

# Trading Account Application



Prior to dealing this must be completed and satisfactory bank and trade references received (unless otherwise agreed by Live Telecoms).

## Customer Profile

Company Registered Title: \_\_\_\_\_  
Registered No. \_\_\_\_\_  
Trading Name (if different from above): \_\_\_\_\_  
VAT NO. \_\_\_\_\_  
Trading Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Post Code: \_\_\_\_\_  
Tel: \_\_\_\_\_ Email: \_\_\_\_\_  
Fax: \_\_\_\_\_ www. \_\_\_\_\_

Registered Office Address (if different) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Post Code: \_\_\_\_\_  
Tel: \_\_\_\_\_ Email: \_\_\_\_\_  
Fax: \_\_\_\_\_ www. \_\_\_\_\_

Number of Employees: \_\_\_\_\_  
Date Established: \_\_\_\_\_

Legal Status (Please tick)

Statutory Body     Public Limited Company     Trader  
 Private Limited Company     Partnership     Trust Sole

## Directors/Partners/Proprietors/Trustees Names & Addresses:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Post Code: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Post Code: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Post Code: \_\_\_\_\_  
Telephone: \_\_\_\_\_

## Trade References

With whom you have traded for not less than one year and appropriate to the limit requested.

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Post Code: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Post Code: \_\_\_\_\_  
Telephone: \_\_\_\_\_

**Bankers:** \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Post Code: \_\_\_\_\_  
Sort Code: \_\_\_\_\_  
Account Number: \_\_\_\_\_

**Credit Card:** \_\_\_\_\_  
Card Holder\*: \_\_\_\_\_  
Card Number: \_\_\_\_\_  
CV2 No. (on signature strip): \_\_\_\_\_  
Expiry Date: \_\_\_\_\_  
Additional Card Holders: \_\_\_\_\_

**Cheque Purchase Limit £** \_\_\_\_\_

I understand that the information enclosed in this form will be used by Live Telecoms Ltd to evaluate my application and all information given is true and accurate. I agree to be bound by the terms and conditions of trade of Live Telecoms Ltd (which are detailed on the reverse of this application).

Name (please print) \_\_\_\_\_  
Position \_\_\_\_\_  
Authorised Signature \_\_\_\_\_  
Date of Application \_\_\_\_\_

Live Telecoms Limited, Quern House, Mill Court, Great Shelford,  
Cambridge CB2 5LD. Registered in England no. 4619328.  
VAT registered no. 810 0486 71.

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email  
[trade@livetelecom.com](mailto:trade@livetelecom.com)

Telephone  
0870 444 1916

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0870 444 1917

# Terms and Conditions of Trade

## 1. Contract Terms

- 1.1 Unless other terms and conditions are expressly accepted by Live Telecoms Ltd ("Live Telecoms") by means of a specific written amendment signed by a director of Live Telecoms the contract (and, unless otherwise agreed, all other contracts with Live Telecoms or any associated company of Live Telecoms) will be on the terms and conditions set out below and overleaf ("the Contract Terms") to the exclusion of any other terms and conditions (except those implied in favour of a seller which are not inconsistent with the Contract Terms) whether or not the same are endorsed upon, delivered with or referred to in any purchase order or other document delivered or sent by the Customer to Live Telecoms. Any reference overleaf to the Customer's order, specification or like document will not be deemed to imply that any terms or conditions endorsed upon, delivered with or referred to in such order, specification or like document will have effect to the exclusion or amendment of the Contract Terms.
- 1.2 In these Contract Terms "associated company" means any company which is either the parent undertaking or a subsidiary undertaking of the party in question or a subsidiary undertaking of such party's parent undertaking or any other person controlled by or under the same control direct or indirect as the party in question. "Parent undertaking" and "subsidiary undertaking" shall have the meanings attributed thereto in Section 21 of the Companies Act 1989 "business day" means a day on which banks in London are open for a full range of banking transactions "dead on arrival" means (in the case of equipment) equipment which on delivery is completely inoperative because of a defect in that equipment
- 1.3 Amendments to these Contract Terms may be made by Live Telecoms from time to time by notification to the Customer and any such amendment shall become operative 7 days after the date of notification by Live Telecoms

