



**Cogent** Distribution

## TERMS & CONDITIONS

### A. Basis of Contract

1. The following terms and conditions govern all transactions made between you, the Customer, and **Cogent Distribution Limited** (and its permitted assigns and/or sub-contractors) (hereafter named as "**the Company**") except as otherwise specifically agreed in writing by the director/s of the Company.
2. The Customer's order for services as set out in a purchase order, the Customer's acceptance of a quotation provided by the Company or such similar document or conduct shall constitute an offer by the Customer to engage the Company for the services as set out in such purchase order or quotation. Such offer shall be made on the basis of these terms and conditions and shall only be deemed accepted when the Company provides written confirmation or clearly accepts the offer by virtue of its conduct.
3. These terms and conditions apply to the exclusion of any other terms even if those terms are contained in any of the Customer's documents which purport to provide that the Customer's own terms shall prevail, or which are implied by trade, custom, practice or course of dealing.
4. These terms and conditions constitute the entire agreement between the parties. The Customer acknowledges that it has not relied upon nor been induced by any promise, representation or statement whether made to it orally or in writing by the Company or an agent of the Company concerning such a transaction that is not set out within these terms and conditions. No agent has the Company's authority to make any representation concerning such a transaction.

### B. Distribution

1. The Company cannot accept responsibility for variances in supply due to packaging errors (i.e. quantities within cartons) or errors which occur due to inaccurate delivery notes, but will endeavour to advise the Customer when significant variances arising from such errors are identified. In the event of a delay or error in the quantity of items supplied, distribution will be carried out at the earliest subsequent opportunity.
2. The Company has an absolute discretion to refuse to accept, publish or distribute any order, whether paid for or not, in whole or in part without giving its reasons, if it believes the acceptance, publication or distribution of the same could: (a) infringe any law or statutory requirement; (b) infringe the Advertising Standards Authority's British Code of Advertising Practice or the British Code for Sales Promotion Practice or other such code or industry guideline that may apply, as amended from time to time; (c) be a breach or infringement of a copyright, patent, trade mark or any other such right; (d) be libellous, obscene or in breach of any rights or any third party whatsoever; (e) be likely to cause embarrassment to the Company or its employees, agents and sub-contractors or will harm, or is likely to harm, the Company's reputation; or (f) be dangerous, including distributing to any property in any area which is considered to be unsafe or undesirable for distributing teams.
3. The Company shall not be liable for refusing to accept, publish or deliver any content for the reasons as set out above and the Company shall have the right to make any changes to the services to be provided which are necessary to comply with any applicable law or safety requirement or which do not materially affect the nature or the quality of such services.
4. Unless agreed otherwise between the parties, the Company's services shall not be exclusive to the Customer and the Company shall not be restricted in any manner from distributing material for other customers.

### C. Shipment

1. The Customer shall be responsible for inspecting the equipment on arrival and shall notify the Company immediately if there is any damage, discrepancy or shortage or within 7 days after receipt of notice of despatch in the event of non-arrival.
2. The Customer specifically authorises the Company to make any such contract of carriage and/or insurance on behalf of the Customer as the Company considers necessary and the Company will be under no obligation to notify the Customer thereof so as to enable the Customer to insure the equipment during sea transit (if any). The Customer shall be responsible for complying with all conditions and requirements of the carriers.

### D. Time for Distribution

1. All dates quoted for distribution of the material supplied by the Customer are approximate only and the Company shall not be liable for any delay in the distribution of the materials, howsoever caused. The time of distribution of the materials shall not be of the essence of the contract unless previously agreed in writing by the Company. The Company may change the delivery schedule at any time, if necessary, by providing notice in writing to the Customer.
2. The Company will endeavour to arrange for the distribution of the said quantities of material in the said area(s) on or about the said dates but cannot guarantee such distribution, and if there is any delay for any cause, whether or not within the Company's control, this shall not be a breach or repudiation of the contract.
3. The Company shall not be liable to the Customer for any loss or damage suffered by the Customer arising from late distribution.

