

## General Terms and Conditions for the Supply of Goods and Services

### 1. Definitions

- 1.1. "We" and "Us" means Octopus Cabling, of Unit F, Chandlers Row, Colchester, Essex CO1 2HG
- 1.2. "You" means the person (which includes a company or other business) contracting to obtain goods, software licences or services from Us
- 1.3. Where "You" means more than one person, each one of You is responsible, individually, for each of the obligations of all of You under this agreement, and may include any other company within the same group of companies as You or your subsidiaries or parent companies.
- 1.4. "This Agreement" means (in reverse order of precedence):
  - 1.4.1. these terms and conditions;
  - 1.4.2. any other terms and conditions referred to in this agreement;
  - 1.4.3. any other documents explicitly referred to in the quotation;
  - 1.4.4. the quotation; and
  - 1.4.5. any written amendments to The Agreement agreed between You and Us.
  - 1.4.6. The Standard Terms and Conditions for the supply of Hardware Maintenance
- 1.5. "Staff" includes employees and sub-contractors.
- 1.6. "Goods" includes voice, data & optic cables, plus any related hardware, software, firmware, components, spares, trunking, etc.
- 1.7. In this agreement "Services" includes consultancy, maintenance & support services.
- 1.8. Our Normal Hours of Work are 9am to 5pm, Monday to Friday, and excluding public and bank holidays.
- 1.9. "Written Form" includes in by handwriting or typed hard copy, or electronically or digitally recorded, for example by e-mail, or by fax, or from our web-site if it provides this facility at the time.
- 1.10. In this agreement, "E & O E" denotes Errors & Omissions Excluded"

### 2. The Agreement

- 2.1 We agree to supply You with the Goods and Services (as appropriate) set out in the quotation for the price set out on the quotation and subject to any terms set out in it, in this agreement and in the other documents referred to in this agreement (as appropriate).
- 2.2 The Agreement is the whole of the terms and conditions governing the agreement between us.
- 2.3 Where there is any conflict between different parts of The Agreement, the item having the higher order of precedence referred to in clause 1.4 above shall prevail.
- 2.4 You confirm that You have told Us everything You know or suspect which may make the Goods or Services significantly more difficult for Us to make or carry out.
- 2.5 You confirm that You have checked the specifications set out in and attached to the quotation and that they are correct.
- 2.6 We cannot be held responsible for any statements that We have not confirmed in writing. If the quotation contains that statement, or explicitly refers to the document containing it, then it becomes part of the contract and We will accept responsibility for it (subject to these terms and conditions).

### 3. Definitions

- 3.1. Any rule of interpretation that is contrary to common sense does not apply to The Agreement. Any part of The Agreement which is in italics (*like this*) is not part of it, but is simply a comment.
- 3.2. Paragraph headings are not intended to be a part of The Agreement.

### 4. Quotations

- 4.1. A quotation is an indication that we may be willing to supply Goods and/or Services at a particular price.
- 4.2. No quotation is valid after 30 days of its issue.
- 4.3. No price specified in the quotation or elsewhere includes VAT or any successor tax or other applicable taxes or duties unless specifically stated.
- 4.4. Unless stated, prices quoted do not include any costs for the provision of lifting or access equipment.
- 4.5. All quotations are submitted on the basis of E & O E.

### 5. Amendments to Specifications, Hours or Work and Cancellation

- 5.1. We may alter the specifications of Goods or Services from time to time so long as the alteration does not make the Goods or Services inferior. If You ask Us to alter the specification after your order has been placed with Us, we may consider doing so (at our discretion).

- 5.2. If after placing an order, You require Us to work out of our normal hours as stated in clause 1.8 above, without having previously requested Us to do so, We may consider doing so (at our discretion).
- 5.3. In the case of either clause 5.1 or 5.2 above, You are warned that this may entail an increase in the price. A variation to the specification (including the price) is only valid where agreed by us in written form.
- 5.4. If, after You have placed an order, You wish to cancel it, We may consider doing so (at our discretion) but if We agree, this may be subject to You paying Us our anticipated loss on cancellation (including loss of reasonable profit).

