

Preferred One Stop Technologies Limited (t/a POST CTI) Terms & Conditions of Sale

1 General

(a) Unless otherwise stated in writing, in any Contract between Preferred One Stop Technologies Limited t/a "POST CTI" whose registered office is situated at Priority House, Grove Park Road, Harrogate, North Yorkshire, HG1 4DP ("the Company") and the person, firm, company or other organization purchasing the Products and/or procuring the Services as detailed in the Purchase Order ("the Customer") the following standard terms and conditions shall apply to all Contracts between the Company and the Customer relating to the sale of Products and/or supply of Services and supersede any and all conditions of the Customer's Purchase Order.

(b) In these terms and conditions, the following words have the following meanings, unless the context requires otherwise:

"Associated Companies" means any group company or company that is a subsidiary company of either party from time to time and "subsidiary" shall have the meaning set out in Section 1159 of the Companies Act 2006.

"Contract" means a contract created by the acceptance of a Purchase Order and which incorporates these terms and conditions and any special conditions detailed in the Purchase Order made between the Company and the Customer for the sale of the Products and/or provision of the Services

"Purchase Order" means the purchase order completed by the Customer and sent to the Company containing details of the Contract

"Products" means the products, being computer telephony hardware and accompanying software supplied by the Company to the Customer

"Services" means the professional services, technical services, training services and such other support services provided by the Company to the Customer in relation to the Products in accordance with the support packages detailed in this information pack and as detailed in the Purchase Order

(c) The Contract will become binding when the Company has sent a written acknowledgement of the order to the Customer. These terms and conditions shall be applicable to all repeat orders made by the Customer, unless the Company notifies otherwise to the Customer.

(d) These terms and conditions shall be incorporated into all Contracts and shall be the sole conditions under which the sale and purchase of the Products and the provision of the Services takes place. All other terms, conditions and other representations are excluded from the Contract between the Company and the Customer, including without limitation, any terms and conditions which the Customer may purport to apply under any Contract, and these terms and conditions shall prevail.

2 Quotation and Acceptance

(a) Unless otherwise stated, quotations are valid for seven (7) days and represent no obligation on the Company until the Company accepts the order by way of a written acknowledgement. Prior to the receipt of a formal purchase order from the Customer, the Company reserves the right to adjust the price without notice to correspond with conditions prevailing at the date of dispatch of the Products and/or performance of the Services.

3 Delivery

(a) Any delivery period quoted is an estimate only and commences from the Company's acknowledgement of the Purchase Order. The Company will take all reasonable steps to deliver the Products at the time stated, but the Company shall be under no liability to do so. Time of delivery shall not be the essence for the purposes of the Contract.

(b) The Company reserves the right to deliver in more than one consignment and to invoice each consignment separately. Each consignment shall be deemed to be a separate Contract. Any breach in relation to any single consignment shall not entitle the Customer to terminate the entire Contract.

(c) Should a Customer request the Company to withhold delivery of the Products for any reason, the Company reserves the right to invoice the Products at the original delivery date. If the Customer fails to take delivery of the Products on the delivery date the Company shall be entitled to charge the Customer for the storage of the Products at the Customer's risk.

(d) Claims for damage to Products in transit must be received within 5 days of the date of the delivery and claims for non-delivery must be received within 14 days of proposed delivery date.

(e) The Customer shall be responsible for the cost and risk of delivering the Products, which shall be arranged by the Company through a third party carrier.

4 Terms of Payment

Unless stated in writing from the Company, the Customer shall make payment in full and cleared funds strictly 30 days from the date of invoice. Time for payment shall be of the essence for the purpose of the Contract. The Company shall be entitled in the event that any amount payable to it under any Contract between the Company (and/or its Associated Companies) is overdue, without prejudice to any other right, suspend deliveries of Products and/or provision of the Services until such payments have been made in full and cleared funds.

