

Terms and Conditions of Sale

1 DEFINITIONS

The following definitions shall apply to these Terms and Conditions to any contract expressly incorporating the same.

- (i) 'Maxim' means Maxim Solutions Ltd whose registered office is situated at ST MICHAELS HOUSE, NORTON WAY SOUTH, LETCHWORTH GARDEN CITY, HERTFORDSHIRE SG6 1NY
- (ii) 'the Purchaser' means any person entering into a contract for the purchase from Maxim of telecommunication or computer or associated equipment
- (iii) 'the Equipment' means the Hardware and Software
- (iv) 'the Hardware' means the hardware and associated equipment supplied and installed by Maxim to the Purchaser itemised in the Quotation proposed.
- (v) 'the Software' means the telecommunications or computer software supplied and installed by Maxim to the Purchaser itemised in the Quotation
- (vi) 'Acceptance' means acceptance provided by the Purchaser to Maxim stating that the Equipment provided by the Purchaser to Maxim has been received and installed and delivered in accordance with the Quotation.
- (vii) 'Confirmation of Receipt' means the letter provided by the Purchaser to Maxim stating the system has been installed and is accepted, subject to all other rights pursuant to any warranty provided hereunder or any other legal rights accruing to the Purchaser. The Confirmation of Receipt shall be issued by the Purchaser within 90 working days of the installation of the Equipment
- (viii) 'Quotations' means the quotation or quotations attached hereto and initialled by the Parties
- (ix) 'Maintenance Service Agreement' means the maintenance services provided for the equipment purchased.
- (x) 'Cover Period' - means the contracted hours and days of cover for the maintenance services, e.g. 0900-1700, Monday to Friday

2 GENERAL

2.1 These Standard Terms and Conditions set out the terms of supply and installation by Maxim of the Equipment set out in the Quotation. These Standard Terms & Conditions shall govern any additional contracts for the sale and supply of equipment by Maxim to the Purchaser, unless otherwise agreed in writing. The Purchaser agrees to purchase and Maxim agrees to supply and install the Equipment on the basis of these Terms & Conditions only.

2.2 Variations: Any variation or change to these Terms & Conditions or the Quotation will not be accepted by either Party unless agreed in writing. The countersignature of these Terms & Conditions shall constitute acceptance of these Terms and Conditions.

2.3 No employee, servant or agent of Maxim has authority to vary these Terms and Conditions orally and no variation of these Terms and Conditions shall be effective or binding on Maxim unless made in writing or signed on behalf of Maxim by a Director or other authorised signatory of the company.

2.4 LOSS OR DAMAGE IN TRANSIT

The buyer shall examine the goods immediately on receipt. Maxim reserves the right to reject claims in respect of shortages or damage in transit or non-delivery unless the same are submitted in writing to the company within 7 (seven) days after delivery of the goods or in the case of delayed delivery, 7 (seven) days after the due date for delivery.

2.5 LATE DELIVERY

Maxim will use reasonable endeavours to deliver the goods in accordance with the Purchasers requirements.

3 DELIVERY

3.1 Maxim shall deliver or produce delivery of the Equipment to the address specified in the Quotation. Reasonable pre-agreed delivery costs shall be charged to the Purchaser in addition to the price of the Equipment.

3.2 Maxim shall arrange for insurance of the Equipment during transit and shall bear the costs thereof. Risk in the Equipment will pass to the Purchaser upon receipt of the Equipment by the Purchaser.

3.3 Maxim will use all reasonable endeavours to effect delivery and/or installation of the Equipment by the agreed delivery date but time of delivery shall not be of the essence of any contract.

3.4 Maxim reserves the right to suspend all deliveries to the Purchaser and/or terminate any contract for the supply of equipment to the Purchaser without liability in the event of any material breach by the Purchaser of these Terms and Conditions and notified in writing to the Purchaser. In the event of any suspension of delivery, Maxim shall return all monies paid to the Purchaser forthwith including any applicable taxes and costs of delivery.

4. PRICE AND PAYMENT

4.1 The purchase price of the Equipment shall be the price specified in the Quotation including packing and installation costs, project management and training contained in the Quotation ("the Purchase Price") and shall be exclusive of VAT or any other similar sales or purchase tax or customs duties payable or to be accounted for by Maxim to the Purchaser in relation to the sale, supply and installation of the Equipment, which shall be charged in addition to the Purchase Price at the rate in force at the date of Maxim's invoice to the Purchaser.

