

ABBEEY ICT TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

The “Seller” means Abbey ICT Ltd.

The “Buyer” means the company, firm, person or persons by whom an order is placed.

The “Goods” means any equipment, spare parts and other goods to be supplied by the Seller to the Buyer in accordance with the Contract.

The “Services” means any installation, repair and other services to be supplied by the Seller to the Buyer in accordance with the Contract.

The “Contract” means the agreement to supply the Goods and Services specified in the Buyer’s order subject to the terms and conditions set out herein.

The “Abbey ICT Group” means the group of companies which includes the Seller and any subsidiary or holding company from time to time of the Seller, any subsidiary from time to time of the Seller’s holding company and any company which from time to time is under the control of the same persons as the Seller.

2. EFFECT OF CONDITIONS

(a) All agreements by which the Seller agrees to supply the Goods and Services to the Buyer shall be subject to these terms and conditions only.

(b) No binding Contract shall come into force unless and until the Buyer’s order is accepted in writing on behalf of the Seller and all offers by the Seller are conditional upon such written acceptance of the Buyer’s corresponding order.

(c) The Contract constitutes the entire agreement between the parties in relation to the subject matter of the Contract. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Seller which is not set out in the Contract.

(d) All of these terms and conditions shall apply to the supply by the Seller to the Buyer of both Goods and Services except where application to one or the other is specified or the context otherwise requires.

3. DESCRIPTIONS & SPECIFICATIONS

(a) Subject to sub-clause 7(a) below, all descriptions, drawings and particulars relating to the Goods and/or Services in any catalogues, leaflets, brochures or other documents are for illustrative purposes only and do not form part of the Contract. All representations as to performance of the Goods and/or Services relate to their performance in normal conditions and when used correctly.

(b) Unless otherwise expressly agreed, the Goods supplied will be in accordance with the manufacturer’s normal designs and specifications current at the date of manufacture or delivery and the supply by the Seller of goods differing from any contractual or pre-contractual specifications or

descriptions shall not be a breach of the Contract so long as the Goods supplied are of approximately equivalent performance standards to the goods referred to in such specifications or descriptions.

4. DELIVERY, INSTALLATIONS AND RISK

(a) The times for delivery and installation of the Goods are not of the essence of the Contract. The agreed dates for delivery and installation are estimates only and a failure by the Seller to comply with them shall not alone be a breach of the Contract.

(b) Unless otherwise expressly agreed the place of delivery shall be the Seller's place of business as stated on the order form and the Goods shall be at the Buyer's risk from the time that the Seller has requested the Buyer to take delivery or from delivery, whichever is earlier.

(c) Where the Goods are to be installed by the Seller it is the Buyer's responsibility to obtain, make available and pay for all licences, documents required by British Telecom or other telecoms provider (where applicable) permits, way leaves, easements, mains electric power supply, conduits, sockets and such like as are necessary for the installation of the Goods by the agreed date for the commencement of the installation and to provide all necessary access, information and co-operation to enable the installation to proceed from that date.

5. PRICE AND PAYMENT

(a) Unless otherwise expressly agreed, 100% of the price is payable on the date of order (except on telephone system orders where 50% of the price is payable on date of order with the remainder payable on delivery of the Goods or substantial performance of the Services) or, if the Buyer does not take delivery when requested, the price is payable the day the Seller has requested the Buyer to take delivery, together with a reasonable charge for the care and storage of the Goods. Time for payment of the price is of the essence of the Contract. The Buyer shall have no right of set-off, statutory or otherwise, against the price payable under the Contract.

(b) If the Seller does not accept the Buyer's order, any monies already paid by the Buyer to the Seller shall be refunded by the Seller to the Buyer.

(c) Unless otherwise expressly agreed, the price for the Goods is exclusive of the cost of packing, carriage and installation and the price of the Goods and the Services is exclusive of value added tax which shall be payable in addition to the price.

(d) Where the Contract provides for the Goods to be delivered by installments, which are to be separately paid for, the Contract shall not be severable and failure by the Buyer to pay for or accept a delivery of an instalment by the due date shall entitle the Seller at its option to treat the whole Contract as repudiated.

(e) By giving notice to the Buyer at any time before delivery of the Goods, the Seller may at its discretion increase the price to take account of increases in the cost of the Goods and/or the Services to the Seller or fluctuations in exchange rates or taxes or other factors outside the Seller's reasonable control which cause an increase in the cost of the Goods and/or Services to the Seller.

(f) Interest shall be due and payable on all overdue amounts at the rate specified in the Late Payment of Commercial Debts (Interest) Act 1998, as amended.

6. PROPERTY IN THE GOODS

(a) Until full payment has been received by the Seller of all amounts due from the Buyer under the Contract or otherwise, the property in the Goods shall remain with the Seller and:

(i) the Buyer shall store them so that they are readily identifiable as the Seller's;

(ii) on demand the Buyer shall deliver up the Goods to the Seller, who is irrevocably authorised to enter the Buyer's premises for that purpose; and

(iii) the Buyer shall hold the Goods on a fiduciary basis as the Supplier's bailee;

Provided that the Buyer may resell or use the Goods in the ordinary course of its business.

(b) If any payment due from the Buyer to the Seller is overdue for one month or the Buyer ceases to trade, becomes the subject of a bankruptcy petition or order or enters into any arrangement with his creditors or has a receiver appointed or a petition is presented or a resolution passed for the winding up of the Buyer (if a company) other than for the purpose of a bona fide reconstruction or amalgamation, the Seller's consent to the Buyer's possession of the Goods shall cease and the Seller or the Seller's agent may recover them forthwith from the Buyer or from any person not being a bona fide purchaser of them without notice of this clause and the Seller may enter upon premises where the Goods may be to search for and remove them.

