

1. **TERMS AND CONDITIONS**

1.1 These "Terms" shall apply to and be incorporated into any "Contract" between you the customer (referred to below as "you" or "your") and Modern Networks Ltd of Unit E2 Knowl Piece, Wilbury Way, Hitchin, Herts, SG4 0TY (referred to below as "us", "our" or "we") for the purchase of IT "Equipment". These Terms shall prevail over any inconsistent terms or conditions contained, or referred to, in your purchase order, confirmation of order, acceptance of a quotation, or specification or other document supplied by you, or implied by law, trade custom, practice or course of dealing.

1.2 Condition headings do not affect the interpretation of these conditions.

1.3 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.4 Your purchase order, or acceptance of a quotation or acknowledgement of order, constitutes an offer by you to purchase the Equipment specified in them on these Terms. No offer placed by you shall be accepted by us other than:

(a) by a written acknowledgement of order issued and executed by us; or

(b) (if earlier) by us delivering the Equipment, when a contract for the supply and purchase of Equipment will be established.

1.5 Quotations are given by us on the basis that no Contract shall come into existence except in accordance with 1.4 above. Any quotation is valid for period of 30 days unless stated otherwise, for example, where we have received a quote from a distributor or manufacturer which sets out a different period of validity, provided always that we or any of our distributors or the manufacturers have not previously withdrawn the quote.

2. **QUANTITY AND DESCRIPTION**

2.1 The quantity and description of the Equipment shall be as set out in our acknowledgement of order or (if there is no acknowledgement of order) quotation.

2.2 All samples, drawings, descriptive matter, specifications and advertising issued by us, and any descriptions or illustrations contained in any of our catalogues or brochures are issued or published for illustrative purposes only and they do not form part of the Contract.

2.3 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 us shall be subject to correction without any liability.

2.4 As we are not a manufacturer of the Equipment, the Equipment is subject to any changes in specification made by the manufacturer of the Equipment which are required to conform to any applicable legislation or, where the Equipment is to be supplied to your specification, which do not materially affect their quality or performance. As we are not the manufacturer of the Equipment, you must rely on the manufacturer's warranty or guarantee unless you have taken out a support and maintenance contract with us.

2.5 Our employees, contractors and agents are not authorised to make any contractually binding representations concerning the Equipment. In entering into the Contract, you acknowledge that you have not relied on, and waive any claim for breach of, any such representations which have not been confirmed in writing by one of our authorised officers. However, nothing in these conditions limits our liability for fraudulent misrepresentation.

2.6 Any advice or recommendation given by us or our employees, contractors or agents to you or your employees, contractors or agents about the storage, application or use of the Equipment which is not confirmed in writing by our authorised officer is followed or acted on entirely at your own risk.

3. **CHARGES FOR THE EQUIPMENT**

3.1 All Charges shall be as stated in our acknowledgement of order or quotation. All Charges are exclusive of delivery, packaging, packing, shipping, carriage, insurance, VAT and other charges and duties.

3.2 The Charges for the Equipment are based on the rates prevailing at the date of our acknowledgement of the order and we may reasonably increase the Charges, to cover any increases due to market conditions (including, but not limited to, increases in foreign exchange rates relating to the Equipment, or in labour, materials, supply or transportation costs) which affect us at the date of delivery.

3.3 The Charges for the Equipment shall be our quoted price or, where no price has been quoted (or a quoted price is no longer valid), our current prevailing price at the date of acceptance of the order.

3.4 We reserve the right, by giving notice to you at any time before delivery, to increase the Charges of such of the Equipment as has not been delivered to reflect any increase in the cost to us which is due to any factor beyond our control (including any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Equipment which you have requested, or any delay caused by any of your instructions or your failure to give us adequate information or instructions.

4. **PAYMENT FOR THE EQUIPMENT**

4.1 Subject to any special terms agreed in writing between you and us, we may invoice you for the Charges for the Equipment on or at any time after delivery of the Equipment, unless:

(a) the Equipment is to be collected by you; or

(b) you wrongfully fail to take delivery of the Equipment,

and in either case we shall be entitled to invoice you for the Charges at any time after we have notified you that the Equipment is ready for collection.

4.2 The terms of payment shall be:

(a) in the case of Equipment delivered in the United Kingdom, within 30 days of the date of our invoice, whether or not delivery has taken place or title in the Equipment has passed to you; and

(b) in the case of export sales, in accordance with condition 9.

