Standard Terms and Conditions



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ERICOM Pty Ltd – Commercial in Confidence

ERICOM PTY LTD STANDARD TERMS AND CONDITIONS

1. DEFINITIONS

The "Company" means Ericom Pty limited ABN 11 070 942 871

The "Purchaser" means the party to whom this Contract is addressed or the party that accepts an offer from Ericom Pty Ltd, to supply services.

The "Contract" means the/this offer by the Purchaser to purchase Equipment or services as set out in this contract, of which the Standard Terms and Conditions of the contract form a part.

The "Equipment" means items of equipment which are described in the contract and which the purchaser offers to purchase.

"Manufacturer's Warranty Period" means the period of the manufacturer's warranty (if any) specified by the manufacturer.

The "Price" means the price specified in this Contract for the purchase of Equipment, and including equipment, services and labour.

The "Site"' means the address and location of installation of the Equipment as specified in this contract.

2. SALE OF EQUIPMENT

2.1. The Company agrees to sell the Equipment to the Purchaser and the Purchaser agrees to purchase the equipment from the company upon the terms and subject to the conditions of this contract.

3. ORDERS

3.1 The Company shall not be bound to supply to the purchaser any order for the Equipment, services or labour made pursuant to this contract until such time as the purchaser provides their official company purchase order or until the Company has accepted the order in writing.

3.2 The Purchaser may specify a delivery date and commissioning date for the equipment when entering into this contract with the company. The company shall use its best endeavors to meet delivery schedules but shall not be liable for any delays.

3.3 All orders are subject to the Companies "Assumptions and Inclusions" (separate document.

4. PRICE, VALIDITY, PAYMENT TERMS AND FINANCE

4.1. It is the Purchasers responsibility to declare in writing to the Company any financial obligations the Purchaser may have that may be detrimental to any agreement for outright purchase or finance of equipment from the Company i.e. existing rental or lease agreement on existing equipment that a finance company has title to which requires a finance payout. It is the Purchasers responsibility to comply with the terms and requirements of any financial agreements that they may have in place.

4.2. All pricing provided by The Company is valid for 30 days unless otherwise stated in our written offer and is subject to any variation in pricing at the time of order without prior written notice.

4.3. Unless specified differently in the order, the Price shall be due and payable by the Purchaser to The Company. The purchaser is to indicate on their order which option they have agreed to. If no option is given on the order then option A is the default agreement.

(*Option A*) 100% of the Contract value paid prior to commencement of work and delivery of the Equipment.
(*Option B*) 60% of the value of the Contract as a deposit paid on order, 30% prior to commencement of work and 10% paid upon Customer Project Acceptance Certificate being signed. This balance is due independent of any 3rd party deliverables or Network Services (i.e. Telstra) which may be outstanding.

4.4. If delivery is delayed by the Purchaser for any reason, 90% of the value of the Contract shall be payable on the date the Equipment is available for delivery (as long as this date is on or after the commissioning date specified by the Purchaser.) If no date was specified then standard delivery times take precedent.

4.5. All monies due to the Company are to be paid to the Company, unless finance has been arranged by the Purchaser, in which case all documents must be signed off and provided with all monies due (i.e. first instalment) to be paid to the finance company according to terms and conditions set out in a separate agreement with the finance company, prior to delivery of Equipment to Purchaser or scheduling of preliminary project meetings and installation. It is important to note that no equipment or services will be ordered until such time as the finance company gives written approval for the finance agreement.

4.6. Urgent installations or late advice/change of payment terms (e.g. from cash to rental or lease) must be secured by a deposit of 90% of the value of the Contract upon delivery of Equipment. This deposit is refundable when the above financial requirements have been met.

4.7. The Purchaser agrees to pay interest on overdue accounts at the rate of 0.3 percent (%) per day on the balance outstanding.

4.8. The Purchaser shall not cancel any order for the Equipment made pursuant to this Contract without the Company's prior written consent. The Company reserves the right to invoice the Purchaser 20% of the value of the contract as a condition of consenting to cancellation of the order by the Purchaser. Where the company cannot return the equipment for a restocking fee then the Purchaser will be invoiced for the full price of the goods not returnable.

4.9. The Purchaser shall not return any item of the Equipment for credit or exchange without the Company's prior written approval.

