

# CLEARLINK TELECOMS AND DATA LTD - TERMS AND CONDITIONS OF SALE

## Definitions

- 1.1 "The Company" means Clearlink Telecoms and Data Ltd.
- 1.2 "The Customer" means the customer of the company.
- 1.3 "The Contract" means any Contract for the sales of goods by the Company to the Customer.
- 1.4 "The Goods" means any goods forming the subject of this Contract including parts and components of or materials incorporated in them.

## Quotation

2. Quotations by the Company unless otherwise stated in them shall be open for acceptance within 30 days of the date of quotation.

## Existence of Contract

- 3.1 No Contract shall come into existence until the Customer's order however given is accepted by the earliest of (a) the Company's written acceptance (b) delivery of goods and (c) the Company's invoice.
- 3.2 These conditions shall be incorporated in the Contract with the exclusion of any terms and conditions stipulated and referred to by the Customer.
- 3.3 No variations or amendments of this Contract shall be binding on the Company unless confirmed by in writing.

## Prices

- 4.1 Prices are ex-works and exclude freight, insurance, delivery charges, VAT and other taxes or duties. Prices invoiced are calculated in respect of the quantity of goods actually delivered irrespective of the quantity of which any quotation was issued.
- 4.2 The Company shall have the right in respect of any uncompleted portion of the Contract to adjust its prices for any increase in the price of material, parts, labour, transport, changes in work or delivery schedules or quantity of which any quotation was issued.

## Payment

5. Payment is to be made in accordance with the terms as shown on the reverse of our invoice and time for payment shall be the essence of the Contract. Without prejudice to any other right of the Company if the Customer fails to pay the invoice price by the due day the Customer shall not be allowed any discount given in that invoice and shall pay interest on any overdue amount from the date on which payment was due to that on which it is made whether before or after judgement on a daily basis at a rate of 4% above the base rate from time to time quoted by the National Westminster Bank PLC and reimburse to the Company all costs and expenses including legal costs incurred in the collection of any overdue amount.

## Title

- 6.1 For the purposes of Section 12 of the Sale of Goods Act 1979 the Company shall transfer only such title or rights in respect of the goods as the Company has and if the goods are purchased from a third party shall transfer only such title or rights as that party had and transferred to the Company.
- 6.2 Notwithstanding the earlier passing of risk title in the goods shall remain with the Company and shall not pass to the Customer until the amount due under the invoice for them has been paid in full.
- 6.3 Until title passes the Customer shall hold the goods as bailee for the Company and shall store or mark them so that they can at all times be identified as the property of the Company.
- 6.4 The Company shall be able at any time before title passes to repossess and dismantle without being liable for any damage caused by so doing and use or sell all or any of the goods and so terminate without any liability to the Customer the Customer's right to use, sell or otherwise deal in them and for that purpose or determining what if any goods are held by the Customer in respect of them to enter into any premises of the Customer.
- 6.5 Until title passes the entire proceeds of sale of the goods shall be held in trust for the Company and shall not be mingled with other monies or paid into any overdrawn bank account and shall be identifiable at all times as the vendor's money.
- 6.6 The Company shall be entitled to maintain an action for the price of any goods notwithstanding that title in them has not passed to the Customer.

