

The Terms of Trade of LYNX NETWORKS PLC ("LYNX") of 28 & 29 Clarke Road, Mount Farm, Milton Keynes, MK1 1LG

All orders, in whatever terms, are accepted subject to the following conditions and no additions or alterations shall apply unless specifically agreed in writing by an authorised representative of Lynx. Previous dealings between Lynx and any customer shall not vary or replace these terms or be deemed in any circumstances to do so. All orders shall be subject to Lynx's Acknowledgement.

The Customer acknowledges that before entering into a contract for the purchase of any Goods or supply of Services from Lynx he has expressly represented and warranted that he is not insolvent and has not committed any act of bankruptcy, or being a company with limited or unlimited liability, knows of no circumstances which would entitle any debenture holder or secured creditor to appoint a receiver, to petition for winding up of the company or apply for the appointment of an administrator or exercise any other rights over or against the company's assets.

The invalidity illegality or unenforceability of any provisions of this contract shall not affect the continuation in force of the remainder of these Terms of Trade.

Interpretation

'Acknowledgement' shall mean the order acknowledgment whether by a document issued or given orally by Lynx to the Customer after either Lynx has accepted an order from the Customer or the Customer has accepted a proposal from Lynx in connection with the Goods and/or Services. Lynx shall keep records of all orders acknowledged whether written or orally and such record shall be final conclusive evidence of the order in the event of any dispute.

'Business Hours' shall mean 9am to 5pm on a Working Day.

'The Customer' shall mean the party named as 'the Customer' in the Acknowledgement.

'Goods' shall mean the cabling, associated fittings, leads and other goods (including instalment or any parts of goods) which Lynx is to supply as set out in the Acknowledgement.

'Services' shall mean the installation and other services which Lynx is to supply as set out in the Acknowledgement.

'Start Date' shall mean the start date of the performance of the Services by Lynx as stated in the Acknowledgement.

'Working Day' shall mean any day except a Saturday, Sunday of bank or public holiday in England.

Words importing one gender include all other genders: words importing the singular include the plural and vice versa

The Conditions:

1. BASIS OF TRADE:

- Lynx shall supply and the Customer shall purchase the Goods and/or Services in accordance with the Acknowledgement subject to these Conditions.
- No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the parties.
- Lynx shall not be liable for any advice or recommendation not given in writing by its employees or agents to the Customer or its employees or agents as to the performance of the Goods and/or Services and such advice or recommendation is acted upon entirely at the Customer's own risk.
- Lynx shall not be liable for any typographical, clerical or other error or omission in any sales literature, proposal, price list, acceptance of offer, invoice or other document or information issued by it.

2. CANCELLATION:

- Lynx reserves the right (without prejudice to any other remedy) to cancel any uncompleted order or to suspend delivery or services should it decide at its sole discretion that the Customer has not carried out its obligations, as agreed by both parties, to Lynx.
- Should the Customer seek to cancel any order, it shall be the decision of Lynx, at its sole discretion, whether or not such cancellation is valid.
- If an order is cancelled in any of the circumstances set out above the Customer shall indemnify Lynx for all losses, costs, damages, charges and expenses arising out of the order and the cancellation thereof.

3. ACCEPTANCE:

- No order submitted by the Customer shall be deemed to be accepted by Lynx unless and until confirmed in the Acknowledgement by its authorised representative.
- The acceptance by Lynx of any order for Goods shall constitute an agreement to supply the Goods and not a sale of them and no title to the said Goods shall pass to the Customer by reason of delivery or acceptance of the same.

4. SPECIFICATION:

- The Customer shall be responsible to Lynx for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer and/or giving Lynx any necessary information relating to the Goods or Services or the premises at which the Goods are to be installed within a sufficient time to enable Lynx to perform its obligations in accordance with these Conditions.
- The quantity, quality and description of and any specification for the Goods or Services shall be those set out in the Acknowledgement.
- Lynx reserves the right to make any changes in the specification of the Goods or Services which are required to conform with any applicable statutory or EC or other legal requirements or where the Goods or Services are to be supplied to Lynx's specification which do not materially affect their quality or performance.

