

By accepting services from Holker Network Solutions Ltd you are agreeing to be bound by our Standard Terms and Conditions of Trading. Please note: Individual Services are covered by related SLAs.

Please fully review and agree to the following terms before signing up to Holker Network Solutions Ltd.

Table of Contents

Application 3

Software and Network Access 3

Delivery, Title and Risk 3

Acceptance of Products 4

Service Offering 4

Exceptions 4

Customer Obligation and Indemnity 4

Price and Payment 5

Liability 6

Termination 6

Confidentiality 7

Communications 7

Entire Agreement 7

Representation 7

Force Majeure 7

Assignment 8

Waiver 8

Severance 8

Notices 8

Law and Jurisdiction 8

Definitions and Interpretation

In these Conditions

Accepted Order means an Order which has been accepted by the Company, acceptance being indicated by an Order being signed by the Company and returned to the Customer;

Agreement means any agreement made subject to these Conditions that shall incorporate these Conditions;

Company means Holker Network Solutions Ltd (company registration number 06872408) of Holker Business Centre, Burnley Road, Colne, BB8 8EG

Customer means any person or organisation with whom the Company enters into an Agreement subject to these Conditions;

Customer Equipment means any equipment owned by the Customer and used in connection with the provision of a collocation service, or which is supplied by the Company for purchase by the Customer under an Accepted Order;

Internet means the global data network comprising interconnected networks to which the company is connected and provides access to its Customers;

ISP means an Internet Service Provider;

Leased Equipment means any equipment owned by the Company and leased to the Customer;

Network Operator means the legal entity or entities responsible for operation of a communications network;

Password means the alphanumeric characters chosen and used exclusively by the Customer at his own risk for the purpose of securing and maintaining the exclusivity of access to the Company's service;

Service Commencement Date means the date identified as the delivery date on the company invoice to the Customer;

Service means the services described in the current Company literature;

User Name means such sequence of alphanumeric characters as are used from time to time by the Customer to identify himself to other users of other computers to which the Company is from time to time connecting or otherwise forwarding data to and from the Customer;

Application

These Terms and Conditions apply to the provision of Information Technology Services and the supply of Goods by Holker Network Solutions Ltd ("Company") to The Customer. These Terms and Conditions will form the basis of any contract between The Company and The Customer to the exclusion of any terms or conditions which may be implied or which may appear on any order or communication from The Customer. The Customer acknowledges that any use it might make of stationery bearing such terms or conditions, other than these Terms referred to herein, shall be purely for its administrative convenience and that such use shall not evidence an intention that such terms or conditions should be incorporated in any contract between The Customer and The Company.

Software and Network Access

Where the service provided includes use of computer software and / or access to network systems, The Customer acknowledges that such use and access is governed by the Company's and the Access Provider's licence terms for such use and access. These Terms shall also apply to such services except to the extent that they are inconsistent with the relevant licence terms. Unless otherwise agreed in writing between The Company and The Customer, use of the provided computer software and access to the network system is restricted to The Customer.

The Customer shall not use any services provided under the contract for any illegal activity and its use of such services shall comply with the Copyright Act, the Data Protection Act, the Computer Misuse Act and any other Act or regulation applicable to such use.

Delivery, Title and Risk

Delivery dates represent The Company's best estimate and are not guaranteed. The Company shall have the right to change the delivery date if The Customer requests any change to the contract details or if The Customer fails to deliver by the due date(s) all the materials, data and information (if any) notified by The Company to The Customer as being required, The Company's failure to meet a delivery date shall not constitute a breach of contract.

Risk of loss or damage (including corruption of data or programs) shall pass to The Customer when the goods or results of the services are, in the case of physical delivery, delivered to The Company, to the carrier, or in the case of electronic delivery, are input by The Company to the electronic delivery system. Where The Company has control over the carrier of goods, The Company shall obtain approval from The Customer for choice of carrier, prior to delivery.

Title to hardware and other tangible and intangible items ("goods") shall not pass to The Customer until The Company has been paid in full. Until such payment, Customer shall hold the tangible goods as bailee for The Company and keep them secure and insured at full replacement value. The Company may repossess any goods for which payment is overdue and, for this purpose, its employees and agents may enter any premises where the goods are situated.

All rights whatsoever (including copyright, database rights and any other rights, whether recognized by present law or only by future law) throughout the world ("Rights") in program code and data, including text, tabulations and graphical images, provided by The Customer to The Company under the contract shall remain with The Customer or its licensor.

The Rights in any program code and data, including text, tabulations and graphical images, provided or made available to Customer under the contract shall remain with Company, or its Third Party Licensor, unless otherwise agreed in writing by Company.

