

Unity Communications Ltd - Terms & Conditions of Trade for Equipment Maintenance Services

1. **Definitions**
 - 1.1 "Seller" shall mean Unity Communications Ltd its successors and assignees or any person acting on behalf of and with the authority of Unity Communications Ltd. 5.4
 - 1.2 "Customer" shall mean the person or entity described as such on the invoices, application for credit, order form or any other forms to which these terms and conditions apply, and shall include any person acting on behalf of and with the authority of such person or entity.
 - 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis. 5.5
 - 1.4 "Equipment" shall mean the Customer's equipment as listed in either the Equipment Maintenance Order Form or the schedule or the description attached to the same order form. 5.6
 - 1.5 "Services" shall mean all services supplied by the Seller to the Customer and are as described on the invoices, quotation, order form or any other forms as provided by the Seller to the Customer and includes any advice or recommendations (and where the context so permits any incidental supply of goods). Such Services will include remedial or preventative maintenance of Equipment as described in Clause 5 with the exception of the exclusions detailed in Clause 6. 6.
 - 1.6 "Initial Period" shall mean the initial term of the agreement comprising these terms and conditions which is thirty six (36) months from the commencement date of the Services. 6.1
 - 1.7 "Price" shall mean the cost of the Services as agreed between the Seller and the Customer subject to clause 4 of this contract. 7.
 2. **Application of these terms and conditions to consumers**
 - 2.1 Where the Customer buys Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights. 7.1
 3. **Acceptance**
 - 3.1 Any instructions received by the Seller from the Customer for the supply of Services and/or the Customer's acceptance of Services supplied by the Seller shall constitute acceptance of the terms and conditions contained herein. 8.
 - 3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for the Price. 8.1
 - 3.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be amended with the written consent of the Seller.
 - 3.4 The Customer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by the Seller as a result of the Customer's failure to comply with this clause. 9.
 4. **Price And Payment**
 - 4.1 At the Seller's sole discretion the Price shall be either:
 - (a) as indicated on the Equipment Maintenance Order Form provided by the Seller to the Buyer; or
 - (b) the Seller's quoted Price (subject to clause 4.2) which shall be binding upon the Seller provided that the Buyer shall accept the Seller's quotation in writing within thirty (30) days.
 - 4.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation. Reasons for variations in the Price include:
 - (a) remedial and preventative maintenance and repair services to Equipment taking place outside usual working hours of 09:00 to 17:00, Monday to Friday; and
 - (b) remedial and preventative maintenance and repair services to Equipment taking place on Bank Holidays and at weekends; and
 - (c) reasonable annual price rises for the Services at up to 10 percent per annum subject to a one month notice period provided by the Seller; and
 - (d) Customers requiring additional equipment to be maintained and repaired; and
 - (e) following inspection of equipment that has not been installed by the Seller; and
 - (f) abortive time fees where the Seller can demonstrate that the Customer has engaged the Seller wrongly in fault determination.
 - 4.3 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due fourteen (14) days following the date of the invoice.
 - 4.4 Payment will be made by cheque, or by Bankers Draft, or by direct credit, or by direct debit, or by any other method as agreed to between the Customer and the Seller.
 - 4.5 VAT and other taxes that may be applicable shall be added to the Price except when they are expressly included in the Price.
 5. **Delivery Of Support Services**
 - 5.1 Delivery of the Services shall commence when the Seller first makes the Services available whether or not the Services are actually used.
 - 5.2 The Seller will carry out any preventative maintenance that may be required to keep the Equipment in working order. 11.6
 - 5.3 In the event of a fault in the Equipment, the Customer shall report such fault on the telephone number provided by the Seller. Upon receipt of such a fault report, the Seller will use its best endeavours to correct the fault as soon as practically possible. 5.4
 - 5.4 Any part of the Equipment which becomes unserviceable in normal use will, at the Seller's sole discretion, be either:
 - (a) repaired; or
 - (b) replaced by appropriate part(s) on an exchange basis whereupon the replaced part will become the property of the Seller and the replacing part becomes part of the Equipment.
 - 5.5 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
 - 5.6 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Services (or any of them) promptly or at all.
6. **Service Exclusions**

The following support services will not be provided:

 - (a) correction of any faults arising from operator error; and
 - (b) where the Customer has changed the Equipment; and
 - (c) repair, renewal or replacement of consumable items such as standard telephone handsets, answer machines, print cartridges; and
 - (d) repair or replacement of underground or under-floor cabling; and
 - (e) repair of faults due to services provided by third parties.
 7. **Risk**

The insurable risk of the Customer's Equipment shall remain with the Customer. The Seller shall not be held responsible for providing Services where the Customer's equipment has been damaged by fire, theft, flood, vandalism or by accident.
 8. **Defects**

The Customer shall inspect any remedial and preventative repair once provided by the Seller, and shall within two (2) days notify the Seller of any alleged defect, error, omission or failure to comply with the description or quote. The Customer shall afford the Seller an opportunity to inspect the Services within a reasonable time following delivery if the Customer believes the Services provided are defective in any way. If the Customer shall fail to comply with these provisions, the Services shall be presumed to be free from any defect or damage. For defective Services, which the Seller has agreed in writing that the Customer is entitled to reject, the Seller's liability is limited to replacing the Services.
 9. **Sale of Services Act 1979 and Supply of Services and Services Act 1982**

This agreement is subject to the provisions of the Sale of Services Act 1979 and the Supply of Services and Services Act 1982 (or any replacement or re-enactment thereof) in all cases except where the Customer is contracting within the terms of a trade/business (which cases are specifically excluded). Notwithstanding clause 9.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions the Sale of Services Act 1979 and the Supply of Services and Services Act 1982 or any laws or legislation governing the rights of consumers, except to the extent permitted by those Acts, laws or legislation.
 10. **Intellectual Property**

Where the Seller has designed, drawn or written plans or diagrams for the Customer, then the copyright in those designs and drawings shall remain vested in the Seller, and shall only be used by the Customer at the Seller's discretion.

