

## **Terms & Conditions of Purchase**

### **1. DEFINITIONS**

The “Company” shall mean TekTube Limited.

The “Vendor” means the person, firm or Company to whom the Order is addressed and shall be deemed to include its employees, agents and sub-contractors.

“Goods” shall refer to either goods or services or both supplied to the Company by or on behalf of the Vendor.

### **2. ORDERING PROCEDURE**

2.1 The Company may at their sole discretion place orders with the Vendor in writing by telephone, fax, post, or by any other electronic means. Orders may be placed by telephone. These terms shall be applicable howsoever the order is placed. Special delivery procedures will be outlined clearly to include the quantity and description of the product required together with the date and place of delivery. All Orders will bear an official order number and must be signed by Authorised signatories of the Company. The Vendor should obtain a list of Authorised signatories from a director of the Company. Should the Vendor fail to obtain such a list, or accept Orders which are not signed by, or signed by persons other than, such Authorised signatories, the Company will accept no liability for such Orders, or for invoices arising there from. All documents relating to the Order from the Vendor must clearly bear the official Order number. All Orders are placed inclusive of the cost of carriage to our premises or such other address as may be specified on the Order. Should Goods have been ordered in error the Company reserves the right to return such Goods in the original packaging within 30 days of delivery at no cost to the Company.

### **3. PRICE**

3.1 Unless otherwise expressly stated in the Order all prices or rates shown on the order are fixed, exclusive of VAT, but shall be deemed to include all other taxes, customs, duties and other public dues, supply, delivery, packaging, and installation where applicable and all royalties, licence fees, or similar arising from the use of any intellectual property for the purpose of performing the Order.

3.2 Where an Order is fulfilled in part by the Vendor no invoice may be raised by the Vendor, or will be processed for payment by the Company, until such time as the order has been received in full by the Company.

### **4. PACKING AND TRANSIT**

4.1 All goods supplied must be suitably and sufficiently marked, endorsed or labelled to enable identification and must be adequately protected against damage and deterioration in transit and delivered carriage paid. Each consignment shall be clearly marked with the Vendors name and address, the Company’s Order number and destination address, and be accompanied by a packing note stating the same plus a list

of the contents thereof. An advice note must be sent to the address on the Order on the same day the Goods are despatched.

4.2 The Vendor shall, at its own expense, replace any Goods lost or damaged in transit and delivery will not be deemed to have taken place until the replacement items have been delivered to the reasonable satisfaction of the Company.

The Company accepts no liability for packaging materials, containers, pallets, cases or drums or for the collection or disposal of returnable packaging.

## **5. QUALITY OF GOODS AND WARRANTIES**

5.1 Where a vendor operates a Quality Management System that meets the requirements of a national or international standard then all Goods provided shall be managed and controlled within the operational requirements of that system

5.2 The Vendor warrants that all Goods will be free from defects in material and workmanship, conform to any applicable specifications and will be suitable for the purposes intended by the Company. If Goods are found to be faulty within 30 days of arrival at the Company, or within thirty days of delivery to the Company's client, whichever is later, then these shall be deemed to be 'dead on arrival' and subject to immediate credit or replacement at the discretion of the Company. The Vendor's warranties shall herein extend to any defects or non-conformity arising or manifesting itself within twelve months after delivery, or within such greater period as may be agreed at time of order, or as may be advertised by the Vendor. At the sole option of the Company full refund or replacement will be given by the Vendor in respect of Goods which are returned by the Company under warranty, or for any other reason, and the Vendor hereby gives its irrevocable consent to the Company to raise a debit note in respect of any such Goods, and to deduct such sums from any monies owed to Vendor by the Company.

5.3 Should any Goods received be found to manifest any defect in material and workmanship, or not to conform to any applicable specifications or to be unsuitable for the purposes intended by the Company the Company shall have the right to obtain alternative Goods in lieu thereof itself or from another vendor and any additional costs and expenses incurred by the Company shall be reimbursed by the Vendor.

## **6. STATUTORY OBLIGATIONS**

6.1 The vendor shall comply with any law or any order, regulation or by-law having the force of law, applicable to the Goods and shall comply in particular with such provisions relating to or affecting the health and/or safety of anyone dispatching,

6.2 Where Goods are for resale the Vendor will provide such marketing materials as may be necessary for the resale of the products

6.3 Invoices shall be sent, following delivery, at the address stated in the Order. Invoices shall quote the Company's official order number, shall show VAT separately and shall be supported by such information, including but not limited to order number, proof of delivery, etc, as the Company shall reasonably require to verify that

the invoice is correct. Invoices not submitted with such Information may be returned to Vendor or held unpaid in query until such information is received.

