

Phone System Terms & Conditions

1. Interpretation

„CUSTOMER means the person named on the Written Quotation for whom Curveball Solutions UK Limited has agreed to supply the Goods and/or Services in accordance with these Conditions.

„CONDITIONS means the standard terms and conditions of trading set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and Curveball Solutions UK Limited

„CONTRACT means the contract for the purchase and sale of Goods and/or provision of the Services.

„DOCUMENT includes, in addition to a document in writing, any map, plan, graph, drawing or photograph, any film, negative, tape or other device embodying visual images and any disc, tape or other device embodying any other data.

„INPUT MATERIAL means any Documents or other materials, and any data or other information provided by the Customer relating to the Service.

„GOODS means the Goods (including any installment of the goods or any parts for them) which Curveball Solutions UK Limited is to supply in accordance with these conditions described in the Written Quotation.

„OUTPUT MATERIAL means any documents or other materials, and any data or other information provided by Curveball Solutions UK Limited relating to the Service.

„PLACE OF USE means that part of the Customer's premises at the Site where the Goods are to be installed and/or Services are to be supplied

„WRITTEN QUOTATION means Curveball Solutions UK Limited order form to which these Conditions are appended.

„WRITING includes telex, cable, facsimile transmission and comparable means of communication.

„SERVICE means the service to be provided by Curveball Solutions UK Limited for the Customer and referred to in the Written Quotation.

„SITE means the address for the delivery of the Goods and/or Supply of Services specified by the Customer and set out in the Written Quotation.

„Curveball Solutions UK Limited whose address is at Curveball Solutions UK Limited, Hanover Buildings, 11-13 Hanover Street, Liverpool, Merseyside, United Kingdom, L1 3DN, Company No. 03820984

The headings in these Conditions are for convenience only and shall not affect their interpretation.

Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

2. Provision of Goods and/or Services

2.1 Curveball Solutions UK Limited shall provide the Goods and/or Services to the Customer subject to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted by the Customer.

2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Customer and Curveball Solutions UK Limited

2.3 The Customer shall at its own expense supply Curveball Solutions UK Limited with all necessary Documents or other materials, and all necessary data or other information relating to the Service, within sufficient time to enable Curveball Solutions UK Limited to provide the Service

in accordance with the Contract. The Customer shall ensure the accuracy of all Input Material.

2.4 Any advice or recommendation given by Curveball Solutions UK Limited or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by Curveball Solutions UK Limited is followed or acted upon entirely at the Customer's own risk and accordingly Curveball Solutions UK Limited shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 The Customer shall at its own expense retain duplicate copies of all Input Material and insure against its accidental loss or damage. Curveball Solutions UK Limited shall have no liability for any such loss or damage, however caused. All Output Material shall be at the sole risk of the Customer from the time of delivery to or to the order of the Customer.

The Written Quotation constitutes an offer by Curveball Solutions UK Limited to provide the Goods and/or Services to the Customer subject to these Conditions.

No offer contained on the Written Quotation shall be deemed to be accepted by the Customer unless and until confirmed in writing by the clients authorised representatives.

2.6 The offer contained on the Written Quotation will lapse unless unconditionally accepted by the Customer in writing within 7 days of its date ("Written Acceptance").

2.7 Further details about the Goods and/or Services, and advice or recommendations about its provision or utilisation, which are not given in Curveball Solutions UK Limited brochure or other

promotional literature, may be made available on written request.

2.8 If the Customer has any special requirements relating to the Goods and/or Services and which are not specified on the Written Quotation, it must notify Curveball Solutions UK Limited in writing and where Curveball Solutions UK Limited agrees to those special requirements of the Customer the terms on which those special requirements will be met must be agreed in Writing between the Customer and Curveball Solutions UK Limited.

2.9 Curveball Solutions UK Limited may correct any typographical or other errors or omissions in any brochure, promotional literature, quotation or other document relating to the provision

of the Goods and/or Services without any liability to the Customer.

2.10 Curveball Solutions UK Limited may at any time without notifying the Customer make any changes to the specifications of Goods and/or Services which are necessary to comply with any applicable safety or other statutory or EC requirements, or which do not materially affect the quality or performance of the Goods or the nature or quality of the Service.

3. Charges for Goods and/or Services

3.1 The charge for the Service and/or Goods shall be Curveball Solutions UK Limited quoted price as stated in the Written Quotation and any additional sums which, in Curveball Solutions UK Limited sole discretion, are required as a result of the Customer's instructions or lack of instructions, the inaccuracy of any Input Material or any other cause attributable to the Customer.

3.2 All charges quoted to the Customer in respect of both Goods and/or Services are exclusive of any Value Added Tax, for which the Client shall be additionally liable at the applicable rate from time to time.

