

ENSIGN COMMUNICATIONS LIMITED – Issue G – September 2008

TERMS & CONDITIONS of BUSINESS

These terms and conditions of business ("Conditions") set out the terms upon which Ensign Communications Ltd., registered in England with no. 05590654 and trading as Ensign ("Company"), contracts to supply goods and/or services to its customers ("Customer"). The Company supplies goods and services only on the basis of the Conditions, and no other agreement, contract, document, representation or undertaking shall form any part of the contract between the Company and the Customer. Any modification or addition to the Conditions or the application of any conditions other than the Conditions will only be valid if accepted by the Company in writing under the signature of a director of the Company and cannot be inferred from a course of behaviour, and in particular any changes to the Conditions made unilaterally by the Customer shall be of no effect.

1. Scope of Contract

- a) The Company provides a range of goods and services in the field of business communications ("Products").
- b) A contract will arise between the Company and the Customer upon the Customer's purchase order issued by it (whether in writing or verbally) in respect of the Products being confirmed by the Company. Although such confirmation may be in writing, confirmation can arise where, following the issue of the purchase order by the Customer as aforesaid, the Company commences delivery of the Products.
- c) The Customer shall provide the Company with such support (including access and services and the obtaining of any permissions) as are reasonable to permit the Company to deliver the Products efficiently and speedily. The Company will comply with all reasonable instructions of the Customer in this regard, and if compliance with such instructions is likely to cause a delay or an increase in cost, then the Company will notify the Customer thereof as soon as is reasonably practicable.
- d) The Customer will provide all information that is necessary to enable the Company to carry out its obligations under the Contract, and the Company shall be entitled to rely upon such information. The Company will not be responsible for any errors or shortcomings in such information.

2. The Products

- a) The Company produces and implements designs and supplies equipment in connection with business communications systems based on requirements, specifications and performance criteria defined in detailed technical proposals.
- b) Proposals for the design and supply of Products will be based on information supplied by the Customer and will be subject to a detailed mechanism controlling changes in scope or specification of the Products. The proposals might contain obligations by the Customer and/or its other suppliers to perform modifications

to its own equipment, systems and/or procedures in order for the agreed requirements and specifications to be delivered by the Company. The parties shall satisfy each other as to the feasibility of the design requirements and solutions and shall define delivery and proving 'milestones' and costs as appropriate.

- c) All designs, drawings, descriptions, photographs, performance figures and other particulars relating to any goods to be supplied under a Contract in any catalogues, leaflets, brochures or other documents are to be regarded as typical and for the purpose of description only and shall not form part of the Contract.
- d) Unless otherwise expressly agreed, all goods supplied will be in accordance with manufacturers' normal designs and specifications current at the date of manufacture or delivery. Where any goods to be supplied by the Company differ from any specification or description defined in a Contract due to unexpected product change or deletion by a manufacturer, this shall:-
 - i) be agreed with the Customer;
 - ii) be subject to re-negotiation of pricing if necessary;
 - iii) not be the basis of a breach of Contract where the goods to be supplied are of approximately equivalent performance to the goods originally referred to in such specification or description;
 - iv) not materially affect the overall system design set out in a Contract.

3. Proposals, Quotations, Prices and Payment

- a) The Company will provide technical solution proposals and quotations following agreement with the Customer on system design requirements and parameters.
- b) Save where price increases are necessary as a result of an increase in the cost of Products being produced from third party suppliers (by reason of exchange rate fluctuations, taxes, increases in the cost of raw materials or otherwise), any quotations shall (unless previously withdrawn) remain fixed for 30 days from issue, unless otherwise stated in the quotation.
- c) Unless the specification for the Products as prepared by the Company states otherwise, any quotation shall not include the cost of any building work.
- d) All prices quoted are based upon any services being performed continuously during normal working hours (i.e. between 9.00 am and 5.00 pm) and under safe accessible working conditions making reasonable assumptions as to the state and construction of the buildings concerned, and the Company reserves the right to render an additional charge if through no fault of its own this transpires not to be the case.
- e) All prices quoted are exclusive of VAT.

- f) The Company's proposal shall be based on the details of surveys, designs and implementation, in stages if appropriate, (including timescales, equipment, software, cabling, layout etc.) being identified and priced, and the Company reserves the right to render additional charges in the event that alterations are subsequently required either at the request of the Customer or from matters arising during the performance of the Contract which could not reasonably have been anticipated by the Company at the time its proposal was drawn up.
- g) Unless otherwise stated in the quotation, payment of any moneys payable under the Contract shall be made (without deduction or setoff) in pounds sterling within 30 days of delivery of invoice (or stage invoice) in respect of which time for payment shall be of the essence of the contract, and without prejudice to any other rights of the Company interest will be payable on all overdue accounts at the rate of interest permitted pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

