



TERMS AND CONDITIONS FOR THE SALE OF PRODUCTS AND SERVICES

1. Definitions

For the purpose of the Contract the following terms shall have the Meaning assigned to them below.

“Buyer” means the company or firm who places the Order.

“Contract” means PSIFX’s quotation to the Buyer, these Terms & Conditions, together with any Appendices, the Order and other documents incorporated by written reference,

“Delivery” means delivery in accordance with clause 4 below.

“Equipment” means the equipment to be supplied under the Order and shall include any media upon which any Software is supplied.

“Order” means a formal written request for Equipment and/or Software and/or Services which expressly incorporates these Terms & Conditions and is placed by the Buyer on the Seller.

“Offer” means the offer for Equipment and/or Software, and/or Services made in writing by PSIFX which, unless otherwise mutually agreed in writing will be valid for 30 days.

“Price/s” means the unit prices and/or total price detailed in the Seller’s Offer.

“Product” means the Equipment, Software, and Services collectively

“Seller” means PSIFX Networks Ltd, also referred to as PSIFX whose registered office is at:
La Corbiere House
76 Moughland Lane
Runcorn
Cheshire
WA7 4SQ

“Services” means those services to be supplied under the Order and referenced in the Offer and/or the Appendices to these Terms and Conditions.

“Software” means the programs in object code form to be licensed under the Contract and either identified by title and reference number in the Offer and/or the Order or supplied as embedded software.

“Technical Specification/s” means those documents referenced in the Offer and/or the appendices to these Terms and Conditions.

The plural shall be construed as incorporating the singular and vice versa where context allows.

The Buyer and Seller may be referred to singularly as Party and collectively as the Parties.

1. Effect

1.1 PSIFX reserves the right to reject those Orders which do not comply with the scope and terms and conditions of the Contract and no such Order shall be of any effect until accepted by PSIFX in writing.

1.2 The terms and conditions contained in the documents forming part of the Contract and / or referred to in any Order shall have the following order of precedence; (i) Order, (ii) Any Buyer specific appendices incorporated in the agreement (iii) the remainder of these terms and conditions (iii) PSIFX’s offer to the Buyer, (v) Technical Specification, (vi) any other documents expressly agreed to form part of the Contract.

2. Orders and the Ordering Process

2.1 The quantity, quality and description of and any specification for the Equipment and/or Software shall be those set out in PSIFX’s Offer.

2.2 The Buyer’s acceptance of the Offer will be indicated by placement of an Order in accordance with the Offer, and including as a minimum the information detailed in clause 2.5. Orders may be placed by postal delivery, delivery by hand, or fax, or e-mail.

2.3 The Seller will endeavour to provide written acknowledgment by of the Order within 10 working days of receipt of the Order, this acknowledgement will not constitute acceptance of the Order. In any case, time shall not be of the essence.

2.4 The Seller will endeavour to provide written acceptance of the Order by postal delivery, delivery by hand, fax or e-mail, which shall include confirmation of the Price, reference to the Offer, and terms and conditions. An effective contract will be formed upon such acceptance of the Order.

2.5 The Order shall include as a minimum the following information:

- o Reference to the Offer, including the date of the Offer
- o Date of the Order
- o Delivery address
- o Invoice address
- o Reference to the payment terms
- o The unit or project Price/s.

3 Price and Payment Terms

3.1 All Prices are quoted in British Pounds Sterling, are exclusive of Value Added Tax, insurance, and all other taxes or levies that may become due.

3.2 The Seller will be entitled to invoice the Buyer for 100% of the Price of the Equipment and/or Software stated in the Order acceptance on delivery of the Equipment and/or Software in accordance with clause 4 below.

3.3 The Seller will be entitled to invoice the Buyer for 100% of the Services on completion of the Services in accordance with the relevant Service Specification.

3.4 The Buyer does not have the right to cancel the Order following acceptance. Any such cancellation will result in the Buyer being liable to pay the full value of the Order to the Seller.

3.5 100% of payment will be made by the Seller, for receipt by the Buyer's bank within 30 days from the date of the invoice. The Buyer's bank details are as follows:

HSBC Account Number 21332201, Sort Code 40-39-14.

3.6 Should the Buyer fail to fulfil its obligation to pay the invoice, for every week, or part thereof, that such payments are late, the Buyer will be liable to pay interest charges of 3% of the amount due, which shall be added to the payment at the time it is made.

4 Delivery

4.1 PSIFX shall make delivery of the Equipment and/or Software within the U.K. to the address specified on the Order ("Delivery").

4.2 Any dates quoted for delivery of the Equipment and/or Software are approximate only and PSIFX shall not be liable for any delay in delivery of the Products however caused. Time for delivery shall not be of the essence of the Contract. The Equipment and/or Software may be delivered by PSIFX in advance of the estimated delivery date.

