

# Terms and Conditions

## 1. Definitions

1.1 In these Conditions:

"Buyer" means the person accepted by the Seller to purchase Goods from it, subject to these Conditions; "Conditions" means these terms and conditions of sale and includes any special terms and conditions agreed in Writing between the Buyer and the Seller; "Contract" means any agreement for the supply of Goods resulting from a Purchase Order and accepted by the Seller in accordance with Clause 3.43; "Goods" means the goods, including any installment of the goods or any part of them, which the Seller is to supply in accordance with the Contract; "Purchase Order" means the Buyer's order for Goods in Writing, which shall include any order that is placed online by the Buyer on the Website; "Seller" means Transatlantic Network Solutions Limited registered in England and Wales under number 5520807 or as appropriate any of its subsidiaries within the meaning of section 736 Companies Act 1985. Hardware.com is a trading names of Transatlantic Network Solutions Ltd. "Website" means the website operated by the Seller from time to time, the current URL of which is <http://www.tns-online.de>. "Writing" includes facsimile transmission, e-mail and comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time. The headings in these Conditions are for convenience only and shall not affect their interpretation.

## 2. Status of Buyer

2.1 The Buyer confirms that it is not dealing as a consumer and that it is buying the Goods for use in its business or the business of a third party end-user.

## 3. Application of these Conditions

3.1 Refunds will be given at the discretion of the Company

3.2 Every Contract shall be subject to these Conditions and no variations to these Conditions, or any other conditions which the Buyer purports to make applicable, shall be binding unless expressly accepted in Writing by an authorised representative of the Seller.

3.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods or their performance characteristics either during communications via telephone or facsimile or e-mail or any other method of communication, unless confirmed by the Seller in Writing. In entering into this Contract the Buyer acknowledges that it does not rely on any representations which are not so confirmed.

3.4 All statements or terms concerning Goods, including prices, quoted or listed by or on behalf of the Seller, or including published price lists, catalogues, pamphlets or postings on the Website constitute invitations to treat, and shall not be construed as offers under any circumstances. Any Purchase Order for Goods received by the Seller from the Buyer shall be deemed to be an offer by the Buyer to purchase Goods, subject to these Conditions. No order shall become binding until the Seller either expressly, by giving notice of acceptance in Writing, or impliedly, by fulfilling the Purchase Order, in whole or in part accepts the offer. The Seller reserves the right to verify any Purchase Order and/or to cancel any Purchase Order placed by the Buyer, whether or not accepted by the Seller.

## 4. Quotations, and Orders

4.1 GOODS SUPPLIED UNDER THESE TERMS AND CONDITIONS MAY BE SOURCED FROM A NUMBER OF ORIGINAL EQUIPMENT MANUFACTURERS. NOTWITHSTANDING ANY PART OR REFERENCE NUMBER USED TO DESCRIBE ANY GOODS, SUCH DESCRIPTION SHALL NOT

## REPRESENT ANY WARRANTY, REPRESENTATION OR UNDERTAKING THAT SUCH GOODS ARE SUPPLIED BY A PARTICULAR ORIGINAL EQUIPMENT MANUFACTURER.

4.2 All quotations given by the Seller will remain firm for fourteen (14) days from the date of the quotation provided the Seller receives a Purchase Order based on such quotation by the end of that period. If the Seller identifies an error in a quotation or a price given by the Seller it will endeavour to inform the Buyer of this. Quotations are subject to acceptance of such Purchase Order by the Seller pursuant to clause 3.43.

4.3 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and providing the Seller with any additional information relating to the goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms. If the Buyer does not provide correct and sufficiently detailed information and the Contract is performed late or the goods delivered are incorrect in terms of specification or quantity the Seller will not be held liable.

4.4 The quantity, quality and description of and any specification for the Goods and Services shall be those set out in the Buyer's Purchase Order (if accepted by the Seller.) The Seller reserves the right to make any alterations to the specifications of the Goods, which are necessary to conform with any Goods. The Goods will be described on the Seller's quotation as coming within one of the following categories, and the Buyer acknowledges and agrees that the Goods will meet the particular description of that category. The categories are:

- **44G-RETAIL** 'New - Retail' - This describes Goods that have been purchased new from a distributor and/or manufacturer, are intended for re-sale and carry a manufacturers warranty
- **44G-MAIN** 'Unused - Sealed in Original Packaging' - This describes Goods that have never been used and whose packaging has not been opened or excess inventory that has been stored for some time, and it is unlikely that these Goods will have any manufacturers warranty left.
- **44G-MAIN2** 'Unused - Opened Box - May be missing some accessories' - This describes unused Goods where the packaging has been opened and maybe some of the accessories are missing. It is possible that these Goods may have been part of cancelled configured orders or demo stock that has not been used and put back in its original packaging.
- **44G-REFURB** 'Used Product - Refurbished - Plain Box' - This describes Goods that have definitely been used and will probably have some form of smartnet or maintenance contract against them. However the Goods will have been re-sprayed by us and will be refurbished to a high standard and packaged in a plain box.

