

GENERAL TERMS AND CONDITIONS

These General Terms and Conditions including Schedule 1 shall govern the supply of the Products and Services (as defined below) by TT OFFICE LIMITED registered in England with number 06275664 whose registered office is at TeleWare House, York Road, Thirsk, North Yorkshire YO7 3BX (hereinafter known as the "Company") and the Customer (as defined below)

1. STRUCTURE OF AGREEMENT

- 1.1 The Customer acknowledges and agrees that it enters into this Agreement for the Products and Services in the course of business and intends to use said Products and Services for business use only.
- 1.2 These GTCs incorporating the Relevant Supplementary Terms shall govern the supply by the Company of the Products and Services.

2. TERM

- 2.1 Subject to the parties rights of termination set out in the Agreement, this Agreement shall continue from the Effective Date until the expiry or termination of all Orders for the Products and Services under the Agreement.

3. GRANT

- 3.1 The Company hereby grants to Customer a non-exclusive revocable right to use Products and Services in accordance with this Agreement.
- 3.2 All rights not specifically and expressly granted to the Customer under this Agreement are reserved for the Company.

4. ORDERS

- 4.1 During the term of this Agreement the Customer may place individual written Orders with the Company for the supply of Products and Services, the availability of such Products and Services being confirmed by inclusion in the Price List. All Orders shall be on the Company's standard order form or in some other form agreed by the Company.
- 4.2 Every Order shall be subject to acceptance in writing by the Company. For the avoidance of doubt, nothing shall oblige the Company to accept any Order.
- 4.3 On acceptance of the Order by the Company, each Order shall form a separate contract for the relevant selected Product or Service and shall be subject to the terms of the GTCs, the Relevant Supplementary Terms, and Order. For the avoidance of doubt, an Order containing Products and Services provided pursuant to different Supplementary Terms shall be deemed separate Orders for the purposes of the Agreement.
- 4.4 All Orders are subject to the terms of this Agreement and any terms proffered by the Customer shall have no effect.

5. PRICES AND PAYMENT

- 5.1 All Prices are exclusive of VAT. Customer shall bear the cost and shall be responsible for the timely payment of all relevant taxes, duties and assessments imposed upon Customer in connection with the payments due to the Company under this Agreement, including all VAT and any other sales taxes, withholding tax and other taxes.
- 5.2 Unless otherwise expressly provided in the Relevant Supplementary Terms or Order, the Price is due and shall be paid without setoff or deduction within 14 days of the date of the invoice or prior to shipment for any Products to be delivered outside the mainland United Kingdom. The Customer acknowledges and agrees that should the Customer require any information of any kind to be included on any invoice prior to payment, such information shall be submitted to the Company in writing prior to the date for invoicing. The Customer acknowledges and agrees that any failure by the Customer to provide such information shall not prevent or delay payment.
- 5.3 Unless otherwise expressly provided in the Relevant Supplementary Terms or Order, all payments from Customer to the Company hereunder will be in pounds sterling by means of a company cheque, bank cheque or bank transfer to the bank account nominated by the Company.
- 5.4 The Company reserves the right to charge interest at the rate of 3% over the base rate of HSBC Bank Plc on a daily basis on all monies outstanding after the due date until the actual date of payment (both before and after judgement).
- 5.5 The Company reserves the right at its sole discretion to reject Orders and / or delay shipment of Products or provision of Services where the aged debt of the Customer rises to a level unacceptable to the Company and where 5 days prior written warning of such action has been given by the Company to the Customer.
- 5.6 The Company or its authorised representative may on giving reasonable notice, at the Company's own expense, audit the records

of the Customer relating to this Agreement to ensure the Customer is complying with the terms of this Agreement. Any such audit shall be conducted during regular business hours either remotely or at the Customer's premises. If an audit reveals that the Customer has underpaid the Price, the Company shall be entitled to require the Customer to make good the underpayment.