## **7. SUPPLY OF GOODS/SERVICES**

7.1 You are referred to our Terms and Conditions of Purchase as herein stated. All orders placed by us are subject to these Terms and you should not accept any order or any further order, or enter into any contract with the Company unless and until you have read and understood our Terms and Conditions which will bind you in any business undertaken with us. In the event that you do not accept or wish to accept our Terms and Conditions, then you are required to notify us by telephone that you do not accept our Order, and confirm this in writing within twenty four hours from the date of such Order, without prejudice, however, to our rights against you for any resultant breach of contract. Any Order not so refused within that period, for whatever reason, will be deemed accepted by you in accordance with our Terms and Conditions by which you will be fully bound. You are deemed to accept our Terms and Conditions upon acknowledgement howsoever given of any order placed by us, howsoever placed, including, but not limited to by mail or fax on Company letterhead or notepaper, or by electronic means, or by Visa, MasterCard or Switch by telephone or other method.

7.2 The Company, at its sole discretion may set off amounts payable to the Vendor against any amounts then due or which at any time thereafter may become due by the Company whether in relation to this agreement or any other order, agreement or contract with the Vendor. The Vendor shall at no time be entitled to set off any amount against any sums due to the Company which shall be paid in full in accordance with the Company's Terms and Conditions of Sale, without deduction or to withhold amounts owed to the Company, or withhold Goods due to be delivered to the Company under any circumstances. Should any dispute arise between the Company and the Vendor, or where any payment from the Vendor is overdue, whether for Goods or for Marketing contributions, retrospective rebates, debit note raised by the Company for whatever reason, including but not limited to query on invoice or delivery or to goods returned under warranty, any sums as may be awarded to the Company for damages, cost, or otherwise, if the Company has in its possession, for whatever reason, goods which are the property of the Vendor, the Company may take lien over these goods until payment is made or until such time as the dispute is resolved. The Company may, at its absolute discretion dispose of these goods as it sees fit and use the proceeds of such towards payment of any overdue debt, without prejudice to any other rights and remedies available to it. Where any dispute arises between the Vendor and the Company, the Company reserves the right to withhold any monies due to the Vendor until such time as the dispute is resolved, either in the Courts or otherwise.

Exercise by the Company of its rights under these conditions shall be without prejudice to any other rights or remedies available to the Company.

7.3 Cisco product is to remain unregistered and SMARTnet clear.

## **8. VARIATION OF TERMS**

8.1 All Orders placed by us to you are placed with the express understanding that they are supplied in accordance with our Terms and Conditions of Purchase as set out herein. These terms and the Order form the entire agreement between the Vendor and the Company and prevail over any other agreements, Terms and Conditions of Sale of the Vendor or other contractual terms which may otherwise be applicable, except where the Vendor is also a Customer of the Company in which instance the Company's Terms and Conditions of Sale will apply to purchases made by the Vendor from the Company. No conduct by the Company shall be deemed to constitute acceptance of any terms put forward by the Vendor. No variation or attempted variation of these Terms and Conditions shall be made by the Vendor in any documentation given by the Vendor to the Company, or otherwise shall be accepted by the Company unless such variations are accepted in writing and signed by a Director of the Company

8.2 Should you need to make any variation to our Terms and Conditions to accommodate individual fulfilment, accounting or company procedures, the Company are happy to discuss such variations, and, where possible come to an agreement to accommodate such variations. Requests for such variations should be made in writing to a Director of the Company, and orders will be deemed as conforming to our standard Terms and Conditions until such time any such variation has been amended/accepted in writing and signed by a Director of the Company.

## **9. DELIVERY**

9.1 Unless otherwise specified by the Company in writing the Goods must be delivered, allowing sufficient time for unloading, during the Company's normal hours of attendance at the place or places stated in the Order. Where the Vendor is delivering directly to the Company's client the Vendor must ensure arrangements are made for delivery at a suitable time and all documentation relating to the delivery must be copied to the Company. The Vendor shall be responsible for delivering and unloading the Goods. The Company reserves the right to arrange for the Goods to be collected from the Vendor. The Company may, from time to time, request the Vendor deliver Goods directly to the Company's client. If Goods should be delivered incorrectly from the Vendor to the Company's client the Vendor warrants to replace such Goods to the Company's client within 24 hours of notification of such error at the expense of the Vendor.

