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## **CONDITIONS**

### **1. PROVISION OF THE EQUIPMENT**

#### **Site Preparation and Access**

- 1.1 The Customer agrees to prepare the Site according to any instructions BT may give and to provide BT with reasonable access to the Site for the purposes of the Contract.
- 1.2 The Customer will obtain any permission needed, including permission for any changes to the Site.
- 1.3 The Customer and BT will meet each other's reasonable safety and security requirements when on the Site. If the Customer or BT damages the other's equipment it must pay for any repair or replacement needed. This does not apply where the damage results from normal use.

#### **Delivery and Installation**

- 1.4 BT will try to supply and install the Equipment by any date agreed with the Customer, but all dates are estimates.
- 1.5 If the Customer delays or prevents the delivery or installation of the Equipment, BT may apply reasonable additional charges and/or claim a reasonable extension to any date agreed under clause 1.4. BT will notify the Customer in writing of any additional charges, which the Customer will pay directly to BT.
- 1.6 The Customer is responsible for making the Site good, after any work undertaken by BT at the Site, including putting items back and for re-decorating.

### **2. ACCEPTANCE**

- 2.1 If BT installs the Equipment, BT will test it to ensure that it is ready for use. Acceptance of the Equipment by the Customer will take place on the earlier of:
  - (a) the date when BT notifies the Customer that the Equipment has passed BT's tests and is ready for use; or
  - (b) the date when the Customer begins to use the Equipment.
- 2.2 If BT does not install the Equipment, acceptance of the Equipment by the Customer will take place when the Customer takes delivery or possession of the Equipment.
- 2.3 Acceptance will not be prevented by minor faults that do not affect the Equipment's performance, but BT will fix those minor faults within a reasonable time.

### **3 CUSTOMER'S OBLIGATIONS**

- 3.1 Until it has paid for the Equipment, the Customer will:
  - (a) keep the Equipment safe and only use it in accordance with any instructions BT may give;
  - (b) not move the Equipment or any part of it from the Site;
  - (c) ensure that the Equipment is without risk to health;
  - (d) only use or allow the Equipment to be used for any purpose for which it is designed;
  - (e) not make any alterations or attachments to the Equipment without BT's prior written consent. If BT gives its consent, any alterations or attachments will become part of the Equipment;

- (f) not sell, charge, assign, transfer or dispose of or part with possession of the Equipment or any part of it;
- (g) not allow any lien, encumbrance or security interest over the Equipment, nor pledge the credit of BT for the repair of the Equipment or otherwise;
- (h) not claim to be owner of the Equipment and ensure that the owner of the Site will not claim ownership of the Equipment, even if the Equipment is fixed to the Site;
- (i) indemnify BT against all claims and proceedings arising from the Customer's use of the Equipment or if the Equipment is stolen or damaged as a result of the Customer's negligence or gross misconduct. The Customer will keep BT informed of anything which may affect the rights of BT, or involve BT in any proceedings, loss or liability.

#### **4 RISK AND OWNERSHIP**

- 4.1 Where the Contract includes delivery or installation, risk passes to the Customer on delivery of the Equipment, but the Customer will not be liable for any loss or damage that is caused by BT's negligence.
- 4.2 Where the Contract does not include delivery or installation risk passes to the Customer when the Customer takes possession of the Equipment.
- 4.3 Ownership of the Equipment, (except for the Intellectual Property Rights) will pass to the Customer on payment in full of the charges as detailed on the Order Form.
- 4.4 Until payment in full:
  - (a) the Equipment will appear in the Customer's books in the name of BT; and
  - (b) in the event of Bankruptcy or threatened seizure of the Equipment, the Customer will immediately notify BT and BT may take action to repossess the Equipment. The Customer will also notify interested third parties of BT's ownership of the Equipment.