3.3 Except where specific provision is made for delivery and installation of Goods on the Written Quotation or otherwise agreed in Writing by the Customer and Curveball Solutions UK Limited, all prices given in respect of sale of Goods only are given by Curveball Solutions UK Limited on an ex-works basis, and where Curveball Solutions UK Limited agrees to deliver the Goods otherwise than at Curveball Solutions UK Limited premises, the Customer shall be liable to pay Curveball Solutions UK Limited charges for transport packaging and insurance.

4. Terms of Payment

4.1 Subject to any special terms agreed in Writing between the Customer and Curveball Solutions UK Limited shall be entitled to invoice the Customer for the price of the Goods and/or Service on or at the time after the date of acceptance of the terms offered in the Written Quotation by the Client's authorised representatives in Writing ("the Total Price").

4.2 As a minimum requirement the Customer must pay 50% (FIFTY PERCENT) non-refundable deposit of the Total Price at the time of submission of the Written Acceptance to Curveball Solutions UK Limited thereafter the Customer must pay a further 50% (FIFTY PERCENT) of the Total Price on completion.

4.3 If payment is not made on demand, Curveball Solutions UK Limited shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgment) at the rate of 5% above the base rate from time to time of HSBC from the due date until the outstanding amount is paid in full.

5. Delivery

5.1 Any dates quoted for delivery/installation of Goods and/or supply of Services is approximate only and the Supplier should not be liable for any delay however caused. Time for delivery of Goods and/or supply of services shall not be of the essence of the Contract unless previously agreed by Curveball Solutions UK Limited in writing.

5.2 Where Goods are to be delivered in installments, each delivery shall constitute a separate contract and failure by Curveball Solutions UK Limited to deliver any one or more of the installments in accordance with these conditions or any claim by the customer in respect of any one or more installments shall not entitle the Customer to treat the contract as a whole as repudiated.

5.3 If Curveball Solutions UK Limited fails to deliver the Goods and/or supply the Services for any reason other than any cause beyond Curveball Solutions UK Limited reasonable control or the Customer's

fault, and Curveball Solutions UK Limited is accordingly liable to the Customer, Curveball Solutions UK Limited liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods and/or services to replace those not delivered or supplied over the price of the Goods and/or Services.

5.4 If the Customer fails to take delivery of the Goods and/or (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of Curveball Solutions UK Limited default) then, without prejudice to any other right or remedy available to Curveball Solutions UK Limited. Curveball Solutions UK Limited may:

5.5 Store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or

5.6 Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Customer for any shortfall below the price under the Contract.

6. Access to Place of Use

6.1 The Customer shall allow Curveball Solutions UK Limited including its employees/agents and sub-contractors such reasonable access to the place of use as it shall from time to time require to perform its obligations under this Agreement.

7. Training

Where the Written Quotation states that „training is included:

7.1 Curveball Solutions UK Limited shall provide to the Customer at a date to be agreed between Curveball Solutions UK Limited and the Customer, no more than half a day's training which shall be included in the Total Price („the Training)

7.2 At the completion of the Training, Curveball Solutions UK Limited will require the customer to sign a form to confirm, if the Customer agrees, that the Training has been satisfactory.

7.3 Any reasonable additional training services required by the Customer shall be provided by Curveball Solutions UK Limited subject to the payment by the Customer of its charges. Such charges shall be calculated upon a time and materials basis at the Company's then prevailing rates.

8. Risks and Property

8.1 Risk of damage to or loss of the Goods shall pass to the Customer: In the case of Goods to be delivered at Curveball Solutions UK Limited premises at the time when Curveball Solutions UK Limited notifies the Customer that the Goods are available for collection; or in the case of Goods to be delivered otherwise than at Curveball Solutions UK Limited premises, at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when Curveball Solutions UK Limited has tendered delivery of the Goods.

8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Customer until Curveball Solutions UK Limited has received in cash or cleared funds payment in full the Total Price and the price of all other goods and/or services agreed to be supplied by Curveball Solutions UK Limited to the Customer for which payment is then due.

8.3 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as Curveball Solutions UK Limited fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as Curveball Solutions UK Limited property, but shall be entitled to use the Goods in the ordinary course of its business.

8.4 Until such time as the property in the goods passes to the Customer, Curveball Solutions UK Limited shall be entitled at any time to require the Buyer to deliver up the Goods to Curveball Solutions UK Limited and if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

8.5 The Customer shall not be entitled to pledge or in any way change by way of security for any indebtedness any of the Goods which remain the property of Curveball Solutions UK Limited, but if the Customer does so all moneys owing by the Customer to Curveball Solutions UK Limited shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.

