

- 1. INTERPRETATION**
- In these Terms and Conditions the following expressions will have the following meanings unless inconsistent with the context:
- "Contract" any contract between Everest Communications and the Customer for the supply of the Services formed in accordance with these Terms and Conditions and the Supply and Maintenance Terms and Conditions annexed hereto
- "Customer" the purchaser of the Services named in section (1) of the Order Form overleaf
- "Everest Communications" Everest Communications Limited
- "Order" any order placed by the Customer with Everest Communications Limited for the supply of the services formed in accordance with Condition 2
- "Order Form" the Order Form overleaf
- "Services" any service which Everest Communications is to provide to the Customer (including any of them or any part of them) under a Contract and detailed on the Order Form overleaf
- "Supply and Maintenance Terms and Conditions" the Supply and Maintenance Terms and Conditions annexed to these Terms and Conditions
- "Service Point" the place at which the Services are to be performed as specified on the Order Form overleaf
- "Terms and Conditions" the standard Order Form Terms and Conditions set out in this document and any special terms agreed in writing between the Customer and Everest Communications as specified on the front of the acknowledgement of order.
- 2. FORMATION AND INCORPORATION**
- 2.1 Subject to any variation under Condition 11.5, any Order made by the Customer for Services provided by Everest Communications will be upon these Terms and Conditions, to the exclusion of all other terms and conditions and all previous oral or written representations including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Order.
- 2.2 These Terms and Conditions shall run in accordance with the Supply and Maintenance Terms and Conditions annexed to this form which shall govern the supply and maintenance of the Services by Everest Communications to the Customer.
- 2.3 Each Order or acceptance of a quotation for services will be deemed to be an offer by the Customer to purchase services upon the Terms and Conditions. The Contract is formed when the order is accepted by Everest Communications by way of a written acknowledgement of order. No contract will come into existence until a written acknowledgement of order is issued by Everest Communications. All orders must be on Everest Communications Ltd standard Order Form.
- 2.4 The Customer may not cancel the Order. Everest Communications may cancel the Order at any time prior to delivery of the Equipment or performance of the Services.
- 3. DESCRIPTION**
- 3.1 The Description of the Equipment or Services to be provided will be set out in Section (2) of Everest Communications Ltd Order Form overleaf. All samples, drawings, descriptive matter, specifications and advertising issued by Everest Communications and any descriptions or illustrations contained in Everest Communications Ltd catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Equipment or Services represented by or described in them. They will not form part of the Contract and this is not a sale by sample.
- 3.2 Everest Communications may make any change to the provisions of the Services which are to conform with any applicable safety, statutory or regulatory requirement or do not materially affect their quality or performance.
- 4. PRICE AND PAYMENT**
- 4.1 The price for the Services will be the price set out in Everest Communications Ltd published price list current at the date of acceptance of order and is exclusive of VAT and any other applicable sales tax or duty which will be added to the sum in question.
- 4.2 Everest Communications will invoice the Customer for the Services as indicated on the Order Form, on or at any time after performance commences and payment is due within 30 days of service of such invoice, or upon the termination of the Contract, whichever occurs first.
- 4.3 Time for payment will be of the essence.
- 4.4 Everest Communications shall be entitled to vary the price for the Equipment or Services by giving the Customer no less than 30 days notice in writing of its intention to do so. The Customer shall be entitled to terminate the Contract if it does not accept such an increase, provided that it notifies Everest Communications of its refusal to accept a price variation within 14 days of notification of the same by Everest Communications. In the event that the Customer does not notify Everest Communications of its intention to terminate within 14 days, it shall lose the right to terminate the Contract.
- 4.5 All payments to be made by the Customer under the Contract will be made in full without any set-off, restriction or condition and without any deduction for or on account of any counter claim.
- 4.6 Payment is due within 21 days of the invoice date. The time of payment of all sums due to Everest Communications under this Agreement shall be of the essence. If payment in full is not received by Everest Communications upon the due date, Everest Communications shall be entitled to levy an interest charge on any unpaid overdue balance based upon the Late Payments of Commercial Debts (Interest) Act 1998 and as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002, at the rate of 8% above the Bank of England base rate. Interest will be charged on a daily basis. Should this account not be settled when due, and thereby fall into arrears, and the Company instruct a Debt Collection Agency and/or a Solicitor to collect the said debt/account, all commissions, legal fees, costs, disbursements, Value Added Tax, and all sums that the Company is called upon to pay in order to collect the said outstanding debt/account, will be borne by the Debtor and/or the party or parties to the Conditions of Sale or by a contract that the Company has entered into with the Debtor.
- 4.7 Everest Communications will be entitled to withhold performance of the Services and reclaim any item of Equipment that it has hired to the Customer in the event that the Customer fails to make payments under a Contract in accordance with this Condition 4.
