

Sale Terms

1. FORMATION

These terms "Terms" apply to any system, equipment, software, services and associated support sold by SMARTCALL Technologies which trades as Smartcall and is hereinafter referred as such. Smartcall agrees to sell equipment, license software, provide a service and where a support contract is in place support and maintain such equipment and software and the Customer agrees to purchase same. The equipment, software and/or services so specified shall be called collectively "System" and is sold subject to these Terms. The term System shall include any application developed for the Customer and all software supplied including any pre-packaged or shrink-wrapped software delivered by Smartcall whether separately identified or not which shall additionally be subject to the terms and conditions of a Smartcall software licence. These Terms shall be binding on the Customer whether some or all of the System is subject to a third-party finance agreement ("Lease Agreement"). Unless specified in writing to the contrary to Smartcall within seven (7) days of the date of relevant order placement the Customer is deemed to have accepted these Terms in their entirety.

2. PRICES

The System price ("Price") is net of Value Added Tax which will be added at the then prevailing rate.

3. PAYMENT

Unless agreed otherwise the payment schedule shall include a deposit which is payable upon submission of the order and Smartcall will not progress the order until cleared deposit funds are received. For stage payments, payments on delivery, payment on installation or acceptance Smartcall will invoice the appropriate balance of the Price. If the System is to be leased via a third party howsoever introduced ("Leasing Company") then Smartcall shall deliver the System and invoice the Leasing Company only after receiving valid authorisation from the Leasing Company that the appropriate leasing documents have been fully completed and the Leasing Company will promptly pay Smartcall's invoice for the full amounts due. Delays to delivery caused by non-receipt of such authorisation shall not be held to Smartcall's account. All payments shall be due within 30 days from the date of installation or acceptance (as defined in clause 4).

Failure by the Customer and/or Leasing Company to make such payments within the said periods shall entitle Smartcall at Smartcall's option summarily to suspend any outstanding deliveries or summarily terminate the Agreement insofar as it may remain unperformed without prejudice to any other remedies to which Smartcall may be entitled including the right to recover the price of System supplied and/or services rendered at the date of cancellation and/or to be indemnified against all loss, damage, costs or expenses occasioned thereby. The Purchaser shall pay to Smartcall interest at the rate of four (4) per cent per annum above the current HSBC Base Rate on any amount unpaid from the due date for payment until the date of actual payment. Such interest shall accrue on a daily basis and be compounded quarterly. Smartcall may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and Late Payment of Commercial Debts Regulations 2002. Smartcall shall not be liable for any damages howsoever occasioned by any action taken by any party under this clause.

4. DELIVERY INSTALLATION AND ACCEPTANCE

The dates of delivery and/or installation applicable to this Agreement are Smartcall's best estimate. Smartcall shall use all reasonable endeavours to avoid any delays in delivery or installation but shall not be liable in any way for delays howsoever caused nor any damage or loss ensuing therefrom. Dates and times of despatch, delivery or installation shall **not** be the essence of the contract. Smartcall shall supply the necessary information to enable the Customer to prepare the premises suitably for the System and the Customer shall bear the expense of and responsibility for such preparation. Any delay in delivery beyond seven days due to unavailability or unsuitability of the site or any other reason caused by the Customer shall render the Customer liable at Smartcall's discretion to pay up to 80% of the outstanding Price forthwith. Delivery shall be deemed to have been made and all risks relating to the System shall pass to the Customer when: i) in the case of hardware the date the System shall have been unloaded at the installation site or; ii) in the case of software or an application developed for the Customer the date the System shall have been loaded or be capable of being loaded on a single PC or server at the installation site; iii) in the case of a service when the service shall have been performed by Smartcall. In any of the circumstances described above such date shall be the date of delivery in respect of such hardware software or application items ("Delivery Date").

Where delivery of the System occurs on more than one date as may be the case where items of System are on differing lead times or involve application development or a service then more than one Delivery Date may apply and where the relevant payment terms require payment upon delivery Smartcall reserves the right to invoice in respect of the items delivered on each Delivery Date. Any delivery charge specified includes costs of carriage from Smartcall to the Customer's premises and any costs to pack and crate the System appropriately.

Smartcall shall install the System at the Customer's site having submitted the System to such tests as Smartcall deems appropriate from time to time. When the System has passed the said tests to Smartcall's satisfaction such date shall be the date of installation ("Installation Date") and Smartcall will inform the Customer that the System is ready for service. In the event of the Customer within thirty (30) days of the Installation Date failing to give written notice of any specific defect in the System and/or using the System either before or after the Installation Date then it is hereby agreed that the Customer shall be deemed to have accepted the System and to have acknowledged that the System has been satisfactorily installed and is in good working order and that the final payment is due. Upon receipt of any notice of defect Smartcall shall remedy such defect to its satisfaction and inform the Customer appropriately. The Acceptance Date shall be the date of acceptance (or deemed acceptance) by the Customer.

Where the delivery schedule involves multiple Delivery Dates as defined in this clause and the period whether planned or actual extends beyond one calendar month then upon the Customer's request Smartcall may at its discretion and upon payment of the final invoice(s) relating to the System so delivered permit the use of such System. If maintenance of any such System is required then the start date for maintenance will be the date of commencement of such use.

