

1 INTERPRETATION

1.1 In these Terms:

“**COMMISSIONING SERVICES**” means the provision of services in respect of the installation of the Goods which may be provided in accordance with clauses 2.2 and 8 below

“**CONDITIONS**” means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Customer and Freedom;

“**CONTRACT**” means the contract for the sale and purchase of the Goods and (if applicable) the supply of the Commissioning Services;

“**CUSTOMER**” means the person who accepts a quotation from Freedom for the sale of the Goods or whose order for the Goods is accepted by Freedom;

“**FREEDOM**” means Freedom Communications (UK) Limited, of Olds Approach, Tolpits Lane, Watford, Herts WD18 9RX

“**GOODS**” means the goods (including any instalment of the goods or any parts for them) specified on the Order Form to which these Conditions are annexed;

“**PREMISES**” means the Customer’s premises as specified on the Order Form to which these Conditions are annexed;

“**PRICE**” means the amount payable to Freedom for the Goods as set out in the Order Form or (in the absence thereof) a Written quotation

“**WRITING**”, includes cable, facsimile transmission and comparable means of communication.

1.2 Any reference in these Conditions to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2 BASIS OF THE SALE

2.1 Freedom shall sell and the Customer shall purchase the Goods in accordance with Freedom’s Written quotation (if accepted by the Customer), or the Customer’s Written order (if accepted by Freedom), subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Customer.

2.2 Where it is specifically stated on the Order Form or any quotation or otherwise agreed in Writing Freedom shall provide the Commissioning Services to the Customer, but (for the avoidance of doubt) in all other circumstances Freedom shall not be obliged to provide the Commissioning Services. Clauses 7 and 8 hereof shall only apply if Freedom has agreed to supply the Commissioning Services as aforesaid.

2.3 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Customer and Freedom.

2.4 Freedom’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by Freedom in Writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not confirmed in Writing.

2.5 Any advice or recommendation given by Freedom 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 Freedom is followed or acted upon entirely at the Customer’s own risk, and accordingly Freedom shall not be liable for any such advice or recommendation which is not so confirmed.

2.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Freedom shall be subject to correction without any liability on the part of Freedom.

3 ORDERS AND SPECIFICATIONS

3.1 No order submitted by the Customer shall be deemed to be accepted by Freedom unless and until confirmed in writing by Freedom’s authorised representative.

3.2 The Customer shall be responsible to Freedom for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving Freedom any necessary information relating to the Goods within a sufficient time to enable Freedom to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of the Goods and any specification for them shall be as set out in Freedom’s quotation (if accepted by the Customer) or the Customer’s order (if accepted by Freedom). For the purposes of this clause all literature submitted to the Customer so far as relates to specifications and application or use of the Goods are approximations and estimates only and only those provided by the manufacturer of the Goods can be relied upon by the Customer.

3.4 Freedom reserves the right to make any changes in the specification of the Goods which are required to

conform with any applicable statutory or E.U. requirements or, where the Goods are to be supplied to Freedom's specification, which do not materially affect their quality or performance.

- 3.5 No order which has been accepted by Freedom may be cancelled by the Customer except with the agreement in Writing of Freedom and on terms that the Customer shall indemnify Freedom in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Freedom as a result of cancellation.

4 PRICE OF THE GOODS

- 4.1 All prices quoted are valid for 30 days only or until earlier acceptance by the Customer, after which time they may be altered by Freedom without giving notice to the Customer.
- 4.2 Freedom reserves the right, by giving Written notice to the Customer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to Freedom which is due to any factor beyond the control of Freedom (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture or manufacturers price increases), any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give Freedom adequate information or instructions.
- 4.3 Where Freedom agrees to deliver the Goods otherwise than at the Customer's premises, the Customer shall be liable to pay Freedom's charges for transport, packaging and insurance.
- 4.3.1 Where Freedom has agreed to supply the Commissioning Services pursuant to clause 2.2 hereof the Price shall only include:
- (a) the cost of parts and costs of delivery of parts of the Goods to the Premises; or
 - (b) the provision of the Commissioning Services at the Premises.
- 4.4 Freedom reserves the right to charge the Customer (at Freedom's prevailing rates) for any additional installation and commissioning services that are required to the extent that were not included in the Order Form or Written Quotation or otherwise contemplated by Freedom due to any act or omission of the Customer or any alteration or variation of the order or specification made by the Customer.
- 4.5 The Price is exclusive of any applicable value added tax, which the Customer shall be liable to pay to Freedom.

