

Terms of Trade

1. Terms

The terms (the trade of terms), as amended or replaced from time to time, govern the supply by Vital iT Limited (we and us) to the purchaser (you) of:

Goods including software and hardware; and Services including installing Goods, establishing computer systems made up of a combination of Goods (Networks), and identifying and repairing faults (Services), whether for your own use or for lease by you (as Lessor) to one of your customers (an End User) (Lease). Also, by these Terms of Trade you apply for credit; and Pursuant to the Personal Property Securities Act 1999, grant us a security interest in all Goods that we supply to you.

2. How to order Goods and Services

To order Goods and/or Services from us you need to be currently approved by us for credit purposes, unless we reach an alternative payment arrangement with you. We will advise you promptly if we approve you for credit purposes or withdraw our approval. To place orders on a casual basis: You (or the End User if you are Leasing) must discuss requirements including preferred delivery dates with us; and You must place an order (an Order) with us. We will advise you promptly of whether we accept your Order. To receive Services from us regularly under a Maintenance Service Plan Agreement, you must; discuss your requirements with us; and enter into an agreement with us in the form of a Maintenance Service Plan Agreement.

3. Application of Terms of Trade

All Goods and Services that we supply to you (whether in relation to an Order, a Maintenance Service Plan Agreement or otherwise) are subject to these Terms of Trade. In addition, all Services that we supply under a Maintenance Service Plan Agreement are subject to the terms of that Maintenance Service Plan Agreement. These Terms of Trade and any current Service Level Agreement prevail over any document issued by you or on your behalf, even if purported to be accepted by us, and your acceptance of any Goods or Services from us indicate acceptance of these Terms of Trade. To the extent that there is any inconsistency between these Terms of Trade and any current Service Level Agreement, the Service Level Agreement will prevail. These Terms of Trade replace any previous versions of Terms or Agreements issued by us, in their entirety.

4. Access to Facilities

To help us provide you with Goods and Services you must: ensure that we have full access to any Goods we have supplied to you, and to your (or, if applicable, the End User's) computer system, computer equipment and backup facilities, as reasonably required; ensure that we have all the information, facilities and services that we can reasonably require to perform our obligations, and ensure that we receive help to ascertain the cause of any faults in any Goods, in your (or, if applicable, the End User's) computer system, or in any other goods or equipment.; and ensure that you have any necessary authorizations for any computer software that you (or the End User), use on the computer system, equipment or facilities; and ensure that your representative (or, if applicable, the End User's representative) is on site at the same time as our representative.

5. Quotation and Prices

Where the quotation is given by Vital iT Limited for Products and Services: The quotation shall be exclusive of goods and services tax unless specifically stated on the quotation; Vital iT Limited reserves the right to amend the quotation because of circumstances beyond its control; Unless otherwise stated the quotation shall be valid for thirty days from the date of issue. For all other accepted Orders, our normal hourly rate will apply plus GST Price excludes travel time which is charged out at the normal hourly rate. A deposit may be required by Vital iT for 50% of the Price of Goods when we accept your Order. Balance is payable within 7 days of delivery.

6. Payment

Unless we agree otherwise in writing payment for Products and Services shall be made as stipulated by Vital iT Limited as follows; In full on or within 7 days from date of invoice. In full on or before the 20th day of the month following the date of invoice. Failure to pay us by the Due Dates: (whether in relation to an Order or a Service Level Agreement) you will be in default, and we may: Choose not to perform for you if your account with us is overdue. This includes but it not limited to emergency services, charge you default interest of 2.5% per month calculated on a daily basis on the overdue amount, from the due date until the date when payment is made. The charging of default interest does not imply the granting of an extension of credit; recover from you (as a debt owing) all costs incurred in attempting to obtain payment, including legal costs (on a solicitor and own client basis), debt collection costs and administrative charges. Any amounts in dispute will not in any way relieve the customer from liability to make payment of any other monies, which may be owed or become owing by the customer to Vital iT. The customer shall not be entitled to offset any disputed amount or amounts against any other payments that are due or may become due or payable to Vital iT Limited.

