

The following **TERMS AND CONDITIONS** shall apply to the Quotation/Order form attached and to any contract pursuant thereto ("the Contract"). If Remote Support Services is included in the Order then the attached Remote Support Services (Schedule 1) is incorporated into these Terms and Conditions.

BETWEEN:-

- (1) **CTI COMMUNICATIONS LIMITED** whose registered office is at The Old Farmhouse, Stanway Grounds, Cheltenham, Gloucestershire, GL54 5DR ("CTI"); and
- (2) The person firm or organisation placing an order for the goods and/or services ("the Customer")

NOW IT IS HEREBY AGREED as follows:-

1. **DEFINITIONS**

In these Terms and Conditions the following words shall have the following meanings:-

"Acceptance Tests"	shall mean tests to demonstrate that the System is capable of achieving the functions as specified by CTI;
"Contract Price"	shall mean the sum set out in the Order as the contract price and shall include maintenance charges and Software Support charges;
"Extra Rate"	shall mean the hourly rate charged by CTI;
"Installation"	shall mean the fixing in position of the various items of the System their interconnection with the Plant and their connection to the power supply in accordance with the Order;
"Network"	shall mean the data Network (if any) specified in the Order;
"PTT"	Shall mean such Public Telephone Telecommunications Supplier as may be specified in the Order or as otherwise agreed in writing by the parties;
"On-Site Loan Equipment"	shall mean the On-Site Loan Equipment (if any) specified in the Order
"Quotation/Order"	shall mean the order form attached;
"Order"	shall mean the Quotation/Order;
"Plant"	shall mean all equipment to be provided by the Customer at the Site and used in association with the System;
"Remote Support Services"	shall mean the telephonic hardware and software support (if any) to be supplied by CTI in accordance with the Order and Schedule 1 of this Contract;
"Site"	shall mean the place of installation of the System set out in the Order;
"Software"	shall mean programs and related materials included or incorporated in the System and any updates and enhancements thereof;
"Standard Works Tests"	shall mean the tests performed by CTI and/or its suppliers prior to dispatch on items of the System to standard test procedures;
"System"	shall mean all hardware and interconnecting cables and the Software to be provided by CTI in accordance with and as specified in the Order;

2. **EXTENT OF ORDER**

- 2.1. The Order includes only the System and Remote Support Services (if any) specified therein.
- 2.2. CTI reserves the right to make changes to the specification of the System at any time and to supply equipment which differs from that set out in the Order provided that such changes do not affect the Contract Price or the performance of the System.
- 2.3. Unless otherwise specified in the Order the Contract Price includes delivery to the Site.

3. **DELIVERY**

- 3.1. CTI shall use all reasonable endeavours to deliver the Remote Support Services (if any) as specified in the Order. If no delivery date is specified delivery shall take place within a reasonable time after formation of the Contract.
- 3.2. Notwithstanding Clause 3.1 above the date or dates of delivery contained in the Order shall not (unless the Company expressly agrees in writing) be of the essence of the Contract.

4. **SUPPLY OF INFORMATION/ASSISTANCE TO CTI**

- 4.1. The Customer will promptly provide CTI with all necessary information that CTI may reasonably require from time to time to permit CTI to proceed uninterrupted with the implementation of programs which may be needed to customise the System to meet the Customer's requirements prior to Installation.
- 4.2. The Customer shall provide information to allow the System to communicate with the Plant for the purpose of transferring information to the Network.
- 4.3. If Installation is delayed by reason of delay in provision by the Customer or PTT of the necessary information or changes in such information or assistance the Customer shall pay for any additional costs that CTI shall have reasonably and properly incurred at the Extra Rate.

5. **SITE FACILITIES**

- 5.1. To enable CTI's obligations under the Contract to be expeditiously and properly carried out the Customer will provide the following facilities free of charge and when required:-
 - 5.1.1. satisfactory environmental conditions for the System;
 - 5.1.2. suitable security and protection for the System from time of delivery;
 - 5.1.3. permanent and suitable electrical supplies for the System;
 - 5.1.4. suitable access to the Plant at reasonable times and for reasonable periods;
 - 5.1.5. competent operators and attendants for the Plant.
 - 5.1.6. all other necessary facilities including adequate assistance from the Customer's staff;
- 5.2. The Customer shall ensure that the Plant is correctly installed and is sufficient and suitable for its purpose and that any minor adjustments that CTI may require to be made to the Plant are carried out expeditiously;

6. **PERFORMANCE**

CTI shall not be responsible for any failure of the System if the System complies with the Customer's performance requirements or comprises equipment stipulated by the Customer save in so far as the Customer's requirements have been specifically approved in writing by CTI or where there has been negligence or default on the part of CTI.

