

NGC NETWORKS LIMITED

Terms and Conditions for the Sale of a Communications System

1. DEFINITIONS

- 1.1 "Agreement" means this Agreement made between NGC and the Customer, including all documents expressly incorporated herein.
- 1.2 "Bring into Service Date" means the date on which the System is first brought into use by the Customer or, in the event of delays attributable to the Customer or any other third party, the date from which the System can be used by the Customer if such delays had not occurred.
- 1.3 "Contract Value" means that sum so named in this Agreement together with any additions thereto or deductions there from agreed in writing in accordance with this Agreement.
- 1.4 "Customer" means the party with whom NGC has contracted to provide the System and services detailed herein and is defined on the front of this Agreement.
- 1.5 "Network Operator" means a public or private telecommunications operator providing a telecommunications network or circuit regulated by statutory licence.
- 1.6 "NGC" means NGC Networks Limited.
- 1.7 "Site" means the place defined in this Agreement to which NGC will deliver the System and where required by this Agreement will undertake installation and commissioning of the System.
- 1.8 "Software" means all operating systems and other programs of a machine readable form that are necessary for the System to operate in compliance with the performance parameters defined in this Agreement and excluding all source material including but not limited to source code listings, object code listings, flow charts and assembler instructions.
- 1.9 "System" means all System hardware, software, documentation and services specified in this Agreement to be provided by NGC to the Customer. When a complete "System" is not been provided "System" applies to any hardware, software or I.T. equipment.

2. EXTENT OF AGREEMENT

- 2.1 This Agreement shall constitute the complete agreement between NGC and the Customer and any other terms, conditions, performance criteria, guarantees or prior representations whatsoever shall be of no effect unless expressly incorporated herein. No variation of the conditions in this Agreement shall have effect unless expressly accepted in writing by a duly authorised Director of NGC.
- 2.2 The Customer shall not rely upon any warranty (other than stated under Condition 13 hereof) or technical statements concerning the System which is to be supplied under this Agreement except where such statements have been confirmed in writing and signed by a duly authorised Director of NGC and expressly incorporated herein. NGC reserves the right to change the specifications and parameters of the System to be supplied insofar as such changes do not materially affect the operational performance of the System.

3. NGC's OBLIGATIONS

- 3.1 NGC shall be responsible for the following:
- (a) To obtain, where there is a statutory requirement for NGC to do so, technical approval from the designated regulatory authority for the System to be supplied and installed in accordance with the terms of this Agreement except those items which are specified by the Customer for which NGC has disclaimed such responsibility in writing.
 - (b) To supply, install and commission the System detailed in this Agreement.
 - (c) To fulfil the warranty obligations defined herein.
 - (d) To enter, at NGC's discretion, into a maintenance agreement with the Customer upon the current NGC's terms and conditions for provision of maintenance services and at the rates then prevailing.

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4. CUSTOMER'S OBLIGATIONS

- 4.1 NGC will at all times endeavour to liaise with and advise the Customer on all aspects of the installation programme. The Customer however, is responsible for undertaking and bearing the cost of the following unless otherwise agreed in writing by a duly authorised Director of NGC:
- (a) **Technical Information:**
The Customer is responsible for supplying NGC when required with all necessary technical information regarding the Site at which the System is to be installed and the Customer's operating requirements.
 - (b) **Preparation of The Site:**
Before delivery is due to take place the Customer shall prepare the Site in accordance with the specifications stipulated by NGC and the Network Operator, and any extra costs incurred as a result of failure to do so, including storage costs, shall be paid to NGC by the Customer.
 - (c) **Provision of Facilities:**
The Customer will provide at its own expense scaffolding, unskilled labour, lifting gear, builders' work, electric power, heating, lighting and ventilation, and where electrical supplies are required these shall be clean and stable and will be provided and maintained by the Customer at its own expense. Any cutting away and making good of floors, ceilings, ceiling tiles and panels, trenching, back filling, the supply and erection of poles and the provision of trunking or ducting shall not be supplied by NGC unless expressly agreed in writing.
 - (d) **Access:**
The Customer shall provide NGC and NGC's authorised contractors with access to the Site at all reasonable times.
 - (e) **Wayleaves/Approvals:**
The Customer shall obtain and pay for all necessary wayleaves and secure the approval of appropriate planning and other authorities as required.
 - (f) **Connection Approval:**
Although NGC will be responsible for securing BAPT/BSI approval of the design of the System, the Customer shall obtain the Network Operator's consent for connection of an approved System to the relevant networks (if required). It is the Customer's responsibility to arrange for such connection to be made together with the provision of any test lines as may be required and to pay any connection and PCI charge, and to comply with any conditions relating to the connection. Installation of the System under this Agreement does not include any such connection. No liability shall attach to NGC if the Network Operator denies or withdraws connection facilities to an approved System.
 - (g) **Other Attachments:**
Any other attachments to the System that are made by the Customer shall be at the Customer's risk and the Customer shall be responsible for ensuring that they are suitable for use with the System and comply with the Network Operator's regulations. The Customer shall not make attachments which diminish performance or reliability of the System.
 - (h) **Self-Provision Licence (SPL) and the Telecommunications Services Licence (TSL):**
The Customer is responsible for ensuring that the System will be used only in accordance with the terms and conditions of the Self-Provision Licence or the Telecommunications Services Licence, as appropriate, and as issued (from time to time) by the Secretary of State for Trade and Industry (or any special licence obtained by the Customer) and that only such private circuits are connected to the System as are permitted by such licence to be so connected.
 - (i) Where the provision of structured cabling and or block or extension wiring is not included under this Agreement the Customer shall be responsible for ensuring that it is or is brought up to relevant BSI standards at its own expense and shall pay the cost of any acceptance tests carried out by NGC in respect of it.

