

SpiriTel IP Communications Ltd. - Terms & Conditions of Purchase

1. Definitions

In these Conditions, unless the context requires otherwise:

'Affiliates' means in relation to the Buyer (a) a company which is either a holding company or a subsidiary of such company; or (b) a company which is a subsidiary of a holding company of which such company is also a subsidiary, and for these purposes "holding company" and "subsidiary" shall have the meanings given in section 736 of the Companies Act 1985;

'Buyer' means SpiriTel IP Communications Ltd., Dobson Park Way, Ince, Wigan WN2 2DX (registered in England with number 2570565) or any of its Affiliates who buys Goods from the Seller;

'Conditions' means the terms and conditions of purchase set out in this document and any special terms and conditions agreed in writing by the Buyer;

'Delivery Date' means the date specified by the Buyer when the Goods are to be delivered;

'Goods' means the goods or services which the Buyer agrees to buy from the Seller;

'Order' means the Buyer's purchase order for the Goods;

'Price' means the price for the Goods including carriage, packing and insurance; and

'Seller' means the person whose name and address appears in the Buyer's Order.

2. Conditions applicable

The Conditions shall apply to all contracts for the purchase of Goods by the Buyer from the Seller to the exclusion of all other terms and conditions including any terms or conditions which the Seller may purport to apply under any sales offer or similar document or in correspondence. These Conditions constitute the entire understanding between the Buyer and the Seller with respect to the subject matter covered by the contract of purchase and supersede all previous agreements and understandings between the parties.

Dispatch or delivery of the Goods by the Seller to the Buyer shall be deemed conclusive evidence of the Seller's acceptance of these Conditions.

Any variation of these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Buyer.

3. Price and payment

- 3.1 The Price shall be the price set out in the Order. The Price is exclusive of VAT which shall be due at the rate ruling on the date of the Seller's invoice.
- 3.2 Payment of the Price and VAT shall be due 45 days following the date of the Seller's invoice.
- 3.3 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 2 % above National Westminster Bank plc's base rate from time to time in force and shall accrue at such a rate after as well as before any judgment.
- 3.4 The Buyer may set off against the Price (including any applicable VAT payable) amounts due from the Seller whether under the applicable contract of sale or otherwise.
- 3.5 Provided that no other payments are due from the Buyer to the Seller the Buyer shall be entitled to deduct a prompt payment discount of 5% of the Price for payment made.

4. The Goods

- 4.1 The quantity and description of the Goods shall be as set out in the Order.

5. Warranties and liability

- 5.1 The Seller warrants that the Goods supplied will correspond to the description set out in the Order.
- 5.2 All representations, statements or warranties made or given by the Seller, its servants and agents (whether orally in writing or in any of the Seller's brochures, catalogues and advertisements) regarding the quality and fitness for purpose of the Goods or any of the Goods shall be deemed to be express conditions of the contract of sale.
- 5.3 The Seller shall ensure that all the Goods shall be manufactured, stored, tested and packed in accordance with all British Standards applicable to them and that all the Goods are of satisfactory quality and fit for the purposes for which the Buyer intends to use such Goods.
- 5.4 The Goods shall be free from any defects and remain free from defects in accordance with any warranty period specified by the Buyer in the Order.
- 5.5 Where any specifications and designs of the Goods or any of the Goods have been provided by the Buyer the copyright, design right or other intellectual property in them shall remain the property of the Buyer.

6. Delivery of the Goods

- 6.1 The Delivery Date is of the essence of this contract.
- 6.2 If the Seller fails to deliver all of the Goods in accordance with the contract on the Delivery Date then without prejudice to the Buyer's rights for the breach of contract:

6.2.1 The Buyer may terminate the contract. In this event without prejudice to the Buyer's other remedies the Seller shall promptly collect any Goods which have been delivered.

6.2.2 Where delivery of a quantity of the Goods which correspond to the contract which is less than the agreed quantity has been tendered and the Buyer has not exercised its rights of termination under clause 6.2.1 the Buyer may accept the Goods which correspond to the contract and recover for the Seller's breach in respect of the failure to deliver the remainder of the Goods.

