

## **Westcountry Broadcast Ltd. Terms and Conditions of Business**

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## **Terms & Conditions**

### 1) Definitions

'the Company' means Westcountry Broadcast Ltd and where relevant includes companies within the same group of companies as Westcountry Broadcast Ltd.

'the Goods' means the goods or any part thereof supplied by the Company and where relevant includes: work carried out by the Company on items supplied by the Purchaser; services supplied by the Company; and software supplied by the Company.

'the Purchaser' means the person or organisation who buys or has agreed to buy the Goods.

'the Price' means the Price of the Goods and any other charges incurred by the Company in the supply of the Goods.

'the Contract' means the quotation, these Conditions of Sale and any other document incorporated in a contract between the Company and the Purchaser.

This is the entire Contract between the parties relating to the subject matter hereof and may not be changed or terminated except in writing in accordance with the provisions of this Contract. A reference to the consent, acknowledgement, authority or agreement of the Company means in writing and only by a director of the Company.

### 2) General

(a) No contract is made with the Company until there has been an acceptance by the Company of an order placed by the Purchaser or the Company commences work on the order.

(b) The terms and conditions herein contained shall apply to the Contract and no terms or conditions stipulated by the Purchaser nor any other variation shall have effect unless agreed in writing by the Company.

(c) All brochures, catalogues, price lists, samples, particulars of dimensions and other advertising or descriptive material submitted to the Purchaser are intended to be approximate only and to give a general impression of the Goods. Unless expressly incorporated the same shall not form part of the Contract. The Company reserves the right to make minor alterations to the design specification or construction of the Goods without prior notification to the Purchaser.

(d) The Purchaser shall be responsible for complying with any legislation or regulations (of the United Kingdom or any other country) governing the export and import of the Goods into the country of destination (and any other country through which the Goods pass in transit) and for the payment of any duties thereon. The Purchaser shall fully indemnify the Company against any fines, penalties, costs, claims, damages, losses and expenses suffered by the Company as a result of the Purchaser failing to comply with this Clause 2(d).

(e) If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Purchaser, the Purchaser shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Purchaser's specification.

(f) The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to specification, which do not materially affect their quality or performance.

(g) If any property of whatsoever nature of the Purchaser is used in connection with the Goods (whether for the purpose of manufacture, display or any other reason) the Purchaser shall indemnify the Company for any loss or claim suffered by the Company as a result of using such property. If such property has not been removed within three months from the date on which the price becomes payable, the Company reserves the right to charge a storage fee.

### 3) Price

(a) Unless otherwise stated, the Price does not include the cost of delivery or packaging.

(b) Where applicable VAT will be levied at the rate prevailing at the time of invoice.

(c) The Price is based on current costs at the date of the Contract. The Company reserves the right, at any time prior to the delivery of the Goods, to adjust the Price to take account of any increase in the costs to it of material labour or services or any currency fluctuations or changes in import duty which increase the costs to it of goods imported into the United Kingdom.

### 4) Payment

(a) Unless otherwise specified on the quotation or order acknowledgement, payment in full of the Price must be made within thirty days from the date of invoice. We understand and will exercise our

right to claim interest under the late payment legislation if we are not paid according to the agreed credit terms.

(b) Should payments not be made in accordance with (a) and the Company deems it necessary to pass the debt to a debt collection agency or to its solicitors, all sums on any account owed by the Purchaser will become immediately due for payment, and the Purchaser will be liable for all costs incurred, in addition to the outstanding account.

## 5) Delivery

(a) Any times quoted for delivery are estimates only and the Company shall not be liable for the consequence of any failure to deliver within the time quoted.

(b) Delivery of the Goods to a carrier for transmission to the Purchaser or the prior delivery of the Goods to the stipulated place of delivery shall constitute delivery to the Purchaser and the risk therein shall, upon such delivery, pass to the Purchaser. Section 32(2) and (3) of the Sale of Goods Act 1979 as amended shall not apply.

(c) Orders may not be cancelled on the grounds of any delay in delivery except by mutual agreement.

(d) The Company does not accept any liability for non-arrival of deliveries or for shortages or for goods damaged in transit arranged by the Company unless notified to them with full particulars within two days of receipt of the Goods or, (in the case of non-arrival of a delivery) within two days of receipt of the invoice. The Purchaser's signature to a delivery note from the Company's carrier shall be prima facie evidence of delivery in good condition of the correct quantity of Goods. The consignment and wrappings must be retained for inspection by the Company if there is any claim for shortage or damage on delivery.

(e) Unless otherwise agreed in writing, the Company shall be entitled to make partial deliveries or deliveries by instalments and the terms and conditions herein contained shall apply to each partial delivery.