6. CONFIDENTIALITY

- 6.1 During the term of this Agreement and following termination hereof both parties undertake to keep confidential the Confidential Information received from the other party (the "disclosing party") and undertake not to use the same other than to enable it to perform its obligations under this Agreement. Accordingly, the parties shall not in any manner, directly or indirectly transmit, reveal, disclose, cause to be disclosed, publish, distribute, copy or make available any such Confidential Information to any party except those of the receiving party's employees who need access to the Confidential Information to enable it to carry out its obligations in accordance with the terms of this Agreement. In the event of such disclosure the Customer will obtain from such employees duly binding agreements to maintain in confidence the information to be disclosed to the same extent at least as the Customer is so bound hereunder.
- 6.2 The foregoing obligations will not apply if and to the extent that:
 - (a) the receiving party clearly establishes that the Confidential Information was already known to it at the time of receipt from the disclosing party; or
 - (b) the Confidential Information subsequently comes lawfully into the possession of the receiving party in good faith from a third party; or
 - (c) the Confidential Information is in the public domain other than through breach of this Agreement; or
 - (d) the Confidential Information is required to be disclosed by governmental, statutory, regulatory or judicial body and even then any such disclosure shall be subject to the confidentiality obligations prescribed by the relevant form.
- 6.3 Without limitation to clauses 6.1 or 6.2 Customer agrees to notify the Company in writing of any suspected or known breach of the obligations under this clause as soon as it becomes aware of such breach and shall implement such security procedures it uses for its own Confidential Information which it protects against unauthorised disclosure, appropriation or use.
- 6.4 For the purposes of this Agreement, Confidential Information means all information of a confidential nature or which is commercially sensitive or of a secret nature including information contained in or embodied in any software (such as the structure, sequence organisation and screen presentation), this Agreement, the specifications, and user manuals and all information relating to any and all aspects of the financial and business and operations of the disclosing party whether such information is marked as confidential or not. Such information may be expressed in any form including but not limited to orally.

7. PROPRIETARY RIGHTS

- 7.1 The Customer acknowledges that all Intellectual Property Rights in the Products and Services including all modifications and enhancements and related documentation (including all versions of any specification and user manual) are and shall remain the property of the Company or its third party suppliers.
- 7.2 Customer acknowledges that the Company's Confidential Information, software and Know-How and all related documentation may contain substantial trade secrets of the Company.
- 7.3 Customer shall not remove or alter any copyright, Mark or other proprietary notice on the Products or Service, or any part of it or on any other material whatsoever provided by the Company.

8. LIMITATION OF LIABILITY

CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE 8.

- 8.1 The following provisions of this clause 8 set out the total liability of each party in respect of any breach of its obligations arising under or in connection with this Agreement whether in contract, tort (including negligence) and breach of statutory duty or otherwise howsoever arising and shall for the avoidance of doubt apply to any indemnity given by the Company under this Agreement. Subject to clause 8.2 and to the fullest extent permissible by law in no circumstances will either party be liable in contract tort or otherwise for any costs, claims, damages, losses or liabilities or expenses in respect of:
 - (a) any direct loss of profit, excluding any element of the Price;
 - (b) any direct loss of anticipated savings; or

GENERAL TERMS AND CONDITIONS

- (c) any indirect loss or damage howsoever caused including without limitation;
- (i) any loss of profit, excluding any element of the Price;
 - (ii) loss of use of money;
 - (iii) loss of anticipated savings;
 - (iv) loss of business;
 - (v) loss of opportunity;
 - (vi) loss of reputation;
 - (vii) loss of data;
 - (viii) any wasted expenditure; and/or
- (d) any other consequential loss including pure economic loss, excluding any element of the Price.

For the avoidance of doubt, the sub-clauses of this clause 8.1 are intended by the parties to be severable.

8.2 Nothing in this Agreement shall limit or exclude:

- (a) either party's liability for fraud (including without limitation fraudulent misrepresentation) or for death or personal injury resulting from negligence;
- (b) either party's liability for any breach of clause 6;
- (c) the Customer's liability for any infringement of the Company's Intellectual Property Rights;

8.3 Without prejudice to clause 8.2, the Company's maximum aggregate liability for all claims made in relation to this Agreement:

- (a) in respect of loss of or damage to tangible property (which for the avoidance of doubt does not include data) whether belonging to Customer or any third party, shall not in any circumstances exceed £1,000,000 in respect of each event or series of connected events in any one Year; and
- (b) in respect of any other loss or damage arising from the Products or Professional Services, the lesser of 115% of the Price paid by the Customer to the Company under the Order for the specific Products or Professional Services that are the subject of the Customer's claim or £1,000,000;
- (c) in respect of any other loss or damage arising from the Services (other than the Professional Services), the lesser of 115% of the Price paid by the Customer to the Company under the Order for the specific Services that are the subject of the Customer's claim under this Agreement in the Year in which the loss or damage occurred or £1,000,000.