4.3 Time for payment of the Charges shall be of the essence of the Contract.

4.4 If you fail to make payment in full on the due date, the whole of the balance of the Charge of the Equipment then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to us, we may: terminate the relevant Contract and/or suspend any further deliveries of Equipment (whether ordered under the same Contract or not);

(b) appropriate any payment made by you to such of the Equipment (or the Equipment supplied under any other contract between you and us) as we think fit (despite any purported appropriation by you);

(c) charge interest on the amount outstanding from the due date to the date of receipt by us, at the annual rate of 5% above the base lending rate from time to time of HSBC Bank accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment.

(d) suspend all further orders, delivery, installation or warranty service until payment has been made in full.

(e) make a storage charge for any undelivered Equipment at its current rates from time to time;

(f) stop any Equipment in transit; and/or

(g) impose a general lien on all Equipment and property belonging to you, exercisable in respect of all sums lawfully due from you to us. We shall be entitled, on the expiry of 14 days' notice in writing, to dispose of such Equipment or property in such manner and at such price as we think fit and to apply the proceeds towards the amount outstanding.

5. **LIMITATION OF LIABILITY**

5.1 The following provisions set out our entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you in respect of:

(a) any breach of the Contract; and

(b) any representation, statement or tortious act or omission (including negligence) arising out of or in connection with the Contract.

5.2 All warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.

5.3 Nothing in these conditions excludes or limits our liability for:

(a) death or personal injury caused by our negligence; or

(b) fraud or fraudulent misrepresentation.

5.4 Subject to 5.2 and 5.3:

(a) We shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:

(i) loss of profits; or

(ii) loss of business; or

(iii) depletion of goodwill or similar losses; or

(iv) loss of anticipated savings; or

(v) loss of goods; or

(vi) loss of contract; or

(vii) loss of use; or

(viii) loss or corruption of data or information; or

(ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

(b) our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the lesser of the price payable for the Equipment by you or £50,000.

6. **DELIVERY OF EQUIPMENT AND ACCEPTANCE**

6.1 We shall use our reasonable endeavours to deliver the Equipment on the date or dates specified in the acknowledgement of order, but any such date is approximate only. If no dates are so specified, delivery shall be within a reasonable time of acceptance of the order. Time is not of the essence as to the delivery of the Equipment and we are not liable for any delay in delivery, however caused.

6.2 The Equipment may be delivered by us in advance of the quoted delivery date on giving reasonable notice to the Customer.

6.3 Delivery shall be made during normal business hours (excluding bank or public holidays). We may levy additional Charges for any deliveries made outside such hours at your request.

6.4 You shall be responsible (at your cost) for preparing the delivery location for the delivery of the Equipment and for the provision of all necessary access and facilities reasonably required delivering and installing the Equipment. If we are prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out, we may levy additional Charges to recover its loss arising from this event.

6.5 You shall be deemed to have accepted the Equipment when you have had 7 days to inspect it after delivery and have not exercised in writing its right of rejection.

6.6 We shall be responsible for any damage, shortage or loss in transit, provided that you notify us (or our carrier, if applicable) within three (3) days of delivery or the proposed delivery date of the Equipment and that the Equipment has been handled in accordance with our stipulations. Any remedy under this condition shall be limited, at our option, to the replacement or repair of any Equipment which is proven to our satisfaction to have been lost or damaged in transit.

7. **RISK AND PROPERTY**

7.1 The Equipment shall be at our risk until delivery to you at the place of delivery specified in the acknowledgement of order. We shall off-load the Equipment at your risk.

7.2 Ownership of the Equipment shall pass to you on the later of completion of delivery (including off-loading), or when we have received in full in cleared funds all sums due to us in respect of:

(a) the Equipment; and

(b) all other sums which are or which become due to us from you on any account.

7.3 Until ownership of the Equipment has passed to you, you shall:

(a) hold the Equipment on a fiduciary basis as our bailee;

(b) store the Equipment (at no cost to us) in satisfactory conditions and separately from all your other equipment or that of a third party, so that it remains readily identifiable as our property;

(c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and

(d) keep the Equipment insured on our behalf for its full price against all risks to our reasonable satisfaction, and hold the proceeds of such insurance on trust for us and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

7.4 Your right to possession of the Equipment before ownership has passed shall terminate immediately if any of the circumstances set out herein arise or if you encumbers or in any way charge the Equipment, or if you fail to make any payment to us by the due date.

