

Wi-Manx Limited (“the Company”): Conditions of Sale

Preliminary

- 1.1 Words beginning with capital letters, unless the context otherwise requires, shall be as defined in the Appendix below. The headings of conditions are for reference purposes only and shall not affect their interpretation.
- 1.2 Proposals given by the Company are for discussion only and no amendment of these conditions shall be effective unless agreed in writing by a duly authorised Company employee. Any Contract shall come into existence only when the Company accepts the Customer’s request for the Service. Each Contract contains the entire understanding of the parties regarding its subject matter.
- 1.3 Where the Company supplies services, or a maintenance service, the Company’s Terms and Conditions of Service, or, as the case may be, Terms and Conditions for Maintenance Service, current from time to time shall apply in addition to these Conditions.

General

- 2.1 This Contract cannot be varied without the written agreement of the parties, save that the Company may make minor changes to the specification of the Equipment which do not impair its performance.
- 2.2 Any warranty, statement or promise regarding the Equipment is only valid if given in writing by the Company.

- 2.3 The Customer is responsible for ensuring that the Equipment is suitable for its needs.

Installation Requirements, Site Regulation and Access

- 3.1 To enable the installation of the Equipment the Customer will, at its own expense:
- 3.1.1 provide a suitable environment, use accommodation and foundations, including all necessary trunking, conduits and cable trays, in accordance with the relevant installation standards and manufacturers' instructions;
- 3.1.2 take up or remove, any fitted or fixed floor coverings, ceiling tiles, suspended ceiling and partition covers, as the Company advises are necessary, and carry out afterwards any making good or decorator's work required. All preliminaries must be completed in advance of any installation work.
- 3.2 The Customer must:
- 3.2.1 obtain for the Company all necessary consents, including consents for any necessary alterations to buildings; and
- 3.2.2 provide any electricity and connection points required by the Company.
- 3.3 The Customer will provide the Company with access to any Site at all reasonable times. The Company will normally only require access during its usual working hours but may, on reasonable notice, require the Customer to provide access at other times. The Company may agree to work outside its usual working hours, but the Customer must pay the Company's additional charges for doing so.
- 3.4 The Company's employees will observe the Customer's reasonable Site regulations, provided they have previously been notified in writing to the Company. In the event of any conflict between the Site regulations and these Conditions, these Conditions will prevail.
- 3.5 The Customer will provide a suitable and safe working environment for the Company employees.

Delivery, Installation and Acceptance

- 4.1 The Company will use reasonable endeavours to provide the Equipment by the date (if any) agreed with the Customer but all dates are estimates and the Company has no liability for any failure to meet any date.
- 4.2 If the Company installs the Equipment, the Company 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:
 - 4.2.1 the date when the Company notifies the Customer that the Equipment has passed the Company's tests and is ready for use; or
 - 4.2.2 the date when the Customer begins to use the Equipment.
- 4.3 If the Company 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.
- 4.4 Acceptance will not be prevented by minor faults that do not impair the Equipment's performance, but the Company will fix any minor faults within a reasonable time.
- 4.5 If the Customer delays or prevents the delivery or installation of the Equipment, the Company may apply reasonable additional charges for any costs that it incurs. The Company may also claim a reasonable extension to any delivery or ready for use date agreed under paragraph 4.1. If any additional charges are payable, the Company will inform the Customer in writing.

Risk and Ownership

- 5.1 Where the Contract includes delivery or installation, risk passes to the Customer at the time of delivery, but the Customer will not be liable for any loss or damage to the extent that it is caused by the Company's negligence.

