

GENERAL TERMS AND CONDITIONS OF SALE



OF

RED 5 NETWORKS LIMITED

1 DEFINITIONS

- 1.1 "Client" means the organisation or person who buys or agrees to buy the Goods & Services from the Supplier;
- 1.2 "Client's Purchase Order" means an order for Goods & Services by the Client and acknowledged by the Supplier in accordance with clause 2.2;
- 1.3 "Contract" means the contract between the Supplier and the Client for the sale and purchase of Goods & Services incorporating these Terms and Conditions;
- 1.4 "Contract Term" means the length of the contract agreed between the Supplier and the Client starting from the Delivery Date;
- 1.5 "Delivery Date" means the date specified by the Supplier when the Goods & Services are to be delivered;
- 1.6 "Goods & Services" means the Goods & Services that the Client agrees to buy from the Supplier;
- 1.7 "List Price" means the list of prices of the Goods & Services maintained by the Supplier as amended from time to time;
- 1.8 "Price" means the price for the Goods & Services excluding VAT (if applicable) or any analogous sales tax, carriage, freight, postage or insurance costs;
- 1.9 "Supplier" means Red5 Networks Ltd of 102 Hellesdon Park Road, Norwich, Norfolk, NR6 5DR;
- 1.10 "Loan Equipment" refers to equipment temporarily provided to the Client at the discretion of the Supplier. This may be under the terms of a separate agreement in which case those conditions shall prevail but only where specifically defined;
- 1.11 "Terms and Conditions" means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Supplier;
- 1.12 "Party" or "Parties" means covering both the Client and the Supplier;
- 1.13 It is expressly understood that neither the Client nor the Supplier are consumers, as defined by the Unfair Contract Terms Act 1977;
- 1.14 Any reference to a statutory provision shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2 CONDITIONS

- 2.1 These Terms and Conditions shall apply to all contracts for the sale of Goods & Services by the Supplier to the Client to the exclusion of all other terms and conditions including any terms or conditions that the Client may purport to apply under any purchase order, confirmation of order or similar document.
- 2.2 All orders for Goods & Services shall be deemed to be an offer by the Client to purchase Goods & Services pursuant to these Terms and Conditions and shall only be accepted by means of the Supplier's standard agreement form.
- 2.3 Acceptance of delivery of the Goods & Services shall be deemed conclusive evidence of the Client's acceptance of these Terms and Conditions.

- 2.4 Any variation to these Terms and Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Supplier.
- 2.5 The Supplier will use reasonable endeavours in the provision of the Goods & Services.
- 2.6 The Supplier will deliver the Goods & Services to the Client from the Connection Date with reasonable skill and care and in all material respects in accordance with the Contract, but the Supplier cannot, given the nature of the product, guarantee that the Goods & Services will be continuously available or error free.
- 2.7 The Supplier reserves the right to cancel the Contract prior to the Delivery Date or within a reasonable period of time thereafter where it becomes apparent that the Goods & Services cannot be delivered to or installed at the site due to a geographic, practical or technical restraint; or the cost of providing or installing the Goods & Services is materially higher than the usual cost of providing the Goods & Services.
- 2.8 Before contacting the Supplier about an Incident, the Supplier should make all reasonable efforts to rule out the possibility that it is caused by the Client's equipment. Otherwise a time charge may be made.
- 2.9 The Goods & Services are provided for use by the Client's users in the course of the Client's business and on the condition that the Client does not resell or otherwise make the Goods & Services available to any other person.
- 2.10 The Client undertakes to use the Product, and to ensure that users use the Goods & Services in accordance with the Terms and Conditions of the Contract and any legislation applicable.
- 2.11 Without limiting Clause 2.10, the Client will not, and will ensure that each user will not where applicable use the Goods & Services to:
- (a) send, communicate, knowingly receive, upload, download or use any material or make any calls that are offensive, abusive, indecent, defamatory, obscene, menacing, cause annoyance, inconvenience, needless anxiety or are intended to deceive;
 - (b) download, possess or transmit in any way, illegal material;
 - (c) engage in criminal, illegal or unlawful activities;
 - (d) violate or infringe the rights or property of any person, including rights of copyright and any other intellectual property rights, privacy or confidentiality;
 - (e) intentionally impair or attempt to impair, without authorisation, the operation of any computer, prevent or hinder access to any program or data held in any computer or to impair the operation of any such program or the reliability of any such data; or
 - (f) send, communicate, knowingly receive, upload or download data or make any calls in such a way or in such amount that the Client knows or ought reasonably to know will have a material adverse effect to the Supplier's business.
- The Client indemnifies and promises to pay on demand the Supplier for any settlement paid by, damages awarded against and reasonable legal costs and expenses suffered or incurred by the Supplier.
- It is the Client's responsibility to secure their telecom and IT systems against misuse. The Client agrees to pay all excess usage and other charges.
- 2.12 Upon activation of a broadband service, the Client accepts it may experience a temporary loss of Client's existing line. The Supplier cannot guarantee the quality on the local loop section provided by any third party operator. Therefore it cannot guarantee that a connection can support the transmission speed specified in the product order. Nor can it guarantee 100% packet data integrity.
- 2.13 If the Client in good faith disputes an invoice, the Client must notify the Supplier in writing of the dispute not more than 14 days after the date of the invoice providing reasonable details of the dispute to allow the Supplier to investigate. The Client must make payment in full of the invoice notwithstanding the dispute raised. If the Supplier finds that the invoice is incorrect the Supplier will apply a credit to the Client's account.
- 2.14 If a direct debit is dishonoured or cancelled, the Supplier will have the right to make a reasonable administration charge;