7. **TESTS**

- 7.1. The System will be subjected to the Standard Works Tests.
- 7.2. Acceptance Tests shall be performed by the Customer in accordance with procedures specified by the CTI and commenced at the time when CTI has given notice that the System is ready for Acceptance Testing. The Customer will ensure that the Acceptance Tests are performed on the agreed date and shall arrange:-
 - 7.2.1. All Site Facilities as specified in Section 5 have been provided and the Customer has nominated a person who will be available when required to

- carry out such tests
- 7.2.2. the Customer or other contractors are responsible for such failure then CTi's charges at the Extra Rate incurred for the purpose of repeating the Acceptance Tests shall be paid by the Customer; or
- 7.2.3. CTi is responsible then CTi's expenses incurred for the purpose of repeating the Acceptance Tests will be for the account of CTi.
- 7.3. Minor defects not affecting functionality of the System in any way shall not preclude acceptance of the System by the Customer.
- 7.4. Where Acceptance Tests (and repeat Acceptance Tests) have not been completed within 10 days of the delivery of the System, due to circumstances entirely within the control of the Customer, then the entire Contract Price shall become immediately due and payable.
8. **SYSTEM DOCUMENTATION**
Manufacturer's documentation is available electronically at any time. Site specific documentation is only supplied when detailed in the Order.
9. **EXTRA WORK**
In the event of CTi being unable to complete Installation or Acceptance Tests or having to carry out extra work due to a lack of instructions or to delays mistakes or work for which CTi is not responsible or to failure of the Customer to comply with Clauses 4 or 5, a sum in respect of such extra work at the Extra Rate shall be payable by the Customer, provided that such extra work has been reasonably and properly incurred and charged.
10. **TIME FOR COMPLETION**
Any period quoted by CTi for completion of a satisfactory Acceptance Test (including supply of programs) are to date from CTi's Acceptance of the Order and receipt of all necessary information and documentation to enable CTi to put the work in hand. The time for such completion shall be extended by a reasonable period if delay in such completion is caused by reason of force majeure namely acts of God, outbreak of hostilities, riot, civil disturbance, acts of terrorism, the act of any government or authority (including refusal or revocation of any licence or consent), fire explosion, flood, or bad weather, power failure, failure of telecommunications lines, failure or breakdown of plant, machinery or vehicles, default of suppliers or sub-contractors, theft, malicious damage, strike, lock out or industrial action of any kind.
11. **PASSING OF RISK AND TITLE**
- 11.1. The risk in the System shall pass to the Customer upon delivery in accordance with this Contract.
- 11.2. Notwithstanding the earlier passing of risk in accordance with Clause 11.1 above, title in the goods shall remain with CTi until payment in full of the Contract Price (and any delivery charges) and any extra costs for extra work has been received by it in accordance with the terms of this Contract together with any other monies due from the Customer to CTi on any account have been paid.
- 11.3. Until title passes the Customer shall hold the System only as bailee for CTi
- 11.4. CTi shall be entitled at any time before title passes to inspect the System, to repossess and use, sell or otherwise deal with the System and so terminate without any liability any rights which the Customer may have in the System under this Contract and for that purpose may enter upon the Site by its servants or agents.
- 11.5. CTi shall be entitled to sue for the price of the System notwithstanding that title to it has not passed to the Customer, provided CTi has not recovered possession. CTi may sue for loss of profit if possession has been recovered.
- 11.6. Until the date CTi receives in full of all monies due to CTi as cleared funds the Customer shall not be entitled to sell transfer lease charge assign by way of security or otherwise deal in or encumber the System and the Customer shall stand possessed of the System as bailee only.
- 11.7. If either:-
- 11.7.1. the Customer fails to effect payment in full of all sums due hereunder by 14 days from Invoice Date; or
- 11.7.2. prior to 14 days from Invoice Date the Customer convenes a meeting of its creditors or a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) the Customers creditors or if the Customer is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee receiver administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the Customer or if a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the Customer or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction)
- then CTi its Servants Agents or sub-contractors shall (without prejudice to any other legal remedies it may have) at any time thereafter be entitled to enter upon the Site (without notice to the Customer) and remove the System;
- 11.8. With effect from the date of delivery up to and including the date CTi receives in full of all monies due to CTi as cleared funds the Customer shall insure the System for its full replacement value against all usual risks.
12. **SOFTWARE LICENCE**
- 12.1. All Software licenses as supplied by CTi are as defined by their respective Manufacturers
13. **COPYRIGHT AND CONFIDENTIALITY**
- 13.1. The Copyright in all specifications designs information drawings manuals and technical descriptions (whether of a commercial or technical nature) provided by CTi with or in connection with the Order vests in CTi and may not be copied, photocopied, reproduced in any form, sold, hired or loaned.
- 13.2. The Customer shall keep the same confidential and shall not without CTi's consent in writing disclose the same to any third party but the Customer shall use the same only for the purpose of assessing the Order, and operating the System. The Customer shall use its best endeavours to ensure that its employees are bound by the same obligations and that such obligations endure beyond termination of their employment with the Customer.
- 13.3. CTi undertakes to keep confidential and not to disclose without the Customer's prior consent in writing to any third party any trade or business secrets or confidential information supplied to CTi relating to the Customer's Plant or processes except as may be necessary for the proper performance of the Contract.
- 13.4. Sub-clauses 13.2 and 13.3 are each subject to the proviso that nothing therein contained shall apply to prevent either party as the case may be from disclosing information:-
- 13.4.1. in its possession (with full right to disclose) prior to receiving it from the other or
- 13.4.2. which is or later becomes public knowledge other than by a breach of this clause or
- 13.4.3. which it may independently receive from a third party (with full right to disclose); or
- 13.4.4. which may be required to be disclosed by law or by any court or regulatory agency or authority.
14. **INTELLECTUAL PROPERTY INDEMNITY**
- 14.1. CTi will indemnify and defend at its own expense the Customer from and against any and all claims for infringements of patents, trademarks, industrial designs, copyrights, (published at the time of the Order) or other proprietary rights affecting the System PROVIDED THAT:-
- 14.1.1. this indemnity shall not apply to any infringement which is due to CTi having followed a design or instruction furnished or given by the Customer or to use of the System in a manner or for a purpose in a foreign country not specified or disclosed to CTi or to any infringement which is due to the System being used in association or combination with the Plant or any other equipment not supplied by CTi.
- 14.1.2. The Customer shall not have done or permitted or suffered to be done anything which may have been or become an infringement of any rights in any patent trademark or other right as herein before provided; and