5 Cancellation

In order to cancel a specific Purchase Order, the Company must receive written confirmation of such cancellation from the Customer within 48 hours of receiving the Purchase Order. Unless due to delayed lead times, the Products listed will be the property and liability of the Customer after 48 hours of such cancellation and thereafter the Customer shall not be entitled to cancel the Purchase Order without the prior written consent of the Company (such consent not to be unreasonably withheld or delayed).

6 Monies outstanding beyond the Company's normal credit terms

Monies outstanding beyond the Company's normal credit terms, unless otherwise agreed in writing, any account outstanding beyond the Company's credit terms of reference may be passed to the Company's debt recovery agency in order to recover the outstanding funds and may be subject to a surcharge of fifty pounds sterling (£50.00) to cover the cost incurred; such accounts will also be subject to any other costs incurred in obtaining a settlement.

7 Interest Charges on Outstanding Accounts

A charge of 8% above the bank base rate [Bank of England] accruing daily from the due date until payment in full and cleared funds or judgment has been obtained will be made if any invoice is not paid on the due date.

8 Force Majeure

If either Party is prevented from, delayed or hindered (whether wholly or in part) in the performance of any Contract or in compliance with its obligations, any condition or performance of any warranty given as a result of strike, lockout, trade dispute, act of God, war, riot, explosion, fire, shortage of materials, labour or transport or fuel, or, without limiting the generality of the foregoing, by other cause or consequence outside either Party's direct and reasonable control, whether affecting its own business or that of any supplier or sub-contractor, neither Party shall be liable for any loss or damage (direct, indirect or consequential) to the other Party or any third party. If either Party is affected by such circumstances of force majeure then time for performance of its obligations under the Contract shall be extended for a period equivalent to the period of delayed performance. If the circumstance of force majeure lasts for a period longer than thirty (30) days, either Party may serve upon the other, one (1) month's written notice of termination of the Contract, and unless the sale of the Products and/or provision of the Services has been resumed before the expiry of such notice, the Contract shall terminate in accordance with such notice.

9 Value Added Tax

All charges are, unless otherwise stated, exclusive of any applicable value added or other similar sales tax, and the Customer shall be responsible for paying such taxes.

10 Risk, Property and Repossession

(a) The property in the Products shall not pass to the Customer and the full legal and beneficial ownership of the Products shall remain with the Company unless and until the Company has received payment in full and cleared funds for:

- (i) the Products the subject of a particular Contract; and,
- (ii) all other Products the subject of any other Contract

between the Customer and the Company (and/or its Associated Companies, as appropriate) which at the time of payment of the full price of the Products sold under this Contract, have been delivered to the Customer but not paid for in full and cleared funds.

(b) Retention of Title:

(i) Until such time as the Customer has paid the full price in cleared funds under the Contract or any other Contract between the Company and the Customer (and/or its Associated Companies, as appropriate) the Customer shall hold the Products solely as bailee for the Company.

(ii) Until the Customer becomes the owner of the Products, the Customer will store the Products on its premises separately from any other Products and in a manner that makes them readily identifiable as the Products of the Company and shall insure the Products for their full price against all risk that is reasonable for the Customer to insure against.

(iii) The Customer's right to possession of the Products shall cease if the Company's rights to suspend or cancel deliveries in accordance with Conditions 4 or 10(c) become exercisable.

(iv) The Company has the right to repossess its Products on the default of the Customer under these terms and conditions or the Contract and in order to recover its Products, the Company may enter upon the Customer's premises and any premises where the Products are stored or where the Company reasonably believes the Products are stored. The Customer will co-operate in the identification of the Company's Products.

(v) [Subject to the provisions under these terms and conditions, the Customer is licensed by the Company to sell the Products, subject to the express condition that such an agreement to sell shall take place as bailee for the Company (but without any right to incur obligations on the part of the Company). Whether the Customer sells on its own account or not, the Customer shall hold the entire proceeds of sale in trust for the Company and shall not mingle such sale proceeds with other monies and shall ensure that such sale proceeds be at all times identifiable as the Company's monies.]