The Customer's right to use and copy any program code or data in which the Rights remain with The Company, or its Third Party Licensor, shall be governed by the applicable license terms of The Company or the Third Party.

If The Company has not received all payment in respect of such code and data by forty-five (45) days from its due date, The Customer's right to use and copy shall cease forthwith.

Acceptance of Products

Upon final completion of the Services, Customer shall have ten (10) days in which to notify The Company of any problems with the Services supplied under this Work Order. If The Company is not notified of any problems within this time period, the Services performed shall be deemed accepted.

If the Goods or Services provided to The Customer under the contract do not conform to the agreed specification and such non-conformity is reported to The Company in writing within fourteen (14) days of provision, The Company will endeavor to correct any such non-conformity. In the absence of such a report within the said 14 days, the Goods and Services provided shall be deemed to be conforming and accepted by The Customer. Unless The Customer purchases separate support services from The Company, The Company shall have no further liability to correct defects or make other alterations to the Goods or Services provided. Ongoing support services shall be subject to such additional terms as The Company may reasonably specify.

Service Offering

Service is offered according to the individual customer Service Support Contract.

The Customer agrees that The Company shall not be liable for any direct, indirect or consequential losses occurring as a result of The Companies failure to meet relevant response times.

Payments made for a support contract are non-refundable whether the payment is made in advance of the supported period or in arrears.

Exceptions

The Services do not include the correction or avoidance of software defects or errors or the loading or re-loading of The Customer's applications software or data or any configuration of the Maintained Products.

Customer Obligation and Indemnity

The Customer shall indemnify and keep indemnified The Company against any and all claims, costs and expenses relating to infringement of Rights in respect of program code and data provided to The Company by The Customer and in respect of work done by The Company in accordance with specific instructions of The Customer. Subject to the aforesaid, The Company shall indemnify and

keep indemnified The Customer against any and all claims, costs and expenses relating to infringement of Rights in respect of program code and data provided or made available to The Customer by The Company under the contract.

Neither party's liability under these Terms and Conditions shall exceed the contract price.

The Customer shall indemnify and keep indemnified The Company against any and all claims, costs and expenses relating to (i) any assertion by a Third Party that any data or information provided to The Company by The Customer is libelous or defamatory and (ii) any failure by The Customer to comply with the provisions of the indemnity clauses above.

The Customer shall properly use the maintained Products and shall provide The Company with all reasonable facilities and information to enable The Company to perform its duties.

The Customer shall be responsible for complying with all applicable regulatory requirements that apply to The Customer.

Price and Payment

The contract price shall be the price quoted in The Company's offer.

Prices are subject to adjustment by The Company at any time before delivery to reflect any increase in the cost to The Company due to any factor which is beyond its control such as, without limitation, changes in quantities, specifications or usage conditions requested by The Customer, or significant increase in the cost to The Company of Goods or Services to be supplied by Third Parties, or failure of The Customer in the provision of timely, complete and accurate information, data or instructions.

The price shall be based on payment in full, in stages, or shall be a periodic charge, as specified in The Company's offer.

VAT and any other taxes or duties applicable shall be added to the invoice and paid by The Customer.

Unless otherwise agreed, the cost of carriage of goods from The Company's or Third Party's premises shall be payable by The Customer.

For ongoing services (such as Support or Network Access), The Company shall have the right, on or after the first nine months of provision of such services, to change the periodic charge by giving three month's notice in writing to The Customer effective on or after the first anniversary of the contract date.

The Company's offer is valid, unless previously withdrawn, only for 30 days from the date of quotation. The Company reserves the right not to accept any order. Oral quotations are valid only to the end of the business day upon which they are given.

If payment terms are not otherwise specified in writing by Company, payment shall be made net cash within 14 days from the invoice date without regard to whether Customer has examined the Services provided or the Goods supplied. The Company reserves the right at any time to require full or partial payment in advance or to revoke any credit previously extended if, in The Company's judgment, The Customer's financial condition or payment record does not warrant proceeding on the terms specified.

In the event of payment default The Company has the right to retain any tangible assets paid for by The Customer that remain in The Company's possession until such time as payment is received in full. In the event of non-payment The Company has the right to sell or retain possession of any such assets in order to recoup their losses.

If The Customer defaults in paying any sum due, or is in breach of any of these Terms, or has a receiver or administrator appointed or goes into liquidation, The Company has the right to suspend or terminate the provision of Services and the supply of Goods, with or without notice, and without prejudice to any other rights of The Company under the contract. On such suspension or termination, The Customer shall immediately become due to pay on a time and materials basis for work done and services provided by The Company up to suspension or termination.

The Company reserves the right to charge interest on sums more than 7 days overdue on a day to day basis, as well after as before any judgment, from the date or last date for payment thereof to the date of actual payment (both days inclusive) at 3% above the base rate from time to time of Lloyds TSB Plc. Such interest shall be paid on demand.

