

Terms & conditions

NextiraOne UK Limited General Terms and Conditions of sale 1st March 2008

1. Introduction

These terms apply to the sale by us of Equipment and / or Services.

The general terms in clauses 2 - 15 apply to all sales. The additional terms set out in Schedule 1 apply to sales of Equipment, those set out in Schedule 2 apply to sales of Support Services, and those set out in Schedule 3 apply to sales of Professional Services.

Further terms are contained in the Support Plan (where relevant).

2. Definitions

"Contract" means a contract documented by an order which has been accepted by us.

"Delivery" shall have the same meaning as set out in clause 1.2 of Schedule 1 to these Terms.

"Equipment" means an item or items of telecommunications equipment and / or software either supplied by us to you under a Contract or covered by Support.

"Fault Particulars" means the details of the fault reported by you to us as specified in the relevant Support Plan.

"Insolvent" means if a party passes a resolution for winding up or a court makes an order to wind up or dissolve it or it is the subject of an administration order or a receiver is appointed or an encumbrancer takes possession of or sells any of its assets or it makes an arrangement or composition with its creditors generally or applies to court for the benefit of any law for protection from creditors generally or any event analogous to any of the above occurs in any jurisdiction.

"Professional Services" means all services other than Support.

"Site" means in relation to Equipment any premises or site belonging to or under the control of NextiraOne where Equipment is unloaded and in relation to Services means an premises or site where the Services are to be performed.

"Services" means any or all of the services to be performed by us under a Contract

"Statement of Works" means the definitive statement of any Equipment and/or Services sent to you pursuant to clause 4.2 below.

"Support" or "Support Services" means Services to repair Equipment or rectify software faults reported by you or detected by remote monitoring and "Supported Equipment" means Equipment which is covered by the Support Services.

"Support Plan" means the Support Services plan referred to in our quotation/order form details of which are available on our website.

"Terms" means these terms and conditions of sale.

3. Formation of Contract

3.1. All quotations, offers and tenders are made and all orders are accepted subject to the Terms. Except as otherwise provided in these Terms, all other terms, conditions, representations or warranties are excluded from any contract between you and us unless expressly accepted in writing by us.

3.2. If there is a conflict between these Terms and any other terms of our quotation, offer, tender or acknowledgement of order, the signed acceptance form sent by us accepting your order shall prevail.

3.3. Acceptance of orders will only be effective where we send you our order acceptance form.

3.4. You confirm that you have not entered into this contract in reliance on any representation which is not set out in these Terms, our quotation or our Statement of Works.

4. Scope of Contract

4.1. We agree to provide and you agree to purchase Equipment and/or Services as agreed in the Contract.

4.2. You agree that the latest document of ours entitled "Statement of Works" which was sent to you is the definitive statement of any Equipment and/or Services to be supplied under the Contract and supersedes any relevant previous understanding between us on this point. If this is not correct then you must let us know within 5 days otherwise you will be deemed to have accepted this provision.

5. Change Control

5.1. Either of us may request in writing a change to the Equipment or Services. The other shall have the right to reject any such change, but shall not exercise such right unreasonably.

5.2. The details of any agreed change and revision to (1) the price, (2) the timetable of work to be carried out by us or (3) to the Statement of Work shall be first specified and confirmed in writing between us.

5.3. If your change request is subsequently withdrawn, you will pay any costs incurred by us in preparing change estimates and allow us an extension of time accordingly.

6. Price and Payment Terms

6.1. Unless the Contract states otherwise, prices quoted by us are in Sterling, exclusive of VAT and any other sales taxes, which you agree to pay.

6.2. You agree to disclose all relevant information to us so we can calculate our charges accurately. You agree to pay for additional work required which we could not reasonably have foreseen from the information you provided.

6.3. Unless the Contract states otherwise, invoicing will be as follows. For Equipment, the price will be invoiced upon Delivery. For the provision of Support Services, the price will be invoiced annually in advance. For Professional Services (including installation) the price will be invoiced monthly in arrears as the Services are performed.

