

## Vortex Communications Ltd Conditions of Sale

### PART ONE

A. In these conditions:- Vortex Communications Limited is referred to as “the Company”. The company person firm or body dealing with the Company is referred to as “the Customer”. Goods supplied or hired by the Customer to the customer are referred to as “the product” and services of any kind supplied by the Company are described as “services”. Wherever the term “supplied” or “supply” is used in these conditions it is to include any hire of goods by the Company to the Customer.

B. The Customer acknowledges and agrees by placing orders with the Company that:- (i) the sale rental or leasing or loan of the product and/or the supply of services by the Company to the Customer are a business transaction to which both parties are freely entering and that the customer is not a consumer as defined by Sale of Goods Act 1979 and/or Supply of Goods Implied Act 1973 and/or Supply of Goods and Services Act 1982. (ii) there are clauses contained in these Conditions which exclude limit or modify the liability of the Company its directors servants and agents. (iii) the Customer is in a better position than the Company to insure the Customer’s materials, work, operations and reputation against loss or damage or liability caused by or arising in any manner whatsoever out of or in connection with the product or services supplied by the Company to the customer and the Company advises and expects the Customer to take out insurance against all such risks. (iv) The Company is willing to negotiate a variation of these Conditions at the request of the Customer. No variation is effective unless set out in a form which complies with Condition (1) of these Conditions.

### PART TWO

1. (i) The supply by the Company of the product and services and every quotation proforma invoice order confirmation delivery note sales invoice price list or other similar document relating to the product or to the supply of services are made or issued solely subject to these Conditions and no representative by or on behalf of the Company shall vary these Conditions unless such representation warranty or statement shall be made in writing and signed by a director of the Company and shall be stated to be made specifically in pursuance of this Condition 1. (ii) The Company shall not be bound by any conditions of business of the Customer unless such conditions are expressly accepted by the Company by a statement made in writing signed by a director of the Company and stated to be made specifically in pursuance of this Condition 1 as aforesaid. Where there is any variance between these Conditions and the Customer’s conditions of business these Conditions shall prevail.

2. In so far as any exclusion, limitation or modification of liability hereinafter appears the Company contracts on behalf of itself its directors servants and agents and the same shall inure to the benefit not only of the Company but also of its directors servants or agents.

3. No order resulting from any quotation proforma invoice price list or other similar document made or issued by the Company shall be binding unless and until accepted by the Company.

4. Orders are accepted on the condition that invoice prices shall be those ruling at the date of delivery. The product specifications and the prices contained or referred to in the Company’s price list may be subject to alteration without notice because of factors outside the Company’s control such as but not limited to exchange rate fluctuations increases in cost of raw materials or production.

5. (i) Delivery of the product shall be made to the Customer at the Company’s premises unless some other place is agreed between the Company subject to Condition 5 (ii). (ii) Where a date is quoted for delivery of the product or in relation to the provision of services by the Company such date is not guaranteed and time shall not be of the essence in respect thereof or of any other obligation on the Company’s part contained in these Conditions. The Company shall not be liable to make good any damage or loss whether arising directly or indirectly out of delay in delivery of the product or provision of services. (iii) Delivery of the product to the Customer by the Company shall be at the Customer’s risk and expense and the Company shall not be liable for physical loss damage or delay to the product from the time the product leaves the Company’s premises whether or not the product is being delivered by the Company or is in the custody of the Company its directors servants or agents or any third party.

6. The Customer shall compensate the Company for any loss which the Company may suffer as a result of any cancellation or variation of any order for the product or services.

7. All equipment and materials entrusted by the Customer to the Company shall be entirely at the Customer’s risk and repairs and modifications to equipment and materials shall be effected at the Customer’s risk. The Company shall not in any circumstances be liable for loss or damage of any kind howsoever caused in respect of such equipment and materials even where such loss or damage has been caused or contributed to by the negligence of the Company its directors servants or agents.

8. (i) Except where otherwise agreed in writing all invoices are for immediate cash settlement without deduction. (ii) Sums not paid when due shall without prejudice to any other rights of the Company carry interest compounded quarterly from the due date until the date of payment at the rate of 4 percent above the base rate of Lloyds Bank Plc for the time being in force. (iii) The Company reserves the right to make a surcharge in respect of any sum payable to the Company to take account of any adverse movement in exchange rates applicable to the product or services occurring prior to the date of payment. (iv) The obligations contained in these Conditions are separate and distinct from those of any other contracts made by the Company or by any associate of the Company and the Customer shall not be entitled to withhold any payment due by virtue of any claims with respect to any other contract or otherwise.