7.5 You hereby grant to us, our agents and employees an irrevocable licence at any time to enter any premises where the Equipment is or may be stored in order to inspect it, or where your right to possession has terminated, to remove it. All costs incurred by us in repossessing the Equipment shall be borne by you.

7.6 On termination of the Contract for any reason, our (but not your) rights in this clause shall remain in effect.

7.7 We may appropriate payments made by you to such Equipment as we think fit, notwithstanding any purported appropriation by you to the contrary, and may make such appropriation at any time.

8. **SOFTWARE LICENCE**

8.1 If we refer to a software licence in the acknowledgment of order, the price of the Equipment includes the licence fee for your right to use the software.

8.2 If you are provided with any operating system or other software with the Equipment, you shall keep the license safe as you acknowledge that you may need to refer to it from time to time if the system needs to be rebuilt and the software re-installed. Failure may mean that another licence for the Software may need to be purchased by you from the licensor.

8.3 If no software licence has been provided you hereby accept a non-exclusive, non-transferable licence to use the software on the following conditions:

(a) you shall not copy (except to the extent permissible under applicable law or for normal operation of the Equipment), reproduce, translate, adapt, vary or modify the software, nor communicate it to any third party, without our prior written consent;

(b) you shall not use the software on any equipment other than the Equipment, and shall not remove, adapt or otherwise tamper with any copyright notice, legend or logo which appears in or on the software on the medium on which it resides;

(c) such licence shall be terminable by either of us and you on 28 days' written notice, provided that we may terminate at any time only if the continued use or possession of the software by you infringes the developer's or a third party's rights, or we are compelled to do so by law, or if you has failed to comply with any term of the Contract; and

(d) on or before the expiry of this licence, you shall return to us all copies of the software in your possession.

9. **EXPORT TERMS**

9.1 Where the Equipment is supplied for export from the United Kingdom, the provisions of this clause shall (subject to any contrary terms agreed in writing between you and us) override any other provision of these Terms.

9.2 You shall be responsible for complying with any legislation governing:

(a) the importation of the Equipment into the country of destination; and

(b) the export and re-export of the Equipment,

and shall be responsible for the payment of any duties or similar taxes on it.

9.3 Unless otherwise agreed in writing between you and us, the Equipment shall be delivered free on board the air or sea port of shipment and we shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

9.4 We may, if requested by you and at your expense arrange for the testing and inspection of the Equipment at our premises before shipment.

9.5 The Customer shall pay the Charges for the Equipment in pounds sterling.

10. **WARRANTY**

10.1 The Equipment is covered by a manufacturer's warranty which we only administer if you and us enter in to an appropriate support and service agreement. If you decide not to take out a support and maintenance agreement with us, any warranty enquiries must be made direct to the manufacturer of the Equipment.

10.2 You acknowledge and accept that we shall not have any liability under this Contract for the Equipment unless:

(a) you give written notice of the defect to us within seven (7) days of the time when you discover or ought to have discovered the defect; and

(b) after receiving the notice, we are given a reasonable opportunity of examining such Equipment and you (if we ask you to) return such Equipment to the manufacturers place of business as may be required by the warranty.

10.3 We shall not be liable for a breach of the warranty in clause condition 10.1 if:

(a) you make any use of Equipment in respect of which you have given written notice under condition 10.2 (a); or

(b) the defect arises because you fail or failed to follow our or the manufacturers written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or (if there are none) good trade practice; or

(c) you alter or repair the relevant Equipment without our express written consent or that of the manufacturer.

10.4 We shall not be liable for any damage or defect to the Equipment caused by improper use of the Equipment or use outside its normal application.

11. **REMEDIES**

11.1 We shall not be liable for any non-delivery of Equipment (even if caused by our negligence) unless you notify us in writing of the failure to deliver within three (3) days after the scheduled delivery date.

11.2 Any of our liability for non-delivery of the Equipment shall be limited to replacing the Equipment within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Equipment.

11.3 If our performance of our obligations under the Contract is prevented or delayed by any of your acts or omissions, you shall be liable to pay to us all reasonable costs, charges or losses sustained by us as a result, subject to notifying you in writing of any such claim we may have.