5. RESERVATION OF TITLE

Title to the System shall remain with Smartcall until the full Price has been received by Smartcall. Until title has passed to the Customer the Customer shall not sell, charge or otherwise dispose of or encumber the System or part thereof (or attempt or purport to do so) or part with the possession of the System or part thereof without Smartcall's written consent. **Your attention is drawn to the fact that software is licensed not sold and title does not pass to the Customer nor any Leasing Company.**

6. WARRANTIES AND LIMITATION OF LIABILITY

Smartcall warrants that System supplied by Smartcall shall not fail because of any defects in materials or workmanship where the defects appear under proper use of the System within twelve (12) months from the Installation Date. Smartcall further warrants that the System shall comply with Smartcall's published specifications in force at the Installation Date. Such specification implies and includes any manufacturer's specification of equipment and/or software and for projects and systems being developed the functional specification agreed between the Customer and Smartcall. If the System fails to comply and provided that Smartcall shall have been notified in writing by the Customer of such failure in accordance with clause 4 Smartcall shall at its sole discretion having been given a reasonable opportunity and time to inspect the System and satisfy itself as to any such non-compliance, either: within a reasonable time alter the System so that it complies with the said specifications or replace it with System that so complies; or accept a return of the System against a credit for the Price thereof. Smartcall's liability under this clause shall be to the exclusion of all other liability to the Customer whether contractual, tortious or otherwise for defects in the System or for any loss or damage to or caused by the System and all other warranties stipulations or other statements whatsoever concerning the System whether express or implied by statute or common law or otherwise howsoever are hereby excluded. Without limitation of the foregoing Smartcall grants no warranties regarding the fitness for purpose performance use nature or quality of the System whether express or implied by statute or common law or otherwise howsoever.

Notwithstanding anything contained in these Terms in no circumstances shall Smartcall be liable in contract tort (including negligence or breach of statutory duty) or otherwise howsoever and whatsoever the cause thereof for any loss of profit business contracts revenues or anticipated savings or for any special indirect or consequential damage of any nature whatsoever.

Smartcall shall not be liable for any failure in the performance of other equipment to which the System is connected nor the functioning of an entire system nor parts of any system of which the System may be part including the effects that other parts of such a system may have upon the System nor for any loss or damage whatsoever of or to the said other equipment or system.

Nothing in these Terms shall exclude or restrict the liability of Smartcall for death or personal injury caused by reason of the negligence of Smartcall or of its employees or agents.

In any event Smartcall's liability to the Customer in respect of damage to tangible property shall be limited to the value of its invoices under this Agreement in the twelve (12) months preceding the event leading to a claim.

7. MAINTENANCE & SOFTWARE SUPPORT

Smartcall will support and maintain the System subject to its Software and Maintenance Support Terms unless the Customer opts to decline such. Software and Maintenance Support may require physical access to the Customer Site though more normally via remote access. Whatever access necessary must be promptly provided upon Smartcall's request. The Customer agrees to allow such access at any time at no charge to Smartcall for the provision of the maintenance service.

8. SOFTWARE

All software of whatever nature and from whatever source and whether provided either separately or with or in the System shall be subject to the terms and conditions of Smartcall's Software Licence.

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9. PATENTS, DESIGNS AND COPYRIGHT

Smartcall shall fully indemnify the Customer against all actions, claims, demands, proceedings, damages, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of letters patent, design or copyright by the use or possession of the System supplied by Smartcall under this Agreement, subject to the following: i) The Customer shall promptly notify Smartcall in writing of any alleged infringement of which it has notice; ii) The Customer must make no admission without Smartcall's consent. iii) The Customer, at Smartcall's request and expense shall allow Smartcall to conduct and/or settle all negotiations and litigation and give Smartcall all reasonable assistance. The costs incurred or recovered in such negotiations or litigation shall be for Smartcall's account. If at any time any allegation of infringement of letters patent, design or copyright is made in respect of the System and/or Software or in Smartcall's reasonable opinion is likely to be made, Smartcall may at its own expense modify or replace the System to avoid the infringement.

The indemnity under this clause will not apply to infringement (including infringement of Smartcall's patents) by use of the System or parts thereof supplied by Smartcall in a combination with equipment and/or software not supplied by Smartcall or use of the System and/or Software which could not reasonably be foreseen by Smartcall at this time of this Agreement and states Smartcall's entire liability in respect of patents, copyright designs and other intellectual property rights.

10. MODIFICATION OF AGREEMENT

Except as otherwise provided herein this Agreement shall not be modified except in writing signed by a proper authorised agent on behalf of each of the parties hereto. In relation to the System this Agreement and Smartcall's acceptance of the order as indicated in clause 11 constitutes the entire agreement between Smartcall and the Customer and supersedes all previous communications, representations or agreements. The Customer hereby acknowledges that this Agreement is not entered into in reliance upon any representations made but not embodied in this Agreement. No addition alteration or substitution of these Terms will bind Smartcall unless they are expressly accepted in writing by a person authorised to sign on Smartcall's behalf.

