

TERMS AND CONDITIONS OF BUSINESS FOR NETPROTOCOL LTD

- 1 Interpretation
 - 1.1 In these Conditions:

"BUYER" means the person who accepts a quotation of the Company for the sale of the Goods and / or Services or whose order for the Goods and / or Services is accepted by the Company

"COMPANY" means Netprotocol Ltd

"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 Buyer and the Company

"CONTRACT" means the contract for the purchase and sale of the Goods and Services

"GOODS" means the goods (including any instalment of the goods or any parts for them) which the Company is to supply in accordance with these Conditions.

'SERVICES' means the consultancy or other services which the Company is to supply in accordance with these conditions.
- 2 Basis of the sale
 - 2.1 The Company shall sell and the Buyer shall purchase the Goods and Services in accordance with any written quotation of the Company which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Company, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions 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 Buyer.
 - 2.2 No variation to these Conditions shall be binding unless agreed in writing by a Director of the Company.
 - 2.3 The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed in writing by a Director the Company. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.
- 3 Orders and specifications
 - 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Company unless and until confirmed in writing by the Company.
 - 3.2 The quantity, quality and description of and any specification for the Goods and the specification of the Services to be completed shall be those set out in the Company's quotation or specification sheet (if accepted by the Buyer) or the Buyer's order (if accepted by the Company).
 - 3.3 The Company reserves the right to make variations to the specifications of the Goods provided such variations do not materially affect the performance of the goods or their quality or fitness for purpose.
 - 3.4 The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements.
 - 3.5 Any performance figures quoted or referred to by the Company are estimates based on assumed conditions, expected usage parameters, within a well maintained environment with efficient operators and proper use of satisfaction materials.
 - 3.6 No order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company 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 the Company as a result of cancellation.
- 4 Price of the goods
 - 4.1 The price of the Goods and Services shall be the Company's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the Company shall re-quote the price, or re-validate the previous price in writing. All prices quoted are valid for 28 days only or until earlier acceptance by the Buyer.
 - 4.2 The Company reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods or Services to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company, any change in delivery dates, quantities or specifications for the Goods or Services which is requested by the Buyer, or any delay caused by any instructions act or omission of the Buyer.

- 4.3 Unless otherwise agreed in writing, all prices are given by the Company on an ex works basis, and the Buyer shall be liable to pay any additional charges for transport, insurance and installation of Goods.
- 4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Company.
- 5 Terms of payment
- 5.1 Subject to any special terms agreed in writing between the Buyer and the Company, the Company shall be entitled to invoice the Buyer:
- 5.1.1 for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Company shall be entitled to invoice the Buyer for the price at any time after the Company has notified the Buyer that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods.
- 5.1.2 for the price of the installation of the Goods, including partial installation, (including all ancillary costs thereof) upon completion of the installation, or defined installation stage, by the Company, its operators or subcontractors.
- 5.1.3 for the price of the Services on completion of the specified Services or at the end of the month in which the Services were supplied.
- 5.2 Unless agreed otherwise in writing, the Buyer shall pay the price of the Goods and / or Services within 14 days of the date of the Company's invoice, and the Company shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
- 5.3.1 cancel the contract or suspend any further deliveries or provision of Services to the Buyer or require payment to be made contemporaneously with delivery up of any Goods or provision of Services;
- 5.3.2 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 1½ per cent per month from the date payment is due until payment in full is made.
- 6 Delivery
- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Company's premises at any time after the Company has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place.
- 6.2 Any dates quoted for delivery or installation of the Goods or supply of Services are approximate only and the Company shall not be liable for any delay however caused. Time for delivery installations and supply shall not be of the essence of the Contract. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 If the Buyer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions or provide adequate access, working conditions or materials at the time stated for delivery or installation (otherwise than by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may:
- 6.3.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 6.3.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- 7 Risk and property
- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
- 7.1.1 in the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Buyer that the Goods are available for collection; or
- 7.1.2 in the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods. The Company shall bear no responsibility for the storage or security of Goods which have been delivered but not yet installed.
- 7.2 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 Buyer until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Company to the Buyer for which payment is then due.

- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Company's property, but the Buyer shall be entitled to use the Goods in the ordinary course of its business.
- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Company shall be entitled at any time to require the Buyer to deliver up the Goods to the Company and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.5 In the event of the Company requiring the Buyer to deliver up possession of the Goods or the Company repossessing the Goods in accordance with Clause 7.4 above, the Company shall not be liable for the loss of any data or software stored on the Goods supplied or any consequential loss resulting therefrom.
- 8 Warranties and liability
- 8.1 Subject to the conditions set out below the Company warrants that the Goods will correspond with their specification at the time of delivery.
- 8.2 The above warranty is given by the Company subject to the following conditions:
- 8.2.1 the Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
- 8.2.2 the Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's or Manufacturer's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's or Manufacturer's approval;
- 8.2.3 the Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
- 8.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.
- 8.3 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.
- 8.4 The Buyer shall be responsible for ensuring that the working environment is suitable for the installation of the Goods or the provision of the Services, including an adequate and suitable electrical supply.
- 8.5 Any claim by the Buyer 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 Buyer) be notified to the Company within 7 days from the date of delivery 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 Buyer does not notify the Company accordingly, the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.6 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Conditions, the Company shall be entitled to replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Company shall have no further liability to the Buyer.
- 8.7 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Buyer 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 any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply or installation of the Goods or their use or resale by the Buyer or the supply of the Services, and the entire liability of the Company under or in connection with the Contract shall not exceed the price of the Goods or Services supplied, except as expressly provided in these Conditions.
- 8.8 The Company shall not in any way be liable for the loss or deletion of or disruption to any software application or data used or stored by the Buyer and it is assumed that the Buyer shall have adequate back up facilities in relation to the same. It is the Customers responsibility to ensure that such software or data is so protected.

- 8.9 The Company shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods or Services, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control: Act of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery.
- 8.10 The Company's prices are determined on the basis of the limits of liability set out in this condition. The Buyer may by written notice to the Company request the Company to agree a higher limit of liability provided that insurance cover can be obtained.
- 9 Insolvency of buyer
- 9.1 If the Buyer makes any 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 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or the Buyer ceases, or threatens to cease, to carry on business; or the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered or the Services have been supplied but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 10 General
- 10.1 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.
- 10.2 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 10.3 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.