

CALNEX TERMS AND CONDITIONS

CALNEX Terms and Conditions of Business (valid as at 1st January 2017):

1 INTERPRETATION

- 1.1 In these conditions the following words have the following meanings:
- 1.1.1 the Customer: the person(s), firm, company or other legal entity who purchases the Goods from the Company;
- 1.1.2 the Company: Calnex Solutions Limited (SC299625), with registered office at Oracle Campus, Linlithgow, West Lothian, EH49 7SF, or where the Contract expressly states to the contrary, the relevant group or associated company of Calnex Solutions Limited (as stated within the Contract);
- 1.1.3 Contract: any contract between the Company and the Customer for the sale and purchase of the Goods, incorporating these Conditions;
- 1.1.4 Goods: any goods agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them);
- 1.1.5 Intended Purpose: the use as set out in the relevant specification or brochure of the Company as may be supplied with Goods or otherwise notified by the Company to the Customer (and until or failing any such notification by the Company then such lawful use as a reasonable person would apply to the Goods taking into account all material published by the Company in connection with the Goods);
- 1.1.6 IPR: all copyright, patent rights, trade marks, design rights, rights in or relating to databases, semiconductor topography rights or any other intellectual property rights (registered or unregistered, vested or contingent) throughout the world and any and all applications for any of the foregoing and any and all rights to apply for any of the foregoing;
- 1.1.7 Warranty Period: means unless otherwise specified by the Company, the 12 month period from the date of delivery of the Goods in accordance with these conditions.
- 1.2 In these conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.
- 1.3 In these conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.
- 1.4 In these conditions headings will not affect the construction of these conditions.

2 APPLICATION OF TERMS

- 2.1 Subject to any variation under condition 2.3 the Contract will be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 No terms or conditions endorsed upon, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director or senior manager of the Company.
- 2.4 Each order by the Customer to purchase Goods from the Company (which may be received by writing, telephone, email or by other form of communication, but preferably in writing) shall be deemed to be an offer by the Customer to purchase Goods subject to these conditions.
- 2.5 Unless the Company states otherwise (by writing, telephone, email or by other form of communication) that the order is rejected, each order placed by the Customer shall be deemed to be accepted by the Company on the 7th day immediately following receipt of the order, or such earlier period, based either (i) on any agreement between the Company and Customer or (ii) on the date of despatch if the Company delivers the Goods to the Customer, whichever is the earlier to occur. No orders for Goods which are accepted or deemed to be accepted by the Company may be cancelled by the Customer without the prior written consent of the Company.
- 2.6 The Customer must ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7 Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it. During this quotation period the Company reserves the right to amend its quotation before it is accepted.
- 2.8 The Company reserves the right to sub-contract such performance obligations under this Contract as it deems appropriate.

3 DESCRIPTION

- 3.1 The description of the Goods shall be as set out in the Company's quotation.
- 3.2 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or Illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of this Contract.

4 DELIVERY

- 4.1 Unless otherwise agreed with the Company, delivery of the Goods shall normally take place at the Customer's place of business. Unless it otherwise agrees with the Customer, the Company or its approved sub-contractors shall normally send the Goods to the Customer by a recognised and reputable courier.
- 4.2 If the Goods require to be picked up by the Customer at the Company's premises, the Customer will take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery.
- 4.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be of the essence. If no dates are so specified, delivery will be within a reasonable time.
- 4.4 Subject to the other provisions of these conditions the Company will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business, loss of data, increased costs of working, depletion of goodwill or reputation, and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor will any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.5 If for any reason the Customer will not accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
- (i) risk in the Goods will pass to the Customer (including for loss or damage caused by the Company's negligence);
 - (ii) the Goods will be deemed to have been delivered; and
 - (iii) the Company may store the Goods until delivery whereupon the Customer will be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.6 If the Company delivers to the Customer a value or quantity of Goods of up to 90% more or less than the value or quantity (as the case may be) accepted by the Company the Customer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.
- 4.7 Acknowledgement of Customer orders shall not form legal acceptance of all terms on the Customer order.

