

Standard Terms and Conditions of Sale – Business

Customers

1. Comms Express Limited (“Comms Express”) agrees to sell, to the person, firm or company (“the Buyer”) identified on the order form, the goods (“the Goods”) which the Buyer wishes to purchase from Comms Express 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). Any contract (the “Contract”) between Comms Express and the Buyer for the sale and purchase of the Goods shall incorporate these conditions.
2. No terms or conditions endorsed on, delivered with or contained in the Buyer’s purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
3. Any variations to these conditions shall have no effect unless expressly agreed in writing and signed by an authorised representative of Comms Express.
4. Each order or acceptance of a quotation for Goods by the Buyer from Comms Express shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions. No order placed by the Buyer shall be deemed to be accepted by Comms Express until a written acceptance of order is issued by Comms Express or (if earlier) Comms Express delivers the Goods to the Buyer. Orders will only be accepted if there are no material errors in the description of the Goods or their prices, as provided in the price list published by Comms Express, in this case the website prices and/or the current brochure prices. Comms Express shall be entitled to correct any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of order, invoice or other document or information issued by Comms Express or information on Comms Express’ website without any liability to the Buyer.
5. The quantity and description of the Goods shall be set out in Comms Express’ quotation or the Buyer’s order (if accepted by Comms Express).
6. The Buyer shall ensure that the terms of its order are complete and accurate.
7. Any quotation is given on the basis that no Contract shall come into existence until Comms Express despatches an acceptance of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that Comms Express has not previously withdrawn it.
8. All drawings, dimensions, weights, measurements and descriptive matter contained in Comms Express’ catalogue or website are published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract.
9. The Buyer acknowledges that it has not relied on any statement, promise or representation made by or given by or on behalf of Comms Express other than those detailed in Comms Express’ quotation or acceptance of order. Nothing in this condition shall exclude or limited Comms Express’ liability for fraudulent misrepresentation.
10. Delivery shall take place and risk will pass when the Goods are collected by the Buyer or, if Comms Express is to deliver to the Buyer’s specified location, when the Goods are delivered to the Buyer. If Comms Express is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations, the Goods shall be deemed to have been delivered, the risk in the Goods shall pass to the Buyer (including for loss or damage to the Goods caused by Comms Express’ negligence) and Comms Express may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
11. Any dates specified by Comms Express for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice.

12. Subject to the other provisions of these conditions, Comms Express 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, 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 Comms Express' negligence) nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 30 days.

13. The Buyer shall provide at the place where delivery of the Goods is to take place and at its expense adequate and appropriate equipment and manual labour for loading the Goods.

14. Comms Express 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.

15. The quantity of any consignment of Goods as recorded by Comms Express upon despatch from Comms Express' 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.

16. Comms Express shall not be liable for any non-delivery or delay in delivery unless the Buyer gives written notice of the non-delivery or delay to Comms Express within three days of the date when the Goods would in the ordinary course of events have been received.

17. Subject to condition 20, Comms Express shall only be liable for Goods that are defective on delivery unless the Buyer gives notice of the defective Goods within 24 hours of delivery. Notice should be given to the Comms Express Customer Service Team on 0800 488 0000 or through Email Support at customerservices@comms-express.com.

18. Any liability of Comms Express for non-delivery or for Goods that are defective on delivery 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.

19. Comms Express will only accept returns of non-defective Goods by prior arrangement and if they are current stock. Such returns will be subject to a handling and restocking fee of up to 35% of the pro rata Contract price of the Goods dependent on the Good(s) supplied.

20. Except where cabinets or Goods which are made to the Buyer's specifications are signed for as 'Unchecked' on delivery, by signing for any such cabinets/Goods, the Buyer is accepting the Goods are in satisfactory condition. tft products, kvm products, console drawers, ups products, 3com, Netgear, Buffalo & Belkin products shall only be permitted to be returned via the manufacturer of such products. Software shall only be permitted to be returned if the seal has not been broken.

21. Any Goods returned by the Buyer must:

- a. be received by Comms Express in as new condition with all software and product seals intact;
- b. be returned complete (including all packaging, cables, manuals and CD's for the Goods). If any items are missing when received by Comms Express, the Goods shall be deemed incomplete and Comms Express shall not accept the returned Goods; and
- c. be returned with unmarked and undamaged packaging.

22. The carriage costs for the original despatch of returned Goods and for returning the Goods must be met by the Buyer and the Buyer shall remain responsible for returned Goods during transit and until signed for by Comms Express.