#### **5 GUARANTEE**

- 5.1 If, for 12 months (or any other period notified to the Customer by BT in writing) from acceptance of the Equipment, BT is notified of a fault in the Equipment which is due to faulty design, manufacture or materials, or the negligence of BT, BT will where necessary by arrangement with the Customer, replace or (at its option) repair the faulty part free of charge provided that:
  - (a) the Equipment has been properly kept, used and maintained in accordance with the manufacturer's or BT's instructions, if any, and has not been modified except with BT's written consent; or
  - (b) the fault is not due to accidental or wilful damage; interference with or maintenance of Equipment by persons other than BT; or
  - (c) the fault is not due to faulty design by the Customer where the Equipment has been manufactured to the Customer's design.
- 5.2 This guarantee does not cover fair wear and tear.
- 5.3 Unless agreed otherwise by BT in writing, where Equipment is installed by the Customer, the Customer will normally be required to return faulty Equipment to BT (where necessary, by arrangement with the Customer), unless BT agrees otherwise in writing.
- 5.4 If the Customer reports a fault and BT finds there is none or that the Customer has caused the fault, BT may apply a charge.
- 5.5 Except where the Customer relies on BT's written advice, it is the Customer's responsibility to satisfy itself as to the suitability of Equipment for its needs.

5.6 BT does not warrant that the Software supplied under the Contract will be free of all faults or that its use will be uninterrupted, but BT will remedy those defects which significantly impair performance (where necessary by arrangement with the Customer) within a reasonable time.

### **6 CHARGES AND PAYMENT**

6.1 The charges are as detailed on the Order Form.

6.2 BT will send bills for any charges to the address notified by the Customer to BT.

6.3 Unless otherwise stated, charges:

- (a) include delivery within the UK.
- (b) are exclusive of VAT which is chargeable at the applicable rate.

6.4 As part of its credit management procedures BT may at any time

- (a) require the Customer to pay a deposit; and/or
- (b) carry out a credit vet of the Customer. The Customer agrees to provide BT with any information that BT may reasonably require for this.

6.5 Payment is due on the date specified on the bill.

#### **Late Payment**

6.6 If BT does not receive payment by the due date, BT may charge the Customer daily interest on late payments at a per annum rate equal to 7% above the base lending rate of the European Central Bank for the period beginning on the date on which payment is due and ending on the date on which payment is made.

6.7 If the Customer does not pay a bill, BT may instruct a debt collection agency to collect payment (including any interest) on its behalf. If BT instructs a debt collection agency, the Customer must pay BT an additional sum to cover the reasonable costs incurred by BT in instructing the debt collection agency.

6.8 If any sum owed by the Customer to BT under the Contract or any other contract the Customer has with BT is not paid by the due date, BT may deduct this sum from any payment or credit due to the Customer under the Contract or any other contract with BT.

### **7. CHANGING THE CONTRACT**

7.1 The Contract cannot be varied without the written agreement of the parties, except that BT may make minor changes to the specification of the Equipment which do not affect the performance.

### **8. ENDING THE CONTRACT**

8.1 BT may end the Contract at any time

- (a) before BT delivers the Equipment or the Customer takes possession of the Equipment on 7 days written notice to the Customer;
- (b) with immediate effect if the Customer:
  - (i) breaches the Contract and, if the breach is capable of remedy, fails to put right the breach within a reasonable time of being asked by BT to do so; or
  - (ii) suffers Bankruptcy.

8.2 The Customer may:

- (a) cancel an order prior to delivery and if so agrees to pay BT's cancellation charge which may include:
  - (i) BT's charges for order processing and management; and/or,
  - (ii) BT's charges for Equipment returns; and/or
  - (iii) The full charges for the Equipment and any Software.

BT will try to keep such charges to a minimum.

- (b) end the Contract if
  - (i) BT materially breaches the Contract and, if the breach is capable of remedy, fails to put right the breach within a reasonable time of being asked by the Customer to do so; or
  - (ii) insolvency proceedings are brought against BT or BT makes an arrangement with its creditors or a receiver, an administrative receiver or an administrator is appointed over any of BT's assets or BT goes into liquidation or a corresponding event under Scottish Law.

## **9. LIMITATION OF LIABILITY**

9.1 Neither the Customer nor BT excludes or restricts its liability for death or personal injury caused by its own negligence or the negligence of its employees or agents acting in the course of their employment or agency or for fraudulent misrepresentation or to any extent not permitted by law.