4.2 Payment shall be due and payable according to the payment terms set out below:

The Purchaser shall pay 60% of the Purchase Price ("the Initial Payment"), with the sign sales order.

4.2.1 The Purchaser shall be entitled to retain 40% of the Purchase Price to be paid as follows:

4.2.1.1. Of the balance remaining, 30% of the Purchase Price shall be paid on or before the start of the delivery of Equipment to the Purchaser.

4.2.1.2. Of the balance remaining, 10% of the Purchase Price shall be paid within 7 working days following the issue of the Confirmation of Receipt which will not to be unreasonably withheld. The Purchaser shall notify Maxim in writing of any issue, concerns or problems with the Equipment as soon as practicable upon identification of any issues which may affect the Purchaser's Confirmation of Receipt.

Without prejudice to its other rights hereunder in connection with late payment Maxim shall be entitled to charge interest on overdue accounts at the rate of 1.5% per month, such interest to accrue at a daily rate from the due date until payment. For the avoidance of doubt, no payments will be due unless the conditions set out herein have been complied with by Maxim. The reasonable refusal to the Confirmation of Receipt will not constitute a breach of these Terms and Conditions on the part of the Purchaser.

5. TITLE

All right, title and interest in the Equipment shall vest in Maxim until payment of the Final Payment by the Purchaser to Maxim for the supply of Equipment.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 The Purchaser acknowledges that any contract for the sale and supply of the Equipment shall not operate so as to transfer or vest in the Purchaser any patent, copyright, registered design or other intellectual property rights in the Equipment whatsoever.

6.2 Maxim warrants that to the best of its knowledge the supply of the Equipment (including hardware or software) to the Purchaser will not infringe any third party intellectual property rights or breach any obligation or any other obligation owed to any third party

7. INSTALLATION

7.1 Maxim will programme manage and be responsible for the proper installation and configuration of the Equipment and undertakes that the installation and configuration will be in accordance with the requirements set out and agreed by the Parties during discussions between the Parties and in accordance with the manufacturer of the Equipment's instructions or recommendations available to professional voice over IP telephony resellers. Maxim will undertake to complete the installation and configuration of the Equipment with such reasonable care and skill expected of a professional voice over IP telephony solutions provider and that it will:

7.1.1 Confirm and test the suitability of the Equipment for operation on the Purchaser's network (including switches, local area cabling infrastructure, firewalls and PC's and applications) and that the operation and use of the Equipment on the Purchaser's will not interfere with or cause any material impact on the performance of any component of the Purchaser's network;

7.1.2 Confirm that the Purchaser's network is suitable for operating the Equipment on the network and that it can perform its function as a voice over IP telephony system to the levels expected of such Equipment.

8. WARRANTY

8.1 Subject to clause 8.8 below Maxim warrants that in so far as it is aware the Equipment (including any hardware or software supplied pursuant to this agreement) is supplied and will be free from defect and that the Equipment when used in accordance with the manufacturers specifications will perform adequately for the purposes for which it was intended and in accordance with any documentation supplied by the manufacturer or Maxim

8.2 Maxim shall not be liable to the Purchaser in respect of the supply of faulty hardware or corrupt or faulty software not manufactured or written by Maxim (unless Maxim licensed that software to the Purchaser) or subsequent damage to the Purchaser's infrastructure resulting directly from the faulty hardware or software themselves, provided that Maxim ensures that hardware or software procured on behalf of the Purchaser and installed by Maxim is from a reputable source. This shall not relieve Maxim from any liability arising from its failure to test the installation and operation of any such software or hardware before the Purchaser uses the same, provided that Maxim shall not be liable for inherent faults as aforesaid.

8.3 Maxim warrants that to its best knowledge the Mitel branded Equipment supplied to the Purchaser is compatible with non Mitel branded Equipment supplied to the Purchaser

8.4 Maxim further warrants that during installation of the Equipment it will not introduce any virus, worm, trojan horse or anything else that corrupts or renders inaccessible any data or software on the Purchaser's systems.