6.4. Invoices shall be paid by you within 30 days from the date of the invoice. If we do not receive payment in full for Support Services at least 15 days (if later than 30 days from the date of invoice) prior to the date on which the Support Services start or any renewal period starts, we reserve the right to cancel or suspend such Support Services.

6.5. If we do not receive payment within 30 days we shall be entitled to charge interest under the Late Payment of Commercial Debts (Interest) Act 1998 until we receive payment in full.

6.6. All payments shall be made by you in Sterling by transfer to such bank account as we may from time to time notify.

6.7. If you do not fulfil your responsibilities promptly or prevent us performing or cancel all or part of the Contract in breach of its terms, we may charge you for all our resulting costs and losses. We will try to mitigate these where possible.

6.8. We may increase our charges annually for any Services performed on an ongoing basis in line with the UK General Index of Retail Prices.

6.9. We shall be entitled to reclaim any expenses relating to travel or overnight accommodation or other disbursements reasonably incurred by us in the performance of the Services.

7. Your Responsibilities

7.1. You will provide us with all information relevant to delivering the Equipment or the Services, including floor plans and utility diagrams, details of equipment, wiring or conditions that might affect or be affected by the Services, and details of any hazardous or potentially hazardous conditions.

7.2. You will prepare the Site for the installation of Equipment, for example removing existing equipment or cable as necessary, and making available secure storage space for equipment, spare parts and tools as reasonably required by us. You agree to allow us to deliver and / or install the Equipment as soon as we are ready to do so.

7.3. You will provide facilities as reasonably required by us to provide the Services, including ducting, conduit, structural borings for cable and conductors, and electrical service with suitable terminals and power surge protection devices and shall designate refuse deposit points close to any Equipment and remove any waste placed there.

7.4. You will arrange access to any Site as reasonably required by us and provide safe and suitable conditions to allow us to perform the Services. You agree to ensure that all Sites comply with all relevant laws and regulations.

7.5. You will procure as required any permission or services of third parties in respect of interfacing equipment or software and allow us, at your expense, to make reasonable service requests on third parties for Equipment interconnection, including obtaining telephone service for testing where necessary.

7.6. You will co-operate with and assist us as reasonably required in connection with the Services and make available at all reasonable times somebody with appropriate knowledge of the Equipment and Site with authority to act on your behalf, replying to any request for any information, approval or decision without delay.

7.7. You will maintain the Equipment and its environment in accordance with any manufacturer specifications and tolerances.

7.8. You will select, implement and maintain security features for defence against unauthorised Equipment use and pay all telecommunications charges incurred through use or misuse of the Equipment.

7.9. You will immediately tell us of any inability or anticipated delay in meeting any obligations set out in this clause.

8. Safety, Security and Personal Conduct

8.1. You will ensure that our employees, agents and sub-contractors are not exposed to anything which might have a detrimental effect on their health, safety or welfare. If any potential hazards exist at any Site which could have such an effect, you will immediately advise us, confirmed in writing afterwards, and offer appropriate training and safeguards to ensure safe working conditions. Any breach of this clause 7.1 shall be a material breach of these Terms.

8.2. We agree to ensure that our employees, agents and sub-contractors attending a Site comply with all reasonable policies and instructions on health and safety, security and personal conduct.

9. Force Majeure

9.1. We shall not be responsible for a delay or failure to perform any obligation under a Contract if caused by an event beyond our reasonable control providing that we notify you as soon as practicable. Events beyond our reasonable control include but are not limited to fire, flood, weather conditions, civil and industrial disturbances, power surges or failure and delays or failures by suppliers, subcontractors, utility companies, telephone companies, internet carriers, telecommunications or other service providers.

9.2. We shall use reasonable endeavours to fulfil our obligations as far as reasonably possible and shall be entitled to an equitable adjustment to any payment or time allowed under the Contract.

