

# Terms & Conditions

## 1. Definitions:

"The Company" means RawApple Communications. "The Customer" means the person or persons to whom the quotation is addressed. "The Equipment" means the equipment specified. "The Installation" means the date or dates when the Company will install the equipment at the installation site. The "Installation Site" means the place or places where the equipment is to be installed. The "Ready For Service Date" means the date or dates when the equipment will be available for use by the customer.

## 2. General:

- a. This contract shall not be binding on the company until accepted by a duly authorised officer of the Company affixing his or her signature to this contract. A copy of this contract duly signed on behalf of the Company will be dispatched to the Customer. Should the Company decide not to accept this contract, it will notify the Customer of its decision but will not be required to give any explanation for its decision.
- b. This contract supersedes and revokes in every respect all other contracts and agreements (if any) concerning all or part of the equipment between the Company and the Customer.
- c. No terms or representations other than those embodied in this contract shall be binding upon the Company and the Customer acknowledges that he has not accepted the conditions overleaf or entered into this contract in reliance on any such terms or representations. No variation or modification of this contract shall be effective unless accepted by the Company in writing.
- d. Cancellation of orders will only be accepted at the sole discretion of the Company who shall be at liberty to impose whatever conditions for agreeing to such cancellations they deem fit.
- e. Any installation date(s) quoted or dates agreed for delivery of the Equipment or for the Ready For service Date will assume that the Customer fulfils all their obligations in a timely manner. If delays result from any failure of the Customer to do so, the installation date(s) may automatically be extended by a reasonable period and the Company shall be entitled to recover any additional costs should they be incurred.

## 3. Customer Obligations:

- a. **Preparation of the Installation:** If the installation site requires preparation the Customer must take whatever action is required in accordance with the specification stipulated the Company and/or British Telecom before delivery is due to commence.
- b. **Provision of Facilities:** If lifting facilities, scaffolding, unskilled labour, masons, joiners and builders work, electrical power, heating, lighting and ventilation are required these will be provided by the Customer at its own expense. Any cutting away and making good of walls, ceilings and floors and fitting of cableways is the Customers responsibility.
- c. **Access:** The Company and its contractors will be permitted access to the installation site at reasonable times.
- d. **Wayleaves, Approvals etc:** The customer must obtain and pay for all necessary wayleaves and secure the approval of planning, fire or similar authorities if required.
- e. **Connection Approval:** Although the company may be responsible for British Telecom or other necessary approval for the design of the system, the customer must obtain the consent of British Telecom for the connection of the system to the public network. No liability shall attach to the company should approval not be given.

## 4. Installation & Ready for Service:

The Company or its appointed contractors will install the system. Within 7 days of completion of the installation the company will carry out its standard installation tests to show that the system is ready for service. In the event of the company being unable to carry out such tests due to restraints or reasons within the control of the customer the system will automatically be deemed ready for service. If the system fails to pass the installation tests they will be repeated within a reasonable time and on the same conditions.

## 5. Payment:

Unless the system is to be financed through the company a deposit of 60% will be taken with initial order. The balance will be invoiced upon completion of the installation and due for payment within 30 days.

## 6. Alterations:

Changes to the technical specifications of the equipment requested by the customer prior to delivery will only be effective if accepted in writing by a duly authorised representative of the company. Subject to full agreement having been reached on any consequent adjustment to the contract price and target details.

## **7. Responsibilities for Property Risks & Insurance:**

The company will indemnify the Customer against damage to property and death or injury to persons directly caused by the negligence of the Company or its servants, agents or contractors but not otherwise making good such damage to property or compensating death or personal injury provided that:- a) The Company or its insurers are immediately notified of any claim and have full power to negotiate and settle all claims. b) The Company's entire liability for damages to property to be limited to £200,000.00

## **8. Interest:**

Any money due or payable to The Company under the agreement which is ten days or more overdue shall bear interest on a day to day basis at the rate of 4% (four per cent) over National Westminster Bank Base Rate from due date of payment. Monies received may be applied by the Company at its option against such interest prior to application against other monies due from the customer.

