

Terms and Conditions



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TERMS AND CONDITIONS OF BUSINESS

Definitions

In these terms and conditions the following words shall bear the following meanings:-

"Company" means Shout Telecoms Limited.

"Purchaser" means any company, firm or person entering into a contract to purchase Goods and or services from the Company or to acquire the right to use the Company's Software.

"Hardware" means a tangible electronic electrical mechanical or Electro-mechanical element or group of such elements capable of data processing or of working as a peripheral to or in conjunction with data processing equipment.

"Software" means the Company's software (including software resident in hardware) and all modifications enhancements and replacements thereof and additions thereto provided by the Company and made available to the Purchaser on licence from time to time for use on the Hardware purchased by the Purchaser.

"Goods" means goods, services, Hardware and Software which the Company shall contract to provide to the Purchaser or any of them.

"Agreed" means agreed in advance in writing by the Company.

Formation of the Contract

- 1.1. All orders are accepted and Goods supplied subject to the following express terms and conditions. These terms and conditions together with the terms of the quotation where an order is accepted by the company from a purchaser constitute the entirety of the terms agreed between the Company and the Purchaser and shall not be varied or added to, save in writing making express reference to this Clause, signed by a Director of the Company and counter-signed by a duly authorised representative of the Purchaser.
- 1.2. Unless otherwise Agreed, and unless previously withdrawn by the Company, all quotations are valid for thirty days from the date appearing upon them and constitute only an invitation to treat.
- 1.3. On receipt by the Company of an order from the Purchaser, the Company shall give written acknowledgement of said order. Such acknowledgement by the Company shall be deemed to bring into effect a contract between Company and Purchaser and all terms and conditions other than these Terms and Conditions and the terms set out in the quotation where an order is accepted shall be inapplicable.
- 1.4. The Purchaser acknowledges that, unless expressly included, no representation, warranty or other statement made by or on behalf of the Company prior to the concluding of this agreement, whether orally or in writing, forms any part of this or any collateral contract or induced the Purchaser to enter into the same.
- 1.5. Any periods quoted for despatch, delivery, installation or provision of Goods are to run from the date of the acknowledgement of the order by the Company. Notwithstanding the foregoing, the Company shall not be liable for any delay in despatch, delivery, installation or provision of Goods caused by any Act of God, strike, lock out, failure of suppliers to the Company to deliver on time or other cause beyond the reasonable control of the Company and any delivery period shall be extended by a period equivalent to that delay.
- 1.6. The Company shall be liable to provide to the Purchaser only such Goods as may be specified in the quotation provided to the Purchaser.
- 1.7. Neither party shall assign or transfer the benefit of this agreement or any of its rights herein to any third party without the prior written consent of the other party, which consent may be subject to such terms as the other party may require.

Copyright and Confidentiality

- 2.1. Any user manual, technical manual, installation and site layout plans provided by the Company to the Purchaser are and shall remain in all respects subject to the Company's copyright or the copyright of the owner thereof and shall not be copied nor reproduced by the Purchaser, other than for back-up or training purposes, in whole or in part, in any manner whatsoever nor shall the Purchaser enable or permit any Third Party to copy or reproduce any, or any part of the same.
- 2.2. Unless required by law or to its professional advisers, the Purchaser shall keep entirely confidential and shall not disclose to any Third Party:-
 - (a) Any information contained in any item referred to in Clause 2.1. save and except and insofar as the same shall already be in the public domain, otherwise than by reason of disclosure by the Purchaser or which the Purchaser received independently from another source with the right to disclose the same; or
 - (b) Any part of the Software or Hardware provided by the Company to the Purchaser.
- 2.3. Any part of the Hardware or Software provided by the Company to the Purchaser which is the subject of any licence, exclusion or reservation of any Third Party shall be taken subject to the same and it is the responsibility of the Purchaser to comply with all terms and conditions thereof.
- 2.4. Notwithstanding any other provision of this Agreement, the Company shall indemnify the Purchaser against any and all claims arising from or incidental to any infringement of any patent, registered design, trade mark or copyright by arising out of use of the Goods supplied to the Purchaser by the Company and against any and all loss, including legal costs and consequential and/or economic loss, which the Purchaser may suffer by reason of any such infringement.
- 2.5. Software provided to the Purchaser by the Company is owned by or licensed to the Company and is protected by copyright and shall only be used by the Purchaser on the terms of the Company's licence set out below:
 - (a) The Software shall only be used by the Purchaser on the Hardware specified by the Company in the Company's quotation or order acceptance.
 - (b) An extension to the licence will be required if additional Hardware or Software is subsequently acquired.
 - (c) Any spares items supplied to the Purchaser shall be used solely for replacement purposes unless specifically covered by an extension to the licence.
 - (d) The Purchaser may not copy the Software, except for back-up or training purposes.
 - (e) The Software must not be used by anyone other than the Purchaser without the prior written consent of the Company. The Company will only agree to the Software being used by someone other than the Purchaser if that person acquires the Hardware from the Purchaser and enters into a direct agreement with the Purchaser and the Company relating to the use of the Software and the Hardware.
 - (f) The Software shall be used by the purchaser for its own business purposes only.

