

BELL IT 2000 LTD Terms and Conditions Document

Terms and Conditions of Sale

Definitions

1.1 In these Terms and Conditions:

"BELL IT" means Bell IT 2000 Limited.

"the Customer" means the person, firm or company offering to buy goods and service from BELL IT.

"the Delivery Date" means the estimated delivery date specified in the Order Form.

"Actual Delivery Date" means the date on which the Equipment is accepted by the Customer.

"the Goods" means the hardware, software, services, machinery parts and spares specified in the Order Form.

"Equipment Address" means the place of installation of the Goods shown in the Order Form.

"the Purchase Price" means the total price as specified in the Order Form.

"the Contract" means any contract between BELL IT and the Customer for the purchase of services and sale of the goods.

"the System acceptance form" means the form signed by the customer indicating full satisfaction for system delivered, installed and configured.

Application

2.1 These conditions apply to all sales of goods and services by BELL IT to any customer and shall apply in place of and prevail over any terms or conditions contained or referred to the buyer's order or in correspondence or elsewhere or implied by trade, custom, practice or course of dealing unless specifically agreed to in writing by BELL IT and any purported provisions to the contrary are hereby excluded or extinguished.

Basis for Sale

- 3.1 BELL IT agrees to sell and the Customer to purchase the Goods set out in the Order Form in accordance with any written or verbal order of the Customer which is accepted by BELL IT. By placing an order for the Goods the Customer shall be deemed to have accepted these conditions, which shall govern the Contract to the exclusion of any other terms and conditions.
- 3.2 No variation of the Contract shall be binding unless agreed in writing by the authorised representatives of the Customer and BELL IT.
- 3.3 BELL IT employees or agents are not authorised to make any representations or give advice concerning the Goods unless confirmed by BELL IT 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 advice or representation, which is not so confirmed.
- 3.4 The Customer will not manufacture or procure or be a party to whether directly or indirectly, the manufacture of Equipment of a like nature to the Equipment, and will not remove, obscure, or deface any label or notice inscribed on the Equipment or affixed thereto by the manufacturer.
- 3.5 The Customer shall keep secret and confidential all drawings specifications and descriptions of the Goods and any information or data relating thereto produced by the manufacturer except insofar as the same shall have been made public, and shall not dispose of the same to any person firm or company except only to the employees of the Customer.

Formation Of Contract and Specifications

- 4.1 The quantity and description of the Goods shall be set out or referred to in BELL IT's order form.
- 4.2 BELL IT reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements, or where the Goods are to be supplied to BELL IT's specification, which do not materially affect the quality or performance of the Goods.
- 4.3 The Customer shall be indemnified and keep indemnified BELL IT fully on demand against any and all losses, damages, cost and expenses incurred by or awarded against BELL IT as a result of the carrying out of any work required to be done to the Goods in accordance with the requirements or specifications of the Customer involving an infringement or alleged infringement of any rights of any third party. The Customer shall indemnify and hold BELL IT harmless from and against any suits, liabilities, losses, damages, claims, causes of action and expenses (including legal fees) arising out of or in any manner related to any act, omission, fault or negligence of the Customer, its agents, employees or subcontractors.
- 4.4 No order which has been accepted by BELL IT may be cancelled by the Customer, except with the agreement in writing of BELL IT and on terms that the Customer shall indemnify BELL IT in full against all losses (including loss of profit), costs (including the costs of all labour and materials used), damages, charges and expenses incurred by BELL IT as a result of cancellation.

- 4.5 The Customer, by written change request ("Change Request") delivered to BELL IT, shall have the right to request changes in the specifications, quantities, order form, methods of shipment, packaging, place of inspection, acceptance and/or point of delivery of any of the Goods. No Change Request by the Customer shall be effective, nor binding upon BELL IT, unless specifically agreed to in writing by BELL IT. If a Change Request agreed to in writing by BELL IT results in a delay in BELL IT's delivery of the Goods, or an increase or decrease in the cost of the Goods to the Customer, BELL IT shall notify the Customer and negotiate an equitable adjustment in the order form or the price of such Goods, or both. BELL IT shall submit all of its claims for equitable adjustments to the Customer in writing at any time prior to the completion of the Contract.

