

TELEX COMMUNICATIONS (UK) LIMITED CONDITIONS OF SUPPLY

1. The Contract

- 1.1 Any order sent to Telex Communications (UK) Limited ("the Company") by the customer for the supply of any of the Company's products ("the Products") will be accepted entirely at the discretion of the Company and if so accepted will only be accepted upon these conditions (the "Conditions") and by means of the Company's standard order acceptance form.
- 1.2 Each order which is so accepted shall constitute an individually legally binding contract ("the Contract") between the Company and the customer.
- 1.3 These Conditions shall override any contrary, different or additional terms or conditions (if any) other documents or correspondence from the customer and no addition or alteration or substitution of these Conditions will bind the Company or form part of any Contract unless they are expressly accepted in writing by an authorised representative of the Company.
- 1.4 The customer acknowledges that it has not been induced to enter into the Contract by any representation made by or on behalf of the Company other than those contained in these Conditions.

2. Orders

- 2.1 All orders placed by the customer must:
 - (a) be numbered sequentially by the customer;
 - (b) specify the address to which the Products are to be delivered; and
 - (c) specify the address to which the Company's invoice is to be sent.
- 2.2 Orders made by telephone must be confirmed in writing by the customer within 48 hours on order forms marked "Confirmation of telephone order".

3. Cancellation

The customer may cancel any order (or any part thereof) at any time until three days prior to the due date for delivery of the Products specified in the order (or as otherwise notified to the customer by the Company under Condition 6). If the customer cancels an order (in whole or in part) under this Condition, then without prejudice to any of the Company's other rights, the Company shall be entitled to recover from the customer as liquidated damages an amount equal to 20% of the value of the Products the subject of the cancellation. The customer specifically agrees that this figure constitutes a genuine pre-estimate of the Company's loss and is not intended to be a penalty.

4. Prices

- 4.1 Customers will be invoiced by the Company at the Company's prices prevailing at the date of despatch of the Products.
- 4.2 Prices quoted in the Company's quotation or prices lists:
 - (a) are those then current and shall not be binding on the Company (save to the extent required by Condition 4.1); and
 - (b) do not include Value Added Tax or any other tax, levy, duty or surcharge (whether imposed before or after making the Contract), packing in transit insurance or carriage (each an "Additional Cost").
- 4.3 The customer shall be liable for all Additional Costs associated with an order (if any), and shall indemnify the Company if and to the extent that the Company incurs any liability or expense as a result of paying for an Additional Cost (whether or not the Company was requested to do so by the customer).

5. Customer's specification

- 5.1 Where the Company supplies Products to a customer in accordance with the customer's specification, any addition or alteration shall be subject to an extra charge (which the Company shall quote and the customer shall agree in advance of the Company commencing work on any such alteration or addition).
- 5.2 Any additional charge payable by the customer under Condition 5.1 shall be made in accordance with the customer's standard payment terms (as set out in Condition 10).
- 5.3 Where the Company makes an addition or alteration to the Products pursuant to the customer's specification, then any copyright, design right or other intellectual property right in the additions or alterations made shall vest in the Company. The customer agrees that it shall do any acts and execute any documentation required by the Company to secure the vesting of such rights in the Company.
- 5.3 The customer acknowledges that the Company shall make no enquiry into any intellectual property or other rights of any third party in making any addition or alteration in accordance with Condition 5.1 and the customer shall indemnify the Company against all damages, penalties, costs, claims or other expenses which the Company may incur through the fulfilment of an order subject to the customer's specification.

6. Delivery

- 6.1 All products supplied by the Company will be delivered to the customer at the place of delivery and time specified on the order form.
- 6.2 Subject to Condition 8, times quoted for delivery are to be treated as estimates only and will not involve the Company in any liability for failure to deliver the Products within such time. Where for any reasons delivery of the Products to the customer is delayed the customer shall take delivery of the Products at any later date within 3 days after being so requested by the Company.

7. Non-acceptance of delivery

If the customer fails to take or accept delivery of Products in accordance with Condition 6 hereof the price for such Products shall nevertheless be payable by the customer in accordance with Condition 10 as if delivery had taken place. The Company shall be entitled to charge the customer for storage, insurance and any other expenses reasonably incurred or suffered by the Company as a result of such failure but the Company shall not be bound to take any steps for the customer of care of the Products, nor shall the Company be liable for any loss or damage suffered by the customer arising in respect of the customer failing to take or accept delivery of any Products.

8. Shortage, damage and non-delivery

8.1 No claims against the Company for shortage, damage in transit or non-delivery will be entertained unless:

(a) in respect of non-delivery, notice of the non-delivery of the consignment of the Products is reported in writing by the customer to the Company and the carrier within 7 days after the date of despatch as notified to the customer in the delivery advice notes; or

(b) in respect of partial loss, damage or non-delivery of any separate part of a consignment is reported in writing to the Company and the carrier within 3 days after the date of delivery of the consignment or part consignment.

8.2 Any claim validly submitted to the Company under this Condition shall be subject to the limitations on the Company's liability set out in Condition 13.

