

# CONDITIONS OF SALE

## BACKGROUND

- The Seller carries on the business of selling the Goods.

- The Customer wishes to buy and the Seller wishes to supply and sell the Goods on the terms and conditions set out in the Contract.

## 1. INTERPRETATION

1.1 In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Conditions:** the terms and conditions set out in this document together with the terms and conditions on the face of the Order Form.

**Contract:** the contract between the Seller and the Customer for the sale and purchase of the Goods in accordance with the Conditions.

**Customer:** the person or company who purchases the Goods from the Seller.

**Deposit:** fifty per cent (50%) of the total price of the Goods as set out in the Order Form.

**Force Majeure Event:** has the meaning given to it in condition 10.2.

**Goods:** the goods (including any instalment of the goods or any parts for them) specified on the Order Form.

**Order:** the Customer's order for the Goods as set out in the Order Form.

**Order Form:** the Seller's standard order form.

**Seller:** Bery Telecom Limited, a Limited company incorporated and registered in England and Wales with company number 07691933 whose registered office is at Berry Group House, Old Sarum Park, Salisbury, Wiltshire, SP4 6BU.

**Specification:** any specification for the Goods, including any related plans and drawings, that are included in an equipment schedule attached to the Order Form or as otherwise agreed in writing by the Customer and the Seller.

1.2 A reference to a statute, statutory provision or any subordinate legislation made under a statute is to such statute, provision or subordinate legislation as amended or re-enacted from time to time whether before or after the date of the Contract and, in the case of a statute, includes any subordinate legislation made under that statute whether before or after the date of the Contract.

1.3 Headings are for convenience only and do not affect interpretation.

1.4 Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## 2. BASIS OF THE SALE

2.1 The Seller shall sell and the Customer shall purchase the Goods as specified in the Order Form. The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions and the Customer is responsible for ensuring that the terms of the Order and any applicable Specifications are complete and accurate.

2.2 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Variations to the Conditions shall only be binding where they have been agreed in writing by the Seller.

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by the Seller which is not set out in the Contract.

2.4 All advice or recommendations provided by the Seller or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Customer's own risk. Consequently, the Seller will not be liable for any such unconfirmed advice or recommendations.

2.5 Errors, including, but not limited to: typographical, clerical or other errors or omissions in any sales literature, quotations, price lists, acceptances of offers, invoices or other documents or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

2.6 Any samples, drawings, descriptive matter, or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

## 3. ORDERS AND SPECIFICATIONS

3.1 A quotation for the Goods given by the Seller shall not constitute an offer. A quotation shall only be valid for a period of 30 Business Days from its date of issue.

3.2 The Order shall only be deemed to be accepted when the Order Form is signed by the authorised representatives of the Customer, received by the Seller and the Seller agrees that it is able to provide to the Goods requested.

3.3 Responsibility lies exclusively with the Customer for ensuring the accuracy of the terms of any Order (including any applicable Specifications) and for giving the Seller any necessary information within a sufficient time to enable the Seller to perform the Contract.

3.4 The quantity and description of and any Specification for the Goods shall be those set out or attached to the Order Form. The Seller reserves the right to alter the Specifications after acceptance by the Customer if the Goods specified are no longer available or have been superseded with a similar or improved product or if required by any applicable statutory or EU requirements or, where the Goods are to be supplied to the Seller's Specification, if the change in Specification does not materially affect the quality or performance of the Goods.

3.5 An Order accepted by the Seller can only be cancelled by the Customer with the Seller's prior agreement in writing and on the basis that the Customer indemnifies the Seller in full for the greater of:

- 3.5.1 either the sum of 40% of the total amount payable under the Order; or
- 3.5.2 all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

## 4. PRICE OF GOODS

4.1 The price of the Goods shall be the price set out in the Order Form.

4.2 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

4.3 The Seller may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods due to:

- 4.3.1 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- 4.3.2 any delay caused by any instructions of the Customer or failure of the Customer to give the Seller adequate information of instructions.

4.4 The Customer is solely responsible for making payment in full of any Value Added Tax, import or export duties or other taxes or duties which may be applicable.

## 5. TERMS OF PAYMENT

5.1 The Deposit will become payable by the Customer immediately once the Order Form has been signed by the Customer. The balance of the price shall be payable as provided in condition 5.2 below.

