

DELTA 365 LIMITED
TELEPHONE SYSTEMS - TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

1.1 In these terms and conditions (**Terms**), the following definitions apply:

Agreement	the agreement between the Company and the Customer for the sale and purchase and installation of the Goods in accordance with these Terms.
Company, We, Us, Our	Delta 365 Limited (Company Number: 09325250) whose Registered Office is at 2-4 Packhorse Road, Gerrards Cross, Buckinghamshire, SL9 7QE
Customer, you	the individual, company, entity, organisation or business that purchases the Goods from the Company.
Goods	the goods (including any instalment of the goods or any parts for them) set out in the Order.
Order	the Customer's order for the Goods, as set out the equipment order and maintenance contract.
Working Day	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

1.2 In these Terms, the following rules apply:

1.2.1 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.2 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.3 A reference to **writing** or **written** includes faxes and emails.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Terms. The Customer is responsible for:

2.1.1 ensuring that the terms of the Order are complete and accurate; and

2.1.2 supplying the equipment set out in any the specification for the equipment that is required to enable the software to run, including servers and PCs (the **Specification**).

2.2 The Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order, at which point the Agreement shall come into existence.

2.3 We may accept or reject an Order at Our sole discretion.

2.4 Once an Order has been accepted by the Company, the Customer may not cancel the Order.

2.5 The Agreement constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Agreement.

2.6 These Terms apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.7 Any samples, drawings, descriptive matter, or advertising produced by the Company are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Agreement or have any contractual force.

2.8 Any quotation given by Us shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.

3. GOODS

3.1 The Goods are described in the equipment order and maintenance contract.

3.2 the Company reserves the right to amend the Specification of the Goods if required by any applicable statutory or regulatory requirements.

4. DELIVERY

4.1 Delivery of the Goods shall be made by the Company delivering the Goods to and installing the Goods at the site(s) of the Customer specified in the Order at which the Goods are to be delivered and installed (**Installation Address**).

4.2 Delivery of the Goods shall be completed on installation of the Goods at the Installation Address.

4.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. We shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.4 We may deliver the Goods by instalments. Each instalment shall constitute a separate Agreement. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4.5 The Customer shall be solely responsible for and where applicable shall ensure that at the date of delivery:

4.5.1 an adequate mains electricity supply with appropriate earth is provided at the Installation Address; and

4.5.2 all equipment which causes or is likely to cause interference to the Goods or to the use and operation of the Goods is adequately suppressed, screened or otherwise maintained so as to prevent such interference.

5. QUALITY

5.1 the Company warrants that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**), the Goods shall:

5.1.1 conform in all material respects with their description; and

5.1.2 be free from material defects in design, material and workmanship.

5.2 Subject to Clause 5.3, if:

5.2.1 the Customer gives notice in writing to the Company during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in Clause 5.1; and

5.2.2 the Company is given a reasonable opportunity of examining such Goods; and

5.2.3 the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Customer's cost,

We shall, at Our option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 We shall not be liable for Goods' failure to comply with the warranty set out in Clause 5.1 in any of the following events:

5.3.1 the Customer makes any further use of such Goods after giving notice in accordance with Clause 5.2;

5.3.2 the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, commissioning, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

5.3.3 the defect arises as a result of relocation or installation of the Goods by any person other than the Company or a person acting under the Company's instructions;

5.3.4 the defect arises as a result of the Company following any drawing, design or due to the equipment supplied by the Customer;

5.3.5 the Customer alters or repairs such Goods without the written consent of the Company;

5.3.6 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;

5.3.7 the Goods differ from the equipment order and maintenance contract as a result of changes made to ensure they comply with applicable statutory or regulatory requirements;

5.3.8 the Customer is in breach of any of the provisions in Clause 4.5;

5.4 The warranty set out in Clause 5.1 shall not apply to parts, materials, equipment, or software not provided by the Company.

5.5 We shall not be liable for:

5.5.1 ensuring call cost savings or cost savings on activation of use of the Goods via alternative network providers;

5.5.2 any fault or failure of the Customer's chosen network providers to meet dates for provision or moving of lines; and

5.5.3 changes by the Customer's chosen Network Provider(s).

- 5.6 Except as provided in this Clause 5, We shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Clause 5.1.
- 5.7 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Agreement.
- 5.8 These Terms shall apply to any repaired or replacement Goods supplied by the Company.

6. OWNERSHIP AND RISK

- 6.1 Delivery of an Order shall be completed when the Company installs the Goods at the Installation Address and the Goods will be the Customer's responsibility from that time.
- 6.2 The Customer will own the goods on the later of installation of the Goods or once the Company has received payment in full for:
- 6.2.1 the Goods; and
- 6.2.2 all other sums which are or which become due to the Company from the Customer on any account.
- 6.3 Until ownership of the Goods has passed to the Customer under Clause 6.2, the Customer shall:
- 6.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
- 6.3.2 store the Goods (at no cost to the Company) in satisfactory conditions and so that they remain readily identifiable as the Company's property;
- 6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.3.4 keep the Goods insured on the Company's behalf for its full price against all risks to the Company's reasonable satisfaction, and hold the proceeds of such insurance on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account. On request the Customer shall produce the policy of insurance to the Company.
- 6.4 The Customer shall not resell the Goods before ownership has passed to it unless the third party is notified that it does not have title to such Goods.
- 6.5 The Customer grants to the Company, 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 your right to possession has terminated, to recover them. All costs incurred by the Company in repossessing the Goods shall be borne by the Customer.