5. PRICE:

- The price of the Goods or Services shall be Lynx's quoted price or where no price has been quoted (or a quoted price is no longer valid) the price listed in Lynx's published price list current at the date of the acceptance of the order.
- All prices quoted for cabling systems, excluding active hardware (hubs, switches, routers etc.) are valid for 60 days only or until earlier acceptance by the Customer after which time Lynx, without giving notice to the Customer, may alter them. Due to prices changing regularly, prices for active hardware must be agreed at time of order.
- Lynx reserves the right by giving notice to the Customer at any time before delivery to increase the price of the Goods and/or Services to reflect any increase in the cost to Lynx which is due to any factor beyond the control of Lynx (such as without limitation any foreign exchange fluctuation, regulation alteration of duties, or significant increase in the costs to Lynx in acquiring the Goods), any change in delivery dates or Start Date quantities or specifications for the Goods or Services which is requested by the Customer or any delay caused by any instructions of the Customer or failure of the Customer to give Lynx adequate information or instructions.

- Lynx reserves the right, in addition to the price of the Goods or Services, to make a charge at its standard rates from time to time if:
 - the Customer requires Lynx to carry out work which is additional to that stated in the Acknowledgement, or site conditions at the time, or site conditions which were not previously made known to Lynx, make it necessary for Lynx to carry out work which is additional to that stated in the Acknowledgement, or
 - Lynx is unable to start on the Start Date or progress with work due to delays caused by the Customer or by contractors of the Customer, or
 - Condition 7(d) is not complied with, or
 - Lynx makes an abortive fault call as described in Condition 12(xi).
- The price of the Goods is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay Lynx.

6. DELIVERY:

- Except as otherwise stated under the terms of any quotation or in any price list of Lynx and unless otherwise agreed in writing between the Customer and Lynx, all prices are given by Lynx on an ex works basis, and where Lynx agrees to deliver the Goods otherwise than at Lynx's premises the Customer shall be liable to pay Lynx's charges for transport packaging and insurance.
- Unless otherwise agreed in writing, delivery of the Goods shall be made by Lynx delivering the Goods by post to the place nominated by the Customer.
- Lynx will use all reasonable endeavours to deliver the Goods on the date stated in the Acknowledgement.
- Lynx will use its best endeavours to comply with its quoted delivery dates but Lynx shall not be liable for any loss or damage (whether direct or consequential) whatsoever arising from late delivery of Goods or materials and the Customer shall not be entitled to treat the contract as repudiated by reason of any such late delivery.
- If Lynx fails to deliver the Goods for any reason other than any cause beyond Lynx's reasonable control or the Customer's fault then Lynx is accordingly liable to the Customer, Lynx's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar Goods to replace those not delivered over the price of the Goods.
- If the Customer wishes to make any claim for non-delivery then it must immediately notify Lynx in writing if the Goods have not been received within 7 days of Lynx's advice note.
- The Customer shall inspect the Goods immediately upon delivery thereof and shall within 1 day from such delivery give notice in writing to Lynx of any damage or loss or shortage of Goods, or of any matter or thing by reason whereof the Customer may allege that the Goods are not in accordance with the contract or are defective in material or workmanship. If the Customer shall fail to give such notice the Goods are thereafter implied to be in all respects in accordance with the contract and free from any defect which would be apparent upon reasonable examination of the Goods and the Customer shall be deemed to have accepted the Goods accordingly. In the event that the Customer establishes to Lynx's reasonable satisfaction that the Goods are not in accordance with the contract or are so defective, the Customer's sole remedy in respect of such non-accordance or defects shall be limited, as Lynx may elect, to the replacement of the faulty part or refund of the purchase price against the return of the Goods.

