

AVENIR TELECOM, TERMS AND CONDITIONS OF TRADING

1. Interpretation

In these Conditions the following words have the following meanings:

- 1.1 "Airtime Agreement" means an airtime agreement with any Service Provider (as defined below) arranged by the Buyer with an End Customer.
- 1.2 "Buyer" means the person, firm or company who purchases Goods from the Seller.
- 1.3 "Clawback" means a commission reclaim charge imposed on the Buyer by the Seller.
- 1.4 "Dead on Arrival" means, in the case of any mobile telephone, one which is defective on delivery to the Buyer.
- 1.5 "End Customer" means the person, firm or company who properly acquires the Goods from the Buyer.
- 1.6 "Goods" means the goods and/or services supplied by the Seller to the Buyer under this contract.
- 1.7 "Returns Cap" means the percentage figure determined by the Seller in its sole discretion and notified to the Buyer from time to time, being the upper limit of Goods permitted to be returned by the Buyer, all other things being equal, presently being 4.5% of the invoice value of Goods purchased under this contract in any calendar month.
- 1.8 "the Seller" means Avenir Telecom UK Limited, whose principal place of business is at Avenir House, Studio Way, Borehamwood, Herts WD6 5NN, company number 2839614.
- 1.9 "Service Provider" means any mobile telephone service, network and/or airtime provider.

2. Formation of the Contract

- 2.1 These conditions shall form the basis of the contract between the parties. Notwithstanding anything to the contrary in the Buyer's standard conditions of purchase, these conditions shall apply except so far as expressly agreed in writing by a director of the Seller.
- 2.2 No servant or agent of the Seller has power to vary these conditions orally, or to make representations or promises about the condition of the Goods, their fitness for any purpose or any other matter whatsoever.
- 2.3 The acceptance by the Buyer of all or any of the Goods shall constitute acceptance by the Buyer of these conditions.
- 2.4 The Seller will provide the Goods at the request of any representative of the Buyer, unless otherwise instructed in writing by the Buyer.
- 2.5 The construction, validity and performance of these conditions and this order shall be governed by English Law.
- 2.6 These general conditions shall be subject to such further special conditions as may be prescribed in writing by the Seller.
- 2.7 In the event of any conflict, or apparent conflict, between the special conditions and these general conditions, the special conditions shall prevail.
- 2.8 These conditions supersede all previous trading terms issued by the Seller.
- 2.9 All notices to be served under this contract shall be served by first class pre-paid post, e-mail or facsimile message at the registered office or principal trading address of the intended recipient. Notices shall be deemed served when they would ordinarily have been received in normal business hours according to the means of transmission of such notices.

3. Price

- 3.1 Unless otherwise agreed in writing by the Seller the price for the Goods shall be the price quoted in the Seller's price list published on the date of delivery or deemed delivery. Where Goods are supplied for export from the United Kingdom, the Seller's published export price list relevant to the country in which the Buyer is located shall apply. The Seller's published price lists are subject to revision from time to time without notice.
- 3.2 All prices are quoted exclusive of Value Added Tax and, re export, other taxes, duties or levies.