6.2.3 The Buyer may require the Seller promptly to deliver sufficient Goods which correspond to the contract to comply with the quantity required.

The Buyer may exercise these rights by written notice to the Seller.

- 6.3 The Seller upon receiving notice of any loss or damage to the Goods in transit from the Buyer shall repair or replace free of charge Goods damaged or lost in transit and due delivery of the Goods shall not be deemed to have taken place until replacement or repaired Goods have been delivered by the Seller to the Buyer. The Buyer reserves the right to hold such damaged Goods at the Seller's risk or to return them at the risk and expense of the Seller.

7. Acceptance of the Goods

- 7.1 The Buyer shall not be deemed to have accepted any part of the Goods until after the Buyer has (or the Buyer's sub-buyers have) actually inspected the Goods and ascertained that they are in accordance with the contract. The Buyer may reject Goods which are not in accordance with the contract until a reasonable time after such inspection.
- 7.2 The Buyer may by notice to the Seller prior to acceptance reject any Goods which are not in accordance with the contract. Unless within a reasonable time of receipt of notice of rejection the Seller collects such Goods the Buyer may dispose of them as the Buyer shall think fit (provided that if the Buyer sells such Goods the Buyer shall account to the Seller for the net proceeds of such sale).
- 7.3 The Seller agrees to permit the Buyer to return any of the Goods which are not in accordance with the contract at any time up to 6 months after delivery notwithstanding that some of the Goods may have already been accepted by the Buyer.
- 7.4 An acceptance of Goods which conform to the contract of sale shall not deprive the Buyer of the right to reject the rest of the Goods on the ground that they are not in conformity with the contract, provided that, if some of those Goods are in conformity with the contract, the Buyer accepts them.

8. Title and risk

- 8.1 Title shall pass on delivery of the Goods.
- 8.2 Risk shall pass on delivery of the Goods.

9. Remedies of Buyer

- 9.1 The Seller shall indemnify the Buyer against all claims by the customers of the Buyer and their sub-buyers arising out of any breach whatever by the Seller of this contract of sale due to want of satisfactory quality or lack of fitness for purpose of the Goods or any of the Goods.
- 9.2 Without prejudice to the other rights of the Buyer for breach by the Seller where any of the Goods supplied to the Buyer are not in accordance with the contract the Seller shall at the option of the Buyer forthwith upon notice being given either repair or replace such Goods. If it is necessary to open up or dismantle any other works or assemblies to permit such repair or replacement then the Seller shall bear the cost of such opening up or dismantling and of re-assembly and making good after repairs, replacements and testing of such goods have been completed to the Buyer's reasonable satisfaction.

10. General

- 10.1 Any notice under or in connection with this contract of sale shall be in writing and shall be served by first class post or by hand on the party or sent by recorded delivery or e-mail at or to the address of the party set out in this contract or at or to such other address as may be subsequently notified by one party to the other.
- 10.2 This contract is subject to the law of England and Wales.
- 10.3 The provisions of the Contracts (Rights of Third Parties Act) 1999 shall not apply to this contract and a person who is not a party to this contract shall have no right under that Act to enforce any term of the contract.
- 10.4 Any provision of this contract which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of this contract.
- 10.5 No waiver or forbearance by the Buyer (whether express or implied) in enforcing any of its rights under this contract shall prejudice its right to do so in the future.
- 10.6 The Seller shall not assign, sub-contract, license or otherwise dispose of any part of its rights or obligations under this contract without the prior written consent of the Buyer.
- 10.7 The Buyer shall not be liable for any default due to any act of God, war, civil disturbance, malicious damage, strike, lockout, industrial action, fire, flood, drought, extreme weather conditions, compliance with any law or governmental order, rule, regulation, direction or other circumstance beyond its reasonable control.

11. Cancellation

- 11.1 The Buyer may cancel this contract at any time before all of the Goods are delivered by giving written notice. On giving such written notice:

11.1.1 the Seller shall cease to be bound to deliver and the Buyer shall cease to be bound to receive delivery of any further Goods;

11.1.2 the Buyer shall cease to be bound to pay that part of the Price which relates to Goods which have not been delivered;

11.1.3 the Buyer shall not be liable for any loss or damage whatever arising from such cancellation.