- 5.2 Where the Contract does not include delivery or installation, risk passes to the Customer when the Customer takes possession of the Equipment.
- 5.3.1 Notwithstanding the earlier passing of risk, title in the Equipment shall remain with the Company and not pass to the Customer (who shall, nevertheless, subject to the conditions below, be entitled to use and resell them, as principal, in the ordinary course of business) until the Company has received in cash or cleared funds payment in full of the price of the Equipment and of all other debts for any other goods or services from time to time owed to it by the Customer on any account.
- 5.3.2 Until title passes:
- 5.3.2.1 the Customer shall hold the Equipment as bailee for the Company and ensure that it is at all times clearly identified as the property of the Company;
- 5.3.2.2 the Company shall be entitled at any time on demand to:
- (a) repossess, remove from other equipment (without being liable for any damage thereby occasioned) and sell all or any of the Equipment and thereby terminate (without liability to the Customer) the Customer's right to use and resell it; and,
 - (b) enter any premises where the Equipment is located for the purpose of inspecting or repossessing it, and where the Equipment is located otherwise than at the Customer's premises the Customer warrants that the Company has or will have a licence to enter the premises concerned for such purposes
- 5.3.3 The Company shall, without prejudice to any other remedy, be entitled to maintain an action for the price of the Equipment although title in it has not passed to the Customer.

Guarantee

- 6.1 The Company guarantees the Equipment for the period and on the terms (if any) of any guarantee given by the manufacturer of the Equipment or the Company's

supplier thereof or in the case of any Equipment manufactured by the Company for the period of three (3) months from the date of its acceptance by the Customer (“guarantee period”).

- 6.2 If the Customer reports a fault during the guarantee period and the fault is due to faulty design, manufacture, materials or the Company's negligence, the Company will take reasonable steps replace or (at its option) repair the Equipment provided that:
 - 6.2.1 the Equipment has been properly kept and maintained, used in accordance with the manufacturer's or the Company's instructions and has not been modified except with the Company's written agreement; and
 - 6.2.2 the fault is not due to damage (including lightning and electrical damage) or the actions of anyone other than the Company.
- 6.3 This guarantee does not cover fair wear and tear.
- 6.4 Equipment that can be installed by the Customer must be returned to the Company if it needs repair or replacement under the guarantee.
- 6.5 If software is supplied under the Contract, the Company does not guarantee that it will be error free, but the Company will correct errors within a reasonable time if they impair performance of the Equipment.
- 6.6 If the Company visits the Site in response to a fault report and no fault is found, or the fault is not covered by the guarantee, the Company may charge the Customer at its rates current from time to time.

Limitation of Liability

- 7.1 The Company accepts unlimited liability for death or personal injury resulting from its negligence. Paragraphs 7.2, 7.3 and 7.4 do not apply to such liability.

- 7.2 The Company is not liable to the Customer, either in contract, tort (including negligence) or otherwise (by way of contribution, indemnity or otherwise) for any direct or indirect loss of profits, business or anticipated savings, nor for any indirect loss or damage.
- 7.3 Where before or after the commencement of the Contract the Company has supplied or supplies any technical information, opinion, recommendation or advice (“Information”) the Customer must check its suitability for its particular requirements and, unless otherwise agreed in writing, the Company accepts no liability in contract, tort (including negligence) or otherwise howsoever for any loss, damage or expense arising from any use by the Customer of any Information or reliance upon it.
- 7.4 The Company shall have no liability to the Customer in contract, tort (including negligence) or otherwise in relation to any Contract except as provided in these Conditions.
- 7.5 The provisions of the Contract will not affect the statutory rights of an individual who is acting for purposes which are outside the individual’s trade, business or profession.

Charges and Payment

- 8.1 The Company will submit an invoice after the Equipment has been accepted by the Customer. Payment is due within 30 days of invoice date. The Company may charge daily interest on late payments at a rate equal to 2% per annum above the base lending rate of the Company’s bankers from time to time.
- 8.2 The Company may, at any time, require the Customer to pay a deposit or provide a guarantee as security for payment.
- 8.3 Unless otherwise stated, prices:

8.3.1 include delivery within the Isle of Man.

8.3.2 do not include value added tax for which the Customer is liable.

Software and Documents

9.1 Where software is supplied to enable the Customer to operate the Equipment, the Company grants or if it is not the owner of the software will take reasonable steps to procure to be granted to the Customer a non-exclusive, nontransferable licence to use the software for that purpose.

9.2 The Customer will keep the software and any operating manuals and other documentation supplied under the Contract confidential, and will not disclose them other than to its employees, agents or contractors who need to use them to operate the Equipment. The Customer will ensure that such employees, agents and contractors abide by the provisions of this paragraph 9.

9.3 The Customer will not, without the Company's prior written consent, copy, or (except as permitted by law) decompile or modify the software in any way, nor copy the operating manuals or documentation.