9. Force Majeure

9.1 If the Company is prevented, hindered or delayed from or in supplying the Products in accordance with these Conditions by a Force Majeure Event the Company may, at its option:

(a) suspend deliveries while the Force Majeure Event continues;

(b) apportion available stocks between the customer and its other customers as it may in its discretion decide; and/or

(c) terminate any Contract so affected with immediate effect by written notice to the customer,

and the Company shall not be liable for any loss or damage suffered by the customer as a result of any such action.

9.2 In this condition "Force Majeure Event" means an event or circumstance beyond the reasonable control of the Company including, without limitation, strikes, lockouts, accidents, war, fire, reductions in or breakdown of plant or machinery or shortage or unavailability of component parts from normal sources of supply.

10. Payment

10.1 Except where a credit account has been opened for the customer by the Company, all payments due in respect of the supply of any Products under a Contract shall be made in advance against a pro-forma invoice supplied by the Company. In any such case, the Company shall be under no obligation to supply the Products until it has received payment in full from the customer.

10.2 Where a credit account has been opened for the customer by the Company, credit account invoices shall be due for payment within 30 days after the date of invoice. All invoices are strictly net of any Additional Costs unless by approved prior agreement.

10.3 Payment of credit account invoices by their due date is condition precedent to the fulfilment of the Company's further obligations under the Contract in respect of which such default has been made and any other Contract then subsisting between the Company and the customer. Accordingly, any failure by the customer to pay any amount when due under any Contract shall operate to relieve the company of all its remaining obligations under all subsisting contracts until such amounts are paid in full by the customer.

10.4 The Company shall determine in its sole discretion those customers in respect of which it shall open a credit account. The Company reserves the right to suspend or cancel any customer's credit account facility, and where the Company so suspends a customer's credit account, the customer shall be required to make all payments due in accordance with Condition 10.

10.5 If the customer fails to pay any amount under a Contract when it is due, the Company shall have the right to charge interest at the rate of 4% per annum above Natwest PLC base rate as amended from time to time (or, if lower, the maximum amount of interest which may be charged at law). Such interest will be charged on a daily basis on overdue amounts and shall be calculated from the date payment is due until the date on which payment is actually received at the Company's offices.

10.6 The Company shall be entitled to offset any amount owing to it from the customer against any amount owed to the customer by the Company.

11. Property and risk

11.1 Risk in the Products passes on delivery.

11.2 Notwithstanding delivery and passing of risk, the Products remain the property of the Company until the customer pays to the Company the agreed price for the Products (together with any accrued interest) under all subsisting contracts between the customer and the company and no other sums whatever shall be due from the customer to the Company.

11.3 Until property in the Products passes to the customer the customer shall hold the Products on a fiduciary basis and shall:

(a) not part with possession of the Products;

(b) take proper care of the Products and take all reasonable steps to prevent damage to or deterioration of them;

(c) keep the Products free from any charge, lien or other encumbrance and store the Products in such a way as to show clearly that they belong to the Company;