4.3 Any dates quoted for the performance of services are approximate only and PSIFX shall not be liable for any delay in provision of the service.

4.4 PSIFX may elect to deliver the Equipment and/or Software on different days by different couriers, but will endeavour to inform the Buyer of this information in a timely fashion.

4.5 If the Buyer fails to take delivery of the Equipment and/or Software or fails to give PSIFX adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of PSIFX's fault) then, without prejudice to any other right or remedy available to PSIFX, PSIFX may:

4.5.1 store the Equipment and/or Software until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

4.5.2 sell the Equipment and/or Software at the best readily available obtainable price and charge the Buyer for any shortfall below the Price under the Contract.

4.6 Risk in the Equipment and/or Software shall pass to the Buyer upon Delivery taking place.

4.7 Title to Equipment will pass to the Buyer on full payment and until then you must store our goods separately and you may not modify, pledge or sell them. Should you sell them before title passes, you will become PSIFX's agent and the proceeds of that sale shall be held on our behalf, separately from your general funds.

5 Warranties and Liability

5.1 All goods purchased will be supplied with a 12 month guarantee that they will function substantially in accordance with the Technical Specification unless otherwise stated. Should the Equipment or Software contain third party proprietary equipment or software then the Seller shall only pass on to the Buyer the benefit of whatever warranty support the Seller receives from such third party.

5.2 PSIFX reserves the right to change the Equipment and/or Software (incl. 3rd Party Products) at any time but PSIFX guarantees you at least equivalent functionality and performance as defined in the Technical Specification.

5.3 All Equipment and/or Software to be returned must first have the authorisation of PSIFX. Failure to obtain such authorisation may result in the rejection of the return. Repairs and replacements of Equipment and/or Software under warranty will be despatched to the Buyer as soon as is reasonably possible.

5.4 In the event that the manufacturer replacing or repairing the Equipment and/or Software and PSIFX receiving these Equipment and/or Software back from the manufacturer, PSIFX shall promptly despatch those Equipment and/or Software at his own cost to the Buyer.

5.5 PSIFX shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, misuse or alteration of the Equipment and/or Software without PSIFX's approval.

5.6 Any claim by the Buyer which is based on any physical damage or defect in the quality or condition of the Equipment and/or Software or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to PSIFX within 7 business days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect. If delivery is not refused and the Buyer does not notify PSIFX accordingly, the Buyer shall not be entitled to reject the Equipment and/or Software and PSIFX shall have no liability for such defect or failure and the Buyer shall be bound to pay the price as if the Equipment and/or Software had been delivered in accordance with the Contract. Buyer.

5.7 Where any valid claim in respect of any of the Equipment and/or Software which is based on any defect in the quality or condition of the Equipment and/or Software or their failure to meet the Technical Specification is notified to PSIFX in accordance with these Conditions, PSIFX shall be entitled at its option to repair, replace the Equipment and/or Software (or the part in question) free of charge or refund to the Buyer the price of the Equipment and/or Software (or a proportionate price of the price), but PSIFX shall have no further liability to the Buyer.

5.8 Any item(s) returned to PSIFX will only be accepted if a returns number is clearly marked on the outside of the package. Any item(s) returned without a valid returns number on the outside may be refused.

5.9 PSIFX does not give a warranty or guarantee protection for:

5.9.1 damage caused by incorrect installation, use, modifications or repair by any unauthorised 3rd party or yourself;

5.9.2 damage caused by any party or other external force;

5.9.3 fitness for any particular purpose;

5.9.4 3rd Party Products, Software and specified by you. You will receive the warranty for these products directly from their manufacturer or licensor;

5.9.5 any instruction given by you and correctly performed by PSIFX.

not critical to Product function.

6. Limitation of Liability

6.1 Nothing in this clause 6 shall be taken in any way as limiting the liability of either Party for death, or personal injury resulting from negligence, or for fraud or fraudulent misrepresentation.

6.2 PSIFX does not accept liability for:

6.2.1 Accidental loss or damage to private property.

6.2.2 indirect or consequential loss, including but not limited to loss of business profits, salary, revenue, savings, or anticipated saving, goodwill, injury to reputation, loss of data and/or loss of use of any data.

6.2.3 damage remedied by PSIFX within reasonable time

6.2.4 loss avoidable by you through reasonable conduct, including backing up all data and following PSIFX's reasonable advice generally

6.2.5 all items excluded from the Warranty, or affected by circumstances of Force Majeure.

