

# SPIRENT COMMUNICATIONS SAS STANDARD CONDITIONS OF SALE

## 1 Basis of Sale

- 1.1 Quotation by the Supplier does not constitute an offer and may be withdrawn or revised at any time prior to Supplier's acceptance of the Order.
- 1.2 The Order constitutes an offer by the Customer, capable of acceptance by the Supplier, to purchase the Products subject to these Conditions.
- 1.3 No Order shall be binding upon the Supplier unless the Supplier expressly accepts the Order by written notice to the Customer ("Acceptance Notice") in which case a contract (the "Contract") will be framed, for the sale and purchase of the Products, comprising the Order, Acceptance Notice and these Conditions.
- 1.4 These Conditions shall apply to, and shall be part of, the Contract to the exclusion of any terms and conditions of the Customer
- 1.5 No variation to the Contract shall be binding unless agreed in writing between the authorized representatives of the Customer and the Supplier.

## 2 Price

- 2.1 The Price of the Products shall be as stated in the price quotation and/or in the Supplier's applicable price list for the Products in effect at the date of invoice and, unless otherwise so stated, shall be.
  - 2.1.1 exclusive of VAT and any other tax which, where applicable, shall be payable by the Customer in addition to the Price, and
  - 2.1.2 exclusive of all charges for packaging, packing, shipping carriage, insurance and delivery of the Products, and any value added or sales tax and other duties, imposts or levies, which, where applicable, shall be payable by the Customer in addition to the Price.
  - 2.1.3 The prices are fixed and shall not be subject to change provided the order is received by the Supplier before expiry of the validity period shown in the price quotation and/or current price list.

## 3 Terms of Payment

- 3.1 The Supplier may invoice the Customer on (or after) the date of shipment of the Products to the agreed point of delivery when the Contract provides that the Products are to be delivered to such place by the Supplier.
- 3.2 The Customer shall pay the Supplier's invoices in full without any deduction whether by way of set off, counterclaim or otherwise within 30 days of the sale of the Supplier's invoice.
- 3.3 The Supplier shall be entitled to charge interest on late payments before as well as after judgement at the rate of 4% per annum above HSBC Bank's base rate from time to time.
- 3.4 Partial payment expressed to be "in full and final settlement" shall be effective as such unless specifically agreed In Writing by the Supplier.

## 4 Delivery

- 4.1 Delivery of the Products shall be made to the place of delivery specified in the Contract, by the Supplier.
- 4.2 The Customer acknowledges any dates for delivery of Products are estimates only. Accordingly, the Supplier shall have no liability in the event of any delays. The time of supply or delivery of the Products is not of the essence of the Contract and shall not be made of the essence of the Contract.
- 4.3 The Customer shall be deemed to have accepted the Products upon delivery in all cases other than when the Products are damaged at the time of delivery and the Customer notifies the Supplier (in Writing) of such damage within eight (8) days of the date of delivery in which case the Supplier shall, at its sole option and as the Customer's sole and exclusive remedy, replace or repair any such Products or part thereof which are proved, to the Supplier's satisfaction, to have been damaged at the time of delivery.
- 4.4 If the Customer refuses or fails to take delivery of Products tendered in accordance with these Conditions then, without prejudice to any other rights the Supplier may have against the Customer (for breach of contract or otherwise):
  - 4.4.1 the Supplier shall be to immediately payment in full for the Products so tendered and either to effect delivery by whatever means it considers most appropriate or to store those Products at the risk of the Customer.
  - 4.4.2 the Customer shall, in addition to the Price, pay all costs of such storage and any additional costs incurred as a result of such refusal or failure, and
  - 4.4.3 the Supplier shall be entitled, after the expiration of 1 month from the date upon which it first tendered the Products for delivery, to dispose of the Products in such manner as the Supplier may determine and shall be under no duty to account to the Customer for any of the proceeds of such disposal.
  - 4.4.5 The Supplier shall be entitled to deliver the Products under a Contract in installments.

