

TERMS AND CONDITIONS FOR THE ORDER OF EQUIPMENT

1 Definitions and Interpretation

1.1 The definitions and rules of interpretation in this clause apply in these conditions:

Equipment: the equipment agreed in the Order Form to be rented by You from Berry or a Funder.

Funder: a third party finance provider willing to provide finance for the Equipment and enter into a Rental Agreement with You.

Order Form: the order form overleaf signed by You.

Services: the assistance to be provided by Berry pursuant to condition 2.3 below together with all other services which Berry deems is required in readiness for and to install the Equipment which shall include without limitation ordering of the Equipment and associated licences, order administration, the booking of engineers, installation and site surveys.

Start Date: means the commencement of the hire of the Equipment as such term is defined in the Rental Agreement;

Rental Agreement: means the agreement for the rental of the Equipment in the standard form produced by the Funder or Berry as the case may be.

You or Your: the person, firm or company who signs the Order Form order the Equipment.

1.2 Clause and paragraph headings shall not affect the interpretation of these terms and conditions.

2 The Conditions

2.1 By signing the Order Form You expressly agree to hire the Equipment in accordance with the terms of the Rental Agreement, subject to the Funder and/or Berry (as the case may be) approving Your application for finance.

2.2 You acknowledge that:

2.2.1 it is your responsibility to put in place a broadband connection that is sufficient to enable the Equipment to function in accordance with its description and/or specifications; and

2.2.2 any terms relating to the operation of the Equipment and condition thereof will be as set out in the Rental Agreement and consequently liability (if any) for such matters will be between You and the hirer of the Equipment as specified in the Rental Agreement; and

2.2.3 We therefore shall have no liability to You under these terms for the operation and/or condition of the Equipment including without limitation for any failure of the Equipment to function in accordance with its description or specification whether as a result of Your broadband connection (or lack of broadband connection) or otherwise.

2.3 You will use Your best endeavours to obtain third party finance from a Funder and to enter into a Rental Agreement as soon as possible after the date of this Order Form.

2.4 Berry shall use reasonable endeavours to assist You with Your application for third party finance from a Funder but shall have no liability to You if any application You make fails to secure the finance requested.

2.5 You will make available to Berry or a Funder all information reasonably requested by either of them in support of Your application for finance for the Equipment.

2.6 In the event Your application for third party finance with a Funder is unsuccessful, Berry may, in its sole discretion, provide finance for You and enter into a Rental Agreement with You directly, but shall be under no obligation to do so. If Berry is agreeable to this You agree that you will enter into the Rental Agreement accordingly.

2.7 Once You have entered into a Rental Agreement, You will be bound by the provisions of the Rental Agreement and consequently You cannot cancel the rental of the Equipment unless otherwise permitted in accordance with the terms of the Rental Agreement.

2.8 In the event Your application for third party finance with a Funder is unsuccessful and Berry is unable or unwilling to enter into a Rental Agreement with You, Berry will notify you accordingly and this order for Equipment will be deemed cancelled without any liability on You or Berry.

2.9 By signing the Order Form you expressly acknowledge and authorise Berry to immediately commence the Services and to purchase the Equipment and associated licences, and you agree to use all reasonable endeavours to assist Berry to enable the Services to be carried out (including without limitation providing access to any property reasonably required by Berry) notwithstanding they are carried out prior to the entry into a Rental Agreement. You also expressly acknowledge and agree that you will be liable for payment in respect of such Services in the event you cancel this order as set out in condition 2.10 below or otherwise fail to enter into a Rental Agreement.

2.10 If, after signing the Order Form, and before the Start Date, You wish to cancel the order for the Equipment, then You are permitted to do so by giving Berry 5 business days notice in writing subject to the payment of a cancellation fee equal to the costs incurred by Berry:

2.10.1 in purchasing the Equipment and associated licences in respect of which Berry determines it is unlikely to be able to re-sell; and

2.10.2 in carrying out the Services. The costs for such Services will be calculated by reference to the time incurred by Berry employees or contractors in carrying out the Services multiplied by Berry standard rates for such services in force at the relevant time.

Berry agrees that notwithstanding the above in no circumstances will You be liable for a cancellation fee which exceeds a sum equal to the aggregate of five (5) quarterly rental payments that would have been charged had You entered into the Rental Agreement.

2.11 If, after signing the Order Form you fail for any reason (other than as provided for in condition 2.8) to enter into a Rental Agreement you will be liable to pay a cancellation fee calculated in accordance with condition 2.10.

2.12 Any cancellation of this order for Equipment for any reason shall be without prejudice to any other services that You have ordered from Berry which shall remain in full force and effect in accordance with the applicable terms and conditions for that service. For example, if You have also ordered network services, those services will continue notwithstanding termination of this order and nothing in this order will operate to give Berry or You any rights to terminate those services beyond what is contained in the terms and conditions for those services which You have signed up to.

2.13 Title to the Equipment shall remain in the ownership of the Funder at all times, unless You have entered into a Rental Agreement with Berry in respect of the Equipment, in which case title to the Equipment shall remain in the ownership of Berry at all times.

2.14 By signing the Order Form you warrant and represent that you are a body corporate and not an individual for the purposes of the Consumer Credit Act 1974.

2.15 You shall not, without the prior written consent of Berry, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these terms and conditions.

2.16 Berry may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these terms.

2.17 No one other than the parties to the Order Form or their successors and permitted assignees, shall have any right to enforce any of these terms and conditions

2.18 These terms and conditions and any disputes or claims arising out of or in connection with it or its subject matter or formation are governed by and construed in accordance with the law of England and Wales and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these terms and conditions or its subject matter or formation.