(vi) If the Customer has not received the proceeds of any sale to a third party, it will, within 7 days of the Company's request, assign to the Company all rights against the person or persons to whom the Customer has supplied the Products.

(c) Either Party shall be entitled to immediately cancel, terminate and/or suspend the Contract with the other Party and/or any other contract between the Parties (and/or any of their Associated Companies, as appropriate) and the Company shall be entitled to the immediate re-delivery of the Products (at the Customer's risk and expense) and to re-sell the Products any time after the due date for payment or before such due date in the case of occurrence of any of the following events namely:

(i) appointment of a trustee, receiver, administrative receiver or similar officer in respect of all or any part of the business or assets of the Customer or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).;

(ii) the bankruptcy of the Customer (if an individual or partnership);

(iii) the Customer being unable to meet its debts in the normal course of business and for the purpose of such recovery and/or resale of the Products the Company shall be entitled and the Customer hereby grants to the Company, its officers, servants or agent a license (which will be binding upon the Customer's liquidator, Administrator, receiver or trustee in bankruptcy) (as appropriate) to enter upon the premises of the Customer during normal business hours and to remove the Products from the Customer's premises;

(iv) if there are circumstances where the Company reasonably believes that any of the events mentioned in Conditions 10(c)(i)-(iii) above is about to occur and the Company notifies the Customer of such belief;

(v) if there are circumstances where it appears to the Company in its reasonable belief that due to the Customer's credit rating it is financially inadequate to meet its obligations under the Contract;

(vi) anything analogous of any of the foregoing under this Condition 10(c) under the law of any jurisdiction occurs to the Customer (and/or its Associated Companies, as appropriate)

(vii) The Customer commits any material or persistent breach, where such breach is capable of remedy and having not remedied the breach within 14 days of receiving written notice from the Company requiring the breach to be remedied; or

(viii) the Customer and/or its Associated Companies (as appropriate) ceases or threatens to cease doing business.

(d) The Products remain entirely at the Customer's risk on delivery of the Products made by the Company.

11 Warranty

(a) The Company warrants, [for 12 months], to the Customer only that in relation to Products which prove defective during normal use, that it will repair Products found by the Company to be defective due to faulty workmanship . This warranty is on a return to factory basis. The Company accepts no responsibility for and issues no warranty for Products which have not been used in accordance with the specifications for the particular Products. Additional limited warranty is available from the Company for guaranteed Next Day advance replacement - please speak to the Company for further details.

(b) Section 12 of the Sale of Goods Act 1979 and Section 29 of the Supply of Goods and Services Act 1982 are implied into the Contract. Save as set out in these terms and conditions, all express or implied conditions, representations and warranties, including without limitation, any implied warranties or conditions of merchantability, relating to fitness for a particular purpose, satisfactory quality, against infringement or arising from a course of dealing, usage or trade practice, are hereby expressly excluded to the extent allowed by applicable law.

(c) If the condition of the Products and/or the provision of the Services is such as might or would (subject to these terms and conditions) entitle the Customer to claim damages, to repudiate the Contract or to reject the Products, and/or Services (as appropriate) as defective, the Customer must notify the Company in writing of such defects within 5 working days of delivery of the Products and/or provision of the Services. The Company shall within a reasonable period:

(i) supply satisfactory Products on a return to factory basis; or

(ii) where a defect can not be rectified within a reasonable time period, credit the amount paid by the Customer for the particular Products and/or the Services; and/or

(iii) re-perform such defective Services free of charge.

(d) The warranty is conditional upon the Customer giving written notice to the Company of the alleged defect in the Products and/or performance of the Services and the Customer affording to the Company an opportunity to inspect the Products and/or investigate the provision of the Services.

12 Return of Products

Any return of Products must first be authorised by the Company, who will issue a Returns Authorisation Number. Any Products returned without this number will not be accepted. Carriage charges for returned Products are to be pre-paid by the Customer. Repaired Products will be delivered at the Company's cost.