4.10. The Price of the Equipment in this order will be held firm for the Purchaser provided that delivery and commissioning dates are within 30 days of this Contract being entered into. Price variations resulting from changes in taxes and duties subsequent to the Contract being entered into are excluded from the operation of this Clause.

4.11. The Company reserves its right to render all or part of the Equipment inoperative if full payment is not received on the due day of commissioning. The Purchaser acknowledges and declares that it will not be entitled to make any claim whatsoever or howsoever arising against the Company for any damages arising as a result of the Company rendering the Equipment inoperative in the event of non-payment.

5. TELSTRA BUNDLE SALES

5.1. All necessary documents required by Telstra must be signed and provided to the Company for submission to Telstra. Any delays in providing the required original signed documents to the Company for approval by Telstra may cause delays in scheduling of work, delivery and installation.

5.2. Any ordering, delivery of goods and scheduling of preliminary project meetings and installation work cannot commence until Telstra's financial requirements have been met and approved by Telstra.

5.3. Urgent installations must be secured by a deposit of 100% of the total order value prior to delivery or commencement of work or system cutover. This deposit is refundable when Telstra's financial requirements have been met.

5.4. Maintenance and Service charge is optional with outright purchase on the Purchasers phone bill but mandatory for the term of rental or lease. Maintenance and Service for subsequent years will be billed separately on an annual or monthly basis.

6. TELSTRA NETWORK SERVICES

6.1. The Company offer to order and arrange the provisioning and installation of any required Telstra Network Services on behalf of the Purchaser such as equipment, exchange lines, ISDN, Broadband, Data etc. All costs associated with Telstra services such as ongoing lease or rental, service plans and installation are the responsibility of the customer.

6.2. These activities can only take place once the Telstra required documents provided by the Company are checked and completed and signed by the customer and returned to the Company and finally approved by Telstra.

6.3. It is the Purchasers responsibility to ensure that all of the information included in the Telstra documentation is correct at the time of signing. The Company is not responsible for incorrect information on documents signed and approved by the Purchaser.

6.4. Delivery and installation of Telstra Services and Equipment is subject to Telstra's lead times and is outside of the control of the Company and any payment owing to the Company or final sign off cannot be withheld due to Telstra provisioning delays.

6.5. Any Telstra charges stated in our offering are subject to change without prior written notice and are outside of the control of the Company and are the responsibility of the Purchaser to ensure that they are correct at the time of order.

7. DELIVERY, INSTALLATION AND TRANSFER OF EQUIPMENT

7.1. The Company is not responsible for any equipment or software changes i.e. an equivalent product than that proposed due to the manufacturer of the Equipment's inability to supply certain products such as handset types if certain models become obsolete.

7.2. The Company shall, during its normal business hours, deliver to, install and commission the Equipment at the Site.

7.3. The Company may specify a delivery and commissioning date but this is given as an estimate only and the Company does not guarantee or assume responsibility for failure to comply with any such date and the Company shall not be liable for any such delay.

7.4. The Purchaser shall provide the correct TRC earth and power requirements specified by the Company for the Equipment and shall be responsible in every respect for the cost of so providing power and for the reliability of the power so provided.

7.5. The Purchaser shall be responsible for ensuring that all necessary connecting facilities have been approved by Telstra.

7.6. Any Equipment sold by the Company shall be at the Purchaser's risk as and from delivery to the Purchaser or at the Purchaser's direction, whether title has passed or otherwise. Upon delivery (including prior to commissioning) the Purchaser shall be responsible for any loss or damage to the Equipment howsoever arising. The Purchaser hereby agrees to indemnify the Company for any loss sustained in any manner whatsoever by the Company in relation thereto.

7.7. Transfer of Title and Property in the Equipment shall not pass to the Purchaser until payment has been made in full by the Purchaser. The Company reserves the right to take possession of and dispose of the Equipment as it sees fit at any time until full payment has been made and the Purchaser hereby grants permission to the Company to enter upon any land or premises where the Equipment is to do so and HEREBY APPOINTS the Company (and any duly authorised nominee thereof) as the duly authorised attorney of the Purchaser for the purpose of access to any land or premises where the Equipment is stored, installed or in operation.

