

# AdaptiveComms Standard Terms & Conditions

For Supply of Goods

## 1. DEFINITIONS

In this document the following words shall have the following meanings:

- 1.1 “Buyer” means the organisation or person who buys Goods from the Seller;
- 1.2 “Goods” means the articles to be supplied to the Buyer or Seller; such as but not limited to Laptop and Personal computers, Telephone headsets, software licences.
- 1.3 “Services” means the services charged monthly or annually to be supplied to the Buyer; such as but not limited to software, hardware and user support for phone systems and IT equipment and software.
- 1.4 “Intellectual Property Rights” means all patents, registered and unregistered designs, copyright, trade marks, know-how and all other forms of intellectual property wherever in the world enforceable:
- 1.5 “List Price” means the list of prices of the Goods maintained by the Seller as amended from time to time;
- 1.6 “Seller” means Adaptive Communication Solutions Ltd of 11b Hoghton Street, Southport, PR9 0NS.

## 2 GENERAL

- 2.1 These Terms and Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions referred to, offered or relied on by the Buyer whether in negotiation or at any stage in the dealings between the parties, including any standard or printed terms tendered by the Buyer.
- 2.2 Any variation to these Terms and Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.
- 2.3 Any typographical, clerical or other error or omission in any quotation, price list, acknowledgement of order, invoice or other document issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- 2.4 These terms and conditions will be considered secondary for Services which will be governed by the terms in the “IT Support Service Agreement Terms” which can be found on the AdaptiveComms website [www.adaptivecomms.co.uk](http://www.adaptivecomms.co.uk)

## 3 PRICE AND PAYMENT

- 3.1 The price shall be that in the Seller’s current List Price, or such other price as the parties may agree in writing. The price is exclusive of VAT or any other applicable costs. Carriage shall be paid for by the Buyer.
- 3.2 Payment of the price and VAT and any other applicable costs shall be due before any Purchase Orders are accepted.
- 3.3 Where the Seller provides a credit account facility to the Buyer, the price and VAT and any other applicable costs shall be due within 14 days of the date of receipt of the invoice supplied by the Seller.
- 3.4 The Seller shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 8% per annum above the base rate of Barclays Bank.
- 3.5 If payment of the price or any part thereof is not made by the due date, the Seller shall be entitled to:
  - 3.5.1 require payment in advance of delivery in relation to any Goods not previously delivered;
  - 3.5.2 refuse to make delivery of any undelivered Goods whether ordered under the contract or not and without incurring any liability whatever to the Buyer for non-delivery or any delay in delivery;
  - 3.5.3 terminate the contract.
- 3.6 You shall indemnify 21st Century Network Solutions Ltd and Adaptive Communication Solutions Limited against all costs, damages, expenses and losses and reasonable professional costs and expenses suffered or incurred by 21st Century Network Solutions Ltd and Adaptive Communication Solutions Limited arising out of or in connection with breach by you or other act or omission by you under or in relation to this agreement.

## 4 DESCRIPTION

Any description given or applied to the Goods is given by way of identification only and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Buyer hereby affirms that it does not in any way rely on any description when entering in to the contract.

## 5 NON-SOLICITATION

During the term of this Agreement and for 36 months after any termination of this Agreement, the customer will not, without the prior written consent of a Director of the Seller, either directly or indirectly, on the customer’s own behalf or in the service or on behalf of

# AdaptiveComms Standard Terms & Conditions

For Supply of Goods

others, solicit or attempt to solicit, divert or hire away any person employed by the Seller.

## 6 DELIVERY

- 6.1 Unless otherwise agreed in writing, delivery of the Goods shall take place at the address specified by the Buyer on the date specified by the Seller. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 6.2 The date of delivery specified by the Seller is an estimate only. Time for delivery shall not be of the essence of the contract and no liability will attach to late or postponed deliveries due to conditions beyond the reasonable control of the Seller.
- 6.3 Collection by the Buyer or delivery by the Seller or the carrier to the Buyer will be deemed to be receipt of the goods by the Buyer for the purpose of this agreement.
- 6.4 Unless otherwise agreed in writing the goods will be supplied “as-is” and no installation or fitting will be carried out. If the customer requires fitting or installation the Seller will make one of their engineers available as soon as they are able in normal working hours and will charge the prevailing rate for labour, current charges are available on our website or on request.

## 7 CANCELLATION AND POSTPONEMENT OF ORDERS

- 7.1 Deliveries in respect of orders for goods may only be postponed with the written agreement of the Seller. If the Buyer cancels an order, The Seller will endeavour to find an alternative Buyer, but will be entitled to charge the Buyer for any losses suffered as a result of the cancellation. There shall be no requirement to prove such losses provided they do not exceed 50% of the value of any orders cancelled
- 7.2 The Seller shall be entitled, on the termination of this contract and without prejudice to any other claims against the Buyer:
  - (i) To recover from the Buyer the cost of any goods acquired by the Seller for the Buyer
  - (ii) To charge the Buyer in addition to 7.2(i) by way of cancellation a sum not less than 35% of the invoice value of the goods ordered by the Buyer but not delivered by the Seller.
- 7.3 Orders for goods manufactured or purchased in accordance with the Buyer’s specifications may not be cancelled without the

written authority of the Seller. The Buyer undertakes to indemnify the Seller for all costs and expenses resulting from a breach of this condition by the Buyer

## 8 RISK

Risk in the Goods shall pass to the Buyer at the moment the Goods are dispatched from the Seller’s premises. Where the Buyer chooses to collect the Goods itself, risk will pass when the Goods are entrusted to it or set aside for its collection, whichever happens first.