13 Limitation of Liability

(a) Nothing in these terms and conditions or the Contract shall limit or restrict the Company's liability for death or personal injury caused as a result of the Company's negligence, nor does the Company restrict its liability for fraudulent misrepresentation.

(b) The sub-clauses of Condition 13 above are intended by the parties to be severable.

- (i) Loss of revenue;
- (ii) Loss of profit;
- (iii) Loss of anticipated savings;
- (iv) Loss of goodwill;
- (v) Loss of reputation;
- (vi) Loss of anticipated contracts;
- (vii) Loss of data.

14 Complaints

Any complaint by the Customer relating to any invoice must be notified by the Customer to the Company in writing within 14 days of the date of the invoice.

15 Proper Law

These conditions shall be governed and construed by English law and the English courts shall have exclusive jurisdiction in connection herewith.

16 Headings

The headings for these conditions are included for convenience only and shall not affect their interpretation.

17 Notice

Any notice required to be given under this Contract shall be in writing and delivered personally or sent by facsimile or electronic mail, or by first class post to the last known address or number as notified by the parties to each other from time to time. If sent by facsimile or email, a copy shall be sent by first class post or delivered personally the same day. Any such notice shall be deemed to be served, if delivered personally, at the time of delivery, if sent by post, on the eighth day after posting, or if sent by facsimile or email, 12 hours after proper transmission.

18 Waiver

Failure by the Company at any time to enforce any breach by the Customer of the Contract shall not be construed as a waiver by the Company of the Contract and the Company shall be entitled to enforce such breach at any time.

19 Severability

If any part of or whole provision of these terms and conditions or the Contract shall be or become invalid, unenforceable or void, the remainder of the provision in question and the other provisions shall remain valid and enforceable.

20 Third Party Rights

A person who is not a party to the Contract shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 ("the Act") to enforce any term of these terms and conditions or the Contract. Any right or remedy of a third party which exists or is available apart from the Act is not affected.

21 Assignment

The Contract is personal to the Customer and the Customer shall not assign the Contract without the Company's prior written consent.

22 Data Protection Act 1998

(a) The Company will use the personal data it receives in connection with the Customer to create or update records held by the Company and its Associated Companies relating to any matter(s), including without limitation for the purpose of product, market or credit analysis, and statistical compilation.

(b) The Company will make enquiries at any time in relation to the Customer with credit reference agencies which will keep a record of such enquiry whether or not credit is granted. Where credit is granted, the Company may also disclose details about the Customer's account with the Company and the Customer's conduct of the account to such agency or to other agencies or to debt collection agencies. This information may be searched by credit grantors and used and given out in assessing applications for future credit facilities and for debt collection, fraud prevention and other purposes.

(c) Without prejudice to Conditions 22(a) and (b) above the Company will also disclose personal data about the Customer, its account and trading relationships with the Company and within the Company's Associated Companies to any other company or body which it considers suitable. By signing these terms and conditions the Customer expressly consents to the processing of its personal data by the Company.

(d) In Conditions 22(a) to (c) above, references to "the Customer" shall be deemed to include (but without limitation) officers, employees, contractors and agents in relation to which the Company receives personal data arising out of or in connection with the Customer's dealings with the Company and its Associated Companies.

(e) The Company shall take appropriate technical and organizational measures against unauthorised or unlawful processing of personal data and against accidental loss and destruction of, or damage to, personal data.

23 Sales via Web-site

(a) No permission to copy, reproduce, modify or download the Web-site or any part such site is given by the Company and in particular nothing on such sites may be reproduced for use in any publication, or distributed for any purpose without the prior written consent of the Company.

(b) Any information found on the web-site is intended for guidance only and the products and prices described in it are subject to change without notice. No representation or warranty is given as to the completeness or accuracy of any information on the web-site, or that such information is current.

(c) Where the web-site is hyper-linked to any site operated by any third party, the Company accepts no responsibility or liability in respect of any product, service, material or information on such site. The presence of such sites shall not be deemed to be a commendation or endorsement of such site by the Company.