8.4 The Prices of the Company have been set on the basis of the exclusions and restrictions of liability in this clause 8, and would be higher without those provisions. In the circumstances, Customer agrees that those provisions are reasonable and will accept risk and insure accordingly.

8.5 The provisions of this clause 8 shall continue to apply notwithstanding the termination of this Agreement (howsoever arising).

8.6 For the purposes of this clause 8, a "Year" shall mean a 365 day period (or a 366 day period if that period encompasses 29th February) commencing either on the date of this Agreement or on any anniversary thereof.

8.7 Save as expressly provided for in this Agreement, no warranty, condition, undertaking or term, whether statutory, express or implied as to condition, satisfactory quality, performance, durability, fitness for purpose or otherwise is given or assumed with regards to the Products or Services and all such terms and warranties are hereby excluded to the fullest extent permitted by law.

9. TERMINATION

9.1 Subject to the provisions of Clause 10, without prejudice to a party's other remedies and accrued rights, and in addition to any rights provided in the Relevant Supplementary Terms either party shall have the right to terminate this Agreement or Order (including any Products or Services provided under such Order) immediately if: -

- (a) the other party commits a material breach of this Agreement and (in the case of a breach capable of being remedied) shall have failed to remedy the breach within 14 days of receipt of the request in writing from the other party to do so and a breach shall be considered capable of remedy if the party in default can comply with the provision in question in all respects other than as to the time of performance;
- (b) the other party being a company suffers any distress or execution or a resolution or order to wind up the company is passed or made (otherwise than for bona fide solvent reconstruction or amalgamation) or goes into liquidation or becomes insolvent or has a receiver, administrative receiver or administrator appointed over all or any part of its assets or undertakings or an administration order is made in respect of the company or enters into an arrangement or composition with its creditors or ceases to carry on business.

9.2 Without prejudice to the Company's other remedies and accrued rights, and in addition to any rights provided in the Relevant Supplementary Terms, the Company may terminate this Agreement or Order (including any Products or Services provided under such Order) if following 10 days written notice any amount remains unpaid after the due date for payment.

10. CONSEQUENCES OF TERMINATION

10.1 Without prejudice to any other provisions in this Agreement expressed to have effect upon termination and save as provided in the Relevant Supplementary Terms, on termination of the Agreement or Order (in which case the following provisions shall apply to said Order):

- (a) all rights granted to Customer shall terminate;
- (b) the Customer shall pay the Company within ten (10) days after such termination, all amounts that are owed to the Company under this Agreement.

10.2 In the event of termination of the Agreement or Order under Clause 9.1(a), such termination shall not affect the rights and obligations of either Party in respect of Orders accepted prior such termination, except in respect of the Order which is the subject of the relevant breach.

10.3 Termination of this Agreement shall not operate so as to affect such of the provisions of this Agreement as are expressed or implied to operate or have effect after termination of this Agreement.

11. DISPUTE RESOLUTION

11.1 This Agreement and all matters arising from it and any dispute resolutions referred to below shall be governed by and construed in accordance with English law save that the Company shall have the right to sue for breach of its Intellectual Property Rights and Know-How (whether in connection with this Agreement or otherwise) in any country where it believes that infringement or a breach of this Agreement relating to its Intellectual Property Rights and Know-How might be taking place.

11.2 The Customer acknowledges and agrees the Company's business relies upon the protection of its Intellectual Property Rights, Confidential Information and Know-How and that in the event of a breach or threatened breach of Intellectual Property Rights, Confidential Information or Know-How, the Company will be caused irreparable damage and may therefore be entitled to injunctive or other equitable relief in order to prevent such a breach or threatened breach.

