

EUROPACOM TERMS & CONDITIONS

1. Definitions

'**Agreement**' means the Europacom "Customer Agreement", (including electronic or paper order detail forms) subject to the terms and conditions herewith for all initial and subsequent orders placed by the Customer.

'**Customer**' means the individual or company detailed in the Agreement.

'**Service(s)**' mean(s) any Europacom product(s) or Service(s) included in Europacom proposals, company literature and communications.

'**Europacom**' is defined as Europacom.net Limited.

'**Order Form(s)**' refers to each order detail form acknowledged and agreed by the Customer detailing each new product or Service(s) ordered. Acceptance of any order form constitutes acceptance of these and any service specific terms and conditions that have been expressly agreed by the Parties

'**Party**' means Europacom or Customer; 'Parties' means Europacom and Customer.

'**Personal Data**' means any data compiled and/or processed by Europacom pursuant to this Agreement which identifies a living individual;

'**Charges**' or '**Tariffs**' mean all Charges relating to connection, rental and usage of Service(s) as published in Europacom proposals, company literature, price lists or other communications and notified to the Customer in writing by Europacom from time to time.

'**Equipment**' means any Equipment which the Parties have agreed is acceptable for Europacom to use in relation to the Service(s) whether or not it is supplied by Europacom.

2. Service(s) supplied

2.1. This Agreement includes but is not limited to the supply and usage of broadband or dedicated data connectivity and Voice over Internet Protocol Service(s) either directly between two or more sites or over the internet or a private data network, Managed WiFi services, IP card payment services, fixed line telephony over the Public Switched Telephone Network for both access and calls, and the supply of hosted IP services such as email, web hosting, co-location.

2.2. Europacom agrees to use all reasonable endeavours to supply to the Customer with the Service as agreed with the Customer in any other documents governed by this Agreement. Europacom will make the Service(s) available for the duration of the Agreement, subject to the terms and conditions of this Agreement.

2.3. Europacom shall agree to perform the Services under this Agreement;

- (a) In accordance with the terms and conditions of this Agreement and the Order Form;
- (b) Safely and with reasonable care and skill;
- (c) In accordance with all Applicable Legislation;
- (d) Using personnel involved in providing the Services who possess such skills and experience and qualifications as are appropriate for their role;

3. Security of services

3.1. Europacom will issue a set of usernames and passwords for use with the service. These are essential for the secure use of the service and will not normally be disclosed. If they are disclosed, the customer agrees to ensure that they are kept confidential, secure and are used in accordance with all relevant instructions.

3.2. To ensure that the service remains secure, the customer must not change or attempt to change a username.

3.3. If in the opinion of Europacom, it is considered that there is likely to be a breach of security or misuse of the service Europacom may:

- (a) change any password and then notify the customer that this has been done; and/or
- (b) suspend username and password access to the service

3.4. If the customer thinks that any username or password has become known by someone not authorised to use it, or if any password is being or is likely to be used in an unauthorised way, the customer must inform Europacom immediately.

4. Access to premises and provision of information

4.1. The Customer shall provide Europacom with all reasonable information, and assistance required to enable Europacom to fulfil its obligations

4.2. The customer shall provide Europacom with reasonable access to their premises from time to time (for example, for installation, repairs, maintenance or upgrades or to recover our equipment). The customer must accept responsibility, concerning the safety of people on the customer's premises.

4.3. Charges for any maintenance or repair work requested by the Customer will be agreed in advance and prior to Europacom undertaking any such repair work. If Europacom undertakes work free of charge and in the reasonable opinion of Europacom (based on what an independent expert in field might decide) it is found that such work was unnecessary, Europacom will give the Customer immediate notice of this fact and will have the right to invoice the Customer charges for the services at the current notified rates.

5. Use of the Service(s)

5.1. The Customer agrees to make appropriate use of the Services and the Equipment. Once the Service(s) have been installed the Customer undertakes that it shall:

- (a) Use the Services and Equipment in accordance with the terms of The Communications Act 2003 and any amendments which may be made to it or any other Applicable Legislation in force from time to time
- (b) Not permit any parts other than those approved by Europacom to be connected to the Service(s).
- (c) Observe the terms of any applicable licenses notified to it by Europacom as being applicable.

5.2. The Customer agrees that it shall ensure that the Service(s) are not used:

- (a) For transmitting any information which is obscene, offensive or defamatory in nature.
- (b) Other than the purpose for which the Service(s) were intended.

5.3. Where the Equipment is supplied by Europacom and title to the Equipment passes to the Customer, Europacom shall wherever possible ensure that the benefit of any warranty or guarantee given to Europacom in respect of the Equipment is transferred to the Customer. All warranties, conditions and other terms implied by statute or common law (save for conditions to title and any other warranties included within this Agreement) are excluded from this Agreement.

5.4. Europacom may make available to the customer, software to enable the use of a service. The customer agrees not to copy or modify such software (unless allowed by law) and to only access the service through such software or in an alternative way permitted by Europacom, and the customer agrees not to attempt to circumvent any security measures in the service.