4. Payment

- 4.1 Unless the sale is for cash, or other credit terms have been expressly agreed, all accounts are due for payment 30 days following the date upon which the Goods are delivered. Notwithstanding any agreement to provide credit, contra charges such as Clawback and Returns Cap charges will be payable as soon as they are imposed.
- 4.2 The Seller reserves the right to charge interest at 8% per annum above the base rate from time to time in force of Barclays Bank Plc on all overdue accounts, together with compensation for the costs suffered by the Seller arising from late payment, in accordance with its rights under the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.3 The Buyer shall not be entitled to withhold payment of any amount payable under this order by reason of any dispute or claim by the Buyer.
- 4.4 The Buyer shall not be entitled to set off against any amount payable under this order any amount due by the Seller to the Buyer under any other agreement.
- 4.5 In the case of short delivery, partial delivery or delivery of damaged Goods, the Buyer shall remain liable to pay the full invoice price of all Goods delivered or available for delivery.
- 4.6 The Seller reserves the right at any time at its discretion to demand security for payments before continuing with or delivering any of the Goods notwithstanding any subsisting agreement to provide credit to the Buyer.
- 4.7 Without prejudice to any other rights of the Seller, if the Buyer shall fail to make punctual payments of any sum under any contract between the parties, the Seller may, at its option, either withhold delivery of the Goods until the total indebtedness of the Buyer to the Seller has been discharged, or cancel this order.
- 4.8 All legal costs and expenses reasonably incurred by the Seller in seeking to collect overdue invoices from the Buyer or otherwise to enforce its rights under this contract will be recoverable from the Buyer on an indemnity basis.
- 4.9 Any payment made by cheque, which is not met upon the first presentation to the Buyer's bank, will accrue a charge of £25.00 in respect of each such presentation. This charge will also apply to all unauthorised credit card transactions and any credit card transaction, which is subsequently charged back by the card issuer.
- 4.10 The Seller reserves the right to retain or offset any amounts as may be due to the Buyer under this contract or otherwise, in respect of any amounts which may be

reasonably contemplates may, in the future be due to the Buyer under this contract or otherwise.

- 4.11 The Seller shall at any time be entitled to appropriate any payment(s) made by or credit given to the Buyer as the Seller may in its absolute discretion think fit, notwithstanding any purported appropriation to the contrary by the Buyer.
- 4.12 The Buyer, by agreeing to be bound by these conditions, irrevocably agrees that the Seller may collect any outstanding sums as may be due to the Seller from time to time from the Buyer's credit/debit card.

5. Delivery

- 5.1 Delivery will be deemed to have been effected when the Goods leave the premises of the Seller or, as the case may be, the premises of the Seller's supplier in circumstances where the Goods are delivered direct from such suppliers or, where the Goods are not delivered by the Seller, but by an independent carrier, delivery of the Goods by the Seller to the carrier shall be delivery to the Buyer.
- 5.2 Delivery dates are given in good faith but are not guaranteed and no liability will be accepted for any loss whatsoever suffered or caused through late delivery or non-delivery and time of delivery shall not be of the essence.
- 5.3 The Seller reserves the right to make delivery by instalments and tender a separate invoice in respect of each instalment.
- 5.4 If the Buyer fails to take delivery on the agreed delivery date or, if no specific delivery date has been agreed, when the Goods are ready for dispatch, the Seller shall be entitled to store and insure the Goods and to charge the Buyer the reasonable costs of so doing. The date upon which the Goods are made available for delivery shall be deemed to be the delivery date for the purposes of sub-clause 5.1 above.
- 5.5 The Buyer shall procure the signature of the Seller's delivery note as acknowledgement of delivery of the Goods specified on the delivery note and that there is no external evidence of tampering and/or damage to the Goods in transit.
- 5.6 If the Buyer wishes to claim that there is any shortage on the delivery of any Goods or that any of the Goods are delivered damaged, the Buyer shall give notice in writing to the Seller within 48 hours after the time of delivery, or within 7 days of non-delivery if the Goods are not delivered on the anticipated delivery date, failing which the Goods shall be deemed to have been delivered undamaged and in accordance with the delivery documents.
- 5.6.1 If short delivery does take place, the Buyer shall not reject the Goods but shall accept the Goods delivered as a part performance of the order;
- 5.6.2 If short delivery or damaged Goods are complained of, the Seller shall be under no liability in respect of the claim unless a reasonable opportunity to inspect the Goods is provided to the Seller before any use is made of the Goods by the Buyer.
- 5.7 The liability of the Seller for short delivery or damaged Goods shall be strictly limited to the provision of any Goods not delivered, or, at the Seller's option, the replacement or repair of any damaged Goods or the cancellation of all or part of the order.