Price

- 5.1 The Purchase Price shall include the costs of delivery to and installation at the Equipment Address together with VAT thereon which shall be payable by the Customer.
- 5.2 The price of the Goods shall be BELL IT quoted price; this shall be fixed and open for a period of seven days from the quote date.
- 5.3 BELL IT reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods, to reflect any increase in cost to BELL IT which is due to alterations in taxation, changes in legislation or exchange rates, any change of delivery dates, quantities or specifications of the Goods or special packaging which are requested by the Customer, or any delay caused by any instructions of the Customer to give BELL IT adequate information or instructions.

Terms Of Payment

- 6.1 Standard purchases by the customer must be paid in full, plus Value Added Tax (VAT) on the Purchase Price within 14 days of installation and invoice of the Goods at the Equipment Address.
- 6.2 BELL IT reserves the right to charge the Customer interest in respect of the late payment of any sum due to BELL IT hereunder (as well after as before judgement) at the rate of eight percent per annum above Royal Bank Of Scotland base rate from time to time from the due date therefore, until payment in full is made.
- 6.3 Any extension of credit allowed to the Customer may be changed or withdrawn at any time.
- 6.4 Payment shall be made in the currency in which the price was quoted on the order form by BELL IT save that if the Customer is prohibited by law from paying in such currency payment shall be made in Pounds Sterling converted at the open market rate of exchange in London at the close of Business on the date of BELL IT's invoice.

Delivery

- 7.1 Delivery of the Goods shall be at BELL IT's premises at any time after BELL IT has notified the Customer that the goods are ready for collection or despatch, unless otherwise agreed by BELL IT in writing.
- 7.2 Any dates quoted for delivery of the Goods are approximate only and BELL IT shall not be liable for any delay in delivery of goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by BELL IT in writing.
- 7.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and defective delivery by BELL IT of any one or more of the instalments in accordance with these conditions shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 7.4 BELL IT will use all reasonable endeavours to ensure delivery of the Goods on the Actual Delivery Date or as soon thereafter as is possible and installation as soon as is possible after delivery.
- 7.5 BELL IT shall not be liable for any loss or damage arising indirectly as a result of any delay in delivery or installation of the Goods.
- 7.6 If the Customer fails to take delivery of the Goods or fails to give BELL IT adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of BELL IT's fault) then, without prejudice to any other right or remedy available to BELL IT, BELL IT may:
- 7.6.1 Store the Goods until actual delivery and charge the Customer for the reasonable costs (including handling and insurance) of storage:
or
 - 7.6.2 sell the Goods at the best price readily obtainable and (after deducting accrued interest, all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract and charge the Customer for any shortfall below the price under the Contract.
- 7.7 If for any reason BELL IT is unable to deliver the Goods, including installation if applicable and the System acceptance form is not signed off (other than any clause specified in Clauses 4.4, 7.2, 7.5 and 8.2.) by the Customer, the Customer is entitled to terminate this contract forthwith and to recover all sums paid to BELL IT and costs relating thereto.

Title and Risk in the Goods

- 8.1 Title to the Goods shall not pass to the Customer until the Purchase Price and VAT thereon have been paid in full to BELL IT ("the Payment Date").
- 8.2 Until the Payment date the Customer shall not be entitled to sell, transfer, lease, charge, assign by way of security, or otherwise deal in or encumber the Goods.
- If either:
- 8.2.1 the Customer fails to effect payment in full of all sums due to BELL IT hereunder by the due date:
- or
- 8.2.2 prior to the said due date the Customer convenes a meeting of its creditors or a proposal is made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) the Customers creditors or if the Customer is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the Customer or if a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the Customer or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction), then BELL IT (without prejudice to any other legal remedies it may have) shall at any time thereafter be entitled to enter upon the Customer Address (without notice to the Customer) and remove the Goods or BELL IT shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if Goods have been delivered but not paid for the price shall become immediately due and payable not withstanding any previous agreement or arrangement to the contrary.
- 8.3 If in breach of Clause 8.2. above, the Customer sells the Goods prior to the Payment Date, then any proceeds of sale in respect thereof and all rights arising under or in respect of the said sale shall be held (in the case of the proceeds of sale in a separate account) by the Customer as agent for BELL IT.
- 8.4 The risk of loss and damage to the goods in the Goods shall pass to the Customer immediately upon delivery unless the Goods are to be collected by the Customer when the risk of loss and damage to the Goods shall pass to the Customer upon BELL IT notifying the Customer that the Goods are ready for Collection.

