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TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

In this document the following words shall have the following meanings:
1.1 "Buyer" means the organisation or person who buys Goods from the Seller;
1.2 "Conditions" means these Terms and Conditions of Sale;
1.3 "Goods" means the articles to be supplied to the Buyer by the Seller;
1.4 "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trade marks, know-how and all other forms of intellectual property wherever in the world enforceable;
1.5 "List Price" means the list of prices of the Goods maintained by the Seller as amended from time to time;
1.5 "Seller" means Burnside Telecom Ltd. Registered office, Highfield Court, Tollgate, Chandler's Ford, Eastleigh, Hampshire, SO53 3TY, England.

2. GENERAL

2.1 These Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions referred to, offered or relied on by the Buyer whether in negotiation or at any stage in the dealings between the parties, including any standard or printed terms tendered by the Buyer, unless the Buyer specifically states in writing, separately from such terms, that it wishes such terms to apply and this has been acknowledged by the Seller in writing. Orders are not binding until accepted in writing by the Seller.
2.2 The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the contract.
2.3 Any variation to these Conditions
(including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller or expressly referred to on the Seller's invoice.

3. PRICE AND PAYMENT

3.1 The price for the Goods shall be that in the Seller's current List Price, or such other price as the parties may agree in writing. Prior to delivery the Seller may vary prices reasonably to reflect increases in the cost of raw materials, the cost of labour or the alteration or imposition of any taxes or duties in respect of the Goods.The price is exclusive of VAT, insurance, duties, transport, storage or similar costs which (if any) shall be paid by the Buyer.
3.2 Payment of the price for the Goods and VAT and any other applicable costs shall be
due within 14 days of the date of the Seller's invoice, unless otherwise stated on the Seller's invoice.
3.3 The Buyer shall make all payments due under the contract in full without any deduction whether by setoff, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
3.4 The Seller shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 5 per cent annum (calculated on a daily basis) above the base rate of the Bank of England.
3.5 If payment of the price or any part thereof is not made by the due date, the Seller shall be entitled to:

3.5.1 require payment in advance of delivery in relation to any Goods not previously delivered;
3.5.2 refuse to make delivery of any undelivered Goods whether ordered under the contract or not and without incurring any liability whatever to the Buyer for non-delivery or any delay in delivery;
3.5.3 terminate the contract.

4. DESCRIPTION

Any description given or applied to the Goods is given by way of identification only and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Buyer hereby affirms that it does not in any way rely on any description when entering into the contract.

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5. SAMPLE

Where a sample of the Goods is shown to and inspected by the Buyer, the parties hereto accept that such a sample is so shown and inspected for the sole purpose of enabling the Buyer to judge for itself the quality of the bulk, and not so as to constitute a sale by sample.

6. DELIVERY

6.1 Unless otherwise agreed in writing, delivery of the Goods shall take place at the address specified by the Buyer on the date specified by the Seller. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
6.2 The date of delivery specified by the Seller is an estimate only. Time for delivery shall not be of the essence of the contract. Subject to any other provisions of these Conditions, the Seller shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges, or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence) nor shall any delay entitle the Buyer to rescind the contract unless such delay exceeds 180 days.
6.3 If the Seller is unable to deliver the Goods for reasons beyond its control, then the Seller shall be entitled to place the Goods in storage until such times as delivery may be effected and the Buyer shall be liable for any expense associated with such storage.
6.4 The Buyer shall be entitled to replacement Goods where the Goods have been damaged during transportation. The Buyer must notify the Seller of the damage within 24 hours of delivery.
6.5 Where Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the contract as a whole as repudiated.
6.6 The quantity of any consignment of Goods as recorded by the Seller upon despatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

7. RISK

Risk in the Goods shall pass to the Buyer at the moment the Goods are dispatched from the Seller`s premises. Where the Buyer chooses to collect the Goods itself, risk will pass when the Goods are entrusted to it or set aside for its collection, whichever happens first.

8. TITLE

Title in the Goods shall not pass to the Buyer until the Seller has been paid in full for the Goods.

