

Cable & Wireless International HQ Limited- Terms & Conditions of Purchase

Definitions

"**Applicable Law**" means any law, regulation or direction of a competent authority relating to the supply of goods and/or services in England and Wales (or in any jurisdiction in which the Goods are to be delivered (or resold) or the Services performed) and includes Directive 2002/96/EC on Waste Electrical and Electronic Equipment and Directive 2002/95/EC on the Restriction on the Use of Certain Hazardous Substances in Electrical and Electronic Equipment;

"**C&W Group Company**" means Cable and Wireless Communications Plc, any direct subsidiaries of Cable & Wireless Communications Plc or companies in which Cable & Wireless Communications Plc has a majority shareholding.

"**Conditions**" means the standard terms and conditions of purchase set out in this document and any special terms included by C&W with the Order.

"**Contract**" means the contract for the sale and purchase of the Goods and/or the supply of the Services on the Conditions and formed by the Supplier's acceptance of an Order in accordance with Condition 3(2).

"**C&W**" means C&W International HQ Limited, whose registered office is 3rd Floor 26 Red Lion Square London WC1R 4HQ "**Delivery Address**" means the address for delivery specified in the Order.

"**Delivery Date**" means the delivery date or period specified in the Order.

"**Good Industry Practice**" means in relation to any undertaking and any circumstances, the exercise of that degree of professionalism, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or an internationally recognised company engaged in the same type of activity under the same or similar circumstances.

"**Goods**" means all those goods and materials including any Software described in the Order.

"**Intellectual Property Rights**" means all rights in software, inventions, patents, copyrights, design rights, semiconductor topography and chip design rights, trade marks and trade names, database rights, domain names, service marks, trade secrets, know-how and other intellectual property rights (whether registered or unregistered) and all applications and registrations for and extensions and renewals of such rights or any of them, anywhere in the world.

"**Order**" means C&W's purchase order for the supply of the Goods and/or supply of Services.

"**Price**" means the total price of the Goods and/or Services.

"**Software**" is the systems and/or applications computer programs of the Supplier in machine-readable object code as described in the Order and including any documentation, operating manuals and other eye-readable information provided with it.

"**Services**" means the services (if any) described in the Order.

"**Specification**" means the technical description of, and requirements for, the Goods and/or Services set out in the Order.

"**Standards**" means the safety standards and technical standards for the Goods and/or Services referred to, or set out, in the Specification.

"**Supplier**" means the person, firm or company to whom the Order is addressed.

"**Writing**" includes e-mail and facsimile transmission.

2. Interpretation

1. Any phrase introduced by the words **including, include, in particular** or any similar word or expression is illustrative and is not intended in any way to limit the sense or interpretation of the preceding words.
2. Use of the singular includes the plural and vice versa.

3. Contract Formation

1. These Conditions are the only conditions upon which C&W will deal with the Supplier and they shall govern the Contract to the entire exclusion of all other terms or conditions.
2. Each Order for Goods and/or Services placed by C&W to be provided by the Supplier is an offer by C&W that is made on and subject to these Conditions. An Order will only be accepted and become a Contract when the Supplier either accepts the offer by notice in writing, or fulfils the Order, in whole or in part, in each case without variation of the terms set out in these Conditions.
3. The Supplier agrees that no terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of order, specification (other than the Specification) or similar document will form part of a Contract and the Supplier waives any right to rely on such terms and conditions.
4. Each Contract is a separate agreement between C&W and the Supplier.

4. Inspection and Testing

1. C&W shall be entitled to:-
 - a. inspect and/or test the Goods at any time prior to delivery, and the Supplier shall give C&W free and safe access to its premises (or those of its sub-contractors) to conduct the inspection and will provide such facilities as C&W may reasonably require; and
 - b. require one or more samples to be submitted to it for inspection and testing prior to despatch of the Goods.
2. Inspection and testing under this Condition 4 shall not constitute acceptance of the Goods by C&W and is without prejudice to C&W's other rights and remedies (including the right to reject the goods under Condition 5(6)).
3. The Supplier shall comply with all requirements of Applicable Law in performing its obligations under a Contract (including in the manufacture, packaging, packing and delivery of the Goods and performing the Services).
4. If, as a result of any inspection or testing carried out in accordance, with Conditions 4(1.a.) and 4(1.b.), C&W is not satisfied that the Goods comply in all respects with the relevant Contract, or with the Specification, and C&W so informs the Supplier within 7 working days of such inspection or testing, then the Supplier shall take all steps necessary to ensure compliance.
5. If C&W is not satisfied with any of the Goods following inspection and/or testing, the Supplier will reimburse C&W for any additional costs incurred by C&W arising out of any reinspection and/or testing.