5.2 The Seller will invoice the Customer for the balance of the price of the Goods on or at any time after the Goods have been delivered and installed by the Seller. The Customer shall pay the invoice in full and in cleared funds within 14 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Seller. Time of payment is of the essence.

5.3 If the Customer fails to make any payment due to the Seller under the Contract by the due date for payment (**due date**) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

- 5.3.1 terminate the Contract or suspend any further deliveries to the Customer;
- 5.3.2 appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract between the Customer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Customer);

5.3.3 charge the Customer interest (both before and after any judgment on the amount unpaid) at the rate of 3% above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount. The Customer shall pay the interest together with the overdue amount;

- 5.3.4 demand immediate payment of all outstanding invoices; and/or
- 5.3.5 render the Goods non-functional until such time as all outstanding invoices and interest are settled in full.

## 6. DELIVERY AND INSTALLATION

6.1 Delivery of the Goods occurs when the Seller has delivered the Goods to the location set out in the Order Form or such other location as the parties may agree in writing.

6.2 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. If no dates are specified, delivery shall be within a reasonable time. The Seller shall not be liable for any delay in delivery of the Goods howsoever caused.

6.3 Upon giving reasonable notice to the Customer, the Goods may be delivered by the Seller in advance of the quoted delivery date.

6.4 If the Seller fails to deliver the Goods, its liability shall be limited to the costs incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

6.5 If the Customer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery then the Seller is entitled to:

- 6.5.1 charge the Customer for all costs and expenses related to the storage of the Goods (including insurance) until such time as actual delivery has taken place; or
- 6.5.2 resell or otherwise dispose of part of or all of the Goods and, after deducting all storage, selling and other costs, account to the Customer for any excess over the price of the Goods, or charge the Customer for any shortfall below the price of the Goods.

6.6 If the Seller is to deliver the Goods other than at the Seller's premises, then the Customer must inform the Seller and the carrier in writing within (48) hours of delivery of any shortage in delivery or any damage to the Goods.

6.7 Where it is agreed that the Seller shall install the Goods, then the Seller will do so as soon as is reasonably practicable after delivery. The Seller will not be liable for any loss suffered by the Customer in the event of any delay in installing the Goods.

## 7. RISK AND PROPERTY

7.1 Risk in Goods (including but not limited to damage or loss) shall pass to the Customer:

- 7.1.1 when the Seller notifies the Customer that the Goods are available for collection; or
- 7.1.2 where the Seller agrees to deliver the Goods on completion of delivery; or
- 7.1.3 in the event that the Customer fails to take delivery of the Goods, the point in time when the Seller has tendered delivery of the Goods.

7.2 Title to Goods shall not pass to the Customer until the Seller has received payment in full (in cash or cleared funds) for:

- 7.2.1 the Goods; and
- 7.2.2 any other goods or services that the Seller has supplied to the Customer in respect of which payment has become due.

7.3 Until title to the Goods has passed to the Customer, the Customer shall:

- 7.3.1 hold the Goods on a fiduciary basis as the Seller's bailee;
- 7.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Seller's property;
- 7.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 7.3.4 maintain the Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks with an insurer that is reasonably acceptable to the Seller. The Customer shall obtain an endorsement of the Seller's interest in the Goods on its insurance policy, subject to the insurer being willing to make the endorsement. On request, the Customer shall allow the Seller to inspect the Goods and the insurance policy; and

7.3.5 notify the Seller immediately if it becomes subject to any of the events listed in condition 9.

7.4 If before title to the Goods passes to the Customer (and provided the Goods are still in existence), the Customer shall deliver up the Goods to the Seller on demand and, if the Customer fails to do so immediately, the Seller may enter any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

7.5 The Customer may not pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller but if the Customer does so all monies owing by the Customer to the Seller shall immediately become due and payable.

## 8. WARRANTIES AND LIABILITIES

8.1 Subject to condition 8.3, the Seller warrants that on delivery and for a period of 12 months from the date of delivery (**warranty period**) the Goods shall:

8.1.1 conform in all material respects with their description and any application specification as detailed in the Order; and

8.1.2 be free from material defects in design, material and workmanship.