4. Delivery and Risk

- a) Unless the contrary is specified and agreed to in writing by the Company, the price quoted by the Company shall include the delivery and installation of any goods supplied as part of the Products.
- b) Unless otherwise agreed in writing by the Company, the period specified in the quotation (if any) for the delivery of goods or the performance of services is an estimate only and the Company shall not be liable for the consequences of any delay attributable to a reason outside of its direct control. Where the Company has agreed that the time for delivery is crucial, it will:
 - i) use its reasonable endeavour to provide the most realistic and accurate delivery timescales for goods and services.
 - ii) ensure that the Customer is made aware of the need for it to provide timely information, instructions and purchase orders to enable the Company to meet required delivery dates.
- c) The Company shall not be liable for the consequences of any delay due to non-performance of obligations by third parties.
- d) For the avoidance of doubt, time of delivery shall not be of the essence of the Contract unless otherwise agreed to in writing by a director of the Company.
- e) The risk in any goods provided as part of the Products shall pass to the Customer upon delivery of such goods to the Customer's premises.

5. Acceptance and Inspection

- a) Although all Products supplied by the Company will have been subject to the Company's quality control process prior to despatch to the Customer, it is mandatory that the Customer inspects such Products immediately on delivery to it. The Customer shall thereupon be deemed to have identified any defect in the Products and shall notify the Company immediately of any such defect. Time shall be of the essence in this clause, and any failure or omission by the

Customer to so notify the Company shall disentitle the Customer from claiming at a later time that the Products are defective.

6. Cancellation

- a) Cancellation by the Customer of the Contract (or any part of it) will only be accepted at the discretion of the Company and shall be conditional upon any costs and expenses incurred by the Company up to cancellation and all loss or damage resulting to the Company by reason of cancellation being paid by the Customer to the Company upon demand. Acceptance of any notice of cancellation received by the Company will only be binding on the Company if such acceptance is in writing and signed by a director of the Company.
- b) If the Customer shall fail to make a payment on the due date or breaches any of the Conditions (which being capable of remedy is not remedied within 14 days of notice of the breach being given to the Customer) or proposes to enter into a composition or arrangement with its creditors or has a petition for its bankruptcy or other similar process presented against it or has any of its assets seized or has a receiver or administrative receiver take control of any part of its assets, then the Company may either defer or cancel the provision of all or any further part of the Contract and treat the Contract as terminated but without prejudice to its right to an appropriate part of the Contract price for that part of the Contract that has been completed and damages for any loss suffered in consequence of such termination.

7. Site Working

- a) The Customer shall provide all reasonable and safe site facilities, services and access and must indemnify the Company fully against all losses incurred by its failure to do so, and the Company reserves the right to stipulate reasonable site requirements which must then be met by the Customer.
- b) Whilst the Company shall endeavour to provide services with the minimum amount of disruption to the Customer's business, it shall not be responsible for any such disruption or the consequences thereof.

8. Reservation of Title

- a) Notwithstanding delivery, all goods sold by the Company as part of the Products shall belong to the Company alone until all money due to the Company by the Customer has been paid. Title in the goods shall remain with the Company notwithstanding that the goods may have been incorporated in or affixed to other products including, for the avoidance of doubt, the storage or incorporation of software in or on any media whatsoever.
- b) Until the ownership in such goods passes to the Customer, it shall keep them in good condition and repair, in safe custody and fully insured.
- c) Where goods that have not been paid for are not clearly identifiable by way of serial number or otherwise attributable to a particular invoice, they shall be attributed to the last unpaid invoice in respect of that type of goods.

- d) Without prejudice to any other rights or remedies arising out of a breach of contract by the Customer, upon the happening of an event specified in clause 6(b) and there remains outstanding any part of any sum properly due to the Company under the Contract, then the Company shall have the right to repossess any goods supplied to the Customer, including the right to dismantle any product to which the goods shall have been attached and to detach or remove the goods from such other product, and for this purpose the Company or its agents shall be entitled to enter upon any relevant land or buildings with such transport as is necessary, the costs incurred to be borne by the Customer.
- e) Where the Contract provides for repair or work to be done to goods belonging to or in the custody of the Customer, then the Company shall have a lien on such goods until all funds due to the Company have been paid.

9. Force Majeure

The Company shall not be responsible for non-performance in whole or any part of its obligations as a result of any cause beyond its reasonable and direct control.

10. Warranties

- a) Save as provided herein, material defects in Products supplied by the Company which arise within 12 calendar months from the date of completion of the Contract (or such other agreed period) will be rectified by the Company at its expense provided that:-
 - i) the defects have arisen as a result of the Company's faulty materials or workmanship proven to the satisfaction of the Company;
 - ii) the Customer notifies the Company within 14 days from the discovery of such defect and has not attempted to rectify it without first seeking the Company's permission to carry out rectification work;
 - iii) the Customer has not at any time substituted any parts other than those supplied or approved by the Company, and has not contracted other parties to make additions to, change or reconfigure the installation of the Products in question;
 - iv) rectification by the Company shall be limited to repair or replacement of the defective item only;
 - v) no responsibility shall accrue to the Company for damage or loss to other parts consequent upon failure or malfunction of the said defective item or any other consequential damage or loss whatsoever;
 - vi) in the case of defects in parts or materials not manufactured by the Company, the repair or replacement shall be subject to the conditions of sale and warranty of the manufacturer of such parts or materials;
 - vii) radio frequency survey reports are based on the findings of survey under the structural, usage and stock level conditions prevailing at the time of the survey and the requirements specifically requested.