5. Delivery

1. The Supplier shall deliver the Goods to and the Services shall be performed at the Delivery Address during C&W's normal working hours unless otherwise specified in the Order. C&W shall not be obliged to accept delivery at any address other than the Delivery Address, but may (in its discretion) accept delivery at a different address provided that the Supplier shall reimburse C&W for all costs incurred in relation to transferring the goods to the Delivery Address.
2. The Supplier shall deliver the Goods on the Delivery Date. The Supplier shall perform the Services for the period specified in the Order. Time for delivery of the Goods or performance of the Services is of the essence.
3. If delivery is delayed as a direct result of the occurrence of a Force Majeure Event (as set defined in Condition 19), provided that the Supplier gives C&W notice in writing immediately of such delay and takes all reasonable steps to mitigate the effect of the delay, C&W shall grant the Supplier such extension of time as it may consider reasonable in the circumstances.
4. The Supplier shall properly pack and secure the Goods, and all despatches must prominently bear the C&W order number and C&W part codes (if any). C&W shall not be obliged to accept delivery in instalments.
5. If for any reason C&W is unable to accept delivery of the Goods on the Delivery Date, the Supplier shall store the Goods, insure and safeguard them and take all steps to prevent their deterioration until their actual delivery. C&W may reimburse the Supplier for the reasonable costs (including insurance) it incurs in doing so.