## Risk Delivery and Performance

- 7.1 Goods are delivered to the Customer when the Company makes them available to the Customer or any agent of the Customer or any carrier who shall be the customer's agent whoever pays his charges at the Company's premises or other delivery point agreed by the company.
- 7.2 Risk in the goods passes when they are delivered to the Customer.
- 7.3 The Company may at its discretion deliver the goods by instalments in any sequence.
- 7.4 Where the goods are delivered by instalments each instalment shall be deemed to be the subject of a separate Contract and no default or failure by the Company in respect of any one or more instalments shall violate the Contract in respect of the goods previously delivered or undelivered goods.
- 7.5 The Company may deliver to the Customer and the Customer shall accept in satisfaction of the Contract a lesser number than the number of goods ordered.
- 7.6 Any dates quoted by the Company for the delivery of goods are approximate and shall not form part of the Contract and the Customer acknowledges that in the performance expected of the Company no regard has been paid to any quoted delivery dates.
- 7.7 If the customer fails to take delivery of any goods or part of them on the due date and fails to provide any instructions, documents, licenses, consents or authorisations required to enable the goods to be delivered on the due date the Contract shall be deemed to have taken place and the Customer shall pay to the Company all costs and expenses including storage and insurance charges arising from its failure.
- 7.8 The Company shall not be liable for any penalty, loss, injury, damage or expense arising from any delay or failure in delivery or performance from any cause at all, nor shall any such delay or failure entitle the Customer to refuse to accept any delivery or performance of or repudiate the Contract.

## Claims Notification

- 8.1 Any claim for the non-delivery of any goods shall be notified in writing by the Customer to the Company within 10 days of the date of the Company's invoice.
- 8.2 Any claim that any goods have been delivered damaged, are not of the correct quantity or do not comply with their description shall be notified by the Customer to the Company within 7 days of their delivery. The warranty period is that given by the manufacturer, faulty goods are to be returned to the manufacturer. If a maintenance agreement with the company exists the conditions of the Contract will apply.
- 8.3 Any alleged defect shall be notified by the Customer to the Company within 7 days of delivery of the goods or in the case of any defect in the goods which is not reasonably apparent on inspection within 7 days of the defect coming to the Customer's attention.

## Installation

- 9.1 It is the responsibility of the Customer to provide adequate working conditions for the installation to take place.
- 9.2 It is the responsibility of the Customer to provide adequate permanent mains supply for the equipment ordered.
- 9.3 The Customer shall pay all costs relating to the installations, line, network and inspection charges to the relevant network carrier.

## Scope of Contract

- 10.1 Under no circumstances shall the Company have any liability of whatever kind for:
- 10.2 any defects resulting from wear and tear, accident, improper use by the Customer or use by the Customer otherwise than in accordance with the instructions or advice of the Company or the manufacturer of any goods or neglect or from any instructions or materials provided by the Customer.
- 10.3 any goods which have been adjusted, modified or repaired otherwise than by the Company.
- 10.4 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 the Company.
- 10.5 any substitution by the Company of any materials or components not forming part of any specification of the goods agreed in writing by the Company.
- 10.6 any description illustration, figures as to the performance drawings and particulars of weights and dimensions submitted by the Company contained in the Company's catalogues, price listings or elsewhere since they are merely intended to represent a general idea of the goods and not to form part of the Contract or to be treated as representations.
- 10.7 any technical information, recommendations, statements or advice furnished by the Company, its servants or agents not given in writing in response to a specific written request from the Customer before the contract is made or
- 10.8 any variations in the quantities or dimensions of any goods or changes of their specifications or substitution of any materials components if the variation or substitution does not materially affect the characteristics of the goods and the substituted materials are of a quality equal or superior to those originally specified.