9.2 Time for delivery is of the essence. Upon receipt of an Order the Vendor must notify the Company by telephone of the expected date of delivery and confirm this in writing by fax, e-mail or other agreed means. If no such notification is made, and if not otherwise stated on the Order delivery will be expected within a reasonable period of time or upon terms as agreed. If the Vendor is unable to deliver the Goods on or before the expected delivery date due to causes outside of its reasonable control it shall forthwith notify the Company of any possible delay and the reasons therefore. Provided such notification is given and that the Vendor shall use its best endeavours to mitigate the effect of any such delay then the time for delivery may be extended by such reasonable period as the Company shall determine, or the Company at its sole discretion may cancel the Order. If the Vendor fails to deliver the Goods by the expected delivery date the Company shall have the right to obtain Goods in lieu

thereof itself or from another vendor and any additional costs and expenses incurred by the Company shall be reimbursed by the Vendor.

9.3 The Vendor shall complete any agreed and/or necessary testing of any Goods prior to delivery.

9.4 All goods will be received by the Company on the understanding they are unchecked, whether or not this is marked on the delivery note. Delivery notes must be endorsed at time of delivery by an Authorised representative of the Company.

If the Vendor should deliver Goods which have not been ordered by the Company these Goods will be held for collection by the Vendor for a period of 30 days after which time they will be disposed of as the Company sees fit and the cost of such disposal may be charged to the Vendor.

Receiving, handling, using or possessing the Goods. The Vendor shall ensure that adequate instructions and or training is provided to the Company and its staff concerning the use and method of operation of the Goods and any conditions which are necessary to ensure that, when put to that use, they will be safe and without risk to health. The price of the Goods shall include the provision of all documents necessary to the set up operation and maintenance of the Goods, and all necessary training in relation to the Goods.

9.5 The Vendor shall ensure that the Goods supplied to the Company shall be available and that compatible spares to effect repairs are also available for a period of seven years from the date of Order.

## **10. INDEMNITY AND INSURANCE**

10.1 The Vendor shall indemnify the Company against all actions, suits, claims, demands, costs, losses including consequential losses, charges and expenses arising in respect of loss or damage to property belonging to or death or personal injury of any person arising as a result of any act or omission of the Vendor in performance or purported performance of the Contract or otherwise arising under these conditions.

10.2 The Vendor shall have in force and shall maintain a policy of insurance in respect of these liabilities with a limit of indemnity not less than £2 million for any one claim arising out of any one incident or event and without limits as to the number of claims during the period of insurance. Without undue delay the Vendor shall provide evidence that such policy is in effect if requested by the Company.

10.3 The Vendor shall indemnify the Company against all liability, loss, damage, costs and expenses, including legal expenses, awarded against or incurred or paid by the Company as a result or in connection with:

Breach of any warranty or condition given by the Vendor in relation to the Goods whether express or implied; in particular, the Vendor warrants it has received the express consent of the manufacturer of the Goods to sell the said Goods within the EEC.

Any claim by any third party that the Goods infringe or their use or resale infringes the Intellectual Property Rights of any person;

Any liability under the Consumer Protection Act 1987 in respect of the Goods; and  
Any act or omission of the Vendor or its employees, agents or sub-contractors in supplying, delivering or installing the Goods.

10.4 Should any dispute arise between the Company and the Vendor, the Vendor hereby agrees to indemnify the Company in respect of all liability, loss, damage, costs and expenses, including legal expenses, awarded against or incurred or paid by the Company, along with all reasonable administrative expenses, including but not limited to such charges detailed in our Terms and Conditions of Sale, and to refund the Company for such on a full indemnity basis.

10.5 Except in respect of death caused by the Company's negligence the Company shall not be liable to the Vendor by reason of any representation or other term for 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 or consequential compensation whatsoever whether caused by the negligence of the Company its employees representatives agents or otherwise which arise out of or in connection with the Order or with the supply of Goods by the Vendor to the Company, or the further supply of such Goods to the Customer's client or other reseller. In any case the Company's liability shall not exceed the original purchase price of the Goods.