5. VARIATIONS

Changes to the technical specification and configuration of the System requested by the Customer prior to delivery will only be effective if accepted in writing by a duly authorised Director of NGC and expressly incorporated into the terms of this Agreement and their implementation will be subject to full agreement in writing having been reached on any consequential adjustment to the Contract Value and target dates.

6. CONTRACT VALUE

- 6.1 The Contract Value shall, unless otherwise specified in this Agreement, be inclusive of:
- (a) Packaging and delivery of the System to the Site.
 - (b) Installation where this forms part of this Agreement.
 - (c) Training, to the extent specified in this Agreement.
- 6.2 The Contract Value shall, unless otherwise specified in this Agreement, be exclusive of:
- (a) Value Added Tax or other government imposts.
 - (b) All items denoted as Customer's Obligations in Condition 4 of these Conditions.

7. PAYMENT

- 7.1 The payment of the Contract Value shall be due and payable without deduction, set off or counterclaim as follows:
- 7.1.1 50% of the Contract Value with the order for the System; and
 - 7.1.2 40% of the Contract Value on commencement of delivery of the System to the Site; and
 - 7.1.3 10% of the Contract Value on the Bring into Service Date.
- 7.2 In the event that the Customer is unable to take delivery of the System upon the agreed delivery date, NGC reserves the right to deliver the System into NGC's stores and the Customer shall be immediately liable to pay to NGC the Contract Value of the System (or the portion of it so delivered) as though delivery had been made to Site.
- 7.3 NGC shall also be entitled to recover any reasonable additional costs incurred as a result of the Customer's delay. Payments shall be made within thirty (30) days of the date of NGC's invoice and payment shall not be prevented by minor defects which do not materially affect operational use, but NGC shall remedy such minor defects within a reasonable time where it is NGC's responsibility to do so.
- 7.4 Where payments are not received within thirty (30) days of the date of NGC's invoice NGC reserves the right to:
- 7.4.1 Suspend deliveries on this and any other order held with the Customer, its Parent Company, Subsidiaries or Associates.
and/or
 - 7.4.2 Recover such sums by deduction of monies otherwise due by NGC to the Customer, its Parent Company, Subsidiaries or Associates.
and/or
 - 7.4.3 Charge interest at the statutory interest rate specified in the Late Payment of Commercial Debts (Interest) Act and amendments thereto per month or part thereof on the unpaid sum for that period the sum remained properly due.
and/or
 - 7.4.4 Enter onto the Customer's premises and recover the System delivered or installed. In such an event NGC shall return any sums previously paid less sums reasonably incurred by it in the delivery, installation and recovery of the System, including depreciation in the System's subsequent resale value.

