

**STANDARD TERMS AND CONDITIONS OF PURCHASE**  
**Issue date: March 2007**

**1. INTERPRETATION**

1.1. In these Conditions, the following expressions shall have the following meanings:

**“Contract”**: any contract between the customer and the Supplier for the purchase and sale of Goods and/or Services, incorporating these conditions

**“Customer”**: Cambridge Broadband Networks Limited (company number 03879840) incorporated under the laws of England whose principal place of business is at Selwyn House, Cambridge Business Park, Cowley Road, Cambridge CB4 0WZ, United Kingdom

**“Customer’s Equipment”**: any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly.

**“Deliverables”**: all documents, products and materials or other deliverables as specified in the Contract which are provided by the Supplier to the Customer as part of the Services.

**“Goods”**: any goods agreed in the Contract to be bought by the Customer from the Supplier (including any part or parts of them).

**“Services”**: any services agreed in the Contract to be supplied to the Customer by the Supplier together with any other services which the Customer takes or agrees to take from the Supplier.

**“Supplier”**: the person, firm or company from whom the Goods and/or Services are purchased by the Customer.

**“Supplier’s Equipment”**: any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its sub-contractors and used directly or indirectly in the supply of the Services which are not the subject of a separate Contract between the parties under which title passes to the Customer.

**“Written”**: this includes email and fax.

1.2. Any reference in these Conditions to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3. A reference to one gender includes a reference to the other gender.

1.4. Condition headings do not affect the interpretation of these conditions.

1.5. Any schedules or annexes attached to these conditions shall form part of the Contract and shall have effect as if set out in full in the body of these Conditions.

**2. APPLICATION OF TERMS**

2.1. Subject to any variation under condition 2.4, these conditions are the only conditions upon which the Customer is prepared to deal with the Supplier and they shall govern the Contract to the exclusion of all other terms or conditions.

2.2. Each quotation by the Supplier for Goods and/or Services constitutes an offer by the Supplier to supply Goods and/or Services subject to these conditions. No offer placed by the Supplier shall be accepted by the Customer other than by the Customer issuing a written and executed purchase order or acceptance of the quotation for Services, thereby

establishing a contract for the supply and purchase of those Goods and/or Services on these Conditions.

- 2.3. No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.
- 2.4. These conditions apply to all the Customer's purchases and any variation to these conditions shall have no effect unless expressly agreed in writing and signed by both parties.

### **3. QUALITY**

- 3.1. The Supplier warrants to the Customer that
  - 3.1.1. the Supplier will perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards;
  - 3.1.2. the Goods shall be of satisfactory design, quality, material and workmanship, and shall be without fault and conform in all respects with the order and specification and/or patterns supplied or advised by the Customer to the Supplier;
  - 3.1.3. the Goods and/or Services will conform with all descriptions and specifications provided in the order or quotation for Goods and/or Services; and
  - 3.1.4. the Goods and/or Services will be delivered in accordance with all applicable legislation from time to time in force and the Supplier will inform the Customer as soon as it becomes aware of any changes in that legislation.
- 3.2. The Customer's rights under these conditions are in addition to the statutory conditions implied in favour of the Customer by the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982 and any other applicable legislation.
- 3.3. If any of the Goods and/or Services supplied fail to comply with the provisions set out in condition 3 the Customer shall be entitled to avail itself of one or more of the remedies listed in condition 11.

### **4. INDEMNITY**

The Supplier shall indemnify and hold the Customer harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, the Customer as a result of or in connection with:

- 4.1. defective workmanship, quality or materials;
- 4.2. any alleged or actual infringement of any intellectual property rights arising out of or caused by the use, manufacture or supply of the Goods and/or Services; and
- 4.3. any claim made against the Customer in respect of any liability, loss, damage, injury, cost or expense sustained by the Customer's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods and/or Services as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Supplier.