23. The Buyer shall complete the Returns Form when returning Goods to Comms Express.

24. Ownership of the Goods shall not pass to the Buyer until Comms Express has received in full (in cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or which become due to Comms Express from the Buyer on any account.

25. Until ownership of the Goods has passed to the Buyer, the Buyer shall:

- a. hold the Goods on a fiduciary basis as Comms Express' bailee;
- b. store the Goods (at the Buyer's expense) separately from all other Goods of the Buyer or any third party;
- c. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- d. maintain the Goods in a satisfactory condition and keep them insured on Comms Express's behalf for the full price against all risks to the reasonable satisfaction of Comms Express.

26. The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

- a. any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
- b. any such sale shall be a sale of Comms Express' property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale and the Buyer shall hold such part of the proceeds of sale as represent the amount owed by the Buyer to Comms Express on behalf of Comms Express and the Buyer shall account to Comms Express accordingly.

27. Comms Express shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Comms Express.

28. Until ownership passes to the Buyer, the Buyer's right to possession of the Goods shall terminate immediately if:

- a. 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 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 is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceased to trade ("an Event of Insolvency"); or
- b. 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 Comms Express and the Buyer; or
- c. the Buyer encumbers or in any way charges any of the Goods.

29. Until such time as the ownership of the Goods passed to the Buyer, the Buyer grants Comms Express, 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. Comms Express' rights contained in this condition shall remain in effect on termination of the Contract, howsoever caused.

30. Unless otherwise agreed by Comms Express in writing, the price for the Goods shall be the price set out in Comms Express' price list published on the date of the order and shall be exclusive of VAT and delivery charges where applicable which the Buyer shall pay in addition when it is due to pay for the Goods. Prices shown on our 'price list' (website) are shown including and excluding VAT, for the purpose of this clause the price referred to is the excluding VAT price.

31. Where credit arrangements have been agreed in writing by Comms Express payment of the price for the Goods is due in pounds sterling within 30 days of the date on which the Goods were ordered.

If credit arrangements have not been agreed, Comms Express shall not be bound to deliver the Goods until cleared payment has been received. Time for payment shall be of the essence.

32. No payment shall be deemed to have been received until Comms Express has received clear funds. All payments payable to Comms Express under the Contract shall become due immediately on its termination despite any other provision.

33. 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 the Buyer has a valid court order requiring an amount equal to such deduction to be paid by Comms Express to the Buyer.

34. If the Buyer fails to pay Comms Express any sum pursuant to the Contract, Comms Express may, notwithstanding previous credit arrangements, and without limiting any other right or remedy available to Comms Express:

a. cancel the Contract and suspend any further deliveries to the Buyer;

b. require the payment of all unpaid invoices whether or not they are then due;

c. charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above Bank of Scotland plc Bank base rate from time to time, until payment in full is made).

35. If an Event of Insolvency occurs, or Comms Express reasonably apprehends that an Event of Insolvency is about to occur in relation to the Buyer and notifies the Buyer accordingly, Comms Express shall be entitled to avail itself of the remedies listed in condition 34 a and b above, without limiting any other right or remedy available to Comms Express.

36. No warranties shall be given in respect of the Goods by Comms Express. However, where the Goods are covered by manufacturer's warranties, Comms Express shall endeavour to transfer to the Buyer the benefit of the manufacturer's warranties. Comms Express shall inform the Buyer of any warranties that it is passing on the benefit of on delivery.

37. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

38. Nothing in these conditions excludes or limits the liability of Comms Express:

a. for death or personal injury caused by Comms Express's negligence; or

b. under section 2(3), Consumer Protection Act 1987; or

c. for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

d. for fraud or fraudulent misrepresentation.

39. Subject to conditions 36 and 37 above:

a. Comms Express' 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

b. Comms Express shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill 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.

40. Comms Express 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 Comms Express 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 period in excess of 90 days the Buyer shall be entitled to give notice in writing to Comms Express to terminate the Contract.

41. Please read Comms Express' Privacy Policy for details of how Comms Express will use any information provided to it by the Buyer.

42. A 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 the notice.

43. No waiver by Comms Express of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision

44.a. Comms Express may assign or transfer its rights and obligations under the Contract to another entity.

b. The Buyer may only assign or transfer its rights or its obligations under the Contract to another person if Comms Express agrees in writing.

45. The Contract is between the Buyer and Comms Express and no other person has any rights to enforce any of its terms.

46. If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

47. The Contract shall be governed by the laws of England and the parties agree to submit to the exclusive jurisdiction of the English courts.