

General Terms and Conditions for Purchasing by the Deutsche Telekom Group (GTC Purchasing)

Part B: Specific terms for the United Kingdom

1. Definitions

In these conditions:

“EU” shall mean the European Union of member countries as may be amended from time to time.

“Customer” shall mean Customer Limited a company registered in England with company number 01668706 and with its registered office at 21st Floor, Euston Tower, 286 Euston Road, London, NW1 3DP or its successors, subsidiaries and assigns.

“Products” shall mean all goods and/or services specified in the Order or as may be amended pursuant to the terms hereof.

“Contractor” shall mean the other contracting party.

2. Form and Acceptance of Order

2.1 The Order constitutes an offer by Customer to purchase the Products specified therein upon these terms and conditions. Customer shall only be bound by an Order (or any amendments thereto notified to the Contractor in the same manner or in writing) that is accepted by the Contractor either (i) the Contractor’s execution or commencement of work, or (ii) commencement of delivery pursuant to the Order as the case may be.

3. Variations

3.1 Customer shall have the right to request the Contractor to add or deduct from, or in any other way amend any Order prior to the delivery of the Products in accordance with clause 7 hereto. The Contractor shall be obliged to give notice in writing within five (5) working days of receipt of such request by Customer, stating the effect (if any) on the price and/or delivery of a proposed variation. In no circumstances shall the receipt of such request from Customer be construed as authorisation to proceed until the Contractor has received a duly authorised amendment in respect thereof.

3.2 Following receipt of the Contractor’s notification in accordance with clause 3.1 above, and subject to Customer’ acceptance of the same, Customer may at its option from time to time

and at any time issue an amendment(s) to any Order affected thereby. Such amendment(s) shall include details agreed between the parties and any variation(s) to the specification(s), quantity, the price, the delivery date(s) of the Products or such other details as are appropriate.

3.3 Notwithstanding the provisions of clause 3.1 above, should Customer consider it desirable to amend the Order by written instruction (provided the same is issued by an authorized representative of Customer) prior to issuing an amendment, the Contractor shall comply with such instruction pending receipt of the amendment.

4. Quality and Description

The Contractor hereby warrants and agrees with Customer:

- a) That all Products delivered by the Contractor shall conform with the quality and description and all other particulars of the Products stated in the Order and that the Products shall conform to all samples, drawings, descriptions and specifications therefore furnished by the Contractor and approved by Customer prior to the date hereof;
- b) That the Products shall be of good and merchantable quality and shall be fit for the purposes which they are designed to fulfil and for any purpose made known, whether expressly or impliedly by Customer to the Contractor, and that all services comprised in the Products shall be performed in a proper, diligent and skilful manner by properly qualified and experienced persons;
- c) That the Products shall comply with all statutory requirements, regulations and British, EU or international standards or equivalent specifications applicable to the Products;
- d) That all the goods shall be free from any defect in title;

- e) That the Contractor (including its employees, agents and sub-contractors) will at all times comply in all respects with all health and safety regulations in force during the performance of the Order (including without limitation Section 6 of the Health and Safety at Work Act 1974); and.
- f) That any and all software and/or electronic processing systems delivered pursuant to any Order shall be coded such that neither the performance nor the functionality of the software will be adversely affected by any dates.

5. Inspection, Testing and Progressing

- 5.1 Customer shall be entitled to inspect and test the Products during their manufacture, processing or storage and shall forthwith upon request at all reasonable times be granted access to any of the Contractor's works or approved sub-contractors for the purpose hereof. Such inspection and testing shall not constitute acceptance by Customer of the Products and does not relieve the Contractor or any sub-contractor of any obligation under the Order, whether implied or express.
- 5.2 The Contractor shall forthwith upon request provide such detailed information as Customer may require with regard to the progress of the Order.
- 5.3 For the purpose of clause 5.1 above, the Contractor shall make available such tools instruments, apparatus, equipment, materials, facilities and services for carrying out such tests for on demand, confirmatory retest(s) at no extra costs as Customer may reasonably require.