9. (i) Notwithstanding delivery the property in the equipment or materials shall not pass to the Customer until the Customer has paid in full the price of the equipment or materials. (ii) Furthermore the property in the equipment or materials shall not pass to the Customer unless and until the full price for any other equipment, materials or services the subject of any other business transaction between the Customer and the Company has been paid in full. Such price and the price of such equipment, materials or services shall hereinafter together be called “the value” and shall where the context so permits include in addition thereto any costs or repossession incurred pursuant to Clause 9 (iii). (iii) Until the value has been received by the Company the Customer will hold the equipment or materials as bailee on behalf of the Company and the Customer hereby acknowledges that there shall accordingly subsist a fiduciary relationship in respect of such equipment or materials between the Customer and the Company Subject thereto:- (a) The Customer will store the equipment or materials on its premises separately from its own equipment or materials or those of any other person in such a way that they can be readily identified as the equipment or materials of the Company; (b) Until payment as aforesaid the Customer will take all necessary measures for the protection of the equipment or materials including the insurance thereof against all usual risks with an insurance company approved by the Company for the full replacement value of the equipment or materials. The Customer will procure that the interest of the Company is noted upon any policy of insurance effected pursuant hereto and that a copy of the same is supplied to the Company on request; (c) The Customer is authorised by the Company to agree to sell on the equipment or materials at a price which shall nevertheless be no less than the purchase price of the equipment or materials hereunder subject to the express condition that the entire proceeds thereof are held in trust for the Company and are not mingled with other monies or paid into any overdrawn bank account and shall be at all times identifiable as the Company’s money. The Customer shall keep records (to be produced to the Company whenever required) of the name and address of any such sub-purchaser and the date and contract price of each delivery and shall if the Company so requires in writing assign such claims as the Customer has against such sub-purchasers as emanate from this transaction; (d) The Company may, at any time if payment is overdue in whole or in part without prejudice to any other right arising pursuant to or consequent upon these Conditions, for the purpose of recovery of the equipment or materials, enter upon any premises where the equipment or materials are stored or where they are reasonably thought to be stored and may repossess the same. All costs and expenses reasonably incurred by the Company in connection with such recovery shall be paid by the Customer. (e) It is declared for the avoidance of doubt without prejudice to the generality of the foregoing that the Company may recover the equipment or materials and payment shall become due in accordance with this Clause 9 (iii) (d) if:- (A) The Customer does or fails to do anything which would entitle an Administrative Receiver to take possession of any of its assets or which would entitle any person to present a petition to wind up the Customer; and/or (B) The Customer passes any resolution to wind itself up or publishes a notice convening a meeting of its creditors pursuant to section 588 of the Companies Act 1985 or any statutory modification or replacement thereof or any Administrator is appointed over its assets; and/or (C) The Customer if an individual has a Receiving Order made against it or enters into any arrangement for the benefit of his creditors generally. (iv) Each of the preceding Clauses and sub-paragraphs shall be construed and shall take effect separately and in the event of one or more such Clauses or sub-paragraphs being held ineffective this shall not affect the validity of the remaining Clauses or sub-paragraphs.

10. Risk in the product passes to the Customer when the product leaves the Company’s premises.

11. The Company accepts liability in respect of the product and services in respect of:- (i) death or personal injury resulting from negligence of the Company its servants or agents when acting in the course of their employment by the Company, (ii) breach by the Company of any condition or warranty as to title implied by Section 12 of the Sale of Goods Act 1979 and Section 8 of the Supply of Goods Implied Terms Act 1973 and Section 2 of the Supply of Goods and Services Act 1982, and these Conditions shall have effect accordingly.

12. The Company does not give any warranty of merchantability or fitness for the purpose of use in respect of the product.

13. The product is supplied subject to the acceptance and observance by the Customer of any conditions imposed by the manufacturer of the product provided such conditions are communicated to the Customer.

14. The liability of the Company in respect of the supply and use of the product or any service is limited in any event to:- (i) the manufacturer’s guarantee so far as it is possible for the Company to assign the benefit of such guarantee to the Customer. (ii) the price paid for the product or the Company’s charge for the service, and the Company hereby excludes all terms implied by Sections 12-15 of the Supply of Goods and Services Act 1982.

15. In no event shall the Company be liable to the Customer for any incidental consequential or special damages (including but not limited to loss of revenue and loss of profits) arising out of the supply or use of the product or services.

16. Except as expressly provided in these Conditions all warranties guarantees conditions and representations whether collateral or otherwise and whether express or implied by common law statute or otherwise are hereby expressly excluded and the Company shall be under no liability to the Customer whether in contract or in tort.

17. Notwithstanding any other provision in these Conditions the Company shall not be liable for failure or default in connection with the supply and use of the product or services if such failure or default results from force majeure which shall include (without limitation) act of God fire explosion accident industrial dispute inability to obtain materials or any other cause beyond the Company’s control.

18. The Company shall be entitled to a general lien on all property of the Customer in its possession or custody or under its control for any unpaid sums due to the Company or any associate of the Company.

19. Any advice instruction guidance representation or statement in connection with or in relation to the nature use application of the product or services given or made by any director or by any servant or agent of the Company is given or made only on condition that the Company shall in no circumstances be liable therefore or for loss or damage of any kind resulting therefrom however cause.

20. If any term or provision or any part thereof in these Conditions shall be held to be illegal and unenforceable under any enactment or rule of law such term or provision or part thereof shall to that extent be deemed not to form part of these Conditions and the enforceability of the remainder of the Conditions shall not be affected thereby.

21. The construction validity and performance of these Conditions shall be governed by English law.

22. Copyright in any designs drawings or plans prepared by the Company for or in connection with the contract shall be and remain vested in the Company.

23. If the Company’s copyright or patent rights in any designs drawings plans or product or the copyright or patent rights of any manufacturer or supplier of goods supplied under this contract is infringed the Company will sue the customer and/or any third party infringer for damages. The Customer shall provide the Company in connection with any third party infringement proceedings brought by or against the Company and shall indemnify the Company for any loss or damages suffered or for which the Company may be liable.

### NOTICES

The Company’s place of business and the address for service of any notices hereunder shall be:  
Vortex Communications Ltd, 75 The Grove, Ealing, London W5 5LL