10. Software Licence

10.1. You acknowledge any software supplied by us is owned by the relevant software publisher or Equipment manufacturer and not by us. In no circumstances shall title to any software pass to you. You agree to be bound by the terms of the relevant licence agreement which may accompany any Equipment or software. Any such licence agreement shall exclusively and independently govern the licensing of the software.

10.2. The parties agree that any failure to comply with the terms of this clause 10 shall be deemed a material breach of the Contract for which injunctive and other equitable relief may be sought.

11. Termination and Suspension

11.1. Either party may by serving notice terminate a Contract if the other party commits a material breach of the Contract which is incapable of remedy or becomes Insolvent.

11.2. Either of us may by serving notice terminate a Contract if the other either fails to remedy a material breach of the Contract which is capable of remedy within twenty eight days of written notice giving appropriate details or fails to make a due payment within fourteen days of written notice giving appropriate details. Either party with a right to terminate under this clause shall have the additional right to suspend all or any of its obligations under the Contract until the breach is remedied.

11.3. If any circumstances exist at any Site which we reasonably believe could have a detrimental effect on the health, safety or welfare of our employees, agents or sub-contractors, we shall have the additional right to suspend the delivery of all or any Equipment or the performance of all or any Services at any time while those circumstances prevail.

11.4. If a suspension should occur under clause 11.2 or 11.3, the party at fault agrees to pay any reasonable extra costs incurred and the time allowed to the suspending party to perform its obligations shall be equitably adjusted.

12. Indemnity

Subject to clause 13, each party shall indemnify the other party, against any third party claim alleging injury, death or damage to tangible property caused by the negligence or willful misconduct of the indemnifying party in connection with the performance of the Contract provided that such claim is promptly reported to the indemnifying party in writing.

13. Limitation of Liability

13.1. Subject to clause 6.6, we shall not be liable for:

- any actual or potential commercial loss of any kind, which includes but is not limited to loss of business, profits, revenue, savings or capital, increased costs of operation whether caused by delays or business interruptions or loss of data or messages or otherwise; or
- any damages of any kind resulting from unauthorised, fraudulent or illegal use of or access to any Equipment or any software; or
- any consequential, indirect, incidental, special or exemplary damages, whether mentioned above or otherwise.

13.2. The parties agree to the fullest extent permitted by law to limit the entire liability of either party for claims arising under or in any way related to the Contract (whether in contract, tort or otherwise) to the value of the relevant Contract (or the annual value of the relevant Contract for ongoing Services) or £1,000,000, whichever is less.

13.3. We shall only be liable for any physical damage to an item of Equipment where it is due to our negligence or willful misconduct. If this occurs, your sole remedy shall be limited to either repair by us of the item of Equipment, or, if we reasonably determine that this is an impossible or uneconomic, replacement with comparable Equipment or a pro-rated refund based on depreciation over 5 years.

13.4. Nothing in these Terms or a Contract shall be construed to limit the liability of either party for death or personal injury caused by its own negligence or for fraud.

13.5. These Terms set out our entire liability to you and your only remedies against us for a breach of the Contract.

14. Confidentiality

14.1. For the purpose of this clause 14, confidential information means any information in any form which is marked confidential or which by its nature or the circumstances surrounding its disclosure should reasonably be regarded as confidential, including but not limited to the terms of any Contract.

14.2. We each agree to take reasonable care to ensure that any confidential information of the other remains confidential. Both parties agree not to disclose any such confidential information during or subsequent to the term of any Contract to any third party, other than where the disclosure is reasonable in the context of general legal requirements or the provision of any Services or Equipment, such as but not limited to disclosure as necessary to any sub-contractor. Confidential information may be disclosed if it:

- is in the public domain without breach of these Terms;
- was developed independently or already known by the disclosing party;
- was, so far as the disclosing party is aware, legitimately disclosed to it on a non-confidential basis without any restriction on its further disclosure; or
- appears that disclosure is legally required, provided the party who made the original disclosure is notified as soon as possible.