## 2. Delivery

- 2.1 Live Telecoms will endeavour to deliver the goods to be supplied under the contract ("the Goods" which expression includes any of them or any part of them) within the time agreed, and if no time is agreed, within a reasonable time, but in no circumstances will Live Telecoms be liable for loss or damage of any kind whatsoever caused directly or indirectly by any delay in the delivery of the Goods nor unless such delay exceeds 7 days (or any such longer period as may have been indicated by Live Telecoms in relation to the Goods prior to or following receipt of the Customer's order) will any delay entitle the Customer to terminate or rescind the contract.
- 2.2 Live Telecoms may make delivery of the Goods by installments.
- 2.3 Live Telecoms will arrange carriage of the Goods to the address specified in the Customer's order unless the Customer indicates on its order that the Customer (or its representative, which shall include any courier engaged by the Customer) will collect the Goods. Where Live Telecoms arranges carriage a delivery charge in accordance with Live Telecoms's tariff (as published from time to time and a copy of which will be available at Live Telecoms's principal place of business) will be added to and form part of the price of the Goods.
- 2.4 The Goods shall be deemed to be delivered to the Customer upon
- 2.4.1 hand-over of the Goods to the Customer (or its representative) at Live Telecoms's premises, where Live Telecoms does not arrange carriage; or
- 2.4.2 delivery to the address specified in the Customer's order (or any other address which Live Telecoms may subsequently agree), where Live Telecoms does arrange carriage.
- 2.5 Short shipment of the Goods (i.e. a shortfall in the Goods delivered) and/or (where Live Telecoms is arranging carriage) any damage in transit to the Goods shall be notified on the carriers own proof of delivery report and notified in writing to Live Telecoms by 5.00pm on the next business day following collection by the Customer at Live Telecoms's premises or delivery at the Customer's address referred to in clause 2.3 (as the case may be). In the absence of such notice the Customer will be deemed to have accepted the Goods and will not be entitled to claim for short shipment or damage in transit.
- 2.6 No claim for non-delivery will be considered unless Live Telecoms is advised in writing within 2 business days of the date which Live Telecoms advised the Customer of the date on which the Goods were to arrive.
- 2.7 In the event of failure by the Customer to give the appropriate notice or notices or to return the Goods as specified in this Clause 2, the Customer's claim will be deemed to have been waived and will be absolutely barred.
- 2.8 Without prejudice to Clauses 2.5 and 2.7, Live Telecoms's total liability to the Customer in respect of short-shipment and/or Goods damaged in transit shall be as follows:-
- 2.8.1 If it is the Customer's responsibility to check all packages for evidence of tampering and/or damage before signing to accept delivery of the Goods, if the Customer signs to accept delivery of the Goods (whether in the form of the carrier's standard delivery note or otherwise), the Customer's claim in respect of any short shipment or damage to the Goods in transit will be deemed to have been waived and will be absolutely barred.
- 2.8.2 Where the Customer reasonably refuses to sign for delivery of any Goods because of evidence of tampering and/or damage to the Goods in transit then subject to the Customer's compliance with the notice requirements of Clause 2.5, Live Telecoms will (at its discretion):-
- 2.8.2.1 within a reasonable time repair or replace those Goods so lost and/or damaged, or substitute (in accordance with Clause 9.2) substantially equivalent goods; or
- 2.8.2.2 credit the Customer's trading account in respect of any such Goods but in no circumstances will Live Telecoms be liable for any other loss or damage of any kind whatsoever caused directly or indirectly by any such short-shipment and/or damage in transit
- 2.9 Goods which are "dead on arrival" must be returned to Live Telecoms within 7 days of delivery in which case Live Telecoms will (in its discretion):-
- 2.9.1 within a reasonable time repair or replace those Goods, or substitute (in accordance with Clause 9.2) substantially equivalent goods; or
- 2.9.2 credit the Customer's trading account in respect of those Goods. In the absence of such return the Customer will be deemed to have accepted the Goods.
- 2.10 Any Goods which the Customer is entitled to return to Live Telecoms under these Contract Terms must be sent (together with all their accessories and their packaging) carriage paid at the Customer's risk to arrive at Live Telecoms's premises unmarked (which includes, without limitation, without any damage to packaging) and be accompanied by an Equipment Return Form authorised in advance by Live Telecoms (save that the Customer shall not be obliged to return any packaging with any Goods returned under warranty in accordance with Clause 3).
- 2.11 Any Goods sold "Electronic Serial Number (ESN) Free" that are delivered "ESN-locked" will either (at Live Telecoms's discretion) be released by Live Telecoms or those Goods which are locked will be replaced free of charge provided that details of the relevant ESN-locked Goods are supplied in writing to Live Telecoms by 5.00pm on the next business day following collection of the same by the Customer from Live Telecoms's premises or delivery at the Customer's address in accordance with Clause 2.3 (as the case may be). This Clause is applicable to Goods comprising cellular telecommunications terminal equipment only.

