

TERMS AND CONDITIONS

1. GENERAL

Viatel Technology Group is pleased to accept orders subject to the Terms and Conditions of Sale as stated below. Unless expressly agreed in writing (for example in the case of a tender), any alteration to these conditions will not apply. In these terms "you" and "your" as appropriate refer to the Buyer and "us", "our" and "we" refers to the Seller, Viatel Technology Group. "Days" refers to working days, being Monday to Friday inclusive excluding bank holidays, unless otherwise stated.

2. QUOTATIONS

Our quotations are valid for the date of issue only unless otherwise stated on the quotation or agreed in writing. Quotations are for the sole use of the addressee and we reserve the right to withdraw a quotation which has been passed by you to a third party.

3. DELIVERY AND COLLECTION OF GOODS

In normal circumstances

- a. We will deliver an order within the agreed delivery period, but we cannot be held liable for any loss caused by late delivery. If we do deliver late you are not entitled to regard this as a breach of contract.
- b. Goods will be delivered to the delivery address supplied by you. You are considered to have given authority to accept a delivery on your behalf to any person who actually accepts delivery at the delivery address.
- c. If we or the goods carrier cannot deliver to the delivery address then we may either store the goods and deliver at a later date, or return the goods to stock and deliver similar goods later.
- d. You are obliged to provide adequate labour facilities at the delivery or collection address to unload or load the Goods without undue delay. We will require compensation for any loss we suffer arising from delivery or collection or non-delivery or non-collection of the Goods. If it is neither our fault, nor that of our carrier, that any delivery or collection is delayed or cannot be carried out then we will charge you for any extra costs incurred.
- e. If we deliver in instalments to you, then each instalment is a separate contract. If payment in full is not made to us at the proper time for orders which have already been delivered, then we may withhold or cancel delivery of any other of your orders which have not yet been delivered.
- f. Unless by prior agreement our prices exclude delivery or transport charges, insurance in transit taxes. We will charge you extra for transport, packaging, taxes and insurance as applicable.

4. PRICES

All prices are quoted in EURO and are exclusive of Value Added Tax ("VAT"). VAT will be added to all invoices at the rate applicable on the tax point date. The tax point date will be the date of the invoice.

5. PAYMENT

Unless otherwise stated, invoices must be paid within 30 calendar days of their date. If you have not paid in full by the due date then:-

- a. We will be entitled to charge you interest at 4% above the current base lending rate of the Central Bank of Ireland, compounded daily, on the amount outstanding until it has been paid in full.

- b. We will be entitled to sue you for the money and our costs incurred whether or not property in the goods has been passed to you. If you have a dispute or counter-claim with us, you will not be entitled to make any reduction in or deferment of payment because of that dispute or counterclaim

6. WARRANTY

- a. All goods supplied by us are warranted (by the manufacturer) to be of sound workmanship and materials, and suitable for the purpose for which they are designed under fair conditions. Our liability under this Warranty will be limited to the replacement, free repair or issue of credit against any goods acknowledged by us to be faulty, provided that such faults have not been caused by your misuse of the goods or your negligent handling of them.
- b. In Order to make a claim under this Warranty you must return the goods:-
 - i. within 7 days of delivery date or the time stipulated by the manufacturer, whichever is the longer
 - ii. in good order and condition
 - iii. carriage paid
 - iv. to our office at Lonsdale Road, National Technology Park, Limerick, unless we have advised you of another address to return goods. Our carriers have no authority to accept Goods for return unless we have agreed so in advance.
- c. In no circumstances will we be responsible for loss or consequential damage arising from the failure or defect of our goods.
- d. If you return goods to us in order to make a claim under clause 6(b) above and those goods turn out to be, in our opinion, fault free or damaged by reason of misuse or negligent handling of them, then we will give you 10 days notice to make arrangements to collect the goods. You may collect the goods in person or make arrangements for your carrier to collect them. You will remain liable to pay for the goods in full. We reserve the right to make arrangements to return the goods to you after the 10 day period, your non-compliance with our request for instruction will lead us to assume that you have given us unconditional authority to dispose of the goods as we see fit.

7. CATALOGUES AND BROCHURES

All descriptions and illustrations of goods in any catalogue, brochure, price list or in any other document provided by us are intended for general guidance only and do not form part of any contract between you and us. We accept no liability for any error or omission in such documents and cannot be liable in any circumstances for loss or damage resulting from your reliance on such descriptions or illustrations.