5 NON-DELIVERY

- 5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's or its carriers' negligence) unless written notice is given to the Company within 10 days of the date when the Goods would in the ordinary course of events have been received.
- 5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6 RISK/TITLE

- 6.1 The Goods are at the risk of the Customer from the time of delivery.
- 6.2 Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of (i) the Goods and (ii) all other sums which are or which become due to the Company from the Customer on any account.
- 6.3 Until ownership of the Goods has passed to the Customer, the Customer must:
- (i) hold the Goods on a fiduciary basis as the Company's trustee;
 - (ii) store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property (unless installation by the Company shall not allow for such separate storage);
 - (iii) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (iv) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company; and
 - (v) hold the proceeds of the insurance referred to in condition 6.3 (iv) on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 6.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:
- (i) any sale shall be effected in the ordinary course of the Customer's business at full market value; and
 - (ii) any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.
- 6.5 The Customer's right to possession of the Goods shall terminate immediately if:
- (i) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
 - (ii) the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe/perform any of its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act

- 1986 or the Customer ceases to trade; or
(iii) the Customer encumbers or in any way charges any of the Goods; or
(iv) if the Customer suffers any event in a foreign jurisdiction analogous to or comparable with any of the foregoing.
- 6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.7 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

7 PRICE

- 7.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's price list published on the date of delivery or deemed delivery or as otherwise set out in the Company's quotation or order schedule which has been accepted by the Customer.
- 7.2 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to installation (including without limitation all flights, accommodation and other reasonable travel charges and other outlays) all of which amounts the Customer will pay in addition.

8 PAYMENT

- 8.1 For new customers or large or expensive orders of Goods, the Company reserves the right to request payment for the Goods from the Customer prior to delivery. In most cases, invoices shall be issued by the Company on or shortly after delivery or installation of the Goods.
- 8.2 The Customer shall pay all invoices within 30 days of receipt and, where no invoice is received or issued, payment of the price for the Goods is due on the 20th working day following the date that the Goods are delivered or deemed to be delivered.
- 8.3 Time for payment shall be of the essence.
- 8.4 No payment shall be deemed to have been received until the Company has received cleared funds.
- 8.5 All payments payable to the Company under the Contract shall become due immediately upon termination of this Contract despite any other provision.
- 8.6 The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.
- 8.7 If the Customer fails to pay the Company any sum due pursuant to the Contract the Customer will be liable to pay (i) interest to the Company on such sum from the due date for payment at the annual rate of 6% above the base lending rate from time to time of the Bank of Scotland plc, accruing on a daily basis until payment is made, whether before or after any judgment and (ii) all costs and expenses (including all lawyers' fees and expenses) incurred by the Company in connection with such late payment by the Customer.
- 8.8 While any payments by the Customer to the Company are outstanding, the Company reserves the right to suspend the supply of further Goods or provision of any services until all outstanding amounts have been paid in full.

9 WARRANTY, RETURNS & REPAIRS

- 9.1 The Company warrants that (subject to the other provisions of these conditions) (i) at the point of delivery the Goods will be of merchantable quality, be reasonably fit for the Intended Purpose (if a purpose is expressly and clearly stipulated) and (ii) operate during the Warranty Period substantially in accordance with the technical specification for the relevant Goods (as published by the Company from time to time or available from the Company upon request).
- 9.2 The Company shall not be liable for a breach of any of the warranties in condition 9.1 unless:
- (i) the Customer gives written notice of the defect to the Company, and (if the defect is as a result of damage in transit) to the carrier, within 14 days of the time when the Customer discovers or ought to have discovered the defect; and
 - (ii) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business for the examination to take place there.
- 9.3 The Company shall not be liable for a breach of any of the warranties in condition 9.1 if:
- (i) the Customer makes any further use of such Goods after giving such notice; or
 - (ii) the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
 - (iii) the Customer alters or repairs such Goods without the written consent of the Company.
- 9.4 Subject to conditions 9.2 and 9.3, if any of the Goods do not conform with any of the warranties in condition 9.1 the Company shall (i) at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Customer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company and (ii) refund the Customer the cost of sending the Goods to the Company from within the UK by Royal Mail for inspection (but not the cost of courier or other international postage or delivery).
- 9.5 If following an inspection by the Company of the Goods, the Customer does not have a valid warranty claim (eg because condition 9.3 applies), the Company if requested by the Customer (and it agrees) may carry out any necessary repairs to the Goods at its standard published rates (available from the Company upon request) and where this involves an on-site repair at the premises of the Customer then the Customer shall also be liable to pay all related costs or charges of the Company (including without limitation all flights, accommodation and other reasonable

travel charges). The Customer shall, where there is no valid warranty claim, be liable to pay for the postage of the Goods by the Company to the Customer.

