

Terms and Conditions of Sale for Telephone Systems

1. Interpretation

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

Agreement	the agreement between Protel Communications Ltd and the customer for the sale, purchase and installation of goods in accordance with these Terms.
Customer	you the individual, organisation or business that purchases goods from Protel Communications Ltd.
Goods	the goods including instalment of the goods or any parts set out in the Order.
Order	customer order for goods as detailed in the equipment order and support contract form.
Protel Communications, We	Protel Communications Ltd, Raleigh House, The Wellsway, Keynsham, Bristol, BS31 1HS
Working Day	a day other than Saturday, Sunday or public holiday

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 in 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 emails and faxes

2. Basis of Contract

2.1. The order constitutes an offer by the customer to purchase the good in accordance with these terms. The customer is responsible for:

2.1.1. Ensuring that the terms of the order are accurate and complete.

2.1.2. Supplying the equipment required detailed in the specification to enable the software to run, including servers and PC's

2.2. Protel Communications Ltd may reject or accept an offer at its discretion.

2.3. Once accepted by Protel Communications Ltd the customer may not cancel the order.

2.4. The agreement constitutes the whole agreement between parties. The customer acknowledges that it has not relied on any assurance, statement, representation, promise or warranty made or given by or on behalf of Protel Communications Ltd which is not set out in the agreement.

2.5. 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 custom, trade, practice or course of dealing.

2.6. Any samples, drawings, descriptive matter or marketing material produced by Protel Communications Ltd are produced for the sole purpose of giving an approximate idea of goods described in them. They will not form part of the agreement or have any contractual force.

2.7. Any quotation given by Protel Communications Ltd shall not constitute an offer. Any quotation is valid for a period of 30 days from date of issue.

3. Goods

3.1. The goods are described in the equipment order and support contract

3.2. Protel Communications Ltd has the right to amend specification of goods if required by any applicable statutory or regulatory requirements.

4. Delivery

4.1. Delivery of goods shall be made by Protel Communications Ltd delivering the goods to and installing the goods at the site as specified by the customer in the order.

4.2. Delivery of goods shall be made on date of installation at the installation address.

4.3. Any dates quoted for delivery are approximate and the time of delivery is not of the essence. Protel Communications Ltd will not be liable for any delay in delivery that is caused by the customers' failure to provide the correct delivery instructions or a force majeure event.

4.4. Protel Communications Ltd may deliver the goods in instalments and each instalment shall constitute a separate agreement. Delivery delay or defect shall not entitle the customer to cancel any other instalment.

4.5. The customer will be fully responsible for and ensure that on the date of delivery:

4.5.1. The installation address has adequate mains electricity with appropriate earth

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. Protel Communications Ltd warrants that on delivery and for 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 written notice to Protel Communications Ltd 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. Protel Communications Ltd is given reasonable opportunity to examine such goods and

5.2.3. The customer if asked by Protel Communications Ltd returns the goods to Protel Communications Ltd office address at the customers cost. Protel Communications Ltd shall either replace or repair the defective goods or refund the price of the defective goods in full

5.3. Protel Communications Ltd 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 happens because the customer failed to follow Protel Communications Ltd written or oral instructions regarding the storage, commissioning, use and maintenance of the goods or good trade practice regarding the same

5.3.3. The defect happens as a result of relocation or installation of the goods by any person other than Protel Communications Ltd or a person acting under Protel Communications Ltd instructions

5.3.4. The defect happens as a result of Protel Communications Ltd following any drawing, design or due to equipment supplied by the customer

5.3.5. The customer alters or repairs goods without Protel Communications Ltd written consent

5.3.6. The defect happens as a result of fair wear and tear, 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 equipment, software or parts not provided by Protel Communications Ltd

5.5. Protel Communications Ltd will 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. Failure of the customers chosen network providers to meet dates for provision or moving of lines and

5.5.3. Changes by the customers chosen network providers

5.6. Except as provided in this Clause 5 Protel Communications Ltd 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 replaced or repaired goods supplied by Protel Communications Ltd

6. Ownership and Risk

6.1. Delivery of an order shall be completed when Protel Communications Ltd install 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 once Protel Communications Ltd has received payment in full for the goods and other sums which are due to Protel Communications Ltd from the customer in 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 Protel Communications Ltd bailee

6.3.2. Store the goods (at no cost to Protel Communications Ltd) so that they remain identifiable as Protel Communications Ltd property and in satisfactory conditions

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 Protel Communications Ltd behalf for its full price against all risks to Protel Communications Ltd reasonable satisfaction and hold the proceeds of such insurance on trust for Protel Communications Ltd 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 Protel Communications Ltd

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 Protel Communications Ltd its agents and employees permission to enter any premises where the goods are or may be stored in order to inspect them or to recover them should your possession terminate. All costs incurred by Protel Communications Ltd 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. If no price is quoted the price set out in Protel Communications Ltd price list in force as at the date Protel Communications Ltd accepts the order

