



# SPECIFIC TERMS AND CONDITIONS FOR TELEPHONE SYSTEMS

## Phone System Terms & Conditions

### 1. Interpretation

“**CONDITIONS**” means the specific terms and conditions of trading set out in this document and (unless the context otherwise requires) includes our General Terms and any special terms and conditions agreed in writing between the Customer and Us

“**CONTRACT**” means the contract for the purchase and sale of Goods and/or provision of the Services.

“**CUSTOMER**” means the person named on the Written Quotation for whom We have agreed to supply the Goods and/or Services in accordance with these Conditions.

“**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 instalment of the goods or any parts for them) which We are 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 Us 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.

“**SERVICE**” means the service to be provided by Us 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.

“**WRITTEN QUOTATION**” means Our order form to which these Conditions are referenced.

“**WRITING**” includes telex, cable, facsimile transmission and comparable means of communication.

“**We**” “**Us**” “**Our**” means Curveball Solutions UK Limited whose address is at Unit 8, Deacon Business Park, Moorgate Road, Knowsley, Liverpool, Merseyside, L33 7RX, Company No. 09310243.

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** We 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** The Customer shall at its own expense supply Us with all necessary Documents or other materials, and all necessary data or other information relating to the Service, within sufficient time to enable Us to provide the Service in accordance with the Contract. The Customer shall ensure the accuracy of all Input Material.

**2.3** Any advice or recommendation given by Us or Our 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 Us is followed or acted upon entirely at the Customer’s own risk and accordingly We shall

not be liable for any such advice or recommendation which is not so confirmed.

**2.4** The Customer shall at its own expense retain duplicate copies of all Input Material and insure against its accidental loss or damage. We 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 of the order of the Customer. The Written Quotation constitutes an offer by Us 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 Customer or the Customer’s authorised representatives.

**2.5** 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”).

**2.6** Further details about the Goods and/or Services, and advice or recommendations about its provision or utilisation, which are not given in Our brochure or other promotional literature may be made available on written request.

**2.7** 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 Us in writing and where We agree 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 Us.

**2.8** We 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.**2.9** We 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 Our quoted price as stated in the Written Quotation and any additional sums which, in Our 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** 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 Us, all prices given in respect of sale of Goods only are given by Us on an ex-works basis, and where We agree to deliver the Goods otherwise than at Our premises, the Customer shall be liable to pay Us charges for transport packaging and insurance.

### 4. Terms of Payment

**4.1** Subject to any special terms agreed in Writing between the Customer and Us We shall be entitled to invoice the Customer for the price of the Goods and/or Service at or at the time after the date of acceptance of the terms offered in the Written Quotation by the Customer or its 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 Us 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, We shall be entitled, without limiting any other rights We may have, to charge interest on the outstanding amount (both before and after any judgment) at the rate of 8% per annum from the due date until the outstanding amount is paid in full plus compensation in line with the provisions in the Late Payment of Commercial Debts (Interest) Act 1998.

### 5. Delivery

**5.1** Any dates quoted for delivery/installation of Goods and/or supply of Services is approximate only and We shall not be liable for any delay however caused. Time for delivery of Goods and/or supply of services shall not be of the essence unless previously agreed by Us in writing.