11. ORDER ACCEPTANCE

The Customer shall have 14 days from the date of its order whether by signed quotation, email or Purchase Order ("Order") to make any changes which are acceptable to Smartcall. Such changes may affect the Price. Thereafter Smartcall shall accept the Order noting any specific terms relevant to the Order including providing copies where relevant the Customer Project Responsibilities Document ("Order Acceptance"). If no such Order Acceptance has been notified to the Customer within 28 days of receipt of the Order then Smartcall shall be deemed to have accepted them unless it notifies the Customer in writing to the contrary. Once the aforementioned 14 day period has expired then subsequent changes by the Customer will incur a charge. Cancellation of an Order in part or in whole will incur a cancellation charge of thirty (30)%. Any waiver by Smartcall at its sole discretion for such charges will not constitute a waiver by Smartcall of any other such charges that may arise at a later date.

12. VIRUS

Smartcall warrants that as at the date of delivery to the Customer the System shall have been checked by industry standard anti-virus software and be free as far as reasonable of any virus, trojan-horse and/or worm as these terms are generally understood by the IT Industry at the time of the Order. However Smartcall does not supply anti-virus software and it is the Customer's responsibility to install and use any appropriate anti-virus software it considers appropriate. The Customer should also be aware that use of anti-virus is subject to restrictions outlined in the Project Responsibilities Document to which the Customer must adhere.

13. HEALTH & SAFETY

Smartcall has undertaken risk assessments concerning its engineers performing installation on customer sites. These are specific to the risks that would appertain to a site with a normal office and communication room environment. The Customer must ensure it makes Smartcall aware in writing of any additional risk to which it may be aware that are relevant to Smartcall's provision of the its services. If requested Smartcall will promptly provide its risk assessments to the Customer. The Customer will indemnify Smartcall against any failure of it to have performed its statutory duties and any failure to inform Smartcall appropriately.

14. LIQUIDATION, BANKRUPTCY AND TERMINATION

If the Customer shall fail to make any payment in accordance with these Terms or shall be in breach of any of the conditions herein, or being a Company go into or be put into liquidation (otherwise than the voluntary winding up for the purposes of amalgamation or reconstruction), or being an individual shall commit an act of bankruptcy or suffer distress or execution of his assets or if the Customer compounds with his Creditors or if a Receiver is appointed for any part of the Customer's business, Smartcall may, without prejudice to any other rights and remedies to which it is entitled, cease to make any further deliveries hereunder. In the event of payment in full not having been made by the Customer Smartcall shall in addition have the right hereby granted by the Customer to enter upon the Customer's premises for the purpose of recovering possession of the System and shall have the right to remove the System without any liability whatsoever on the part of Smartcall to the Customer as to repayment of any part of the price already paid to Smartcall and without prejudice to any right of Smartcall for damages or otherwise. In particular Smartcall shall have the right to charge the Customer for the expenses incurred by Smartcall for any actions taken under this clause.

15. RE-EXPORT

The Customer hereby agrees that it will not re-export any System supplied by Smartcall without the approvals required under UK or any other relevant laws or regulations.

16. GENERAL PROVISIONS

ASSIGNMENT

Neither this Agreement nor any rights hereunder may be assigned by the Customer without the prior written consent of Smartcall.

FORCE MAJEURE

Neither party shall be liable to the other for any delay in or failure to perform its obligations under this Agreement (other than a payment of money) provided that such delay or failure is due to reasons beyond its reasonable control. Notwithstanding the above the party so affected shall use its reasonable endeavours to avoid or remove such cause of non-performance and to mitigate its consequences to the other party.

WAIVER

No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall either be or deemed to be a waiver or in any way prejudice any right of that party under this Agreement.

NOTICES

All notices to or by the respective parties hereto shall be in writing and shall be deemed to have been duly given when delivered by hand, posted by recorded delivery post or sent electronically to the party to which such notice is required to be given under this Agreement. Notices delivered by hand or sent electronically shall be deemed received the first working day following such delivery or sending. Notices which have been posted as above shall be deemed received on the second working day following posting.

HEADINGS

Clause headings contained herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the terms.

SEVERABILITY

In the event that any of the terms, conditions or provisions of this Agreement shall be determined by any competent authority to be invalid unlawful or unenforceable to any extent such term condition or provision shall to that extent be severed from the body of this Agreement and the remainder thereof shall continue to be valid and enforceable to the fullest extent permitted by law.

ALTERNATIVE DISPUTE RESOLUTION

If any dispute arises in connection with this Agreement the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure. Unless otherwise agreed between the parties the mediator will be nominated by CEDR.

RELATIONSHIP & THIRD PARTY RIGHTS

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership nor joint venture between the parties and the relationship between parties established by this Agreement shall be that of independent parties and nothing shall be construed to give either party the power to bind or obligate the other in any manner whatsoever except as expressly provided in this Agreement.

A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exist or is available outside of the Act.

LAW

The terms and conditions of this Agreement shall be governed by English Law and the parties agree to submit to the exclusive jurisdiction of the English Courts.