7.2. Protel Communications Ltd may increase the price of the goods (by giving the customer notice at any time before delivery) to reflect any increase in the cost of the goods that may be due to

7.2.1. Any factor beyond Protel Communications Ltd control including increases in labour, materials, taxes and duties and other manufacturing costs

7.2.2. Any request by the customer to change the delivery date, quantities or types of good ordered

7.2.3. Any delay caused by the customer's failure to give Protel Communications Ltd adequate or accurate information or instructions

7.3. The price of goods is exclusive of packaging charges, insurance and transport of goods. These costs will be invoiced to the customer

7.4. The prices of goods are exclusive of VAT. On receipt of a VAT invoice from Protel Communications Ltd the customer shall pay Protel Communications Ltd the additional amounts

7.5. Protel Communications Ltd will invoice the client for

7.5.1. The deposit for goods in advance of delivery

7.5.2. The balance of the order upon completion of the installed goods

7.6. The customer will pay the invoice in full within 14 days from date of invoice and payment will be made to Protel Communications Ltd nominated bank account

7.7. Should the customer fail to make payment by the due date then

7.7.1. Protel Communications Ltd may cancel or suspend any further deliveries to the customer

7.7.2. The customer will pay interest on the overdue amount. Interest will accrue at the rate of 4% above the Bank of England's base rate on a daily basis from due date until full payment is made. The interest and overdue will be paid together.

7.8. The customer will 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) Protel Communications Ltd 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 Protel Communications Ltd to the customer.

8. Termination and Suspension

8.1. If the customer becomes subject to any of the events listed in Clause 8.2 Protel Communications Ltd may terminate the agreement with immediate effect

8.2. The relevant events are:

8.2.1. The customer is entering administration, provisional liquidation or any composition or arrangement with its creditor (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 ceases or threatens to suspend or cease to carry on all or part of its business or

8.2.3. The customers' financial position deteriorates to such an extent that the customers' 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. If the customer becomes subject to any of the events in Clause 8.2 without limiting its other rights or remedies Protel Communications Ltd may suspend provision of the goods under the agreement or any other contract between the customer and Protel Communications Ltd

8.4. On termination of the agreement the customer shall immediately pay Protel Communications Ltd all unpaid invoices and interest

8.5. Termination of agreement shall not affect parties' rights, obligations and liabilities that have accrued as at termination

8.6. Clause 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 Protel Communications Ltd liability for

9.1.1. Personal injury or death caused by its negligence or the negligence of its employees, agents or subcontractors

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 2015 or

9.1.5. Any matter in respect of which it would be unlawful for Protel Communications Ltd to exclude or restrict liability

9.2. Subject to Clause 9.1 Protel Communications Ltd 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 100% of the total charges paid under the agreement

9.3. Subject to Clause 9.1 Protel Communications Ltd 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, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss of damage to goodwill and any direct or consequential loss

9.4. Clause 9 shall survive termination of the agreement

10. Data Protection

10.1. Should Protel Communications Ltd process any personal data on the customers behalf when providing the services the parties record their intention that the customer shall be the data controller (as defined in the DPA) and Protel Communications Ltd shall be a data processor (as defined in the DPA) and in any such case the customer and Protel Communications Ltd shall comply with their respective obligation under the DPA

10.1.1. The customer shall ensure that it is entitled to transfer the relevant personal data to Protel Communications Ltd so that Protel Communications Ltd 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, damage or destruction

10.2. Notwithstanding Clause 10.2 Protel Communications Ltd may collect and process the following data about the customer

10.2.1. Information which Protel Communications Ltd collects or the customer submits during the registration or sales process

10.2.2. Information the customer provides when filling in forms or by corresponding with Protel Communications Ltd by phone or email. This will include information the customer provides when the services are requested. The information the customer gives may include names, addresses, email addresses and phone numbers of users of the services and of the customer and financial information

10.3. The customer agrees that Protel Communications Ltd may use information held about the customer and users in the services in the following ways

10.3.1. To deliver products and services, for security and service support, credit checking, fraud prevention and product analysis

10.3.2. To carry out Protel Communications Ltd contractual obligations and to provide the customer with the information products and services requested from Protel Communications Ltd

10.3.3. To notify the customer about changes to the services

11. Notices

11.1. Any notice or other communication given to the customer in connection with the agreement shall be in writing addressed to the customer at their registered address and shall be delivered by a Protel Communications Ltd member of staff, posted first class or sent by courier, fax or email

12. General

12.1. **Force Majeure.** Neither party shall be liable for any failure or delay in performing its obligation 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 parties 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 own workforce or third parties. Failure of energy sources or transport network, acts of god, war, terrorism, riot, 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. Assignments and other dealings

12.2.1. Protel Communications Ltd may at any time assign, transfer, mortgage, charge, subcontract 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 Protel Communications Ltd

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, shall be governed by and construed in accordance with the law of England and Wales

12.8. **Jurisdiction** Each party conclusively 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 or formation