8.5 If Maxim receives notice from the Purchaser of any breach of the warranty in clause 8.1 above then Maxim will at its own expense respond to the following Equipment failures under the conditions and within the time frames set out below:

"Priority 1 (Critical Failure)"

For a system fault which completely prevents any use of the Equipment supplied pursuant to this Agreement by the Purchaser within [4] hours of the notification of such fault;

"Priority 2 (Urgent)"

For a system fault which prevents the use of an essential part of the Equipment by a particular operational function or group within the Customer's business within [8] hours of the notification of such fault;

"Priority 3 (Specific Fault)"

means a fault which is not a Priority 1 or 2 fault but which involves an issue related to the Equipment supplied under this Agreement which does not

prevent users from utilising the majority of functions of the Equipment within [24] hours of the notification of such fault;

8.6 After receiving such notice at its discretion, Maxim may either repair or remedy the defect or error in question, replace the Hardware or Software or such part as is defective or refund to the Purchaser the price paid for the Equipment which is defective, provided that Maxim shall have no liability or obligation under the warranty unless it receives notice of the defect or error prior to issuance of the Confirmation of Receipt by the Purchaser:

8.7 The Purchaser will at Maxim's cost return the defective Hardware or Software to Maxim's premises for either repair, replacement or a refund, however, Maxim agrees to carry out the de-installation of the Equipment or parts. Maxim will at its cost deliver the repaired or replacement Hardware or Software to the Purchaser's premises.

8.8 The warranties contained in this clause 8 are given by Maxim subject to the following conditions:

(i) Maxim does not warrant that the operation of the Software will be interrupted or error free;

(ii) Maxim shall be under no liability in respect of any defects in the Hardware or Software arising from fair wear and tear, abnormal working conditions or environmental working conditions, failure to follow Maxim's or the manufacturers reasonable written instructions or misuse or modification of the Hardware or Software without Maxim's approval.

8.9 Maxim warrants that the Equipment will be fit and suitable for the purpose of internal and external telecommunications. For which it is required by the Purchaser.

8.10 Except as expressly stated in these Terms and conditions all warranties, conditions, terms, undertakings and obligations expressed or implied by statute, common law, custom, trade usage, course of dealing or otherwise are hereby excluded to the fullest extent permitted by law.

8.11 Save as otherwise provided for herein, Maxim shall not be liable to the Purchaser whether for breach of contract, breach of statutory duty, breach of any duty at common law or otherwise for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise) whether caused by the negligence of Maxim, its employees or agents or otherwise incurred by the Purchaser arising out of or in connection with the design, manufacture, supply or use of the Equipment.

8.12 Maxim shall use all reasonable endeavours to assign to the Purchaser the benefit of any guarantee, condition or warranty which may expressly or by implication have been given to Maxim by the manufacturer or any other supplier of the Equipment to the extent to which the same may be capable of assignment. The Purchaser agrees to complete and return to the manufacturer or other supplier of the Equipment such registration card or other documentation as the manufacturer or other supplier may require in order to gain the benefit of such guarantee, condition or warranty.

8.13 Save as otherwise provided for herein, Maxim shall not be liable to the Purchaser for any claims, liabilities, damages, losses or expenses incurred by the Purchaser resulting from any negligence on the part of Maxim or its employees or agents in connection with the design, manufacture, supply or use of the Equipment except where such negligence results in death or personal injury (where Maxim's liability will be unlimited) or where such negligence results in damage to property (where Maxim's liability will be limited to [£1,000,000] per occurrence).

8.14 The provisions of this clause 8 states the entire liability of Maxim whether in contract, tort or otherwise for defects in the Hardware and Software notified to it by the Purchaser after the delivery of the Hardware and Software to the Purchaser.

9. RETURNS AUTHORISATION PROCEDURE

9.1 Any equipment returned to Maxim by a Purchaser must have a Returns Authorisation number regardless of the reason for its return. Maxim shall reject any delivery of returned goods which does not have a valid Returns Authorisation number.

9.2 To obtain a Returns Authorisation number the Purchaser shall contact Customer Services Department of Maxim which in the first instance will try to resolve the relevant query over the telephone but, in the event of that being unsuccessful, will require the following information:

- (a) A full description of the problem
- (b) The Maxim invoice number.

Maxim will then issue a Returns Authorisation number.

9.3 When returning Equipment the Purchaser shall ensure that the Returns Authorisation number is clearly marked on the outside of the packaging.

9.4 Equipment can only be returned in approved suppliers packaging. Failure to comply with this may avoid warranty.

9.5 Despatch of goods to Maxim is the Purchaser's responsibility.

9.6 Shipping charges back to the Purchaser will be paid as follows:
 Warranty - Maxim will pay for the return journey(UK mainland only),
 Non-warranty - charged to you the Purchaser.

9.7 Chargeable repairs must be paid before despatch of Equipment from Maxim unless it is previously agreed in writing to charge it to the Purchaser's account.