## 5. Cancellations

5.1 Cancellations should be expressed in Writing to the Seller seven (7) days prior to the commencement of delivery. The Seller's acceptance of a cancellation will be evidenced by receipt of consent in Writing.

## 6. Prices

6.1 The price of the Goods shall be the price set out in any valid quotation, or where no price has been quoted or a quoted price is no longer valid, the price listed in the Seller's published price list or posted on the Seller's Website, current at the date of acceptance of the Purchase Order. Prices will normally be held for a period of 30 days of the date of the quotation. If the Seller identifies any error in any price quoted or posted, and the Buyer submits a Purchase Order containing that price, the Seller will endeavour to inform the Buyer of the error. For the avoidance of doubt, the Seller is not bound to accept any Purchase Order or other offer from the Buyer except as provided in clause 3.4 above.

6.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any changes in specifications for the Goods which are requested by the Buyer

or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

**6.3** All prices are exclusive of any applicable Value Added Tax (VAT) or any other sales taxes for which (if applicable) the Buyer shall be additionally liable.

## **7. Terms of Payment**

**7.1** An invoice will be issued to the Buyer at commencement of delivery of the Goods. Payment must be made within the thirty (30) days from invoice date (less any discount to which the Buyer is entitled, but without any other deduction). The time of payment of the price shall be of the essence of the Contract. If the Buyer has elected to pay for the Goods by credit card via the Website a card handling fee of 3% of the invoice value of the Goods will automatically be added to the amount due and payable by the Buyer. When the Buyer purchases Goods by credit card, the Buyer deals direct with WorldPay. The Seller does not hold any of the Buyer's credit card details, and can accept no liability for fraudulent or any other improper or unauthorised use of the Buyer's credit card details. In particular, the Seller refers to the exclusions in clause 10.2 below.

**7.2** The Seller reserves the right not to despatch Goods if the Buyer's account with the Seller is overdrawn, or if the Seller is otherwise in breach of any payment obligation to the Seller. Goods will be delivered once the account is placed in sufficient credit or such breach is remedied. The Seller will hold the Goods for the Buyer, at the Buyer's expense, for a period of up to thirty (30) days, to enable the Buyer to remedy the situation, failing which the Seller shall be released from any further obligation towards the Buyer in relation to such Goods.

**7.3** If the Customer fails to pay the invoice value of Goods by the due date it shall pay interest on the amount unpaid from the date on which payment was due to that on which it is made (whether before or after judgment) at the rate of 8% per annum over the base rate from time to time of NatWest Bank plc. Transatlantic Network Solutions Limited also reserves the right to recover any collection or legal costs incurred, from the debtor on the overdue amount.

## **8. Delivery**

**8.1** The Goods shall be delivered, carriage paid, to the Buyer's notified place of business or to such other place of delivery as is agreed between the Parties in Writing prior to the Goods being passed to the carrier.

**8.2** Any dates specified for delivery of the Goods are intended to be estimates only and time of delivery may not be of the essence. If no dates for delivery are specified, delivery will be within a reasonable time. Subject to the other provisions of these Conditions the Seller will not be liable for late delivery of the Goods (even if caused by the Seller's negligence), nor will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.

**8.3** The Seller reserves the right to elect the carrier of the goods, unless otherwise agreed in Writing between the parties. The Seller also reserves the right to arrange adequate insurance, either independently or through the carrier, for the Goods up until the time when they are delivered, to the place agreed between the parties, and a Proof of Delivery has been issued, at which time risk passes to the Buyer.

**8.4** The Goods are at the risk of the Buyer from the time of delivery. If for any reason the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations, risk in the Goods will pass to the Buyer (including for loss or damage caused by the Seller's negligence) from the moment of attempted delivery, the Goods will be deemed to have been delivered and the Seller may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance).

**8.5** If the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

**8.6** If the Seller fails to deliver the Goods (or any instalments) for any reason other than Force Majeure (as defined below) or the Buyer's fault, and the Seller is accordingly liable to the Buyers, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

## **9. Title**

**9.1** Property in the Goods shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds including, without limitation, as a result of a valid credit card transaction) all sums due to it in respect both of the Goods, and all other sums which are or which become due to the Seller from the Buyer on any account.

**9.2** Until property in the Goods has passed to the Buyer the Buyer must: store the Goods (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way as they remain readily identifiable as the Seller's property; not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; maintain the Goods in satisfactory condition insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller. The Seller shall be entitled to recover payment for the Goods notwithstanding that property in the Goods has not passed from the Seller. The Buyer grants the Sellers, 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 Buyer's right to possession has terminated, to recover them. The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall, without prejudice to any other right or remedy available to the Seller, forthwith become due and payable.