6.3 Notwithstanding anything to the contrary in this contract, but without prejudice to clause 6.2 above, PSIFX's liability during the term of this Contract, and if applicable, thereafter under or in connection with this Contract whether arising from contract, negligence or howsoever shall be limited as follows:

6.3.1 In the case of loss or damage to physical property caused by an employee of PSIFX insofar as it arises directly from information or Services provided in performance of the Contract in respect of any one event or series of connected events shall be £5,000,000.

6.3.2 In respect of any other liability arising out of the Contract, PSIFX's liability for any loss or damage occasioned by any event or series of related events of negligence or default or breach of contract shall in no event exceed 100% (one hundred percent) of the amount paid and payable by the Buyer to PSIFX under this Contract in the twelve month period in which the said act of negligence or default or breach of contract giving rise to the liability occurred, where the twelve month period is measured from the date of effectiveness of the first Order placed under this Contract.

7 Services

7.1 Services will be provided in accordance with the Service Descriptions by PSIFX or its subcontractors. Response times are estimates and may vary according to the remoteness or accessibility of Product location

7.2.1 Unless stated in the Service Description, the following are excluded from Service: items excluded from Warranty, relocation, preventative maintenance, consumables, diskettes, unnecessary work in PSIFX's assessment, electrical environment, transfer of data or Software, viruses. 3rd Party Products will be repaired according to manufacturer or licensor warranty, Parts

8 Intellectual Property (IP) Rights Indemnity

8.1 PSIFX indemnifies you from costs and liabilities from any claim that use of Product infringes any 3rd party IP. PSIFX may recall and exchange or modify Product or refund you, minus depreciation in this event. You indemnify PSIFX against any IP specified or owned by you and integrated into Product. PSIFX retains the right to litigate, negotiate and settle claims and you must assist us at our expense (except where IP specified or owned by you is allegedly infringing) when litigation is directly related to your Product. PSIFX retains all PSIFX-owned IP in Product. You must notify PSIFX immediately of any infringing or unauthorised use of Product or IP in it.

8.2 This indemnity states PSIFX's entire liability in respect of any actual or alleged infringement of IPR.

8.3 The Buyer warrants that any design or instruction provided by the Buyer shall not cause PSIFX to infringe any IPR in the performance of PSIFX's obligations in accordance with the Contract.

9 Software

9.1 Software is supplied subject to licence and warranty of the Software licensor. PSIFX encloses the Software licence that you require with the Product where necessary; you must comply with that licence. If not enclosed, then it is your responsibility to purchase said licence(s).

10 Confidentiality

The Buyer hereby acknowledges and confirms that the Buyer shall keep confidential all information disclosed by the Seller in relation to PSIFX or PSIFX's business which is disclosed to it or its advisors by PSIFX or its advisors and will not without PSIFX's consent divulge such information except for that which:

(i) is in or comes into the public domain otherwise than through a breach of this Contract, or

(ii) has been lawfully received from a third party without restriction as to its use or disclosure, or

(iii) was already in the Buyer's possession free of any restriction prior to receipt, or

(iv) was independently developed by the Buyer.

11 Termination

11.1 PSIFX may terminate this Contract with written notice if you:

11.1.1 fail to pay on time and within 14 days of written notice

11.1.2 for convenience, upon written notice

11.2 Either party may terminate if the other:

11.2.1 commits a material or persistent breach of this Contract and fails to remedy this within 30 days of written notice from the other

11.2.2 becomes insolvent or is unable to pay debts as they fall due.

12 Your Obligations as a Buyer

12.1 You are responsible for:

12.1.1 your own choice of Product and its suitability for purpose;

12.1.2 your telephone & postal charges in contacting PSIFX, if any;

12.2 You must provide PSIFX with all reasonable courtesy, information, cooperation, facilities and access to enable PSIFX to perform duties, failing which PSIFX shall not be obliged to perform any service or supply any Equipment. You are responsible for the removal of non PSIFX-supplied products during service, the back up and confidentiality of all data in Product and all of your legal and regulatory requirements.

13 Buyer's Failure to Perform

13.1 PSIFX shall have no liability in respect of delays in or failure by the Buyer to perform any of its obligations under the Contract and the Buyer shall indemnify PSIFX for any additional costs or expenses incurred by PSIFX as a result of such delays or failures.

14 Data Protection

14.1 Your data will be held and/or transferred in strict accordance with the applicable data protection laws and you consent to this. You may instruct PSIFX not to use your data for direct marketing purposes.

15 Substitution

15.1 PSIFX reserves the right to substitute the Equipment or Software or part thereof with Equipment or Software which will operate in accordance with or in excess of the Technical Specification.

16 Taxes

16.1 Unless otherwise stated, the Contract Unit Prices are exclusive of all Taxes and Value Added Tax but are inclusive of packaging to PSIFX normal standards.