9.2 Neither the Customer nor BT shall be liable to the other in contract, tort (including negligence), breach of statutory duty or otherwise for any direct loss of profit, revenue, time, anticipated savings or profit or revenue, opportunity, data, use, business, wasted expenditure, business interruption which may arise in relation to the Contract whether or not the Customer or BT was advised in advance of the possibility of such loss or damage.

9.3 Neither the Customer nor BT shall be liable to the other in contract, tort (including negligence), breach of statutory duty or otherwise for any indirect or consequential loss of profit, revenue, time, anticipated savings or profit or revenue, opportunity, data, use, business, wasted expenditure, loss of or damage to physical property, business interruption or for any other indirect or consequential loss or punitive damages which may arise in relation to the Contract whether or not the Customer or BT was advised in advance of the possibility of such loss or damage.

9.4 Subject to clauses 9.1, 9.2 and 9.3, the Customer and BT accept liability to the other in contract, tort (including negligence) breach of statutory duty or otherwise for direct loss to a value not to exceed:

- (a) £1,000,000 for loss of or damage to physical property; and
- (b) for all other loss or damage, the greater of either
  - (i) £25,000; or
  - (ii) 125% of the amounts paid by the Customer under the Contract.

9.5 Clause 9.4 will not apply to any obligation to pay charges or to clauses 3.1(i), 10.5 or 10.6.

9.6 Each part of this clause operates separately. If any part of a clause is held by a Court to be unreasonable or inapplicable the rest of the clause shall continue to apply.

## **10. INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

### **Intellectual Property**

10.1 Except as expressly set out in the Contract, the Customer and BT do not acquire any rights or licences to the other's Intellectual Property Rights.

- 10.2 If Software is provided to enable the Customer to use the Equipment, BT grants the Customer a non-exclusive, non-transferable licence to use such Software for its own use.
- 10.3 If the Customer is supplied with Software licensed by third parties who require the Customer to accept their terms of use, the Customer must keep to those terms.
- 10.4 Except as permitted by applicable law or as expressly permitted under the Contract the Customer must not, without BT's prior written consent, copy, de-compile or modify any Software, copy manuals or documentation or permit anyone else to do so.
- 10.5 BT will indemnify the Customer against all third party claims brought against the Customer, that the provision of the Equipment to the Customer infringes the Intellectual Property Rights of any third person.
- 10.6 The indemnity set out in clause 10.5 does not apply to infringements arising out of :
- (a) the use of the Equipment in conjunction with any equipment, software or any other service not supplied by BT; or
  - (b) any modification which was not made by BT or with BT's prior written consent; or
  - (c) designs or specifications supplied by the Customer; or
  - (d) the use of the Equipment other than in accordance with the terms of the Contract; or
  - (e) breach by the Customer of clause 10.3.

The Customer will indemnify BT against all claims and proceedings arising from such infringements.

- 10.7 As a condition of the indemnities in clauses 10.5 and 10.6 the indemnified party must:
- (a) notify the indemnifying party promptly in writing of any allegation of infringement;
  - (b) make no admission relating to the infringement;
  - (c) allow the indemnifying party to conduct all negotiations and proceedings in respect of any such claims and give it all reasonable assistance in doing so (the indemnifying party will pay the other party's reasonable expenses for such assistance); and
  - (d) where BT is the indemnifying party, allow BT to modify the Equipment as set out in clause 10.8.
- 10.8 If the Equipment becomes, or BT believes it is likely to become, the subject of a claim of infringement of any Intellectual Property Rights BT, at its option and expense, may secure for the Customer a right of continued use or modify or replace the Equipment so that it is no longer infringing, provided that the modification or replacement does not materially affect the performance of the Equipment. If the indemnity offered by BT in clause 10.5 applies and none of the remedies in this clause is available to BT on reasonable terms, BT may collect the Equipment from the Site and refund the sums paid for the Equipment by the Customer to BT.