7 WARRANTIES AND LIABILITY OF THE SELLER

Note: the exclusions and limitations of liability in this clause 7 do not apply to:

- death or personal injury caused by the negligence of the Seller;
- any fraud or fraudulent misrepresentation by the Seller;
- breach of the terms implied by section 2 Supply of Goods and Services Act 1982 (title and quiet possession);
- breach of the terms implied by section 12 Sale of Goods Act 1979 (title and quiet possession); or
- defective products under the Consumer Protection Act 1987.

(a) The Seller undertakes to remedy free of charge by repair or replacement any defects in the Goods appearing within 12 months of delivery, that arise under proper use and normal conditions and are caused by faulty design and workmanship provided that the Buyer notifies the Seller promptly of such a defect in writing, and provided also that sub-clause 7(e) below does not apply.

(b) The Seller further undertakes to pass on to the Buyer so far as reasonably possible the benefit of any guarantee given to the Seller by its supplier or the manufacturer of the Goods or the benefit of any other liability undertaken by such person to the Seller in respect of defects in the Goods.

(c) Nothing in the clause affects the statutory rights of the Buyer if he is a consumer and the Goods are supplied under a consumer transaction.

(d) If the contract is not a consumer transaction, the following terms shall apply:

(i) The Seller shall only be liable to remedy the defects free of charge under (a) above where the Buyer arranges for the prompt return to the Seller of the defective Goods at the Buyer's risk and expense and thereby affords the Seller a reasonable opportunity to examine the defective Goods.

(ii) Except as provided in this clause and in the case of death or personal injury arising from ~~the Seller's negligence, the Seller shall not be liable to the Buyer for any injury, loss or damage whether~~ direct or consequential, including loss of profit, resulting from any defect in the Goods, delay or other breach of any express or implied term of the Contract or any negligence of the Seller howsoever caused and, save as stated in the note at the beginning of this clause 7, all terms implied by the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982 or any other statute are hereby excluded;

(iii) In any event the Seller shall not be liable for any loss, damage or delay whatsoever arising from any cause whatsoever outside the reasonable control of the Seller including, but without prejudice to the generality of the foregoing, fire, storm, tempest, lightning, frost, inclement weather, strike, lock-out, war, hostilities, rebellion, civil unrest or a failure of the Seller's source of supply of the Goods or their components.

(e) In the particular case of equipment connected to the British Telecom Network in respect of which British Telecom or another telecoms provider require an approved maintenance agreement to be in force, the undertaking of the Seller in sub-clause (a) above shall not apply unless such a maintenance agreement has been entered into by the Buyer with the Seller or any other company within the Abbey ICT Group.

(f) Where the Goods comprise Voice Over Internet Protocol equipment ("VoIP Equipment"), it shall be entirely the Buyer's responsibility at all times to ensure that the VoIP Equipment is suitable for and fully compatible with its systems and networks (including any local area networks) upon which the VoIP Equipment may be used, if necessary by having an audit of its systems and networks carried out prior to the VoIP Equipment being installed or when any changes are being made to its systems and networks. The Seller shall have no liability for any loss or expense whatsoever which may be suffered or incurred by the Buyer arising from the failure of calls or any other failure or fault in connection with the VoIP Equipment due to it being unsuitable for or not fully compatible with the Buyer's systems and networks.

(g) If the Seller procures that a third party shall enter into a maintenance or service contract with the Buyer or gives the Buyer details of third parties willing to enter into maintenance or service contracts no warranty is given as to the suitability or competence of such third party or parties and the Seller shall be under no liability to the Buyer whatsoever in this respect.

(h) The total liability of the Seller for all or any claims shall not in any event exceed the price of the Goods.

(i) The Seller warrants to the Buyer that the Services will be provided using reasonable care and skill.

(j) The exclusions and limitations of liability in this clause 7 shall apply to any repaired or replacement goods supplied by the Seller under sub-clause 7 (a).

8. FORCE MAJEURE

In the event that performance of the Contract is rendered uneconomic for the Seller, prevented or delayed as a result of war, hostilities, act of God, industrial unrest, civil disturbance, the act of any local or national government or authority, shortage or unavailability of raw materials, equipment, labour or fuel or any other cause beyond the reasonable control of the Seller, the Seller may by written notice to the Buyer at the Seller's option either cancel the Contract or suspend or postpone performance of it with no liability on either side.

9. HEALTH AND SAFETY

The Seller has made available any product and technical information in respect of the safe use, storage and handling of the Goods. The Buyer shall be responsible for complying with all statutes, regulations and codes of practice applicable to the Goods.

10. TERMINATION

If the Buyer commits:

(a) any material breach of the contract (including non-payment of an overdue account); or

(b) any act of bankruptcy or, being a company, enters into any arrangement with its creditors, administration, receivership or winding up then in any such event the Seller shall have the right to cancel or suspend any further delivery of the Goods or supply of the Services and/or treat the Contract as determined, but without prejudice to the Seller's right to any sums due and damages for loss suffered in consequence of such determination.

11. ASSIGNMENT

The Buyer shall not assign or transfer the contract or the benefit thereof without the prior written consent of the Seller.

12. QUALITY OF SERVICE

The Seller reserves the right to record their telephone calls for quality of service purposes.

13. SEVERANCE

(a) If any provision of these terms and conditions is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

(b) If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

14. LAW AND JURISDICTION

English law shall govern the Contract and any other agreement between the Seller and the Buyer and the English Courts shall have jurisdiction and the Buyer and Seller agree to submit to the exclusive jurisdiction of the English courts in respect of all matters arising under contracts between them.