8.2 Subject to condition 8.4, if:

8.2.1 the Customer gives notice in writing to the Seller during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in condition 8.1;

8.2.2 the Seller is given a reasonable opportunity of examining such Goods; and

8.2.3 the Customer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Customer's cost,

the Seller shall, at its option repair or replace the defective Goods, or refund the price of the defective Goods in full.

8.3 The warranty at condition 8.1 is conditional upon the manufacturer of the Goods accepting the warranty claim from the Seller. In this regard and subject to the Conditions set out below, the Seller shall pass to the Customer (to the extent that the Seller is legally entitled to do so) the benefits of the manufacturer's warranty as applicable.

8.4 The Seller shall not be liable for Goods' failure to comply with the warranty set out in condition 8.1:

8.4.1 the Customer makes any further use of such Goods after giving notice in accordance with condition 8.2;

8.4.2 any defect arises as a result of the Seller following any drawing, design or specification of the Customer;

8.4.3 any defect arises from fair wear and tear, wilful damage, negligence (including improper storage), improper installation or maintenance, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's prior approval;

8.4.4 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements;

8.4.5 any sum owing by the Customer to the Seller has not been paid;

8.4.6 the defect or failure to meet their description or specification arises as a result of the Customer's broadband connection (or lack of broadband connection) unless the broadband connection is provided by the Seller; or

8.4.7 loss is suffered by the Customer because the Goods fail to perform to their Specifications due to faults in the service provided by the network provider.

8.6 Except as provided in this condition 8, the Seller shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in condition 8.1.

8.7 These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.

8.8 Nothing in these Conditions shall limit or exclude the Seller's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable), fraud or fraudulent misrepresentation or any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

8.9 Subject to condition 8.8:

8.9.1 the Seller shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

8.9.2 the Seller's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

8.10 Unless expressly provided in these Conditions, and with the exception of the Goods being sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all other warranties, terms or conditions implied by statute or common law arising out of or in connection with the supply of the Goods or resale of the Goods by the Customer are excluded to the fullest extent permitted by law. The Seller's prices are determined on this basis.

## 9. INSOLVENCY OF CUSTOMER

9.1 Where the Customer becomes subject to any of the events listed in condition 9.2, or the Seller reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Seller, the Seller may cancel or suspend deliveries under the Contract or under any other contract with the Customer and the Seller without incurring any liability to the Customer, and all outstanding sums in respect of the Goods delivered to the Customer shall become immediately due.

9.2 For the purposes of condition 9.1, the relevant events are:

9.2.1 the Customer suspends or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of the Insolvency Act 1986, or (being an individual) is deemed unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 if the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

9.2.2 the Customer commences negotiations with all or any of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

9.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

9.2.4 (being an individual) the Customer is the subject of a bankruptcy petition or order;

9.2.5 a creditor or encumbrancer of the Customer attached or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

9.2.6 (being a company) a floating charge holder over the Customer's assets or a receiver is appointed over the Customer's assets;

9.2.7 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 9.2.1 to condition 9.2.6 (inclusive);

9.2.8 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;

9.2.9 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

## 10. GENERAL

10.1 The Seller may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Seller.

10.2 The Seller shall not be liable or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Seller's obligations under the Contract if the delay or failure was due to a Force Majeure Event. A Force Majeure Event means any event beyond the Seller's reasonable control including (without limitation) flood, fire, war or threat of war, sabotage, civil disturbance or governmental action, strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport networks, malicious damage, breakdown of plant or machinery, collapse of building structures, natural disasters or extreme adverse weather conditions, default of suppliers or subcontractors, import or export regulations or embargoes.

10.3 Any notice or other communication in connection with the Contract shall be in writing addressed to the addressee at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as may at the relevant time and which has been notified in writing in accordance with this condition and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier or fax.

10.4 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in condition 1.1; if sent by pre-paid first class post or recorded delivery, at 9:00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.

10.5 No delay or failure by the Seller in enforcing any provision of the Contract shall constitute a waiver of that provision or any other provision. No waiver by the Seller of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. No waiver by the Seller shall be effective unless in writing.

10.6 If any court or competent authority finds that any provision of this Contract (or part of a provision) is invalid or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

10.7 The Seller's rights are cumulative and in addition to any rights available to it at common law.

10.8 A person who is not a party to the Contract shall not have any rights under it or in connection with it.

10.9 Except as set out in this Contract, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Seller.

10.10 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formulation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.