7. PERFORMANCE:

- This Condition 7 applies only to contracts for the supply of Services or Goods and Services, but not Goods alone.
- Lynx will use all reasonable endeavours to start performance of the Services on the Start Date.
- Lynx will use its best endeavours to comply with the Start Date but Lynx shall not be liable for any loss or damage (whether direct or consequential) whatsoever arising from the late supply of Services and the Customer shall not be entitled to treat the contract as repudiated by reason of any delay in the Start Date.
- The Customer is to do and provide everything requisite to enable Lynx's programme of work to be carried out in the sequence carried out by Lynx without interruption, and unless otherwise agreed in writing the Customer will, prior to the Start Date, obtain all necessary and relevant licences permissions and consents relating to the performance of the Services at the site and will from the Start Date until completion of the Services procure that Lynx is provided free of charge with the following facilities:
 - Clear and continuous access to areas where Services are to be performed.
 - Adequate area to allow storage and adequate protection of the Goods and materials and Lynx's equipment, tools and other property.
 - If the contract provides that Lynx will use existing ducts, ducts with clear capacity for the Goods and with draw ropes, and free access to such ducts.
 - All cable access routes and working areas free from hazardous substances such as asbestos, toxic chemicals and explosives.
 - Labour or equipment to enable the moving of items of a weight or dimension which would, in the opinion of Lynx, require more than two persons to lift.
 - Artificial lighting and all power services.
 - All facilities and services required to ensure a safe working environment in compliance with all applicable Health & Safety and other legal provisions.
- In the event of breach of the foregoing obligations or of any of the foregoing facilities not being provided, then without prejudice to Lynx's other rights, the Customer will pay Lynx's reasonable additional charges arising as a result.
- If Lynx fails to perform the Services for any reason other than a cause beyond Lynx's reasonable control or to the Customer's fault then Lynx is accordingly liable to the Customer. Lynx's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar Services in substitution for those not performed over the price of the Services.

8. PAYMENT:

- (a) Unless the Customer has a credit account with Lynx and subject to any special terms agreed in writing between the Customer and Lynx, Lynx shall be entitled to recover the price notwithstanding that the property in the Goods has not passed to the Customer.
- (b) If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Lynx, Lynx shall be entitled to:
- (d) cancel the contract or suspend any further deliveries to the Customer;
- (e) appropriate any payment made by the Customer to such of the Goods or Services (or the goods supplied under any other contract between the Customer and Lynx) as Lynx may think fit (notwithstanding any purported appropriation by the Customer); and
- (f) charge the Customer interest after 30 days from the due date on any unpaid amount at the rate of 3 per cent per annum above Barclays Bank base rate applicable from time to time until payment in full is made.

9. RISK AND PROPERTY:

- (a) Risk of damage to and loss of the Goods shall pass to the Customer at the time of delivery or if the Customer wrongfully fails to take delivery of the Goods at the time when Lynx has tendered delivery of the Goods.
- (b) Lynx shall remain the sole and absolute owner of the Goods until such time as each invoice, including any interest accrued due to late payment and/or any other unforeseen costs arising out of the Customer's conduct, shall have been paid in full and received by Lynx. Until such time the Customer shall be the bailee of the Goods for Lynx and shall store them upon his premises separately from his own goods or those of any other person and in a manner which makes them readily identifiable as the Goods of Lynx.
- (c) Whilst Lynx remains the owner, the Customer shall ensure that the Goods are properly stored, protected and insured.
- (d) Until such time as the title in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold) Lynx shall then be entitled at any time to require the Customer to deliver up the Goods to Lynx and if the Customer fails to do so forthwith, Lynx shall be entitled to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.
- (e) The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Lynx, but if the Customer does so all monies owing by the Customer to Lynx shall (without prejudice or any other right to remedy of Lynx) forthwith become due and payable.

10. PRODUCT INCORPORATION:

- (a) The Customer shall be at liberty to sell or incorporate the Goods into another product or chattel subject to the condition that if the Goods are admitted or united in any way with those of the Customer, the product thereof shall become and/or shall be deemed to be for all purposes the property of Lynx until all invoices, costs and interest for those Goods have been paid by the Customer and payment has been received by Lynx. If the Goods are admitted or united in any way with the property of any person or persons other than the Customer or are processed with or incorporated therein, the product thereof shall become and shall be deemed for all purposes to be owned in common with that other person or persons. The Customer shall further indemnify Lynx for any loss suffered as a result of the Goods being incorporated into another product where recovery of those Goods is not possible and/or a claim by Lynx in respect of its retention of title of the same is unsuccessful.
- (b) On sale to a sub-purchaser of the Goods or any products, goods or chattels to which the Goods have been attached or been incorporated, the proceeds thereof shall be held in trust for Lynx, shall not be held together or mixed with other monies and shall not be paid into any overdrawn bank account but shall be paid into a fiduciary account for Lynx with the Customer's bankers and not until payment to Lynx of all invoices, costs and any interest accrued relating to those Goods shall the Customer be entitled to transfer such monies held in trust to any other account.