6. Acceptance and Rejection

- 6.1 Without prejudice to Customer' other rights whether under these conditions or at law, Customer shall be entitled within a reasonable period of delivery of the Products (in no event less than thirty days by written notice to the Contractor) to reject the Products or part thereof which on Customer' inspection are found not to comply with the Order or are otherwise not in accordance with the stipulated quality or measurement or which are damaged or lost in transit or where there has been a shortage in delivery. Customer, when giving such notice of rejection, shall have the option of either:
 - a) Requiring the Contractor at the Contractor's risk and expense, expeditiously to collect replace and / or re-

perform any rejected Products and to deliver additional Products in accordance with the Order; or

- b) Cancelling the Order and, recovering from the Contractors any monies paid by Customer in respect of such rejected Products and, if Customer so requires, any other Products comprised in the same Order as the rejected Products together with any additional expenses incurred by Customer in obtaining replacement Products. Where the Contractor replaces any Products in accordance with this Clause 6 the provisions of the Order shall apply to the replacement Products.

7. Delivery

- 7.1 Without prejudice to any of Customer' other rights, failure to deliver the Products by the due date shall entitle Customer to cancel the Order in whole or in part without liability to the Contractor, to purchase substitute items or services elsewhere and to hold the Contractor accountable for any loss and additional costs incurred, or Customer may at its sole option instruct the Contractor to deliver the Products at the Contractor's expense by an express service.
- 7.2 The Products shall be properly packed and secured in such a manner as to enable them to reach their destination and in good condition and shall be delivered during normal business hours to the premises specified in the Order or, as otherwise notified in writing in accordance with clause 3.1 hereto.

8. Title and Risk

Title and risk in the Products shall pass to Customer on delivery in accordance with the Order without prejudice to any rights of Customer which may accrue under these conditions. Any Products or materials purchased or allocated by the Contractor for the purpose of the Order, or work done thereunder, shall immediately vest in Customer where advance payment or progress payments have been made or are being made by Customer.

9. Price and Payment

- 9.1 The Contractor shall send to Customer a detailed price invoice(s), clearly stating the Order number, the quantity and unit of measure, the description and Contractor's part and/or stock number(s) for the Products, Customer' designated part number(s) (if applicable) and such information required to be stated on a tax invoice in accordance with Section 6 (15) Value

- Added Taxes Act 1994. Customer reserves the right for correction to any invoice which does not comply with these requirements and notwithstanding any resultant delay in payment Customer shall remain entitled to any prompt payment discounts applicable pursuant to the Order.
- 9.2 The price shall be stated exclusive of any applicable Value Added Tax, or sales or similar taxes. No price variation shall apply unless such provision is specifically made in the Order. Unless otherwise specified in the Order payment shall be made within sixty (60) days of receipt by Customer of the Contractor's valid invoice issued in respect of the Products delivered and accepted in accordance with the terms hereof. Payment shall not operate as a waiver of any of Customer' rights under the Order or at law.
- 10. Intellectual Property Rights**
- 10.1 The Contractor hereby assigns to Customer with full title guarantee all rights of whatever nature (including but without limitation copyright and design rights) in and to the Products and of any services performed pursuant to the Order and any materials (including without limitation any promotional materials, drawings, photographs, engravings, graphic works or any other artistic, literary or musical works, and any sound recordings, films, broadcasts and cable programmes) supplied by the Contractor to Customer pursuant to the Order.
- 10.2 The Contractor hereby waives and shall procure that any third party involved in the supply of the materials or the services shall waive unconditionally and irrevocably any and all moral rights which the Contractor and/or any such third party has or may have in the Products or the product of such services.
- 10.3 Neither the Contractor's name nor its trademark are to appear on any Products which are made to Customer' prior permission in writing.
- 11. Warranty**
- 11.1 Without prejudice to any other rights which Customer may have whether implied by statute or otherwise, the Contractor undertakes, at Customer' option, forthwith either to repair or modify, to replace or refund the cost of the Products or any part thereof which are or become defective within a period of twelve (12) months from the date of delivery (or within such longer period as may be specified in the Order), or from the date of delivery following the satisfactory repair, modification or replacement of the Products or any part thereof.
- 11.2 Where the Contractor repairs, modifies or replaces any Products in accordance with this clause 12, the provisions of the Order shall apply to the repaired, modified or replacement Products.
- 12. Indemnity and Insurance**
- 12.1 In addition to and without prejudice to the generality of these conditions, the Contractor hereby undertakes to defend, indemnify and hold Customer harmless from any and all claims, liabilities, costs, damages and expenses resulting at any time:
- a) in respect of any alleged or actual infringement of any patent, utility model, registered design, copyright, trade mark, design mark, design right, moral right or other proprietary or third party rights vested in any other person;
 - b) sustained by Customer or for which Customer may be liable as a result of the Contractor's failure to perform its obligations to Customer hereunder or in respect of any act, omission or negligence by the Contractor, his employees, agents or sub-contractors whether arising inside or outside of the scope of his duties;
 - c) in respect of death or injury to any person and / or in respect of any loss of or damage to any property real or personal of Customer or of any third party whether sustained by Customer or by any person to whom Customer may be responsible and arising by the act omission or negligence of the Contractor; or
 - d) in respect of any defect or fault discovered in the Products supplied hereunder including without limitation defects in design materials workmanship and / or non suitability for intended use or in respect of any claim brought or made against Customer under the Consumer Protection Act 1987.
- 12.2 The Contractor shall effect and maintain and shall require its sub-contractors to effect and maintain throughout the continuance of the Order insurance policies with insurers in respect of all and any liabilities of the Contractor which may arise hereunder or in law.
- 12.3 In the event that any of the Products develop problems or become non-compliant (in the manner referred to in clause 12.1 d) above) with