### E. Prices

1. Unless otherwise specified prices are for delivery at the Company's offices and are subject to the Company's right to increase any price to take account of delivery charges, insurance costs, special handling charges (if any) and/or packaging charges (if any), agreed changes in the specifications or changes in any taxes, duties or levies charged on or in relation to the equipment or goods, materials or services used on or in relation to this contract and/or any extra costs or expense incurred by the Company as a result of site conditions, delays, interruptions, lack of information, changes in exchange rates and/or without limitation any other factors beyond the Company's control. Clients are able to cancel orders prior to shipment if any pricing increases are deemed unacceptable. Pricing is subject to change based on the fluctuation of the exchange rates.

## F. Retention of Title

1. The Company and the Customer expressly agree that until the Company has been paid in full for the equipment comprised in this or any other sales contract between them and that all outstanding amounts due to the Company from the Customer or any associated or subsidiary or holding company of the Customer or from any director or shareholder of the Customer or any other such company:-
  - (a) the equipment shall remain the property of the Company and the Customer, as bailees of them for the Company will store the same for the Company in a proper manner without charge and in such a way that the equipment is clearly identified as being the property of the Company, notwithstanding that the risk therein shall pass to the Customer as provided herein.
  - (b) at any time the Company may recover from the Customer the equipment remaining in the Customer's possession, and for the purpose thereof may enter upon any premises of or occupied by the Customer or any third party (with the consent of that third party) after payment terms are exceeded and with reasonable notice.
  - (c) the Customer has the right to dispose of the equipment in the course of its business for the account of the Company and to pass good title to the equipment to their customers being bona fide purchasers for value without notice of the Company's rights.
  - (d) in the event of such disposition the Customer, and its Director (if a Limited Company) have the fiduciary duty to account to the Company for the proceeds thereof but may retain there from an excess of such proceeds over the amount outstanding to the Company under this or any other sales contract between them and for all outstanding amounts due to the Company from the Customer or any associated or subsidiary or holding company of the Customer or from any director or shareholder of the Customer of any other such company.
2. The risk in the equipment shall pass to the Customer on despatch, thereafter the Customer shall be responsible for the satisfactory care and protection of the equipment.

## G. Payment

1. Every order shall be paid on receipt of a Proforma invoice, unless a credit account and associates terms have been agreed in writing with the Company.
2. In the case of non-payment by the due date the Company shall be entitled to terminate the order without notice and to charge the Cancellation Fee. If funds are not received by the due date the Company has the right at its own discretion, without notice, to postpone, delay or cancel the distribution (and to charge the Cancellation Fee) as per clause I.2.
3. If the Customer disputes the amount of an invoice, the Customer shall pay the invoice in full until the dispute is settled. If appropriate, the Company shall then refund any overpayment made by the Customer.
4. If monies due to the Company under this agreement are not paid on the due date, the Customer will pay interest on the sum outstanding at either (a) five (5%) percentage points above the base rate declared by the Bank of England or (b) at the rate and on the basis permitted under the Late Payment of Commercial Debts (Interest) Act 1998, from the due date to the date of payment whether before or after judgement.
5. Without prejudice to its other remedies, the Company shall in respect of all unpaid debts due from the Customer have a general lien on all goods and property in its possession and shall be entitled on the expiration of 14 days written notice sent to the Customer at his/her last known address to dispose of such goods and property as it thinks fit and to apply any proceeds towards such debts. The Company shall not be liable for any loss or damage caused by or consequent upon such action.
6. The Customer shall not make any deduction from the amount due or any deferment of payment on account of any disputes, set offs or cross claims.
7. The prices quoted by the Company are exclusive of Value Added Tax, unless otherwise stated, which will be charged at the rate currently

