

**Comtech IT Services Ltd**

**Standard terms and conditions for the provision of goods and ICT support services.**

**1. Definitions**

In these terms and conditions (unless the context requires or dictates otherwise) the following expressions shall have the following meanings:

Word	Meaning
Seller	COMTECH IT SERVICES LIMITED
Agreed Tasks	The scheduled programme of system support, administration and management tasks and preventative maintenance tasks that are to be undertaken on a regular basis as part of ICT Support Services.
Buyer	The person, firm, company or authority purchasing Goods or Services from the Seller.
Commissioning Services	The assembly and/or installation of the Goods at the agreed delivery point, if, and to extent that, these are to be undertaken by the Seller as set out in the Contract Order.
Contract	The contract for the sale and purchase of Goods and/or Services as evidenced by the Contract Order and these Conditions and the Special Conditions and in the case of ambiguity these Conditions shall prevail.
Contract Order	The Seller's written confirmation of: (i) the Buyer's order specifying the sale and purchase of Goods and/or Services or; (ii) acceptance of the Buyer's invitation to treat on the basis of the Quotation.
Goods	Computer hardware, software, networking, equipment, apparatus, accessories, spare parts, replacement and other goods as specified in the Contract Order.
ICT	Information and Communications Technology
ICT Support Services	The provision by the Seller of a technician at the Buyer's specified location during specified timeslots, dates and times to undertake (so far as are within the technician's capabilities) the Agreed Tasks and Other Services as shall from time to time be agreed in Writing between the Buyer and the Seller.
Other Services	Network, user and computer administration; computer and Audio/Visual system repair and maintenance; staff training on hardware, software and Audio/Visual equipment; support for staff on structured courses relating to ICT; all subject to these services being within the capabilities of the technician provided by Seller or by prior arrangement with Seller.
Project	One or more Services and/or Goods as specified in a Contract Order.
Quotation	The Seller's written quotation specifying the Goods and /or Services and price in respect thereof.
Services	The Commissioning Services and/or ICT Support Services and/or the Other Services and any design, advisory, support, training, installation, fitting, integration, testing, repair, examination or other services as specified in the Contract Order.
Special Conditions	Any variations to these Conditions and/or the Contract Order that have been agreed in Writing between Buyer and Seller.
Specification	The specification of Goods and/or Services as supplied by the Buyer to the Seller and set out in the Contract Order and/or the Quotation.
Working Day	Monday to Friday excluding English Public (Bank) Holidays.

Writing or written	includes email, facsimile transmission and comparable means of communication.
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## 2. Application of Conditions

Notwithstanding anything which may be contained in any purchase order or other document of the Buyer, the Goods and Services are supplied subject to these terms and conditions alone (**“these Conditions”**). Any variation of these Conditions or any Contract Order shall not be binding unless expressly agreed in Writing and signed by the Buyer and the Seller. Any agreed variations shall be regarded as Special Conditions.

## 3. Acceptance of Orders

- a) Unless otherwise stated, any Quotation shall only be valid for ten (10) Working Days from time of issue. A Quotation shall be deemed to be an invitation to treat only. No order shall be binding upon the Seller unless and until each Contract Order has been confirmed by the Seller. A Contract Order cannot be varied or determined otherwise than upon terms expressly agreed and evidenced in Writing by the Seller and the Buyer.
- b) A Contract Order will not be binding on either party in the absence of a Specification.
- c) Goods are supplied only in the multiples, and are subject to any minimum order quantity, as quoted or stated by the Seller. Services are subject to any minimum order period where stated by the Seller.

## 4. Prices

Goods and Services will be invoiced at the prices set out in the Quotation if the Contract Order is made within ten (10) Working Days from issue of the Quotation or within any other stated period of validity of the Quotation and otherwise at the Seller’s prevailing prices or rates at the time a Contract Order is made. Value Added Tax and any other taxes which may from time to time be applicable will be invoiced as appropriate at the prevailing rate.

## 5. Delivery

### *a) Liability*

The Seller shall not be liable for shortages, damage to or nondelivery of Goods or faults in Services unless the Buyer notifies the Seller in Writing:

- i) in the case of Goods, the later of next Working Day after delivery of the Goods or (if applicable) the next Working Day after completion of Commissioning Services; and
- ii) in the case of Services (other than Commissioning Services) and Projects, or any phase thereof, the next Working Day following completion of the Services or Project or the relevant phase thereof (as the case may be).

Absence of such notification will be deemed as acceptance of the Goods. *b)*

### ***Buyer’s failure to take Delivery (Goods)***

If for any reason the Buyer cannot accept delivery of the Goods at the time when the Goods are due and ready for delivery, the Seller may, at the Seller’s election, either:

- i) store the Goods pending their actual delivery and the Buyer shall be liable to the Seller for the costs (including insurance) of so doing but the Seller shall be under no obligation to insure the goods in storage and the risk of any loss or damage to the Goods howsoever arising shall be borne by the Buyer; or ii) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the Contract Order price or (as the case may be) charge the Buyer for any shortfall below the Contract Order price. *c) Date for Delivery*

Any dates specified for delivery of the Goods in the Contract Order are approximate only and Seller shall not be liable for any delay in delivery howsoever caused. Time for delivery shall not be of the essence of the

Contract, unless previously agreed by Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date on giving reasonable notice to the Buyer.

