

The customer's attention is drawn in particular to the provisions of clause 9

**1. INTERPRETATION**

**1.1 Definitions.** In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 11.6.

**Contract:** the contract between TXO Systems Ltd and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods from TXO Systems Ltd.

**Data:** any personal, sensitive, confidential or other data stored within any part of the Goods.

**Force Majeure Event:** has the meaning given in clause 10.

**Goods:** the goods (or any part of them save for any Software and/or Data) set out in the Order.

**Order:** the Customer's order for the Goods, as set out in the Customer's purchase order form.

**Software:** any software installed onto the Goods.

**TXO Systems Ltd:** TXO Systems Ltd (registered in England and Wales with company number 05479601) and whose registered office is at Unit 3, Newhouse Farm Industrial Estate, Chepstow, NP16 6UP, United Kingdom.

**1.2 Construction.** In these Conditions, the following rules apply:

(a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its personal representatives, successors or permitted assigns.

(c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(d) Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(e) A reference to writing or written includes faxes and e-mails.

**2. BASIS OF CONTRACT**

**2.1** These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

**2.2** The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Order shall only be deemed to be accepted when TXO Systems Ltd issues a written acceptance of the Order, at which point the Contract shall come into existence.

**2.3** The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of TXO Systems Ltd which is not set out in the Contract. Any samples, drawings, descriptive matter, or advertising issued by TXO Systems Ltd and any descriptions or illustrations set out on TXO Systems Ltd's website or contained in any of TXO Systems Ltd's other marketing materials are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or any other contract between TXO Systems Ltd and the Customer for the sale of the Goods.

**2.4** A quotation for the Goods given by TXO Systems Ltd shall not constitute an offer and shall be subject to any conditions as to availability or otherwise as specified by TXO Systems Ltd.

**2.5** No Order which has been accepted by TXO Systems Ltd may be cancelled by the Customer except with the agreement in writing of TXO Systems Ltd and on terms that the Customer shall indemnify TXO Systems Ltd in full against all loss (including loss of profit), charges and other expenses incurred by TXO Systems Ltd as a result of cancellation.

**3. DELIVERY**

**3.1** Delivery of the Goods shall be made to the location set out in the Order or such other location as the parties may agree ("Delivery Location") at any time after TXO Systems Ltd notifies the Customer that the Goods are ready.

**3.2** Delivery of the Goods may be arranged:

(a) by the Customer arranging for collection and transportation using its own FedEx account or other method of transport;

(b) by TXO Systems Ltd arranging for transportation using its own FedEx account or other method of transport

provided that the Customer shall inform TXO Systems Ltd in writing of its preferred delivery arrangements and the Customer shall be responsible for complying with any legislation or regulations governing the exportation of the Goods from the originating country and the importation of the Goods into the county of destination and the full cost of such delivery including any duties and taxes.

**3.3** Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. TXO Systems Ltd shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure event or the Customer's failure to provide TXO Systems Ltd with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

**3.4** TXO Systems Ltd shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide TXO Systems Ltd with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

**3.5** If the Customer fails to take or accept delivery of the Goods within 3 Business Days of TXO Systems Ltd notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or TXO Systems Ltd's failure to comply with its obligations under the Contract:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which TXO Systems Ltd notified the Customer that the Goods were ready; and

(b) TXO Systems Ltd shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

**3.6** If 10 Business Days after TXO Systems Ltd notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted delivery of them, TXO Systems Ltd may resell

or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

**3.7** TXO Systems Ltd may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

**4. QUALITY**

**4.1** TXO Systems Ltd warrants that on delivery, and for a period of 30 calendar days (or as individually agreed between TXO Systems Ltd and the Customer) from the date of invoice ("Warranty Period"), the Goods shall:

(a) subject to clause 4.2 below, conform in all material respects with TXO Systems Ltd's written description of the Goods;

(b) be functional and operational in all material respects.

**4.2** TXO Systems Ltd shall use reasonable endeavours to ensure that any Goods which purport to have been made by a particular manufacturer are genuine but it shall have no liability to the Customer in the event that any of the Goods and/or replacement items are not the genuine merchandise of the purported manufacturer.