## 5. DELIVERY

- 5.1. The Goods shall be delivered, carriage paid (unless otherwise agreed), to the Customer's place of business or to such other place of delivery as is agreed by the Customer in writing prior to delivery of the Goods. The Supplier shall off-load the Goods at its own risk as directed by the Customer.
- 5.2. The Supplier shall provide the Services and deliver the Deliverables to the Customer in accordance with the Customer's order and allocate sufficient resources to the Services to enable it to comply with this obligation
- 5.3. The date for delivery shall be specified in the order or quotation, or if no such date is specified then delivery shall take place within 28 days of the order.
- 5.4. The Supplier shall invoice the Customer upon, but separately from, despatch of the Goods to the Customer. The Supplier shall ensure that each delivery is accompanied by a delivery note which shows, inter alia, the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 5.5. Unless otherwise stipulated by the Customer in the Order, deliveries shall only be accepted by the Customer in normal business hours.
- 5.6. If the Goods are not delivered on the due date then, without prejudice to any other rights which it may have, the Customer reserves the right to:
  - 5.6.1. cancel the Contract in whole or in part;
  - 5.6.2. refuse to accept any subsequent delivery of the Goods which the Seller attempts to make;
  - 5.6.3. recover from the Supplier any expenditure reasonably incurred by the Customer in obtaining substitute Goods and/or Services from another supplier; and
  - 5.6.4. claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to deliver the Goods on the due date.
- 5.7. The Supplier shall:
  - 5.7.1. observe, and ensure that the Supplier's personnel observe, all health and safety rules and regulations and any other security requirements that apply at the Customer's premises;
  - 5.7.2. notify the Customer as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services; and
  - 5.7.3. before the date on which the Services are to start, obtain and at all times maintain all necessary licences and consents and comply with all relevant legislation in relation to:
    - the Services;
    - the installation of the Supplier's Equipment;
    - the use of all Documents, information and materials provided by the Supplier in relation to the Services which existed prior to the commencement of the Contract including the pre-existing materials specified in the quotation; and
    - the use of the Customer's Equipment in relation to the Supplier's Equipment.
- 5.8. The Customer shall not be deemed to have accepted the Goods until it has had 7 days to inspect them following delivery. The Company shall also have the right to reject the Goods as though they had not been accepted for 14 days after any latent defect in the Goods has become apparent.

- 5.9. Time is of the essence as to the delivery of Goods and/or the performance of Services.
- 5.10. Where the Goods are to be delivered in instalments, if the Supplier delivers more than the agreed instalment, the Customer reserves the right to (at its option) either return excess Goods to the Supplier (at the Supplier's cost) or charge the Supplier for the costs of storing such Goods until the date on which such Goods should have been delivered.

## **6. RISK/PROPERTY**

- 6.1. The Goods shall remain at the risk of the Seller until delivery to the Customer (including off-loading and stacking) when ownership of the Goods shall pass to the Customer.
- 6.2. Ownership of Deliverables (including all intellectual property rights comprised in Deliverables) shall, unless otherwise agreed in writing by the Customer or as otherwise stated in these conditions, pass to the Customer at the time of delivery of such Deliverables to the Customer. The Supplier shall do all things and sign all documents reasonably necessary to give effect to the transfer of ownership set out in this condition.

## **7. PRICE**

- 7.1. The price of the Goods and/or Services shall be stated in the order or quotation and unless otherwise agreed in writing by the Customer shall be exclusive of value added tax but inclusive of all other charges.
- 7.2. No variation in the price nor extra charges shall be accepted by the Customer save in writing.

## **8. PAYMENT**

- 8.1. The Customer shall pay each invoice properly due, issued and submitted to it by the Supplier for Goods and/or Services, within 60 days of the end of the month in which the Customer received the invoice, but time for payment shall not be of the essence of the Contract.
- 8.2. Claims for payment in respect of materials purchased by or services provided to the Supplier, or for reimbursement of expenses, shall be payable by the Customer only if accompanied by relevant receipts. The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services in such form as the Customer shall approve, and the Supplier shall allow the Customer to inspect such records at all reasonable times on request.
- 8.3. Without prejudice to any other right or remedy, the Customer reserves the right to set off any amount owing at any time from the Supplier to the Customer against any amount payable by the Customer to the Supplier under the Contract.

## **9. CONFIDENTIALITY AND THE CUSTOMER'S PROPERTY**

- 9.1. The Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Customer or its agents and any other confidential information concerning the Customer's business or its products which the Supplier may obtain and the Supplier shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to the Customer and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Supplier.

- 9.2. Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied or provided by the Customer to the Supplier or not so supplied but used by the Supplier specifically in the manufacture of the Goods shall at all times be and remain the exclusive property of the Customer but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Customer and shall not be disposed of other than in accordance with the Customer's written instructions or authorisations, nor shall such items be used otherwise than as authorised by the Customer in writing.