9. Rights in Input Material and Output Material

9.1 In respect of any Service provided under these conditions the property and any copyright or other intellectual property rights in:

Any Input Material shall belong to the Customer any Output Material shall, unless otherwise agreed in writing between the Customer and Curveball Solutions UK Limited, belong to the Curveball Solutions UK Limited, subject only to the right of the customer to use the Output Material for the purposes of utilising the Service.

9.2 All Output Material or other information provided by Curveball Solutions UK Limited which is so designated by Curveball Solutions UK Limited shall be kept confidential by the Customer; but the foregoing shall not apply to any Documents or other materials, data or other information which are public knowledge at the time when they are so provided by either party, and shall cease to apply if at any future time they become public knowledge through no fault of the other party.

9.4 The Customer warrants that any Input Material and its use by Curveball Solutions UK Limited for the purpose of providing the Service will not infringe the copyright or other rights of any third party, and the Customer shall indemnify Curveball Solutions UK Limited against any loss, damages, costs, expenses or other claims arising from any such infringement.

10. Warranties and Liability

10.1 Subject as expressly provided in these Conditions and except where the Goods and/or Services are supplied to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by Law.

10.2 Where the Goods are sold from and/or Services supplied under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these conditions.

10.3 Curveball Solutions UK Limited shall have no liability to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client.

10.4 Except in respect of death or personal injury caused by Curveball Solutions UK Limited negligence, or as expressly provided in these Conditions, Curveball Solutions UK Limited shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of Curveball Solutions UK Limited, its servants or agents or otherwise) which arise out of or in connection with the supply of Goods and/or Service or their use by the Customer, and the entire liability of Curveball Solutions UK Limited under or in connection with the Contract shall not exceed the amount of the Total Price except as expressly provided in these Conditions.

10.5 Curveball Solutions UK Limited shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of Curveball Solutions UK Limited obligations in relation to the Goods and/or Services if the delay for failure was due to any cause beyond Curveball Solutions UK Limited reasonable control and time for the provision of the Goods and/or Services shall not be of the essence of the Contract unless previously agreed by Curveball Solutions UK Limited in Writing. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond Curveball Solutions UK Limited reasonable control:

War or threat of war, sabotage, insurrection, civil disturbance or requisition;
Act, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
Import or export regulations or embargoes;
Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of Curveball Solutions UK Limited or of a third party);
Difficulties in obtaining raw materials, labor, fuel, parts or machinery;
Power failure or breakdown in machinery.

11. Insolvency of Customer

11.1 This Clause applies if: the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or An encumbrance takes possession, or a receiver is appointed, or any of the property or assets of the Customer; or the Customer ceases, or threatens to cease, to carry on business; or Curveball Solutions UK Limited reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

11.2 If this clause applies then, without prejudice to any other right or remedy available to Curveball Solutions UK Limited, Curveball Solutions UK Limited shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

12. Telecommunications

12.1 Where the Customer intends to attach the Goods (or any part of them) to a telecommunications network (the „Network“), the Customer shall be responsible for:

Where necessary obtaining the consent of the owner of the Network (the „Owner“ for the connection of the Goods to the Network;

Purchasing and installing all equipment necessary to make the said connection to the Network. Paying all charges from time to time levied by the Owner for connection to the Network;

At all times complying with such technical and other regulations that the Owner shall impose as a condition of the Network.

12.2 Curveball Solutions shall not be liable for any loss or damage resulting from the acts or omissions of the Owner or the breach by the Customer of its obligations under clause 12.1 above.

13. General

13.1 These Conditions (together with the terms, if any, set out in the Written Quotation) constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except in writing between the parties. All other terms and conditions, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

13.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the 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.

13.3 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

13.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

13.5 Any dispute arising under or in connection with these Conditions or the provision of the Goods and/or Service shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of The Law Society of England and Wales in accordance with the Arbitration Act 1996.

13.6 Curveball Solutions UK Limited reserve the right to charge the customer additional installation charges, where any unforeseen circumstances prevent normal installation. Such charges are to be advised to the customer prior to the commencement of the additional works.

13.7 Whilst Curveball Solutions UK Limited use every best endeavor to make the Customers phone system safe, it cannot Guarantee that the phone system is 100% safe. Any charges as a result of illegal hacking of the system will be the responsibility of the customer.

13.8 English law shall apply to the Contract, and the parties agree to submit to the non-exclusive jurisdiction of the English courts.

14. Contract Expiry

14.5 This contract will automatically rollover for the term of two years from the date of expiry, unless 90 days' notice is given in writing to Curveball Solutions UK Limited by the Client.

14.6 Curveball Solutions UK Limited reserve the right to pass on to the Client any increase in charges from a third party provider.

Maintenance Agreement

1. To ensure that all warranties for the phone system are maintained :

A maintenance contract for the phone system must be in place for the entire warranty period. It must be a maintenance agreement directly with Curveball Solutions or an approved Curveball Solutions maintenance company.