- b) Save as stated in clause 10(a), no warranty as to performance is implied and any technical advice or service given is made in good faith but is accepted by the Customer at its own risk.
- c) All other conditions, warranties, terms and undertakings express or implied, statutory or otherwise in respect of the Products are hereby excluded to the extent permitted in law.

11. Limitation of Liability

- a) The liability of the Company in respect of any claim arising out of the provision of Products to a Customer shall be limited to the greater of (i) the amount paid by the Customer to the Company under the Contract in question and (ii) such amount as shall be receivable by the Company in respect of such a claim under any insurance policy effected by the Company from time to time.
- b) No claims of any nature may be brought against the Company arising out of the provision of Products more than 12 months after the date of delivery of the Products in question.
- c) The Company has no responsibility for misuse by the Customer of goods supplied or serviced.
- d) The Company is not the manufacturer of equipment supplied by it, and therefore any liability of the Company to the Customer in respect of satisfactory quality or fitness for purpose of the equipment shall not extend beyond the corresponding liability of the manufacturer or original supplier to the Company. Wherever possible the Company will assign to the Customer its rights against such third parties.
- e) The Company shall not be liable to the Customer for loss of profit, goodwill 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) arising out of any breach of its contractual obligations arising under the Contract entered into on these terms and conditions (including loss of use of equipment and loss of/or spoiling of data). This clause shall apply even if such loss was reasonably foreseeable or the Company had been advised of the possibility of the Customer incurring the same.
- f) Nothing in these terms and conditions shall limit the Company's liability for death or injury resulting from its negligence or the negligence of its employees or agents.

12. Confidentiality and Data Security

- a) The Company and the Customer will enter in to mutual Non-disclosure Agreements ("NDAs") with regard to technical information required from the Customer and technical information to be provided by the Company in order to produce the design proposals and with regard to the designs and solutions that result therefrom.

- b) In addition to the parties' obligations under any NDA where either party discloses information relating to an identified or identifiable individual, partnership, corporation or other entity ("Personal Data"), each party will apply appropriate technical and organisational security measures to protect such data against destruction, loss, alteration, unauthorised disclosure or access, and against all other unlawful forms of processing.
- c) The parties agree that they will comply with applicable data protection laws and regulations.

13. Personnel

- a) Unless expressly agreed, the Company will utilise only directly employed staff to undertake key functions in a Contract. The Company reserves the right to use specialist sub-contractors subject to notification to the Customer. Any such sub-contractors will be subject to the provisions of clause 12.
- b) Where the Contract involves the supply of Products which are stated expressly as being crucial to the Customer, then the Company will appoint a nominated Project Manager ("PM") as the prime point of contact for the Customer. The PM will have delegated responsibility for the conduct of technical and commercial consultation relating to the Contract but any conclusions or agreements which may arise from any consultation will not be binding on the Company unless ratified in writing by a director of the Company.
- c) Where the Company is required to work with third parties, the following conditions will apply:
 - i) the Company reserves the right to satisfy itself that a third party is competent to carry out the work to be assigned to it;
 - ii) the provisions of clause 12(a) will apply in regard to any of the Company's designs and documentation disclosed to the third party;
 - iii) it will be a precondition to the utilisation of a third party that the scope of work to be carried out by it shall have been clearly identified in the Company's proposal for the Products in question and agreed to by the Customer and the third party concerned.

14. Governing Law

All Contracts and these Conditions shall be governed by English law, and the parties concerned shall submit to the jurisdiction of the English Courts.

15. Mediation

- a) In the event of any dispute which cannot be resolved between the parties then it shall be mediated through ADR Net before taking any further action, providing that nothing in this Clause shall prevent either party from applying to the courts for injunctive relief if it reasonably believes that this is necessary in order to prevent material damage to its business or reputation.

16. Miscellaneous

- a) The headings to the paragraphs of these terms and conditions are for ease of reference only and shall not affect the interpretation or construction thereof.
- b) If any provision of these conditions is or becomes illegal, void or unenforceable for any reason, the validity of the remaining provisions shall be effective.
- c) Failure by the Company to enforce strict compliance with these Conditions by the Customer will not constitute a waiver of any of the provisions of these Conditions.
- (d) The Company shall have reasonable right to publicise its involvement in connection with the Products once the work that was the subject of the Contract in question has been completed.
- (e) For the purposes of the Contracts (Rights of Third Parties) Act 1999, these Conditions and any Contract are not intended to, and do not, give any person who is not a party to them any right to enforce any of their respective provisions.