14.3. We each agree to ensure any third party to whom disclosure is made in accordance with these Terms will comply with the obligations in this clause 14.

15. General

15.1. Governing Law. These Terms and all Contracts shall be governed by English law and both parties agree to be bound by the exclusive jurisdiction of the English Courts.

15.2. Assignment. Neither party may assign or transfer any of its rights or obligations under a Contract without the prior written consent of the other party, which consent shall not be unreasonably withheld. Nothing in this clause or in any Contract shall prevent us from using subcontractors to perform any of its obligations.

15.3. Third party rights. A person who is not a party to a Contract shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

15.4. Amendment and waiver. These Terms or any other provision of a Contract may only be changed by a written document (excluding electronic mail and instant messaging) executed by both parties. A waiver by either party of a breach of these Terms or any other provision of a Contract shall not be construed as a waiver of any subsequent or different breach. The fact that a party has not sought a remedy for non-compliance or breach by the other party shall not be construed as a waiver of any right or remedy.

15.5. Invalid Clauses. If any Court finds all or part of any provision of these Terms or a Contract to be invalid or

unenforceable, the remainder of these Terms and the Contract shall continue in full force and effect as if such provision had not existed.

15.6. Independent Parties. Nothing in these Terms shall be construed to establish or create an agency, partnership or joint venture relationship between the parties.

15.7. Non-Solicitation. Both parties agree not to directly or indirectly solicit, employ or contract with any employee of the other party who has been associated with a Contract during its term and for one year after its termination or expiry.

15.8. Notices. Notices required by these Terms shall be in writing and shall either be delivered in person or by a postal or courier service which requires the signature of the receiving party. The notice will become effective on delivery. Notices shall be served at the registered office address marked for the attention of the Contracts Manager.

SCHEDULE 1

Additional Terms for Equipment

1. Delivery

1.1. Any delivery dates given to you by us are given in good faith but are estimates only and you shall not have any right to damages or to cancel the Contract if we fail to meet any delivery time stated.

1.2. Delivery shall take place when the Equipment is unloaded at the Site or, if you fail or are unable to take delivery, or we agree to delay delivery, 7 days after we notify you that the Equipment is ready for delivery.

1.3. We will not accept responsibility for any claims for shortages, discrepancies or apparent physical damage to Equipment unless you notify us in writing as soon as the problem should have been apparent and at the latest within 48 hours of delivery.

2. Risk and Title

2.1. You assume the risk of loss or damage to Equipment from the time of delivery. With effect from delivery, you will maintain insurance for the full insurable value of Equipment until title passes to you in accordance with paragraph 2.2.

2.2. Title shall pass to you upon full payment of all sums due for Equipment.

3. Defects and Warranty

3.1. Any end-user warranties for Equipment from an Equipment manufacturer are to the extent permitted passed on to you by us, unless stated otherwise in the Contract. If an item of Equipment supplied by us develops a fault during the manufacturer's warranty period, we shall at our option and expense either return the item to the manufacturer and replace it or repair the item. Replacement parts may be new or reconditioned to be the functional equivalent of the original. You acknowledge that any work on Equipment by non-manufacturer certified technicians may invalidate the manufacturer's warranty.

3.2. Unless otherwise stated in these Terms, the warranties in this paragraph 3 are in place of all other warranties from us. All other warranties, whether express or implied by statute or common law or otherwise, are excluded to the fullest extent permitted by law, including but not limited to warranties of satisfactory quality or fitness for a particular purpose (whether that purpose has been brought to our attention or not) or any warranty that any Equipment will function uninterrupted or error-free.

SCHEDULE 2

Additional Terms for Support Services

1. General

1.1. The objective of the Support Services is to maintain Supported Equipment in good operating condition in accordance with the manufacturer's specifications, based on normal use by you. You agree to pay us at our standard rates for work you request us to perform which did not result from normal use of the Equipment.