### **Confidentiality**

- 10.9 Except to the extent any disclosure is required by law BT and the Customer will keep in confidence any information, whether written or oral, of a confidential nature obtained under or in connection with the Contract. The Customer and BT will not, without the consent of the other, disclose such information to any person other than:
- (a) their Group Company employees or professional advisers who need the information in order for the Customer or BT to fulfil its obligations under the Contract; or
  - (b) in the case of the Customer, its employees to the extent necessary to use the Equipment;

- (c) in the case of BT, the employees or professional advisers of its suppliers who need the information in order for BT to fulfil its obligations under the Contract.

10.10 Information will not be treated as confidential if it is:

- (a) in the public domain other than in breach of the Contract; or
- (b) lawfully in the possession of the Customer or BT before disclosure has taken place; or
- (c) obtained from a third person who is free to disclose it; or
- (d) replicated independently by someone without access or knowledge of the Information.

10.11 Where the Freedom of Information Act 2000 applies to the Customer and the Customer receives a request under the Act that includes any information held by the Customer that was provided by BT in connection with the Contract the Customer will:

- (a) notify BT immediately of the request; and
- (b) give BT at least five working days to make representations.

## **11. GENERAL TERMS**

### **Matters Beyond Reasonable Control**

- 11.1 (a) If the Customer or BT is unable to perform, or is delayed in performing, any obligation under the Contract because of something beyond its reasonable control including act of God, lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, industrial disputes or acts or omissions of local or central government or other competent authorities, or beyond the reasonable control of its suppliers, it will have no liability to the other for that failure or delay in performing.
- (b) If any of the events detailed in clauses 11.1(a) continue for more than three months the Customer or BT may end the Contract in whole or part by written notice to the other.

### **Escalation and Dispute Resolution**

- 11.2 (a) BT will try to work through any dispute that the Customer may have with BT. If this does not resolve the dispute then the Customer may refer the matter to the relevant dispute resolution service as follows:
- (i) where appropriate, in accordance with the details set out in BT's Code of Practice for Residential Customers and Small Businesses; and
  - (ii) otherwise, as set out in clause 11.2 (b) below.
- (b) Any dispute must be raised in writing with the Customer's or BT's representative as appropriate giving all relevant details including the nature and extent of the dispute. The Customer and BT will use reasonable endeavours to resolve any dispute as follows:
- (i) a dispute which has not been resolved by the Customer's or BT's representative within 14 days of being raised may be referred by the Customer or BT to the first level by written notice to the other; and
  - (ii) if the dispute is not resolved at the first level within 14 days of referral, the Customer or BT may refer the dispute to the second level by written notice to the other.

The Customer's and BT's representatives at the first and second levels are as notified by the Customer and BT to the other from time to time.

- (c) If the dispute is not resolved after the procedures detailed in clause 11.2(b) have been followed then, if the Customer and BT agree, the dispute will be settled by mediation in accordance with the procedures specified by the Dispute Resolution Service – Chartered Institute of Arbitrators (“DRS – CiArb”). If the dispute is referred to a mediator:-
- (i) the mediator will be appointed by agreement of the Customer and BT. If the Customer and BT fail to agree within seven days of a proposal by one party, the mediator will be appointed by DRS – CiArb; and
  - (ii) all negotiations on the dispute and any agreement reached will be kept confidential.
- (d) Nothing in this clause 11.2 shall prevent the Customer or BT from exercising any rights and remedies that may be available in respect of any breach of the provisions of the Contract.

### **Transfer of Rights and Obligations**

- 11.3 The Customer and BT may not transfer any of their rights or obligations under the Contract without the written consent of the other, except that:
- (a) The Customer may transfer its rights or obligations or both to a Group Company with the written consent of BT, such consent not to be unreasonably withheld or delayed; and
  - (b) BT may transfer its rights or obligations or both to a Group Company without consent provided that it notifies the Customer that it has done so.

### **Severability**

- 11.4 If any term of the Contract is held invalid, illegal or unenforceable by any court of competent jurisdiction, it will be severed and the remaining terms will continue in full force as if the Contract had been made without the invalid, illegal or unenforceable terms.