7. Risk and Ownership

Risk of loss, deterioration or damage from any cause, of any Goods that we supply to you, passes to you on delivery of the Goods to you (or on delivery of the Goods to the End User, if we deliver them to an End User). We retain ownership of the Goods until you have paid us all amounts that you owe us in relation to all Goods and Services that we have supplied to you. If any Goods are mixed or commingled (as defined in the Personal Property Securities Act 1999) (PPSA) with other goods before payment, we will own the resulting mixed or commingled goods as if they were Goods that we had supplied. After delivery, but while ownership of Goods remains with us: you must ensure that they are stored so they are clearly identifiable as belonging to us; You may (unless we advise you otherwise, or you have breached these Terms of Trade) use, lease at market rates, or sell for full value, the Goods in the ordinary course of your business. If you lease or sell the Goods, you must hold the proceeds (separately and in identifiable form) in trust for us, and pay them into a bank account nominated by us if we request this; except as provided in clause 8.3.2, you must not grant anyone any interest in or charge over the Goods; and You must insure the Goods at your cost, naming us as loss payee, for full replacement cost against all risks. We may apply the proceeds of any insurance payment to reduce the amount that you owe us.

8. Title and Security (Personal Property Securities Act 1999)

You acknowledge that: these Terms of Trade are a security agreement for the purposes of section 36 of the PPSA; we take a security interest in all Goods that we have previously supplied to you (if any) and all Goods that we will supply to you in the future, to secure (with equal priority) payment of all amounts that you owe us; the security interest will continue until you have paid all amounts owing; and You waive your right to receive a verification statement under section 148 of the PPSA. You; will promptly sign any further documents, provide any further information, or do any other things that we reasonably require to perfect and maintain the perfection of our security interest (including by registering a financing statement or financing change statement); indemnify (and if requested reimburse) us for all expenses that we incur in registering a financing statement or financing charge statement or releasing Goods charged by the statement; and will give us 14 days' prior written notice of any change in your name, business practice or any other details, and use your best endeavours to ensure that any applicable financing change statement is registered disclosing your new details. To the fullest extent permitted by law, you and we contract out of section 114(1)(a) of the PPSA, and out of your rights referred to in sections 107(2)(c), (d), (h), and (i) of the PPSA. If and for so long as we are not the secured party with priority over all other secured parties in respect of any particular Goods, you and we agree that section 109(1) of the PPSA does not apply to those particular Goods.

9. Warranties and Liability

We warrant that if, due to our fault, any Network that we establish does not allow the Goods in that Network to function simultaneously during the 30 days immediately following the commissioning Date for the number of users specified in our quotation, and you notify (or, if applicable, the End User notifies) us of the fault, we will remedy the fault free of charge.

Where Goods are covered by a manufacturer's warranty we will endeavour to ensure that any faults in the Goods that are notified to us are attended to quickly by the manufacturer. However, to the extent that we are not reimbursed by the manufacturer, we will charge you for our Services in attending to the faults. Subject to clauses 10.1 and 10.2, all warranties, representations and conditions relating to the Goods and Services, whether express or implied, whenever arising, and whether originating by statute, law, trade, custom or otherwise, are expressly excluded to the fullest extent permitted by law. In particular: we do not warrant that the Goods will be error-free or that we will be able to correct all errors in the Goods, any Network, or your (or, if applicable, the End User's) computer system; you acknowledge that the Goods and Services are acquired for the purposes of a business, and that the Consumer Guarantees Act 1993 will not apply; and you will indemnify us and keep us indemnified against all costs (including legal costs on a client and own solicitor basis), expenses, damages, losses (including loss of profits, data or business opportunity) that we suffer or incur as a result of any claim by an End User, whether in tort (including negligence), breach of statutory duty, equity or otherwise. If, despite the other provisions of these Terms of Trade, we are found to be liable to you, then our liability is limited to an amount equal to the price you paid for the particular Good or Service in respect of which the liability arises.

10. Intellectual property

You acknowledge that Vital iT (or our supplier) are the sole owner of all intellectual property (including business know-how, ideas, methodologies, routines, systems and processes) relating to or arising, directly or indirectly, out of the Goods and Services that we supply to you, or developed or contributed to by us in relation to any information, fault, repair or documentation that we supply to you, or as a result of us performing Services or any other work for you.

11. Disputes and Return of Products

No claim relating to Products and Services will be considered unless made within 7 days of the delivery. No products will be accepted by Vital iT unless prior approval has been given. There will be no returns on special or indent orders or software. Products must be returned unused, undamaged, unopened and in original the packaging. The client is liable for all costs associated with returns. At 15% restocking fee applies.

12. Confidential information

Each party agrees to always keep the other party's Confidential Material confidential and not to: use the Confidential Material for any purpose other than for the purpose for which it was supplied; or Copy or reproduce any of the Confidential Material in any way, except where disclosure is necessary to enable an End User to use Goods or Services under lease, or where the party that owns the Confidential Material has consented to disclosure. On request, each party will ensure that any Confidential Material (including any copies of it) that it possesses or controls (and, where that party is a Lessor, that an End User possesses or controls) and that belongs to other party is returned to that other party.