## Extent of Liability

- 11.1 The Company shall have no liability to the Customer other than a liability for death or personal injury resulting from the Company's negligence for any loss or damage of any nature arising from any breach of any express or implied condition or warranty of the Contract or any negligence breach of statutory or other duty on the part of the company or in any other way out of or in connection with the performance or purported performance of or failure to perform the Contract except in accordance with this condition.
- 11.2 If a Customer establishes that any goods have not been delivered, have been delivered damaged, are not of the correct quantity or do not comply with their description the Company shall at its option replace with similar goods any goods which are missing, lost or damaged or do not comply with their description, allow the Customer credit for their invoice value or repair any damaged goods.
- 11.3 If the Customer establishes that any goods are defective the Company shall at its option replace with similar goods or repair any defective goods or allow the Customer credit for their invoice value or to the extent that the goods are not of the Company's manufacture assigned to the Customer (so far as the Customer is able to do so) any warranties given by the manufacturer of the goods to the company.
- 11.4 The delivery of any repaired goods shall be at the company's premises or other delivery point specified for the original goods.
- 11.5 Where the Company is liable in accordance with this condition in respect of only some or part of the goods the Contract shall remain in full force and effect in respect of the other or other parts of the goods and no set-off or other claim shall be made by the Customer against or in respect of such other or other parts of the goods.
- 11.6 No claim against the Company shall be entertained for any defect arising from any design or specification provided or made by the customer or if any adjustments, alterations or other work has been done to the goods by any person other than the Company.
- 11.7 The Company shall not be liable where any goods, the price of which does not include carriage, are lost or damaged in transit and all claims by the Customer shall be made against the carrier. Replacements for such lost or damaged goods will, if available, be supplied by the Company at the price ruling at the date of despatch.
- 11.8 The Company is not responsible for any loss of profit which may occur from any of the network providers or associated equipment and the Company shall also not be liable for any loss of profit resulting from installation of the system or associated equipment, or loss of profit resulting from any form of telephone hacking.

## General

- 12.1 The Company may sub-contract the performance of the Contract in whole or part.
- 12.2 The Contract is between the Company and the Customer as principles and shall not be assignable by the Customer without the express written consent of the Company.
- 12.3 The Company shall have a lien on all the Customer's property in the Company's possession for all sums due at any time from the Customer and shall be entitled to use, sell or dispose of that property as agent for and at the expense of the Customer and apply the proceeds in and towards the payment of such sums on 28 days notice in writing to the Customer. Upon accounting to the Customer for any balance remaining, after payment of any sums due to the company and the cost of sale and disposal, the company shall be discharged of any liability in respect of the Customer's property.
- 12.4 The Company may at its discretion suspend or terminate the supply of any goods if the Customer fails to make any payment when and as due or otherwise defaults in any of its obligations under the Contract or any other agreement with the Company or becomes insolvent, has a receiver appointed of its business or is compulsorily or voluntarily wound up or the Company bona fide believes that any part of those events may occur and in the case of termination shall be entitled to forfeit any deposit paid.
- 12.5 If the goods are manufactured in accordance with any design or specification provided or made by the Customer, the Customer shall indemnify the Company from and against all claims, costs, expenses, and liability of any nature in connection with them including any claims whether actual or alleged that the design or specification infringes the rights of any third party.
- 12.6 All tools, patterns, materials, drawings, specifications and other data provided by the Company shall remain its property and all technical information, patentable or unpatentable, copyright and registered designs arising from the execution of any orders shall become the property of the Company.
- 12.7 The Contract and its subject matter are confidential and shall not be disclosed or used for any unauthorised purpose.

## Cancellation

13. Should the Customer cancel this order, for any reason prior to installation, after acceptance by the Company there will be a cancellation fee incurred equivalent to 30% of the total value of this order. This applies to either a cash order or an order taken to be financed through a third party whether accepted or not. The customer may also be liable for cancellation fees from third parties such as Network Carriers.

## Force Majeure

14. If the performance of the Contract or any obligation under it is prevented, restricted or interfered with by reason of circumstances beyond the reasonable control of the party obliged to perform it, the party so affected upon giving prompt notice to the other party shall be excused from performance to the extent of the prevention, restriction or interference but the party so affected shall use its best efforts to avoid or remove such causes of non-performance and shall continue the performance under the contract with the utmost despatch whenever such causes are removed or diminished.

## Third Party Rights

15. A person who is not a party to this agreement, has no right under the Contracts (Right of Third Parties) Act 1999 to enforce any term of this agreement, but this does not affect any right or remedy of a third party which exists or is available as part of this Act.

## Law and Construction

- 16.1 The Contract shall be governed by English Law and the Customer consents to the exclusive jurisdiction of the English courts in all matters regarding the contract.
- 16.2 The headings of conditions are for convenience of reference only and shall not affect their interpretation.