Liability

The Company's entire liability to The Customer in respect of all matters associated with the Services shall be limited as follows:

Nothing in this contract excludes The Company's liability for death or personal injury arising from the negligence of The Company, its servants or agents.

Nothing in this contract excludes any other liability, which is prohibited from being excluded by law.

Except as set out above the Company accepts no liability for and hereby excludes any liability for any consequential or indirect losses, loss of profits, loss of business, loss of goodwill or any form of special damages.

The Company's liability for direct losses shall be limited to the amount paid by The Customer to the Company and all conditions, warranties or other terms whatsoever inconsistent with the provisions of this paragraph are hereby expressly excluded.

In the event that liability cannot be excluded, any liability shall be limited to the amount paid by the Customer to the Company in respect of The Services supplied.

Each of the paragraphs above shall be a separate and severable limitation and if any one or more of them shall prove for any reason ineffective to exclude any liability referred to in the relevant paragraphs the remaining paragraphs shall remain in full force and effect.

Termination

Without prejudice to any other right to which it may be entitled, The Company may give notice in writing to The Customer terminating a contract with immediate effect if Customer is in material breach of any of its obligations and fails to remedy such breach (if remediable) within thirty (30) days of notice in writing requiring such remedy.

The contract shall terminate forthwith if The Customer makes any composition with its creditors or has an administrative receiver appointed of any of its assets or if an order is made or a resolution is passed for the winding-up of The Customer or an order is made for the appointment of an administrator or, being a natural person or partnership, becomes insolvent or enters into any arrangement with his creditors or has a bankruptcy petition presented against him.

In the event that The Customer believes services by The Company to be faulty or of unsatisfactory standard, The Customer may terminate the contract, by providing 14 days' notice in writing. On such termination, The Customer shall immediately become due to pay on a time and materials basis for work done and services provided by The Company up to termination and including the 14-day notice period.

In the event of termination of a contract howsoever occasioned, (i) The Company shall forthwith cease provision of services, and (ii) The Customer will, if requested by The Company, return or destroy all copies in whole or in part of any documents, data and software which Company has provided under the contract and within seven (7) days of receiving such a request shall certify in writing to The Company that such return or destruction has been completed, and (iii) any licence or rights granted to The Customer under the contract in respect of software or otherwise shall cease.

Neither party shall be relieved or discharged from any obligation which accrued prior to such termination and termination shall not prejudice the effect of any of the provisions of the contract that expressly or by implication come into or continue in effect on or following termination.

Confidentiality

Each party shall keep confidential and not disclose to any Third Party information of the other which is marked confidential or by its nature is evidently confidential and is disclosed by the other

party in connection with a contract under these Terms. Such obligations shall not apply to information (i) which is or comes into the public domain other than as a result of a breach of this term or (ii) which lawfully comes into the party's possession free of restriction or (iii) which is independently developed by the party.

Communications

If the contract requires significant technical or commercial communication between the parties, each shall nominate one person through whom such communication shall be channeled.

Entire Agreement

The agreement supersedes all prior agreements, arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof.

The Customer warrants to The Company that it has not been induced to enter into the Agreement by any prior oral representation (whether innocently or negligently made) except as specifically contained in the Agreement.

Representation

The Customer acknowledges that in entering into the contract The Customer has not relied on any documentation, statement or representation given or made by or on behalf of The Company other than The Company's documentation specifically identified as applying to the contract.

Force Majeure

Neither party shall be in breach of its obligations under the contract or under any liability for any delay, loss or damage due to any cause beyond its reasonable control, including but not limited to acts of nature, Government intervention, strikes and lockouts, delays or failures by The Company's and failures of network or electronic communication systems.

Assignment

Neither party may assign the contract or any rights or claims thereunder without the prior written consent of the other party.

Waiver

Failure by either party to exercise or enforce any rights under the contract shall not be or be deemed to be a waiver of any such right nor prevent enforcement thereof thereafter.

Severance

The invalidity or unenforceability of any provision of These Terms shall not affect the other provisions which shall be construed in all respects as if such invalid or unenforceable provision had been omitted.

Notices

Any notice to be given under the contract shall be given by personal delivery, post or facsimile transmission to the address of the relevant party as set out in the contract or to such other address as a party may have notified the other in accordance herewith. Notice by facsimile transmission shall be confirmed by post. Notice shall be deemed to have been given when personally delivered, or on the second business day after posting, or on the next business day after facsimile transmission.

Law and Jurisdiction

The contract shall be governed and construed in accordance with the laws of England and the parties shall submit to the jurisdiction of the English courts.