## **9. Default & Termination:**

If the customer breaks any provision of this or any other contract with the Company or suffers distress or execution, or commits an act of bankruptcy makes arrangements with creditors or goes into liquidation or receivership (except for amalgamation or reconstruction). The Company may (without affecting any other claim or remedy) suspend performance or determine this or any other contract by written notice and shall be entitled to be paid for any part of the Equipment already delivered, work in progress (including software generated but not supplied) at a rate reasonably based on the Contract Price.

## **10. Legal Construction:**

English Law shall govern this Contract.

## **11. VAT:**

The Prices and Fees specified in the Agreement do not include Value Added Tax and accordingly they will be increased by the gross amount of the Value Added Tax and/or such other taxes as may be chargeable on the supply of equipment or services and the supply and licensing of software from time to time.

## **12. Software Licence:**

(Applicable only where software supplied as part of the System).

Any software is supplied under licence and will be in object code form and in current release state Source materials will not be supplied. The Company warrants that it has the right to license the software supplied and grants the Customer a non-exclusive, non-transferable licence to use the software solely with and for the operation of the System. The customer is not licensed to use software on any other equipment or for any other purpose and may not copy, modify or merge programs without The Company's prior written consent. If the Customer wishes to dispose of the system to a third party The Company undertakes to grant a licence to such third party subject to agreement on acceptable terms and conditions.

## **13. Contingencies:**

The Company shall not be responsible for non-performance in whole or in part of its obligations under any liability to the Customer in respect thereof if such non-performance is due to an act of God, war, insurrection civil commotion, government regulations, embargoes, strikes, labour disputes, illness, flood, fire, tempest or any other cause beyond the reasonable control of the Company.

## **14. Risk & Ownership:**

Equipment supplied by the Company shall be at the Customers own risk immediately on delivery to the Customer or into the custody on the Customer's behalf (whichever is the sooner) and the Customer should therefore be insured accordingly. However, the ownership of the equipment will not pass to the Customer until (a) the Equipment the subject of this contract and (b) all other equipment the subject of any other contract between the Company and the Customer which at the same time for payment of the full price of the equipment sold under such contract has been delivered to the customer but not paid for in full.

## **15. Modifications:**

The Company reserves the right at any time without notice to modify or change or cease the supply of any item of equipment as a result of events beyond the reasonable control of the Company.

# Terms & Conditions for Maintenance

## 1. The Customer Agrees:

- a. To pay the maintenance charges prescribed in the Schedule in all circumstances and if any time should the whole or any part thereof be in arrears for more than 30 days then the Company shall be entitled to suspend the services hereunder until payment is made in full.
- b. If the equipment is to be connected to British Telecom or any other Service Provider's apparatus to comply with all their requirements and at the Customers expense to arrange the provision of any such apparatus specially required for the Customers purpose.
- c. To orally notify the Company immediately of any fault in the Equipment or any repair which may be necessary, such notification to be confirmed in writing and to provide the Company at all reasonable times with access to equipment and allow it to carry out maintenance of the Equipment under the terms of this Contract.
- d. Not to maintain, service, repair, adjust tamper or alter the Equipment or Extension wiring. In the event of requiring any alterations the Equipment or Extension wiring to give the Company 14 days written notice and should any alterations be effected by an agent not appointed by the company to allow the Company the right of inspection of that work which should be carried out in accordance with the current "Code of Practice" and should the work be found to be unsatisfactory to remedy the defect within 90 days of inspection or pay the Company's charges for effecting the remedy. Any breach of this condition may result in the Contract being terminated by the Company, if the Company so desires.
- e. To pay the Company's charge for reprogramming and/or service visits as a result of a programming error effected by the Customer or his agent.
- f. Not to assign the benefit of this Contract without previous written consent from the Company.