17 Offset

17.1 No payment may be withheld or offset by the Buyer against any sums that may become due to PSIFX.

18 Intellectual Property Rights and Software Licence

18.1 IPR's in the Products and in all information in respect of the Products made available to the Buyer under the Contract shall at all times remain vested in PSIFX or its licensors and such Products and information shall not be copied, reproduced or used for any purpose other than that specified in Clause 8.4.

18.2 The Buyer will follow all reasonable instructions as PSIFX gives with regard to the use of the IPR's or other indications of the property and rights of PSIFX' or its licensors.

18.3 All Software is supplied by PSIFX to the Buyer under Licence and the rights of the Buyer under the Licence may be subject to the Buyer observing the terms of the licence granted to PSIFX by the owner of such Software.

18.4 PSIFX hereby grants to the Buyer a non-exclusive, non transferable licence ("the Licence") to use the Software with the Equipment at the place of use which must be specified by the

Buyer in the Order. The licence extends to any correction supplied by PSIFX for the Software.

18.5 The Buyer shall permit PSIFX or its licensors to enter any of the Buyer's premises at all reasonable times to check the use of the Software and shall maintain adequate security measures to safeguard the Software.

18.6 The Buyer may not make any copies of the Software or Documentation except such copies as are necessary for operational security. Any such copies are subject to this Contract and the Buyer undertakes; (i) to maintain accurate and up-to-date records of the number and location of all such copies, and (ii) to include PSIFX copyright notice on all such copies.

18.7 Except to the extent that such operations cannot be prevented or restricted by law, the Buyer is not permitted to modify, reverse engineer or decompile the Software in any way whatsoever.

19 Provisions For Accidents Or Damage

19.1 PSIFX shall indemnify the Buyer and shall maintain appropriate insurance cover against damage to property (other than the Product) and death or injury to persons to the extent caused solely by the negligence of PSIFX or its personnel, provided that:

19.2 PSIFX is immediately notified of any claim and is given full power to negotiate and settle all claims; and

19.3 PSIFX' liability for damage to property shall be limited to £1,000,000 per event or series of connected events and £2,000,000 in aggregate under the Contract.

19.4 The Buyer shall similarly indemnify PSIFX and shall maintain appropriate insurance cover against death or injury to PSIFX' personnel or damage to PSIFX' property (to the same limit) to the extent caused by negligence of the Buyer or its personnel or contractors.

20 Variations

20.1 The Buyer or PSIFX may request variations to the Contract. The parties shall enter into discussions to agree any required changes, revised pricing and time for performance. Such variations will only be effective if agreed in writing by the parties and recorded in a format to be mutually agreed.

21 Assignment and Sub-Contracting

21.1 PSIFX shall have the right to assign or sub-contract the whole or any part of the Contract without the prior consent of the Buyer.

21.2 The Buyer may not assign, sub-contract or sub-licence any rights, licences or benefits or obligations obtained under the Contract in whole or in part without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

22 Force Majeure

22.1 Any delivery dates estimated or committed by PSIFX may be extended if the delay in delivery of Equipment and/or Software is due to the reasons described herein. Neither party will be liable for delay in performing or failure to perform obligations (other than the obligation to make due payments) if the delay or failure results from circumstances beyond the reasonable control of the other party including but not limited to an Act of God, refusal

or revocation of any license or other governmental act, fire, explosion, accident, third party industrial disputes, war, armed conflict or civil commotion. In the event that such circumstances continue for 90 days or longer either party may terminate the Contract or relevant part of it without further liability to the other.

23 Notices

23.1 Any notices given by either party to the other must be in writing and may be delivered personally or by first class post and in the case of post will be deemed to have been given seven (7) business days after the date of posting. Notices must be delivered or sent to the parties to the addresses set out in the Order.

24 Legal Construction

24.1 The validity, construction and performance of the Contract shall be governed by English Law. The parties shall negotiate in good faith to resolve any disputes before recourse to rights at law.

25 Miscellaneous

25.1 If any provision set out herein shall be held by any court or award in arbitration to be invalid or unenforceable, the validity or enforceability of such provision shall not affect the other provisions or Clauses of the Contract, which shall continue in full force and effect.

25.2 No failure or delay by either party in enforcing its rights will prejudice or restrict that party's rights, and no waiver of any such rights or any breach of any contractual terms by the other party will constitute a waiver of any right or later breach.

25.3 All Clauses in the Contract which are either expressed to survive or which are by implication intended to survive termination or expiry of the Contract will continue to survive notwithstanding termination or expiry of the Contract.

25.4 The headings in these Terms & Conditions are inserted for convenience only and shall not be referred to in the interpretation of the Contract.