

## GENERAL CONDITIONS (Version 7 – 26 October 2010)

### Contract

This Contract comprises these General Conditions, and any order expressed to be subject to these General Conditions. Unless otherwise stated capitalized expressions used in these General Conditions shall have the meanings ascribed to them in any related order.

### Assignment and Subcontracting

The Supplier shall not assign or subcontract any part of this Contract without first obtaining BT's written consent.

### Delivery

The Supplier shall deliver Supplies to such delivery address(es) and at such times as are specified by the Delivery Contact and, if requested to do so, provide details of the weight and material composition of any packaging and/or batteries forming part of or accompanying Supplies.

### Quality Of Supplies

Supplies shall be to BT's reasonable satisfaction and comply with:

- the latest applicable issues of all UK and International standards; and
- this Contract and all documents referred to in it.

The Supplier shall give BT or its representatives reasonable access to all its relevant premises and co-operate in any quality assessment.

### Price

The price of Supplies excludes VAT, but includes all royalties, licence fees or similar expenses arising from the use of any intellectual property and the delivery and, where applicable, off-loading of Supplies.

### Payment and Invoicing

- In this Condition, "iSupplier" means the Oracle iSupplier application, enabling, via the internet, the receipt of purchase orders, visibility and tracking of shipment receipting details, and invoice and payment data, including the secure transmission and storage of VAT invoices, without the delivery of paper invoices, by electronic means.
- If BT requires the Supplier to use iSupplier, the Supplier shall, following supply of all or (where agreed by BT in writing) each instalment of Supplies, submit its invoices using only iSupplier and agrees that BT may reject any invoice not so submitted.
- If BT does not require the Supplier to use iSupplier, the Supplier shall, following supply of all or (where agreed by BT in writing) each instalment of Supplies, send a valid VAT invoice to BT [insert relevant name of BT Line of Business] Accounts Payable, PO Box 371, Parkway Business Centre, Manchester M14 0WE, United Kingdom (or such address as BT may specify from time to time) for the price of Supplies delivered in accordance with this Contract.
- Each invoice shall specify: its date; the correct BT and Supplier legal entities in accordance with the Contract; the VAT amount in sterling (and, if the agreed payment currency is other than sterling, the rate at which the VAT amount has been converted from the agreed payment currency to sterling in accordance with any then applicable HM Revenue & Customs requirements); the VAT Registration number; the VAT rate applicable, this Contract number; the order reference; line reference; the relevant BT item code(s) if appropriate; the correct price; the full description of the Supplies to which the invoice relates (as defined in this Contract); the portion of the Supplies for which payment is due and, if appropriate, the cumulative amount invoiced to date. The agreed payment currency and the Incoterm must be specified in relation to any non-UK transaction. Any discounts should be separately shown with a clear indication of what the discount is for plus information sufficient to comply with Inland Revenue and Customs & Excise requirements. If the agreed payment currency is other than sterling, the VAT amount shall be payable by BT to the Supplier in sterling notwithstanding such agreement. Where iSupplier is used, the Supplier shall ensure on each occasion that a pdf image of the tax invoice showing identical information to that inputted by the Supplier is attached to the iSupplier invoice record. The Supplier shall raise a separate

invoice for each purchase order reference number. BT may reject any invoice if it is for multiple purchase order reference numbers or otherwise does not comply with these General Conditions.

- BT shall pay due and valid invoices on or before the first Monday (or, if that Monday is a public holiday, on the next day that is not a public holiday) after the expiration of 42 days from the date BT receives the invoice. Payment of 100% of the Contract Price shall become due upon complete performance of this Contract.
- Payment shall not become due to the Supplier and the Supplier shall not submit invoices for payment until the Supplier has fully completed its obligations under and in accordance with this Contract
- The Supplier shall submit invoices within one year of the date upon which the payment they relate to becomes due to the Supplier. BT shall have no liability to make payments in respect of invoices not so submitted.
- BT shall not be liable to the Supplier for or in connection with any failure or unavailability of iSupplier.

### **Guarantee**

The Supplier shall promptly at its own expense:

- remedy (by repair or replacement at BT's option) defects in Supplies appearing within one year which arise from faulty design, workmanship, materials or the Supplier's negligence and shall pay for their return carriage; and
- repair or replace (at BT's option) Supplies lost or damaged in transit.

### **Title and Risk**

Without prejudice to BT's other rights:

- title in Supplies passes to BT on the earlier of delivery or payment (including part payment); and
- risk in Supplies is borne by the Supplier until delivery.