6. If any of the Goods are found to be not in accordance with the Contract during a period of 12 months following the date of delivery, C&W shall be entitled (without prejudice to any other rights or remedies it may have) to reject those Goods by notice in writing and the Supplier shall reimburse to C&W all sums paid for those Goods.
 7. If C&W rejects the Goods under sub-Condition 5(6) above then risk in the Goods will immediately revert to the Supplier and the C&W shall be entitled to return the Goods to the Supplier at the Supplier's expense.
 8. The Supplier shall provide C&W in good time with any instructions or other information required to enable C&W to accept delivery of the Goods or performance of the Services.
 9. Delivery of the Goods or performance of the Services shall be made or completed not later than the Delivery Date. C&W and the Supplier agree that (subject to Condition 19) any loss or damage incurred by C&W arising out of or in connection with any delay will be recoverable by C&W from the Supplier.
- 6. Title and Risk**
1. Subject to sub-Conditions (2) below and 5(7) above, title to, and risk in, the Goods shall pass to C&W only upon actual delivery of the Goods to the Delivery Address or such other address as C&W shall have specified in writing in accordance with Condition 5 above.
 2. Where C&W pays for all or part of the Goods prior to delivery, title in those Goods paid for (but not risk) shall pass to C&W on the date of payment.
- 7. Licences**
1. The Supplier grants C&W a worldwide, irrevocable, perpetual and non -exclusive licence to:
 - a. use the Software;
 - b. modify, adapt, translate, arrange or otherwise alter the Software to the extent reasonably necessary for its use of it;
 - c. make as many back-up copies of the Software as are reasonably necessary for back-up, security and operational use;
 - d. reverse engineer, disassemble or decompile the Software to the extent necessary to achieve interoperability with an independently created program; and
 - e. sub-license the Software to its customers and use the Software to market to them.
 2. C&W will:
 - a. not remove any of the Supplier's proprietary notices set out in or on the Software ; and
 - b. ensure that any proprietary notices of the Supplier set out in the original are reproduced in or on all copies of the Software;
 3. The licence granted under this Condition 7 will survive any termination of a Contract.
- 8. Price and Payment**
1. Subject to the sub-Conditions below, C&W shall pay the Supplier the Price in accordance with the payment terms set out in the Order.
 2. The Price excludes any applicable sales or value added taxes on the sale or measured by the sales price which Cable & Wireless shall pay in the manner prescribed by law against delivery by the Supplier of VAT invoices in proper form. The Supplier alone shall bear any taxes related to the Supplier's existence or gross or net income taxes based on the Supplier's sales including any withholding tax that Cable & Wireless must withhold from payments to the Supplier and remit to the relevant authority. The Supplier shall not charge Cable & Wireless or gross up or add onto the Price any amounts properly withheld by Cable & Wireless and remitted by Cable & Wireless to the relevant authority. Cable & Wireless shall provide to Supplier a copy of its certificate of withholding on request. Each party shall provide to the other evidence of any tax exempt status, act in accordance with such status, and promptly advise of any change in such status. The Supplier shall be responsible for paying its personnel and making all deductions, payments, contributions and generally satisfying all personnel-related obligations required by law. If it is determined that any taxes paid by Cable & Wireless to the Supplier were not required to be paid, the Supplier shall promptly refund such taxes to Cable & Wireless.
 3. The Price is inclusive of all charges for packaging, packing, shipping, carriage, insurance, delivery of the Goods to the Delivery Address and any duties, imposts, customs or levies other than VAT.
 4. C&W may deduct from any sums due and payable to the Supplier any monies due from the Supplier to C&W.
 5. If no payment terms are set out in the Order, then C&W shall pay (subject to receipt of an invoice in accordance with sub-condition 8(6) below) for the Goods and/or Services by or on the last day of the month following the month during which the Goods were delivered and/or Services performed or during which the invoice for the Goods and/or Services is received, whichever is the later.
 6. The Supplier shall quote the Order reference on all invoices and send them to the address indicated on the Order. C&W shall return invoices which have no Order reference and shall not be obliged to pay such invoices.