- 5. INSTALMENTS**
- 5.1 Everest Communications may perform the Services in stages. Each stage will be a separate Contract and no cancellation or termination of any one Contract relating to a stage will entitle the Customer to repudiate or cancel any other contract or stage. Each separate stage will be invoiced and paid for in accordance with the provisions of the Contract.
- 6. PERFORMANCE OF THE SERVICES**
- 6.1 The services will be performed at the Service Point.
- 6.2 The Customer shall during the term of the Contract allow any authorised representative of Everest Communications access to its premises and its Equipment to enable it to carry out Everest Communications Ltd obligations under the Contract. This shall include (but not limited to) inspection of the Equipment, removal of the Equipment for non-payment or for any other purpose associated with the terms of the Contract.
- 6.3 Everest Communications will use reasonable endeavours to perform each of the Customer's orders for the Services within the time agreed when the Customer place an order and, if no time is agreed, then within a reasonable time, but the time of performance will not be of the essence.
- 7. RISK/TITLE**
- 7.1 All Equipment will remain the property of Everest Communications until the price of such Equipment has been paid in full but risk will pass to the Customer from the date of delivery.
- 7.2 The Customer will insure the Equipment and keep it insured throughout the term of the Contract on an agreed value basis, but not for less than the full market value of the Equipment, against all risks on a comprehensive policy without restriction or excess.
- 8. LIABILITY AND INDEMNITY**
- 8.1 Everest Communications does not exclude its liability (if any) to the Customer.
- 8.1.1 for breach of Everest Communications Ltd obligations arising under section 12 Sale of Goods Act 1997 or section 2 Sale of Goods and Services Act 1982;
- 8.1.2 for personal injury or death resulting from Everest Communications Ltd negligence;
- 8.1.3 under section 2(3) Consumer Protection Act 1987;
- 8.1.4 for any matter which it would be illegal for Everest Communications to exclude (or to attempt to exclude) its liability; or
- 8.1.5 for fraud.
- 8.2 Except as provided in Condition 8.1 Everest Communications will be under no liability to the Customer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever.
- 8.3 Except as set out in Condition 8.1 Everest Communications hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, expressed (other than those set out in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.
- 8.4 Each of Everest Communications Ltd employees, agents and sub-contractors may rely upon and enforce the exclusions and restrictions of liability in Conditions 8.1 to 8.3 in that person's own name and for that person's own benefit, as if the words "its employees agents and sub-contractors" followed the word Everest Communications wherever it appears in those conditions. 8.5 The Customer acknowledges that the above conditions of this Condition 8 are reasonable and reflected in the price which will be higher without those provisions, and the Customer will accept such risk and/or incur accordingly.
- 8.6 The Customer agrees to indemnify, keep indemnified and hold harmless Everest Communications from and against all costs (including the cost of enforcement), expenses, liabilities, injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic, loss of profits, loss of business, depletion of goodwill and light loss), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgements which it incurs or suffers as a consequence of a direct or indirect breach of negligent performance or failure or delay in performance by the Customer of the terms of the Contract.
- 9. FORCE MAJEURE**
- 9.1 Everest Communications will not be liable to the Customer for any failure or delay of for the consequences of any failure or delay in performance of the Contract if it is due to any event beyond the reasonable control of Everest Communications including, without limitation, acts of God, war, industrial disputes, protests, fire, tempest, explosion, an act of terrorism and national emergencies and Everest Communications will be entitled to a reasonable extension of time for performing such obligations.
- 10. TERMINATION**
- 10.1 Everest Communications may by written notice terminate the Contract by giving not less than 90 days notice in writing to the Customer.
- 10.2 Everest Communications may by written notice terminate the Contract immediately if the Buyer is in material breach of the Contract or enters into insolvency, bankruptcy, any arrangement with its creditors or any other arrangement or situation which has a like effect. Failure to pay any sums due in accordance with Condition 4.2 is a material breach of the terms of the Contract which is not capable of remedy.
- 10.3 The termination of the Contract howsoever arising is without prejudice to the rights, duties and liability of either the Customer or Everest Communications accrued prior to termination. The conditions which expressly or impliedly have effect after termination will continue to be in force notwithstanding termination.
- 10.4 Upon termination of the Contract, the Customer will pay all monies due under the contract to Everest Communications up to and including the date of termination.
- 11. GENERAL**
- 11.1 Time for performance of all obligations of the Customer is of the essence. Time for performance of all obligations of Everest Communications is not of the essence.
- 11.2 Each right or remedy of Everest Communications under the Contract is without prejudice to any other right or remedy of Everest Communications whether under the Contract or not.
- 11.3 If any condition or part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Contract and will be ineffective, with as far as is possible, modifying any other provision or part of the Contract and this will not affect any other provisions of the Contract which will remain in full force and effect.