8. SYSTEM AND INSTALLATION SPECIFICATION

- 8.1 The System and installation specification shall be that which has been agreed upon in writing and expressly incorporated into this Agreement and any prior representations be they written or verbal shall be of no effect unless expressly incorporated herein. Where no such specification is detailed in this Agreement the System and installation details in NGC's quotation shall apply.
- 8.2 The illustrations and engravings in NGC's catalogue and data sheets are intended to display the general features of the System and the information contained in such publications shall not form part of this Agreement.
- 8.3 All drawings, sketches and information provided by the Customer in relation to wiring and installation are contractual documents upon which NGC has placed reliance. Any changes, errors or omissions to such drawings, sketches or information shall form a change to this Agreement with regards to which NGC reserves the right to make additional charges, amend timescales or offer an alternative system, whichever is appropriate and suitable.

9. RISK AND TITLE

- 9.1 Risk in the System shall pass from NGC to the Customer upon delivery to the Site (or, in the event of instalment delivery to the Site, risk shall pass as and when each instalment is delivered to the Site) and the Customer shall indemnify NGC against all risks in respect of the same and accept full responsibility to provide insurance cover at full replacement value.
- 9.2 For the purpose of this Condition the term System includes any item leased by NGC for demonstration purposes.
- 9.3 Risk in all other equipment, such as tools and plant taken on to the Customer's Site by NGC for the purpose of this Agreement, shall pass to the Customer when brought onto the Site by NGC (or its agents or sub-contractors) until such equipment is removed from the Site except in so far as any damage to such equipment is due to any act of negligence on the part of NGC.
- 9.4 Title to System hardware shall pass to the Customer only when NGC has received full payment for the System hardware. However, title to System Software and the media on which it is embodied and copyright and other intellectual and industrial property rights in System Software and in all data and information embodied in System hardware shall at all times remain with NGC and its licensors.

10. DELIVERY

- 10.1 The Contract Value includes packaging and delivery to the Site nominated by the Customer in this Agreement by any means at NGC's disposal.

- 10.2 Unless otherwise agreed in writing the System price comprised in the Contract Value is based upon the normal delivery timescale for the System. Where an extended delivery timescale is required by the Customer NGC reserves the right to deliver to storage and claim payment accordingly.
- 10.3 Delivery will be recorded by a NGC Delivery Note and the Customer or his nominated agent shall acknowledge receipt by countersigning a copy of the Delivery Note.
- 10.4 Where NGC site personnel sign to acknowledge receipt of deliveries they do so as the Customer's agent unless an agent is otherwise notified to NGC by the Customer in writing prior to delivery. In this instance such personnel as are nominated by the Customer must be available to receive the System.
- 10.5 NGC shall repair or at NGC's option replace free of charge any part of the System which is lost or damaged in transit, provided that NGC is given written notification of such loss or damage within such times as will enable NGC to comply with the carrier's Conditions of Carriage or, where delivery is made by NGC's own transport, within five (5) working days after counter signature by the Customer or the Customer's agent of the Delivery Note.

11. INSTALLATION

- 11.1 Where installation is included the Contract Value is based on the work being carried out during NGC's normal working hours and proceeding without hindrance to completion and may be increased if the Customer requests the work to be carried out at any other time or if the work is interrupted for reasons outside NGC's control. All ordinary cutting away is included but not making good or redecorating or work normally carried out by a specialist tradesman. NGC or its contractors will install and commission the System and, within seven (7) days of NGC giving notice of completion of installation, NGC will carry out its standard installation tests to show that the System is ready to be Brought into Service.
- 11.2 On completion of the installation the System shall be accepted by the Customer. The Customer will then sign NGC's Completion Certificate. If NGC is unable to proceed with completion for reasons within the control of the Customer or the Customer's other contractors, then the System shall be deemed accepted seven (7) days after NGC's notice of completion of installation.
- 11.3 If any part of the System fails to pass the installation tests they will be repeated within a reasonable time and on the same conditions.
- 11.4 The System will not be deemed to have failed the installation tests on account of minor failures that do not materially affect its operational use, but NGC will be obliged to rectify such failures within a reasonable time.
- 11.5 NGC will assist the Customer in arranging any Network Operator's Pre-Connection Inspection (PCI) and be in attendance during PCI if required. This does not relieve the Customer from its obligations defined in Condition 4.
- 11.6 If the System is subject to testing by the Network Operator NGC accepts no responsibility for the timely conduct of such tests, and final introduction into service will occur at a date to be agreed with the Network Operator.
- 11.7 Following PCI, NGC will assist the Customer in arranging for the Network Operator to connect the System to the network. This does not relieve the Customer from his obligations under Condition 4.
- 11.8 Following connection to the Network the System will be Brought into Service.