## H. Warranties

1. Equipment supplied by The Company is supplied with the benefit of a 12 month return to base warranty provided by the producer under the Peplink Care Service, and where no such warranty applies, the Company warrants to the Customer only that the equipment shall be free of defects in workmanship and materials for the period of 12 months after delivery to the Customer.
2. If such a defect arises within the warranty period in respect of the equipment or one or more of its component parts the Company will at its option, either repair or replace the defective equipment or component provided that:-
  - (a) The Company is notified of the defect within 14 days of the time the Customer becomes, or ought reasonably to have become aware of the defect, and in any event within the warranty period; and, (where the Company elects to investigate the defect at its repair facility, as opposed to an on-site investigation),
  - (b) the Customer obtains appropriate authorisation from the Company for the return of the relevant equipment, which the Company will issue if its technical support department has been unable to correct the defect within 7 days of the Company receiving notification;
  - (c) the risks and any cost of de-installation and transportation of the defective equipment to the Company's repair facility shall be borne by the Customer, and any cost of return transportation and re-installation shall be borne by the Company. If the Company reasonably determines that the equipment is not defective the Customer shall reimburse the Company for any costs of transportation or reinstallation.
3. The Company does not warrant any software, and the only warranties which attach to it are those given by the producer of the software.
4. The Company accepts no liability for any failure of the equipment or software, or for any defect, fault malfunction or unfitness for use, associated with the processing of dates prior to, during or after the Year 2000. Where the Customer requires confirmation that equipment or software is capable of correctly processing such dates, the Company shall give all commercially reasonable assistance to the Customer to obtain satisfactory confirmation from the equipment producer or software proprietor, as the case may be.
5. Disputes in quality or dimensions of any one delivery shall not be a ground for cancellation of the outstanding part of the order, agreement or contract.
6. The warranty given by the Company above shall not apply if:-
  - (a) the repair or replacement of a part or parts is required because of accident, neglect or misuse of the equipment by the Customer or interference with the equipment by persons other than the Company's engineers,  
or
  - (b) they are used in the equipment supplies from sources which have not been authorised by the Company.

## I. Cancellation / Returns

1. Written notice of at least seven days (prior to the beginning of the distribution week) must be given for any cancellation or alternation to the distribution arrangements. At least fourteen days notice must apply in the case of a distribution.
2. In the event of a cancellation of more than seven days (or fourteen days in relation to a distribution) the Customer will pay to the Company the following: (a) the costs incurred by the Company in connection with the said order including any costs incurred in connection with the proposed distribution, including, but not limited to, any cancellation fees or charges that may charge the Company; and (b) 20% of the order price representing an agreed estimate of the Company's loss of profit on the order (such amount shall not restrict the Company in recovering further sums should the Company claim any damages or losses outside of the category of loss of profit).
3. For the purposes of these terms and conditions the fees as set out in paragraphs (1) and (2) above shall be deemed "Cancellation Fees".
4. If the Customer decides to return goods unused after a sales order has been processed and payment has been taken, the Company reserves the right to charge a restocking penalty of 20% of the UK RRP.
5. Goods must be unopened and in original packing and if/when agreed, the Company will only issue a credit note to the Customer.

## J. Complaints

1. All complaints or claims must be notified to [admin@cogentdistribution.com](mailto:admin@cogentdistribution.com) within seven days of the relevant distribution date(s) in order to enable a more thorough investigation to take place. Such complaints should be accompanied with supporting evidence to uphold such complaint or claim.
2. In the event of a complaint of non-distribution the Company will, upon receipt of the details, investigate the complaint and depending upon the results of such investigation will consider re-imbusement to the Customer.

## K. Force Majeure

The Company will not be liable to the Customer for any delay in performing its obligations or failure to perform its obligations if such delay or failure results from circumstances beyond its control including but not limited to force majeure, natural disaster, failure to perform by third parties, fire, explosion, flood, storm, accident, strikes, lock-outs or other industrial dispute (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, breakdown of machinery or default of suppliers or sub-contractors .

## L. Risk and Insurance

The Customer shall, at all times, be responsible for the insurance of any materials, whether for distribution or otherwise in possession of the Company. Such materials are at all times at the risk of the Customer.