## 3. Guarantee and exclusion clauses

- 3.1 The Customer acknowledges that Live Telecoms is not the manufacturer of the Goods, and accordingly, that the warranty given by Live Telecoms is limited as follows. If any Goods are proved to the reasonable satisfaction of Live Telecoms to be defective in material or workmanship then:
- 3.1.1 if the Goods are returned to Live Telecoms within 12 months of the date of their delivery, then Live Telecoms will at its option (a) repair the Goods; (b) replace the Goods; (c) substitute substantially equivalent goods (in accordance with Clause 9.2) or (d) credit the Customer's trading account in respect of any such Goods. For the avoidance of doubt, where Live Telecoms replaces Goods or provides substitute goods, the original Goods returned by the Customer will belong to Live Telecoms.
- 3.1.2 if the Goods are not returned in accordance with Clause 3.1.1 (and/or in respect of any repaired, replacement or substituted Goods supplied by Live Telecoms in accordance with Clause 3.1.1), Live Telecoms will endeavour to transfer to the Customer the benefit of any warranty or guarantee given to Live Telecoms in respect of the Goods and where such warranty or guarantee applies this may result in Live Telecoms (a) attempting to repair the Goods and/or (b) returning them to the manufacturer for repair (in which case, Live Telecoms reserves the right to charge a handling fee in accordance with its terms and conditions from time to time, a copy of which will be available on request from Live Telecoms's principal place of business) Provided that these obligations on the part of Live Telecoms will not apply where:-
- (a) the Goods have been altered in any way whatsoever or have been subjected to misuse or unauthorised repair; or
- (b) the Goods have been improperly installed or connected (unless Live Telecoms carried out such installation and connection); or
- (c) the Customer has failed to observe any maintenance requirements relating to the Goods; or
- (d) the Customer is in breach of this or any other contract made with Live Telecoms; or
- (e) the Customer fails to comply with Clause 2.10.
- (f) the Goods are expressly sold on a "no warranty" basis or in respect of any promotional items supplied from time to time with or in connection with the Goods. In no circumstances shall the Customer be entitled to be provided with any loan equipment.
- 3.2 Live Telecoms's liability for loss or damage of any kind whatsoever (however such liability arises and whether in contract, tort, for breach of statutory duty or otherwise) under or in connection with:-
- (a) this contract and/or
- (b) any matter collateral to this contract and/or
- (c) in respect of any representation or misrepresentation (other than a fraudulent misrepresentation) made by or on behalf of Live Telecoms shall in no circumstances exceed the sum paid by the Customer to Live Telecoms in respect of those Goods in respect of or in connection with which such liability arises (which in the case of Goods supplied as part of a consignment shall mean only those Goods directly in respect of or in connection with which such liability arises and not the balance of the consignment) provided that nothing in this clause shall limit or exclude liability for death or personal injury arising from Live Telecoms's negligence.
- 3.3 SAVE AS PROVIDED IN CLAUSES 2.8, 2.9, 3.1 AND 3.2 LIVE TELECOMS WILL BE UNDER NO LIABILITY UNDER THE CONTRACT FOR ANY PERSONAL INJURY, DEATH, LOSS OR DAMAGE OF ANY KIND WHATSOEVER (OTHER THAN DEATH OR PERSONAL INJURY RESULTING FROM LIVE TELECOMS'S NEGLIGENCE) WHETHER CONSEQUENTIAL OR OTHERWISE INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS AND LIVE TELECOMS HEREBY EXCLUDES ALL CONDITIONS, WARRANTIES AND STIPULATIONS EXPRESS OR IMPLIED, STATUTORY, CUSTOMARY OR OTHERWISE WHICH BUT FOR SUCH EXCLUSION WOULD OR MIGHT SUBSIST IN FAVOUR OF THE CUSTOMER EXCEPT THAT SUCH EXCLUSION WILL NOT APPLY TO:
- 3.3.1 ANY IMPLIED CONDITION THAT LIVE TELECOMS HAS OR WILL HAVE THE RIGHT TO SELL THE GOODS WHEN THE PROPERTY IS TO PASS; OR
- 3.3.2 WHEN THE CUSTOMER DEALS AS A CONSUMER (AS DEFINED IN SECTION 12 OF THE UNFAIR CONTRACT TERMS ACT 1977); ANY IMPLIED TERM RELATING TO THE CONFORMITY OF THE GOODS WITH THEIR DESCRIPTION OR SAMPLE OR AS TO THEIR QUALITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 3.4 SAVE AS PROVIDED IN CLAUSES 2.8, 2.9, 3.1 AND 3.2, IN NO CIRCUMSTANCES WILL LIVE TELECOMS OR ITS EMPLOYEES, AGENTS OR SUB-CONTRACTORS BE LIABLE FOR ANY LOSS OR DAMAGE OF ANY KIND WHATSOEVER (OTHER THAN DEATH OR PERSONAL INJURY RESULTING FROM LIVE TELECOMS'S NEGLIGENCE) WHETHER CONSEQUENTIAL OR OTHERWISE CAUSED DIRECTLY OR INDIRECTLY BY ANY NEGLIGENCE OR OTHER TORTIOUS ACT OR BREACH OF STATUTORY DUTY ON THE PART OF LIVE TELECOMS OR ON THE PART OF ANY OF ITS EMPLOYEES, AGENTS OR SUB-CONTRACTORS IN CONNECTION WITH OR ARISING OUT OF THE SUPPLY OF THE GOODS OR IN CONNECTION WITH ANY STATEMENT (OTHER THAN A FRAUDULENT MISREPRESENTATION) GIVEN OR MADE (OR ADVICE NOT GIVEN OR MADE) BY OR ON BEHALF OF LIVE TELECOMS.