12. SOFTWARE

- 12.1 The System Software is supplied under licence in object code form and current release state on suitable media together with a configuration manual. Source materials will not be supplied under any circumstances whatsoever.
- 12.2 NGC grants the Customer non-exclusive licences to use the System Software solely with and for the operation of the System (and for no other purposes), for so long as the Customer wishes to use System Software for that purpose.
- 12.3 The Customer may not copy, modify or merge any part of the Systems Software, media or configuration manual, nor part with possession of the same nor deal with them in any manner prejudicial to NGC, without NGC's prior written consent. Any copies for which consent is given must reproduce the copyright notice of NGC and its licensors.
- 12.4 The Customer undertakes to hold the Software and any associated manuals and/or documentation in strict confidence and not to make copies or make available or otherwise disclose them to any third party without the prior written consent of NGC.
- 12.5 The customer fully complies with Avaya's Software Licensing and Warranty for End Users as outlined in the link below: <http://support.avaya.com/css/P8/documents/100072471>

13. WARRANTY

- 13.1 NGC warrants that the System will be free from defects in materials and workmanship for a period of twelve (12) months after the Bring into Service Date, subject to the System being properly used for its designed purposes and to proper maintenance, in appropriate environmental conditions.
- 13.2 NGC will use all reasonable endeavours during the twelve month period to repair (or at its sole option replace) defective items of System hardware and to correct defects in System Software, free of charge, where the defect arises as a result of faulty materials or workmanship but NGC shall have the right to charge for repair, replacement or correction of defects due to any other cause.
- 13.3 NGC will pass on to the Customer any warranty offered to NGC by a third party manufacturer of equipment which is attached to the System.
- 13.4 NGC shall have no liability to the Customer for any defects that occur outside the scope of this warranty.

- 13.5 The Customer acknowledges that the System Software cannot be tested in every possible permutation and accordingly NGC does not warrant that System Software will be free of all defects or that its use will be uninterrupted.
- 13.6 The Customer assumes responsibility for ensuring that performance data, equipment, Systems features and facilities stipulated by it are sufficient and suitable for the Customer's purpose save in so far as its stipulations or orders are in accordance with NGC's written advice.
- 13.7 All other express or implied terms, conditions or warranties in respect of quality, fitness, use or condition of the Systems are excluded.
- 14. LIABILITY FOR DELAY**
- 14.1 All target dates quoted on the face of this Agreement are subject to prompt receipt by NGC in accordance with agreed timescales of all necessary information from the Customer to enable NGC to put the work in hand. In respect of the target dates, time shall not be of the essence.
- 14.2 The completion date will be subject to extension if any incidence of delay is the result of the Customer's instructions or lack of instruction, industrial dispute or any other cause beyond NGC's reasonable control.
- 14.3 If the Bring into Service Date of all or part of the System is delayed by more than two weeks for reasons other than industrial disputes or any other causes outside NGC's reasonable control, for each further complete week of delay there shall be deducted from the Contract Value one quarter of one per cent (0.25%) of the value of such portion or portions only of the System as cannot in consequence of the said failure be made Bring into Service. The amount so deducted shall not in any case exceed five per cent (5%) of the Contract Value. Such damages shall be in full and final satisfaction of all liability of NGC to the Customer for all losses of whatsoever kind the Customer may have suffered as a result of NGC's delay.
- 15. LIABILITY FOR ACCIDENTS AND DAMAGE**
- 15.1 NGC shall indemnify the Customer against damage to property (other than the System) and death or injury to persons to the extent caused by the negligence of NGC or its personnel, but not otherwise, provided that :
- (a) NGC and its insurers are immediately notified of any claim and have full power to negotiate and settle any claims.
- (b) NGC's total liability for damage to property shall be limited to £1,000,000.
- 15.2 The Customer shall similarly indemnify NGC and shall maintain or procure appropriate insurance for damage to NGC's property (to the same limit) to the extent caused by the negligence of the Customer or its personnel, agents or contractors.
- 16. INDUSTRIAL AND INTELLECTUAL PROPERTY RIGHTS**
- 16.1 NGC will indemnify the Customer against all actions, claims, demands, proceedings, damages, charges and expenses arising from or incurred by reason of any infringement of third party United Kingdom patents, design or copyright as a consequence of the Customer's use of the System subject to the Customer:
- (a) promptly notifying NGC of any allegation of infringement;
- (b) making no prejudicial statement without NGC's consent;
- (c) permitting NGC to conduct and settle all negotiations and litigation.
- 16.2 Such indemnity shall not apply to any infringement due to the use of the System in combination with other equipment and/or software not supplied by NGC, or which is due to NGC having followed the Customer's design or instructions, or which is due to the System being used in a manner or for a purpose not specified by or disclosed to NGC prior to the date of execution of this Agreement.
- 16.3 If a claim of infringement is made or in NGC's opinion is likely to be made in respect of the System, NGC shall have the right but not the obligation to procure for the Customer the right to continue using the System or to modify it in any way that it becomes non-infringing provided that the System remains capable of performing substantially the same functions as that originally supplied and the indemnity set out in Condition 16.1 shall not apply to the extent that NGC exercises any such right.
- 17. EXCLUSION AND LIMITATION OF LOSS**
- 17.1 Except in the case of death or personal injury due to the negligence of NGC or its subcontractors and liability of NGC arising under Part 1 of the Consumer Protection Act 1987, NGC shall not be liable for loss of contracts, profits, anticipated savings, revenue, business, data, software programs, use or fraudulent use of the System, or interruption in the use or availability of data, stoppage to other work or indirect or consequential loss, howsoever arising including from negligence, breach of contract and/or statutory duty before and after any termination of this Agreement.
- 17.2 Subject to the express exceptions set out in this Agreement NGC's liability howsoever arising including from negligence, breach of contract and/or statutory duty before and after termination of this Agreement shall in no event exceed the Contract Value.