## 5 Risk and Property

- 5.1 Risk of damage to or loss of the Products shall pass to the Customer upon delivery to the Customer in accordance with the Contract.
- 5.2 The title in the Products shall, subject to the second sentence of this Clause 5.2, pass to the Customer upon full payment for the Products or on is later. Title to the Software (as defined in Clause 6.1 below) contained in or supplied with or for use with the Products shall not pass to the Customer but shall remain at all times with supplier.
- 5.3 Until such time as title in the Products has passed to the Customer.
- 5.3.1 the Supplier shall be entitled to repossess at any time any of the Products in which title remains vested in the Supplier.
- 5.3.2 for the purpose specified in Clause 5.3.1 above, the Supplier or any of its agents or authorized representatives shall be entitled at any time and without notice to enter upon any premises in which the Products or any part thereof are installed, stored or kept, or are reasonably believed so to be;
- 5.3.3 the Supplier shall be entitled to seek a court Injunction or equivalent judicial order under the applicable law of the Contract to prevent the Customer from selling, transferring, or otherwise disposing of the Products.
- 5.4 Until such time as title in the Products has passed to the Customer, the Customer shall, subject to the Supplier's rights hereunder, keep the Products separate from other products and hold the Products as the Supplier's fiduciary agent.

## 6 Software & Documentation

- 6.1 The Product units supplied to the Customer under the Contract shall contain embedded software ("Embedded Software"), and external software ("External Software") shall be supplied for use with the Product (Embedded Software and External Software being collectively referred to as "Software"). The Software is more fully described in the Specification. Except as otherwise expressly provided herein, all references to "Product" in these Conditions shall be deemed to include such Software, provided that nothing in these Conditions shall be construed as a sale (and/ or assignment) of such Software to the Customer.
- 6.2 Supplier's software license and restrictions are included in the Software License Agreement included with the Product. Such Software License Agreement shall be in addition to these Conditions of Sale and can be found at: <https://spirent1.sharepoint.com/sites/Legal/Legal%20Public/templates/EULA/EULA.pdf>
- 6.3 Each Product is accompanied by a copy of the user's manual in the form of a CD ROM, or hardcopy (on request).

## 7 Maintenance Support, Hire or Loan

- 7.1 The provision, by Supplier, of maintenance and support hire or loan for the Product may be included in this Agreement or may be the subject of a separate agreement between the parties.

## 8 Warranties and Liability

- 8.1 The Supplier warrants to the Customer for a period of ninety (90) days that the Software and 1 (one) year for hardware that the Products will be free from defects in materials and workmanship ("Limited Warranty") following the date of delivery («Warranty Period»).

- 8.2 The Supplier's entire liability and the Customer's sole remedy will be at the Supplier's sole discretion, the repair or replacement (with the same or similar hardware) of any hardware not meeting the Limited Warranty set out above in 9.1 that is returned to Supplier during the Warranty Period in accordance with the terms and conditions of the Contract. To the extent that the Supplier elects to repair Product (including component parts thereof) the warranty period in respect of such repaired Product shall be equal to an unexpired portion of the warranty for the Product outstanding at the date of repair.
- 8.3 In respect of repair of Products after expiry of the warranty period referred to Clause 8.1 above such repairs may be conducted at the discretion of the Supplier on commercial terms agreed at the date of such repair and in such event the warranty period for such product shall be 3 months from date of repair.
- 8.4 To the maximum extent permitted by law all other warranties and conditions, expressed or implied, including without limitation any conditions of quality, merchantability, or fitness for a particular purpose with respect to the use of the Products are excluded.
- 8.6 Specifically, the Limited Warranty in Clause 8.1 does not cover failures of the Products which result from accident, abuse, misuse, alterations (by persons other than the Supplier or its authorized repair agents), moisture, corrosive environments, shipping, high voltage surges, or abnormal working conditions. The Limited Warranty does not cover normal wear and tear. The Limited Warranty does not cover the Software which is provided the fullest extent permitted by law, "as is".
- 8.7 In no event shall the Supplier's liability under Clauses 8.1 and 8.2 exceed the price paid for the Products in question, provided always that nothing in this Contract shall limit or exclude the Supplier's liability for death or personal injury resulting from its negligence.
- 8.8 If the Customer needs to make a claim under the Limited Warranty within the Warranty Period, the Customer must telephone the Supplier prior to sending the Product to the Supplier. The Supplier will inform the Customer as to where (and how) to return the Product. The Supplier will not accept any Products returned to it where this procedure is not followed.
- 8.9 The Customer is responsible for all costs involved in sending the Products to the Supplier and for packaging the Product such that it will not be damaged during return carriage to the Supplier
- 8.10 The Supplier reserves the right to charge the Customer on a time and materials basis at its then current rates if the Customer's warranty claim is found to be invalid.
- 8.11 The Supplier gives no warranty that the Products do not infringe the patent, copyright, design right, trademark or other intellectual property rights of any person and (to the maximum extent permitted by law) accepts no liability in this regard.

