

## Orbtalk Limited

### Goods Agreement

#### TERMS AND CONDITIONS

These Goods Terms & Conditions (the "**Agreement**") sets out certain service-specific terms applicable to the Company's supply, and the Client's acceptance, of the Goods and forms part of the Contract between the Company and the Client for the provision of Goods.

Condition 3 of the MCC, will regulate the Client's submission and the Company's acceptance of any Goods Orders the Client submits through an Order Form.

In the event of any conflict or ambiguity between this Agreement and the MCC, this Agreement will take precedence.

**By ordering any Goods from the Company the Client confirms the Client agrees to these the Agreement.**

#### TERMS FOR EQUIPMENT

Words beginning with a capital letter in this Agreement bear the meaning given in the MCC (as defined below) unless the context requires otherwise. The following definitions in this clause also apply in this Agreement.

##### **1 Definitions and Interpretation Provisions:**

###### 1.1 Definitions

**"Business Day"** means any day which is not a Saturday, a Sunday or a bank or public holiday in England.

**"Goods Order"** means the order for Goods the Client sends to the Company through any of the means specified in the Agreement (through an Order Form or otherwise);

**"Goods"** means the communications equipment and other hardware the Client purchases from the Company under the Agreement;

**"MCC"** means the Company's Master Terms and Conditions of Contract setting out the general terms and conditions applicable to Services to be rendered or supplied by the Company to the Client from time to time.

**"Services"** means the communications services the Company provides to its business customers under the Agreement including without limitation: (i) Ethernet Service & EFM Connectivity services; (ii) VoIP Services; and any other services the Company provide to a customer under the Contract including but not limited to installation and maintenance Services;

**"Order Form"** means an order form the Client submits to the Company requesting the provision of any of the Company Services (and the provisioning of Goods - as applicable) in accordance with Clause 3 of the MCC; and

**“Website”** means the Company website at [www.orbtalk.co.uk](http://www.orbtalk.co.uk) or any other website the Company uses in connection with the Goods from time to time.

## 1.2 Interpretation Provisions:

In this Agreement (except where the context otherwise requires):

- (a) the Clause headings are included for convenience only and shall not affect the interpretation of this Agreement;
- (b) use of the singular includes the plural and *vice versa*;
- (c) use of any gender includes the other genders;
- (d) any reference to "persons" includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, foundations and trusts (in each case whether or not having separate legal personality);
- (e) any reference to an enactment, statute, statutory provision or subordinate legislation (**“legislation”**) shall (except where the context otherwise requires) be construed as referring to such legislation as amended and in force from time to time and to any legislation which re-enacts or consolidates (with or without modification) any such legislation;
- (f) Where in the Agreement the Client agrees not to do any act or thing the Client also agrees not to allow (including without limitation, taking all reasonable preventative measures) any other person to do that act or thing.

## 2 Scope

2.1 This Agreement applies to the Goods the Client orders from the Company:

- (a) through a Service Order Form;
- (b) by email;
- (c) via the Website;
- (d) by any other means agreed by the Company in writing;

2.2 The Agreement will apply to any support services the Company provides to the Client in connection with the Goods.

2.3 The Goods made available to the Client under this Agreement are for use of business customers only. The Client has confirmed to the Company that the Client is a trading business. The Consumer Agreements (Information, Cancellation and Additional Charges) Regulations 2013 and the Consumers Rights Act 2015 do not apply to this Agreement.

### **3 Order and acceptance:**

3.1 In the event that the Client order Services and Goods from the Company through the Order Form, condition 3 of the MCC will regulate the order and acceptance of the Goods. The terms of this Agreement will regulate and apply to any other aspects connected to the Goods.

3.2 The Client can also send the Company one-off Goods Orders by sending an email to the Company to sales@orbtalk.com:

(a) The Company will send the Client a Goods Order acknowledgement shortly after the Client places the Goods Order, notifying the Client that the Company have received the Goods Order. However, please note that this does not mean that the Goods Order has been accepted.

(b) If the Company cannot accept the Goods Order (for example, but without limitation, because the Goods are found to be unavailable) the Company will notify the Client by telephone or by email.

3.3 Website Goods Orders:

(a) Our shopping pages will guide the Client through the steps the Client needs to take to place a Goods Order with the Company. The order process allows the Client to check and amend any errors before submitting the Goods Order to the Company. Please take the time to read and check the Goods Order at each page of the order process.

(b) We will send the Client a Goods Order acknowledgement shortly after the Client place the Goods Order. However, this does not mean that the Goods Order has been accepted.

