



Terms and Conditions of Sale

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1 Interpretation and Definitions.

1.1 Unless the context otherwise requires, the following expressions shall have the following meanings:

“Contract” means the agreement between NetVu Limited and the Customer for the sale and purchase of Products which incorporates these Terms and Conditions.

“Customer” means the person or undertaking who has agreed to purchase Products from NetVu Limited on these Terms and Conditions and whose name and address appears on an Order Acknowledgement.

“NetVu Limited” means NetVu Limited Limited (registered in England and Wales under number 10066076) whose principal place of business is at No 1. Thellow Heath Park, Northwich Road, Antrobus, Northwich, CW9 6JB.

“Delivery Address” means the Customer’s address which appears in the Purchase Order or such other different delivery address as is specified in that document or agreed between NetVu Limited and the Customer in Writing as being a required address for delivery.

“Internet Order Acknowledgement” means an electronic confirmation of receipt by NetVu Limited of an Internet Purchase Order delivered by NetVu Limited to the Customer either or both as web page or e-mail.

“Non-Internet Order Acknowledgement” means a confirmation of receipt by NetVu Limited of a Non-Internet Purchase Order delivered by NetVu Limited to the Customer in writing.

“Internet Purchase Order” means an order to purchase Products delivered from NetVu Limited which is made by means of the completion and electronic submission over the internet of a Purchase Order in the form of an accurately completed electronic form as permitted, from time to time, by NetVu Limited on its e-trading website or any authorised associate site.

“Non-Internet Purchase Order” means an offer from a Customer to purchase Products from NetVu Limited.

“Order Acknowledgement” means Internet Order Acknowledgements and Non-Internet Order Acknowledgements.

“Products” means the products to be supplied to the Customer in accordance with these Terms and Conditions and which are identified within a Purchase Order.

“Purchase Order” means Internet Purchase Orders and Non-Internet Purchase Orders. “Terms and Conditions” means the Terms and Conditions of Supply set out in this document to apply to the purchase of Products by the Customer from NetVu Limited.

“Writing” means a communication in the form of a letter, telex, cable, facsimile or email.

2.0 Basis of the Sale

2.1 These Terms and Conditions shall apply to all Contracts entered into between NetVu Limited and the Customer in respect of the purchase of Products and such Contracts shall be formed in the following manner (but not otherwise).

2.2 Internet Purchase Orders. Where the Customer delivers to NetVu Limited an Internet Purchase Order, this shall be deemed to be an offer made by the Customer to purchase Products as set out in it and on these

Terms and Conditions, which offer shall be deemed accepted and a contract formed between the Customer and NetVu Limited on the delivery to the Customer of an Internet Order Acknowledgement by or on behalf of NetVu Limited.

2.3 Non-Internet Purchase Orders. Where the Customer delivers to NetVu Limited a Non-Internet Purchase Order, this shall be deemed to be an offer made by the Customer to purchase Products as set out in it (as varied thereafter by agreement between the Customer and NetVu Limited) and on these Terms and Conditions, which offer shall be deemed accepted and a Contract formed between the Customer and NetVu Limited on the delivery to the Customer of a Non- Internet Order Acknowledgement by or on behalf of NetVu Limited.

2.4 Any typographical, clerical or other error or omission in any sales literature, Order Acknowledgements, price lists, invoices or other documents or information originating from or issued by NetVu Limited shall be subject to correction without any liability on the part of NetVu Limited.

2.5 Internet and Non-Internet Purchase Orders are non-cancellable prior to or after the issue of Order Acknowledgement. Acknowledged and unacknowledged orders can only be cancelled with the written agreement of NetVu Limited.

3 Specification of The Products. NetVu Limited reserves the right, prior to actual delivery, to make any changes, without notice, to the specification of the Products where those changes are required to conform with any applicable safety or other legal requirement or which do not materially affect the Products’ quality, performance or functionality.

4 Price of the Products

4.1 The price of the Products shall be as specified in the Order Acknowledgement or, if omitted, then the price shall be deemed to be in accordance with the prices for identical or equivalent products as appearing in the then current applicable NetVu Limited’s price list (less any discounts agreed in Writing between NetVu Limited and the Customer).