5.5. The supply of any service or associated software is intended for the customer's use only and the service (or any part of it) must not be re-sold, transferred, assigned or sub-licensed to anyone else.

5.6. Where equipment is not supplied by Europacom, all equipment connected to, or used with the service must bear the European Consumer Equipment Standards "CE" mark. Europacom do not support or warranty any equipment that it does not supply.

5.7. The Customer agrees not to alter or re-configure any Equipment (hardware or software) provided by Europacom without the prior written permission of Europacom.

5.8. The Customer understands and accepts that the features and capabilities of Europacom's VoIP offerings will differ from Europacom's PSTN based services.

- (a) The Customer is advised that if a Broadband Connection fails, the VoIP service will also fail. Service may also cease to function if there is a power cut or failure. Any service failures may be caused by events outside of our control. Broadband is provided on an analogue phone line which may continue to function independently through a power cut or failure. No continuity of telephone numbers, tariffs or services can be offered when using the analogue line and a compatible handset is required. Europacom's VoIP services support 999 and 112 calls to the emergency services, however emergency location based information may not be made available by us to these services.

6. Local Area Network (LAN) access

6.1. If the customer accesses the service via a LAN, the customer is responsible for:

- (a) providing and maintaining a suitable LAN; and
- (b) appointing a system administrator, who will be Europacom's point of contact for matters relating to the service.

6.2. Europacom are not responsible under the contract for providing any technical or other support to the customer's LAN. Any IP addresses that are allocated to the customer are for use in connection only with the service and all rights in those IP addresses belong to Europacom and IP Addresses may not be sold or transferred to any third party. On termination of the services, the IP addresses to revert to Europacom

6.3. If the customer or any other party alters firewall or IP router settings or fails to maintain them or the case where the customer supplies their own equipment, incorrectly configures settings, Europacom may suspend access to the service. In addition, Europacom reserve the right to charge the customer for any reconfiguration or administrative charges as a result of corrective measures that may be required

7. Term

7.1. This Agreement will commence upon the date of signing of this Agreement, and any minimum period shall commence from the date that the service is provisioned and available for use and shall continue for the full contract period detailed on the relevant Order Form or as otherwise extended by the mutual written agreement of the Parties. If for whatever reason a period is not shown on the relevant Order Form, then the standard minimum contractual period for each service will be a minimum of 24 Months and being subject to minimum notice period of 30 days plus as many days thereafter as required in order to coincide with the end of the following calendar month.

8. Payment terms

8.1. Where requested by the Customer, Europacom may agree to allocate a credit limit which may be varied from time to time at Europacom's sole discretion.

8.2. If required by Europacom at any time, the Customer shall provide a deposit to be used as security against any pending Charges, which will be returnable to the Customer only when payment of all sums due has been made to Europacom, or upon termination of this Agreement, whichever is later. The Customer shall not be entitled to any interest payment on any monies held by Europacom.

8.3. The Customer agrees to pay all outstanding Charges by Direct Debit or other form of automatic electronic bank transfer on the due date shown on each Europacom invoice. When a due date is not shown Europacom's standard terms are 14 days from date of invoice. Europacom reserves the right to levy a charge when payment is not made by such means.

8.4. Usage Charges for each Service(s) supplied will be charged at the rates agreed either in the relevant proposal and/or Order Form or as are requested and will be subject to the charging rules applied to the chosen tariff.

8.5. Europacom shall issue invoices for usage Charges in a form agreed with the Customer. Usage Charges payable shall be calculated using data recorded or logged by Europacom and not by the Customer and Europacom agrees to provide the Customer with any breakdown or information relevant to the Charges upon the Customer's reasonable request.

8.6. Europacom undertakes to charge daily interest at a rate equal to 2 percent per annum above the Bank of Scotland Base Lending Rate as current from time to time on amounts outstanding 30 days after invoice, until full settlement is received. In the event of termination of this Agreement, interest shall continue to accrue until the date of payment by the Customer.

8.7. Europacom shall be free to exercise its right to charge for any amounts incurred in the collection of overdue balances.

8.8. Europacom will only respond to billing queries relating to usage of a Service by the Customer provided the query is made within three months of the date of the relevant invoice.