7. PRICE AND PAYMENT

- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Company's published price list in force as at the date the Company accepts the Order.
- 7.2 We may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- 7.2.1 any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- 7.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
- 7.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate or accurate information or instructions.
- 7.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 7.4 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 7.5 We shall invoice the Client for:
- 7.5.1 the deposit for the Goods in advance of the Goods being delivered; and
- 7.5.2 the balance of the Order upon completion of the installation of the Goods.
- 7.6 The Customer shall pay the invoice in full and in cleared funds within 14 Working Days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Company. Time of payment is of the essence.
- 7.7 If the Customer fails to make any payment due to the Company under the Agreement by the due date for payment, then:
- 7.7.1 We may cancel or suspend any further deliveries to the Customer;
- 7.7.2 the Customer shall pay interest on the overdue amount at the rate of 4% per annum above NatWest Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. Non-DD payments will attract a £2.50 charge per line, service or mobile number per month. In addition, a late payment fee of £25 will be applied to all late payments.
- 7.8 The Customer shall pay all amounts due under the Agreement in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). We may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

8. TERMINATION AND SUSPENSION

- 8.1 If the Customer becomes subject to any of the events listed in Clause 8.2, We may terminate the Agreement with immediate effect by giving written notice to the Customer.
- 8.2 For the purposes of Clause 8.1, the relevant events are:
- 8.2.1 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

8.2.2 the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

8.2.3 the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy;

8.2.4 a change of Control of the Customer.

8.3 Without limiting Our other rights or remedies, We may suspend provision of the Goods under the Agreement or any other contract between the Customer and the Company if the Customer becomes subject to any of the events listed in Clause 8.2.1 to Clause 8.2.3, or the Company reasonably believes that the Customer is about to become subject to any of them.

8.4 On termination of the Agreement for any reason the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest.

8.5 Termination of the Agreement, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

8.6 Clauses which expressly or by implication survive termination of the Agreement shall continue in full force and effect.

9. LIMITATION OF LIABILITY

9.1 Nothing in these Terms shall limit or exclude the Company's liability for:

9.1.1 death or personal injury caused by Our negligence, or the negligence of Our employees, agents or subcontractors (as applicable);

9.1.2 fraud or fraudulent misrepresentation;

9.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;

9.1.4 defective products under the Consumer Protection Act 1987; or

9.1.5 any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.

9.2 Subject to Clause 9.1, the Company's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Agreement shall be limited to one hundred per cent (100%) of the total Charges paid under the Agreement.

9.3 Subject to Clause 9.1, We shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement for:

9.3.1 loss of profits;

9.3.2 loss of sales or business;

9.3.3 loss of agreements or contracts;

9.3.4 loss of anticipated savings;

9.3.5 loss of use or corruption of software, data or information;

- 9.3.6 loss of damage to goodwill; and
- 9.3.7 any indirect or consequential loss.

9.4 This Clause 9 shall survive termination of the Agreement.

10. DATA PROTECTION

10.1 If the Company processes any Personal Data on the Customer's behalf when providing the Services, the parties record their intention that the Customer shall be the data controller (as defined in the DPA) and We shall be a data processor (as defined in the DPA) and in any such case the Customer and We shall comply with their respective obligations under the DPA:

10.1.1 the Customer shall ensure that it is entitled to transfer the relevant Personal Data to the Company so that We may lawfully use, process and transfer the Personal Data in accordance with this Agreement on the Customer's behalf within the EC;

10.1.2 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing or disclosure of the Personal Data or its accidental loss, destruction or damage.

10.2 Notwithstanding Clause 10.2, We may collect and process the following data about the Customer:

10.2.1 information which We collect or which the Customer submits to the Company during any sales or registration process;

10.2.2 information the Customer provides when filling in forms or by corresponding with the Company by phone, e-mail or otherwise. This includes information the Customer provides when it requests the Services. The information the Customer gives to We may include names, addresses, e-mail addresses and phone numbers of users of the Services and of the Customer and financial and credit card information.

10.3 The Customer agrees that We may use information held about the Customer and users of the Services in the following ways:

10.3.1 to deliver products and services ordered by the Customer, for security and emergency service support, for credit checking and fraud prevention, and for product analysis;

10.3.2 to carry out the Company's obligations arising from any contracts entered into between the Customer and the Company and to provide the Customer with the information, products and services that it requests from the Company;

10.3.3 to notify the Customer about changes to the Services.

10.4 The Customer agrees that We may share information and data provided by the Customer including any Personal Data of users of the Services to any member of the Company's group, which means the Company's subsidiaries, ultimate holding company and its subsidiaries, as defined in section 1159 of the UK Companies Act 2006.

11. NOTICES

11.1 Any notice or other communication given to a party under or in connection with the Agreement shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this Clause, and shall be delivered

personally, sent by pre-paid first class post or other next Working Day delivery service, commercial courier, fax or email.

- 11.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 11.1; if sent by pre-paid first class post or other next Working Day delivery service, at 9.00 am on the second Working Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Working Day after transmission.

12. GENERAL

- 12.1 **Force Majeure.** Neither party shall be liable for any failure or delay in performing its obligations under the Agreement to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

12.2 Assignment and other dealings.

12.2.1 We may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of Our rights under the Agreement and may subcontract or delegate in any manner any or all of Our obligations under the Agreement to any Authorised Party, third party or agent.

12.2.2 The Customer shall not, without the prior written consent of the Company, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Agreement.

- 12.3 **Severance.** Each of the Clauses of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining Clauses will remain in full force and effect.

- 12.4 **Waiver.** Any failure by either party to exercise or enforce its right under the Agreement shall not be a waiver of that right, nor prevent such party from exercising or enforcing such right at a later time.

- 12.5 **Third party rights.** No one other than a party to the Agreement shall have any right to enforce any of its terms.

- 12.6 **Variation.** Except as set out in these Terms, no variation of the Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Company.

- 12.7 **Governing law.** The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

- 12.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).