- 2.15 If the Client offers employment to or employs any member of the Suppliers staff during the Contract or up to 6 months after its termination, then the Client shall pay the Supplier an amount being equal to the employee's annual salary; such sum being a genuine estimate of the cost of disruption that such inducement would cause to the conduct of the Supplier's business unless waived in writing by the Supplier.
- 2.16 Unless expressly agreed in writing by the parties, the Supplier's personnel shall not & can not hold themselves out as agents of any party & shall not have any authority to create any obligations.
- 2.17 Any advice or recommendations given by the Supplier or its employees or agents to the Client or its employees or agents as to the application or use of the services which is not confirmed in writing by the Supplier is followed or acted upon entirely at the Client's own risk and accordingly the Supplier shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.18 The Client accepts for any downtime that the infrastructure is provided by separate third parties who have their own service levels. The only and total compensation for downtime will be in proportion to the time down only compared to the monthly fee paid.
- 2.19 All and any data & backups remains the ultimate responsibility of the Client. The Supplier cannot guarantee the integrity of data backup without examining the backup log and media each day. As this service is not supplied, the ultimate responsibility must rest with the operators on site. It remains at all times the Clients responsibility to monitor the backup system and notify us of any irregularity.

3 PRICE AND PAYMENT

- 3.1 The Price shall be that in the Supplier's current List Price, or such other price as the parties may agree in writing. The Price is exclusive of VAT or any analogous sales tax, carriage, freight, postage or insurance costs.
- 3.2 Payment of the Price and VAT and any other applicable costs shall be due on within 30 days of the date of receipt of the invoice supplied by the Supplier. In the absence of written agreement to the contrary all payments will be taken by direct debit.
- 3.3 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 8.00% per annum above the base rate of The Bank of England from time to time in force.

4 GOODS & SERVICES

- 4.1 The quantity and description of the Goods & Services shall be as set out in the Supplier's Client Agreement form.
- 4.2 The Goods & Services shall be required only to conform to the specification in the Supplier's Client Agreement form. Photographs are for illustrative purposes only and may not exactly match the product itself.

5 DELIVERY OF GOODS & SERVICES

- 5.1 Unless otherwise agreed, delivery of the Goods & Services shall take place at the address specified in the Supplier's Client Agreement form on the Delivery Date and the Client shall be deemed to have accepted the Goods & Services upon their delivery. The Client shall make all arrangements necessary to take delivery of the Goods & Services whenever they are tendered for delivery.
- 5.2 The Delivery Date specified by the Supplier is an estimate only. Time of delivery shall not be of the essence of the Contract.
- 5.4 The Client shall be entitled to replacement Goods where the Goods have been damaged during transportation. The Client must notify the Supplier of the damage within 24 hours of delivery.