4.2 The price for Products are ex-works and do not include delivery charges. Where the Customer arranges for the Products to be collected and shipped at its own cost from NetVu Limited’s premises, no charge will be made for delivery but additional delivery costs will be charged and invoiced to the Customer where the Customer requires delivery by NetVu Limited to a specified location. Such delivery costs will be as set out in the Order Acknowledgement or, if no such details appear in that document then NetVu Limited shall charge all reasonably incurred transport, packing, insurance and other costs relating to the delivery of the Products to the Customer’s Delivery Address including in accordance with any particular terms of the Contract (such as urgent delivery requirements).

4.3 UK value added tax (VAT) and all other similar or related sales taxes shall be payable in addition by the Customer and all payments due in respect of the Products shall be made without set off or deduction of taxes, charges or other duties that may be imposed except in so far as any such deduction can be credited in full by NetVu Limited against its own tax liabilities and in respect thereof the Customer will provide all such reasonably required documentation and assistance as NetVu Limited may require in order to secure any credit or repayment or take advantage of any double taxation agreement in respect thereof.

5 Terms of Payment

5.1 Unless Clause 12 below applies, where credit terms and approved credit limit are formally provided by NetVu, all sums payable by the Customer in respect of the Products shall be due and payable within 30 (thirty) days of invoice for the agreed price (together with properly chargeable additional items such as delivery charges, VAT etc) but which invoice may not be issued by NetVu Limited prior to the date of actual delivery in accordance with Clause 6.5 below. Credit terms and credit limit are subject to credit status reviews and can vary without

notice. NetVu reserves the right to refuse credit terms for any reason. NetVu reserves the right to request payment in advance of shipment of goods. All invoices will be in the currency specified in the Order Acknowledgement (or UK Sterling in default) but provided always that where any payment is made after the due date, NetVu Limited shall be entitled by notice to the Customer to require payment in a different currency, the conversion rate being calculated as at the date when payment was due.

5.2 If the Customer fails to make any payment on the due date, or the approved credit limit is exceeded at any time, then without prejudice to any other right or remedy available to NetVu Limited, it shall be entitled in its discretion and on notice to the Customer to:

5.2.1 withhold or delay shipment, including partial shipments of Products, cancel any or all remaining deliveries of Products and/or any or all other contracts to which NetVu Limited and the Customer may be party to; and/or

5.2.2 require pre-payment prior to any further deliveries of Products; and/or

5.2.3 claim interest, compensation and reasonable costs under the Late Payment of Commercial Debts (Interest) Act 1998 and it is agreed that the term implied by that Act shall apply after any judgement as well as before. Any reference to the Late Payment of Commercial Debts (Interest) Act 1998 is also a reference to any amendment, modification or re-enactment of it. If for any reason the Late Payment of Commercial Debts (Interest) Act 1998 does not apply interest shall be payable on overdue amounts at 8% over the Bank of England Base Rate from time to time.

5.2.4 without prejudice to NetVu Limited's right to claim costs under the Late Payment of Commercial Debts (Interest) Act 1998, if for any reason any payment is not made when due NetVu Limited reserves the right to be paid on an indemnity basis any costs NetVu Limited incurs in recovering any money due under this contract (and the costs of recovering such costs) including NetVu Limited's administrative costs and any costs incurred with lawyers or debt collection agencies. NetVu Limited's administrative costs may include the cost of employing the staff concerned and the overheads attributable to them for the time spent. In calculating NetVu Limited's administrative costs credit will be given for any compensation due to NetVu Limited under the Late Payment of Commercial Debts (Interest) Act 1998.

6 Delivery Location

6.1 Unless agreed to the contrary and specified in the Order Acknowledgement, delivery of all Products will be ex-works and available for collection by the Customer or its carrier at the premises of NetVu Limited or its manufacturing facility at Dedicated Micros (Malta) Ltd, the address of which appears on the face of the Order Acknowledgement.

6.2 Time of Delivery. NetVu Limited will use its reasonable endeavours (although time is not of the essence) to deliver Products to the Customer on the date or dates which appear in the Order Acknowledgement or, in default, within a reasonable time thereafter. NetVu Limited shall not be liable for any delay in delivery, howsoever caused and subject to giving the Customer reasonable prior notice, delivery may be effected early. Where no delivery date is specified in the Order Acknowledgement, NetVu Limited will deliver the Products within a reasonable period of time following the conclusion of this Contract. Indicative, but not binding, indications of likely delivery dates in those circumstances may be given to the Customer from time to time.