## The Company Agrees

- a. To maintain the Equipment at the installation address in the schedule (or such other address as may be agreed in writing by the Company) in efficient working order and during the continuance of the Contract to execute by its servants, agents or contractors without charge all repairs and replacements to the Equipment necessitated by fair wear and tear and/or faulty workmanship and/or faulty materials provided the Customer shall have duly notified the Company of such fault or necessary repair in accordance with Clause 1 (c) hereof. Such service to be provided between the hours of 9.00am and 5.00pm Monday - Friday excluding Public Holidays. Provided however that the Company (without prejudice to the terms and conditions of this Contract or the Customers liability for payment of maintenance charges) shall not be obliged to service the Equipment if any such maintenance charge is overdue.
- b. At the expense of the customer to provide service where failure of the Equipment is subsequently found to be due to mis-operation or failure of British Telecom or any other Service Provider's equipment and/or Host PBX systems and/or electricity supply service or if any person not authorised by the Company to do so shall have tampered with the equipment.
- c. At the request and expense of the Customer: to carry out any alterations to the Equipment or Extension Wiring and/or upon receipt of 14 days notice to allow the Customer's appointed agents to carry out alterations to the Equipment or Extension wiring. The Company reserves the right to inspection of such work and if found.
- d. To be unsatisfactory shall require the Customer to remedy the defect within 90 days of the inspection. At the request and expense of the Customer to move the Equipment to alternative premises where in the opinion of the Company suitable service and reception facilities exist provided the Equipment does not thereby pass out of the possession of control of the Customer.

## 3. Duration of the Contract:

The term of this Contract shall be the initial period of maintenance specified in this schedule and thereafter from year to year unless either party gives to the other three month's written notice of termination expiring at the end of any annual maintenance period. Provided that if the Customer has committed any breach of this Contract and has not remedied such breach within fourteen days after notice to that effect from the Company this Contract may be terminated by notice from the Company to the Customer at the latter's last known address.

## 4. Variation of Maintenance Charge:

The Company may vary the maintenance charge payable hereunder by written notice to the Customer provided that no such variation shall take effect earlier than the initial period specified in the schedule or less than one year after a preceding variation.

## **5. Prohibition of Oral Variations:**

The terms and conditions in this Contract are the sole terms and conditions of the Contract between the Company and the Customer. No variation or modification of these terms or conditions and no agreement made or purported to be made between the company and the Customer inconsistent with these terms or conditions shall be valid or of any effect unless made in writing and signed by a Director or the appointed officer of the Company. No representation relating to or in any way connected with the Equipment shall be deemed to be made in writing and signed by a Director or the appointed Officer of the Company.

## **6. Exclusions:**

- a. The Company shall not be liable for any delay in the execution of any work of installation, repair, replacement, alteration or removal of or to the Equipment howsoever caused.
- b. The Company shall not be liable for making good defects in the electricity supply, British Telecom or any other Service Provider's telephone service and connections and/or Host PBX systems. Service calls for these Purposes will be charged to the Customer at the Company's standard rates.
- c. The Company shall not be liable for repair of damage resulting from accident, transportation, neglect or Misuse failures of electrical power, surge of electrical power or causes other than ordinary use.
- d. The Company shall in no circumstances be liable for any failure or defective working of the Equipment due to any fault, failure or change in the electricity supply service and/or British Telecom or any other Service Provider's equipment and/or Host PBX systems.
- e. In no circumstances shall the Company be liable for any loss of profit, business or production or any similar loss or damages whether direct, indirect or consequential howsoever caused.
- f. The Company shall not be liable for making good defects to the customers telephone stations or other peripheral apparatus, unless specified in the schedule, and service calls for these purposes will be charged.
- g. To the customer at the Company's standard rates. The Company shall not be liable under section 2 (a) for costs of making good defects in the overhead and Underground cables from the Associated Wiring and service calls for these purposes will be charged to the Customer at the Company's standard rate.

## **7. General**

The Company's right hereunder shall not be affected by granting any time or indulgence to the customer. All charges under this Contract are subject to Value Added Tax. This Contract is not a VAT invoice, invoices will be sent to the customer for all payments under this Contract.