9. WARRANTY

9.1 The Seller warrants that where the Goods have been manufactured by the Seller and are found to be defective, the Seller shall repair, or in its sole discretion, replace defective Goods free of charge within 12 months from the date of delivery, subject to the following conditions:

9.1.1 the Buyer notifying the Seller in writing immediately upon the defect becoming apparent;
9.1.2 the defect being due to the faulty design, materials or workmanship of the Seller.
9.2 Any Goods to be repaired or replaced shall be returned to the Seller at the Buyer's expense, if so requested by the Seller.

9.3 Where the Goods have been manufactured and supplied to the Seller by a third party, the Seller will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Seller.
9.4 The Seller shall, in lieu of replacement or repair, be entitled in its absolute discretion to refund the price of the defective Goods in the event that such price has already been paid.
9.5 The Seller shall not be liable for breach of the warranty in Condition 9.1 if

9.5.1 the buyer makes any further use of such Goods after giving such notice; or

9.5.2 the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to storage, installation, commissioning, use or maintenance of the Goods; or
9.5.3 the Buyer alters or repairs such Goods without the written consent of the Seller.
9.6 If the Company complies with Condition 9 it shall have no further liability for a breach of the warranty in condition 9.1 in respect of such Goods. Any Goods replaced shall belong to the Company and any repaired Goods shall be guaranteed for the unexpired portion of the 12 month period.
9.7 The remedies contained in this Clause are without prejudice to the other Conditions herein, including, but without limitation, Clause 10.

10. LIMITATION OF LIABILITY

10.1 Subject to Conditions 6 and 9, the following provisions set out the entire financial liability of the Seller (including any liability for the acts and omissions of its employees, agents and subcontractors) to the Buyer in respect of:
10.1.1 any breach of these Conditions;
10.1.2 any use made of or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
10.1.3 any representation, statement or tortuous act or omission including negligence arising under or in connection with the contract.
10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the contract.
10.3 Nothing in these Conditions shall exclude or limit the Seller's liability:
10.3.1 for death or personal injury caused by the negligence of the Seller;
10.3.2 under section 2(3) of the Consumer Protection Act 1987; or
10.3.3 for any matter which it would be illegal for the Seller to exclude or attempt to exclude it liability; or
10.3.4 for fraud or fraudulent misrepresentation.
10.4 Subject to Conditions 10.2 and 10.3:
10.4.1 The Sellers' total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the contract shall be limited to the price paid for the Goods in question; and
10.4.2 the Seller shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the contract.
10.5 The parties agree that these restrictions are reasonable in light of their relationship and the availability of insurance against such risks.

11. INTELLECTUAL PROPERTY RIGHTS

11.1 All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Seller, and the Buyer shall do all that is reasonably necessary to ensure that such rights vest in the Seller by the execution of appropriate instruments or the making of agreements with third parties.
11.2 The Buyer shall ensure that, without the Seller's written consent, any trade names or marks that the Seller uses on or in connection with the Goods are not supplemented by any mark of the Buyer, interfered with or obscured.

12. FORCE MAJEURE

The Seller shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the Seller shall be entitled to a reasonable extension of its

obligations. If the delay persists for such time as the Seller considers unreasonable, it may, without liability on its part, terminate the contract.

13. RELATIONSHIP OF PARTIES

Nothing contained in these Conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms and Conditions shall be deemed to construe either of the parties as the agent of the other.

14. ASSIGNMENT AND SUB-CONTRACTING

The contract between the Buyer and Seller for the sale of Goods shall not be assigned or transferred, nor the performance of any obligation sub-contracted, in either case by the Buyer, without the prior written consent of the Seller.

15. WAIVER

The failure by either party to enforce at any time or for any period any one or more of the Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Conditions.

16. SEVERABILITY

If any term or provision of these 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 Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

17. EXPORT

17.1 If the Goods shall be sold for export the invoice relating to the Goods may set out additional terms relating to that transaction.
17.2 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination, for the payment of any duties thereon and for ensuring that the Goods may be used in such country.

18. NO THIRD PARTY RIGHTS

The parties to the contract do not intend that any term of the contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

19. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.

20. DISPOSAL OF END-OF-LIFE PRODUCTS

At the end of their life, Burnside Telecom Limited-branded products may be disposed of by the end-user either: (a) free of charge - by taking them to any public waste collection site; or (b) at the end-user's own expense - by returning the units to the Seller (please contact the seller for the address)
with a written request that they be disposed of by the Seller. If the quantity of end-of-life products to be disposed of is large, then please contact the Seller first.

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