## 9 Termination

- 9.1 Either party may terminate the Contract, by notice in writing, if the other party commits a material breach of the Contract and fails to remedy such breach within fourteen (14) days after being requested by notice in writing to do so.
- 9.2 The Supplier shall be entitled to terminate the Contract without liability to the Customer by giving notice to the Customer at any time if: the Customer makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction), or an encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Customer, or the Customer is unable to pay its debts as they fall due; or the Customer ceases, or threatens to cease, to carry on business, or the Supplier reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

## 10 General

- 10.1 The Supplier may assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract. The Customer may not assign or transfer the Contract.
- 10.2 Any notice required or permitted to be given by either party to the other shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 10.3 No waiver by the Supplier of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. Any waiver of the Contract by the Supplier shall only be effective if in Writing expressly waiving the provision in question.
- 10.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 10.5 The Supplier shall be under no liability to the Customer in respect of anything which, if this Clause 10.5 were not part of the Contract, may constitute breach of the Contract arising by reason of force majeure, namely circumstances beyond the reasonable control of the Supplier which shall include (but shall not be limited to) acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion, including acts of local government and parliamentary authority; shortage of supplies, utilities, equipment, materials, breakdown or shortage of equipment and labor disputes of whatever nature and for whatever cause arising.
- 10.6 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to these Conditions and/or any Contract in particular but without limitation any warranties given in the Contract are for the benefit of the Customer being the original purchaser of the Products, only.
- 10.7 All (and any) liabilities of the Supplier to the Customer under, or arising out of, a Contract (including, but not limited to, liability for breach of contract, negligence and misrepresentation), which may be excluded or limited at law and which have not been excluded or limited by any other provision of these Conditions shall be limited, in aggregate, to the value of the relevant Contract.
- 10.8 Exclusion of damages; limitation on liabilities. Except as explicitly provided herein in no event shall either party or its supplier be liable for (A) any indirect, special incidental punitive or consequential damages including but not limited to loss of profits, loss of data and/or loss of business, arising out of or resulting from this agreement even if the other party has been advised of the possibility of such damages, or (B) damages in excess of the amounts payable hereunder by client. The foregoing shall apply regardless of the negligence or other fault of each party and regardless of whether such liability sounds in contract, negligence, tort, or any other theory of legal liability.
- 10.10 To the extent permitted by law, the Customer shall defend and indemnify the Supplier from any and all claims brought against the Supplier by third parties, and shall hold the Supplier harmless from all corresponding damages, liabilities, costs and expenses, (including reasonable lawyers' fees) incurred by the Supplier arising out of or in connection with Customer's possession, use or distribution of the Products.
- 10.11 The parties agree that, to the extent permitted by law the Vienna Convention of 1980 ("The Convention on Contracts for the International Sale of Goods") and all international and domestic (or other) implementations of that Convention shall not apply in relation to any Contract.
- 10.12 The Contract shall be governed and construed in accordance with the laws of France. In the case of any legal disputes which may arise as a result of these Conditions or the activities arising therefrom, it is expressly agreed that jurisdiction shall be conferred on the courts of Versailles.
- 10.13 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted, or extended at the relevant time.
- 10.14 The headings in these Conditions are for convenience only and shall not affect its interpretation.
- 10.15 Additional Considerations:  
Cancellation for implementation and educational services are as follows:  
More than two (2) weeks' notice - no cancellation fee.  
Between two (2) weeks and one (1) week notice-50% cancellation fee.  
Less than one (1) week notice - 100% cancellation fee