7.8. Until payment is made in full the Purchaser agrees to keep all such Equipment as fiduciary for the Company and to store them in a manner, which clearly shows the Company as owner.

7.9. Each part of the Equipment shall be deemed to be a chattel notwithstanding any affixation to any premises.

7.10. If at any time prior to payment in full the Purchaser commits any breach of its obligations hereunder or becomes bankrupt or commits an act of bankruptcy or calls any meeting of its creditors or enters into any assignment for the benefit of or any composition or arrangement with creditors or being a company if a petition is presented or an order is made or an effective resolution is passed for its winding up or a meeting is called or convened for the purpose of considering such a resolution or if a Receiver or Manager is appointed then the Company may at its own option cancel the Contract and the Purchaser shall deliver up to the Company the Equipment or such part thereof as has been delivered. The Company shall be entitled to retain any deposit paid by the Purchaser for such Equipment.

7.11. The Company retains title to any and all software supplied with the Equipment including documentation developed and revealed in sale or service of its goods. Copyright is similarly retained and reproduction is expressly forbidden unless permission is given by the Company in writing.

8. TRAINING AND SUPPORT

8.1. The Company shall use all reasonable commercial efforts to provide the Purchaser at the Site with training in the use and operation of the Equipment as the company deems reasonable and necessary. However, any training of operators or train the trainer of the Equipment shall

be the Purchaser's responsibility to arrange, and shall be at the Purchaser's cost unless otherwise included in the Company pricing.

8.2. The Company will provide manuals or a disk where provided by the manufacturer of the Equipment and where necessary for the proper operation use and upkeep of the Equipment. The Purchaser acknowledges that the proper observation of the manuals or disk and each and every direction or advice given therein must be proven as a condition precedent to any action being taken against the Company whatsoever or howsoever arising concerning the Equipment.

9. MAINTENANCE

9.1. The Purchaser acknowledges that the sole obligation for proper maintenance of the Equipment rests with the Purchaser and that the maintenance must be by properly skilled and trained personnel. The Purchaser further acknowledges that until a service or maintenance contract is entered into with Telstra and the Company in writing, that there shall be no implied agreement placing any obligation whatsoever upon Telstra or the Company to maintain the Equipment in any way.

10. WARRANTY

10.1. The Purchaser shall be entitled to the benefit of the manufacturer's warranty (if any) in respect of each item of the Equipment for the duration of the Manufacturer's Warranty Period. This Manufacturer's Warranty Period shall begin on the date of commissioning of the Equipment.

10.2. Such Equipment which fails during the Manufacturer's Warranty Period for reasons due to wear and tear, negligence, neglect or default on the part of the Purchaser or third parties is excluded from Warranty.

10.3. All Equipment included under Warranty and in need of repair or replacement will be repaired or replaced free of charge (excluding labour) upon delivery to the Company. The Purchaser is required to pay the cost of delivery. (Delivery is not required if covered by a service or maintenance agreement.)

10.4. Any warranty given does not extend to any equipment other than that supplied by the Company, nor does it extend to Equipment maintained otherwise than by properly trained personnel or interfaced other than in accordance with the conditions specified by the Company.

10.5. The Purchaser shall have no rights under warranty until payment in full has been made for the Equipment.

11. SOFTWARE ASSURANCE

11.1. The Purchaser acknowledges the following are not included in providing the installation of Software Assurance:
(a) Fault resolution relating to issues within the Purchasers network or network capacity;
(b) Resolution of issues relating to interoperability of the IP compatible voice system software with other operating systems, network management software or other software applications;

11.2. The Purchaser acknowledges that Ericom, in providing the installation of Software or Software
Assurance, cannot and does not warrant or guarantee:
(a) Uninterrupted or error-free operation of the Equipment while the Software installation is in progress;
(b) That the provision of the Software will achieve or result in a solution to any problem affecting the Equipment; or
(c) That the installed Software will prevent fraud.
(d) That the Software will be error free as supplied by the manufacture.

12. DISCLAIMER/WARNING

12.1. Toll Fraud: The Company disclaims any express or implied warranty that the equipment is technically immune from or, prevents fraudulent intrusions into and/or unauthorised use of the system (including its interconnection to the long distance network). The Purchaser is hereby warned that fraudulent use of the system, including but not limited to DISA, auto attendant, voicemail, 800 and 900 services, is possible.