11.3 Subject to the above, the parties shall irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales for the purposes of hearing and determining any dispute arising out of this Agreement.

11.4 Nothing in this clause shall however prevent either party from exercising any rights available pursuant to any other provisions of this Agreement.

12. FORCE MAJEURE

12.1 Neither party shall be liable for failure or delay in performing any of its obligations under this Agreement if such failure or delay is due to any circumstances beyond the reasonable control of the defaulting party ("Force Majeure"). This includes but is not limited to Acts of God, war, acts of terrorism, fire, explosion, earthquake, flood, strikes and labour disputes, the inability to obtain materials, supplies, Network and PSTN availability, power or equipment necessary to enable such party to perform its obligations under this Agreement and any act or order of any governmental or European Union authority or other regulatory body.

12.2 Each party shall promptly notify the other in writing of any such event of Force Majeure, the expected duration of it and its anticipated effect on its ability to perform its obligations under this Agreement and make reasonable efforts to promptly overcome the delay occasioned by any such event.

12.3 If the Force Majeure in question continues for more than 90 days either party may give notice in writing to the other to terminate this Agreement with immediate effect without liability.

13. NOTICES

13.1 All notices relating to this Agreement shall be given by hand or by prepaid first class post or by facsimile or other form of electronic transmission to the addressee at (1) the address stated above in the case of the Company and (2) the address stated in the Order in the case of the Customer, or such other address as the addressee shall have for the time being notified to the party giving the notice. Such notice shall be deemed to have been delivered if by letter at the

GENERAL TERMS AND CONDITIONS

expiration of 48 hours after posting and if by facsimile or other form of electronic transmission at the time it was transmitted.

14. DEFINITIONS AND INTERPRETATION

- 14.1 In this Agreement the expressions shall have the meaning given to them in Schedule 1 except where otherwise provided.
- 14.2 The headings to this Agreement are for convenience only and shall not affect its interpretation.
- 14.3 References in this Agreement to a statute or any provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.
- 14.4 References to numbered clauses are references to the relevant clauses in these GTCs unless otherwise specified;
- 14.5 Reference in any Supplementary Terms to appendices, numbered paragraphs or clauses relate to the appendices, numbered paragraphs or clauses of those Supplementary Terms unless otherwise specified;
- 14.6 Words importing the singular meaning include where the context so admits the plural meaning and vice versa.
- 14.7 For the avoidance of doubt and notwithstanding any language in the Agreement capable of being construed to the contrary (including but not limited to "sale", "sell", "resell", "reseller") all software supplied under the Agreement shall be licensed or sublicensed and not sold.
- 14.8 In the event of a conflict between the GTCs, Supplementary Terms, and Orders the following order of priority shall prevail (1) the GTCs (2) the Supplementary Terms, and (3) the Order.

15. GENERAL

- 15.1 This Agreement may not be modified or amended nor may any right under this Agreement be waived except by written communication signed by an authorised officer of the party against whom the same is sought to be enforced.
- 15.2 No failure or delay on the part of either party in exercising any right, power or remedy will act as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right, power or remedy.
- 15.3 If any clause or part of this Agreement is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision shall to the extent required be severed from this Agreement and shall be ineffective without as far as is possible modifying any other clause or part of this Agreement and this shall not affect any other provisions of this Agreement which shall remain in full force and effect.
- 15.4 The Company shall be entitled to assign, transfer, or sub-contract its rights and obligations arising under the Agreement. Except as expressly provided in the Agreement, Customer shall not assign, transfer, or sub-contract any of its rights or obligations under this Agreement without the prior consent in writing of the Company.
- 15.5 Except as expressly provided in the Agreement, nothing in this Agreement shall be construed as constituting or evidencing any partnership, agency or contracts of employment between the parties and neither party shall have any authority to bind and shall not make any representations binding upon the other party.
- 15.6 This Agreement contains all the terms which the parties have agreed in relation to the subject matter of this Agreement and supersedes all previous agreements and representations, written or oral, with respect to its subject matter. For the avoidance of doubt any terms and conditions (other than as expressly set out in this Agreement) proffered by Customer shall be null and void and have no effect. Neither party to this Agreement has been induced to enter into this Agreement by a statement, promise or representation which is not expressly set out in this Agreement save that this clause shall not exclude any liability which one party would otherwise have to the other in respect of any statements made fraudulently by that party.
- 15.7 A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

SCHEDULE 1

The expressions in this Agreement shall have the following meanings except as otherwise provided in the Supplementary Terms:

"Agreement" means these GTCs, the Relevant Supplementary Terms, and all contracts pursuant to the Orders;

"Company Website" means the Company website.