6. Specification, Warranties and Defective Goods

- 6.1 The Goods are supplied on the basis that they comply with technical specifications contained in printed documentation concerning the Goods prepared by the Seller, the Service Provider or the manufacturer and that they conform to the written descriptions contained on any order form.
- 6.2 The Seller reserves the right without notice to the Buyer to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory or EC requirement or which do not materially affect their quality or performance.
- 6.3 In the event that a defect in the Goods is discovered by the Buyer and reported to the Seller in writing during the period of 12 months from the date of delivery of the Goods, which defect was caused by faulty design or manufacture (and not by misuse), the Seller will, at its option, either repair the Goods at its own expense, replace the Goods or refund the purchase price of the Goods, subject in all cases to the return of the Goods (or such of them as it is claimed are defective) to the Seller by the Buyer, at the Buyer's expense.
- 6.4 Save as set out in sub-clause 6.3, all warranties or other terms implied by statute or otherwise shall not apply to this order, including but not limited to those implied by the Sale of Goods Act 1979 (as amended by the Sale and Supply of Goods Act 1994), the Supply of Goods and Services Act 1982 and the Consumer Protection Act 1987.
- 6.5 The Seller shall not be liable for any consequential or indirect loss suffered by the Buyer or any third party in relation to this order and the Buyer shall indemnify the Seller in respect of any claim of any person in respect of such consequential or indirect loss.
- 6.6 This clause 6 constitutes the entire liability of the Seller under this order, which, in any event, shall not exceed the contract price of the Goods, save in respect of the Seller's liability for death or personal injury resulting from negligence.
- 6.7 The Buyer shall indemnify the Seller against any liability that the Seller may incur as a result of a claim against the Seller under the Consumer Protection Act 1987 in respect of an alleged defect in the Goods.

7. Title and Risk

- 7.1 Risk in the Goods shall pass to the Buyer when the Goods are delivered to the Buyer.
- 7.2 The ownership of the Goods shall remain with the Seller until the Buyer has paid all liquidated sums owed by the Buyer to the Seller, including Clawback, whether under this contract or otherwise.
- 7.3 The Goods shall be stored on the Buyer's premises separately from any other goods and the Buyer shall not interfere with any identification marks or serial numbers on the Goods.
- 7.4 The Buyer is licensed by the Seller to sell the Goods delivered to the Buyer subject to the revocation of such authority in accordance with sub-clause 7.5 below.
- 7.5 Until title to the Goods passes, without prejudice to any other rights of the Seller, the Seller may at any time revoke the power of sale and use contained in sub-clause 7.4 above by notice to the Buyer if the Buyer is in default for longer than 14 days in the payment of any sum whatsoever due to the Seller whether in respect of the Goods or otherwise or if the Seller has bona fide doubts as to the solvency of the Buyer, whereupon the Buyer shall deliver up such Goods to the