5 TERMS OF PAYMENT

- 5.1 Subject to any special terms agreed in Writing between the Customer and Freedom, the Customer shall pay the full amount of the Price without any deduction or withholding or any legal or equitable right of set-off whatsoever on any account together with all other payments referred to in these Conditions as follows :
- 5.1.1 an amount equal to 30% of the Price on the date the order for the Goods is accepted by Freedom; and
- 5.1.2 where Commissioning Services are applicable, an amount representing 70% of the Price on completion of the Commissioning Services; or where Commissioning Services do not apply, 70% on delivery of the Goods actually delivered; and
- 5.1.3 in each case with value added tax on the amount payable at the applicable rate.
- 5.2 If the Customer fails to make any payment on the due date then, without limiting any other right or remedy available to Freedom, Freedom may:
- 5.2.1 cancel the contract or suspend any further deliveries to the Customer; and /or
- 5.2.2 appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract between the Customer and Freedom) as Freedom may think fit (notwithstanding any purported appropriation by the Customer).

6 DELIVERY

- 6.1 Except as otherwise stated on the Order Form or the terms of any Written quotation or unless otherwise agreed in Writing delivery of the Goods shall be made by Freedom at the Premises during normal working hours at any time after Freedom has notified the Customer that the Goods are ready for delivery or, if some other place for delivery is agreed by Freedom, by Freedom delivering the Goods to that place.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and Freedom shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by Freedom in Writing. The Goods may be delivered by Freedom in advance of the quoted delivery date on giving reasonable notice to the Customer.
- 6.3 Where the Goods or any part of them are procured by Freedom from manufacturers or third party suppliers ("**the Suppliers**") Freedom shall be under no obligation to deliver the same until it shall have received delivery of the same. Accordingly upon receiving delivery of part of the Goods Freedom shall arrange for such part to be delivered to the

Customer and each delivery shall constitute a separate contract and failure by Freedom to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments due to delay on the part of the Suppliers shall not entitle the Customer to treat the Contract as a whole as repudiated.

- 6.4 If Freedom fails to deliver the Goods (or any instalment) for any reason (other than any cause beyond Freedom's reasonable control or the Customer's fault), and Freedom is accordingly liable to the Customer, Freedom's liability shall be limited to the amount of the Price actually paid by the Customer.
- 6.5 If the Customer fails to take delivery of the Goods or fails to give Freedom adequate delivery instructions at the time stated for delivery (or fails to permit Freedom to undertake or complete the Commissioning Services), otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Freedom's fault, then, without limiting any other right or remedy available to Freedom, Freedom may:
 - 6.5.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
 - 6.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the Price or charge the Customer for any shortfall below the Price.

7 PREPARATION OF THE PLACE OF USE

- 7.1 Where Freedom has agreed to supply the Commissioning Services, pursuant to clause 2.2 hereof the Customer shall prepare the Premises in sufficient time and in such manner as to enable Freedom to comply with its obligations under clause 8 below.
- 7.2 Freedom shall have no liability to the Customer in respect of late or partial delivery where the same results from the Customer's failure to prepare the Premises in accordance with clause 7.1 above in a timely manner.

8 INSTALLATION AND ACCEPTANCE

- 8.1 Where Freedom has agreed to supply the Commissioning Services pursuant to clause 2.2 hereof Freedom shall commence installation of the Goods at the Premises on such date as the Customer and Freedom shall have previously agreed, or in default of agreement, on the such date as shall be notified in Writing to the Customer and Freedom shall inform the Customer when such installation is completed.
- 8.2 The Customer shall accept (and in default shall be

deemed to accept) the Goods upon the date that Freedom informs it that the Goods have been installed.

- 8.3
 - (i) Where Goods are to be connected to the Network Service Provider (here meaning provider of telephone lines authorised under telecommunications legislation) or other outside services it is the responsibility of the Customer to arrange for the provisioning of any circuits with the providing authority.
 - (ii) All costs for circuit rentals, connection charges, inspection, commissioning and any other costs necessary to provide the services in respect of sub-clause (i) will be borne by the Customer.
 - (iii) Freedom shall not be responsible for any delays in the provision of the services mentioned in subclause (i) and any delays in the provisioning of the services shall not give the Customer the right to refuse installation of the Goods or any part of them or to withhold payment due to Freedom.

9 RISK AND PROPERTY

- 9.1 Risk of damage to or loss of the Goods shall pass to the Customer:
 - 9.1.1 in the case of Goods to be delivered at Freedom's premises, at the time when Freedom notifies the Customer that the Goods are available for delivery to or collection by the Customer; or
 - 9.1.2 in the case of Goods to be delivered otherwise than at Freedom's premises, at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when Freedom has tendered delivery of the Goods.
- 9.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Customer until Freedom has received in cash or cleared funds payment in full of the Price and all other payments that are due to Freedom under these Conditions.
- 9.3 Until such time as the property in the Goods passes to the Buyer, the Customer shall hold the Goods as Freedom's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as Freedom's property. The Customer shall not resell or use the Goods in the ordinary course of its business.
- 9.4 Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold), Freedom may at any time require the Customer to deliver up the

Goods to Freedom and, if the Customer fails to do so forthwith, enter on any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

- 9.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Freedom, but if the Customer does so all moneys owing by the Customer to Freedom shall (without limiting any other right or remedy of Freedom) forthwith become due and payable.