## 4. Risk

- Subject to Clause 2.8 but notwithstanding any other Contract Term, risk in the Goods shall pass to the Customer when the Goods are delivered to or collected by the Customer in accordance with Clause 2 (Delivery)

## 5. Property in the Goods.

- 5.1 The property (both legal and equitable) in the Goods shall not pass to the Customer until:-
- 5.1.1 the purchase price of the Goods has been paid in full in cleared funds; and
- 5.1.2 payment is made in full to Live Telecoms of any sum which is at the date of the contract or may thereafter become due or owing from the Customer to Live Telecoms.
- 5.2 Until property in the Goods has passed to the Customer or until delivery of the Goods to a third party pursuant to the permission given below, the Customer will hold the Goods in a fiduciary capacity and will not obliterate any identifying mark on the Goods or their packaging.
- 5.3 Prior to the property in the Goods passing to the Customer Live Telecoms permits the Customer to deliver the Goods to a third party pursuant to a bona fide and arm's length agreement to re-sell the Goods but such liberty will (a) cease upon the termination of the contract and (b) be without prejudice to Clause 5.1.
- 5.4 Where Live Telecoms is unable to determine whether any goods are the Goods the Customer shall be deemed to have sold all Goods of the kind sold by Live Telecoms to the Customer in the order in which they were invoiced to the Customer.
- 5.5 Live Telecoms may at any time after payment for the Goods has become due take possession of the Goods (which for the avoidance of doubt will include the right to stop the Goods in transit) and remove them and the Customer shall be deemed to have granted irrevocable authority to Live Telecoms to enter upon the Customer's premises or other premises where the Goods may be by its employees or agents to take possession of the Goods and (if necessary) to dismantle the Goods from any fitting to which they are attached.
- 5.5.1 If prior to the expiry of 7 days from the date when Live Telecoms has taken possession of the Goods the Customer pays all sums then due or owing to Live Telecoms together with the costs of retaking possession of the Goods, Live Telecoms will redeliver the Goods to the Customer at the Customer's expense. If within the 7 day period the Customer fails to pay all sums then due or owing to Live Telecoms, Live Telecoms may resell the Goods and shall pay to the Customer the balance of any sums received upon the resale of the Goods after deducting all sums due or owing from the Customer to Live Telecoms and the costs of taking possession of and reselling the Goods save that if the sums so received by Live Telecoms do not exceed all sums due or owing from the Customer to Live Telecoms and the costs of taking possession of and reselling the Goods the Customer will pay to Live Telecoms any shortfall.
- 5.6 Live Telecoms will have the right to maintain an action against the Customer for the price of the Goods notwithstanding that property in the Goods has not passed.
- 5.7 Nothing in this contract will constitute the Customer the agent of Live Telecoms in respect of any resale of the Goods by the Customer so as to confer upon a third party rights against Live Telecoms.