(f) The Purchaser shall not delay any requested delivery times stated in the Contract without the prior written agreement of the Company.

## 6) Transfer of Property

(a) The property in all Goods sold to the Purchaser shall remain in the Company until the Company has received payment in full for all the Goods and for all other sums owing to the Company under any other contract between the Company and the Purchaser for which payment is still outstanding.

(b) So long as the property in the Goods remains in the Company, the Company shall have the right, without prejudice to the obligation of the Purchaser to purchase the Goods, to re take possession of the Goods (and for that purpose to go on any premises occupied by the Purchaser). The Company may resell the Goods once they have been repossessed under this clause.

(c) Nothing in this condition shall confer any right upon the Purchaser to return the Goods sold hereunder. The Company may maintain an action for the price notwithstanding that property in the Goods may not have passed to the Purchaser and notwithstanding that the Goods have been repossessed.

(d) Where the Goods are attached to other equipment of the Customer, the Customer agrees that the Goods nevertheless remain as chattels, severable from that other equipment. In particular printed circuit boards and other cards supplied for fitment into personal computers do not lose their separate identity by being fitted into the computer and may be removed by the Company when enforcing this clause 6.

(e) In respect of computer software supplied to the Purchaser, the property in the software and the copyright in the software remains with the Company. In purchasing the Goods, the Purchaser is granted a non-exclusive non-transferable licence to use the software only on the equipment supplied by the Company with the software.

## 7) Warranty and Liability - Important: The Purchaser is advised to read this Clause

(a) The Company agrees to repair or (at its discretion) replace Goods which are found to be defective (fair wear and tear excepted) and which are returned to the Company within 12 months of the date of despatch provided that each of the following are satisfied:

(i) notification of any defect is given to the Company immediately upon its becoming apparent to the Purchaser;

(ii) the Goods have only been operated under normal operating conditions and have only been subject to normal use (and in particular the Goods must have been correctly connected and must not have been subject to high voltage or to ionising radiation and must not have been used contrary to the Company's technical recommendations);

(iii) the Goods are returned to the Company's premises at the Purchaser's expense;

(iv) any Goods or parts of Goods replaced shall become the property of the Company;

(v) no work whatsoever (other than normal and proper maintenance) has been carried out to the Goods or any part of the Goods without the Company's prior written consent;

(vi) the defect has not arisen from a design made, furnished or specified by the Purchaser;

(vii) the Goods have been assembled or incorporated into other goods only in accordance with any instructions issued by the Company;

(viii) the defect has not arisen from a design modified by the Purchaser;

(ix) the defect has not arisen from an item manufactured by a person other than the Company. In respect of any item manufactured by a person other than the Company, the Purchaser shall only be entitled to the benefit of any warranty or guarantee provided by such manufacturer to the Company.

(b) In respect of computer software supplied by the Company the Company does not warrant that the use of the software will be uninterrupted or error free.

(c) The Company accepts liability:

(i) for death or personal injury to the extent that it results from the negligence of the Company, its employees (whilst in the course of their employment) or its agents (in the course of the agency);

(ii) for any breach by the Company of any statutory undertaking as to title, quiet possession and freedom from encumbrance.

(d) Subject to conditions (a) and (c) from the time of despatch of the Goods from the Company's premises the Purchaser shall be responsible for any defect in the Goods or loss, damage, nuisance or interference whatsoever consequential economic or otherwise or wastage of material resulting from or caused by or to the Goods. In particular the Company shall not be liable for any loss of profits or other economic losses. The Company accordingly excludes all liability for the same.

(e) At the request and expense of the Purchaser the Company will test the Goods to ascertain performance levels and provide a report of the results of that test. The report will be accurate at the

time of the test, to the best of the belief and knowledge of the Company, and the Company accepts no liability in respect of its accuracy beyond that set out in Condition (a).

(f) Subject to Condition (e) no representation, condition, warranty or other term, express or implied (by statute or otherwise) is given by the Company that the Goods are of any particular quality or standard or will enable the Purchaser to attain any particular performance or result, or will be suitable for any particular purpose or use under specific conditions or will provide any particular capacity, notwithstanding that the requirement for such performance, result or capacity or that such particular purpose or conditions may have been known (or ought to have been known) to the Company, its employees or agents.

(g) (i) To the extent that the Company is held legally liable to the Purchaser for any single breach of contract, tort, representation or other act or default, the Company's liability for the same shall not exceed the price of the Goods.

(ii) The restriction of liability in Condition (g)(i) shall not apply to any liability accepted by the Seller in Condition (c).

(h) Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Purchaser are not affected by these Conditions of Sale.