12.2. Invasion of Privacy: The Company hereby disclaims any express or implied warranty that the equipment is technically immune from or prevents unlawful and/or unauthorised utilisation that may result in the invasion of an individual's right to privacy. The Purchaser is hereby warned that such is possible.

12.3. Loss or Theft of Data: The Company hereby disclaims any express or implied warranty that the equipment is technically immune from or prevents improper, unlawful and/or unauthorized utilisation that may result in the loss of or theft of electronic data. The Purchaser is hereby warned that such is possible.

13. LIABILITIES

13.1. The liability of the Company under the Contract or otherwise or pursuant to any warranties terms or conditions which arise or are impaled pursuant to the provisions of the Trade Practices Act and which may not be excluded shall be limited to the repair or replacement of any faulty or defective Equipment as the case may be, save insofar as any such limitation cannot be imposed. All other terms, conditions and warranties, which might but for this sub-clause arise or be implied, are expressly excluded. Without limiting the generality of the foregoing, the Company shall not be liable for any damage whatsoever or howsoever arising including (inter alia) indirect or consequential loss or damage which the Purchaser or any other party may sustain nor shall the Company be liable for any defect caused in whole or in pan by the manufacturer of the Equipment or Telstra or any other service provider and any of their servants agents and employees.

13.2. The Company shall not be under any liability in relation to any Equipment, which has been maintained or tampered with by any persons who are not properly trained or who are not a direct employee of the Company.

13.3. The Company shall not be liable for any loss or damage incurred due to fraudulent activity from outside or inside sources such as hackers in relation to toll fraud via the service provider network using the purchasers system as a hop off.

13.4. The Company shall not be liable for any loss or damage incurred if the Purchasers network does not allow/provide for emergency calls to 000 at the local site due to the set up and design of the Purchasers network. i.e. limited or no provision of external lines at each site for outgoing emergency calls.

14. GENERAL

14.1. The Company may, in its absolute discretion, and upon such terms and conditions as the Company may determine, allow the Purchaser to substitute a third party as purchaser of the Equipment, provided that this Contract shall continue to bind the Purchaser notwithstanding that it is contemplated by the parties that the Purchaser may obtain some form of finance in respect of its purchase of the Equipment under this Contract, and/or that pursuant to this Contract a finance company may be substituted for the Purchaser as purchaser of the Equipment.

14.2. The Company may sub-contract for the performance of any of its obligations under this contract.

14.3. This Contract supersedes all prior agreements and understandings, including oral representations, between the parties relating to the Equipment and is intended by the parties as the complete and exclusive statement of the terms of this Contract and may be modified only in writing signed by the parties. In the case of any discrepancy between this Contract and any other document this Contract shall prevail.

14.4. Where this Contract has been signed on behalf of the Purchaser by any person, that person warrants that he/she has authority to complete this Contract on behalf of the Purchaser and to bind the Purchaser accordingly.

14.5. The Company may elect to waive any of its rights under this Contract but no such waiver shall affect the Company's rights in respect of any further or continuing or recurring breach or event.

14.6. In the event of any delay or prevention in performance by the Company due to any cause arising from or attributable to any Act of God or to any event beyond the reasonable control of the Company (including but not limited to delays in obtaining Telstra and/or statutory authority approval, strike, lockout, civil commotion, war, fire, explosion, storm, earthquake. failure of plant, compliance with government authority, inability to obtain suitable materials, components, labour, power, failure or delay in delivery or shipment on the part of the manufacturer of the

Equipment, stock shortage or any other thing beyond the Company's reasonable control) the Company shall be under no liability for loss or injury suffered by the Purchaser thereby and delivery and commissioning date(s) shall be postponed during the period of such delay or prevention.

14.7. In the event that any part of these terms and conditions is void, voidable, illegal or otherwise unenforceable may be severed there from and the remaining provisions of these terms and conditions shall remain in full force and effect.

14.8. This contract shall be governed and constructed in accordance with the laws in force in the state of New South Wales and any dispute or litigation arising in relation to this contract shall be dealt with in the appropriate New South Wales court in Sydney.

14.9. Words denoting the singular shall be plural and vice versa. Words denoting any gender shall include all genders.