- 3.1. Unless otherwise specified, the price quoted is for delivery Delivered Duty Paid to the Purchaser's elected delivery point.
- 3.2. The Purchaser shall be solely responsible for ensuring that the site upon which it is intended the Goods shall be installed and all parts of the route leading thereto from the public thoroughfare are of adequate strength to support the Goods and any persons and/or equipment used for its transport.
- 3.3. Subject to Clause 4, the risk in the Goods shall pass to the Purchaser once the Goods have been delivered to the Purchaser in accordance with this Agreement.

Provided the company is not, or has not been, in breach of this agreement the Purchaser shall hold the Goods as bailee for the Company and acknowledges that it holds the said Goods to the order of the Company and will return the same to the Company or deliver the same to any Third Party as and when required so to do. Upon breach of this Agreement by the Company, this bailment or arrangement is immediately terminated. Goods held by the Purchaser as bailee for the Company shall be stored separately and distinctly from any other Goods held or owned by the Purchaser and shall be clearly marked by the Purchaser as being the property of the Company. Any sale of any Goods held by the Purchaser as bailee for the Company shall be made by the Purchaser as agent for the Company and not otherwise and the Purchaser shall account forthwith to the Company for any monies received pursuant to the said sale and shall pay the same, or such part thereof as may be necessary to discharge the Purchaser's liability to the Company in respect of the said Goods, together with interest if any, to the Company. The Purchaser shall, at its own expense, keep fully insured any Goods held by it as bailee for the Company against any loss or damage from theft, fire, flood and other perils and, in the event of any claim being necessary under such insurance, shall pay to the Company, all, or such part of any monies received as may discharge the Purchaser's liability in respect of the said Goods together with any outstanding interest.

Defects and Repairs

- 4.1. The Company shall, at the Companies discretion, repair or replace, with equivalent parts, any Hardware which has, in the reasonable view of the Purchaser, become defective and of which it has received written notice within twelve months of the date of delivery, save and except where such defect has arisen by reason of normal wear and tear or by reason of the Goods being used otherwise than in accordance with the instructions given by the Company and/or in an environment or with a power supply not conforming with the provisions of Clause 6 hereof.
- 4.2. The Company shall, at the Companies discretion, undertake corrections to any Software which in the reasonable view of the purchaser is or becomes defective and of which it has received written notice within 12 months of the date of delivery.
- 4.3. The Company shall be responsible for the cost of returning the defective part(s) to the Company. The repaired or replacement part(s) will be delivered free of charge by the Company to the Purchaser within the United Kingdom mainland.
- 4.4. The Purchaser accepts and shall ensure that any part(s) replaced by the Company shall be and remain the Company's property and subject to these terms and conditions save that no further warranty period under Clause 5.1. and 5.2. shall arise by reason of such replacement.
- 4.5. The Purchaser shall afford to the Company the time and facilities reasonably necessary to carry out any direct and consequential alterations necessary to enable the repair or replacement of defective part(s) or of any part(s) which may become defective or lead to malfunction of the system.
- 4.6.
 - (a) The Company's total liability for any loss or damage resulting from or arising out of any Goods (including without limitation parts) delivered or installed or carried out by the Company shall in no event exceed the Price paid by the Purchaser in respect thereof.
 - (b) IN NO EVENT SHALL THE COMPANY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROPERTY, LOSS OF PROFITS OR LOSS OF PRODUCTION DAMAGES, RESULTING FROM OR ARISING OUT OF ANY GOODS (INCLUDING WITHOUT LIMITATION PARTS) DELIVERED OR INSTALLED OR CARRIED OUT BY THE COMPANY, WHETHER A CLAIM FOR SUCH DAMAGE IS BASED UPON WARRANTY, CONTRACT, TORT, NEGLIGENCE OR OTHERWISE.
 - (c) Nothing in Clause 4.6 (a) or (b) above shall limit the Company's liability in respect of death or personal injury or where loss results from fraudulent misrepresentation on the part of the Company

