

4COM NETWORK SERVICE AGREEMENT
TERMS AND CONDITIONS

1. INTERPRETATION

1.1 In these Conditions:
The Act: means the Telecommunications Act 1984
Contract: means the contract for the provision of the Service
Customer: means the person named in the Network Service Agreement for whom the Supplier has agreed to provide the Service in accordance with these Terms.
Equipment: means the equipment detailed in the Network Service Agreement
Input Material: means any documents and other materials and all necessary data and other information provided by the Customer relating to the Service.
Network Service Agreement: means the Network Service Agreement overlaid.
Supplier: 4Com Network Services Ltd, of Loewy House, 11 Enterprise Way, Aviation Park West, Christchurch, Dorset BH23 6EW. Registered in England Number 06472696
Group: in relation to the Supplier, means 4Com plc, and any company of which 4Com plc is a Subsidiary (its holding company) and any other Subsidiaries of any such holding company.
Subsidiary: in relation to a company wherever incorporated (a holding company) means a "subsidiary" as defined in section 1159 of the Companies Act 2006 and any other company which is a subsidiary (as so defined) of a company which is itself a subsidiary of such a holding company;
Terms: means these terms and conditions,
Service: the telecommunications service detailed in the Network Service Agreement to be provided to the Customers telephone lines by the Seller.
1.2 Any reference to any legislative provision is a reference to that provision as amended, re-enacted or extended at the relevant time.
1.3 Headings are for convenience only and do not affect interpretation.

2. SUPPLY OF THE SERVICE

2.1 The Service will commence on the connection date and continue for the minimum term as set out in the Order Form. The Supplier shall provide the Service and Equipment to the Customer subject to these Terms.
2.2 No variation to these Terms shall be binding unless agreed in writing by the Supplier.
2.3 The Customer shall at its own expense supply the Supplier with all necessary documents and other materials and all necessary data and other information relating to the Service and the Equipment within sufficient time to enable the Supplier to provide the Service and the Equipment in accordance with the contract. The Customer shall ensure the accuracy of all Input Material.
2.4 The Customer shall at its own expense retain duplicate copies of all Input Material and insure against its accidental loss or damage. The Supplier shall have no liability for any such loss or damage, however caused.
2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.
2.6 The Supplier reserves the right to alter the specifications of the Service and/or the Equipment after acceptance by the Customer if the Service has been superseded with a similar or improved product.
2.7 The Supplier reserves the right to change the specification of the Service and/or the Equipment so that the Service conforms to any applicable safety or other statutory requirements.

3. PRICE OF THE SERVICE

3.1 The price of the Service shall be the relevant price at the time the Service is in use as determined by the tariff stated in the Network Service Agreement.
3.2 Any applicable value added tax, import or export duties or other taxes or duties are payable by the Customer in addition.
3.3 The Supplier shall be entitled to vary the tariff stated in the Network Service Agreement from time to time by providing not less than three months notice to its Customers. Such notice to be posted upon the Supplier's website at www.4com.co.uk

4. TERMS OF PAYMENT

4.1 The Supplier will invoice the Customer for sums due at monthly intervals.
4.2 Sums due will become payable in full on the date specified by the invoice. All payments must be made by direct debit.
4.3 The Supplier shall submit invoices to the Customer via e mail. A relevant email address must be supplied by the Customer.
4.4 If payment in full is not made on the due date the Supplier may:
4.4.1 cancel the Contract;
4.4.2 stop providing the Service, and any other services provided to the Customer by a member of 4com's Group ("Other Services");
4.4.3 charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 2 per cent per month (or part of a month) until payment in full is made;
4.4.4 demand immediate payment of all outstanding sums due;
4.4.5 render the Equipment non-functional until such time as all outstanding invoices and interest are settled in full;
4.4.6 If the Service or Other Services are suspended, the Supplier will tell the Customer what needs to be done before they can be reinstated. However the Customer must continue to pay all charges relating to the Services and Other Services whilst the relevant contracts and agreements continue.
4.5 If the Customer requests that the Supplier change the network telecommunications supplier used in connection with the Service, the Supplier shall be entitled to be reimbursed by the Customer for all and any reasonable charges, expenses or other costs incurred by the company in this respect.