## **10. TERMINATION**

- 10.1. The Customer shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier written notice whereupon all work on the Contract shall be discontinued and the Customer shall pay to the Supplier fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.
- 10.2. The Customer shall have the right at any time by giving notice in writing to the Seller to terminate the Contract forthwith if:
- 10.2.1. the Supplier commits a material breach of any of the terms and conditions of the Contract; or
  - 10.2.2. any distress, execution or other process is levied upon any of the assets of the Supplier; or
  - 10.2.3. the Supplier has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Supplier or notice of intention to appoint an administrator is given by the Supplier or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Supplier or for the granting of an administration order in respect of the Supplier, or any proceedings are commenced relating to the insolvency or possible insolvency of the Supplier; or
  - 10.2.4. the Supplier ceases or threatens to cease to carry on its business; or
  - 10.2.5. the financial position of the Supplier deteriorates to such an extent that in the opinion of the Customer the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy.
- 10.3. On termination of the Contract for any reason the Supplier shall immediately deliver to the Customer:
- 10.3.1. all materials and all copies of information and data provided by the Customer to the Supplier for the purposes of the Contract. The Supplier shall certify to the Customer that it has not retained any copies of such materials or other information or data, except for one copy which the Supplier may use for audit purposes only and subject to the confidentiality obligations in condition 9;
  - 10.3.2. all specifications, programs (including source codes) and other documentation comprised in the Deliverables and existing at the date of such termination, whether or not then complete. All Intellectual Property Rights in such materials shall

- 10.4. The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Customer accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

## **11. REMEDIES**

Without prejudice to any other right or remedy which the Customer may have, if any Goods and/or Services are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of the Contract the Customer shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods and/or Services have been accepted by the Customer:

- 11.1. to terminate this contract in whole or in part without liability to the Supplier; or
- 11.2. to reject the Goods and, at the Supplier's cost return them to the Supplier (in whole or in part), or refuse to accept the provision of any further Services from the Supplier and require the immediate repayment by the supplier of all sums previously paid by the Customer to the Supplier under the Contract; or
- 11.3. to purchase substitute Goods and/or Services elsewhere and to require the Supplier to compensate the Customer for the costs incurred in doing so; or
- 11.4. to require the Supplier, to carry out such additional work as is necessary to correct the Supplier's failure; or
- 11.5. to claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of the Contract.

## **12. ASSIGNMENT**

- 12.1. The Supplier shall not be entitled to assign the Contract or any part of it without the prior written consent of the Customer.
- 12.2. The Customer may assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Contract.

## **13. FORCE MAJEURE**

The Customer reserves the right to defer the date of delivery of Goods or performance of Services or payment for Goods and/or Services or to cancel this contract if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Customer including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

## **14. GENERAL**

- 14.1. Each right or remedy of the Customer under the Contract is without prejudice to any other right or remedy of the Customer whether under the Contract or not.

- 14.2. If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 14.3. Failure or delay by the Customer in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 14.4. Any waiver by the Customer of any breach of, or any default under, any provision of the Contract by the Supplier shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract and shall be in writing and signed by or on behalf of each of the parties.
- 14.5. Nothing in this Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way.
- 14.6. The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 14.7. The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

## **15. NOTICES**

- 15.1. All notices sent by the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:
  - 15.1.1. (in case of notices to the Customer) to its principal place of business as stated in these Conditions or such changed address as shall be notified to the Supplier by the Customer; or
  - 15.1.2. (in the case of the notices to the Supplier) to the registered office of the Supplier (if it is a company) or (in any other case) to any address of the Supplier set out in any document which forms part of the Contract or such other address as shall be notified to the Customer by the Supplier.
- 15.2. Notices shall be deemed to have been received:
  - 15.2.1. if sent by pre-paid first class domestic post, two (2) days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
  - 15.2.2. if sent by airmail, seven (7) days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
  - 15.2.3. if delivered by hand, on the day of delivery; or
  - 15.2.4. if sent by fax on a working day prior to 1600 hours, at the time of transmission and otherwise on the next working day, provided such transmission is evidenced by an automatically-generated transmission report
- 15.3. Notices addressed to the Customer shall be marked for the attention of the Chief Executive Officer, with a copy to the Legal Counsel.