The Customer warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Customer's order.
 11. **Default & Consequences of Default**

Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.

If any account remains overdue after thirty (30) days then an amount of £20.00 shall be levied as an administration fee and shall be levied for each month that the account remains overdue, which sums shall become immediately due and payable.

The Seller may charge interest on overdue invoices in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.

Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Services to the Customer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller exercised its rights under this clause.

Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:

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- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 12. Security And Charge**
- 12.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:
- (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- (b) should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) The Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 12.1.
- 13. Cancellation**
- 13.1 The Seller may cancel these terms and conditions or cancel delivery of Services at any time before the Services are delivered by giving written notice. On giving such notice the Seller shall repay to the Customer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.2 During the Initial Period of sixty (36) months, either the Seller or the Customer may cancel these terms and conditions by giving three (3) months' written notice to the other.
- 13.3 In the following circumstances, cancellation by either party can be immediate if:
- (a) the Seller is precluded from providing the Service by law or by any competent regulatory authority; and
- (b) either party becomes insolvent or bankrupt; and
- (c) The Customer is in default of payment terms or in breach of any other part of these terms and conditions.
- 13.4 In the event that the Customer cancels delivery of Services the Customer shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.
- 14. Limitation of Liability**
- 14.1 The Seller shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit or goodwill) suffered by the Customer or any third party arising out of a breach by the Seller of these terms and conditions.
- 14.2 In the event of any breach of this contract by the Seller the remedies of the Customer shall be limited to damages and the Seller's liability (if any) whether in contract, tort or otherwise in respect of any defect in the Services, or for any breach of these terms and conditions, or of any duty owed to the Customer in connection with them shall be limited to the amount of the Price.
- 14.3 For the avoidance of doubt, nothing in these terms and conditions shall exclude or restrict the Seller's liability to any person for death or personal injury to that person resulting from the Seller's negligence.
- 15. Unpaid Seller's Rights**
- 15.1 Where the Customer has left any item with the Seller for repair, modification, exchange or for the Seller to perform any other Service in relation to the item and the Seller has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Seller shall have:
- (a) a lien on the item;
- (b) the right to retain the item for the Price while the Seller is in possession of the item;
- (c) a right to sell the item.
- 15.2 The lien of the Seller shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.
- 16. Customer's Disclaimer**
- 16.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by the Seller and the Customer acknowledges that the Services are bought relying solely upon the Customer's skill and judgment.
- 17. General**
- 17.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of England and Wales and are subject to the jurisdiction of the courts of Dorking.
- 17.3 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Seller.
- 17.4 The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 17.5 The Seller reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Customer of such change. Except where the Seller supplies further Services to the Customer and the Customer accepts such Services, the Customer shall be under no obligation to accept such changes. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 18. Confidentiality and Data Protection**
- 18.1 The Customer agrees to keep all Confidential Information confidential, to disclose it only to its employees that need to know it and use it exclusively for the purposes contemplated by the Agreement. This clause shall not apply to information that the Customer can prove: is in the public domain otherwise than by the Customer's breach; it already had in its possession prior to obtaining the information directly or indirectly from the Company; or a third party subsequently disclosed to the Customer free restrictions on disclosure and use. This Clause shall survive for three (3) years from when the Customer acquired that Confidential Information from the Company.
- 18.2 The Company and the Customer shall each comply with their respective obligations under the DPA and maintain all relevant registrations and notifications.
- 18.3 We may collect and process the following data about the customer: information which We collect or which the Customer submits to the Company during any sales or registration process; information the Customer provides when filling in forms or by corresponding with the Company by phone, e-mail or otherwise. This includes information the Customer provides when it requests the Services. The information the Customer gives to We may include names, addresses and phone numbers of users of the Services and of the Customer and financial and credit card information.
- 18.4 The Customer agrees that We may contact BT or previous communications service providers of the Customer to obtain information required to perform the Services.
- 18.5 The Customer agrees that We may use information held about the Customer and users of the Services in the following ways: to open and manage an account for the Services, to deliver products and services ordered by the Customer, for security and emergency service support, for credit checking and fraud prevention, and for product analysis; to carry out the Company's obligations arising from any contracts entered into between the Customer and the Company and to provide the Customer with the information, products and services that it requests from the Company; to notify the Customer about changes to services.
- 18.6 The customer agrees that We may share information and data provided by the Customer including Personal Data of users of the Services to: the Company's Network Operator to enable it to process the Customer's information and Personal Data, which We collect or which the Customer submits to the Company during any sales or registration process; any member of the Company's group, which means the Company's subsidiaries, ultimate holding company and its subsidiaries, as defined in section 1159 of the UK Companies Act 2006.
- 18.7 The Customer agrees that We may disclose information and data provided by the Customer including any users Personal Data to third parties: in the event that the Company sells or buys any business or assets, in which case We may disclose such information and Personal Data to the prospective seller or buyer of such business or assets: and if the Company or substantially all its assets are acquired by a third party, in which case information and Personal Data held by the Company about its customers will be one of the transferred assets; and if the Company is under a duty to disclose or share the Customer's information and Personal Data in order to comply with any legal obligation, or in order to enforce or apply these Terms and other agreements; or to protect the rights, property, or safety of the Company, its customers, or others. This includes exchanging information with other companies and organisations for the purposes of fraud prevention and credit risk reduction.
- 18.8 The Customer shall ensure that the relevant individuals and users of the Services have been informed of, and have given their consent to, such use, processing, and transfer of their Personal Data, as required by the DPA and as set out in this clause 18.