## 6. Price and Payment

- 6.1 Unless expressly stated otherwise all prices are exclusive of V.A.T. which shall be charged at the rate and in the manner prescribed by law from time to time.
- 6.2 Subject (unless Live Telecoms agrees otherwise) to the receipt by Live Telecoms of bank details and two trade references acceptable to Live Telecoms (in its absolute discretion), a cheque purchase limit ("CP Limit") will be allocated to the Customer; and provided that the indebtedness of the Customer to Live Telecoms (including, without limitation any payment in uncleared funds made by the Customer to Live Telecoms hereunder) remains within the CP Limit, payment by cheque will be permitted.
- 6.2.1 Where no CP Limit has been agreed by Live Telecoms or if the CP Limit has been removed, or if the price of the Goods (together with any other indebtedness of the Buyer to Live Telecoms) exceeds the CP Limit, then the Goods will not be released to the Customer, whether by Live Telecoms or by the carrier referred to in Clause 2.3 (as the case may be), until Live Telecoms is paid by cleared funds by any method acceptable to Live Telecoms the amount payable on the delivery of the Goods as advised by Live Telecoms.
- 6.2.2 Where a CP Limit has been agreed Live Telecoms may in its absolute discretion set other and/or remove the CP Limit.
- 6.2.3 Where a CP Limit has been agreed in writing by Live Telecoms:
- 6.2.3.1 a credit limit will be allocated to the Customer, and Live Telecoms may in its absolute discretion set other and/or remove the credit limit;
- 6.2.3.2 unless Live Telecoms (in its absolute discretion) agrees from time to time to accept payment by any other method no Goods will be released to the Customer until the Customer has executed and the Customer's bank has accepted, a direct debit mandate to Live Telecoms's satisfaction, authorising Live Telecoms to collect from the Customer's specified account(s) any outstanding sums whatsoever due from the Customer to Live Telecoms on the payment date(s) specified by Live Telecoms and advised to the Customer from time to time; and
- 6.2.3.3 if the price of the Goods (together with any other indebtedness of the Customer to Live Telecoms) does not exceed the Customer's credit limit at that time, the price of the Goods will become payable upon delivery and payment will be made by direct debit on the payment date(s) specified by Live Telecoms and advised to the Customer from time to time.
- 6.3 Any failure to make payment when due (including, without limitation, where any cheque provided by a customer by way of payment is dishonoured or where any direct debit arrangement is cancelled) will incur an immediate administration charge of £200.00 plus VAT, payable in addition to the outstanding payment due.
- 6.4 The Customer, by agreeing to be bound by these Contract Terms, hereby irrevocably agrees that Live Telecoms may collect any outstanding sums due at any time to Live Telecoms from the Customer's credit card or any other credit card details of which shall have been supplied by the Customer to Live Telecoms or any associated company of Live Telecoms on the Customer's trading account application or otherwise from time to time.
- 6.5 Live Telecoms reserves the right at its absolute discretion to levy a surcharge for all credit card transactions (including, without limitation, any described in Clause 6.4) in accordance with Live Telecoms's tariff applicable from time to time, a copy of which will be available at Live Telecoms's principal place of business.
- 6.6 Interest at an annual rate of 5% above Barclays Bank plc Base Rate from time to time will accrue daily and be calculated on a daily basis on overdue accounts from the due date until payment.
- 6.7 Where the Customer makes default under the contract or any other contract with Live Telecoms in payment on the due date of any sum due to Live Telecoms, Live Telecoms without liability may postpone any delivery or may cancel the contract or any other contract between Live Telecoms and the Customer but without prejudice to any right or remedy which Live Telecoms may have against the Customer in respect of such default.