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

**5.3** If We fail to deliver the Goods and/or supply the Services for any reason other than any cause beyond Our reasonable control or the Customer’s fault, and We are accordingly liable to the Customer, Our 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 Our default) then, without prejudice to any other right or remedy available to Us We may:
- 5.4.1 Store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
- 5.4.2 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. **Training**
- 6.1 Where the Written Quotation states that training is included: We shall provide to the Customer at a date to be agreed between Us and the Customer, no more than half a day's training which shall be included in the Total Price (the Training)
- 6.2 At the completion of the Training, We will require the Customer to sign a form to confirm, if the Customer agrees, that the Training has been satisfactory.
- 6.3 Any reasonable additional training services required by the Customer shall be provided by Us 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.
7. **Risks and Property**
- 7.1 Risk of damage to or loss of the Goods shall pass to the Customer when in the case of Goods to be delivered at Our premises at the time when We notify the Customer that the Goods are available for collection; or in the case of Goods to be delivered otherwise than at Our premises, at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when We have tendered delivery of the Goods.
- 7.2 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain Our property, but if the Customer does so all moneys owing by the Customer to Us shall (without prejudice to any other right or remedy of Ours) forthwith become due and payable.
8. **Rights in Input Material and Output Material**
- 8.1 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 and any Output Material shall, unless otherwise agreed in writing between the Customer and Us, shall belong to Us, subject only to the right of the Customer to use the Output Material for the purposes of utilising the Service.
- 8.2 All Output Material or other information provided by Us which is so designated by Us 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.
- 8.3 The Customer warrants that any Input Material and its use by Us for the purpose of providing the Service will not infringe the copyright or other rights of any third party, and the Customer shall indemnify Us against any loss, damages, costs, expenses or other claims arising from any such infringement.
9. **Warranties and Liability**
- 9.1 We 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 Customer 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 Customer.
- 9.2 We 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 Our obligations in relation to the Goods and/or Services if the delay for failure was due to any cause beyond Our 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 Us in Writing. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond Our reasonable control:
- i. War or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - ii. Act, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- iii. Import or export regulations or embargoes;
  - iv. Strikes, lock-outs or other industrial actions or trade disputes (whether involving Our employees or of a third party);
  - v. Difficulties in obtaining raw materials, labour, fuel, parts or machinery;
  - vi. Power failure or breakdown in machinery.
10. **Insolvency of Customer**
- 10.1 If any of the events set out in clause 12.3 of the General Terms arise then, without prejudice to any other right or remedy available to Us, We 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.
11. **Telecommunications**
- 11.1 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:
- 11.1.1 Where necessary obtaining the consent of the owner of the Network (the "Owner") for the connection of the Goods to the Network;
- 11.1.2 Purchasing and installing all equipment necessary to make the said connection to the Network;
- 11.1.3 Paying all charges from time to time levied by the Owner for connection to the Network; and
- 11.1.4 at all times complying with such technical and other regulations that the Owner shall impose as a condition of the Network.
- 11.2 We 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 11.1 above.
12. **General**
- 12.1 These Conditions (together with the terms, if any, set out in the Written Quotation) and our General Conditions constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except in writing between the parties. Any other terms and conditions, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
- 12.2 We reserve the right to charge the Customer additional installation charges, where any unforeseen circumstances prevent normal installation. Such charges will be advised to the Customer prior to the commencement of the additional works.
- 12.6 Whilst We use every reasonable endeavour to make the Customer's phone system safe, We 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. **Contract Expiry**
- 13.1 **This contract will automatically rollover for a further term of two years from the date of expiry, unless 90 days' notice is given in writing to Us by the Customer.**
- 13.2 We reserve the right to pass on to the Customer any increase in charges from a third party provider.

**Maintenance Agreement**

if the increase has resulted from additions made to the system.

**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 Us or a maintenance company approved by Us.

Any replacements or alterations to the phone system must be agreed with Us in writing in advance. If replacement parts are no longer available to repair the phone system then you agree to upgrade the phone system.

**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 Us 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 Commencement Date as defined in our General Conditions. It will continue for a minimum term of two years and then on a rolling basis until terminated in accordance with clause 12 of our General Terms.

**4. Maintenance Payment Terms**

Payments for maintenance of the phone system 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 We 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 We reserve the right to recover all monies that we would otherwise have received had the Contract continued for the remaining part of the term had the contract not been terminated early.

**5. Quality and Reliability**

If requested within the manufacturer's warranty period, We will replace faulty items free of charge with an identical model or one with similar capabilities. We will do this only if We supplied the Equipment to the Customer, the equipment has been maintained only by Us, the Customer is not at fault and liability is not excluded.

**6. Servicing & Exclusions**

**6.1** Throughout the term of the Agreement We 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** We will endeavour to respond to reported faults within the level of service taken by the Customer but at no time will a failure by Us 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) We 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 We have 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**

We 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 Us within 30 days of the invoice for the increased price terminate the Agreement. Customers will not be allowed to terminate the Agreement

**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 and quoted separately.

**Definition of System Crash**

System Crashes are classified as a 50% or more failure of any part of the system and for 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.