1.2. Any Support Services provided shall be in accordance with the Support Plan chosen by you.

1.3. Where we either did not deliver, or did not install or did not support any Equipment immediately before the Support

Services begin, we reserve the right to undertake a pre-maintenance inspection to determine whether any work is required to bring the Equipment up to the manufacturer's specification. We reserve the right to charge you at our standard rates for the inspection and any necessary work.

1.4. We have no obligation to provide Support for software releases which are not supported by the manufacturer.

1.5. We shall have the right to inspect all equipment and software which is connected to Supported Equipment as reasonably required for the purpose of checking the causes of faults in Supported Equipment.

1.6. Any parts fitted to the Equipment under the Support Service shall upon fitting become your property. Any parts that have been replaced by us shall upon replacement become our property. The parties warrant that they have good title to pass on. If the Equipment is leased or charged, you warrant that you have obtained all necessary consents to part with the possession of, and give good title to, the replaced parts.

2. Our Obligations

2.1. We shall use reasonable endeavours to ensure that we comply with any obligations set out in these Terms and the Support Plan.

2.2. We may, depending on the Support Plan purchased attempt to repair, by remote technical support, faults reported by you or diagnosed remotely; if this does not resolve the problem, we shall dispatch an engineer to fix the faulty item and if an item needs replacing, de-install the faulty item and install a replacement. Replacement parts may be new or re-conditioned to be the functional equivalent of the original.

2.3. Any target response time starts from the logging by us of a service ticket in response to your request for assistance.

3. Your Obligations

3.1. You will comply with your obligations set out in these Terms and the Support Plan.

3.2. If you are required to report faults in Supported Equipment to us, you shall make reasonable attempts to fix any fault yourself and if these fail you will report the fault to our Welcome Centre as soon as possible giving the Fault Particulars. You will also make available a competent person either in person or by telephone to demonstrate the fault and verify its satisfactory resolution. Where agreed with us, you will provide the relevant network and equipment to allow remote diagnostics.

3.3. Where we are maintaining software on your server as part of the Support Service, you agree to maintain the hardware and operating system software at your expense within the specifications and tolerances specified by the relevant manufacturer. You will promptly forward to us all information regarding updates, patches or hot fixes to hardware and/or software operating systems prior to implementation, for review and determination of compatibility with the application software for server-based products.

3.4. You agree to ensure adequate back-up of data and restoration of data which might otherwise be lost, for example when Equipment is repaired.

3.5. You will not modify, enhance, repair, disassemble, add new equipment to or move any Supported Equipment without our prior written consent, which will not be unreasonably refused: if we grant consent, you agree to pay our reasonable extra charges to reflect any resulting additional work for us.

3.6. You agree to maintain and supply to us a database of Supported Equipment showing the type of equipment, the model number, the serial number, the location, and any changes.

3.7. Where we are installing and / or maintaining Equipment that relies on communication over your network, you shall ensure that the infrastructure is maintained to provide acceptable communication levels.

4. Exclusions

4.1. The scope of Services performed under any warranty or under the Support Service does not include any repairs or any work made necessary by any of the following:

- events beyond the reasonable control of the parties of the type referred to in clause 8 of the Terms;
- failure to follow operational, maintenance or environmental requirements described in the manufacturer's manuals or product bulletins, or in our manuals and other documentation provided to you;
- failure of consumable items such as but not limited to batteries;

modifications, enhancements or repairs to, disassembly of or moving Equipment;

- abnormal use of the Equipment, such as but not limited to mishandling, abuse or accidental damage;
- relocation of Equipment without our written consent (other than telephone handsets located in accordance with the manufacturer's specifications);
- changes required by any telephone company, utility company or other transmission provider;
- electrical work external to the Equipment;
- service which is impractical for us to render because of Equipment alterations or its connection to other devices, or because of alterations to operating systems;
- systems engineering services, programming, reconfiguration or reprogramming of equipment, or operational procedures of any sort; or
- service calls where either no problem is found or any problem is unrelated to the Equipment.

4.2. We shall have no obligation to undertake any repairs or work made necessary by any of the events set out in paragraph 4.1 but may at your request, perform the work or repairs at our current time and materials rates.