- 14.1.3. the Customer shall have exercised a reasonable standard of care in protecting the same, failing which the Customer shall indemnify CTi against all actions, proceedings, costs, claim and expenses incurred in respect thereof;
- 14.2. The Customer undertakes to notify CTi immediately in writing by recorded mail of any claim being made or action threatened or brought against the Customer and on the Customer permitting CTi at its own expense to conduct any litigation that may ensue and all negotiations for settlement of the claim.
- 14.3. The Customer warrants that any design or instructions furnished or given by the Customer shall not be such as will cause CTi to infringe any patents, trademarks, industrial designs, copyrights or other proprietary rights affecting the System.
15. **TERMS OF PAYMENT**
- 15.1. Unless otherwise agreed as specified in the Order, payments shall be made by the Customer as follows:-
- 15.1.1. 100% of the Contract Price within 14 days of System acceptance which shall be evidenced by the signature of the Customer's representative on a System acceptance form;
- 15.1.2. extra work or any other agreed charges shall be paid for within 14 days of submission of the invoice;
- 15.2. All prices quoted are exclusive of VAT which is chargeable at the standard rate applicable at the tax point;
- 15.3. If CTi is prevented due to causes within the Customer's control or that of other contractors of the Customer's from delivering all or any part of the System when ready or from proceeding with the Installation of such System as they have already delivered they shall be entitled to arrange storage either at their own works or elsewhere on the Customers behalf. All charges for packing and storage, for insurance, for demurrage, for additional carriage and for re-testing and necessary refurbishing shall be payable by the Customer
- 15.4. Payments under 15.1 shall not be withheld on account of minor defects or omissions in the System which do not materially affect its use.
- 15.5. Payments not made on the due date will incur interest at the rate of 8% per annum above the base rate of The Bank of England and statutory late payment compensation.
- 15.6. If the cost to CTi of performing its obligations under the Order shall be increased by reason of the making or amendment of the Contract of any law or of any order, regulation or bye-law having the force of law that shall affect the performance of the Contract the amount of such increase shall be added to the Contract Price.
- 15.7. If the cost to CTi of performing its obligations under the Order shall be increased by any rise in labour costs or in the costs of materials or transport above such rates and costs ruling at the date of the Contract the amount of such increase shall be added to the Contract Price provided that no account shall be taken of any amount by which any cost incurred by CTi has been increased by CTi's default or negligence. For the purpose of this clause "the cost of materials" shall be construed as including any duty or tax by whomsoever payable which is payable under or by virtue of any Act of Parliament on the import, purchase, sale, appropriation, processing of such materials.
- 15.8. In addition the payment provisions contained at clause 4 of Schedule 1 shall apply to the Remote Support Service Charges.
16. **DEFECTS**
- 16.1. While all due care and skill has been exercised in the design, development, manufacture and installation of the System CTi does not warrant that the System is free from errors or that the operation of the System will be uninterrupted or error free.
- 16.2. CTi will make good by repair or at CTi's option by the supply of a replacement defects which under proper use, care and maintenance appear in the System within a period of 3 calendar months after the System has passed the Acceptance Tests.
- 16.3. If during the period stated in sub-clause 16.2 an apparent defect in the System occurs and the Customer is unable to identify the cause of the apparent defect using proper skill and following CTi's fault finding procedures CTi will at the Customer's request locate and rectify the apparent defect for the Customer. Such work will be provided free of charge if a defect was due to CTi's faulty design materials or workmanship.
- 16.4. CTi's liability in respect of any fault or defect in the System or any part thereof arising from design materials or workmanship shall be limited in all cases to the reasonable costs of replacing or repairing such a defective System or any part thereof and shall not in any event exceed that part of the Contract Price set out against such System in the Order.
- 16.5. CTi shall not be obliged to correct errors pursuant to this Clause which result directly or indirectly from:-
- 16.5.1. the modification, alteration, repair or substitution by the Customer of any of the System or the transfer of the System to a different operational environment (whether by alterations of equipment or inter-acting software or otherwise);
- 16.5.2. incompatibility of the System with the Customer's data or conversion by the Customer of its pre-existing data in order for it to conform to the requirements of the System;
- 16.6. Save as provided in this Clause, CTi makes no warranty as to fitness for purpose, satisfactory quality, compliance with sample, description or otherwise and all warranties, conditions, representations and liabilities (whether express or implied) on the part of the Company in relation to the System are expressly excluded.
17. **LIMITATION**
- 17.1. Subject to the provisions of Clauses 14 and 16 above the following provisions set out CTi's entire liability (including any liability for acts and omissions of its employees agents and sub-contractors) to the Customer in respect of:-
- 17.1.1. any breach of its contractual obligations arising under this Contract; and
- 17.1.2. any representations, statements or tortious acts or omissions including negligence arising under or in connection with this Contract.
- 17.2. Any act or omission on the part of CTi or its employees, agents or sub-contractors falling within Clause 17.1 above shall for the purposes of this Clause be known as an "Event of Default"
- 17.3. CTi's liability to the Customer for:-
- 17.3.1. death or personal injury resulting from its own or that of its employees agents or sub-contractors negligence; and
- 17.3.2. all damage suffered by the Customer as a result of the implied statutory undertaking as to title quiet possession and freedom from encumbrances not be limited.
- 17.4. Subject to the provisions of Clause 17.5.1 CTi shall accept liability to the Customer in respect of damage to the tangible property of the Customer resulting from the negligence of the Company or its employees, agents and sub-contractors.
- 17.5. Subject to the provisions of Clause 17.3 and to the following provisions of this Clause 17 CTi's entire liability in respect of any Event of Default shall be limited to damages of an amount equal to:-
- 17.5.1. £2 million in the case of an Event of Default falling within Clause 17.4 above; and
- 17.5.2. the Contract Price in the case of any Event of Default relating to the System; and