## 6. Rights of others and Permissions

- 6.1. If We have agreed that We are to do anything under The Agreement on your instructions, and as a result We are in breach of any rights of anyone else (or anyone else threatens Us with proceedings for breach of their rights) You agree to indemnify Us against any loss We may suffer, including legal costs, in defending or resisting the proceedings or claim, or settling the proceedings or claim on legal advice. Your obligations under this clause will remain upon completion of The Agreement whatever the reason for termination for a period of 6 years.
- 6.2. If You come across any circumstances which may lead to a claim under clause 6.1 above, You agree to tell Us about them as soon as possible.
- 6.3. If, as a result of such a claim or threat, We decide that it is no longer commercially sensible to proceed with The Agreement, we may cancel The Agreement in accordance with clause 10 below.
- 6.4. We will use reasonable commercial effort to ensure that nothing We do under The Agreement will infringe the rights of others. If We do anything under The Agreement which results in an actual or threatened infringement of the rights of anyone else (provided that it was something which was not performed at your explicit direction or with your specific consent) ("a claim") We may at our option:
  - 6.4.1. obtain a licence or settlement of the claim (at no cost to You);
  - 6.4.2. perform our obligation in a different way to avoid the claim;
  - 6.4.3. cancel The Agreement under clause 10 below.

## 7. Intellectual Property and Copyright

- 7.1. You acknowledge that material of any nature which We provide You with, either under The Agreement or otherwise (for example, other pre-contractual material, such as our design schematics), in any form whatsoever (either written, hard copy or electronically recorded) may contain intellectual property which is either our property or licensed to Us (including copyright, trade marks, registered and unregistered designs and patents). Nothing in The Agreement is intended
  - 7.1.1. either as a licence for You to use such intellectual property
  - 7.1.2. or as a transfer of such intellectual property, unless explicitly stated in writing.
- 7.2. You acknowledge that material of any nature which We provide You with, either under The Agreement or otherwise (for example, pre-contractual material, such as our design schematics), will unless already covered by 7.1 above, be our copyright, and You are therefore not permitted to copy, convert or transmit the contents in any form whatsoever (either written, hard copy or electronically recorded) for any other purpose save solely in connection with our provision of our Goods and Services.

## 8. Sub Contracting

- 8.1. We may sub-contract any of the services We have agreed to provide under this contract at our discretion.
- 8.2. Where We have sub-contracted any services to a third party specified by You, we shall not be liable for any non-performance of that third party's obligations, and for the purposes of The Agreement, any delay or hindrance caused by or attributable to that third party shall be considered to have been caused by You.

## 9. Third Party Recommendations

- 9.1. As part of carrying out our obligations under The Agreement We may recommend or suggest that a third party or parties carry out other work, or supplies Goods or Services, if in our judgment, the third party in question is competent to carry out this other work, and if it is in your interest for Us to do so. By making this recommendation or suggestion, We do not guarantee that work or those Goods, or Services in any way, and We expect You to exercise due care in deciding whether to employ any third parties so introduced by Us. In doing so, You agree to contract directly with the third parties introduced by Us for the supply of their goods or services.

## 10. Unusual or Unforeseen Circumstances & Force Majeure

If circumstances arise largely beyond our reasonable control so that the consequences could not have been avoided through the exercise of all due care:

- 10.1. which make it no longer commercially sensible for Us to continue to fulfil your order, We may reschedule completion of your order, or change the contents and nature of the order, subject to prior agreement with

you. Failure to reach agreement with You may result in our decision to cancel your order.

- 10.2. If We decide to cancel it :
  - 10.2.1. We shall give You notice, and We shall not be responsible for any loss to You which arises because of that decision (although any other rights which You may have arising before We made that decision will still stand); and
  - 10.2.2. You will pay Us a reasonable sum in relation to the proportion of your order which We have fulfilled.
- 10.3. Without prejudice to any other condition in this document, the following shall be regarded as a non exhaustive list of causes where clauses 10.1 and 10.2 may apply :
  - 10.3.1 Act of God, explosion, flood, fire or accident
  - 10.3.2. strikes, lock-outs or other trade union disputes or industrial actions
  - 10.3.3. acts or threats of war, terrorism, sabotage or other civil disturbance
  - 10.3.4. Insolvency

## 11. Consequential Loss and Our Liability

- 11.1. Unless explicitly stated, we do not accept liability for consequential loss of any kind, be it extra cost of working, interruption to business, financial or economic cost, loss of profit, loss of revenue, damages, compensation to any third party or any other kind of consequential loss that may arise in respect of The Agreement. OUR QUOTATIONS ARE PRICED ON THE BASIS THAT CONSEQUENTIAL LOSS HAS BEEN EXCLUDED: IF YOU WISH US TO BEAR LIABILITY FOR CONSEQUENTIAL LOSS WE MAY CONSIDER DOING SO BUT ON THE BASIS THAT THE CONTRACT PRICE WILL HAVE TO BE INCREASED TO COVER THE INCREASED RISK, WHETHER OR NOT WE CHOOSE TO BEAR IT THROUGH OUR INSURANCE.
- 11.2. If we have not accepted a different level of liability our entire liability under this contract shall be limited to the value of the goods or services provided under it (or, in the case of a breach of any of the terms referred to in clause 16 below, the appropriate level of liability contained within those terms).
- 11.3. Nothing at all in The Agreement is designed or intended to reduce or restrict our liability for the death of or personal injury to anyone caused by our negligence or the negligence of anyone for whom we are responsible (*which may include, for example, our employees, sub-contractors or agents*).
- 11.4. Nothing in The Agreement excludes liability for fraudulent misrepresentation.

