

## STANDARD TERMS AND CONDITIONS OF SALE

- 1. Interpretation**
- 1.1 In these conditions the following words and expressions shall have the following meanings:
- Buyer: the person, firm or company who purchases the Goods from the Company.  
Company: Everything Everywhere Limited trading as Orange whose address is shown overleaf or any organisation that may succeed it as assignee of this Contract.  
Contract: any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions.  
Dealer/Retailer: appointed by the Company as its non-exclusive distributor for the sale of Goods subject to the terms and conditions of a Dealer/Retailer Agreement.  
Goods: any Goods agreed in the Contract to be supplied to the Buyer by the Company (including parts) thereof.  
Service Provider: appointed by the Company to resell airtime with the Company subject to the terms and conditions of a Service Provider Agreement between the parties.  
SIM Card: a card or other device which shall for the avoidance of doubt include a USIM which contains a unique telephone number and which is programmed to allow users to use the Orange Network.
- 2 Application of terms**
- 2.1 The Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document) save that these terms are subject to any express agreement between the parties, including but without limitation the terms contained in any Dealer/Retailer agreement or other agreement.
- 2.2 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods subject to these conditions and no order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.
- 3 Description**
- 3.1 The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's literature are issued for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.
- 4 Delivery**
- 4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the address shown overleaf.
- 4.2 The Buyer shall take delivery of the Goods within 5 days of the Company giving it notice that the Goods are ready for delivery. Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 4.3 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, costs, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.4 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- 4.4.1 risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
- 4.4.2 the Goods shall be deemed to have been delivered; and
- 4.4.3 the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses.
- 4.5 If the Company delivers to the Buyer a quantity of Goods of up to 5% more or less than the quantity accepted by the Company, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such Goods at the pro rata Contract rate.
- 4.6 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other contract or instalment.
- 5. Non-delivery**
- 5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 2 days of the date when the Goods would in the ordinary course of events have been received.
- 5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
- 6. Risk/title**
- 6.1 The Goods are at the risk of the Buyer from the time of delivery or deemed delivery under condition 4.
- 6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of (a) the Goods; and (b) all other sums which are or which become due to the Company from the Buyer on any account.
- 6.3 Until ownership of the Goods had passed to the Buyer, (he Buyer shall (a) hold the Goods on a fiduciary basis as the Company's bailee; (b) store the Goods (at no cost to the Company) separately from all other Goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property; (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for (their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.
- 6.4 The Buyer may resell the Goods before ownership has passed to it solely on the condition that any sale shall be effected in the ordinary course of the Buyer's business at full market value: any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 6.5 The Buyer's right to possession of the Goods shall terminate immediately if:
- 6.5.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- 6.5.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the contract or any other contract between the Company and the Buyer or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (the Buyer ceases or threatens to cease to trade; or
- 6.5.3 the Buyer encumbers or in any way charges any of the Goods; or
- 6.5.4 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies (he Buyer accordingly.
- 6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.7 The Company shall be entitled to suspend all or any future deliveries under this or any other order without liability to the Buyer.
- 6.8 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 6.9 Notwithstanding any other provision, title in any SIM Cards comprising the Goods (or any part thereof) shall remain vested with the Company.
- 6.10 On termination of the contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.
- 7 Price**
- 7.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's price list published on the date of delivery or deemed delivery excluding VAT and price of carriage and insurance.
- 6. Payment**
- 8.1 Subject to condition 8.4, payment of the price for the Goods is due in pounds sterling on the terms specified in the applicable Contract.
- 8.2 Time for payment shall be of the essence.
- 8.3 No payment shall be deemed to have been received until the Company has received cleared funds.
- 8.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 8.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless (he Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 8.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of [2] % above the base lending rate from time to time of (National Westminster Bank Limited), accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interests) Act 1998.
- 9 Quality**
- 9.1 Where the Buyer is a Service Provider, the Buyer must comply with the terms of the applicable Service Provider Agreement relating to any damage or defect to any Goods.
- 9.2 Where the Buyer is a Dealer or Retailer any damage or defect to the Goods will be repaired or replace in accordance with the terms and conditions contained in the applicable Dealer/Retailer Agreement.
- 10 Limitation of liability**
- 10.1 Subject to conditions 4, 5 and 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 10.1.1 any breach of these conditions;
- 10.1.2 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- 10.1.3 any representation, statement, or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these conditions excludes or limits the liability of the Company:
- 10.3.1 for death or personal injury by the Company's negligence; or
- 10.3.2 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- 10.3.3 for fraud or fraudulent misrepresentation.
- 10.4 Subject to condition 10.2 and condition 10.3:
- 10.4.1 the Company's total liability in Contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
- 10.4.2 the Company shall not be liable to the buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 11 Force majeure**
- 11.1 The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of [21] days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.
- 12 General**
- 12.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 12.2 The Company may assign (the Contract or any part of it to any person, firm or Company.
- 12.3 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonably it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability, or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 12.4 Failure or delay by the Company in enforcing or partially enforcing any provision of the contract shall not be construed as a waiver of any of its rights under the contract. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 12.5 The parties to the Contract do not intend that any term of the contract shall be enforceable by virtue of the Contract (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 12.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.