12. **INTELLECTUAL PROPERTY RIGHTS**

12.1 If we are asked by you to adapt the Equipment or to apply any process to it, in accordance with a specification submitted or prepared by you or any other information provided by you, you shall indemnify and keep us indemnified against all losses, damages, costs, claims, demands, liabilities and expenses (including without limitation consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) awarded against or incurred by us in connection with, or paid or agreed to be paid by us in settlement of, any claim for infringement of any third party Intellectual Property Rights which results from our use of your specification or such other information. The indemnity shall apply whether or not you have been negligent or at fault and does not limit any of our further compensation rights.

12.2 You acknowledge that all intellectual property rights used by or subsisting in the Equipment are and shall remain our sole property or (as the case may be), the manufacturer or other any third party rights, owner.

12.3 Our Intellectual Property Rights in and relating to the Equipment or any manuals or documents produced by us shall remain our exclusive property. Nothing herein shall assign or cause to assign any Intellectual Property Rights of one Party to the other Party in any manner whatsoever.

12.4 In relation to the software provided with the Equipment:

(a) you acknowledge that you are buying only the media on which the software is recorded and the accompanying user manuals;

(b) nothing contained in these conditions shall be construed as an assignment of any Intellectual Property Rights in the software or user manuals; and

(c) you shall be subject to the rights and restrictions imposed by the owner of the Intellectual Property Rights in the software and user manuals, and shall comply with all licence agreements, terms of use and registration requirements relating to them.

13. **CONFIDENTIALITY**

13.1 Any information of either party, including without limitation business and financial information, technical or commercial know-how, specifications, inventions, processes or initiatives, customer and vendor lists and pricing and sales information which are of a confidential nature ("Confidential Information") disclosed by either of the parties ("the Disclosing Party") to the other party ("the Receiving Party") pursuant to the Contract shall be confidential. The Receiving Party shall maintain the confidentiality of all such Confidential Information and shall not, without the prior written consent of the Disclosing Party (i) utilise the same, directly or indirectly, for its own business purposes or for any other purpose or (ii) disclose the same to any third Party. This clause does not apply to any information in the public domain or which is required to be disclosed by either of the parties to any of its employees, officers, consultants, subcontractors, representatives, advisers or agents, or pursuant to an order issued by a court of competent jurisdiction or applicable law or regulation or information which is disclosed by the Receiving Party to its professional advisors on a confidential basis.

13.2 The Parties shall ensure that their respective employees, officers, representatives, advisers, agents, consultants or subcontractors to whom it discloses such information comply with this clause.

14. **TERMINATION**

14.1 Without prejudice to any other right or remedy available to us, we may terminate the Contract or suspend any further deliveries under the Contract without liability to you and, if the Equipment has been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary if:

(a) your ability to accept delivery of the Equipment is delayed, hindered or prevented by circumstances beyond your reasonable control; or

(b) an order is made or a resolution is passed for your winding up, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to you; or

(c) an order is made for the appointment of an administrator to manage your affairs, business and property, or documents are filed with a court of competent jurisdiction for the appointment of an administrator over you, or notice of intention to appoint an administrator is given by you or your directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

(d) a receiver is appointed of any of your assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager over you, or if any other person takes possession of or sells your assets; or

(e) You make any arrangement or composition with your creditors, or make an application to a court of competent jurisdiction for the protection of your creditors in any way, or you become bankrupt; or

(f) You cease, or threatens to cease, to trade; or

(g) You take or suffer any similar or analogous action in any jurisdiction in consequence of debt.

14.2 Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination.

15. **FORCE MAJEURE**

We reserve the right to defer the date of delivery, or to cancel the Contract or reduce the amount of Equipment ordered, if we are prevented from or delayed in carrying on our business by acts, events, omissions or accidents beyond our reasonable control, including without limitation strikes, lock-outs or other industrial disputes (whether involving our workforce or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors (Force Majeure Event).

16. **WAIVER**

16.1 A waiver of any right under the Contract is only effective if it is in writing and signed by or on behalf of the waiving party, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

16.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

17. **SEVERANCE**

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

18. **STATUS OF PRE-CONTRACTUAL STATEMENTS**

Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement other than as expressly set out in the Contract.

19. **ASSIGNMENT**

19.1 You shall not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of your rights or obligations under the Contract.

19.2 We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under the Contract.

20. **THIRD PARTY RIGHTS**

The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

21. **NOTICES**

Any notice required to be given pursuant to this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the address of the party as set out in these conditions, or such other address as may be notified by one party to the other. A notice delivered by hand is deemed to have been received when delivered (or, if delivery is not in business hours, 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

22. **GOVERNING LAW AND JURISDICTION**

22.1 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.

22.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).