5. DELIVERY OF EQUIPMENT

5.1 Delivery of the Equipment shall be made by the Supplier delivering the Equipment to the agreed location, as detailed in the Network Service Agreement.
5.2 Any dates given for delivery of the Equipment are approximate only and the Supplier shall not be liable for any delay in delivery of the Equipment howsoever caused. Time for delivery shall not be of the essence. The Equipment may be delivered by the Supplier in advance of the quoted delivery date upon giving reasonable notice to the Customer.

6. RISK AND PROPERTY

6.1 The Equipment will remain the property of the Supplier.
6.2 The Customer shall keep the Equipment separate from that of the Customer and third parties and properly stored, protected and fully insured and identified as the Supplier's property. The Customer shall if so requested by the Supplier, produce within 7 days, evidence of such insurance to the Supplier.
6.3 The Customer shall deliver up the Equipment to the Supplier on demand and, if the Customer fails to do so immediately, the Supplier may enter any premises of the Customer or any third party where the Equipment is stored and repossess the Equipment.
6.4 The Customer may not pledge or in any way charge the Equipment by way of security for any indebtedness of the Customer.
6.5 The Customer shall keep the Equipment in good condition and not alter or modify it in any way.

7. CUSTOMERS OBLIGATIONS

7.1 The Customer agrees that it will:
7.1.1 allow the Supplier, at its reasonable request, free and safe access to its premises and service connection points, access to information and assistance from the Customers employees; use the Service and the Equipment in accordance with instructions given by the Supplier;
7.1.2 ensure that only attachments approved for connection under the Telecommunications Act 1984 be connected with the Service;
7.1.3 not to use the Service or the Equipment in a manner which constitutes a violation or infringement of the rights of any other party;
7.1.4 maintain the Equipment in good working order and in conformation with the relevant standard or approval for the time being designated under the Act or any other relevant regulations authorities or licences;
7.1.5 obtain and comply with any permission, licence, consent, registration and approval necessary for the use of the Service and/or the Equipment;
7.1.6 indemnify and keep indemnified the Supplier in full against all loss (including loss of profit), liabilities, damages, claims, charges, losses and expenses incurred by the Supplier as a result of any breach of the Customer's obligations under the Contract.