 7. Payment by C&W shall be without prejudice to any claims or rights which it may have against the Supplier and shall not constitute any admission by C&W as to the proper performance by the Supplier of its obligations.
 8. If any sum payable under a Contract is not paid within 30 days of the due date, the party to whom that payment is due may charge interest on the outstanding sum from the date due for payment to the actual date of payment at a rate of 3% above the base rate of the Bank of England from time to time in force.
- 9. Warranty and Guarantee**
1. The Supplier warrants and represents to C&W that the Goods:-
 - a. are free from any third party lien, claim, title or interest;
 - b. shall be of good and merchantable quality and fit for the purpose for which they are intended;
 - c. shall conform in all respects with the terms of the Contract and the Specification;
 - d. shall be free from defects in design, materials and workmanship;
 - e. shall conform to the Standards and the Specification;
 - f. shall comply with Applicable Law
 - g. were manufactured using all reasonable care and skill; and
 - h. shall be provided to C&W with adequate instructions to enable C&W to make full use of the Goods.
 2. In respect of the Services, the Supplier warrants and represents to C&W that it shall:
 - a. perform the Services with reasonable care and skill, in a professional manner and in accordance with Good Industry Practice;
 - b. provide suitable qualified and experienced personnel to carry out the Services or related tasks;
 - c. provide the Services in a timely and efficient manner; and in accordance with any reasonable instruction notified by C&W; and
 - d. ensure that all representatives of the Supplier shall comply with C&W's security arrangements, office procedures and regulations whenever attending C&W's premises.
 3. The Supplier shall comply with any procurement guidelines issued by C&W from time to time.
 4. The Supplier warrants and represents to C&W that the sale or use of the Goods and the use of the Services does not infringe any Intellectual Property Right of any third party and that it has the necessary Intellectual Property Rights to grant the licence under Condition 7.
 5. If any Goods or Services are not supplied or performed in accordance with the Contract then C&W, without prejudice to any of its other rights or remedies, may require the Supplier forthwith either to:
 - a. repair the Goods or to supply replacement Goods or Services in accordance with the Contract and within such reasonable time period as C&W may specify; or
 - b. treat the Contract as repudiated by the Supplier's breach and require the refund to C&W of the Price (or any part of it) paid by C&W in respect of such Goods or Services.
 6. Any repaired Goods and/or replacement Goods or Services provided in accordance with sub-Condition 9(5.b) shall be subject to the provisions of the Contract in the same manner as those originally provided.
 7. Without prejudice to C&W's rights under sub-Condition 5(6), the Supplier shall guarantee the Goods for a period of twelve (12) months from the date of delivery to C&W and shall investigate the cause of faults and promptly repair to C&W's satisfaction or replace without charge to C&W all or any part of the Goods found to be not in accordance with the Contract. The Supplier shall carry out the repairs in a manner convenient to C&W and shall bear all costs associated with the repair.
- 10. Liability and Indemnity**
1. The Supplier shall indemnify and hold C&W and the C&W Group Companies harmless, and keep C&W and the C&W Group Companies fully indemnified and held harmless, against all liability, loss, damage, costs and expenses of whatsoever nature incurred by C&W and the C&W Group Companies and arising out of or in connection with:
 - a. any damage to C&W's and the C&W Group Companies' property and any claims for loss, injury or death to any third party or the property of any third party by reason of the Supplier's negligence or any act or omission on the part of employees, subcontractors or agents of the Supplier;
 - b. any claim by a third party that the use by C&W, a C&W Group Company or a customer of the Software in accordance with a Contract infringes any third party Intellectual Property Rights;
 - c. any breach of the warranties set out in sub-Conditions 9(1), 9(2) or 9(3); and
 - d. failure by the Supplier to deliver the Goods or perform the Services by the Delivery Date.
 2. C&W shall not be liable to the Supplier in an action based on breach of contract or tort (or otherwise) for:
 - a. any loss of revenue, business, contracts, or profits; or