(c) If the Company cannot accept the Goods Order (for example, but without limitation, because the Goods are found to be unavailable) the Company will notify the Client by telephone or by email.

3.4 Any order placed by the Client by email or through the Website for Goods advertised on the Website (or for Goods the Company make available for sale by other means) is an offer by the Client to purchase the Goods selected in the Goods Order. No contract exists between the Client and the Company for the sale of any Goods until the Company has received the Goods Order and accepted it in writing (which the Company may do at the Company's sole discretion).

### **4 Description and Price of the Goods**

4.1 The description and price of the Goods the Client orders will be notified to the Client in writing or otherwise will be as shown on the Website at the time the Client places the Goods Order. The Company takes reasonable care to ensure that the prices of Goods are correct

at the time when the relevant information was entered onto the Company system. However please see Clause 4.7 for what happens if the Company discovers an error in the price of the Goods the Client ordered.

- 4.2 Prices for the Goods may change from time to time, but changes will not affect any Goods Order the Client have already placed, unless the Goods were incorrectly priced in which case Clause 4.7 below will apply.
- 4.3 The price of any Goods excludes VAT which will be applied to the Client at the applicable current rate chargeable in the UK for the time being. However, if the rate of VAT changes between the date of the Goods Order and the date of delivery, the Company reserves the right to adjust the VAT the Client pays, unless the Client has already paid for the Goods in full before the change in VAT takes effect.
- 4.4 The price of Goods does not include delivery charges. The Company delivery charges are:
- (a) if the Client orders Goods by email, the Company standard delivery charges per Goods Order (as specified to the Client in writing); or
  - (b) if the Client orders the Goods through the Website, as specified on the Company Website during the check-out process, before the Client confirms the Goods Order; or
  - (c) if the Client orders the Goods by other means, as the Company notifies the Client in writing.
- 4.5 If after the Company acceptance of the Goods Order the Company discovers within 7 Business Days of such acceptance that all of the Goods are unavailable, the Company will give the Client the option to wait until new stock is available or, if the Client prefers so, the Company will terminate the Agreement and refund or re-credit the Client within 7 Business Days for any sum that has been paid by the Client or debited from the Client credit card for the Goods. In these circumstances, the Company will inform the Client as soon as possible.
- 4.6 If within 7 Business Days of the Company acceptance of the Goods Order the Company discovers that some but not all of the Goods are unavailable, the Company will no longer supply the unavailable Goods, unless the Client agrees to wait until new stock is available. In these circumstances the Company will contact the Client detailing the Goods that are unavailable and offer the Client the option of amending the Goods Order to substitute the unavailable items with alternative Goods or to wait until new stock is available. If the Client does not wish to wait until new stock is available or the Client does not wish to order alternative Goods to substitute the unavailable items within 7 calendar days of receipt of such notice, the Company will deliver the available Goods to the Client in accordance with Clause 6 below. The Company will refund or re-credit the Client for any sum that has been paid by the Client or debited from the Client credit card in respect of the unavailable Goods.

4.7 The Website contains a large number of Goods. Every effort is made to ensure that prices shown on the Company Website or in any price guide the Company makes available to the Client are accurate at the time the Client places the Goods Order. However, it is always possible that, some of the Goods on the Company Website or in a price guide may be incorrectly priced. If within 7 Business Days of accepting the Goods Order a pricing error is found in respect of any or all of the Goods the Client have ordered, the Company will notify the Client as soon as possible detailing the mispriced Goods and offering the Client the option of:

4.7.1 placing a new Goods Order at the correct price for this Goods;

4.7.2 cancelling the whole of the Goods Order; or

4.7.3 cancelling the Goods Order for the mispriced Goods and reconfirming the Goods Order for the correctly priced Goods.

4.8 If, within 7 calendar days of receipt of the Company's notice to the Client, the Client have not responded by selecting one of the available options at Clauses 4.7.1 to 4.7.3 above, then:

4.8.1 if all of the Goods the Client have ordered are found to be mispriced, the entire order will be cancelled automatically and the Company will refund or re-credit the Client for any sum the Client has paid for the Goods; or

4.8.2 if only some of the Goods the Client have ordered are found to be mispriced, the Agreement with the Client continues and the Company will deliver the correctly priced Goods but the Company will not be obliged to supply the Client with the mispriced Goods. In these circumstances, the Company will refund or re-credit the Client for any sum the Client have paid for the mispriced Goods.