## 12. Payment of Price & Retention of Title

- 12.1. You must pay Us the price specified in The Agreement, including any VAT which may apply in accordance with the terms and on the dates contained in it.
- 12.2. Where time charges have been estimated in The Agreement the price payable shall be that on the invoice.
- 12.3. If You fail to pay the whole or part of any sum You owe to Us (whether because of The Agreement or not) by the time it comes due for payment, all sums which You owe Us (whether under The Agreement or not) will become due for payment immediately, and We may issue court proceedings against You to recover them without giving You any further notice. If an invoice becomes overdue, You will be liable for any debt collection and court costs incurred if We need to put the collection of unpaid debts into the hands of a third party.
- 12.4. You must pay Us the whole of the amount due, and may not set off or deduct anything from this amount without our written permission.
- 12.5. Any sums which remain unpaid after they became due may be subject to interest at, The Late Payment of Commercial Debts (Interest) Act 1998 rate currently in force compounded monthly, both before and after judgment.
- 12.6. We may assign the benefit of any debt owed to Us by You to any third party at any time.
- 12.7. All Goods supplied shall remain our property until all Goods and Services supplied to You are paid for in full, at which point title to the same shall pass to You.
- 12.8. While any Payment for Goods and Services remains outstanding You are to ensure that any Goods supplied to You under The Agreement remain segregated from your Property and are clearly identified as belonging to Us.

## 13. Guideline Definitions of Payment Terms

- 13.1. No terms specified : payment is due in full on acceptance of your order by Us;
- 13.2. If a deposit is specified in our quotation, payment of said deposit is due with your order;
- 13.3. "30 days" : payment is due by the 30th day after the date of our invoice;
- 13.4. "On installation" : payment is due in full immediately upon the work being completed to the extent that it is reasonably possible to use it for normal contemplated use, save only for any minor snagging items (which will usually be dealt with under the terms of our warranty).
- 13.5. "lease": means that :
  - 13.5.1. (in the case of any software) the licence may be a periodic licence and periodic fees are payable under the provisions of the licence agreement.
  - 13.5.1. in the case of any other goods, title does not pass to You (unless explicitly stated in, and subject to the terms of, The Agreement);
- 13.6. If We have undercharged You the VAT that should have been due on an order, You agree to pay us the out

standing VAT immediately. If We have overcharged You VAT, We shall refund You the amount that You have overpaid.

13.7. Where payment is concerned, time is of the essence.

#### **14. Time for Performance**

14.1. Whenever we agree to do anything by or on a particular time, We will try to do it on or by that time, but We shall not be liable for late performance;

14.1.1. if late performance is reasonably beyond our control (*it is due, for example, to the failure of our own suppliers to perform*); or

14.1.2. if You have given Us insufficient notice to allow Us to perform the service ordered.

#### **15. Warranty**

15.1. We will accept liability for defective products that We supply as part of any installation only to the extent that We are entitled to make a claim under the manufacturers Dead on Arrival, warranty or other defective goods terms.

15.2. Such warranty shall be limited to 12 months or the manufacturer's warranty period, whichever is the lower.

15.3. In the event that a defective item is subject to warranty and cannot be repaired, or has been superseded, We agree to supply and install a new replacement to similar value and performance characteristics at no charge to You.

15.4. We shall be under no liability under the above warranty if our payment terms have not been adhered to.

15.5. All warranty entitlement shall be forfeited in the event of fair wear and tear, or failure to operate according to our recommendations, or deployment under abnormal conditions outside the manufacturer's specification, or in the event of misuse, damage or unauthorised modification by You, or by anyone acting on your behalf, whether the cause is inadvertent or otherwise.

15.6. We will accept liability to make good defective workmanship on our services at no cost to You for any such defects notified to Us up to and including a period of 90 days from completion of the job, and We will use all our endeavours to undertake such remedy urgently.

#### **16. Indemnity**

16.1. Where We do anything for You on your premises (or premises under your control), You agree to indemnify Us and keep Us indemnified against any loss, damage claim or expense arising out of the physical injury of or death of any of our staff arising in any way from our performance of The Agreement and arising by reason of the provision of defective equipment, or your failure to provide a safe system of work or otherwise by reason of any negligent act or default on your part or on the part of your servants or agents or other person on your premises.

#### **17. Assignment**

17.1. Except as is specifically referred to in The Agreement, neither You nor Us may assign the benefit or the obligations of any part of The Agreement without the written consent of the other party.