- any specifications descriptions or statements as to quality, whether at delivery to or acceptance by Customer, or at any time thereafter then the Contractor shall indemnify Customer against any and all such costs and losses that Customer may suffer resulting from the Contractor's warranty in this clause 12.
- 12.4 The remedy contained in this clause 12 shall be without prejudice to Customer other rights under the Order or at law.
- 13. Break**
- Without prejudice to any of Customer' other rights, Customer may at any time without stating the reason therefore cancel the Order in whole or in part forthwith by written notice to the Contractor. In such event Customer shall in full and final settlement pay to the Contractor a fair and reasonable price for all Products delivered or in a deliverable state at the date when such notice is given. In no case shall the sums recoverable by the Contractor exceed the price.
- 14. Suspension**
- 14.1 The Contractor shall suspend the whole of the Order or any part thereof forthwith on written receipt of notice from Customer so to do and the Contractor shall take all measure necessary to protect and secure the same. Any additional costs which are in the opinion of Customer reasonably and necessarily incurred by the Contractor arising from such suspension shall subject to clause 14.2 be paid by Customer upon substantiation by the Contractor to the satisfaction of Customer. In the event of such suspension, the Contractor shall promptly stop work and where applicable discontinue all sub-contacts. The Contractor shall however use its best endeavours to mitigate the financial effect of such suspension.
- 14.2 No additional costs shall be payable by Customer if the suspension arises as a result of any act, default or negligence on the part of the Contractor or as a result of circumstances beyond the reasonable control of Customer.
- 15. Work permits**
- Where employees, vicarious agents or subcontractors without United Kingdom citizenship are deployed, Contractor hereby assures Customer that all necessary official approvals have been obtained. Under no circumstances may employees, vicarious agents or subcontractors who are not in possession of a valid work permit and/or a valid residence permit be deployed. Contractor shall indemnify Customer from any legal consequences resulting from failure to comply with these requirements.
- 16. General**
- 16.1 Failure on the part of Customer to exercise or enforce any rights conferred under the Order or at law shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.
- 16.2 The headings in these conditions shall not be deemed to be part hereof or be taken into consideration in the interpretation or construction hereof or of the contract. If any of the words or provisions of these conditions shall be deemed to be invalid for any reason then the conditions shall be read as if the invalid provisions had to that extent been deleted therefrom and the validity of the remaining provisions of the conditions shall not be affected thereby.
- 16.3 Any notice required to be given hereunder shall be sufficiently given if sent by registered post, by hand, cable or telex to the recipient at its registered office or last known address and shall be deemed to have been properly served at the time when in the ordinary course of transmission it would reach its destination.
- 16.4 The Contractor shall maintain a true and correct set of records pertaining to the Order, and agrees to retain all such records for a period of not less than five (5) years after the date of completion of the order, and shall upon reasonable request by Customer give access to such records.
- 16.5 Nothing in these conditions shall constitute or be deemed to constitute either party the agent of the other for any purpose whatsoever and neither party shall have any authority or power to bind the other or to contract in the name of or create a liability against the other.
- 16.6 Contractor's claims against Customer may only be assigned with the express written consent of Customer's procurement unit. Section 354a HGB [German Commercial Code] shall apply if the transaction is a commercial transaction for both parties.
- 16.7 These conditions set out in the order subject to any amendments made in accordance with clause 3 hereof represent the entire agreement between the Contractor and Customer and shall not be varied except by written authority of the parties.