9.8 Returned Equipment for credit: Any items returned for credit must have prior authorisation from Customer Services Department of Maxim. Failure to have authorisation will result in Maxim refusing to accept delivery. Maxim sales personnel are not permitted to give such authorisation.

10 PURCHASER'S OBLIGATIONS

During the term of the contract and for 12 months thereafter the Purchaser will not without the consent of Maxim employ or attempt to employ any employee or former employee of Maxim to perform telecom related services (otherwise than through Maxim pursuant to these Terms and Conditions or any agreement in continuation or substitution of it) if that employee or former employee has had a direct involvement with the Purchaser during the period of the contract.

11.0 MAINTENANCE SERVICES

Where annual Maintenance Services have been purchased the following terms and conditions will apply.

11.1 Fault Reporting

Severity - Major	<p>Significant area of functionality disabled. For example, but not limited to: Whole system failure, Shelf failure, Trunk Group (Exchange Line Interface) Failure.</p> <p>Considerable area of functionality disabled. For example, but not limited to: More than 20% of handsets down or experiencing problems, Trunk Card Failure, Windows Operator Console Problem.</p>
Severity - Minor	<p>Limited or isolated area of functional disability. For example, but not limited to: Single non-critical application problems, limited call loss, two or more handsets failed or experiencing problems.</p> <p>Minor problem minimal impact. For example, but not limited to: one channel experiencing problems, redundant or hot spare failure, single extension/handset problem. Fault to an extension or small number of extensions or programming fault which results in loss of use of some features or extension on the system. Incoming and outgoing calls still possible at a reduced service level.</p>

Once a call has been successfully logged with Maxim Technical Support, the call will be analysed and passed to the Support Team as appropriate and Maxim will establish the severity level according to the criteria as defined above.

In the event of a reported system or component failure, a Maxim Support Engineer will endeavour to diagnose the fault, possibly through the use of remote dial up access tools where this has been enabled. The Customer may be contacted if further information is required or if it is considered that the problem may be rectified through changes that the Customer can make.

Should hardware or software defect be suspected, where the hardware or software is not part of this agreement then the problem will be passed back to the Customer.

For problems not caused by a hardware or software defect, i.e. due to configuration, interoperability issues etc, and mutually agreed adequate progress is being made, the Support Engineer will work on the problem until resolution. At any time, should the Customer be dissatisfied with the progress, the Support Engineer must be notified, and the issue will be escalated in writing or by telephone to Maxim senior management.

11.2 Responsibilities of Maxim

Maxim will diligently and make all reasonable efforts to deliver the services as detailed in the Contracted Services section 1 of this Agreement.

Where the services require Maxim personnel to visit Customer site, they shall comply with all reasonable Customer and all government imposed site rules, health, safety and security requirements while providing the Service under this Agreement.

Maxim shall not be responsible for delays in performing Services due to the Customer's failure to act on requests, or provide information necessary to enable diagnosis, or to provide Maxim personnel with access to the Customer's facilities or knowledgeable person(s) or due to the Customer's or government imposed site rules, health, safety and security requirements.

11.3 Responsibilities of the Customer

The Customer shall:

- a) be responsible for the general care of the Equipment, ensuring it is maintained, operated and transported in accordance with the manufacturers specifications, manuals or documentation.
- b) not permit the Equipment to be used or operated by other than properly qualified operators employed by or under the Customer's control.
- c) Undertake to respond to Maxim requests to aid remote resolution of the problem, such as a detailed explanation, provision of information such as log/configuration files, apply software patches or upgrades, make recommended configuration changes and allowing remote access, where agreed.
- d) give Maxim at all reasonable times full access to the Equipment and where appropriate safe access to the Site to enable Maxim to carry out its obligations under this Agreement.
- e) make available such reasonable facilities as may be requested from time to time by Maxim for on-site work and the storage and safe keeping of test equipment and spare parts.
- f) provide Maxim with access to appropriate knowledgeable employees and to all documentation, diagnostics programmes, operating system, utilities and application programmes necessary to enable correct diagnosis and resolve reported problems.
- g) ensure that personnel of Maxim working on or near potentially hazardous equipment, whether due to the temporary or permanent state of the electrical system or the nature of the work to be carried out, will be accompanied by another competent person at all times whilst doing so.
- h) maintain appropriate back-up and archiving procedures that ensure any data, configuration details, operating software, user details etc lost by

reason of Equipment failure or as a result of maintenance operations, is recoverable from back-up files or archives.