#### **18. Notices**

18.1. Where any notice is required to be given under The Agreement (where the word "notify" is used it means "to give notice"), it is validly given if it is in written form and sent by fax, email or prepaid first-class or airmail post to the correct fax number, email address or postal address of the relevant party as contained on the quotation or prior correspondence, or subsequently notified to the other party. Where sent by fax, the notice is deemed to have arrived immediately upon sending. If sent by email, the notice is deemed to have arrived 24 hours after it was sent (unless within those 24 hours the sender has been sent an email saying that the notice has not been delivered). If sent by post, the notice is deemed to have arrived on the third working day after the day on which it was sent (if sent to an address within the UK), the fifth working day (if sent to an address within the EC) or on the seventh working day (anywhere else in the world) (unless in each case within that period it was returned as undelivered).

#### **19. Confidentiality**

19.1. You may have or obtain confidential information (which includes but is not limited to information relating to our products, planned products and details of our marketing, support and internal structures and similar information relating to our suppliers or related products). You agree that You will use confidential information solely for the purposes of The Agreement and for evaluating future products or services supplied by Us, and that you shall not disclose, whether directly or indirectly, to any person any confidential information unless the disclosure is required to carry out The Agreement. Before You make any disclosure to another person, You must obtain from them a binding commitment to keep that information confidential.

That commitment must be at least as effective as this obligation is on You. You shall not make any copies of a record in any way or part with Possession of any confidential information upon termination of The Agreement for any reason You shall cease to use (except as expressly altered in The Agreement) and shall forthwith deliver up to Us or destroy, any document in your possession or control containing or recording any confidential information.

- 19.2. The clause above shall not prevent you from disclosing or using any information
  - 19.2.1. which is public or becomes public through no fault of your own or of those to whom You have entrusted it;
  - 19.2.2. or to the extent permitted by law.
- 19.3. We agree to be bound by the obligations contained in the above clauses 20.1 and 20.2 likewise in relation to any confidential information which You may give Us.

## **20. Staff Recruitment**

- 20.1. Where You decide to recruit any of our staff on a permanent or contract basis, You shall pay Us a fee equivalent to six months of their salary & benefits with Us at the time of recruitment or start date, whichever is the later, by way of a recruitment fee.
- 20.2. This fee shall apply where the start date is any day between the first day upon which We do business with You, up to and including six months after the termination of any contract between You and Us.

## **21. Termination on Insolvency**

- 21.1. If, in our reasonable opinion, it appears that You will be unable to meet the payment terms We have agreed We may terminate The Agreement immediately without notice, in which case We shall no longer be under any obligation to do any work for You under it, and You immediately become liable to pay Us all sums which you owe Us (whether or not under The Agreement and whether or not they have become due). In addition, You will be liable to pay Us a reasonable sum representing the work We have done up to the date of termination, which shall be calculated to include the loss of anticipated profit for the whole of The Agreement.
- 21.2. For the avoidance of doubt, it shall be reasonable for Us to terminate under clause 22.1 above if any of the following occurs:
  - 21.2.1. the presentation of a bankruptcy or winding-up petition against You;
  - 21.2.2. the appointment of a manager, receiver or administrator over all or any part of your assets;
  - 21.2.3. the commencement of any winding-up process (other than for the purposes of reconstruction or amalgamation);
  - 21.2.4. the entry into or proposal of any form of arrangement or composition with your creditors; or
  - 21.2.5. anything analogous to the above sub-sub-clauses in any jurisdiction.

## **22. Law**

- 22.1. This agreement is subject in all respects to English Law

## **23. Waiver**

- 23.1. If We fail to rely on our strict legal rights under The Agreement, that shall not prevent Us from relying on those rights at any time in the future.

## **24. Disputes**

- 24.1. If any dispute or grievance arises between Us and You out of The Agreement, before taking any further action, both parties agree that it will be discussed by staff members of each party who are most closely involved with the running of The Agreement. If that does not produce a resolution, the problem will be escalated to the respective superiors of each staff member respectively, until the problem is dealt with. Only if the respective heads of each party cannot reach agreement on the dispute will the matter be taken to the next stage as set out in clause 24.2.
- 24.2. Should the escalation mechanism set out in 24.1 above fail to be effective, before taking any other action both parties agree to submit in good faith to a mediation procedure administered by ADR Group of Bristol, or, failing that, such other similar organisation as the President for the time being of the Law Society of England and Wales shall nominate. Unless the parties agree otherwise, the costs of the mediation shall be borne equally by both of the parties.

## **25. Third Party Rights**

The Contracts (Rights of Third Parties) Act 1999 does not apply so as to give to a person who is not a party to The Agreement a right under it.