

## TERMS OF BUSINESS

These terms of business ("Terms"), together with the Quotation, represent the contract ("Contract") between Affinity Communications Systems Limited ("the Company") and the Customer.

### 1. Interpretation

1.1 In this Contract, the following definitions shall have the following meanings:

"Company"	means Affinity Communication Systems Limited;
"Customer"	means the person referred to in the Quotation;
"Director"	means any Director of the Company and acting on behalf of the Company;
"Goods"	means the goods supplied by the Company to the Customer and detailed in the Quotation;
"Quotation"	the quotation to which these Terms are appended;
"Services"	means the services supplied by the Company to the Customer and detailed in the Quotation;
"VAT"	means value added tax at the rate for the time being in force (as may be varied from time to time by HM Customs & Excise).

1.2 Except where the context requires otherwise words denoting the singular include the plural and vice versa, and words denoting any one gender include all genders.

1.3 Any reference to "persons" includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, foundations and trusts (in each case whether or not having separate legal personality).

1.4 Any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words following those terms.

### 2. Basis for the supply of Goods and Services.

2.1 The Quotation constitutes an offer by the Company to the Customer for the supply of Goods and/or Services subject to these Terms.

2.2 Unless otherwise agreed in writing by a Director the Quotation will lapse unless unconditionally accepted by the Customer in writing within 30 days of its date.

2.3 No variation to the Quotation or these Terms shall be binding unless agreed in writing by the parties.

2.4 The quantity, quality and description of the Goods and Services shall, subject as provided in these Terms be specified in the Quotation or agreed in writing by the Company.

2.5 The Company shall provide the Goods and Services to the Customer in accordance with the terms of this Contract provided the Customer has paid for the Goods and Services in accordance with the Contract.

2.6 The Company may at any time make any changes to the Service which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Service.

### **3. Price of Goods and Services**

- 3.1 The price of Goods and/or Services shall be as stated in the Quotation and unless otherwise stated shall be:
- 3.1.1 inclusive of packing;
  - 3.1.2 exclusive of VAT (which shall be payable by the Customer) and any other sales excise, levies, imposts, taxes or other duties; and
  - 3.1.3 exclusive of shipping charges, carriage, insurance and delivery charges of the Goods.
- 3.2 The Company may increase the price of the Goods or Services on account of increased material, labour or transport costs or may require the Customer to pay any additional sums for the provision of the Services which, in the Company's sole discretion, are required as a result of the Customer's instructions or lack of instructions, the inaccuracy in the instructions or any other cause attributable to the Customer.

### **4. Terms of payment**

- 4.1 The Company may invoice the Customer on or at any time after delivery of the Goods or performance of the Services, as the case may be, and each invoice shall quote the number of the Quotation.
- 4.2 Unless otherwise stated in the Quotation, the Customer shall pay the price of the Goods and the Services within 30 days of the date of the invoice.
- 4.3 The Customer shall not set off against any sums due to the Company under this Contract.
- 4.4 If payment is not made on the due date, the Company shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgment) at the rate of 4 per cent above the base rate from time to time of Barclays Bank plc from the due date until the outstanding amount is paid in full.

### **5. Delivery**

- 5.1 The Goods shall be delivered to, and the Services shall be performed at, the delivery address on the date or within the period stated in the Quotation, in either case during the Company's usual business hours.
- 5.2 Where the date of delivery of the Goods or of performance of the Services is to be specified after the acceptance of the Quotation, the Company shall give the Customer reasonable notice of the specified date.
- 5.3 In the event the Customer fails to take delivery of the Goods on the date agreed for delivery, the Company may store and safeguard the Goods. The Customer shall indemnify the Company for all losses and expenses (including insurance) reasonably incurred in so doing.
- 5.4 The time of delivery of the Goods and of performance of the Services shall not be of the essence of the Contract.