6.3 Products may be collected by the Customer from NetVu Limited or Dedicated Micros (Malta) Limited premises, the address details of which appear in the Order Acknowledgement (or such different address as may have been agreed between NetVu Limited and the Customer in Writing) between the hours of 9.00 am to 5.00 pm, local time for the relevant premises location and between Monday to Friday (excluding locally recognised business closures for holidays and religious festivals etc).

6.4 Where NetVu Limited has agreed to deliver the Products to the Customer it shall do so between the hours of 9.00am to 5.00pm local time for that location between the hours of 9.00 am to 5.00 pm, local time for the relevant premises location and between Monday to Friday (excluding locally recognised business closures for holidays and religious festivals etc)

6.5 Delivery shall be deemed to have been effected for the purposes of these Terms and Conditions:

6.5.1 in the case of delivery ex-works from NetVu Limited or Dedicated Micros (Malta) Limited premises, on the actual date of collection of the Products by the Customer or any person on its behalf or on the giving by NetVu Limited of notice to the Customer confirming that the Products are available for such collection but provided that such notice may not be given (subject to agreement on early delivery in accordance with Clause 6.2 above) prior to the agreed date for delivery under these Terms and Conditions; or

6.5.2 in the case of delivery by NetVu Limited to the Customers' Delivery Address, on the actual date of arrival of the Products at that address (whether or not the Customer takes possession of those Products).

6.6 NetVu Limited shall be entitled to deliver the Products in instalments. Each delivery shall constitute a separate contract and failure by NetVu Limited to deliver any one or more of the instalments in accordance with these Terms and Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.

6.7 If the Products are damaged on delivery or less than the correct amount of the products is delivered, then unless the Customer notifies NetVu Limited and the carrier within 5 days of delivery, no claim against NetVu Limited may be made in respect of damage to or short delivery of such Products.

6.8 If the Products have not been delivered despite receipt by the Customer of the invoice from NetVu Limited for those Products, then unless the Customer notifies NetVu Limited within seven days after the date of such invoice, no claim against NetVu Limited may be made in respect of non-delivery of those Products.

6.9 Cancelled orders, rescheduled deliveries or any other type of amendments, however specified, will be subject to:

6.9.1 NetVu Limited acceptance in writing; and/or

6.9.2 NetVu Limited being entitled to charge the Customer an optional restocking/ administration fee of 25% of the total order value.

7 Risk and Property

7.1 Risk of damage to or loss of the Products will pass to the Customer on delivery in accordance with these Terms and Conditions. Title to and property in the Products shall only pass to the Customer when full payment has been received by NetVu Limited in cash or cleared funds for the full price of the Products and all other Products agreed to be sold by NetVu Limited to the Customer for which payment is then due including all other charges stated on the invoice, such as any taxes or delivery charges.

7.2 Until such time as title to and property in the Products passes to the Customer, the Customer shall hold the Products as NetVu Limited fiduciary agent and bailee and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as NetVu Limited property. Until that time the Customer shall be entitled to resell or use the Products in the ordinary course of its business.

7.3 Until such time as title to and property in the Products passes to the Customer (and provided the Products are still in existence and have not been resold) NetVu Limited shall be entitled at any time to require the Customer to deliver up the Products to NetVu Limited and if the Customer fails to do so forthwith to enter upon any premises of the

Customer or any third party where the Products are stored and repossess the Products.

7.4 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of NetVu Limited, but if the Customer does so all moneys owing by the Customer to NetVu Limited shall (without prejudice to any other right or remedy of NetVu Limited) forthwith become due and payable.

8 Hardware and Software Warranties Hardware

8.1 The Products are covered by a twelve (12) month warranty from the date of delivery to the distributor or to the end customer if proof of date can be provided to in accordance with these Terms and Conditions, the extent of which shall be limited to defects in work and materials but excluding any and all defects arising from any drawing, design, specification or requirement of the Customer or which arise from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow Product environment or operating instructions, voltage fluctuations, lightning, water damage, faulty installation or adjustments, improper maintenance, misuse or alteration or repair of the Products other than by NetVu Limited or an approved engineer and as a result of connection to or a location near any third party equipment.