- 7.6 The Seller may at any time recover and re-sell Goods in which title shall not have passed to the Buyer. The Seller by its servants and agents shall be entitled to access to the Buyer's premises or those to which the Buyer has a right of access where the Goods or some of them are stored or thought to be stored for the purpose of re-possession at any time.
- 7.7 The Buyer will, upon demand, notify the Seller of all and any locations where the Goods will be delivered to or stored by the Buyer.
- 7.8 Risk in the Goods shall revert to the Seller following re-possession but not otherwise.
- 7.9 If the Buyer shall become bankrupt or insolvent, or have a receiving order or administration order made against him or compound with his creditors, or, being a corporation, commence to be wound up, not being a members voluntary winding up for the purpose of reconstruction or amalgamation, or carry on its business under a receiver for the benefit of its creditors or any of them, or the Seller has bona fide doubts as to the solvency of the Buyer, all sums payable to the Seller by the Buyer in respect of the Goods or otherwise shall become due and payable forthwith, without requirement for any notice to be given and the Seller shall be released from its obligation to deliver such of the Goods as remain undelivered, save on terms acceptable to the Seller, or if the Goods or any of them shall have been delivered, the power of sale and use contained in sub-clause 7.4 above shall be deemed revoked forthwith, and the Goods shall be delivered up to the Seller.
- 8. Cancellation, Refunds, Returns and Termination**
- 8.1 No cancellation or variation of the whole or any part of the order by the Buyer is permitted, except where expressly agreed in writing by a person authorised to sign on behalf of the Seller.
- 8.2 When the Buyer rejects any Goods, then the Buyer shall have no further rights whatever in respect of the supply to the Buyer of such Goods or any failure by the Seller to supply Goods which conform to the description ordered by the Buyer.
- 8.3 The Seller's "Dealer Returns Policy and Procedure" as published in the Seller's monthly "Talking Shop" bulletin in force at the time of return of any Goods form part of these trading terms. The "Dealer Returns Policy and Procedure" is also published on the Seller's website: www.avenir-telecom.co.uk. A hard copy of the "Dealer Returns Policy and Procedure" is also available from the Seller upon request.
- 8.4 Where Goods are returned by the Buyer without the Seller's consent and subject to full compliance with the Seller's Dealer Returns Policy and Procedure, they will not be accepted for credit.
- 8.5 The Seller may, at any time, at its sole discretion, suspend or cancel any outstanding orders and cease to supply Goods to the Buyer.
- 8.6 The termination of this Contract will be without prejudice to the rights and duties of either party accrued prior to termination and, in particular, termination shall not prejudice the Seller's right to recover and the Buyer's obligation to pay any amounts by way of Clawback, notwithstanding that the event which gives rise to such Clawback occurs after termination.
- 8.7 Upon termination of this Contract or in the event of the Buyer ceasing to trade, the Seller reserves the right to withhold all and any commissions or other payments as may be due to the Buyer for up to 12 months to make adequate provision for prospective Clawback.
- 9. Commission and recovery of Commission**
- 9.1 Any commission due to the Buyer in relation to sales of Goods, Airtime Agreements and/or value added services shall be on the terms published in the Seller's monthly "Talking Shop" bulletin in force at the time that the Goods are connected to a network operated by a Service Provider. This date may be different from the rates and terms applicable when the Goods were purchased from the Seller.
- 9.3 Commission on sales of Goods and on value added services shall be credited to the Buyer's account on the later of the date when the relevant Service Provider notifies the Seller that the connection has been made and the date when the Seller's account is credited with commission paid by the relevant Service Provider.
- 9.4 The Seller reserves the right to provide (and no commission will be paid to the Buyer in respect of) any value added service to an End Customer where such value added service is activated after connection.
- 9.5 All and any payments to the Buyer in respect of any applicable Deferred Bonus Scheme will be made solely at the discretion of the Seller. The Buyer is required to maintain sales levels with the Seller and continue to meet the minimum performance criteria for the scheme at the point that any credits are due to be made under the scheme.
- 9.6 Any commission due to the Buyer from the Seller in respect of a 'High Tariff' talkplan will not be credited to the Buyer for up to 4 months after the date of connection of the Goods by the End User. A 'High Tariff' talkplan is a talkplan, which will result in the Buyer being due a commission payment of in excess of £1,000.00, or such other sum as may be determined by the Seller from time to time.
- 9.7 Due to the complexity of the mobile telephone commission structure, the Buyer shall be deemed to have accepted any commission/account statement issued by the Seller nine months after the date of the commission/account statement.
- 9.8 Where the Buyer pays or elects to pay any charges, which may become due from the End Customer under any Airtime Agreement, including, without limitation, upon the transfer of any subscription agreement from one End Customer to another, then: such charges shall be treated as part of the Buyer's trading account under this Contract and be subject to these Conditions; and the Seller reserves the right to make an administration charge in respect of such an arrangement.
