to act upon it or supply the Equipment ordered.
- 3.2 The Customer shall state on placing an order if it requires the Company to arrange carriage and if so the delivery address. If the Customer so requests the Company shall be entitled to make any contract of carriage and/or insurance on behalf of the Customer as the Company considers necessary and will be under no obligation to notify the Customer thereof. The Customer will be responsible for complying with all conditions and requirements of the carriers. Unless otherwise agreed by the Company delivery of the Equipment will be ex-works.
- 3.3 All times or dates given for delivery of the Equipment are only estimates given in good faith and are not conditions, warranties or in nominate terms (or terms otherwise howsoever), of this or any other (whether collateral or otherwise) contract.
- 3.4 The Company shall give the Customer notice when the Equipment is ready for delivery. If the Customer refuses or fails to arrange collection or take delivery (as the case may be) of Equipment ordered within seven days of service of that notice then
(a) The Customer will bear the risk off any loss or damage to the Equipment after expiry of that time
(b) The Company shall be entitled to immediate payment in full for the Equipment which is the subject of the order and
(c) The Customer shall in addition to the invoice price pay all costs of storage and any additional costs incurred as a result of such refusal or failure. The Company shall not be liable to the Customer for any loss or damage to the Equipment caused by their storage.
- 3.5 The Company may make and the Customer shall accept partial deliveries of Equipment ordered. Each delivery shall be considered to be the subject of a separate Contract and failure by the Company to make any one or more deliveries in accordance with the Contract or any claim by the Customer in respect of any one or more deliveries shall not entitle the Customer to treat the Contract as a whole as repudiated.

4. ACCEPTANCE

- 4.1 The Customer will accept the Equipment even if it is delivered late and late delivery will not entitle the Customer to terminate the Contract.
- 4.2 The Customer shall inspect the Equipment as soon after delivery as is reasonably practicable and in any event within 3 working days after delivery, which period the Customer agrees is a reasonable period given the nature of the Equipment supplied by the Company.
- 4.3 The Customer will notify the Company in writing of any shortage of supply, deficiency, or damage to or fault with the Equipment within 3 working days of delivery. If the Customer fails to comply with this clause the Company shall not be liable to the Customer in respect of any shortage discrepancy, damage or fault, or in respect of any consequential losses or expenses arising there from.
- 4.4 The Customer hereby agrees that the retention of the Equipment without written complaint to the Company within 3 working days of delivery constitutes for all purposes an intimation by the Customer that the Equipment has been unconditionally accepted and that given the nature of the Equipment supplied by the Company, 3 working days constitutes a reasonable period within which the Equipment should be rejected.
- 4.5 Each of the preceding sub-clauses of this clause is entirely without prejudice to the provisions of clause 9 hereof.

5. RISK

- 5.1 From the time the Equipment leaves the Company's premises whether this be by way of collection by the Customer or receipt by carriers (as the case may be) the risk in the Equipment shall pass to the Customer who shall be solely responsible for the custody and maintenance thereof.

6. PAYMENT

- 6.1 If credit terms have been agreed in writing by the Company payment shall be made in full without any deduction or set-off within 30 days of the date of the invoice unless otherwise agreed in writing by the Company. In any event, the Company reserves the right to withdraw credit facilities at any time. If the trading relationship between the Customer and the Company is terminated for whatever reason then all sums due by the Customer become payable immediately.
- 6.2 If credit terms have not been agreed by the Company then payment shall be made in full without any deduction or set-off at the time of placing the order for the Equipment.
- 6.3 If:
(1) The Customer is unable to pay its debts as they fall due or is otherwise insolvent;
(2) A receiver or an administrative receiver is appointed over any part of the Customers business or assets.
(3) The Customer (if it is an individual) makes or offers to make any arrangement or composition with its creditors or commits any act of bankruptcy or a bankruptcy petition is presented against it; or (if the Customer is a limited Company) any resolution or petition to wind it up is passed or presented, or any steps are taken to appoint an administrator, or an administrator is appointed over it
- then all invoices for Equipment which has been delivered to the Customer (or to its order) shall become due and payable forthwith and such credit arrangements as may have been made for the same shall automatically come to an end. In the event that delivery has yet to be made, then, in addition to and without prejudice to the Company's rights at common law, equity and statute, it shall be entitled at its option to cancel the contract or to cancel or suspend delivery.
- 6.4 Notwithstanding any of the terms and conditions hereof the time of payment shall be of the essence of the Contract.
- 6.5 Interest shall be payable on overdue accounts at the rate of eight percent per annum over the base rate of HSBC plc calculated on a daily basis on the amount for the time being outstanding from the due date of payment thereof until receipt by the Company whether before or after judgment.

- 6.6 If any cheque presented in payment of an invoice by the Customer shall be returned unpaid or if any agreed standing order or direct debit arrangement shall fail to operate then the Customer shall in addition to all other sums payable under the Contract pay to the Company the sum of £24.99 for each such event or such greater sum as shall represent the cost incurred by the Company by reason of such dishonor or failure as aforesaid.