## 8) Termination

The Company shall, at its option, be entitled by notice to terminate all or any of its contracts with the Purchaser forthwith and recover all expenses, losses and damage resulting to the Company including (but without limitation to) loss of profit or other consequential loss if:

(a) the Purchaser has a bankruptcy petition presented against him or a bankruptcy order is made;

(b) the Purchaser makes or seeks to make any composition or arrangement with his creditors;

(c) the Purchaser makes a proposal to his creditors for a voluntary arrangement or applies for an interim order (within the meaning of Section 286 Insolvency Act 1986);

(d) an encumbrancer takes possession of any of the Purchaser's assets, or any of the Purchaser's property is taken in execution or process of law;

(e) a petition is presented or an order is made or a resolution is passed for the winding-up of the Purchaser;

(f) a petition is presented or an order is made for an administration order to be made in relation to the Purchaser;

(g) the Purchaser's directors make a proposal for a voluntary arrangement with the Purchaser's creditors;

(h) the Purchaser is unable to pay its debts (within the meaning of Section 123 Insolvency Act 1986);

(i) a receiver or administrative receiver is appointed over any of the Purchaser's assets; or

(j) the Purchaser fails to make any payment owed to the Company on the due date; or

(k) the Purchaser fails to take delivery of or to collect the Goods within 14 days of being notified by the Company that they are to be delivered or are ready to be collected; or

(l) the Purchaser is in breach of the terms and conditions of any contract with the Company (including breach of these Conditions) and shall fail to remedy the same within 7 days of notice specifying the breach and requiring remedy (if the breach shall be redeemable).

#### 9) Force Majeure

The Company shall not be under any liability of whatsoever kind for non performance in whole or in part of its obligations under the Contract due to causes beyond the control either of the Company or the Company's suppliers including, but not limited to, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot or other act of civil disobedience, acts or defaults of the Purchaser or a third party, failure or delay in transportation, acts of any Government or any agency, or subdivision thereof, Government regulations, judicial actions, labour disputes, strikes, embargoes, illness, accident, fire, explosion, flood, tempest or other acts of God, delay in delivery to the

Company or the Company's suppliers of any item required for the Goods, inability to obtain any item required for the Goods, or shortage of labour, fuel, components, or machinery or technical failure. In any such event the Company may, without liability, cancel or vary the terms of the Contract including, but not limited to, extending the time for performing the Contract for a period of at least equal to the time lost by reason of such event.

#### 10) Cancellation/Suspension of Deliveries

(a) If any of the Purchaser's obligations to the Company are not fulfilled or the Purchaser's financial condition at any time does not, in the Company's unfettered judgement, justify continuance of the Contract on the terms of payment specified, the Company may, without prejudice to any other rights it may have, cancel any outstanding order or suspend any deliveries of any goods unless the Purchaser makes such payment for any of the Goods ordered as the Company may require.

(b) If any order is so cancelled or suspended by the Company, the Purchaser shall indemnify the Company on demand against all losses (including loss of profit), costs (including the costs of all labour and materials used and overheads incurred), damages, charges and expenses arising out of the order and the cancellation or suspension thereof (the Company giving credit for the value of any such materials sold or utilised for other purposes).

(c) The Company will accept cancellation of orders only on the basis that the Purchaser is prepared to pay cancellation costs to be determined by the Company. These costs will normally depend on the length of time between the cancellation date and the due delivery date with a minimum value of 10% of the Price for the Goods. The Purchaser shall indemnify the Company on demand against all losses (including loss of profit), costs (including the costs of all labour and materials used and overheads incurred), damages, charges and expenses arising out of the order and the cancellation or suspension thereof (the Company giving credit for the value of any such materials sold or utilised for other purposes).

#### 11) Purchaser's Obligations

The Purchaser shall comply with all instructions of the Company and all legislation in relation to the use, processing, storage or sale of the Goods. Where the Purchaser has to prepare other equipment, its environment or the buildings where the Goods are to be installed, the Purchaser shall carry out such preparation in a suitable way so that the Company can meet its obligations under the Contract.

## 12) Notices

Any notice to be given hereunder shall be in writing and shall be deemed to have been duly given if sent or delivered to the party concerned at its address specified on the invoice or such other addresses as that party may from time to time notify in writing and shall be deemed to have been served, if sent by post, 48 hours after posting.

## 13) Assignment

The Purchaser shall not assign or transfer or purport to assign or transfer the Contract or the benefit thereof to any other person.

## 14) Sub-Contracts

The Company reserves the right to sub contract the performance of the Contract or the benefit thereof to any other person.

## 15) Proper Law and Jurisdiction

The contract shall be governed by and construed in accordance with English law and the Courts of England shall have jurisdiction to hear all disputes arising in connection with the Contract.

## 16) Headings

The headings of these conditions are for convenience only and shall have no effect on the interpretation thereof.