**d) Delay due to Buyer (Services)**

In the event that any Services (including Commissioning Services) cannot be provided by Seller due to any default by the Buyer, including but not limited to failing to take delivery of the Goods, or failing to provide the Seller access to the premises at which such Services are to be undertaken, or failing to provide the Seller a safe place of work to carry out the same, so that the Services cannot be undertaken due to such default, the Seller reserves the right to charge at its then current rates for any incremental time and expenses incurred and/or any unproductive time arising as a result of the Buyer's default. **e) Delivery of ICT Support Services**

- i) The ICT Support Services will be delivered at the agreed location on the agreed dates and times. The Seller will use its reasonable endeavours to provide the ICT Support Services using the named technician, as notified from time to time by the Seller to the Buyer. The ICT Support Services provide a fixed amount of time on each visit and a predetermined number of visits, as specified in the Contract Order. Subject to the Seller's agreement, the Buyer may set the priorities for the technician's tasks within the Buyer's timeslot.
- ii) The Seller therefore provides no warranty that the technician's time to be delivered under the ICT Support Services will enable the Agreed Tasks to be completed on a regular basis nor to ensure the error free operation of the Buyer's systems nor that all requested Other Services will be provided when requested. However, the Seller will use its reasonable endeavours to achieve the Agreed Tasks on a regular basis and to provide such Other Services as may be requested. The Seller will notify a representative of the Buyer in the event that the Agreed Tasks have not been completed on a regular basis, together with a proposal on how best to address the non-completion of the Agreed Tasks.

**6. Invoicing, Payment Terms and Renewals** Unless the Contract specifies to the contrary:

- a) All payments and charges relating to Goods, Services and Projects, except the ICT Support Services, will be 50% with the order, 25% at the time of delivery of Goods and remaining 25% of the total value on completion.
- b) ICT Support Services will be invoiced annually or monthly in advance and invoices will be issued on the date of the Contract Order or one month in advance of the commencement of the period to which the payment relates, whichever is the later.
- c) All invoices are to be paid in sterling within 7 (seven) Working Days from the date of the invoice.
- d) If the Buyer fails or delays to make payment on the due date for payment the Seller reserves the right to charge interest on the unpaid amount at 8% per annum above the Bank of England base lending rate for the period being in force calculated on a daily basis in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. Payment shall be deemed to have been received only when the full amount of the value of the invoice(s) has been credited to the Seller's bank account without recourse or the Seller has received the full amount in cash.
- e) ICT Support Services agreement shall be renewable at the end of the current term for a successive 12 months unless either party gives written notice of its intention not to renew three months before the expiration of the current term.

**7. Property, Title and Risk**

- a) No property or title to Goods or products, materials or goods relating to the Services, shall pass from the Seller to the Buyer unless or until the full amount of the value of the Goods (including, if applicable, the Commissioning Services) and/or the Services (as the case may be) have been paid as a cleared effect or in cash.
- b) Risk ("Risk") of damage to or loss of the Goods shall pass to the Buyer at the earlier of: i) time of delivery;  
ii) where the Buyer fails to take delivery or facilitate the Services (including the Commissioning Services) the date that the Seller has notified the Buyer in Writing that: (a) in respect of Goods, the Goods are

ready for delivery and/or the Seller is ready to undertake the Commissioning Services, whichever is the earlier and (b) in respect of Services, the Seller is ready to undertake the same.

- c) The Buyer shall indemnify the Seller against any loss or damage to the Goods, or products, materials or goods relating to the Services (as the case may be), prior to the passing of property therein whilst in the Buyer's custody, possession or control.

#### **8. Insurance**

The Seller shall insure the Goods or products, materials or goods relating to the Services and shall indemnify the Buyer for all damage or loss to the same until Risk in the Goods or products, materials or goods relating to the Services (as the case may be) has passed to the Buyer.

#### **9. Warranty**

Unless otherwise stated in the Contract Order, all new Goods supplied by the Seller shall have a one (1) year warranty in respect of faulty or defective parts.

#### **10. Supply**

In the event that the Seller is unable to supply the Goods the Seller reserves the right to offer goods of equal or superior quality comparable to or compatible with the Goods at the price/s specified in the Contract Order. The Seller shall consult the Buyer to ensure that the replacement item is suitable for the Buyer's requirements.