- 11.4 No failure or delay by Everest Communications to exercise any right, power or remedy will operate as a waiver of it, nor will any partial exercise preclude any other exercise of the same, or of any other right, power or remedy.
- 11.5 Save as set out in the Contract, these Terms and Conditions may also be varied or amended in writing and signed by a director of Everest Communications.
- 11.6 Everest Communications may assign, delegate, licence, hold on trust or sub-contract all or any part of its rights or obligations under the Contract.
- 11.7 The Contract is personal to the Customer who may not assign, delegate, licence, hold on trust or sub-contract all or any of its rights or obligations under the Contract without Everest Communications Ltd prior written consent.
- 11.8 The Contract contains all the terms which Everest Communications and the Customer have agreed in relation to the Services and supersedes any prior written or oral agreements, representations or understandings between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Everest Communications which is not set out in the Contract.
- 11.9 Save as set out in Condition 8.4 the parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a Party to it.
- 11.10 Any notice not in connection with the Contract will be in writing addressed to the other party at its registered offices, or principal place of business and will be delivered by hand, or first class or special delivery post. The notice will be deemed to have been duly served if delivered by hand, which left at the proper office for service or if made by pre-paid, first class post or special delivery post, 48 hours after being posted.
- 11.11 The formation, existence, construction, performance, validity and all aspects of the Contract or of any term of the Contract will be governed by English law. The English courts will have exclusive jurisdiction to settle any dispute which may arise out of, or in connection with the Contract. The parties agree to submit to that jurisdiction.
- 1. MAINTENANCE PERIOD AND CHARGES**
- a. This agreement shall start on the commencement date and continue for the minimum term of 60 months and thereafter from year to year starting on the anniversary of the said commencement date until terminated by either party giving written notice to the other of a minimum period of 90 days from the anniversary of the commencement date next following the date on which such notice is received. Notice shall be deemed to be received within 7 days of being posted by recorded delivery to the last known address of the party to whom it is given.
- b. The annual maintenance charge for the initial period of 12 months shall be the charge specified overleaf. For each subsequent year during the continuation of this agreement the annual maintenance charge shall be fixed according to Everest Communications current charges at the beginning of that year for the equipment stated overleaf. The annual maintenance charge for each year during which this agreement continues shall be paid for before the date on which that year begins together with the applicable rate of VAT. Payment is due within 21 days of the invoice date. The time of payment of all sums due to Everest Communications Ltd under this Agreement shall be of the essence. If payment in full is not received by Everest Communications Ltd upon the due date, Everest Communications shall be entitled to levy an interest charge on any unpaid overdue balance based upon the Late Payments of Commercial Debts (Interest) Act 1998 and as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002, at the rate of 8% above the Bank of England base rate. Interest will be charged on a daily basis. Should this account not be settled when due, and thereby fall into arrears, and the Company instruct a Debt Collection Agency and/or a Solicitor to collect the said debt/account, all commissions, legal fees, costs, disbursements, Value Added Tax, and all sums that the Company is called upon to pay in order to collect the said outstanding debt/account, will be borne by the Debtor and/or the party or parties to the Conditions of Sale or by a contract that the Company has entered into with the Debtor.
- c. If notice is given as above before the expiry date of the minimum term shown then payment is due for the sum of the annual amounts up to the expiry date of the minimum term.
- If notice is given as above after the expiry date of the minimum term shown then payment is due up to the end of the current year of cover.
- If notice is not given as above and the contract is still before the last year of the minimum term then payment is due for the sum of the annual amounts up to the expiry date of the minimum term.
- If notice is not given as above and the contract is either in the last year or after the minimum period of the agreement then payment is due up to the anniversary of the following year of cover.
- Additionally, if the contract is terminated without any notice, then an discount which reduced the amount paid in the first year will be repayable.
- 2. MAINTENANCE AND REPAIR**
- a. During the period of the agreement, in consideration of the payment of the maintenance charge, Everest Communications Ltd shall as soon as reasonably practicable after notification in accordance with paragraph 4 below provide a Everest Communications Ltd authorised maintainer to carry out during its normal business hours any maintenance of and repairs and replacements to the equipment that may be reasonably requested by the customer and shall carry out free of any extra charge and maintenance repairs and replacements (including the provision of any necessary materials and spare parts) as shall be necessary as result of fair wear and tear arising from the proper operation of the equipment. Any maintenance repairs and replacements for customers visits caused other than by fair wear and tear arising from the proper operation of the equipment or telecommunications network may be carried out at the customers expense at Everest Communications Ltd current charges. All maintenance, repairs or replacements may be carried out at the premises where the equipment is installed or elsewhere at the option of Everest Communications Ltd.