Liability And Indemnity

- 9.1 With the exception of the conditions and warranties implied by Sections 12 to 15 of the Sale of Goods Act all conditions, warranties, terms and undertakings implied by statute common law, custom trade usage or otherwise (including without limitation, any implied condition, warranty or undertaking as to correspondence of the Goods with any contract description given, merchantable quality or fitness for any particular purpose) are hereby wholly excluded.
- 9.2 Except in respect of death or personal injury caused by the negligence of BELL IT or its agents, or employees, BELL IT shall not be liable to the Customer for any indirect or consequential loss or (whether for loss of profits or otherwise: including loss or damage suffered by the Customer as a result of an action brought by a third party whether caused by the negligence of BELL IT, its agents or otherwise) which arises out of or in connection with the supply of the Goods or its use.
- 9.3 The Liability of BELL IT (if any) whether in contract or tort or otherwise in respect of any defect in the Goods or for any breach of these Terms and Conditions or of any duty owed to the Customer in connection therewith shall be further limited in the aggregate to the value of three times the price of the Goods in question.
- 9.4 The Customer shall indemnify BELL IT against all actions claims costs losses and damages whatsoever arising in connection with these Terms and Conditions due to the negligent act or omission or wilful misconduct of the Customer, its employees servants or agents or otherwise, except where clause 9.2 applies.

Third Part Rights

- 10.1 BELL IT and the Customer intend that BELL IT shall transfer to the Customer only such title as BELL IT may have in the Goods and BELL IT shall have no liability to the Customer in the event of the Goods infringing or being alleged to infringe the rights of any third party.

Force Majeure

- 11.1 Not withstanding anything expressed or implied in these Terms and Conditions, BELL IT shall not be liable for any delay or failure in carrying out its obligations hereunder resulting from causes beyond its reasonable control including (but not limited to) act of god, fires, strikes (of its own or other employees) insurrection or riots, embargoes, container shortages, wrecks, war, floods or delays in transportation, inability to obtain supplies and raw materials, requirements or regulations of any civil or military authority, except where clause 9.2 applies.

11.2 If due such circumstances or events BELL IT has insufficient stock to meet all its commitments BELL IT may apportion available stock between its customers at its sole discretion.

General

12.1 This Standard Terms and Conditions of sale cover all Contracts for the sale of Hardware, Software and services by Bell IT 2000 Limited governed by English Law except as otherwise specifically agreed in writing between Bell IT 2000 Limited and the buyer of its goods and services.

12.2 All disputes of any nature shall be settled by an English Court of competent Jurisdiction. Each of the provisions of the agreement shall be treated as separate and distinct and any part held by a Court to be unenforceable shall be considered removed and shall not effect the validity of the remainder.

12.3 No particular provision shall be taken as limiting, prejudicing or effecting in any way any other provision or any right, remedy or entitlement of the company under General English Law.

12.4 No forbearance delay or indulgence by BELL IT in enforcing these Terms and Conditions shall prejudice or restrict its rights hereunder nor shall any waiver by BELL IT of any breach of the Contract by the Customer be construed as a waiver of any succeeding breach of the same or other provisions.

12.5 Any notice required or permitted to be given hereunder shall be in writing and delivered or sent by first class post or by telex or facsimile to the address the party set out in the Order Form (or such other address as may have been notified in accordance with this clause) and any such notice or other document shall be deemed to have been served if delivered at the time of delivery, if sent by post upon the expiration of 24 hours after posting and if sent by telex or facsimile at the time of dispatch.

12.6 If any provision of these Terms and Conditions shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable whole or in part, the validity of the other provisions shall not be affected thereby and shall remain in full force and effect.

12.7 These Terms and Conditions, the Order Form and the System acceptance form constitute the entire agreement between the parties hereto as to the sale and purchase of the Goods and BELL IT shall not be liable to the Customer for loss arising from or in connection with any representations agreements, statements and undertakings made prior to the date of execution hereof other than those representations agreements statements and undertakings confirmed by a authorised representative of BELL IT in writing or expressly incorporated or referred to herein.

12.8 Headings to clauses in these Terms and Conditions are for the purpose of information and identification only and shall not be construed as forming part of these Terms and Conditions.

Export

13.1 Any Goods supplied which are intended for onward export should be subject to the Conditions of the Export of Goods (Control) Order, 1992 and/or such other similar legislation that shall be introduced from time to time.