4.9 Where the Goods:

4.9.1 are unavailable (and the Client orders alternative Goods from the Company); or

4.9.2 have been mispriced and the Client subsequently re-orders such Goods at the correct price,

the Agreement shall apply to the new Goods Order and the supply of the relevant Goods, whether the Goods Order is placed through the Website or otherwise.

## **5 Payment terms**

5.1 Unless the Company says otherwise to the Client in writing, payment for the Goods and all applicable delivery charges is in advance and can be made by the Client by any method shown on the Website, or otherwise accepted by the Company at the time the Client places the Goods Order. Payment shall be due when the Company accepts the Client Goods Order and always before the delivery date. Time for payment shall be a fundamental term of the Agreement. The Company reserves the right to terminate the Agreement immediately

or to stop providing the Client any Goods or support services to the Client in the event that the Client does not pay for the Goods as specified in the Agreement.

- 5.2 We reserve the right not to deliver the Goods until the Company receives the full payment of the Goods the Client has ordered plus any other amounts due to the Company in cleared funds.
- 5.3 Payments for any Goods Order from the Company shall be made by the Client in full without any set-off, deduction, withholding, restriction or condition whatsoever.
- 5.4 Unless the Company says otherwise to the Client, the Client shall pay to the Company for any Goods support services the Company provides to the Client at the Company then current rates and for any other charges the Company are entitled to apply to the Client under the Agreement.
- 5.5 When the Client pays for the Goods or the Company charges under the Agreement in advance, the Company will issue an invoice to the Client when the Company receives the Client payment. For payments in arrears, the Company will send the Client an invoice and the Client shall pay the Company invoice within 14 days of the date of the invoice (or as otherwise specified in the invoice).
- 5.6 If the Client fails to pay any sum due under the Agreement, within 14 days from the date of the Company invoice (or as otherwise specified in the Client invoice), the Company shall be entitled to charge interest on the amount due at the rate of eight percent (8%) above the Barclays Bank Plc base rate ruling from time to time calculated from the due date until the Company receives the payment. The Company may in the alternative claim interest at the Company's discretion under the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.7 If the Client does not pay an invoice before the due date, the Company may instruct a debt collection agency to collect payment from the Client (including any interest and/or late payment charges) on the Company behalf. If the Company engages a debt collection agency to collect the Client's debt, the Client must pay the reasonable costs the Company have to pay to such agency, which will be added to the amount the Client owes.

## **6 Delivery**

- 6.1 Unless the Company agrees otherwise in writing, the Goods the Client orders will be delivered to the address the Client gives when the Client place the Goods Order (provided that such address is within the United Kingdom).
- 6.2 If delivery cannot be made to the Client's address for reasons under the Company control the Company will inform the Client as soon as possible.
- 6.3 Time is not of the essence for the delivery of the Goods. We will use reasonable endeavours to deliver the Goods on the date the Company agrees with the Client.

- 6.4 Unless the Client cancelled the Agreement in accordance with Clause 8, if the Client deliberately fails to take delivery of the Goods (otherwise than by reason of circumstances under the Company's control) then without prejudice to any other right or remedy available to the Company, the Company may:
- 6.4.1 store the Goods until the Company deliver them to the Client and charges the Client for reasonable costs (including insurance) of storage and for returning the Goods to the Company (or the Company sub-contractor's depot) and re-delivery (if applicable); or
  - 6.4.2 if re-delivery is not possible within a period of 14 Business Days from the previous deliver date, the Company reserves the right to sell the Goods at the best readily obtainable price and either: (a) where the Client have not already paid for the Goods in question and the Company manages to re-sell the Goods the Company will charge the Client for any shortfall below the price the Client agreed to pay for the Goods plus all reasonable storage, return and selling expenses the Company has; or (b), where the Client has already paid for the Goods in question the Company will account to the Client (after deducting all reasonable storage, return and selling expenses) for any proceeds received.

## **7 Risk / Title**

- 7.1 The Company shall bear the risk of loss or damage to the Goods until the point of delivery to the Client. The Client shall bear the risk of loss or damage to Goods from the time of delivery to the Client.
- 7.2 Ownership (i.e. title) of the Goods will pass on to the Client only once the Company have received payment in full from the Client of the price of the Goods and any other amounts due under the Agreement (e.g. delivery charges).
- 7.3 The Company shall be entitled to demand full payment for the Goods the Client ordered, even though ownership (i.e. title) of any the Goods has not passed to the Client yet.