Where Services have been rendered or costs incurred as a result of a breach of any of the foregoing, Maxim reserve the right to render reasonable charges for the same.

11.4 The charges for Services are as specified on the signature page as varied in accordance with this clause 5 ("Service Fee"). The Service Fee is due and payable annually in advance by the Customer within 30 days of the date of the invoice unless otherwise agreed in writing. In the event of non payment of any amount due under this Agreement without limiting any rights it may have, Maxim reserves the right to suspend its performance or terminate this Agreement and to charge interest on the amount due on a daily basis from the due date until payment at the rate of 2% above the base rate of the HSBC Bank for the time being in force.

If the Customer requires new, additional or altered Equipment to be covered by this Agreement whether at an existing Site or at a new Site location or where existing Equipment is to be relocated, the following conditions apply:-

i) the Customer shall provide Maxim with details of the new, additional or altered Equipment or of the relocation and the date from which it requires cover (to be not less than 30 days after the date of notice);

ii) Maxim shall calculate the appropriate increase in the Service Fee for the unexpired part of that Year of the Agreement and the Customer shall pay such increased Service Fee within 30 days of receipt of an invoice.

Maxim may withdraw item(s) of Equipment from this Agreement at the end of the first Year of the Agreement or thereafter upon six months' prior written notice if, in Maxim's reasonable opinion, the item(s) cannot be properly or economically supported.

Maxim reserves the right to supply new, second hand or reconditioned replacement parts in the performance of the Services.

Maxim does not warrant that the Services will cause the Equipment to operate without interruption or error.

11.5 Cover. Unless agreed otherwise, the period of cover will be 0900hrs to 1700hrs, Mondays to Fridays excluding national holidays.

12 TERMINATION

12.1 Either party may by notice to the other cancel all or any part of any contract forthwith in the event that the other party is in breach of any of these Terms and Conditions or either Party (if an individual) becomes bankrupt or makes any composition or arrangement with his creditors or (being a company) goes into liquidation, either voluntarily or compulsorily, has a receiver or administrative receiver appointed over all or any part of its assets or undertaking, becomes subject to an administration order or makes or seeks to make any composition or arrangement with its creditors or proposes any voluntary arrangement under section 1 of the Insolvency Act 1986.

12.2 Termination of any contract in any manner whatsoever shall be without prejudice to the rights of either party accrued as at the date of such termination.

12.3 Excepting in the case of Maintenance Services (see 11.4) provided by Maxim, Maxim requires forty eight (48) hours notice of cancellation of engineering services or training. A cancellation fee equal to fifty per cent (50%) of the order value will payable by the purchaser in the event that notice is not given. Engineering services or training cancelled or aborted on the same day will be charged at the full contract value. A restocking charge will levied equal to twenty per cent (20%) of any returned equipment value.

12.4 The Maintenance Service Agreement starts on the date that the installation is deemed complete and continues until the Expiry Date. This

Agreement shall continue annually thereafter unless either party gives notice of termination to the other at least ninety (90) days prior to the Expiry Date or any subsequent anniversary of that date.

Notwithstanding section 11.1 the Maintenance Service Agreement may only be terminated in the following circumstances by either party forthwith by notice in writing to the other if the other is in breach of its obligations hereunder and in the case of a remediable breach fails to remedy it within 30 days of receipt of a notice requiring remedy.

13 FORCE MAJEURE

Neither of the parties shall be liable to the other in respect of any claim arising under any contract where the same arises by reason of any act or cause beyond the reasonable control of such party.

14 WAIVER OF BREACH

Neither party shall be prejudiced or restricted in any way by any indulgence or forbearance extended to the other and no waiver from the other party to the other in respect of any breach by the party shall operate as a waiver in respect of any subsequent breach.

15 ASSIGNMENT

Any contract between Maxim and the Purchaser is personal to the Purchaser and shall not be capable of assignment by the Purchaser to any third party without the prior written consent of Maxim.

16 ENTIRE AGREEMENT

These Terms and Conditions together with any Software licence required pursuant to this Agreement shall constitute the entire agreement between Maxim and the Purchaser. All previous agreements between the Parties are hereby superseded and excluded from any contract unless expressly agreed in writing by the parties.

17 GOVERNING LAW

These Terms and Conditions and any contract between Maxim and the Purchaser incorporating the same shall be governed by and construed exclusively in accordance with English law and the parties hereby agree to submit any dispute arising there from to the exclusive jurisdiction of the English Courts.