9.4 The Customer will sign any agreement reasonably required by the owner of the copyright in the software to protect the owner's interest in that software.

Infringements

10.1 The Company will indemnify or if it is not the owner of the software take reasonable steps to procure to be indemnified the Customer against all claims and proceedings arising from infringement of any intellectual property rights by reason of the Customer's use of the Equipment. As a condition of this indemnity the Customer must:

10.1.1 notify the Company promptly in writing of any allegation of infringement;

10.1.2 make no admission relating to the infringement;

- 10.1.3 allow the Company to conduct all negotiations and proceedings and give the Company all reasonable assistance in doing so (the Company will pay the Customer's reasonable expenses for such assistance); and
- 10.1.4 allow the Company to modify or replace the Equipment, or any part of it, so as to avoid the infringement, provided that the modification does not materially affect the performance of the Equipment.
- 10.2 The indemnity in paragraph 10.1 does not apply to infringements caused by the use of the Equipment, in conjunction with other equipment, software or services not supplied by the Company, or to infringements occasioned by designs or specifications made by, or on behalf of, the Customer. The Customer will indemnify the Company against all claims, proceedings and expenses arising from such infringements.
- 10.3 The limitations and exclusions of liability contained in paragraph 7 do not apply to this paragraph.

Breach of Contract

- 11.1 Either party may terminate the Contract, immediately on notice, if the other:
- 11.1.1 commits a material breach of the Contract, which is capable of remedy, and fails to remedy the breach within a reasonable time of a written notice to do so; or
- 11.1.2 commits a material breach of the Contract which cannot be remedied; or
- 11.1.3 is repeatedly in breach of this Contract; or
- 11.1.4 is the subject of bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of their creditors, or goes into voluntary (otherwise than for reconstruction or amalgamation) or compulsory liquidation, or a receiver or administrator is appointed over their assets.

- 11.2 If either party delays in acting upon a breach of the Contract that delay will not be regarded as a waiver of that breach. If either party waives a breach of the Contract that waiver is limited to that particular breach.

Transfer of Rights and Obligations

12. Neither party may transfer any of their rights or obligations under the Contract, without the written consent of the other, except that the Company may transfer its rights or subcontract its obligations (or both), without consent.

Force Majeure

13. Neither party shall be liable for any failure or delay in the performance of the Contract (but not in connection with the payment of the Company's Charges) arising from any cause beyond its reasonable control existing at the date of the Contract or occurring thereafter including but not limited to fire, explosion, breakdown or failure of equipment or facilities, lack or failure of supply of labour, materials or power, strike, lock-out or labour dispute (whether or not involving the personnel of the Party concerned), illness, epidemic, flood, drought, war, civil commotion or requirement of any authority or governmental agency and including in the case of the Company any termination or suspension of supply by any person on behalf of the Company on which the Company depends, whether in the Isle of Man or elsewhere, and the time for performance shall be extended by the period of any such failure or delay.

Severability

14. Any provision of this Contract which is adjudged by a competent tribunal to be unlawful, void or unenforceable shall not affect the validity of the remaining provisions.

Law and Jurisdiction

15. The law applicable to this agreement is the law of the Isle of Man and the parties consent to the non-exclusive jurisdiction of the Manx courts in all matters connected with the Contract.

Third Parties

16. No right is granted to any third party to enforce any rights arising under the Contract.

Notices

17. Any notice to be given to either party shall be in writing and if sent by fax or first class letter post to the receiving party at its registered office or business address last notified to the other party shall be deemed to have been given on the date of the fax or email (if sent during normal office hours and provided a copy is sent the same day by first class letter post) or 2 days after the date of posting.

Appendix

“Contract” means the Customer’s request for the Equipment, the Company’s acceptance of that request, these Conditions and any other document that the parties agree in writing will form part of the Contract provided that in case of any inconsistency between the Customer’s request and the other documents comprising the Contract the latter shall prevail.

“Customer” means the person with whom the Company contracts to supply the Equipment and anyone reasonably appearing to the Company to be acting with that person’s authority or permission.

“Equipment” means the things sold by the Company to the Customer under the Contract and includes any software.

“Site” means the place where the Equipment will be delivered or installed.