Any replacements or alterations to the phone system must be agreed with Curveball Solutions in writing in advance.

2. Reinstatement of direct debit

Where a direct debit has been stopped or cancelled by you or your bank, there will be an additional charge to you of £15.00 plus vat for Curveball Solutions to reinstate the direct debit. This will be taken with the first payment after the direct debit has been reinstated.

3. Start Date and Period of Maintenance

The period of maintenance will start on the Preferred Commencement Date. It will continue for the Minimum Term and then from year to year until terminated at any time by either party giving the other not less than twelve (12) calendar months written notice prior to the Anniversary date.

4. Maintenance Payment Terms

Payments for maintenance of the will be either by payment in advance for a minimum of 12 months or by direct debit.

The direct debits will be taken in advance of the periods to which the direct debit relates. Failure to maintain the direct debit as per the contract will be treated as material breach of contract. If the breach is not remedied then Curveball Solutions reserve the right to give written notification of termination of the maintenance contract with immediate effect.

Where termination has occurred because of a breach of contract by you then Curveball Solutions reserve the right to recover all lost revenue over the period of the contract.

5. Quality and Reliability

If requested within the manufacturer's warranty period, Curveball Solutions will replace faulty items free of charge with an identical model or one with similar capabilities.

Curveball Solutions will do this only if Curveball Solutions supplied the Equipment to the Customer, the equipment has been maintained only by Curveball Solutions, the Customer is not at fault and liability is not excluded.

6. Servicing & Exclusions

6.1 Throughout the term of the Agreement Curveball Solutions shall ensure that the performance of the Equipment and the servicing meet the approved standard of the manufacturer including: (a) telephone technical support for maintenance (b) an engineer's visit to the Site when required (c) service of the central control unit and all components within it (d) service of key phone instruments (e) service of Voicemail – auto attendant hardware* (f) headsets*

*(only covered if stated in the Agreement)

6.2 Curveball Solutions will endeavour to respond to reported faults within the level of service taken by the Customer but at no time will a failure by Curveball Solutions to do so be construed as a material breach of the Agreement.

6.3 Maintenance will not cover the following: (a) failure due to changes to or disconnection from the approved system (b) failure of any supplies or connected services (c) changes in the environment (d) ancillary items including but not limited to answer phones, call loggers, pay phones, public address systems, printers, external music on hold sources, system cabling and consumables unless otherwise agreed in writing (e) a force majeure event as defined in the Agreement

7. Connections

(a) If the Equipment is to be connected to the BT Network or other outside services, it is the Customer's responsibility to arrange for provision of any required circuits. (b) The Customer must pay all costs for circuit rentals, connection charges, inspections, commissioning and any other costs necessary to provide the services in clause (a). (c) Curveball Solutions shall not be responsible for any delays in the provision of services referred to in clause (a). Any such delay will not give the Customer the right to refuse installation of the Equipment or payment due to us.

8. Acceptance

After Curveball Solutions has installed the Equipment at the Site, our engineer will confirm to the Customer that the Equipment is working satisfactorily. When this is confirmed the Customer will be taken to have accepted the Equipment. Any warranties for the Equipment from the manufacturer will be passed to the Customer for 30 days.

9. Annual Price Increases

Curveball Solutions may from time to time increase the charge for maintenance to account for cost increases. If this increase exceeds 10%, the Customer may by writing to Curveball Solutions within 30 days of the invoice for the increased price terminate the Agreement. Customers will not be allowed to terminate the Agreement if the increase has resulted from additions made to the system.

10. Expiry

This contract will automatically rollover for the term of two years from the date of expiry, unless 90 days' notice is given in writing to Curveball Solutions UK Limited by the Client. Curveball Solutions UK Limited reserve the right to pass on to the Client any increase in charges from a third party provider.

Maintenance Service Contracts

There are two types of Maintenance contracts.

1. Enhanced

This provides for full remote support and the replacement of hardware. The response time is 4 hours.

2. Standard

This provides for full remote support and the replacement of hardware. The response time is 8 hours. The maintenance contract operates Monday to Friday (except Bank holidays) 9am until 5pm. The call out charges are £50 per hour, including traveling, limited to £500 per day. The minimum charge is for 4 hours.

Other maintenance contracts offering cover for PBX, system and 24 hours 7 day cover are available quoted separately.

Definition of System Crash

System Crashes are classified as a 50% or more failure of any part of the system and / or applications such as voicemail and Contact Centre Manager – where these applications are specifically included in the system maintenance contract.

For example, if over half of the external trunk lines fail as a consequence of the system PRI modules, this is determined to be a system crash. Similarly, if over half of the phones ceased to operate then this would be responded to as a system crash. Alternatively if an IP Controller failed this would result in a complete failure of the system i.e. > 50% this is determined to be a system crash.