- 6.7 The Customer will not assign to an associated company or to a third party the debts due to it from the sale of Equipment property in which remains in the Company without the Company's consent in writing signed by an authorised director of the Company. If at any time the Customer intends so to assign such debts it will notify the Company as soon as possible of such intention in writing.

- 6.8 If credit terms have been agreed by the Company, the Customer and its directors undertake to notify the Company, as soon as practicable after such agreement, of the existence and identity of any associated companies under common ownership with the Customer. This obligation is a continuing obligation such that, if at any time after credit has been granted, any other Company comes into common ownership with the Customer, the same must be notified, as soon as practicable to the Company. It is agreed that the requirements under this sub-clause are of the essence of the Agreement to provide credit and of any other contract made under or pursuant to that agreement between the Company and the Customer.

- 6.9 Any costs and/or expenses incurred by the Company in recovering funds from, or otherwise enforcing any of its rights against, the Customer, whether within or outside the United Kingdom, shall be fully reimbursed to the Company by the Customer, and the Customer agrees fully to indemnify the Company in respect of any such costs or expenses.

- 6.10 If credit terms have been agreed by the Company, the Customer undertakes to notify the Company of any material or potentially material change in its finances and/or structure and/or position generally. Such notifiable events include, but are not limited to:

- (1) Any change in the information supplied by the Customer to the Company for the purposes of and/or in relation to obtaining credit; and
- (2) Any change in the ownership of the shares in the Customer and any change in the number of such shares;
- (3) Any change in the ownership of the shares in any Company which has been, at any time after the granting of credit, under common ownership with the Customer;
- (4) Any material change in the nature and/or value of the Customer's assets, whether as a result of disposal, acquisition, the grant or crystallisation of any security, or otherwise howsoever. It is agreed that the requirements under this sub-clause are of the essence of the Agreement to provide credit and of any other contract made under or pursuant to that agreement between the Company and the Customer.

- 6.11 For the avoidance of doubt, the Company may maintain an action for the price once the due date for payment has arisen, notwithstanding the fact that title has yet to pass to the Customer.

7. RETENTION OF TITLE

- 7.1 The Equipment shall remain the property of the Company until payment in full has been made for all sums payable to the Company (including those sums which have not yet fallen due for payment) under all contracts between the Company and the Customer.
- 7.2 The Customer shall hold all Equipment property in which remains in the Company as bailee for the Company. Further, it shall mark it, and store it, in such a way that it can be identified as the Company's property and shall keep it separate from the Customer's own property and the property of any other person.
- 7.3 If, notwithstanding clause 7.2, the Equipment property in which remains in the Company is incorporated into or affixed to products belonging to the Customer or anyone else, property in the equipment shall remain in the Company until full payment is made in accordance with clause 7.1 above.
- 7.4 At any time the Company shall be entitled to recover the Equipment property in which remains in the Company and for that purpose the Customer hereby grants to the Company, its agents and employees an irrevocable licence to enter any premises where such Equipment is stored in order to repossess the same, and (in the event that it has been incorporated or affixed to other products) to dismantle it or detach it from those products and repossess it. Further, the Customer will give the Company's representatives all reasonable assistance to enable it to identify (and dismantle) such Equipment when they attend such premises.
- 7.5 The Customer may sell on Equipment property in which remains in the Company, and may appropriate it to a contract for sale and deliver it to a third party, but only when each of the following conditions is satisfied:
(1) The agreement for sale, and the appropriation of the Equipment to the agreement for sale and the delivery to the third party, are made and effected bona fide and in the ordinary course of business;
(2) The Customer, under the agreement for sale, retains property in the Equipment until it (the Customer) has been paid in full by the third party to whom it is agreeing to sell on the same;
(3) The Customer is not in default of any of its obligations (including its payment obligations) to the Company. If at the time of the agreement for sale, or appropriation, or delivery, one or more of such conditions is not satisfied, then the Customer has no right to sell such Equipment, or to appropriate it to a contract for sale, or (unless it has already been properly sold or appropriated) to deliver it to the third party.
- 7.6 The Customer's licence in clause 7.5 to sell on Equipment property in which remains in the Company, to appropriate the same to a contract for sale, or to deliver the same to a third party, is automatically revoked and comes to an end in any of the following events:
(1) It is unable to pay its debts as they fall due or is otherwise insolvent;
(2) A receiver or an administrative receiver is appointed over any part of the Customer's business or assets.
(3) The Customer (if it is an individual) makes or offers to make any arrangement or composition with its creditors or commits any act of bankruptcy or a bankruptcy petition is presented against it; or (if the Customer is a limited company) any resolution or petition to wind it up is passed or presented, or any steps are taken to appoint an administrator, or an administrator is appointed over it.
- 7.7 For the avoidance of doubt, the Company expressly reserves all its rights at common law and in equity in the event that the Customer makes an unauthorised sale, appropriation or delivery of Equipment property in which remains in the Company. In particular, the Customer expressly acknowledges that the proceeds of any such unauthorised sale appropriation or delivery belong to and are payable only to the Company.