### **Survival**

- 11.5 Subject to clause 10.3, clause 10.2 will survive the termination or expiry of the Contract and clauses 10.9 and 10.10 will survive the termination or expiry of the Contract for two years.

### **Entire Agreement**

- 11.6 (a) The Contract contains the entire agreement between the Customer and BT and replaces all previous written or oral agreements relating to its content.
- (b) The Customer and BT agree that:
- (i) they have not been induced to enter into the Contract by, nor have they relied on, any statement, representation, warranty or other assurance not expressly incorporated; and
  - (ii) in connection with the Contract their only rights and remedies in relation to any statement, representation, warranty or other assurance are for breach of the Contract and that all other rights and remedies are excluded.
- (c) The terms of clauses 11.6(a) and 11.6(b) will not affect the rights or remedies of the Customer and BT for any fraudulent misrepresentation.

### **Waiver**

- 11.7 A failure or delay by the Customer or BT to exercise any right or act upon a breach under the Contract will not be a waiver of that right or breach. If the Customer or BT waives a right or breach of the Contract, that waiver is limited to the particular right or breach.

## **Rights of Third Parties**

- 11.8 A person who is not the Customer or BT (including an employee, the officer, agent, representative or subcontractor of the Customer or BT) has no right under Contracts (Rights of Third Parties Act 1999) to enforce any term of the Contract. This does not affect any right or remedy that exists or is available apart from that Act.

## **Notices**

- 11.9 Notices given under the Contract must be in writing and delivered to the following addresses:
- (a) to BT at the address shown on the bill or any address (including email address) which BT provides to the Customer for this purpose; or
  - (b) to the Customer at the address to which the Customer asks BT to send bills, the address of the Site or, if the Customer is a limited company, its registered office or its email address.

This clause does not apply to notices given under clause 6.2.

## **Law and Jurisdiction**

- 11.10 The Contract is governed by the law of England and Wales and is subject to the non-exclusive jurisdiction of the English courts.

## **Data Protection**

- 11.11 The Customer and BT will comply with their respective obligations under the Data Protection Act 1998 and any data protection, privacy or similar laws that apply to any personal data processed in connection with the Contract. The Customer and BT will provide such help and co-operation as is reasonably necessary or requested by the other to enable compliance with this clause.

## **Customer's Instructions**

- 11.12 BT may take instructions from a person whom it thinks, with good reason, is acting with the Customer's permission.

## **12 DEFINITIONS**

- 12.1 In the Contract the following terms have the meanings shown next to them:

<b>Bankruptcy</b>	an event where bankruptcy or insolvency proceedings are brought against the Customer or the Customer does not make any payment under a judgement of a Court on time or the Customer makes an arrangement with its creditors or a receiver, an administrative receiver or an administrator is appointed over any of the Customer's assets or the Customer goes into liquidation or a corresponding event under Scottish Law
<b>BT</b>	British Telecommunications plc of 81 Newgate Street, London EC1A 7AJ, registered in England No. 1800000
<b>Conditions</b>	these conditions of Sale
<b>Contract</b>	this agreement for the provision of any Equipment between BT and the Customer comprising in order of precedence: the Order Form; the Conditions; and any other documents and terms expressly incorporated into the Contract

<b>Customer</b>	the person with whom BT contracts to supply the Equipment
<b>Equipment</b>	each item of equipment, including any Software, specified on the Order Form
<b>Group Company</b>	a subsidiary or holding company including a holding company, or a subsidiary of any such holding company, all as defined by Section 736 of the Companies Act 1985 and as amended by the Companies Act 1989
<b>Intellectual Property Rights</b>	any patent, petty patent, registered design, copyright, design right, database right, rights in designs, invention, semiconductor topography right, know-how, or any similar right exercisable in any part of the world and including any applications for the registration of any patents or designs
<b>Order Form</b>	the document that sets out the Equipment to be supplied under the Contract
<b>Site</b>	the place at which the Equipment is delivered, kept or installed
<b>Software</b>	any software and associated written and electronic documentation and data provided by BT under the Contract