- b. The agreement does not cover the following items unless they are specifically detailed in the equipment section overleaf.
- Overhead, underground or external cabling.
 - Two wire telephone handsets.
 - Call loggers, voicemail, battery back-up and other additional equipment.
- 3. ALTERATIONS TO EQUIPMENT AND EXTENSION WIRING**
- a. All alterations to apparatus and extensions to wiring or re-installations shall be carried out by Everest Communications Ltd.
- b. Any alterations to equipment and wiring shall be notified to Everest Communications Ltd within 14 working days of the commencement of the works.
- c. Everest Communications Ltd may adjust the Annual Maintenance Charge if the equipment is altered or added to at any time.
- 4. THE CUSTOMER'S RESPONSIBILITIES AND LIABILITIES**
- a. The customer shall notify Everest Communications Ltd either orally or in writing as soon as possible of any fault in the equipment or of any work or maintenance that may be necessary. The Everest Communications Ltd Authorised Maintainer may at its option repair at its current charges faults or damage that have arisen because of the failure of the customer to notify Everest Communications Ltd promptly.
- b. The customer shall not allow the equipment to be moved, interfered with or tampered with and shall at all times comply with all reasonable advice given by the Everest Communications Ltd Authorised Maintainer in relation to the operation and care of equipment. Everest Communications Ltd may at its option repair at its current charges, faults or damage that have been caused by such moving, interference, tampering or by any failure by the customer to comply with Everest Communications Ltd directions.
- c. Should any maintenance, repair, replacement, alteration or addition be made to the equipment other than by Everest Communications Ltd, Everest Communications Ltd may terminate the agreement with immediate effect by giving the customer written notice and may retain the Annual Maintenance Charge.
- d. The customer shall at its expense comply with all statutory requirements, obligations, regulations, recommendations, bylaws or instructions relating to the use or testing of the equipment. The customer shall obtain and pay for any such licenses, way leaves, suitable private vehicle jack stands and other items necessary for the operation of the equipment. Suitable electric supplies where needed shall be provided and maintained by the customer at its expense.
- e. The customer shall give Everest Communications Ltd Authorised Maintainer and its representative's unhindered access to the equipment and shall at its expense make available mains electric supply and any other facilities and co-operation as may be necessary for the proper and prompt maintenance of the equipment under this agreement.
- f. The customer shall maintain an environment suitable to support efficient operation of the equipment under this agreement.
- g. If the customer fails to observe the provisions of this agreement Everest Communications Ltd may terminate it with immediate effect by giving the customer written notice and may retain the Annual Maintenance Charge.
- 5. LIMITATIONS OF LIABILITY**
- a. The Everest Communications Ltd Authorised Maintainer will indemnify the customer
- (Where the United Kingdom Contract Terms Act 1977 applies to this Agreement) against liability for personal injury or death directly attributable to the negligence of the Everest Communications Ltd Authorised Maintainer and
 - against physical damage (but not loss of any data) caused by the customers tangible property directly arising from the negligence of the equipment.
- b. The Everest Communications Ltd Authorised Maintainer's total liability to the customer under the indemnities contained in the paragraph 5 shall not exceed ten times the Annual Maintenance Charge for one or more related claims arising in any one twelve month period.
- c. Subject to the provisions of this paragraph 5 the Everest Communications Ltd Authorised Maintainer shall not be liable to the customer for any loss, expense or damage of any kind (direct, indirect or consequential and whether arising from negligence or otherwise) in connection with the Everest Communications Ltd Authorised Maintainer's maintenance of the equipment or otherwise.
- 6. GENERAL**
- a. English Law
- This agreement in all respects shall be governed by English Law. The Parties hereby irrevocably submit to the non-exclusive jurisdiction of the English courts.
- b. Construction
- The construction of the agreement is not to be affected by any heading. Reference to the plural shall include the singular and vice versa.
- c. Entire Agreement
- This agreement constitutes the entire agreement between the parties and there are no agreements or understandings between them other than those set herein.
- d. Variations
- Any variations to this agreement shall only be binding if it is recorded in a document signed by an authorised representative of Everest Communications Ltd.
- e. Waiver
- Failure by Everest Communications Ltd to exercise any of its rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights.
- f. Any expressed or implied waiver by Everest Communications Ltd of any term or condition of this agreement or of any breach or default by the customer may be terminated by Everest Communications Ltd at any time. No such waiver shall constitute a continuing waiver nor shall it prevent Everest Communications Ltd from acting upon that or any subsequent breach or default or from enforcing any term or condition of this agreement.
- g. Force Majeure
- Everest Communications Ltd shall not be liable in any way for loss, damage or delay consequent upon any circumstances beyond its reasonable control.
- h. Assignment and Transfer
- The customer may not assign the benefit of this agreement without prior written consent of Everest Communications Ltd.