8. INFORMATION

- 8.1 As and when requested by the Company, the Customer will as soon as possible inform the Company of the whereabouts of any Equipment property in which remains in the Company. In particular:
(1) It will as soon as possible inform the Company of the whereabouts of any such Equipment that is still in the Customer's possession.
(2) In relation to all such Equipment which the Customer has either sold or delivered to anyone else or otherwise parted with possession of), the Customer will as soon as possible inform the Company of:
(a) The person to whom it sold or delivered such Equipment, or to whom it gave possession of the same;
(b) The current whereabouts of such Equipment to the best of its (the Customer's) knowledge.
(3) In relation to such Equipment which has been sold or delivered to anyone else, or otherwise parted with possession of, the Customer will as soon as possible inform the Company of the terms of the relevant contract under which it sold, delivered or parted with possession of the same, and provide a true copy thereof; and in particular it shall inform the Company of:
(a) The purchase price;
(b) When the purchase price falls due to be paid.
(4) Further, in relation to such Equipment that has been sold or delivered to anyone else or otherwise parted with possession of, the Customer will provide the Company with all reasonable assistance to enable it to find and repossess the same.
(5) For the avoidance of doubt, for the purpose of this clause Equipment remains the Company's property even if
(a) The Customer, without the Company's authority, has purported to pass title in it under any contract with a third party, and
(b) That third party, as against the Customer, is entitled to enforce that contract under the provisions of the Sale of Goods Act or otherwise.

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- 8.2 Further, as long as any sums are owed by the Customer to the Company, the Customer, as and when requested by the Company, will as soon as possible provide to it the following information and documentation:
- (1) What payments have been received by the Customer from third parties in relation to Equipment supplied to it by the Company; and what payments are currently or contingently owed to the Customer by any third party in relation to such Equipment, identifying the third party in question.
 - (2) What factoring or invoice discounting arrangements, if any, have been entered into by the Customer with a factor or other entity, identifying the name and address of the factor or other entity, and specifying whether or not debts due in relation to goods supplied by the Company have been factored or assigned to that factor or other entity.
 - (3) What funds are available to the Customer in order to pay the outstanding sums it owes the Company, what plans has it made to pay the same to the Company, and when does it expect to pay the same. And
 - (4) The Customer's last two VAT returns, and management accounts over the last three months.
- 8.3 Further, in the event that the Customer is unable to pay its debts as they fall due or is otherwise insolvent, and currently or contingently owes money to the Company which it is not able to pay in accordance with its obligations:
- (1) The Customer will as soon as possible inform the Company of the identity of the directors (or other persons responsible for managing it) who procured it to order from the Company the Equipment that has been supplied to it by the Company in the last six months. The Customer will supply all relevant documentation evidencing the responsibility of the directors (or other persons) in question.
 - (2) The Customer will as soon as possible inform the Company of the identity of the directors (or other persons responsible for managing it) who procured it to sell or deliver to any third party, or part with possession of, Equipment property in which remained in the Company at the time of the sale, delivery, or parting with possession. The Customer will supply all relevant documentation evidencing the responsibility of the directors (or other persons) in question.
 - (3) In the event that the Customer is put into a CVA Moratorium, or administrative receivership, or has an administration order made over it, or is put into liquidation, then it will provide to the Company as soon as possible copies of its management accounts for the last six months, its sales and purchase ledger for the last six months, and its last four VAT returns before the date (whichever is earliest) on which it was put into administrative receivership, administration or liquidation.

9. SPECIFICATION AND PERFORMANCE

- 9.1 All drawings specification and technical documents issued by the Company at any time in relation to the Contract are issued solely for the Customer's use in connection with the Equipment and shall not be copied reproduced or communicated to any third party without the Company's express written agreement.
- 9.2 The Company reserves the right to alter or depart from any specification or design of any Equipment sold provided that such alteration or departure shall not to a material extent adversely affect the performance of the Equipment or the quality of the workmanship or the materials used.
- 9.3 Unless otherwise expressly agreed in writing any performance figures, quoted or referred to in any specification or other document are estimates only based on assumed conditions in a well managed office with experienced adequate and efficient operatives and appropriate services and proper use of satisfactory material.

10. WARRANTY

- 10.1 The Company will make good by repair or exchange (at its option) such of the Equipment or part thereof which is shown to its reasonable satisfaction to have proved defective in materials or workmanship during the Warranty Period on the following terms:
- 10.1.1 Any defect in or failure of the Equipment must be notified to the Company in writing as soon as practicable and in any event no later than three working days after discovery.
- 10.1.2 The Equipment must be unmodified, have been properly used under normal working conditions and have been properly stored, installed and maintained.
- 10.1.3 Before returning the Equipment or any part thereof the Customer must obtain a return authorization number from the Company and details of the Company's returns procedure which must be fully complied with.