- 6.8 Live Telecoms will be entitled to payment for all installments of Goods delivered to the Customer.
- 6.9 Live Telecoms shall not be entitled to appropriate any payment made by the Customer in respect of any goods or work in settlement of such invoices or accounts in respect of such goods or work as Live Telecoms may in its absolute discretion think fit notwithstanding any purported appropriation to the contrary by the Customer.
- 6.10 6.10.1 Without prejudice to any other rights and remedies which Live Telecoms may possess, Live Telecoms (and any associated company of Live Telecoms) will each be entitled to deduct from or set off against any debts or other sums whatsoever owed by Live Telecoms (and/or any associated company of Live Telecoms) to the Customer, any debts or other sums whatsoever owed by the Customer (and/or any associated company of the Customer) to Live Telecoms (and/or any associated company of Live Telecoms) and without prejudice to the foregoing, such deduction or set off shall be allowable across any other contracts between Live Telecoms (or any associated company of Live Telecoms) and the Customer (or any associated company of the Customer) and shall continue to operate despite any reversionary or fixed or floating charge. Without prejudice to the foregoing, the Customer will not dispute in any way (whether by assignment, charge, declaration of trust or in any other manner without limitation) of all or any part of its interest in any debts or other sums whatsoever owed by Live Telecoms (or any associated company of Live Telecoms) without the prior written approval of Live Telecoms or such associated company and any purported disposal without such consent shall be void.
- 6.10.2 For the avoidance of doubt, set off under clause 6.10.1 is permitted in respect of Live Telecoms, or other sums whatsoever owed by the Customer to Live Telecoms (or any associated company of Live Telecoms) whether or not the debts or the other sums are due and payable at the time of set off and/or whether the debts or other sums are contingent or certain, and/or liquidated or unliquidated at the time of the set off.
- 6.11 The Customer shall repay to Live Telecoms forthwith on demand all expenses costs or charges (in excess of the administration charge referred to in paragraph 6.3) incurred by Live Telecoms in enforcing any of the provisions of this Agreement (including without limitation any legal and/or debt collection costs).
- 6.12 The price charged by Live Telecoms for Goods may include a discount reflecting commission, bonus or subsidy which will be payable by the network operator (or other supplier) of the Goods to Live Telecoms in respect of sales of the Goods concerned if certain requirements are satisfied. Alternatively (or additionally) Live Telecoms may agree from time to time that commissions, bonuses or subsidies are payable to the Customer (in cash, by set off against any amount owed by the Customer to Live Telecoms, or otherwise) in respect of sales by the Customer of Goods to third parties. Such commissions, bonuses or subsidies will generally reflect commissions, bonuses or subsidies payable by the network operator (or other supplier) of the Goods to Live Telecoms.
- 6.13 Live Telecoms reserves the right, at any time in the future, to:
- (a) invoice the Customer for all or part of the amount of any discount given to the Customer; or
- (b) reclaim in full or in part the commission, bonus or subsidy paid or credited by Live Telecoms to the Customer in respect of Goods sold by Live Telecoms to the Customer in circumstances where the network operator (or other supplier) of the Goods is entitled to reclaim (either by set off or otherwise) from Live Telecoms (and/or any associated company of Live Telecoms) any commission, bonus or subsidy in respect of such Goods.
- 6.14 Any amount invoiced in respect of a discount, or commission, bonus or subsidy reclaimed, by Live Telecoms pursuant to clause 6.13, at the option of Live Telecoms, be set off against any commission, bonus or subsidy, or other amount due from Live Telecoms to the Customer.