### **Security of Information**

(a) Without prejudice to any obligations of confidentiality it may have, where the Supplier or Supplier's personnel have access to BT's computer systems or to BT's information, the Supplier shall:

- ensure such information is not disclosed to or accessed by Supplier's personnel not directly employed by the Supplier without BT's prior written consent; and
- keep (and ensure all relevant Supplier's personnel keep) such information secure and confidential, act only on BT's instructions with respect to it, and comply with such further reasonable requirements from time to time of BT for the security of it; and
- allow (and ensure that all relevant Supplier's personnel allow) BT or its authorised representatives such access to premises, systems and records containing such information as is reasonably necessary to assess the Supplier's compliance with this Condition.

(b) Any breach of this Condition by the Supplier shall be deemed to be a material breach of this Contract.

(c) Without prejudice to BT's rights and remedies under this Contract, the Supplier shall at its own cost and expense take all steps necessary to restore the lost or corrupted information to the last back-up and/or terminate the unauthorised use of or access to the information to the extent it caused such loss, corruption or unauthorised use of the information.

### **Access to iSupplier**

(a) The provisions of this Condition shall apply only if the Supplier uses iSupplier (as defined in the Condition headed "Payment and Invoicing").

(b) The following expressions are used in this Condition:

"Access" - interconnection with iSupplier and access to BT information.

"Authorised" - having undergone and being fully compliant with NAIF.

"BT Security Contact" – Steve Hughes, BT Global Security Sourcing Manager, 01977 591640, or such other person whose details shall be notified by BT to the Supplier from time to time.

"BT Systems" – iSupplier.

"Guide" – the latest applicable issue of BT's 'A Guide to Information Security for Third Parties' at [http://www.selling2bt.bt.com/Downloads/thirdparty\\_guide\\_issue\\_FINAL.pdf](http://www.selling2bt.bt.com/Downloads/thirdparty_guide_issue_FINAL.pdf)  
"NAIF" - BT's Network Authorisation and Interconnect Facility process (NAIF) as described at [http://www.selling2bt.bt.com/Downloads/thirdparty\\_guide\\_issue\\_FINAL.pdf](http://www.selling2bt.bt.com/Downloads/thirdparty_guide_issue_FINAL.pdf)  
"Purposes" - the proper performance by the Supplier of its obligations under and in accordance with this Contract.

(c) BT allows (so far as it can and is able to do so) the Supplier, while the Supplier is Authorised, Access solely for the Purposes.

(d) In relation to Access, the Supplier shall (and, where relevant, shall procure that all personnel engaged by it):

- ensure each individual user has a unique user identification and password known only to such user;
- ensure each individual receives appropriate security training in the use, handling and management of passwords and information;
- ensure that physical access to computer equipment having Access or storing or having access to BT Information is password-protected to reflect the Supplier's obligations under the Condition headed "Security of Information";
- ensure onward bridging or linking to BT computer systems is prevented.
- take all reasonable steps to ensure no viruses or malicious code (as the expressions are generally understood in the computing industry) are introduced to iSupplier and/or BT information;
- not have or permit Access other than for the Purposes in accordance with the Contract;
- take all reasonable steps to prevent unauthorised Access;
- notify BT immediately should any personnel engaged by the Supplier move off this Contract, thus enabling BT to disable the access rights to systems and information; and
- comply with the Guide.

(e) Any breach of this Condition by the Supplier shall be deemed to be a material breach of this Contract and the Supplier indemnifies BT from and against any costs, losses, damages, proceedings, claims, expenses or demands incurred or suffered by BT which arise as a result of any such breach.

(f) The Supplier shall inform the BT Security Contact immediately upon its becoming aware of any actual or suspected unauthorised Access or misuse of iSupplier or BT information or breach of any of the Supplier's obligations under this Condition.

(g) This Condition shall survive this Contract.

### **Confidentiality**

(a) In this Condition, "Openreach Information" and "BT Wholesale Information" mean respectively Information which BT from time to time identifies to the Supplier as being commercially confidential, or is by its nature commercially confidential, to the BT lines of business known as "Openreach" or "BT Wholesale", as the case may be.

(b) Except with BT's agreement, the Supplier shall not disclose:

- Openreach Information to any BT employee, agent or contractor unless the Supplier knows that such BT employee, agent or contractor is employed within or by Openreach; or
- BT Wholesale Information to any BT employee, agent or contractor unless the Supplier knows that such BT employee, agent or contractor is employed within or by BT Wholesale.