8. WARRANTIES AND LIABILITIES

8.1 The Supplier does not warrant that the Service will never be faulty.
8.2 Subject to the conditions set out below, the Supplier shall pass to the Customer (to the extent that the Supplier is legally entitled to do so) the benefit of any manufacturer's warranty.
8.3 Where a valid claim is made in writing by the Customer in respect of Equipment that is defective or does not meet the specifications detailed in the Network Service Agreement the Supplier shall repair the defect provided that the Customer is not in breach of any of the terms of the Contract but the Supplier shall have no further liability whatsoever.
8.4 Subject as expressly provided in these Terms, and except where the Equipment is sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all other warranties, terms or conditions implied by statute or common law arising out of or in connection with the supply of the Equipment or resale of the Equipment by the Customer are excluded to the fullest extent permitted by law. The Supplier's prices are determined on this basis.
8.5 The Supplier's employees or agents are not authorised to make any representations about the Service unless confirmed by the Supplier in writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim it may have for damages for or right to rescind the Contract for any such representations which are not so confirmed (unless such representations were fraudulently made).
8.6 The Supplier shall not be liable for any advice or recommendation about the Contract given by the Supplier or its employees or agents to the Customer or its employees or agents that is not confirmed in writing by the Supplier. The Customer acts on such unconfirmed advice or recommendation entirely at the Customer's own risk. The Customer confirms that it has not been induced to enter into this Contract on the basis of any representations of the Supplier that have not been confirmed in writing.
8.7 The Supplier shall have no liability whatsoever:
8.7.1 in respect of any defect arising from fair wear and tear, wilful damage, negligence (including improper storage), improper installation, use or maintenance, abnormal working conditions, failure to follow the Supplier's instructions (whether oral or in writing), misuse or alteration or repair of the Equipment without the Supplier's approval; if any sum owing by the Customer to the supplier has not been paid;
8.7.2 if loss is suffered by the Customer because the Equipment fails to perform to its specifications due to the default of the network provider or any other third party.
8.8 Save as otherwise expressly provided in these Conditions, the following provisions set out the Supplier's entire liability (including any liability for the acts and omissions of its employees, agents and sub-contractors) to the Customer in respect of:
8.8.1 any breach of the Supplier's contractual obligations arising under the Contract;
8.8.2 any representation (other than fraudulent misrepresentation) statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
AND THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE FOLLOWING PROVISIONS OF THIS CLAUSE 8
8.9 Any act or omission on the part of the Supplier or its employees, agents or sub-contractors falling within clause 8.8 above is described as an "Event of Default".
8.10 That part of the Supplier's liability to the Customer for death or injury resulting from the Supplier's negligence, or the negligence of the Supplier's employees, agents' or sub-contractors that the law does not permit the Supplier to exclude shall be unlimited.
8.11 To the extent the law does not permit such liability to be excluded and save as otherwise expressly provided, the Supplier's entire liability in respect of any Event of Default shall be limited to damages of an amount equal to the price paid by the Customer for the Service and Equipment over the three month period preceding the Event of Default.
8.12 Subject to condition 9.9 above, the Supplier shall not be liable to the Customer in respect of any Event of Default for any increased costs, expenses, loss of profits, goodwill, business, contracts, revenues or anticipated savings or any type of special, indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or the Supplier had been advised of the possibility of the Customer incurring the same.
8.13 The Supplier shall not be liable to the Customer, or be deemed to be in breach of the Contract, by reason of any delay in performing, or any failure to perform, any of the Seller's obligations, if the delay or failure was due to any cause beyond the Seller's reasonable control including (without limitation) flood, fire, war or threat of war, sabotage, civil disturbance or governmental action, import or export regulations or embargoes.
8.14 The Customer shall fully indemnify the Supplier in respect of loss or damage to the Supplier's property or death of any of the Supplier's employees caused by the negligence or wilful misconduct of the Customer.
9. TERMINATION BY THE SELLER
9.1 The Supplier may terminate this Contract with immediate effect on giving written notice to the Customer.
9.1.1 if the Customer breaches any term of the Contract and fails to rectify the breach within 14 days of being sent written notice by the Supplier requesting rectification;
9.1.2 if the Customer at any time does not have the necessary valid licence to run its telecommunications system;
9.1.3 the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a limited company) goes into liquidation; or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or the Customer ceases, or threatens to cease, to carry on business; or the Supplier reasonably apprehends that any of these events is about to occur in relation to the Customer and notifies the Customer accordingly;
9.2 The Supplier may terminate this Contract at any time by giving not less than 28 days prior written notice to the Customer.
10. TERMINATION BY THE CUSTOMER
10.1 The Customer may terminate this Contract by giving not less than three (3) months' prior written notice to the Supplier, such notice to become effective no earlier than the day after the last day of the Minimum Term. This notice must be sent to the Supplier's place of business via recorded delivery.
10.2 Where the Customer terminates this Contract prior to the expiry of the Agreed Term, the balance of the fees payable for the Service for the remainder of the Agreed Term shall become immediately due, less a discount of 50 per cent which the Supplier shall in its discretion give to the Customer. The Supplier shall invoice the Customer for 50 per cent of the amount which the Supplier estimates would have been charged based on an average charge over the last 3 months billing to the Customer.
10.3 The Customer hereby agrees to repay in full, any termination charges paid by the Supplier on behalf of the Customer to a previous Supplier, should the Customer wish to end this Agreement at any time prior to the agreed term.
10.4 If the Customer has been allocated a Non Geographic Number by the Supplier providing inbound call revenue, the Supplier shall in its own discretion upon termination of this Agreement rescind all inbound revenues payable to the Customer.
11. GENERAL
11.1 The Supplier may assign its rights and obligations under the Contract. The Customer may not assign its rights and obligations under the Contract.
11.2 Any notice shall be in writing addressed to the addressee at its registered office or principal place of business or such other address as may at the relevant time have been notified to the party giving the notice.
11.3 No delay or failure by the Supplier in enforcing any provision of the Contract shall constitute a waiver of that provision or any other provision. No waiver by the Supplier of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. No waiver by the Supplier shall be effective unless in writing.
11.4 If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.
11.5 These Terms and the Network Service Agreement overlaid constitute the entire Agreement between the Supplier and the Customer concerning the supply of the Equipment and provision of the Service and replace and supersede any prior arrangement, understanding, warranty or representation (other than any fraudulent misrepresentation).
11.6 The Supplier may change these Terms (including the charges) at any time. The Supplier will publish details of such changes on line on the Supplier's website www.4com.co.uk at least two weeks before the change is to take effect.
11.6 The Supplier's rights are cumulative and in addition to any rights available to it at common law.
11.7 The Contract shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the English courts.