11. INSOLVENCY OF BUYER:

The Customer's right to the possession of the Goods or to the supply of the Services shall cease if he commits any available act of bankruptcy or (being a company) shall go into liquidation (save for the purpose of amalgamation or reconstruction of a solvent company) or shall have a receiver appointed of its undertaking or if the Customer shall enter into any arrangement or composition for the benefit of his creditors or shall suffer any distress or execution to be levied on his goods or (being a company) shall do anything which would entitle any person to present a petition for winding up or to apply for an administration order. The Customer agrees that Lynx may for the purpose of recovery of its Goods enter the premises of the Customer without prior notice to the Customer and repossess such Goods.

12. WARRANTY / DEFECTS AFTER DELIVERY:

- (a) For a maximum of a twelve month period from the date of delivery of the Goods, Lynx will make good, by any means and method at its sole discretion, any defects which under proper use appear in such part or parts of the Goods as arise solely from faulty materials or workmanship PROVIDED ALWAYS that:
- (i) any repairs to the Goods which may become necessary are carried out by Lynx or its agents or otherwise as Lynx may at its discretion agree in writing;
- (ii) the Customer will allow Lynx, its agents and/or contractors full access to the cabling network for the purpose of rectifying the defect;
- (iii) any such Goods requiring inspection for repair or replacement are delivered promptly by the Customer, carriage paid, to Lynx if necessary;
- (iv) the Goods are properly maintained and operated in accordance with any instructions supplied to the Customer by Lynx;
- (v) prompt notification of the discovery of any defect in the Goods is given to Lynx and, if aggravated damage may result from continued operation, the Goods are not used again until repairs have been effected;
- (vi) Lynx shall not be liable in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Customer;
- (vii) Lynx shall not be liable in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, fire tampering (including faults attributable to mains cabling), failure to follow Lynx's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without Lynx's approval;
- (viii) Lynx shall not be liable for faults attributable to the 240 volt mains cabling;
- (ix) Lynx shall not be liable under any warranty, conditions or guarantee expressly given or implied if the total price for the Goods has not been paid by the due date for payment;
- (x) the warranty in this Condition 12 does not extend to parts, materials or equipment not manufactured by Lynx in respect of which the Customer shall only be entitled to the benefit of such warranty or guarantee as is given by the manufacturer to Lynx;
- (xi) any claim by the Customer which is based on the defect in the quality or conditions of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by Buyer) be notified to Lynx within 7 days after discovery of the defect or failure. If delivery is not refused and the Customer does not notify Lynx accordingly the Customer shall not be entitled to reject the Goods and Lynx shall have no liability for such defect or failure and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the contract; or

(xii) All parts replaced under warranty shall become the property of Lynx and the new parts shall remain the property of Lynx until such time as payment has been received in full from the Customer for the Goods to which they are part.

- (b) In relation only to any contract for Services, the Customer's notice under condition 12(x) may be given by telephone to Lynx during Business Hours stating the Customer's name the address where the Goods are installed and the nature of the fault. Within eight Business Hours of such fault call (or within such other period as shall have been agreed in writing with the Customer) Lynx shall attend at the site notified by the Customer and shall as soon as reasonably practicable cure the fault by providing parts and labour to repair or replace the Goods or the part in question. The Customer will where required allow Lynx its agents and contractors full access to the cabling network for this purpose. Lynx shall have no further liability to the Customer in connection with a claim which is based on any defect in the quality or condition of the Goods or their failure to meet specification. Lynx may charge its standard rates from time to time (including a minimum charge) for responding to a fault call is the fault is not attributable to the cabling network or if Lynx is not liable in respect of the defect or under the warranty.
- (c) In relation only to any contract for the Goods (without Services), Lynx shall be entitled to repair or replace the Goods (or the part in question) free of charge or at Lynx's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price) in respect of any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to Lynx in accordance with Condition 12(x). Lynx shall have no further liability to the Customer other than that stated in this Condition 12(xii).