- 17.5.3. the charges for the Remote Support Services in the case of an Event of Default relating to the Remote Support Services
- 17.6. Notwithstanding the foregoing provisions of this Clause CTi shall not be liable to the Customer in respect of any Event of Default for loss of profits, goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was originally foreseeable or CTi had been advised of the possibility of the Customer incurring the same.
- 17.7. If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this Contract.
18. **TERMINATION**
- 18.1. CTi may terminate this Contract forthwith if the Customer commits any material breach of any term of this Contract which (in the case of a breach capable of being remedied) shall not have been remedied within 7 days of a written request from CTi to the Customer to remedy the same.
- 18.2. In the event of the Customer becoming bankrupt or making a composition or arrangement with its creditors or having a winding-up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed or having a provisional liquidator receiver or manager of its business or undertaking duly appointed or having possession taken by or on behalf of the holders of any debenture secured by floating charge or any property comprised in or subject to the floating charge CTi may immediately terminate this Contract.
- 18.3. Upon termination, the Customer shall pay to CTi all costs and expenses, including legal and other fees incurred and all arrears of fees, charges or other payments arising in respect of the System, this Contract or otherwise.
- 18.4. Termination, howsoever or whenever occasioned shall be subject to any rights and remedies the Licensor may have under this Licence or in law.
- 18.5. If the Customer shall fail to make punctual payments or if either party shall be in breach of its obligations under Schedules 1 and 2 of this Agreement, the party hereto not in breach may forthwith by written notice delivered by recorded mail terminate the Remote Support Services without prejudice to any pre-existing rights.
- 18.6. The provisions of clauses 12 and 13 shall survive the termination of this Agreement.
19. **LEGAL CONSTRUCTION**
- 19.1. Unless otherwise agreed in writing the Order shall in all respects be construed and operate as an English contract and in conformity with English law and the parties hereby submit to the exclusive jurisdiction of the English Courts.
- 19.2. Clause headings are for information only and shall not affect the construction or interpretation hereof