#### **11. Force Majeure**

In the event that the Seller is prevented from carrying out its obligations hereunder as a result of any cause beyond its control such as but not limited to acts of God, war, strikes, lockouts, flood, civil unrest and failure of third parties ("**the Event**") to deliver the Goods and/or provide the Services, the Seller shall be relieved of its obligations and liabilities hereunder for as long as such fulfilment is prevented **PROVIDED THAT** the Seller shall give the Buyer notice in writing as soon as possible following the date of the Event and if the Seller cannot fulfil the Contract Order within a period of three (3) months from the date of the Event, the Buyer may rescind the Contract Order by notice in Writing given to the Seller .

#### **12. Cancellation (Goods only)**

When Goods have been despatched or ordered from another source to meet the Buyer's requirement on the same day as, or following, the Seller's acceptance of the Contract Order, the Seller reserves the right not to accept cancellation of the Contract Order or to accept cancellation on such terms as the Seller shall decide, but not exceeding the price set out in the Contract Order plus costs incurred by the Seller that the Seller is unable to recoup from a third party.

#### **13. Termination**

If the Buyer is in breach of the Contract or suffers distress or execution or becomes insolvent or commits an act of bankruptcy or enters into any arrangement or composition with his creditors or goes or is put into liquidation (other than solely for amalgamation or reconstruction while solvent) or if a receiver or administrator is appointed over any part of the Buyer's business the Seller may, without prejudice to any rights which may have accrued or which may accrue to it, terminate the Contract summarily by notice in Writing to the last known address of the Buyer.

#### **14. The liability of the Seller**

- a) The Seller shall under no circumstances whatsoever be liable for loss of profit or any indirect, special or consequential loss arising out of or in connection with the provision of any Goods or Services or any delay in providing or failure to provide any Goods or Services pursuant to this Contract (except in respect of death, fraud or personal injury resulting from negligence on the part of the Seller) and the total liability of the Seller for any other loss of the Buyer so arising shall be limited in aggregate to the amount payable for the relevant Goods or Services specified in the Contract Order from which liability flows and actually payable by the Buyer (but for the breach or default) to the Seller.

- b) For the saving of doubt the Seller shall not have any liability for loss to Buyer in respect of Services arising from any breach or default of Buyer's obligations under this Contract, nor in respect of adhering to the Buyer's instructions, whether or not loss is reasonably foreseeable.
- c) Unless stated otherwise in Writing, Goods are not tested or sold as fit for any particular purpose or for use under any specific conditions.
- d) Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- e) Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) or to a consumer (as defined by the Sale and Supply of Goods to Consumers Regulations 2002) the statutory rights of a consumer are not affected by these Conditions.

#### **15. Nature of Contract**

- a) The Seller may perform any of the obligations undertaken by it and exercise any of the rights granted to it under this Contract through any other company which at the relevant time is its holding company or subsidiary (as defined by section 736 of the Companies Act 1985, as amended by Section 736 A)) or the subsidiary of any such holding company, and any act or omission of any such company shall for the purposes of this Contract be deemed to be the act or omission of the Seller.
- b) Seller may carry out its obligations under the Contract through any suitably qualified agents or subcontractors appointed by the Seller in its absolute discretion for that purpose.
- c) Except as provided in a) and b) above, the Contract is personal to the Buyer and Seller, and neither of them may, without the Written consent of the other, assign, mortgage, charge or dispose of any of its rights hereunder, or subcontract or otherwise delegate any of its obligations under this Contract.

#### **16. Law**

This contract shall be subject to the laws of England and construed in all respects as an English Contract.

#### **17. Health and Safety at Work act 1974 & Consumer protection act 1987**

In compliance with the above legislation the Seller confirms that the Goods supplied by the Seller as a reseller or distributor do not present a hazard to health and safety when properly used for the purpose for which they have been designed and provided that the Buyer or its employees, agents or servants take reasonable precautions in their use. Where required, the Seller will supply the manufacturer's literature that is provided to it in respect of the Goods or any component in the Goods. However, unless such a request is made at time of acceptance of the Contract Order, the Seller will assume that the Buyer is already in possession of such information and literature and does not require any information or advice in connection with the safe use of the Goods at work.

#### **18. Notices**

Any notice to be served or delivered hereunder may be served or delivered to the Seller at the address on the bottom of all invoices, letters, faxes, etc. Notices sent via First Class Recorded delivery post shall be deemed to have been delivered 48 hours after posting and proof of due posting shall be sufficient evidence of delivery.

#### **19. Miscellaneous**

- a) The clause titles and headings contained herein are for ease of use and shall not affect the construction hereof.
- b) If any provision hereof shall be held invalid, illegal or unenforceable, the validity and enforceability of the remaining provisions shall not be in any way affected.
- c) No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

- d) Any dispute arising under or in connection with the Contract or the sale of the Goods and/or Services shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Law Society, in accordance with the rules of the Arbitration Act 1996.
- e) The contract shall be governed by the laws of England, and the Buyer agrees to submit to the nonexclusive jurisdiction of the English courts.
- f) The Contract does not create any right enforceable by any person not a party to it.

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