## 7. Cancellation

- 7.1 If the Customer cancels, extends or delays or purports to cancel, extend or delay the contract or part thereof, or fails to take delivery of any Goods at the time agreed (if any) or otherwise within a reasonable time, then the Customer will be liable (without prejudice to any other rights of Live Telecoms to claim damages) to indemnify and keep indemnified Live Telecoms against any resulting loss, damage or expense incurred by Live Telecoms if Live Telecoms is unable (whether temporarily or permanently) to procure any services or goods necessary to enable it to supply the Goods or if the supply of the Goods is prevented or hindered by reason of any cause beyond Live Telecoms's reasonable control which for the avoidance of doubt and without prejudice to the generality of the foregoing shall include governmental action, war, riot, civil commotion, fire, flood, epidemic, labour disputes including labour disputes which prevent or hinder the work force of Live Telecoms, restraints or delays affecting shipping or carriers, currency restrictions and Act of God. Live Telecoms may cancel or suspend performance of the contract in writing to the Customer so far as it relates to Goods and/or Works not then supplied or work not then done and such cancellation or suspension shall not give rise to any claims by the Customer provided that the Customer shall remain liable to pay for Goods delivered prior to the date of such cancellation or suspension.

## 8. Storage

- 8.1 If the Customer fails to take delivery of the Goods when they are ready for delivery Live Telecoms may, at its option, either store them itself or have them stored by third parties on such terms as Live Telecoms may in its absolute discretion think fit. In any event the cost of storage will be borne by the Customer and insofar as the storage is done by Live Telecoms then such cost will be Live Telecoms's storage charges current at the time of storage. The cost together with any additional insurance or double handling charges will be added to and form part of the price for the Goods.

## 9. Specification

- 9.1 No variation in the specification or design of any Goods which in the reasonable opinion of Live Telecoms does not affect the suitability of the Goods for the purpose for which they are supplied by Live Telecoms will constitute a breach of contract or impose upon Live Telecoms any liability whatsoever provided that Live Telecoms reserves the right to supply the Goods with any software levels unless the software levels have been specifically agreed prior to or on receipt of the Customer's order.
- 9.2 Without prejudice to clause 9.1, Live Telecoms shall be entitled to substitute for the Goods any other goods which Live Telecoms, in its reasonable opinion, considers to be of equal or better quality.

## 10. Promotional material and Trade Marks

- 10.1 No drawings, descriptive matter, weights, dimensions or shipping specifications issued by Live Telecoms or the manufacturer of the Goods, nor the descriptions and illustrations contained in Live Telecoms' or manufacturer's or supplier's catalogues, price lists or other promotional material will form part of the contract nor be regarded as a warranty or representation relating to the Goods.
- 10.2 For the avoidance of doubt, any taxation which may become payable in respect of any gifts or promotional items supplied by Live Telecoms will be the responsibility of and be paid by the Customer and without limiting the foregoing, shall be declared by the Customer in the Customer's tax return.
- 10.3 The Customer shall not be entitled to use any trade marks or other brands belonging to or associated with Live Telecoms without Live Telecoms's prior written consent (provided always that, for the avoidance of doubt, the Customer shall not be required by this clause to remove any such trade marks or names from any packaging or other material supplied by Live Telecoms with the Goods).