## **10. Warranties and Liability**

**10.1** All Goods are sold subject to the express warranty terms specified by the original manufacturer or supplier. The Seller will pass to the Buyer to the extent that it is able to do so, the benefit of such guarantee or warranty relating to the Goods as it may receive from the manufacturer of the Goods.

**10.2** Save as expressly provided in these Conditions, the Seller shall be under no liability to the Purchaser under these Conditions, any Contract or otherwise for any loss or damage howsoever caused to the Buyer or any other person including, without limitation, any loss of profit, loss of earnings, damage to property, business interruption, damage to reputation or goodwill or any indirect, special or consequential loss or damage (save in respect of death or personal injury resulting from negligence) and any term, condition or representation to the contrary whether express or implied by statute, common law or otherwise is hereby expressly excluded as far as it is possible to exclude it, save for fraudulent misrepresentation to which this exclusion shall not apply.

**10.3** The liability of the Seller to the Buyer for any loss or damage of whatsoever nature and however caused shall be limited to and in no circumstances shall exceed the price paid by the Buyer for the Goods.

## **11. Defective Goods**

**11.1** The Seller reserves the right at its sole discretion to decide whether any goods are defective. Defective goods will either be replaced with a Good of the same or similar specification or will be repaired. If replacement or repair is not practicable, the Seller will credit the value of the defective Good (as detailed on the invoice) to the Buyer's account. The Seller shall have no other liability in respect of defective Goods. All

defective Goods must be reported on the Website within seven (7) days of the delivery date and must be returned in accordance with the following RMA procedure. All Goods that are reported defective during the warranty period, will be given an RMA number and must be returned following the Returns Materials Authorization procedure, details of which can be provided to the Buyer on request. No Goods may be returned except pursuant to the RMA procedure. No goods may be returned without a valid RMA number displayed in the packaging. Any defects discovered shall not entitle the Buyer to rescind the contract. The Buyer will pay for the Goods to be returned to the Seller, but will be reimbursed for these costs if the defect is reported to the Seller within the warranty period and returned to the Seller in adherence with the RMA procedure. Transport charges shall be charged to the Buyer if the defect is reported after the expiration of the warranty period, if the Good is not returned in compliance with the RMA procedure, and/or if the Good is returned in compliance with this clause but proves not to be defective. Transatlantic Network Solutions Limited reserve the right to charge a re-stocking fee for any returned goods taken back into stock, for any reason.

## 12. Privacy Policy

12.1 In connection with the processing of any personal data the Seller will comply with the Data Protection Act 1998 including, without limitation, each Data Protection Principle contained in the 1998 Act and with all other applicable data protection legislation which is in force from time to time.

12.2 The information collected by the Seller may be used for the following purposes: internal review for the Seller's own operational purposes; to improve the content of its website; to provide information to members on subjects requested by users; to customise the content and/or layout of its website for each individual user; to notify users about updates to the services and products available on the website; [we may disclose the information to our carefully selected and reputable commercial partners who will be offering compatible or complementary goods or services with us or through the Website, provided they undertake to exercise the same care with the data as we do ourselves]; and for the purpose of assessing the credit status of the Buyer, and to this end, may be disclosed to credit reference agencies.

12.3 If the Buyer does not wish to receive emails from the Seller at any time in the future, it should inform the Seller via email.

## 13. General

13.1 All notices required to be given hereunder shall be given in writing to the recipient at the address stated on the face of these Conditions, or to such other address as the recipient may from time to time specify in writing by sending the same by pre-paid postage or facsimile. All notices shall, if sent by post, be deemed to be delivered forty eight (48) hours after posting and if sent by facsimile, shall be deemed to have been received at the time of delivery as indicated on the facsimile activity report of the sender.

13.2 Neither party shall be deemed to be in breach of these Conditions or otherwise liable to the other party for any delay in performance or any non-performance of any obligations under these Conditions (and the time for performance shall be extended accordingly) if and to the extent that the delay or non-performance is due to circumstances beyond its reasonable control including without limitation flood, fire, earthquake, riots, industrial disputes (other than disputes with a party's employees) not arising through the fault of either party ("Force Majeure").

13.3 No delay or omission on the part of either party in exercising any right, power or remedy provided by law or under these Conditions shall impair such right, power or remedy or operate as a waiver thereof. The single or partial exercise of any right, power or remedy provided by law or under these Conditions shall not preclude any other further exercise thereof or the exercise of any other right, power or remedy. The rights, powers and remedies provided in these Conditions are cumulative and not exclusive of any rights, powers and remedies provided by law.

**13.4** These Terms and Conditions and any amendments agreed in Writing between the parties shall be governed and construed in accordance with English law and the parties submit to the non-exclusive jurisdiction of the English Courts in relation to all matters arising out of this Contract.