## M. Exclusions and Limitations

1. Except as provided herein the Company shall be under no liability whatsoever to the Customer in regard to the service provided pursuant to the order and any condition or warranty which might otherwise be implied or incorporated by contract, by reason of statute, common law or custom or otherwise is hereby excluded to the extent permitted by law. The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from these terms and conditions.
2. The Company's total liability in respect of all other losses arising under or in connection with these terms and conditions, whether in negligence, tort, contract, breach of statutory duty or otherwise shall in no circumstances exceed the amounts paid in relation to each order (limited to a period for 12 months preceding the date such action was made).
3. The Company shall not be liable to the Customer in connection with or arising out of the subject matter of these conditions, except that the loss or damage results from misrepresentation, the negligence of, or breach of contract or other default by the Company, its agents or contractors, in which case such liability shall be subject to the exclusions and limitations expressed in these conditions.
4. The Company does not, and nothing stated in this clause shall be construed or be deemed as operating to exclude or restrict its liability in damages or otherwise.
  - (a) for death or personal injury to the extent that such liability results from the negligence of the Company or its employees, agents or contractors, or
  - (b) for breach of the obligations arising from Section 12 of the Sale of Goods Act 1979 (as amended from time to time);
  - (c) under the Consumer Protection Act 1987, but to the extent only that the Company is prohibited by law from seeking to restrict or exclude its liability there under.
5. The Company's liability for any loss or damage which shall include without limitation costs and expenses related to any claim, however caused, in connection with or arising out of the subject matter of these conditions, will:-
  - (a) in the case of direct physical damage to any tangible property (other than the equipment) to the extent it results from the negligence of the Company, or of its employees, agents or contractors, be limited in respect of any one claim or series of claims arising out of the same event or circumstances, to £1m.
  - (b) in the case of any other claim or series of claims arising out of the same event or circumstances be limited to the amount of the price payable by the Customer pursuant to the Contract governed by these conditions (excluding VAT thereon).
6. Notwithstanding Clause 5 above, the Company shall not be liable to the Customer or to any other person for:-
  - (a) loss of use, operating time, contracts, business, profits, goodwill, revenue, anticipated savings or any other like economic loss, however caused;
  - (b) any indirect or consequential loss or damage however caused;
  - (c) any loss or damage to any intangible property (including but not limited to loss of programmes or data) or for any inconvenience caused to the Customer, however caused.
  - (d) any claim, unless made with reasonable details in writing to the Company no later than 2 months (or such longer period as may be reasonable in the circumstances) after the date the claimable event first comes or ought reasonably to have come to the notice of the Customer, its employees, agents or contractors.
7. Notwithstanding any other provisions herein, all exclusions and limitations of liability contained in these conditions shall apply to all liabilities of the Company under or in connection with or in relation to the subject matter of these conditions and regardless of whether or not the loss or damage

was foreseeable, and of whether the Customer notifies the Company of the possibility of any greater loss or damage, and shall apply only so far as is permitted by law.

8. The Customer agrees to indemnify the Company at all times hereafter against all claims, demands, costs and expenses in excess of the liability expressly accepted by the Company hereunder.
9. No representation of fact, oral or written, including but not limited to statements regarding the capacity, suitability for use or performance of the equipment, whether made by the Company, its employees or otherwise shall be deemed to be a warranty by the Company for any purpose, or give rise to any liability of the Company whatsoever, unless made by the Company in writing.
10. Save as set out in these conditions, all other express or implied terms, conditions and warranties (whether statutory or otherwise) including without limitation, terms as to satisfactory quality, year 2000 compliance, and fitness for purpose are hereby excluded to the fullest extent permitted by law.
11. Where any valid claim in respect of any of the equipment which is based on any defect in the quality or condition of the equipment or its failure to meet specification is notified to the Company in accordance with these conditions, the Company shall be entitled to repair or replace the equipment (or the part in question) free of charge or at the Company's sole discretion, refund the Customer the price of the equipment (or a proportionate part of the price) but the Company shall have no further liability to the Customer.
12. The Customer acknowledges that it has had the opportunity to negotiate different terms of these conditions.