## 11. Termination

- 11.1 The contract will terminate immediately upon the happening of any one or more of the following, namely, that the Customer has had a bankruptcy order made against him or has made an arrangement or composition with his creditors or otherwise taken the benefit of any Act for the time being in force for the relief of insolvent debtors or (being a body corporate) has had convened a meeting of creditors (whether formal or informal) or has entered into liquidation (whether voluntary or compulsory) except a solvent liquidation for the purpose only of reconstruction or amalgamation approved by Live Telecoms in advance or a receiver manager administrator or administrative receiver appointed of its undertaking or any part thereof or a resolution has been passed or a petition presented to any Court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer or any proceedings have been commenced relating to the insolvency or possible insolvency of the Customer.
- 11.2 The contract will terminate immediately upon service of written notice of termination by Live Telecoms on the Customer on the happening of any one or more of the following, namely, that the Customer has suffered or allowed any voluntary liquidation for the purpose only of reconstruction or amalgamation approved by Live Telecoms in advance or a receiver manager administrator or administrative receiver appointed of its undertaking or any part thereof or a resolution has been passed or a petition presented to any Court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer or any proceedings have been commenced relating to the insolvency or possible insolvency of the Customer.
- 11.3 Live Telecoms's rights contained in the clause headed "Property in the Goods" (but not the Customer's rights) shall continue beyond the discharge of the parties' primary obligations under the contract consequent upon its termination.
- 11.4 The termination of the contract howsoever arising will be without prejudice to the rights and duties of either party accrued prior to termination.

## 12. General

- 12.1 Live Telecoms will be entitled to assign sub-contract or sublet the contract or any part thereof.
- 12.2 Failure by Live Telecoms to enforce any of the Contract Terms will not be construed as a waiver of any of its rights hereunder.
- 12.3 In relation to all obligations of the Customer under the contract, the time of performance is of the essence.
- 12.4 The illegality, invalidity or unenforceability of any Clause or part of these Contract Terms will not affect the legality, validity or enforceability of the remainder (if any) of the contract or part saved by any competent court or authority to be illegal, invalid or unenforceable the parties agree that they will substitute provisions in a form similar to the offending provisions as is possible without thereby rendering them illegal, invalid or unenforceable.
- 12.5 Each of the parties hereto is an independent contractor and nothing contained in these Contract Terms shall be construed to imply that there is any relationship between the parties of partnership or of principal/agent or of employer/employee.
- 12.6 The legal construction of these clauses shall not be affected by their headings which are for convenience of reference only.
- 12.7 Any contract made by the Customer or part saved by any competent court or authority to be illegal, invalid or unenforceable shall be deemed to have been duly severed.
- 12.7.1 If delivered by hand, when left at the proper address for service.
- 12.7.2 If given or made by prepaid first class post, 48 hours after being posted (excluding Saturdays, Sundays and public holidays)
- 12.7.3 If given or made by fax at the time of transmission subject to receipt of the appropriate "clear" transmission report provided that where in the case of delivery by hand or transmission by fax, such delivery or transmission occurs either after 4.00p.m. on a Business Day or on a day other than a Business Day service shall be deemed to occur at 10.00a.m. on the next following Business Day (such times being local time at the address of the recipient). For the purposes of a "Business Day" is a day when the banks in the location of the recipient are open for a full range of banking transactions Any demand, notice or communication shall be made in writing or by fax (addressed to the recipient at its registered office or its address stated in this Agreement (or such other address or fax number as may be notified in writing from time to time)

## 13. Crime Prevention

- The Customer undertakes and agrees with Live Telecoms that it will comply with the requirements of The Mobile Communications Crime Prevention Scheme established by The Federation of Communications Services Ltd and that it will ensure that parties to all transactions entered into by the Customer comply with the rules of the scheme as amended from time to time. The Customer further agrees to ensure that any business or company that trades with it will be informed of the scheme and that such parties agree to be bound by the scheme.

## 14. English Law

- The formation, interpretation and operation of the contract will be subject to English Law and the Customer submits itself to the non-exclusive jurisdiction of the English Courts.