13. FRUSTRATION:

If any contract or any part of it shall become impossible of performance or otherwise frustrated Lynx shall be entitled to a fair and reasonable proportion of the price in respect of the work done up to the date thereof. For this purpose any monies previously paid by the Customer shall be retained as against the sum due to Lynx under this provision. Lynx may dispose of the Goods as Lynx thinks fit, due allowance being made to the Customer for the net proceeds thereof.

14. FORCE MAJEURE:

- (a) Lynx shall have no liability in respect of failure to deliver or perform or delay in delivering or performing any obligations under a contract due to any cause outside the reasonable control of Lynx including but not limited to civil commotion, strikes, lock-outs, war, fire, accidents, epidemics, governmental regulations or requirements, unavailability of materials or failure of original manufacturer or supplier, carrier or sub-contractor to deliver the Goods and if the delay or failure has continued for a period of 3 months then either party may give notice in writing to the other determining the contract and on such determination Lynx shall refund to the Customer any payment which the Customer has already made on account of the price of the Goods after deduction of any payment due to Lynx.
- (b) Any monies owed by the Customer to Lynx shall become immediately repayable in such circumstances and the provisions in Clause 8 of these terms shall become applicable.

15. PATENT RIGHTS:

The sale of any Goods and the publication of any information or technical data relating to such Goods does not imply freedom from patent or other protective rights in respect of any particular application of the Goods.

16. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS:

All rights relating to the specification and/or the designs of the Goods (including any copyright, design right or other intellectual property rights in the same) shall as between Lynx and the Customer be the sole and absolute property of the Lynx.

17. DRAWINGS AND DESCRIPTIVE DOCUMENTS:

All software specifications, drawings, plan designs and technical documents and information supplied by Lynx for the Customer's use or information shall remain at all times Lynx's exclusive property and must not be copied, reproduced, transmitted or communicated to a third party without Lynx's prior consent in writing.

18. LEGAL INTERPRETATION:

Any contract between Lynx and the Customer shall be governed by English law. Any dispute arising out of or in connection with these terms shall be determined under the exclusive jurisdiction of the English Courts.

19. HEALTH AND SAFETY AT WORK ACT 1974:

For the purposes of section 6 of the Health and Safety at Work Act 1974 the Customer hereby undertakes that the Goods supplied by Lynx will be used as specified and for laid down uses in accordance with the appropriate Health and Safety information supplied by Lynx and, in particular, ensure that this information will be brought to the attention of all users of the Goods. All such information provided by Lynx is based on results gained from experience and tests by the manufacturers and is believed to be accurate and adequate for the uses laid down but no liability can be accepted for uses outside those laid down.

20. LIMITATION OF LIABILITY:

Lynx's liability (if any) whether in contract, tort or otherwise in respect of any defect in the Goods or fault caused by the Services, or for any breach of the contract or of any duty owed by the Customer in connection therewith shall be further limited in the aggregate to the agreed price of the Goods and/or Services in question.

21. GENERAL:

- (a) These terms set out Lynx's entire liability in respect of the Goods and Services, and Lynx's liability under these terms shall be in lieu and to the exclusion of all other warranties, conditions, terms and liabilities express, implied or statutory or otherwise in respect of the quality or the fitness for any particular purpose of the Goods or otherwise (notwithstanding any advice or representation to the Customer, all liability in respect of which howsoever arising is expressly excluded) except any implied by law or statute and which by law or statute cannot be excluded.
- (b) Save as provided in these terms and except as aforesaid Lynx shall not be under liability, whether in contract, tort or otherwise in respect of defects in the Goods or fault caused by the Services or failure to correspond with the specification or sample or for any injury, damage or loss resulting from such defects or from any work done in connection therewith.
- (c) Lynx may sub-contract performance of any of the Services.
- (d) Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other 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.
- (e) No waiver by Lynx 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.
- (f) If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity or the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

Lynx Networks plc

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