10 WARRANTIES AND LIABILITY

- 10.1 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

- 10.2 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Terms.

- 10.3 Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to Freedom within seven days from the date of delivery or (if applicable) the date of completion of the Commissioning Services (whichever the later) or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Customer does not notify Freedom accordingly, the Customer shall not be entitled to reject the Goods and Freedom shall have no liability for such defect or failure, and the Customer shall be bound to pay the Price as if the Goods had been delivered in accordance with the Contract.

- 10.4 Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specification is notified to Freedom in accordance with these Conditions, Freedom may replace the Goods (or the part in question) free of charge or, at Freedom's sole discretion, refund to the Customer the Price (or a proportionate part of the Price) that has actually been paid by the Customer, in which case Freedom shall have no further liability to the Customer.

- 10.5 Under no circumstances shall Freedom have any liability of whatever kind for:

- 10.5.1 any defects resulting from wear and tear accident, or improper use by the Customer, its employees, agents or sub-contractors; or

- 10.5.2 any Goods which have been adjusted or modified or

repaired otherwise than by Freedom;

- 10.5.3 the suitability of any Goods for any particular purpose or use under specific conditions whether or not the purpose or conditions were known or communicated to Freedom; or

- 10.5.4 any substitution by Freedom of any materials or components not forming part of any specifications of the Goods agreed in writing by Freedom; or

- 10.5.5 any technical information recommendations statements or advice furnished by Freedom its servants or agents not given in writing in response to a specific written request from the Customer before the Contract is made; or

- 10.5.6 any variation in the quantities or dimensions of any Goods or changes of their specification or substitution does not materially affect the characteristics of the Goods, and the substituted materials or components are of a quality or superior to those originally specified.

- 10.6 Except in respect of death or personal injury caused by Freedom's negligence, or liability for defective products under the Consumer Protection Act 1987, Freedom shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of Freedom, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Customer, and the entire liability of Freedom under or in connection with the Contract shall not exceed the nor be more onerous than the liability of the manufacturer (whether implied or expressed and or in respect of any warranty given by the manufacturer to Freedom) the Goods, except as expressly provided in these Conditions. Freedom shall wherever possible assign, or where assignment is prohibited, hold the benefit of any manufacturers warranty for the benefit of the Customer.

- 10.7 Freedom shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of Freedom's obligations in relation to the Goods or the Commissioning Services, if the delay or failure was due to any cause beyond Freedom's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond Freedom's reasonable control:

- 10.7.1 act of God, explosion, flood, tempest, fire or accident;

- 10.7.2 war or threat of war, sabotage, insurrection, civil

- disturbance or requisition;
- 10.7.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 10.7.4 import or export regulations or embargoes;
- 10.7.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of Freedom or of a third party);
- 10.7.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 10.7.7 power failure or breakdown in machinery;
- 10.7.8 delays in respect of production, delivery or otherwise on the part of third party manufacturers and suppliers of the Goods
- 10.8 Freedom's liability for any breach of its obligations or for breach of contract or in tort or otherwise shall not in any event in aggregate exceed the amount of the Price actually paid by the Customer to Freedom
- 11 INSOLVENCY OF CUSTOMER**
- 11.1 This clause 11 applies if:
- 11.1.1 the Customer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 11.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- 11.1.3 the Customer ceases, or threatens to cease, to carry on business; or
- 11.1.4 Freedom reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

- 11.2 If this clause applies then, without limiting any other right or remedy available to Freedom, Freedom may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

12 GENERAL

- 12.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 12.2 No waiver by Freedom 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.
- 12.3 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 12.4 Any dispute arising under or in connection with the Contract or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Law Society, in accordance with the rules of the Arbitration Act 1996.
- 12.5 The Contract shall be of England and the Customer agrees to submit to the governed by the laws non-exclusive jurisdiction of the English courts.
- 12.6 This Agreement does not create any right enforceable by any person not a party to it.
- 12.7 The Customer cannot assign the benefit and burden of its obligations under the Contract.
- 13 MAINTENANCE AND REPAIR AGREEMENT**
- 13.1 Freedom is able to provide or procure the maintenance and repair of the Goods. Any agreement made between the Customer and Freedom in that behalf shall be deemed to be mutually exclusive.