**4.3** Subject to clause 4.4, if:

(a) the Customer gives notice in writing to TXO Systems Ltd during the Warranty Period that some or all of the Goods do not comply with the warranty set out in clause 4.1; and

(b) TXO Systems Ltd is given a reasonable opportunity of examining such Goods; and

(c) the Customer (if asked to do so by TXO Systems Ltd) returns such Goods to TXO Systems Ltd's place of business at TXO Systems Ltd's cost, TXO Systems Ltd shall, at its option, replace the defective Goods, or refund the price of the defective Goods in full.

**4.4** TXO Systems Ltd shall not be liable for any failure of the Goods' to comply with the warranty set out in clause 4.1 if:

(a) the Customer makes any further use of such Goods after giving notice in accordance with clause 4.3; or

(b) prior to the sale of the Goods TXO Systems Ltd has explicitly stated that the Goods are sold with no warranty/as "Sold as Seen"/as already defective; or

(c) the defect arises because the Customer failed to follow TXO Systems Ltd's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice; or

(d) the Customer alters or repairs such Goods without the written consent of TXO Systems Ltd; or

(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.

**4.5** Except as provided in this clause 4, TXO Systems Ltd shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.1.

**4.6** Except as set out in these Conditions, TXO Systems Ltd gives no warranty to the Customer in respect of the design, functionality, suitability, condition otherwise of any of the Goods and all other warranties, conditions and terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

**4.7** These Conditions shall apply to any replacement Goods supplied by TXO Systems Ltd.

**4.8** The Customer acknowledges that TXO Systems Ltd is a reseller of pre-owned telecommunications equipment and as such, no two items supplied by TXO Systems Ltd are identical. The Customer therefore further acknowledges and agrees that, where defective Goods are replaced by TXO Systems Ltd pursuant to clause 4.3 above, the replacement items will not be identical to the original Goods supplied to the Customer. Notwithstanding the foregoing provisions of this clause 4.8, TXO Systems Ltd shall use reasonable endeavours to supply replacement items which are materially similar to the original Goods supplied pursuant to the Order but shall be under no obligation to do so in which case a refund will be given in respect of any breach of warranty pursuant to this clause 4.

**5. TITLE AND RISK**

**5.1** Risk of damage to or loss of the Goods shall pass to the Customer:

(a) where delivery is arranged by the Customer in accordance with clause 3.2(a), upon collection of the Goods from TXO Systems Ltd's premises or delivery is undertaken by TXO Systems Ltd using the Customer's chosen shipper on their shipping account;

(b) where delivery is arranged by TXO Systems Ltd in accordance with clause 3.2(b), at the time of arrival at the Delivery Location;

(c) if the Buyer fails to take delivery of the Goods, the date of deemed delivery in accordance with clause 3.6(a).

**5.2** Title to the Goods shall not pass to the Customer until TXO Systems Ltd has received payment in full (in cash or cleared funds) for the Goods. For the avoidance of doubt, TXO Systems Ltd does not purport to transfer title or any other rights to or in the Software or any of the Data to the Customer.

**5.3** Until title to the Goods has passed to the Customer, the Customer shall:

(a) hold the Goods on a fiduciary basis as TXO Systems Ltd's bailee;

(b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as TXO Systems Ltd's property;

(c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

(e) notify TXO Systems Ltd immediately if it becomes subject to any of the events listed in clause 8.2; and

(f) give TXO Systems Ltd such information relating to the Goods as TXO Systems Ltd may require from time to time.

**5.4** If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, or TXO Systems Ltd reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been