- (d) notify the Company immediately upon the happening of any of the events set out in Condition 15; and
(e) give the Company such information relating to the Products as the Company may from time to time require.
- 11.4 From delivery until property in the Products passes to the customer, the customer shall insure the Products for their full value with a reputable insurer and, upon request, shall use reasonable endeavours to have the Company's interest in the Products noted on the insurance policy. Until the property in the Products passes to the customer, the customer shall hold the proceeds of any claim on the insurance policy on trust for the Company and shall immediately account to the Company with the proceeds.
- 11.5 The Company reserves the right to repossess and resell any of the Products to which it has retained title. The Company's consent to the customer's possession of the Products and any right the customer may have to possession of the Products shall in any event cease upon the happening of any of the events set out in Condition 15.
- 11.6 The customer grants an irrevocable right and licence to the Company to enter the customer's during normal business hours in order to inspect or repossess Products to which it has retained title and the termination for any reason of a Contract shall not affect the continuance in force of this right and licence.
- 11.7 The customer acknowledges that as a consequence of its fiduciary relationship with the Company, it is under a duty to the Company to hold the proceeds of sale or hiring of the Products on trust for the Company and not to mingle such proceeds with other money or pay them into an overdrawn bank account and shall ensure that such proceeds are at all material times identified as the Company's money.
- 11.8 The Company shall be entitled to recover the price (plus VAT) in the event of non-payment by the customer notwithstanding that property in any of the Products has not passed from the Company. The Company may, by notice to the customer at any time after delivery, pass property in the Products to the customer with effect from the date of the notice.
- 12. Warranty**
- 12.1 The Company will at its option repair, replace, reimburse the customer or issue a credit note in respect of the price paid for any Products which, after proper use, prove to be defective within the warranty period specified for the relevant Products (as noted in the documentation supplied therewith), such warranty period commencing on the date of delivery specified on the relevant order form. This Condition shall not apply unless:
(a) notice in writing of any such defect is given to the Company promptly upon its appearance;
(b) the defect shall be found to have arisen solely from the Company's faulty design, workmanship or materials; and
(c) the defective Products are returned to the Company's factory at the customer's expense (if so requested by the Company).
- This Condition shall not apply to Products that have been processed or interfered with (other than by the Company or any person authorised in writing by the Company) or which have not been stored, handled or used in accordance with the Company's instructions as communicated by the Company to the customer from time to time.
- 12.2 Any repaired or replaced Products provided in accordance with Condition 12.1 shall be redelivered by the Company free of charge to the original place of delivery but otherwise in accordance with and subject to these Conditions, save that the stated period for which the warranty under Condition 12.1 is given shall be deemed to be the unexpired portion only of the original warranty period given in respect of the original Products.
- 13. Limitation of liability**
- 13.1 Except where by law its liability cannot be excluded or limited:
(a) the Company's compliance with its obligations under Condition 12 shall be in lieu of any other guarantee, representation, warranty or condition (whether express or implied, statutory or otherwise) in respect of the Products; and
(b) the Company shall not be under any liability (whether in Contract, tort or otherwise) for any indirect or consequential loss (including any loss of profits) suffered by the customer as a result of the customer having entered into any Contract.
- 13.2 Save as provided in Condition 13.3, the Company's aggregate liability in contract, tort, breach of statutory duty or otherwise, including any liability for negligence, howsoever caused arising out of or in connection with each Contract shall be limited to the value of the Products supplied by the Company to the customer under the Contract(s).
- 13.3 The Company's liability to the customer for death or injury resulting from its negligence shall not be limited.
- 13.4 Where the customer is a consumer (as defined by the Unfair Contract Terms Act 1977 or any successor legislation), nothing in these Conditions shall affect his statutory rights.
- 14. Third party software/hardware**
- The customer acknowledges that in order to use the Products it may be required to obtain certain software and/or hardware from third parties, in accordance with the Company's specification. Details of the third party software and/or hardware required to use each of the Company's Products is available from the Company and, in respect of any Products ordered by the customer, will be included in the documentation supplied therewith. The customer expressly agrees that it is the customer's responsibility to obtain all relevant third party software and/or hardware recommended by the Company for use with the Products purchased by the customer, and further that the Company shall be under no liability (whether in respect of the warranty given under Condition 12 or otherwise) in respect of the performance, quality or fitness for purpose of any Product supplied if the customer does not obtain the relevant third party software and/or hardware specified by the Company as required for proper use of that Product.

15. Termination

- 15.1 The Company shall have the right to terminate each and any Contract with the customer forthwith by notice in writing where:
- (a) the customer commits a material breach of any obligation under any Contract with the Company (including, for the avoidance of doubt but without limitation, failing to pay any amounts to the Company when they fall due);
 - (b) the customer passes a resolution for its winding up, a court of competent jurisdiction makes an order for the customer's winding up (other than, in each case, for the purposes of solvent amalgamation or reconstruction)
 - (c) the customer enters administration or suffers the appointment of an administrative receiver, a receiver over, or an encumbrancer taking possession of or selling an asset of, the customer;
 - (d) the customer making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally;
 - (e) (in respect of any customer who is a consumer (as defined in Condition 12)), the customer makes an arrangement or composition with his creditors generally, suffers the making of a bankruptcy order against him or dies; or
 - (f) in accordance with Condition 9 following an Event of Force Majeure.
- 15.2 Where the Company terminates a contract in accordance with Condition 15.1, the Company shall have no further obligations under the terminated Contract and the price for all the Products delivered to the Customer under any Contract shall become immediately due and payable.
- 15.3 For the purposes of Condition 15.1(a), a "material breach" means a breach (including an anticipatory breach) which is serious in the widest sense of having a serious effect on the benefit which the Company would otherwise derive from a substantial portion of a Contract.

16. Confidentiality

Each party undertakes that it will not divulge or communicate to any person, except its professional representatives or advisers (or as may be required by law or any legal or regulatory authority), any Confidential Information concerning the other party which may have or may in future come to its knowledge and each of the parties shall use its reasonable endeavours to prevent the publication or disclosure of any Confidential Information. For the purposes of this Condition, "Confidential Information" shall mean all information relating to either party's business or financial or other affairs (including future sales and targets of either party) which is not in the public domain.

17. Assignment

The customer shall not assign or otherwise dispose of this any Contract without the Company's prior written consent.

18. Variation

No variation of these Conditions shall be valid and binding unless the terms thereof have been agreed in writing by both the Company and the customer.

19. Invalidity and severability

- 19.1 If any provision of these Conditions is or becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction, the validity, legality and enforceability under the law of that jurisdiction of any other provision shall not be affected or impaired in any way thereby.
- 19.2 If any provision of these Conditions shall be held to be void or declared illegal, invalid or unenforceable for any reason whatsoever, such provision shall be deemed to be deleted from these Conditions and the validity of the remaining provisions shall not be affected.

20. Exclusion of third party rights

The Contracts (Rights of Third Parties) Act 1999 shall not apply to these Conditions nor any Contract made under them and no person other than the Company and the customer shall have any rights under any such Contract, nor shall these Conditions or any Contract be enforceable under that Act by any other person.

21. Proper Law

These Conditions and any Contract made under them shall be governed in accordance with English law and the customer agrees to submit to the exclusive jurisdiction of the English Courts.