5. Warranty

5.1. We warrant that the Services will be performed by us or on your behalf using reasonable skill and care, unless otherwise expressly provided.

5.2. Unless otherwise stated in these Terms, the warranties in this paragraph 5 are in place of all other warranties from us. All other warranties, whether express or implied by statute or common law or otherwise, are excluded to the fullest extent permitted by law, including but not limited to warranties of satisfactory quality or fitness for a particular purpose (whether that purpose has been brought to our attention or not) or any warranty that any Equipment will function uninterrupted or error-free.

6. Term

6.1. Support and other ongoing Services are provided on an annual basis and, provided that any minimum or initial term agreed with you has elapsed, may be terminated on an anniversary of the commencement of the Services by either party serving not less than three months' notice on the other party. For the avoidance of doubt three months prior written notice to terminate is also required for the provision of Support and other ongoing Support Services even if the term of the relevant order is for a fixed term.

6.2. In relation to Support and other ongoing Services you acknowledge that the list of Supported Equipment cannot be varied or changed or substituted in any way without our prior written consent.

7. Termination

7.1. We reserve the right to cancel any or all of our Support obligations by serving three months' notice on you if we determine that we are unable on commercially reasonable terms either to continue to provide the Support Service or to obtain replacement parts for the Supported Equipment or to maintain any relevant software. If we cancel all or part of the Support Service we shall reimburse you a pro-rated refund of sums paid.

SCHEDULE 3

Additional Terms for Professional Services

1. Services

1.1. We will perform the Services set out in the "Statement of Work" using reasonable skill and care.

1.2. Any timescales given by us are given in good faith but you shall not have the right to damages or to cancel the Contract if we fail to meet any given timescale.

2. Acceptance

2.1. We will test the Equipment we install in accordance with the manufacturer's diagnostic and readiness test specifications. Acceptance is deemed to occur on the earlier of: (i) when the Equipment has been connected to the network, activated and operated to provide its main functions except for minor variances in performance that do not materially affect those main functions; or (ii) when you put the Equipment into commercial use.

If Equipment is installed in phases, we may carry out acceptance testing for each phase.

2.2. If during testing any item of Equipment is found to be defective, we will at our discretion and within a reasonable time either rectify the defect or replace the item with a new item and the Equipment shall be re-tested.

3. Your Responsibilities

3.1. You agree to carry out the responsibilities allocated to you in the Statement of Work.

3.2. You will make available to us promptly and without charge such of your staff as necessary for the performance of the Services, to meet any reasonable timetable proposed by us, and ensure that such staff have the appropriate information, skills and experience for the tasks assigned to them. You will also provide our staff with such office accommodation, facilities and access to your premises as may be reasonably necessary for us to perform the Services.

3.3. If you fail to fulfil your obligations promptly, we may charge you for the additional costs incurred by us on a time and materials basis and may require an extension of time for the performance of the Services.

3.4. We are reliant on you for all information concerning your operations (including technical issues) required for the performance of the Services.

3.5. The deliverables are based on the information provided to us by you. Accordingly, we make no representation as to the effects which may follow implementation of the deliverables.

4. Intellectual Property Rights

4.1. All intellectual property (including know how and confidential information) ("IP") owned by either of us at the start of the engagement will remain the property of that party.

4.2. All IP created or developed by either party, which would not reasonably have arisen but for the performance of the Services will belong to that party. All other IP arising after the date of these terms shall be owned by the party who has developed or created the same.

4.3. On completion of the engagement and provided we have been in paid in full, you may use our IP (other than that which is mentioned below) strictly for your own internal purposes.

4.4. You may not use any of our IP in inventions for which patent protection has been sought or granted, software, models, tools or databases without our express permission. You may be required to pay a separate licence fee to use such IP.

5. Liability

5.1. If we fail to provide the Services using reasonable skill and care, we shall be liable to perform the relevant part of the Services free of charge.