8.2 Additional warranties may be available for certain Products and the nature and these shall be deemed to be incorporated within these Terms and Conditions (subject to the limitations contained within this Clause 8) subject to registration of products with NetVu Limited. Software (Limited Software Warranty)

8.3 For a period of ninety (90) days from the date of delivery of Products, to the distributor or to the end customer if proof of date can be provided NetVu Limited warrants that any and all software comprised within or provided for use in conjunction with the Products shall be on media which is free of defects in materials and workmanship under normal use and that the software will function materially in accordance with all published specifications of NetVu Limited relating thereto

8.4 In no event does NetVu Limited warrant that the software is error free or that the Customer will be able to operate the Software without problems or interruptions.

8.5 The Customer shall notify NetVu Limited in Writing as soon as reasonably possible following the discovery by the Customer of any defect or non-conformity of the Products covered by the warranties at Clauses 8.1, 8.2 and/or 8.3 above and in any event prior to the expiry of the warranty periods in each case. NetVu Limited shall have no liability in respect of the Products under the above warranties (or any other warranty, condition or guarantee) unless Written notification is received prior to the expiry of the relevant warranty period.

8.6 The above warranties in Clauses 8.1, 8.2 and 8.3 do not extend to parts, materials, equipment or software not manufactured (or, in the case of software, not developed and owned) by NetVu Limited in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to NetVu Limited.

8.7 Except where expressly provided in these Terms and Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.8 Unless NetVu Limited receives notice of rejection of any Products delivered to the Customer within 7 days of the date of delivery, the Products shall be deemed to have been accepted by the Customer.

8.9 NetVu Limited' liability to the Customer in respect of the Products supplied on these Terms and Conditions both generally and specifically under Clauses 8.1, 8.2, 8.3 and 11.1 including as regards any defect in their quality, performance, condition or functionality or failure to meet any agreed specification comprising part of the Contract for which NetVu Limited will be liable under these Terms and Conditions shall be limited to the replacement or repair of the Products or repayment of the

price paid by the Customer for such Products (in the absolute discretion of NetVu Limited) but without further liability to the Customer in respect thereof.

8.10 Except in respect of death or personal injury caused by NetVu Limited negligence NetVu Limited shall not be liable to the Customer by reason of any representation (unless fraudulent) or any implied warranty condition or other term, or any duty at common law or under the express terms of the Contract for any consequential loss or damage (whether for loss of profit or otherwise) costs expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of NetVu Limited its employees or agents or otherwise) which arise out of or in connection with the supply of the Products or their use or resale by the Customer except as expressly provided in these Terms and Conditions.

8.11 NetVu Limited shall not be liable to the Customer if performance of its obligations under the Contract is prevented or hindered due to any circumstances outside its control.

8.12 The Customer acknowledges that, in entering into the Contract for the purchase of Products it has not relied on any representation from or on behalf of NetVu Limited and that no such representations are to be implied as contractual terms herein or form (in whole or in part) terms of any collateral or related contracts between NetVu Limited and the Customer. The Customer recognises that any and all facts and matters upon which it relies have been included in the Purchase Order and/or the Order Acknowledgement.

8.13 NetVu Limited is not the Prime nor Main Contractor and does not act as design authority for the installation of its Products.

8.14 Any service offered under the scope of Commissioning is strictly limited to the scope of the equipment supplied and does not constitute any sign off of the suitability of any installation as a whole.

9 Termination of Warranty

9.1 If the Customer fails to comply with all these Terms and Conditions including, but not limited to, as to the time of performance in relation to such matters as payment under Clause 5 above then, without prejudice to all other rights of NetVu Limited, the warranties contained in Clauses 8.1, 8.2 and 8.3 shall from the date of such non-performance terminate and for the purposes of this Contract shall be deemed excised.

10 Order Variation NetVu Limited shall be entitled by notice to the Customer at any time prior to the agreed delivery date to vary the Terms and Conditions of this Contract (including but not limited to as regards such matters as price, delivery date, availability and specification) ("a Variation Notice") and this Contract shall continue as varied by that Notice as from the date of its effective service unless NetVu Limited receives from the Customer a refusal to accept such variation by notice and within 5 working days of service of the Variation Notice ("a Refusal Notice"). Where the Customer serves any such Refusal Notice then this Contract shall terminate on the date of effective service of that Notice without liability on the part of either the Customer or NetVu Limited.