## 9. TITLE

Title in the Goods shall not pass to the Buyer until the Seller has been paid in full for the Goods.

## 10. WARRANTY

- 10.1 Subject to the terms of this clause Seller warrants to Buyer that:
  - 10.1.1 Hardware Products are free of defects in materials and workmanship that materially affect their performance for a period of one (1) year from the date Seller ships the Products to the Buyer (“Delivery Date”).
  - 10.1.2 Software Products will perform substantially in accordance with the accompanying written materials, for a period of ninety (90) days from the Delivery Date.
- 10.2 Seller agrees to repair or replace (at Sellers option) all Products which fail to conform to the relevant warranty set out in clause 10.1 provided that:
  - 10.2.1 notification of the defect is received by Seller within the warranty period specified above;
  - 10.2.2 allegedly defective Products are returned to Seller with Seller’s prior authorisation within ten (10) days of the defect becoming apparent; and
  - 10.2.3 the Products have not been altered, modified or subject to misuse, incorrect installation, maintenance, neglect, accident or damage by excessive current or used with incompatible parts.
  - 10.2.4 Replacement Products shall have the benefit of the applicable warranty for the remainder of the applicable warranty period.
- 10.3 If the Seller complies with clause 10.2 it will have no further liability for breach of the relevant warranty set out in clause 10.1.
- 10.4 Allegedly defective Products returned to Seller in accordance with 10.2.2 will if found by Seller on examination not to be defective be

# AdaptiveComms Standard Terms & Conditions

For Supply of Goods

returned to Buyer and a charge made for examination and testing.

10.5 The warranty is not transferable and shall only apply to the original Buyer and shall not extend to any Subsequent Buyer or User.

10.6 Where the Goods have been manufactured and supplied to the Seller by a third party, any warranty granted to the Seller in respect of the Goods shall be passed on to the Buyer.

10.7 The Seller shall be entitled in its absolute discretion to refund the price of the defective Goods in the event that such price has already been paid.

10.8 The remedies contained in this Clause are without prejudice to the other Terms and Conditions herein, including, but without limitation, Clauses 11 and 12 below.

10.9 The warranty shall not apply to any software if:

10.9.1 the software is not used in accordance with these Conditions or the instructions of Seller or the manufacturer;

10.9.2 the software is altered, modified or converted by Buyer or a third party;

10.9.3 a program error in the Product results from a malfunction of a third party's or Buyer's equipment or software not supplied by Seller.

## 11 LIABILITY

11.1 No liability of any nature shall be incurred or accepted by the Seller in respect of any representation made by the Seller, or on its behalf, to the Buyer, or to any party acting on its behalf, prior to the making of this contract where such representations were made or given in relation to:

11.1.1 the correspondence of the Goods with any description;

11.1.2 the quality of the Goods; or

11.1.3 the fitness of the Goods for any purpose whatsoever.

11.2 No liability of any nature shall be accepted by the Seller to the Buyer in respect of any express term of this contract where such term relates in any way to:

11.2.1 the correspondence of the Goods with any description

11.2.2 the quality of the Goods; or

11.2.3 the fitness of the Goods for any purpose whatsoever

11.3 All implied terms, conditions or warranties as to the correspondence of the Goods to any description or the satisfactory quality of the Goods or the fitness of the Goods for any purpose whatsoever (whether made known to

the Seller or not) are hereby excluded from the contract.

11.4 The Seller shall not be liable to the Buyer for any loss of profit, anticipated profits, revenues, anticipated savings, goodwill, or business opportunity, or for any indirect or consequential loss or damage howsoever incurred.

## 12 LIMITATION OF LIABILITY

12.1 Where any court or arbitrator determines that any part of Clause 11 above is, for whatever reason, unenforceable, the Seller shall be liable for all loss or damage suffered by the Buyer but in an amount not exceeding the items Sale Price.

12.2 The Buyer acknowledges and agrees that the exclusions from and limitations of liability provided for in this document are reasonable in the circumstances and that if they had not been included the Sale Price would have been materially increased.

12.3 Nothing contained in these Terms and Conditions shall be construed so as to limit or exclude the liability of the Seller for death or personal injury as a result of the Seller's negligence or that of its employees or agents.

12.4 Without affecting our responsibilities to you under this acknowledgement and to the fullest extent permitted by law, you agree that you are solely responsible for

(i) Any product or process using or incorporating the goods;

(ii) Testing the goods and determining their suitability for your application, product or process

## 13 INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Seller, and the Buyer shall do all that is reasonable necessary to ensure that such rights vest in the Seller by the execution of appropriate instruments or the making of agreements with third parties.

## 14 FORCE MAJEURE

The Seller shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability

# AdaptiveComms Standard Terms & Conditions

For Supply of Goods

of raw materials from natural source of supply and the Seller shall be entitled to a reasonable extension of its obligations. If the delay persists for such time as the Seller considers unreasonable, it may, without liability on its part, terminate the contract.

## 15 RELATIONSHIP OF PARTIES

Nothing contained in these Terms and Conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms and Conditions shall be deemed to construe either of the parties as the agent of the other.

## 16 ASSIGNMENT AND SUB-CONTRACTING

The contract between the Buyer and Seller for the sale of Goods shall not be assigned or transferred, nor the performance of any obligation sub-contracted, in either case by the Buyer, without the prior written consent of the Seller.

## 17 WAIVER

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

## 18 SEVERABILITY

If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

## 19 GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English Courts.