- resold, or irrevocably incorporated into another product, and without limiting any other right or remedy TXO Systems Ltd may have, TXO Systems Ltd may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 6. SOFTWARE AND DATA**
- 6.1 The Customer acknowledges that the Goods are pre-owned and as such it is likely that certain items of Software and/or Data may be embedded within the Goods.
- 6.2 TXO Systems Ltd gives no warranties, licences, consents or other authorisations in relation to any Software and the Customer warrants to TXO Systems Ltd that it shall independently obtain all necessary licences before using any Software and it shall promptly delete any Data which it is not authorised to use or process.
- 6.3 The Customer shall keep TXO Systems Ltd indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by TXO Systems Ltd as a result of or in connection with:
- any claim made against TXO Systems Ltd for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with any use of the Software following delivery of the Goods to the Customer;
  - any claim made against TXO Systems Ltd for actual or alleged breach of the provisions of the Data Protection Act 1998 or other confidentiality obligation by the use, disclosure or processing of any Data following delivery of the Goods to the Customer.
- 7. PRICE AND PAYMENT**
- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in TXO Systems Ltd's published price list in force as at the date of delivery.
- 7.2 TXO Systems Ltd may, by giving notice to the Customer at any time up to 2 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- any factor beyond TXO Systems Ltd's control (including foreign exchange fluctuations and increases in taxes and duties);
  - any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
  - any delay caused by any instructions of the Customer or failure of the Customer to give TXO Systems Ltd adequate or accurate information or instructions.
- 7.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be paid by the Customer when it pays for the Goods.
- 7.4 The price of the Goods is exclusive of amounts in respect of value added tax ("VAT"). The Customer shall, on receipt of a valid VAT invoice from TXO Systems Ltd, pay to TXO Systems Ltd such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 7.5 TXO Systems Ltd may invoice the Customer for the Goods on or at any time after the completion of delivery. Where credit terms have not been agreed, proforma invoices will be raised at point of order.
- 7.6 The Customer shall pay the invoice in full and in cleared funds in accordance with the terms of TXO Systems Ltd's invoice. Payment shall be made to the bank account nominated in writing by TXO Systems Ltd. Time of payment is of the essence.
- 7.7 If the Customer fails to make any payment due to TXO Systems Ltd under the Contract by the due date for payment ("due date"), then the Customer shall pay interest on the overdue amount at the Bank of England base rate plus 8% from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. Debt recovery costs may be implemented in line with prevailing legislation.
- 7.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against TXO Systems Ltd in order to justify withholding payment of any such amount in whole or in part. TXO Systems Ltd may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by TXO Systems Ltd to the Customer.
- 8. CUSTOMER'S INSOLVENCY OR INCAPACITY**
- 8.1 If the Customer becomes subject to any of the events listed in clause 8.2, or TXO Systems Ltd reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to TXO Systems Ltd, TXO Systems Ltd may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and TXO Systems Ltd without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 8.2 For the purposes of clause 8.1, the relevant events are:
- the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or
  - the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer; or
  - (being an individual) the Customer is the subject of a bankruptcy petition or order; or
  - a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
  - (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer; or
  - (being a company) a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver; or
  - a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; or
- any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2(a) to clause 8.2(g) (inclusive); or
  - the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
  - the financial position of the Customer deteriorates to such an extent that in the opinion of TXO Systems Ltd the capability of the Customer adequately to fulfil its obligations under the Contract has been placed in jeopardy.
- (k) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 9. LIMITATION OF LIABILITY**
- 9.1 Nothing in these Conditions shall limit or exclude TXO Systems Ltd's liability for:
- death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - fraud or fraudulent misrepresentation; or
  - breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - defective products under the Consumer Protection Act 1987; or
  - any matter in respect of which it would be unlawful for TXO Systems Ltd to exclude or restrict liability.
- 9.2 Subject to clause 9.1:
- TXO Systems Ltd shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or indirect or consequential loss arising under or in connection with the Contract; and
  - TXO Systems Ltd's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed 100% of the price of the Goods.
- 9.3 The Customer acknowledges and agrees that the exclusions and limitations set out in these Conditions are reasonable given that the Goods are used / pre-owned and that this is reflected in the price of the Goods.
- 10. FORCE MAJEURE**
- Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, inability to supply replacement goods which are identical to or materially similar to any Goods previously supplied and returned or other default of suppliers or subcontractors.
- 11. GENERAL**
- 11.1 Assignment and subcontracting.
- TXO Systems Ltd may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
  - The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of TXO Systems Ltd.
- 11.2 Notices.
- Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier, fax or e-mail.
  - A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2(a); if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after TXO Systems Ltd.
  - The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 11.3 Severance.
- If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
  - If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 11.4 Waiver. A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 11.5 Third party rights. A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 11.6 Any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by TXO Systems Ltd.
- 11.7 Governing law and jurisdiction. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.