5.5 Risk shall pass on delivery of the Goods to the Client.

6 TITLE

6.1 The Supplier warrants that it has good title to the Goods.

6.2 Title to the Goods shall not pass to the Client until the Supplier has been paid in full for the Goods.

7 GUARANTEE

7.1 Where the Goods have been manufactured and supplied to the Supplier by a third party, any warranty granted to the Supplier in respect of the Goods shall be passed on to the Client. It is the Client's responsibility to read and understand the limitations of this third party warranty and to notify the Supplier in writing if no such warranty document has been received. No further warranty beyond this is provided to the Client by the Supplier unless expressly defined as part of a separate agreement.

7.3 All other warranties, conditions or terms whether made expressly or implied by common law or by statute relating to use, quality, and/or fitness for purpose are excluded.

8 LOAN EQUIPMENT

8.1 Any equipment provided under loan arrangements will be subject to the following conditions

8.1.1 All carriage charges will be payable by the Client

8.1.2 The loan period shall only be free of charge for a maximum of 2 weeks following dispatch

8.1.3 Damage or excessive wear-and-tear shall be charged to the Client at rates discretionary to the Supplier

8.1.4 Charges levied for overdue Loan Equipment shall be as defined in R5Doc006 ('Rates and Charges') <http://www.r5n.co.uk/documents/R5Doc006.pdf>. Such charges shall accrue until the equipment is returned to the Supplier or full payment is received to purchase the Loan Equipment as Goods.

9 LIMITATION OF LIABILITY

9.1 In the event of any breach of these Terms and Conditions by the Supplier the remedies of the Client shall be limited to damages which shall in no circumstances exceed the Price of the Goods & Services.

10 FORCE MAJEURE

The Supplier shall not be liable for any circumstances beyond a Party's reasonable control including acts of God, theft, war or riot, civil disobedience, national emergency, strikes and other labour disputes (other than concerning the Party affected by the Force Majeure Event), fire, flood, act of terrorism, power failures, non-availability of any third party communication services, or the internet or breakdown of any equipment not supplied under a Contract and acts of government or other competent authority.

11 SEVERANCE

If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid illegal or unenforceable provision eliminated.

12 TERMINATION

The Client may terminate the Contract by providing the Supplier with no less than 90 days written notice. Such notice must expire on or after the end of the Contract Term. If the Contract is terminated by the Client within the Contract term the Supplier may invoice the Client the charges for the remaining term of

the contract. The Client agrees that the charges are a fair assessment of the losses and damage that the Supplier will suffer as a result of the termination.

13 SUSPENSION

- 13.1 The Supplier may, without prejudice to any other right which it might have, elect to suspend the provision of Goods & Services under the Contract until further notice on notifying the Client in writing if:
- (a) the Supplier is entitled to terminate the Contract;
 - (b) the Supplier has reasonable grounds to believe that the Client or an end user is using the Goods & Services in breach of the contract;
 - (c) the Supplier or any third party providing equipment or services to the Supplier in connection with the provision of the Goods & Services is obliged to comply with an order, instruction or request of government, regulatory authority, emergency services organisation or other competent authority; or
- 13.2 If the Supplier exercises its rights under Clause 11.1 as a consequence of the breach, fault, act or omission of the Client or an end user, The Price will be continue to be payable and the Client will pay to the Supplier all reasonable costs and expenses incurred by the implementation of such suspension and any recommencement of the provision of the Goods & Services.