## **8 Your Right of Cancellation, Returns and Refunds**

### **8.1 Cancellations:**

- 8.1.1 If the Client transfers phone and/or broadband services and/or a landline(s) to the Company from a losing provider over Openreach or KCOM Access Network and the Client exercises the Client right of cancellation during the Transfer Period the Client will be entitled to return to the Company, the Goods directly connected to these services, at the Client's own cost. The Client must return the Goods to the Company without undue delay and in any event not later than 14 calendar days after the day on which the Client notifies the Company that the Client wishes to cancel the Agreement.

8.2 In the event the Client has a valid claim for a defect in the new Goods or because the Goods are not as described by the Company the Company will (at the Company's sole option) either:

8.2.1 replace this Goods, if the Company have available the same Goods at the same price or give the Client a refund in accordance with Clause 8.3.3. The Company will collect the Goods from the Client or ask the Client to return the Goods to the Company; or

8.2.2 ask the Client to send the Goods for repair to the manufacturer in accordance with the Company's instructions.

8.3 Returns:

8.3.1 In the event that Clause 8.2 above applies, the Company will be responsible for the reasonable costs of returning the Goods to the Company. However, the maximum refund the Company would pay the Client for the Client delivery costs will be the costs of delivery by the least expensive delivery method the Company offers (provided that this is a common and generally acceptable method).

8.3.2 If the Client returns the Goods to the Company for any reason:

(a) the Client must take reasonable care to ensure the Goods are not damaged in the meantime or in transit.

(b) the Client shall return any Goods to the Company in good working condition (save for any defects in the new Goods not attributable to the Client) and with normal wear and tear excepted. Any Goods that the Client returns to the Company are at the Client's own risk, therefore the Company strongly advises all the Company customers to take reasonable care when returning any items to the Company for example, by ensuring the Goods are correctly addressed, adequately packaged, and carried by a reputable carrier.

8.3.3 Refunds:

(a) the Company will make any refunds due to the Client under the Agreement as soon as possible and in any event within 14 calendar days after the day on which the Company receives the Goods back from the Client.

(b) please note that any Goods returned to the Company which the Client claims to be faulty or incomplete will be checked and verified by the Company technicians. If any returned Goods are found not to be faulty or incomplete will be returned to the Client and the Company shall be entitled to charge the Client for the return and re-delivery carriage costs via the Client's original payment method. In the event that the Client's credit card



has expired, or is declined the Company will be entitled to hold the item(s) until full payment has been made for the return and re-delivery carriage.

- (c) We will reduce the Client's refund to reflect any reduction in the value of the Goods the Client return to the Company if the Client does not return the Goods as specified in Clause 8.3.2 above. If the Company refunds the Client the price paid before the Company are able to inspect the Goods and later discover the Client have handled them in an unacceptable way, the Client must pay the Company an appropriate amount.

## **9 New Agreement per Goods Order**

- 9.1 Every time the Client order Goods from the Company, the Agreement in force at the time of the Goods Order will apply to such Goods Order.

## **10 Warranty**

- 10.1 Other than as expressly set out in this Agreement and to the greatest extent permitted by law, the Company makes no representations or warranties with respect to the Goods, or the performance of the Company obligations hereunder, and expressly excludes such representations and warranties of any kind, whether implied, statutory or otherwise to the maximum extent permitted by law, including, without limitation, the warranty of merchantability and fitness for a particular purpose, whether expressed or implied, for the Goods.
- 10.2 All new Goods supplied by the Company is warranted free from defects for 12 months from the date the Company delivers it to the Client (unless otherwise stated). If new Goods develop a defect during the 12 month warranty period, the Client must notify the Company in writing via email at support@orbtalk.com, as soon as possible, but in any event within 7 calendar days of the date the Client discovered or ought to have discovered the damage, defect or complaint.
- 10.3 In the event that the Goods become faulty outside its warranty period the Client will be responsible for any fees connected to the repair of the Goods or to replacing it.
- 10.4 Neither the Company nor the manufacturer accepts liability for any damages to the Goods caused by the Client, its Users or by third parties even within the applicable warranty period. The warranties in Clause 10.1 above, do not apply to any defect in the Goods arising from fair wear and tear, wilful damage, accident, negligence by the Client or any third party, use otherwise than in accordance with its intended use, failure to follow the manufacturer's or the Company instructions, or any alteration or repair carried out without the Company prior written approval.
- 10.5 Upon receipt of the Goods the Client ordered, the Client will be asked to sign for the Goods received in good condition. If the package does not appear to be in good condition then please refuse the delivery. If the Client is unable to check the contents of the delivery at

the point of delivery then the Client must sign for the parcel as "UNCHECKED". Failure to do so may affect any warranty claims that the Client makes thereafter.