"Confidential Information" has the meaning given to it in clause 6.4;

"Customer" means the customer of the Company so named in the Order;

"Effective Date" means the date the first Order is accepted by the Company;

"General Conditions" means the general conditions of entitlement as set out in the notification issued by the Director General For Telecommunications on 22nd July 2003, in accordance with section 48(1) of the Communications Act 2003 pursuant to section 45 of said act as may be amended from time to time;

"GTCs" means these General Terms and Conditions including this Schedule 1;

"Intellectual Property Rights" means all vested contingent and future intellectual property rights including but not limited to goodwill, reputation, rights in confidential information, copyright, trade marks, logos, service marks, devices, plans, models, diagrams, specifications, source and object code materials, data and processes, design rights, patents, Know-How, trade secrets, inventions, get-up, database rights (whether registered or unregistered) and any applications or registrations for the protection of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created

"Know-How" means all industrial, marketing and commercial information and techniques including (without prejudice to the generality of the foregoing) the knowledge and expertise of the Company regarding what functions and facilities of Products and Services;

"Laws" means any applicable law (including General Conditions), statute, bye-law, regulation, order, regulatory policy, guidance, standard or industry code, rule of court or directives or requirements of any government or regulatory body, delegated or subordinate legislation or notice of any government or regulatory body and the common law and the law of equity as applicable to the Parties from time to time;

"Maintenance Services" means the maintenance services as specified in the Relevant Supplementary Terms provided in accordance with an accepted Order;

"Marks" means any trade marks, service marks or trade names of the Company or its suppliers and which are associated with the Products and/ or Services (whether registered or unregistered);

"Order" means an order for the Products and Services provided in accordance with the provisions of the clause 4 of these GTCs and the provisions of the Relevant Supplementary Terms;

"Parties" means the parties to this Agreement and "Party" shall be construed accordingly;

"Price" means the charges (as further described in the Relevant Supplementary Terms) for the Company's products and services;

"Price List" means the document containing the Prices provided and updated by the Company from time to time;

"Products" means the CPE Systems and/or Equipment (as defined in the Relevant Supplementary Terms) but excluding any Services supplied to the Customer by the Company, as specified in an accepted Order;

"Professional Services" means the services (if any) supplied by the Company pursuant to the Relevant Supplementary Terms including (where appropriate) consultancy, installation, commissioning, usage support, site audits, training services and any other services (but excluding any Maintenance Services and Specific Services) as specified in an accepted Order;

"Relevant Supplementary Terms" means the relevant Supplementary Terms which apply to the supply by the Company of the specific products and services;

"Services" means the services supplied by the Company pursuant to the Relevant Supplementary Terms including (as appropriate) Professional Services, Maintenance Services and Specific Services as specified in an accepted Order;

"Specific Services" means the services supplied by the Company pursuant to the Supplementary Terms but excluding the Professional Services and Maintenance Services;

"Specifications" means the relevant specification for the Products and Services as detailed on the Company Website;

"Supplementary Terms" means the terms and conditions agreed between the Parties in respect of the supply and use of the products and services supplied by the Company;

"Territory" means the United Kingdom;

"T&M Rates" means the Company's time and materials rates for additional Professional Services as set out in the Price List or otherwise provided by the Company, such rate being exclusive of travel, accommodation and sustenance expenses incurred by the Company which shall be charge in addition at cost;

"VAT" means value added tax;

"Working Days" means Monday to Friday inclusive but excluding any United Kingdom bank, public or statutory holidays; and

"Working Hours" means 8:00 -17:00 (UK time) on any Working Day.