14 LIABILITY

- 14.1 Nothing in the Contract will exclude or limit a Party's liability arising from or in connection with:
- (a) any death or personal injury caused by the negligence of such Party, its agents, subcontractors, officers, directors or employees;
 - (b) any fraudulent acts or omissions of or fraudulent representations made by such Party, its agents, subcontractors, officers, directors or employees;
 - (c) any breach of statutory implied terms as to title;
 - (d) any other liability which cannot be excluded or limited by law;
 - (e) any indemnity given by such Party in the Contract unless otherwise expressly agreed in writing;
- 14.2 Subject to Clause 14.1, a Party will not be liable to the other Party in contract, tort (including negligence), breach of statutory duty or otherwise for:
- (a) indirect, consequential or special loss or damage;
 - (b) loss of opportunity (whether direct or indirect);
 - (c) loss of anticipated savings (whether direct or indirect);
 - (d) loss arising from or damage to a brand, reputation or goodwill (whether direct or indirect);
 - (e) loss of profit or anticipated profit (whether direct or indirect);
 - (f) loss of business or contracts (whether direct or indirect);
 - (g) loss of revenue or anticipated revenue (whether direct or indirect);
 - (h) loss arising from the loss or degradation of data including backups (whether direct or indirect); and
- 14.3 Subject to Clauses 14.1 and 14.2, a Party's total liability to the other Party in respect of all Losses arising under or in connection with the Contract in contract, tort (including negligence), breach of statutory duty or otherwise, will in no circumstances exceed the greater of:
- (a) the charges paid by the Client under the Contract during the 12 months preceding the claim; and
 - (b) one thousand pounds (£1,000).
- 14.4 The Supplier will not be liable to Client for any failure of the Goods & Services as a result of:
- (a) any act or omission of Client, end users or Client's employees, agents or subcontractors;
 - (b) any of the Clients equipment;
 - (c) failure by the Client to implement any reasonable instructions issued by the Supplier or
 - (d) any suspension of the Goods & Services
- 14.5 Except as expressly set out in the Contract and to the extent permissible by law all other warranties, terms and conditions, guarantees as to quality or fitness for a particular purpose of the Goods & Services whether express or implied by law, custom or otherwise are excluded.

15 INFORMATION LAW AND GOVERNANCE (AS APPLIED TO INDIVIDUAL PERSONS)

15.1 Rights

Under the General Data Protection Regulation (GDPR) and The Data Protection Act 2018(DPA) individuals have a number of rights with regard to their personal data. They have the right to request from us access to and rectification or erasure of personal data, the right to restrict processing, object to processing as well as in certain circumstances the right to data portability.

Having provided consent for the processing of data they have the right (in certain circumstances) to withdraw that consent at any time which will not affect the lawfulness of the processing before consent was withdrawn.

They have the right to lodge a complaint to the Information Commissioners' Office if they believe that we have not complied with the requirements of the GDPR or DPA 18 with regard to their personal data.

15.2 Policy

It is the policy of Red5 Networks Ltd to only use the personal data of private individuals for 'primary' business purposes (i.e. to facilitate the transactions pursuant to the instructions of the private individual concerned). This means we only gather the minimum data required to complete these transactions and supporting activities. We will never use their private information for any other purpose.

We will not collect any data designated as 'Special' under the GDPR such as health, ethnicity, political or religious beliefs etc.

We will not collect any data on under-age subjects (children).

15.3 Legal Basis

The legal basis under which we collect basic information on individuals is that it be pursuant to our primary business purposes. In plain English, this means in order to carry out the instructions of those individuals as we transact business with them in the normal manner.

15.4 Storing and Processing

Information on individuals will only be stored and processed for as long as it is needed. Either to support the primary business activities or to comply with relevant legislation (such as company law). After this, it will either be deleted or anonymised as appropriate.

15.5 Data Subject Access Requests

Data subjects wishing to exercise their rights should contact igov@r5n.co.uk using the subject 'Information Governance Request'. Requests to this address will be dealt with by the data controller within 30 days.

Details of our SAR and Incident Response procedures are available on request (R5Doc051)

15.6 Incident Response

Where there has been a breach, we will notify the Information Commissioners office (and where appropriate the affected data subjects) within 72 hours.

16 GOVERNING LAW AND JURISDICTION

These Terms and Conditions shall be governed by and construed in accordance with the Law of England and Wales and the parties hereby submit to the exclusive jurisdiction of the Courts of England and Wales.