- 9.6 If the Company complies with condition 9.4 it shall have no further liability for a breach of any of the warranties in condition 9.1 in respect of such Goods.
- 9.7 Any Goods or parts replaced will belong to the Company (unless otherwise agreed) and any repaired or replacement Goods will be guaranteed on these terms for the unexpired portion of the Warranty Period.
- 9.8 All repair work and installation services shall be performed by the Company exercising reasonable care and skill.
- 9.9 For the avoidance of doubt, any extended warranty, service or maintenance agreement cannot be cancelled or refunded once the service has commenced.

10 LIMITATION OF LIABILITY

- 10.1 Subject to condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of: (i) any breach of these conditions; and (ii) any representation, statement or delictual act or omission including negligence arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.
- 10.4 Subject to conditions 10.2 and 10.3, the Company's total liability in contract, delict (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to two times the price paid by the Customer for the Goods.
- 10.5 Subject to conditions 10.2 and 10.3, the Company shall not be liable for any indirect or consequential loss or damage (whether for loss of profits, loss of business, loss of data, increased costs of working, depletion of goodwill or reputation, or otherwise) costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11 ASSIGNATION

- 11.1 The Customer shall not be entitled to assign or novate the Contract or any part of it without the prior written consent of the Company.
- 11.2 The Company may assign or novate the Contract or any part of it to any person, firm or company.

12 FORCE MAJEURE

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riots, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that if the event in question continues for a continuous period in excess of 160 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

13 INTELLECTUAL PROPERTY RIGHTS

- 13.1 The Company hereby grants to the Customer a non-transferable (unless permitted in accordance with condition 11.1) and non-exclusive right to use the IPR in, and to, the Goods for the Intended Purpose, but without authority to sublicense the IPR.
- 13.2 The Customer shall not reverse engineer, decompile, disassemble or otherwise reduce any part of the software or any part of the hardware or any mechanical devices contained within the Goods to human-readable form nor permit any third party to do so, except to the extent expressly permitted by applicable law. The interface information necessary to achieve interoperability of such software, hardware or associated mechanical devices with independently created computer programs will be provided to the Customer on request on payment of the Company's reasonable costs and expenses.
- 13.3 The Customer shall not delete or obscure any trade mark or copyright notice of the Company or any other third party contained on or within the Goods (or part thereof) nor pass off nor attempt to pass off the Goods as having been manufactured by the Customer or by any third party. Other than as expressly permitted by the Company in writing, neither the Customer nor any of its officers or employees (if applicable) may during or after the expiry or termination of this Contract use or adopt any domain name, trade mark, trade name or commercial designation that includes or is similar to or may be reasonably mistaken for the whole or any part of any domain name, trade mark, trade name or commercial designation used by the Company.

14 AUTHORISED USES

- 14.1 The Goods are for use by the Customer in accordance with the Intended Purpose exercising due care and skill and in accordance with any operating instructions or manual that is supplied with the Goods.
- 14.2 The Customer shall issue all instructions, documentations and warnings on use to subsequent users.

- 14.3 The Customer shall only use the Goods as a complete entity and shall not be permitted to attempt to disassemble the Goods in order to utilise any of the component parts for any purpose whatsoever.

15 COMMUNICATIONS

- 15.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by prepaid first class post or sent by facsimile transmission or sent by email:
- (i) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company or in the case of email to info@calnexsol.com or such changed email address as shall be notified to the Customer by the Company ; or
 - (ii) (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address (including email address) of the Customer set out in any document which forms part of this Contract or such other address (including email address) as shall be notified to the Company by the Customer.
- 15.2 Communications shall be deemed to have been received:
- (i) if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);
 - (ii) if delivered by hand, on the day of delivery;
 - (iii) if sent by facsimile transmission on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day; and
 - (iv) if transmitted by email and a successful delivery receipt is generated on a working day prior to 4.00 pm, then at the time of transmission and otherwise on the next working day.
- 15.3 Communications addressed to the Company shall be marked for the attention of the CEO.

16 GENERAL

- 16.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 16.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 16.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 16.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 16.5 The parties to this Contract do not intend that any term of this Contract will be enforceable by any person that is not a party to it (save in respect of permitted assignees).
- 16.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by the law of Scotland and the parties submit to the non-exclusive jurisdiction of the Scottish courts.

End