

TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "Telco Solutions" shall mean Telco Solutions Limited, or any agents or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from Telco Solutions.
- 1.3 "Products" shall mean:
 - 1.3.1 all Products of the general description specified on the front of this agreement and supplied by Telco Solutions to the Customer; and
 - 1.3.2 all Products supplied by Telco Solutions to the Customer; and
 - 1.3.3 all inventory of the Customer that is supplied by Telco Solutions; and
 - 1.3.4 all Products supplied by Telco Solutions and further identified in any invoice issued by Telco Solutions to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
 - 1.3.5 all Products that are marked as having been supplied by Telco Solutions or that are stored by the Customer in a manner that enables them to be identified as having been supplied by Telco Solutions; and
 - 1.3.6 all of the Customer's present and after-acquired Products that Telco Solutions has performed work on or to or in which goods or materials supplied or financed by Telco Solutions have been attached or incorporated.
 - 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Products and Services" shall also mean all products, goods, services and advice provided by Telco Solutions to the customer and shall include without limitation the design, manufacture, supply and installation of telecommunication systems, telephone and computer cabling, electrical cabling and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Products and Services by Telco Solutions to the Customer.
- 1.5 "Price" shall mean the cost of the Products and Services as agreed between Telco Solutions and the Customer and includes all disbursements e.g. charges Telco Solutions pay to others on the Customer's behalf subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by Telco Solutions from the Customer for the supply of Products and Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises Telco Solutions to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Products and Services provided by Telco Solutions to any other party.
- 3.2 The Customer authorises Telco Solutions to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Customer is a natural person, the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the Products and Services shall be deemed to be sold at the current amount as such Products and Services are sold by Telco Solutions at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Products and Services that is beyond the control of Telco Solutions between the date of the contract and delivery of the Products and Services.

5. PAYMENT

- 5.1 Payment for Products and Services shall be made in full in accordance with the Quotation Acceptance form which these terms and conditions for part of. Payment shall be made on or before the due date shown on the invoice ("the due date").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by Telco Solutions in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.5 A deposit may be required.

6. QUOTATION

- 6.1 Where a quotation is given by Telco Solutions for Products and Services:
 - 6.1.1 Unless otherwise agreed the quotation shall be valid for twenty eight (28) days from the date of issue; and
 - 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
 - 6.1.3 Telco Solutions reserve the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Products and Services are required in addition to the quotation the Customer agrees to pay for the additional cost of such Products and Services.
- 6.3 Installation figures may vary dependant on site conditions. A site audit and greater detail is required to confirm quotation. Third party software integration is not included within this quotation.
- 6.4 Where applicable, prices quoted other than where specified exclude any Telecom charges for example, line rental and connection fees, demarcation frames etc. Telco Solutions is reliant on network providers to provide services including cabling to the exchange. We will use our best endeavours to ensure the timely provision of service but cannot be held responsible if there are service provisioning delays.

- 6.5 Prices quoted exclude any network troubleshooting or remedial work required to make any Products installed operative. Where, in installing the Products, it becomes apparent to Telco Solutions that there is a network fault Telco Solutions will advise the Customer of that fact and should the Customer request that Telco Solutions take steps to identify and if possible remedy that fault ("Additional Services") the Customer acknowledges that Telco Solutions shall be entitled to invoice the Customer at Telco Solutions' standard rates for the Additional Services. The amount payable by the Customer for the Additional Services is, for the avoidance of doubt, in addition to any quoted prices for the installation of any Products. [If, in performing the Additional Services it becomes apparent that the operative failure of any Products is caused by either defective of Products or an error in their installation, then Telco Solutions will not be entitled to invoice the Customer for the Additional Services]. For the purposes of this clause the term "network" means any network not under the direct control of the Customer or Telco Solutions that is necessary for the Products to be operative.

7. RISK

- 7.1 The Products and Services remain at Telco Solutions's risk until delivery to the Customer.
- 7.2 Delivery of Products and Services shall be deemed complete when Telco Solutions gives possession of the Products and Services directly to the Customer or possession of the Products and Services is given to a carrier, courier, or other bailee for purposes of transmission to the Customer.
- 7.3 The time agreed for delivery shall not be an essential term of this contract unless the Customer gives written notice to Telco Solutions making time of the essence.

8. AGENCY

- 8.1 The Customer authorises Telco Solutions to contract either as principal or agent for the provision of Products and Services that are the matter of this contract.
- 8.2 Where Telco Solutions enters into a contract of the type referred to in clause 8.1 it shall be read with and form part of this agreement and the Customer agrees to pay any amounts due under that contract.

9. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 9.1 Title in any Products and Services supplied by Telco Solutions passes to the Customer only when the Customer has made payment in full for all Products and Services provided by Telco Solutions and of all other sums due to Telco Solutions by the Customer on any account whatsoever. Until all sums due to Telco Solutions by the Customer have been paid in full, Telco Solutions has a security interest in all Products and Services.
- 9.2 If the Products and Services are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Products and Services shall remain with Telco Solutions until the Customer has made payment for all Products and Services, and where those Products and Services are mixed with other property so as to be part of or a constituent of any new Products and Services, title to these new Products and Services shall be deemed to be assigned to Telco Solutions as security for the full satisfaction by the Customer of the full amount owing between Telco Solutions and Customer.
- 9.3 The Customer gives irrevocable authority to Telco Solutions to enter any premises occupied by the Customer or on which Products and Services are situated at any reasonable time after default by the Customer or before default if Telco Solutions believes a default is likely and to remove and repossess any Products and Services and any other property to which Products and Services are attached or in which Products and Services are incorporated. Telco Solutions shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Telco Solutions may either resell any repossessed Products and Services and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Products and Services and credit the Customer's account with the invoice value thereof less such sum as Telco Solutions reasonable determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 9.4 Where Products and Services are retained by Telco Solutions pursuant to clause 9.3 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.
- 9.5 The following shall constitute defaults by the Customer:
- 9.5.1 Non payment of any sum by the due date.
- 9.5.2 The Customer intimates that it will not pay any sum by the due date.
- 9.5.3 Any Products and Services are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Products and Services.
- 9.5.4 Any Products and Services in the possession of the Customer are materially damaged while any sum due from the Customer to Telco Solutions remains unpaid.
- 9.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distains against any of the customer's assets.
- 9.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
- 9.5.7 Any material adverse change in the financial position of the Customer.
- 9.6 If the Credit Repossession Act applies to any transaction between the Customer and Telco Solutions, the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.

10. SECURITY INTEREST FOR SERVICE PROVIDERS

- 10.1 The Customer gives Telco Solutions a security interest in all of the Customer's present and after-acquired Products and Services that Telco Solutions has performed services on or to or in which goods or materials supplied or financed by Telco Solutions have been attached or incorporated.

11. PAYMENT ALLOCATION

- 11.1 Telco Solutions may in its discretion allocate any payment received from the Customer towards any invoice that Telco Solutions determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by Telco Solutions, payment shall be deemed to be allocated in such manner as preserves the maximum value of Telco Solutions's purchase money security interest in products.

12. DISPUTES

- 12.1 No claim relating to Products and Services will be considered unless made within seven (7) days of installation.

13. LIABILITY

- 13.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Telco Solutions which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Telco Solutions, Telco Solutions's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 13.2 Except as otherwise provided by clause 13.1 Telco Solutions shall not be liable for:
- 13.2.1 Any loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Products and Services provided by Telco Solutions to the Customer; and
- 13.2.2 The Customer shall indemnify Telco Solutions against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Telco Solutions or otherwise, brought by any person in connection with any matter, act, omission, or error by Telco Solutions its agents or employees in connection with the Products and Services.

14. WARRANTY

- 14.1 Manufacturer's warranty applies where applicable.
- 14.2 Any written warranty that Telco Solutions provides to the Customer will also form part of these terms and conditions of trade.

15. WARRANTY BY CUSTOMER

- 15.1 The Customer warrants that:
- 15.1.1 It has and shall continue to provide Telco Solutions with all information and assistance relevant to the carrying out of work that is the matter of this contract; and
- 15.1.2 It has obtained all necessary resource consents from the relevant Local Authority and has informed Telco Solutions of all matters relating to such consents; and
- 15.1.3 Prior to commencement of any work it shall mark all boundaries of the land where work is to proceed and mark all areas of such land where work is required and shall inform Telco Solutions of all such markings and point out to the driver of any machine or vehicle about to execute or executing the work where work is to be executed and the extent of the work to be carried out, and if any spoil is to be removed, the place where it is to be deposited; and
- 15.1.4 It has located, marked and advised Telco Solutions of all gas pipes, water pipes, sewage lines, drainage lines, telephone cabling, and other utilities that are on, or near, or adjacent to the land upon which any work is to proceed; and
- 15.1.5 It has advised Telco Solutions of any possibility of or knowledge of any subsidence, slip, erosion, flooding, or any other thing which might constitute a hazard on the land where work is to proceed or on any adjacent land.

16. CONSUMER GUARANTEES ACT

- 16.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquired Products and Services from Telco Solutions for the purposes of a business in terms of section 2 and 43 of that Act.

17. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 17.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for Telco Solutions agreeing to supply Products and Services and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to Telco Solutions the payment of any and all monies now or hereafter owed by the Customer to Telco Solutions and indemnify Telco Solutions against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

18. MISCELLANEOUS

- 18.1 Telco Solutions shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 18.2 Failure by Telco Solutions to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Telco Solutions has under this contract.
- 18.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.