11 Indemnity

11.1 If any claim is made against the Customer that the Products infringe or that their use or resale infringes the patent, copyright, design right, trade mark or other industrial or intellectual property rights of any other person then unless the claim arises from the use of any drawing, design or specification supplied by the Customer NetVu Limited shall indemnify and keep indemnified the Customer against all loss, damages, costs and expenses awarded against or incurred by the Customer in connection with the claim or paid or agreed to be paid by the Customer in settlement of the claim provided that:

11.1.1 NetVu Limited shall be notified promptly in Writing by the buyer of any notice of a claim; and

11.1.2 NetVu Limited is given full control of any proceedings or negotiations in connection with any such claim; and

11.1.3 the Customer undertakes no act or permits any omission within its power or control (save with the prior Written agreement of NetVu Limited) which might compromise or otherwise prejudice the defence of that claim; and

11.1.4 the Customer shall give NetVu Limited all reasonable assistance for the purposes of any such proceedings or negotiations;

11.2 NetVu Limited shall be entitled to the benefit of and the Customer shall accordingly account to NetVu Limited for all damages and costs (if any) awarded in favour of the Customer which are payable by or agreed with the consent of the Customer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim.

11.3 NetVu Limited shall be entitled to require the Customer to take such steps as NetVu Limited may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which NetVu Limited is liable to indemnify the Customer under this Clause.

12 Insolvency of Customer

12.1 Without prejudice to any other right or remedy available to NetVu Limited, NetVu Limited shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer and if the Products have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary if:

12.2 the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

12.3 a third party (acting in accordance with its rights) takes possession or a receiver is appointed of any of the property or assets of the Customer; or

12.4 the Customer ceases or threatens to cease to carry on business; or

12.5 NetVu Limited reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer in Writing accordingly.

13 Internet Orders - Assumed Authority

Where, from time to time, this Contract is formed as a consequence of an Internet Purchase Order and where the Customer has, for the purposes of submitting that Order, properly input a user name and password previously allocated as a distinctive identifier for that Customer within NetVu Limited' business then NetVu Limited shall be entitled to assume (and for these purposes the Customer warrants and represents that this is the case) that the inputting of such data is undertaken by and with the express consent and authority of the Customer.

14 Laws and Regulations

The Customer shall comply with all laws and regulations relating to the ownership and use of the Goods including health and safety requirements and export control legislation.

15 General

15.1 This Contract may only be modified by a Written document issued by authorised representatives of NetVu Limited and Customer.

15.1.1 No waiver by NetVu Limited of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

15.1.2 If any provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part

the validity of the other provisions of these Terms and Conditions and the remainder of the provision in question shall not be affected.

15.2 The Contract contains all the terms agreed by the parties relating to the subject matter of the Contract and supersedes any prior agreements, understandings or arrangements between them, whether oral or in writing.

15.3 Any notice required to be given under or in respect of this Contract shall be served personally, sent by fax or by first class recorded delivery post and any such notice so given shall be deemed to have been duly served if personally delivered, on the day of delivery, if faxed, 8 hours after the recorded transmission time or, if posted, two days after the day after posting. Notices may not be given by e-mail or other electronic means whether or not incorporating a recognised digital signature.

15.3.1 In the event of a breach of this agreement, the breaching party shall pay to the other party any reasonable legal fees and other costs and expenses incurred by the non-breaching party in connection with the enforcement of any provisions of this agreement.

15.4 For USA Customers only, the Customer grants NetVu Limited a security interest in Products purchased under this Agreement to secure payment for those Products. If requested by NetVu Limited, Customer agrees to execute financing statement to perfect this security interest

15.5 The construction, validity and performance of this Contract is governed by the law of England & Wales and the parties now accept the jurisdiction of the English Courts in respect thereof. The Customer shall have the right to commence proceedings solely in the English Courts (and no other) but NetVu Limited shall have the right (in its absolute discretion) to commence proceedings in the English Courts or the Courts of any country where the Products are delivered or in which the Customer is resident or which otherwise has jurisdiction to hear the matters in issue in accordance with any international convention or treaty.

15.6 NetVu Limited may without notice assign the Customers' debt to a factoring agent or an invoice discounting facility, at such time and to such extent as NetVu Limited determines and the Customer shall provide all such reasonable assistance as NetVu Limited may require in that respect, its reasonable costs incurred in respect of which shall be borne by NetVu Limited.