## **N. Indemnity**

1. In the event that any complaint, claim, action proceedings, or prosecution is brought or made against the Company in respect of, or arising in any way from any matter or things appearing in or on the material published or distributed or dealt with by the Company for the Customer, whether such matter or thing is, or is alleged to be illegal, unlawful, libellous, an infringement or copyright, trade mark, patent design or any third party right whatsoever of any nature, or in breach of any code, regulation or guidelines whether having statutory force or otherwise, and whether such complaint, claim, action or proceeding is settled, compromised or litigated in any way and as a result the Company incurs any cost, loss, damage, liability or penalty of any kind the Customer shall forthwith upon demand in writing sent to the Customer's last known address indemnify the Company in full in respect of such cost, loss, damage or liability including any legal or other costs incurred in relation thereto and without exercising any right of set off, counterclaim or cross demand of any nature against the Company.

## **O. Intellectual Property Rights**

1. The Customer must not use any other trademarks or intellectual property rights that belong to the Company, or use or apply any other words, marks, logos or devices similar to those the Company uses or which may, in the Company's opinion, cause confusion or suggest the Customer has an association with the Company.

## **P. Termination**

1. The Company may determine any contract then subsisting without notice and without prejudice to any of the Company's other rights or claims against the Customer, if the Customer: (a) commits a breach of contract or obligation to the Company; or (b) if distress or execution is levied upon the Customer's property; or (c) if the Customer enters into liquidation whether compulsorily or voluntarily or makes or offers any arrangement or composition with its creditors or becomes subject to an administration order or commits any act of bankruptcy or if any petition or receiving order in bankruptcy is presented or made against it or such analogous event of insolvency; or (d) if a receiver is appointed to any of the Customer's property or assets.
2. Upon such termination and without prejudice to the Company's other rights and claims the Customer shall pay any outstanding unpaid invoices and, where applicable, the cancellation fee as per clause I.2 to the Company forthwith together with any accrued interest.
3. The accrued rights and remedies of the Company as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of these terms and conditions which existed at or before the date of termination or expiry.
4. Clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## **Q. Sub-Contractors and Assignment**

1. The Company reserves the right to sub-contract, transfer, charge and assign the whole or any part of the order.
2. The Customer may not sub-contract, transfer, charge and assign its rights or obligations hereunder to a third party without prior written consent of the Company.

## **R. Confidentiality**

1. Both parties shall keep in strict confidence all technical or commercial know-how specifications and processes including the content of the terms as agreed between the parties in relation to each order and any other confidential information.
2. This clause shall survive the termination of these terms and conditions.

## **S. Notices**

Any written notice under these terms shall be in writing and shall be deemed to have been properly given if hand delivered or sent by pre-paid first class post to the registered office or any one of the principal places of business of the party being served on the date delivered, if by hand or the date when in the ordinary course of post the letter would have been delivered if sent by post.

## **T. General**

1. The Company reserves the right to sub-contract the fulfilment of the contract (including any installation) or any part thereof.
2. The Customer shall not assign any rights under this agreement without the prior consent in writing of one of the Company's directors.
3. Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
4. No waiver by the Company 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.
5. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby.
6. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims) however nothing in this clause shall limit the right of the Company to take proceedings against the Customer in any other court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the Company from taking proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction

## **U. Entire Agreement**

These terms represent the entire agreement and understanding between the parties, and no amendments to these terms shall be binding on the parties unless agreed in writing by both parties.

## **V. Severance**

1. If a court or any other competent authority finds that any provision of these terms and conditions (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of these terms and conditions shall not be affected.
2. If any invalid, illegal or unenforceable provision of these terms and conditions would be valid, legal and enforceable if some part of it were deleted or amended, the provision shall apply with the minimum modification necessary to make it valid, legal and enforceable.

## **W. No Partnership**

Nothing in these terms and conditions is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties. Nor shall either party have the authority to bind or act as agent for the other party.

## **X. Third Parties**

A person who is not a party to these terms and conditions shall not have any rights under or in connection with them.

## **Y. Compliance with Laws**

Both parties agree that they will keep, and make sure that anyone which each party employs or is responsible for, adheres to any anti-bribery or anti-money laundering laws and regulations relating to these terms and conditions.

## **Z. Governing Law and Jurisdiction**

These terms and conditions, and any dispute or claim arising out of or in connection with them or the subject matter or formation (including non-contractual disputes or claims), shall be governed and construed in accordance with the English Law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.