## **11. CONFIDENTIALITY**

11.1 The Vendor acknowledges and agrees that any information which is confidential or is denoted by the company as confidential including but not limited to information relating to the Company's business, the use to be made of the Goods or the business or identity of the Company's client/s is secret and confidential information and the Vendor accordingly undertakes that it will not at any time directly or indirectly use or disclose any of this confidential information to any person in whole or part. The undertaking does not apply to information which;

At the date of disclose is generally available to the marketplace; or

After disclosure to the Vendor becomes generally available through no fault of the Vendor; or Was lawfully in the possession of the Vendor prior to disclosure by the Company as evidenced by the written records of the Vendor and which was not acquired directly or indirectly from the Company; or The Vendor is obliged to disclose by law.

## **12. PAYMENT AND CREDIT TERMS**

12.1 It is the responsibility of the Vendor to ensure the Company is allowed a credit limit sufficient to facilitate the supply of Goods under the Order. Where necessary the credit limit will be increased to facilitate this. In instances where an insufficient credit limit prevents an order being processed the Vendor must notify this to the Company immediately by telephone and within 24 hours in writing. Unless otherwise agreed in

writing, and unless any query has been made on the invoice or Goods delivered remittance for Goods will be raised at the end of the month following the Company's receipt of an invoice from the Vendor.

The invoice from the Vendor must not fall due prior to the end of the month following date of invoice and the Company will endeavour to pay such invoices within 60 days where there is no dispute or query on such invoice. The Company will make payment by Cheque, BACS, bank transfer or by any other method as the Company may, at its sole discretion, decide. Where there is a dispute or query on an invoice the Company will make payment 60 days from such time as the dispute or query is resolved to the satisfaction of the Company. The Vendor warrants not to cease to accept orders or cease to make deliveries due to any non-payment of invoice due to invoice query or dispute. In the event the Vendor refuses to accept orders or make deliveries due to a disputed or queried invoice the Vendor hereby indemnifies the Company against any losses, including but not limited to consequential losses, loss of profit, loss of goodwill, etc, the Company may suffer thereby. In the case of disputed or queried invoice, should the Company make payment on any subsequent invoice from the Vendor, the Vendor may not deem that such payment has been made in respect of the disputed or queried invoice.

### **13. TITLE AND RISK**

The property in the Goods shall pass to the Company when the Goods are unloaded at the place specified by the Order, except that if for any reason the Company pays part of the price of the Goods before delivery, property shall pass upon such payment. The risk in the Goods shall pass to the Company upon the Goods being signed for by a duly authorised representative of the Company. The Vendor should obtain a list of Authorised signatories from a director of the Company. Should the Vendor fail to obtain such a list, or accept Orders which are not signed by, or signed by persons other than, such Authorised signatories, the Company will accept no liability for such Orders, deliveries, or invoices arising there from.

### **14. FORCE MAJEURE**

The Company shall not be liable to the Vendor for any failure to perform its obligations due to any circumstances beyond its control (including, without limitation, strikes, lockouts, industrial disputes, failure of power supplies, failure of computer hardware, software or networks, delays caused by matters outside its control or by any other person, firm or company, delays caused by any manufacturer of the goods, riots, civil disturbances, war or warlike activity, embargo, fire, explosion, flood or natural causes).

### **15. NOTICE**

Any notice or communications required or permitted to be given by either party to the other under these Terms and Conditions shall be in writing to that party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice or communication.

## **16. WAIVER**

No waiver by the Company of any breach of any of these Conditions by the Vendor shall be considered as a waiver of any subsequent breach of the same or any other condition.

## **17. PROVISIONS OF TERMS & CONDITIONS**

17.1 If any of these 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 Conditions and the remainder of the provision in question shall not be affected thereby.

17.2 The headings in these Conditions are for convenience only and shall not affect their interpretation. Nothing in these Conditions shall be deemed to restrict the rights of the Company under common law or statute.

## **18. LAW & JURISDICTION**

The order shall be construed and have effect in all respects in accordance with English law and any disputes arising there from or in connection with these Terms & Conditions and any written special conditions of purchase applicable hereto shall be submitted to the exclusive jurisdiction of the English Courts to which jurisdiction the parties exclusively submit.