### **6. Risk and Property**

- 6.1 Risk of damage to or loss of the Goods shall pass to the Customer on delivery to the Customer in accordance with the Contract.
- 6.2 The property in the Goods shall pass to the Customer once payment has been made and the Goods have been appropriated to the Contract.

### **7. Warranties and liability**

- 7.1 The Customer warrants to the Company that it has full power and authority to enter into this Contract and perform its obligations under the Contract. The Customer shall indemnify the Company against all claims made against the Company by any person in respect of any act, advice, neglect or default of the Customer.

- 7.2 The Company warrants to the Customer that:
- 7.2.1 the Goods:
    - 7.2.1.1 will be of satisfactory quality and fit for any purpose made known to the Company by the Customer;
    - 7.2.1.2 will be free from defects in design, material and workmanship;
    - 7.2.1.3 will correspond with the Quotation; and
    - 7.2.1.4 will comply with all statutory requirements and regulations relating to the sale of the Goods.
  - 7.2.2 the Service will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with the Quotation. Where the Company supplies in connection with the provision of the Service any goods supplied by a third party, the Company does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Customer the benefit of any warranty, guarantee or indemnity given by the person supplying the goods to the Customer.
- 7.3 If any Goods are not supplied in accordance with the Contract, then the Company may repair the Goods or supply replacement goods.
- 7.4 The Company shall have no liability to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from any instructions supplied by the Customer, which are incomplete, incorrect, inaccurate, or any other fault of the Customer.
- 7.5 Except in respect of death or personal injury caused by the Company's negligence, or as expressly provided in these Terms, the Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of the Company, its servants or agents or otherwise) which arise out of or in connection with the provision of the Goods and/or Services (including any delay in providing or failure to provide the Services) or their use by the Customer, and the entire liability of the Company under or in connection with the Contract shall not exceed the amount of the Company's charges for the provision of the Goods and Services, except as expressly provided in these Terms.
- 7.6 The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Services, if the delay or failure was due to any cause beyond the Company's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond either party's reasonable control:
- 7.6.1 Act of God, explosion, flood, tempest, fire or accident;
  - 7.6.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - 7.6.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
  - 7.6.4 import or export regulations or embargoes;
  - 7.6.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees or either the Seller or the Buyer or of a third party);
  - 7.6.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
  - 7.6.7 power failure or breakdown in machinery.

7.7 In the event the Customer cancels the purchase of the Goods then the Customer shall pay the following sums by way of liquidated damages to the Company:

7.7.1 15% of the gross price of the Goods if the notice of cancellation is received by the Company at least 16 days before the date the Goods are to be delivered to the Customer; or

7.7.2 50% of the gross price of the Goods if the notice of cancellation is received by the Company 15 days or less before the date the Goods are to be delivered to the Customer.

7.8 The parties acknowledge that the damages set out in Clause 7.7, and their calculation and application, represent a genuine pre-estimate of loss to and by the Company on account of the cancellation by the Customer of the purchase of the Goods and do not operate as a penalty.

## 8. General

8.1 These Terms (together with the Quotation) constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except in writing between

the parties. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

8.2 A Notice required to be given by either party to the other under these Terms shall be in writing addressed to the other party at its registered office or principal place of business.

8.3 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

8.4 If any provision of these Terms is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.

8.5 Each party acknowledges that it has not relied upon or been induced to enter into the Contract by any representation other than a representation expressly set out in the Contract and neither party will be liable to the other in equity, contract, tort, under the Misrepresentation Act 1967 or in any other way for any representation not expressly set out in the Contract, provided that nothing will affect a party's liability in respect of any fraudulent misrepresentation.

8.6 Subject to Clause 8.7, neither party may assign, transfer or deal in any other manner with the Contract or any rights under it or purport to do any of the same, nor sub-contract any obligations under it without the prior written consent of the other party.

8.7 It is agreed that the Company may at its absolute discretion delegate or sub-contract to any person such functions as it deems necessary.

8.9 English law shall apply to the Contract, and the parties agree to submit to the exclusive jurisdiction of the English courts.