Cancellation

- 5.1. If either party:-
- (a) breaches a term of this agreement and fails to remedy such breach within 14 days; or
 - (b) enters into any composition with his creditors or is made bankrupt or (being a company) has an administrator or receiver appointed or passes a resolution for its winding up or is ordered by any Court to be wound up; or
- the other party may terminate this agreement , without prejudice to its other rights
- 5.2 Any termination of this Agreement (however occasioned) shall not effect any accrued rights or liabilities of either party.

Environment

- 6.1. The Purchaser acknowledges that the efficient and safe operation of the Goods requires that:-
- (a) the Goods are at all times maintained in an environment:-
 - (i) where the ambient temperature is within the range 10 degrees Celsius to 30 degrees Celsius
 - (ii) which is non-condensing with a relative humidity in the range 20% to 60%
 - (iii) with a low level of dust and no smoke particles present;
 - (iv) where there is no significant vibration;
 - (b) the power supplied to the Goods conforms with the appropriate specifications;
 - (c) the Goods are not used in proximity to any external source of excessive electro-magnetic radiation;
 - (d) the safety earth is by a permanent link.

- 7.1 The waiver by a party of any breach of any Clause hereunder shall not prevent the subsequent enforcement of that Clause and shall not be deemed to be a waiver of any subsequent breach whether of that or any other term or condition hereof.
- 7.2 Time is of the essence in this agreement.
- 7.3 The Company will indemnify the Purchaser for direct physical injury or death caused by defects in the Goods sold to the Purchaser or by the negligence of its employees in connection with the performance of their duties under this agreement.
- 7.4 The Company will indemnify the Purchaser solely for any breach of this Agreement, or by the negligence of its employees in connection with the performance of their duties under this contract and the liability of the Company shall not exceed £100,000 for any one event or any series of connected events. Under no circumstances whatsoever shall the Company be liable for any indirect or consequential loss or damage, loss of profit or economic loss arising from the Company's negligence pursuant to 7.3.
- 7.5 This agreement shall be governed by English law and shall be subject to the exclusive jurisdiction of the English Courts.
- 7.6 If any provision, or part of a provision, herein shall be deemed illegal, void or unenforceable, it shall be treated as severable from the remaining text. The remaining text shall remain in full force.
- 7.7 The parties hereby acknowledge and agree that the limitations contained in this clause 7 are reasonable
- 7.8 The Purchaser and the Company undertake to comply with the provisions of the Data Protection Act 1998 and any related legislation in so far as the same relates to the provisions and obligations of this Agreement.

HEALTH AND SAFETY AT WORK

The Company's products, when used in normal or prescribed applications within the parameters set for mechanical and electrical performance in the technical data provided for each product range, will not cause any danger or hazard to health or safety if normal engineering practices are observed and they are handled/used in applications by trained/skilled persons in accordance with the relevant legislation, regulations (including IEE Wiring Regulations) and the accepted rules or art for the industry concerned. In the interests of health and safety products should not be handled whilst "live".