- 10.6 If the Client signs for the parcel as "UNCHECKED" and the Goods supplied to the Client are damaged in transit, the Client shall notify the Company promptly after receipt of the Goods (in any event no later than 1 Business Day from receiving the Goods) and return the Goods to the Company in accordance with the Company's instructions.

## **11 Limitation of Liability**

- 11.1 Nothing in this Agreement shall exclude or restrict a party's liability for matters which cannot by law be excluded or restricted. Nothing in this Agreement limits or excludes the Client's liability to pay the price of the Goods (or any amount owed by the Client under this Agreement) or each party's liability for: (i) death or personal injury resulting from negligence of that party; (ii) fraud or fraudulent misrepresentation; or (iii) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or (iv) any other liability which cannot be limited or excluded by applicable law. However, nothing in this Clause 11.1 gives a party any right or remedy which it would not otherwise have.

- 11.2 Subject to Clause 11.1, the Company shall not be liable under, or in connection with this Agreement for:

11.2.1 loss of income;

11.2.2 loss of business profits or contracts;

11.2.3 business interruption;

11.2.4 loss of the use of money or anticipated savings;

11.2.5 loss of information;

11.2.6 loss of opportunity, goodwill or reputation;

11.2.7 loss of, damage to or corruption of data;

11.2.8 any loss or damage that is not foreseeable by the Company;

11.2.9 cost of procurement of substitute goods or services; or

11.2.10 any indirect, special or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise or, whether any such losses could be reasonably foreseen by the Company or not or if even if the Company have been advised of the possibility of such damages.

Each of the Sub-clauses 11.2.1 to 11.2.10 shall be deemed to be independent of the others.

11.3 Subject to Clause 11.1, the Company entire liability to the Client in contract, tort (including negligence) or otherwise arising out of or in connection with the Goods the Client ordered in a particular transaction under the Agreement shall, for any one incident or series of related or unrelated incidents within a period of 12 months, be limited to the price the Client paid for such Goods.

## **12 Data Protection**

12.1 We operate in accordance with the Data Protection Act 1998 and in accordance with the Company's privacy policy available on the Company Website. You are also required to comply with all applicable data protection legislation. We will take all reasonable precautions to keep the details of the Goods Order and the Client's payment details secure.

## **13 Images**

13.1 The images of the Goods on the Website are for illustrative purposes only. Although the Company has made every effort to display the colours accurately, the Company cannot guarantee that the Client computer's display of the colours accurately reflect the colour of the Goods. The Goods may vary slightly from those images.

## **14 Goods Support**

14.1 Reasonable free technical support during the applicable manufacturer warranty period for faulty Goods will be made available in respect of Goods directly from the Company (i.e. virtual or remote technical support for faulty items) or from the manufacturer (as specified by the Company). After the warranty period, reasonable technical support may be available to the Client at the Company's sole discretion (and the Company reserves the right to charge the Client for such support at the Company's then current rates).

14.2 Technical support for any equipment the Client acquired from any other source is the responsibility of the equipment manufacturer or the Client's third party supplier.

## **15 General Provisions**

15.1 This Agreement represents the entire agreement between the parties in relation to its subject matter and supersedes all agreements and representations made by either party, whether oral or written.

15.2 The parties acknowledge and agree that:

15.2.1 the parties have not been induced to enter into this Agreement by any representation, warranty or other assurance not expressly incorporated into it; and

15.2.2 in connection with this Agreement the parties' only rights and remedies in relation to any representation, warranty or other assurance are for breach of this Agreement and that all other rights and remedies are excluded, except in the case of fraud.

- 15.3 The parties do not intend that this Agreement be enforceable by any person not a party to this Agreement including under the General Terms (Rights of Third Parties) Act 1999.
- 15.4 The Client may not assign sub-contract or transfer any of the Client's rights or obligations under this Agreement. The Company may assign or transfer the Company's rights and obligations under this Agreement to a third party who agrees to continue complying with the Company's obligations under the Agreement.
- 15.5 If any part, term or provision of this Agreement is held to be illegal or unenforceable the validity or enforceability of the remainder of this Agreement will not be affected. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 15.6 If either party delays in acting upon a breach of this Agreement that delay will not be regarded as a waiver of that breach. If either party waives a breach of this contract that waiver is limited to that particular breach.

## **16 Governing Law and Jurisdiction**

- 16.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.
- 16.2 Each of the parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).