- b. any indirect or consequential loss, howsoever arising.
3. C&W's aggregate liability arising out of or in connection with any Contract shall be limited to the Price under that Contract. 4. Nothing in this Contract shall limit the liability of either party for death or personal injury resulting from negligence or for fraud.
- 11. Regulations and Labelling**
The Supplier shall be responsible for compliance with all Applicable Law and the Supplier shall ensure that the Goods when delivered to C&W are labelled in such a way as to ensure the Goods can be handled safely and without causing damage.
- 12. Confidentiality**
- The parties shall treat each Order as confidential and, in particular, the Supplier shall not make use of the name C&W or the name of C&W's customers or suppliers for any advertisement, announcement or publicity without the prior written consent of C&W. C&W will be entitled to request that the Supplier provide them with a proof of any such materials prior to their publication.
 - The Specification and all information supplied with it shall remain the property of C&W and are confidential. The Supplier shall not without the prior written consent of C&W use the Specification except for the purpose of the Contract and shall not communicate such information to third parties except insofar as may be necessary for the purpose of the Contract. The Supplier shall ensure that third parties who are given confidential information are informed of the confidential nature of the information and keep that information confidential.
 - On completion of the Order or the termination of the same, at the request of C&W, the Supplier must return to C&W (or destroy) the Specification and any other documentation supplied with it.
- 13. Termination**
- C&W may terminate a Contract with immediate effect by written notice prior to the Delivery Date or if the Supplier commits any breach or non-observance of any of the Conditions (including a failure to deliver the Goods or perform the Services by the Delivery Date).
 - Upon any termination under sub-Condition 13(1) above:
 - risk in the Goods will immediately revert to the Supplier and C&W shall be entitled to return the Goods to the Supplier at the Supplier's expense ;
 - the Supplier shall reimburse to C&W all sums paid under the Contract; and
 - C&W shall be entitled to recover from the Supplier any additional expenditure incurred by C&W in obtaining other Goods and/or Services in replacement of the Goods and/or Services.
 - C&W shall be entitled to terminate the Contract without liability to the Supplier by giving notice to the Supplier if:
 - the Supplier makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
 - an encumbrancer takes possession, or a receiver is appointed of any of the property of the Supplier; or
 - the Supplier ceases, or threatens to cease, to carry on business; or
 - C&W reasonably apprehends that any of the events mentioned above likely to occur in relation to the Supplier (and notifies the Supplier accordingly).
 - C&W shall be entitled to terminate a Contract in respect of all or part only of the Goods and/or the Services by giving notice to the Supplier at any time in which event C&W's sole liability shall be to pay to the Supplier the Price for any Goods and/or Services supplied prior to such cancellation date. C&W shall have no further liability to the Supplier as a result of any such termination.
- 14. Notices**
All notices, demands, or other communications under this Contract shall be given or made in writing and shall be delivered personally or sent by first class post or facsimile transmission, addressed to the other party at the address set out in the Contract (or at such other address as may be designated by notice from such other party).
- 15. Spares Support**
The Supplier shall keep spare parts for the Goods for a period of ten (10) years from the date of the Order and where the Goods or spare parts thereof are to be made obsolete, the Supplier shall give C&W at least twelve (12) months' notice in writing.
- 16. Assignment/Sub-Contracting**
- The Supplier shall not assign or sub-contract any of its obligations under the Contract.
 - C&W may assign or novate any of its rights and liabilities under this Contract to a C&W Group Company.
- 17. Amendments**
No amendment, interpretation or waiver of any of the provisions of the Order, the Contract or these Conditions shall be effective unless made in writing and signed by the authorised representatives of C&W and the Supplier.
- 18. Enforcement**
A failure by either party to enforce any of its rights under a Contract is not a waiver of those rights or any other rights it has under that Contract.
- 19. Force Majeure**
- Neither party shall be liable to the other under the Contract, for any loss or damage which is suffered by the other party due to an event that is beyond the reasonable control of the affected party ("Force Majeure Event") and whose effects are not capable of being overcome including government act, war, riots, civil commotion, fires, explosions, storms, floods, lightning, earthquakes and other natural calamities, but do not include failure by the affected party's sub-contractors, industrial action or lack of funds.
 - If the Supplier's performance is affected as set out in clause 19(1), it will give written notice to C&W as soon as reasonably practicable after becoming aware of the Force Majeure Event and will use best endeavours to bring the Force Majeure Event to an end and to mitigate the effects of the Force Majeure Event.
- 20. Data Protection**
The Supplier shall have in place adequate technical and organisational security measures so that its processing complies with the EU Data Protection Directive (95/46/EC) (as implemented in the United Kingdom as the Data Protection Act 1998) and the Privacy and Electronic Communications Directive (2002/58/EC) (as implemented in the United Kingdom as the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI2003/2426) and shall only process personal data of C&W and any C&W Group Company in accordance with the instructions of C&W or such C&W Group Company.
- 21. Contracts (Rights Of Third Parties) Act 1999**
Unless expressly stated, no provision of a Contract is enforceable by, or intended to benefit, any person who is not a party to that Contract except a Cable & Wireless Group Company.
- 21. Co-operation with Third Party Contractors**
In performing its obligations, the Supplier shall use reasonable efforts to co-operate with any third parties appointed by C&W who are performing activities which are related to the activities of the Supplier under a Contract and not jeopardise or compromise their work.
- 22. Entire Agreement**
- The Contract represents the entire understanding between the Supplier and C&W in relation to its subject matter and supersedes all prior agreements, understandings or arrangements made by either party, whether oral or written.
 - Where special conditions specified by C&W are stated on the face of the Order, such special conditions shall apply equally with these Conditions, except that where there is any inconsistency between the two, the special conditions stated on the face of the Order shall apply.
- 23. Remedies Cumulative**
The remedies under a Contract are cumulative and no remedy is exclusive of any other remedy except as expressly stated.
- 24. No Agency**
The parties to a Contract are independent parties and a Contract does not make them principal and agent, partners, employer and employee nor does it create a joint venture.
- 25. Representations and Warranties**
The Supplier represents and warrants that it has the full legal right, power and authority to perform its obligations under the Contract and these Conditions and that the person executing the Contract has been duly authorised to sign the Contract on behalf of the Supplier.
- 26. Severability**
If any provision of a Contract is held by a court to be unenforceable then that provision will be deemed to be amended to the extent necessary, and in a manner consistent with the intentions of the parties, to make it and the Agreement fully enforceable. The unenforceability of any provision of a Contract will not affect the remaining provisions.
- 27. Governing Law and Jurisdiction**
The Contract and the relationships of the parties in connection with the subject matter of the Contract will be governed by and determined in accordance with the laws of England and the parties hereby submit to the exclusive jurisdiction of the courts of England in relation to any legal action or proceedings arising out of or in connection with the Contract.