(d) The Company will not be liable for damage to, or viruses that may affect any computer equipment, software, data or other property as a result of access to, use of, or browsing of the web-site or the downloading of any material data, text or image.

(e) All trademarks used in the Company's catalogue, brochure, price list or web-site belong to the Company or the registered proprietor of such trademarks.

(f) All rights relating to copyright, trademarks, know-how and any other intellectual property right in materials or information on the web-site are reserved to the Company.

24 Software Licenses

All Software provided by The Company to Customer shall be by way of a license. In the event that The Company shall provide any such Software to Customer pursuant to a separate license agreement (including without limitation any "click-through", "shrink-wrap", or other valid license agreement), the terms of such license agreement shall be cumulative with the provisions of this Section 24; provided, however, the provisions of such license agreement shall apply to such Software to the extent the terms of such license agreement conflict with the provisions of this Section 24.

(a) License Grant to End-Users: Subject to the terms of this Agreement, Customer may install, access and use one copy of the Software on a single computer, workstation, terminal or other digital electronic device ("System") or Customer may install a copy of the Software on a device, such as a network server, used only to run, display or otherwise provide access to the Software to other Systems over an internal network; provided, however, Customer must acquire and dedicate an additional license for each separate System for which such access is provided. No license for the Software may be shared or used concurrently on different Systems.

(b) License Grant to Resellers: Subject to the terms of this Agreement, Resellers shall have the right to sell or license Products to end-users subject to these terms and conditions of sale and licensing.

(c) Other Rights and Limitations:

(i) Reverse Engineering. Customer may not reverse engineer, decompile, or disassemble the Software, except and only to the extent that The Company is required to permit such activity by applicable law.

(ii) Product Transfers. Except as may be provided in this Section 24, Customer shall not sublicense, assign, transfer, sell or otherwise convey (a "Transfer") its rights under this Section 24 to any other party. In the event that Customer shall Transfer, directly or indirectly, any Equipment which requires the use of Software for its operation to any third party, Customer shall immediately notify The Company in writing of such Transfer. In the event that any third party shall operate such Equipment without obtaining a valid Software license from The Company (or a The Company authorized distributor or reseller), Customer shall pay to The Company upon the occurrence of each such event, as liquidated damages and not as a penalty, an amount equal to The Company's then-current list price for a license to use such Software. The payment of liquidated damages by Customer pursuant to this paragraph shall not relieve any such third party from its obligation to obtain a valid license to use such Software.

(iii) Separability. The Software is licensed as a single product and may not be separated for use on more than one System.

(iv) Reservation of Rights. All rights not expressly granted hereunder are reserved by The Company.

(v) Termination. In the event that Customer fails to comply with the terms and conditions of this Section 24, The Company may terminate the license granted to Customer hereunder without prejudice to any other rights of The Company. Upon such termination, Customer must return or destroy all copies of the Software and its component parts.

(d) Intellectual Property: All title and copyrights in and to the Software and any copies of the Software are owned by The Company or its suppliers and licensors. All title and intellectual property rights in and to the content which may be accessed through use of the Software are the property of the respective owner of such content and may be protected by applicable copyright or other intellectual property laws and treaties. No ownership of or any right to use any part of such content is transferred to Customer under this Agreement. If the Software contains documentation provided only in electronic form, Customer may print one copy of such documentation for Customer's own use.

(e) Backup Copy: Customer may make one copy of the original media on which the Software was provided to you by The Company solely for backup or archival purposes. Except as expressly provided in this Agreement, Customer may not otherwise make copies of the Software.

25 Entire Agreement

The Contract and these terms and conditions constitutes the entire agreement between the parties with respect to the subject matter of the Contract and supersedes any representations and understandings previously given or made, whether oral or in writing, other than those contained in the Contract. For the avoidance of doubt, the parties acknowledge that save as expressly set out in the Contract the parties have not relied on entering into the Contract on any statement or representation made by any other party to the Contract.