18. TERMINATION OF AGREEMENT

- 18.1 Without prejudice to other rights NGC shall have the right forthwith to terminate this Agreement and claim any resulting losses or expenses if:
- (a) The Customer commits a breach of this or any other Agreement with NGC and fails to remedy such breach within a reasonable time.
 - (b) The Customer commits an act of bankruptcy, or compounds with its creditors, or a petition or receiving order in bankruptcy is presented or made against it; or a resolution or petition to wind up the Customer is passed or presented (otherwise than for reconstruction or amalgamation), or a receiver or manager is appointed, or the Customer is deemed under Section 123 of the Insolvency Act 1986 to be unable to pay its debts.
 - (c) The Customer fails to enter into an appropriate third party leasing or financing arrangement.

19. LEASING/FINANCE ARRANGEMENTS

- 19.1 Where the Customer has entered or will enter into third party leasing or financing arrangements this will not affect or invalidate the Terms and Conditions of this Agreement, save that title in the System (excluding software) shall pass to the third party finance provider only when NGC has received full payment of the Contract Value.
- 19.2 Other than as described above the Terms and Conditions of this Agreement have precedence over the terms and conditions of any third party leasing or financing arrangement entered into by the Customer.

20. FORCE MAJEURE

Neither party shall be liable for any failure to perform its obligations under this Agreement if such failure results from circumstances beyond the affected party's reasonable control.

21. CONFIDENTIALITY

The Customer undertakes that, whether this Agreement continues in force or not, it will keep confidential all information communicated to it by NGC and will not without the prior written consent of NGC disclose the same to any third party.

22. ASSIGNMENT

- 22.1 NGC may assign or transfer this Agreement to any other company within the NGC's group of companies.
- 22.2 The Customer may only assign or transfer this Agreement with NGC's prior written agreement.

23. VALIDITY

If any provision of this Agreement becomes invalid, illegal or unenforceable, the other provisions of this Agreement shall not be affected thereby.

24. LAW

- 24.1 This Agreement shall in all respects be construed and operate as an English contract and in conformity with English Law.
- 24.2 The legal construction of these conditions shall not be affected by their headings.
- 24.3 NGC and the Customer hereby irrevocably agree to submit to the exclusive jurisdiction of the English Courts.

25. EFFECT

This Agreement becomes effective when signed by a duly authorised NGC's signatory. These conditions shall prevail over any others proposed by the Customer or implied by trade custom or practice. NGC's failure to object to any other terms and conditions shall not be deemed as a waiver of this condition.

26. THIRD PARTIES

Third parties have no rights under the Contracts (Rights of Third Parties) Act 1999 or any amendment to or re-enactment of it to enforce any provision of this Agreement.