- 9.9 The Seller may introduce from time to time additional commission arrangements, such as marketing support and/or profit share arrangements. Such commission arrangements are payable at the sole discretion of the Seller and in strict accordance with the procedures and requirements as laid down by any Service Provider sponsoring such payments.
- 10. Clawback**
- 10.1 The Seller will Clawback all commission paid or credited to the Buyer, where the Service Provider applies clawback to the Seller, regardless of the period elapsed since the commission was paid or credited to the Buyer. In certain circumstances and at the sole discretion of the Seller, part only of any such commission will be subject to Clawback.
- 10.2 Examples of circumstances giving rise to Clawback include: early termination, disconnection or downgrade of an Airtime Agreement by the relevant Service Provider, discontinuance of any value added service, connections deemed to be a fraudulent connection (as determined by the Service Provider), where the End Customer fails to pay bills issued by the Service Provider, where the End Customer's call spend or call activity is lower than that reasonably expected (as determined by the Service Provider), where the Buyer does not supply a new phone to the End Customer, where the supply to the End Customer is made for commission purposes rather than business efficacy and where an Airtime Agreement is procured via unauthorised marketing activity or where there is evidence of non compliance with the Service Provider's operational procedures (as determined by the Service Provider).
- 10.3 The Seller reserves the right to Clawback all commission paid or credited to the Buyer, in respect of any connections for which satisfactory documentation is not provided by the Buyer within fourteen days of request.
- 10.4 Where Clawback takes place, the Seller will re-calculate the applicability of any supplemental commission or bonus paid to the Buyer and, if appropriate reclaim all or part of such payments.
- 10.5 If the Seller has reasonable grounds at any time for believing that any commission will not become due or will become subject to Clawback by the Airtime Provider for any reason whatsoever, the Seller may withhold such commission or apply Clawback to commissions already paid until such time (if any) as such grounds no longer exist.
- 10.6 Clawback shall be a debt payable on invoice from the Buyer to the Seller.
- 10.7 Where the Seller supplies a pre-pay phone on a "Net" or "Gross" basis, the Seller reserves the right to reclaim all commission paid or credited to the Buyer if the pre-pay phone is not registered to the relevant Service Provider as a genuine connection (as determined by the Service Provider) within 60 days of supply of the pre-pay phone by the Seller.
- 11. Deposits**
- 11.1 The Seller shall be entitled to retain any payment made by the Buyer to the Seller by way of bond or deposit until all sums due from the Buyer to the Seller, including any contingent sums which may become payable in relation to Clawback, have been paid in full to the Seller and to deduct from such bond or deposit any sum which may be due by the Buyer to the Seller from time to time under this Contract or otherwise.
- 11.2 If the Service Provider requests a deposit from the End Customer in order to satisfy the End Customer's credit appraisal, the Seller has the right to require that connection will not occur until such deposit payment has been received in cleared funds by the Seller.
- 11.3 Any deposits as may be required by the Service Provider from an End Customer will be passed to the Seller by the Buyer immediately and without deduction. The Seller will, in turn, pass on any deposit to the relevant Service Provider who will be responsible for the repayment of the deposit to the End User, at the Service Provider's absolute discretion.
- 12. General**
- 12.1 The Seller shall not be liable for any failure to deliver or delay in delivery of the Goods arising from circumstances outside its control, including but not limited to lock-outs, fire, accidents, defective materials, delays in receipt of raw materials or bought-in goods or components.
- 12.2 If all or any part of any provision of these Conditions is found by any competent court or authority to be illegal, invalid or unenforceable the offending words shall be deemed severable and the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected by it.
- 12.3 The Buyer shall not be entitled to assign or otherwise transfer the Contract or any of its rights or obligations under the Contract without the Seller's prior written consent. The Seller reserves the right to withhold such consent in its absolute discretion. The Seller shall be entitled to assign the Contract.
- 12.4 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered a waiver of any subsequent breach of the same or any other provision. Any waiver shall be in writing signed by the party waiving its rights.
- 12.5 The Buyer undertakes and agrees with the Seller that the Buyer will keep secret and confidential all pricing information provided by the Seller and/or to which the Buyer is permitted to have access and to use such information only for the purpose of carrying out this Agreement and for no other purpose whatsoever.
- 12.6 A person who is not party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any Terms of these Terms and Conditions.