8. FORCE MAJEURE

We reserve the right to cancel an order or suspend or delay delivery of it without being liable for any loss or damage if supply of the goods is prevented or delayed by reason of war, (whether declared or not), civil strife, riots, adverse weather conditions, fire, flood, labour disputes,

accidents or any other cause or circumstances beyond our control.

9. SHORTAGES, DAMAGES, DISCREPANCIES AND/OR LOSS IN TRANSIT

We will at our discretion refund, replace or issue credit where goods have been lost, wrongly delivered, damaged in transit or there is short supply of an order. We will only consider claims if made in writing to us within 3 days of the date of delivery. If goods have been lost in transit you must also inform the carrier in writing within that period. If goods have been damaged or supplied short, then you must keep those goods in one place, separate from any other goods and let us inspect them if we wish before we decide what action to take. If a whole consignment of goods is lost then you must inform us in writing within 10 days of invoice date.

10. RETENTION OF TITLE

- a. General: - Notwithstanding delivery, the goods shall remain the sole and absolute property of Viatel Technology Group until unconditional payment in full has been received by Viatel Technology Group for the goods and all other monies due to Viatel Technology Group Ltd.
- b. Sales of the Goods: - If you sell the goods on to third party before you have paid for them you will hold the proceeds of that sale on trust for us pending payment. We will have the right to require you to direct the third party to pay the money he would have paid to you direct to us instead.
- c. Storage: - You must keep the goods separate and clearly identified as our property until you have paid for them.
- d. Insurance: - After delivery and until payment you must keep the goods fully insured. If the goods are lost, destroyed or damaged then you must hold the proceeds of the insurance for and to our order pending payment. If the goods are so destroyed you are entitled to delay paying us until you have been paid by the insurer of the goods.
- e. Recovery of the Goods: - We may enter your premises without notice and recover the goods which have not been paid for in full. As between you and us, this sub-clause constitutes your authority for us to enter on the premises of any other person holding the goods on your behalf and on whose property the goods may be and remove the goods.
- f. Where we (or any other company within the Viatel Technology Group have incurred any liability to you for goods or services you provide to us or a Group Company, we may at our discretion and by written notice to you set off any monies we or any Group Company owe to you against any monies you owe to us.

11. YOUR BANKRUPTCY OR DEFAULT

If:-

- a. You fail to honour any of your obligations to us under this contract, or you breach them, or b. any distress or execution is levied on you, or
- b. you offer to make arrangement with your creditors or commit any act of bankruptcy or if any petition of bankruptcy is presented to you, or (if you are a listed company) any resolution or petition to wind

up such a company's business (other than for the purpose of amalgamation or reconstruction) is passed or presented we will have immediate right to cancel in writing any contract we currently have with you without prejudice to any claim or right we might otherwise have.

12. LIABILITY

- a. Viatel Technology Group does not limit or exclude liability for:
 - i. death or personal injury which is due to the negligence of Viatel Technology Group or its employees while acting within the course of their employment;
 - ii. any breach by Viatel Technology Group of the warranties as to quiet possession and freedom from encumbrance which may implied by Section 2 of the Supply of Goods and Services Act 1982 (or any statutory amendment or re-enactment of the same);
 - iii. Fraud or fraudulent misrepresentation.
- b. Viatel Technology Group shall not be liable in respect of any delay in providing or failure to provide services where such a failure is due to circumstances beyond the reasonable control of Action Point, including but not limited to if such delay is due to actions of the Customer or a third party.
- c. Viatel Technology Group total aggregate liability to the Customer (whether for breach of any contract, tort, including negligence or otherwise howsoever arising) shall not in any circumstances exceed the aggregate value of the goods and services being provided under this contract.
- d. Subject always to clause 12a, in no event shall Viatel Technology Group be liable to the Customer:
 - i. For any loss of profits, loss of business revenue, loss of savings or loss of data (whether direct or indirect).
 - ii. For any losses, costs or damages whatsoever under this contract or otherwise where proceedings for such losses costs or damages are begun two years or more after the occurrence of the breach giving rise to the claim or the time when the Customer should reasonably have become aware of the facts constituting the cause of action.
 - iii. For any indirect, special or consequential losses howsoever arising, the Customer is required to maintain adequate insurance to provide for its liability under this clause 12d.
- e. Except as set out in this section, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this contract.
- f. This section shall survive termination of this or any other contract.

13. INTERPRETATION AND VALIDITY

The construction, validity and performance of this contract will be governed only by Irish law, and the Irish courts will have exclusive jurisdiction. The interpretation of any clause or sub-clause above will not in any way be limited or restricted by reference to or inference from any clause or sub-clause. If for any reason one clause or sub-clause is enforceable according to its terms then the others will remain in full force and effect.