(c) The Supplier shall keep confidential all information obtained from BT ("Confidential Information") and shall not without BT's prior written consent disclose the existence of this Contract or disclose or use any of Confidential Information for any purpose except as necessary for properly performing this Contract.

(d) Paragraphs (b) and (c) this Condition shall not apply to: information which is in the public domain otherwise than through a breach of this Condition; or information already known to the recipient and not the subject of any obligation of confidentiality; or information obtained by the recipient from a third party who is free to disclose it; or replicated by development independently carried out without access to or knowledge of Confidential Information. The Supplier shall ensure that any subcontractor used in relation to this Contract is bound by a provision in similar terms to this Condition in relation to Confidential Information.

## **Indemnity**

The Supplier indemnifies BT against all claims, liability, demands, proceedings, costs and expenses arising:

- (a) in respect of loss or damage to any property, or death or personal injury of, any person arising as a result of any act or omission of the Supplier, its employees, agents or subcontractors (or their employees or agents) in relation to this Contract except to the extent such loss, damage, death or personal injury is caused by the negligence of BT; or
- (b) under Part 1 of the Consumer Protection Act 1987 in relation to Supplies; or
- (c) in respect of any claim that Supplies infringe or allegedly infringe any intellectual property rights (including without limitation, patents, copyright, registered designs and design rights).

## **Limitation of Liability**

- (a) Subject to paragraph (c) of this Condition, neither party shall be liable to the other under this Contract for any indirect or consequential loss or damage
- (b) Subject to paragraph (c) of this Condition the liability of either party to the other under this Contract shall not exceed £1,000,000 in aggregate.
- (c) Paragraphs (a) and (b) of this Condition shall not apply to loss or damage arising out of or in connection with:
  - death or personal injury; or
  - the wilful failure of either party to perform its contractual obligations; or
  - paragraphs (b) or (c) of the Condition headed "Indemnity".

## **Insurance**

- The Supplier shall at its own expense effect and maintain for the duration of this Contract such insurances as required by any applicable law and as appropriate in respect of its obligations under this Contract. Such insurances shall include third party liability insurance with an indemnity limit of not less than £1 million for each and every claim.
- If the Supplier cannot provide evidence of such insurance to BT on request, BT may arrange such insurance and recover the cost from the Supplier.
- The Supplier shall notify BT as soon as it is aware of any event occurring in relation to this Contract which may give rise to an obligation to indemnify BT under this Contract, or to a claim under any insurance required by this Contract.
- This Condition shall not be deemed to limit in any way the Supplier's liability under this Contract.

## **Termination**

Without prejudice to BT's other remedies, BT shall have the right to terminate this Contract forthwith, and to claim the additional cost of obtaining replacement supplies if:

- the Supplier commits a material breach or persistent breaches of this Contract and fails to remedy the breach within ten days of receiving written notice to do so; or
- the Supplier becomes insolvent, ceases to trade, compounds with its creditors, commits an act of bankruptcy, or a bankruptcy petition or bankruptcy order is presented or made in relation to the Supplier; or has a receiver appointed, or a petition for an administration order presented or made; or a resolution or petition to wind up the Supplier is passed or presented (otherwise than for reconstruction or amalgamation).

## **Compliance**

The Supplier (and Supplies) shall comply with:

- all applicable legislation, regulations or by-laws of any relevant local or other authority as well as any BT site regulations that may be notified; and
- (and shall ensure that those engaged by the Supplier in connection with this Contract comply with) BT's Anti-Corruption and Bribery Policies at <http://www.selling2bt.bt.com/Anti-CorruptionandBribery/index.htm> as though such policies applied to and had been adopted by the Supplier, and promptly provide to BT on request from time to time all information BT may reasonably require in respect of such compliance.

**General**

- These Conditions are in addition to and shall not prejudice or affect any terms or rights implied under statute or common law. Otherwise this Contract is the entire contract between BT and the Supplier.
- No variation to this Contract shall have effect unless agreed by both parties in writing.
- No waiver by either party shall be effective unless made in writing.
- A person who is not a party to this Contract may not enforce any of its terms under this Contracts (Rights of Third Parties) Act 1999.
- The Conditions headed "Guarantee", "Security of Information", "Access to iSupplier", "Confidentiality", "Indemnity", "Limitation of Liability" and "General" shall survive this Contract.
- This Contract shall be governed by English law and subject to the exclusive jurisdiction of the English Courts.