- 8.9. All Charges referred to in each proposal and Order Form is exclusive of Value Added Tax and any other taxes of a similar nature which may be introduced as a result of new or changing Legislation from time to time.
- 9. Temporary service suspension**
- 9.1. Europacom may need to temporarily suspend the service for operational reasons (e.g. for repairs, planned maintenance or upgrades), and before this is done, The customer will be given as much notice as can be reasonably expected and Europacom promise to restore the service as soon as possible after any suspension.
- 9.2. Europacom may have to alter code or access numbers or technical specification associated with the service for operational reasons and before this is done, the customer will be given as much notice as can be reasonably expected. The technical specification will only be changed where this will not materially affect the performance of the service.
- 9.3. Europacom may give you instructions about health and safety issues when using the service or on your use of the service to ensure the quality of the service provided to you and other customers and the customer agrees to observe them.
- 9.4. Although Europacom attempt to provide you with the best possible service, it cannot be guaranteed that the service will never be faulty and Europacom promises to correct all reported faults as soon as they reasonably can be rectified. Supplied products and services are subject to individual Service Level Agreements.
- 10. Suspension of Service(s)**
- 10.1. Europacom shall without notice suspend supply of the Service(s) until further notice with no payment of compensation in the event that:
- Europacom is obligated to fulfil a request of the Government or an emergency service organisation or other similar authority.
 - The Customer has breached this Agreement in some material way.
 - When Europacom has reasonable cause to believe that fraudulent use of the Customer's Service is taking place
 - If Europacom has reasonable cause to believe that any Charges due from the Customer may not be paid or that the Customer's credit limit is exceeded.
 - If the Customer's direct debit mandate or credit card continuous authority mandate is not accepted by the Customer's bank or is subsequently cancelled.
 - The provision of Service is suspended, discontinued or terminated for any reason beyond Europacom's control.
- 10.2. In the event of the circumstances outlined in 7.1 herein arising, Europacom shall be entitled to make reasonable charges to the Customer for any associated costs incurred by Europacom through carrying out the suspension and the re-connection of the Service(s) as applicable. Notwithstanding the foregoing, the Customer shall not be liable for such costs where the suspension of the services is carried out by Europacom for reasons other than as a result of a breach of contract by the Customer or the negligent acts of the Customer.
- 11. Termination and disconnection**
- 11.1. Where the sale of Service(s) has been carried out in the way of distance communication, in line with statute, the Customer is able to terminate a particular order within 14 days (known as the 'cooling off period') of receipt of the relevant Order Form subject to the following:
- If the Customer makes use of the Service(s) supplied under this Agreement within the 14-day period, this will be considered acceptance of ownership on the Customer's behalf and in so doing, the Customer will thereafter give up the right to terminate the order under this Agreement.
 - The Customer must inform Europacom in writing of the intention to cancel this order, which is to be received at Europacom's address as is shown on the Order Form.
 - The customer is obliged to pay any costs incurred by Europacom for the provision and installation of services including any cancellation charges from third parties that may apply
 - The Customer is obliged to take reasonable care of any Equipment that has been supplied by Europacom for use under the Agreement, until such time as it is returned to Europacom. The Customer will be held responsible for any losses or damage to the Equipment whilst in their care.
 - The Customer is responsible for ensuring that all Equipment provided by Europacom under this Agreement is returned at the Customers own cost and that it is sent in a safe and timely manner.
 - All monies paid by the Customer minus any Charges incurred under the terms of provision of this Agreement will be refunded after safe receipt of the said Equipment, within 30 days of termination of the Agreement.
- 11.2. Aside from anything to the contrary expressed or implied in this Agreement, either party may terminate this Agreement without delay in the event that:
- As set out in section 123 of the Insolvency Act 1986, the Customer does not meet with the test of solvency and is not able to pay its debts or the Customer is declared bankrupt, insolvent, has a receiver, liquidator or administrator appointed or enters into any agreement with its creditors or other circumstances arise which entitle a court or creditor to appoint a receiver or administrator.
 - Either party is in breach of this Agreement and the breach has not been remedied within 14 days of the date of the other party's written notice of such a breach and requirement for such breach to be remedied.
- 11.3. Europacom may terminate this Agreement forthwith in the event that any entitlement under which the Customer may be permitted to run an electronic communication system and connect it to the Europacom system is revoked or otherwise becomes invalid.
- 11.4. If the Customer cancels this Agreement in whole or in part at any time, either before or after connection, Europacom will accept such cancellation provided that a minimum of 30 days' written notice is supplied and the Customer agrees to pay the cancellation Charges as below, or alternatively in the case that Europacom and the Customer have agreed a minimum contract period for the Service(s), Europacom will accept cancellation at the end of the agreed minimum period on the basis that a minimum of 30 days' written notice is given and the Customer agrees to pay the cancellation Charges as detailed in section 8.5. Where cancellation takes place prior to the end of the Agreement, and ownership of the equipment has not been transferred to the customer, the Customer agrees to return any and all Equipment to Europacom.
- 11.5. Upon cancellation of the service(s), the Customer must pay:
- All Charges outstanding on their account(s).
 - All line and other rental Charges and Service(s) costs for each month as per the value at the commencement of the original contract and proportionally for each part-month, for the remaining period of the Agreement
 - All Migration Authorisation Codes Administration fees (MAC's) at the then current rate.
 - All termination charges as specified in Europacom's price lists at the then current rate.
- 11.6. Europacom reserves the right to charge any administrative costs directly associated with any cancellation fees charged by any other communication supplier involved.
- 11.7. The termination of an order for Service(s) under this Agreement, howsoever arising is without prejudice to the duties, rights and obligations of either party existing prior to termination. The clauses in this Agreement which impliedly or expressly have effect after termination shall continue to apply in spite of termination.
- 11.8. Should for whatever reason the Customer request termination of the Agreement and the transfer of any telephone number to any other provider, Europacom shall be within its rights to levy a reasonable administration fee for each number or may decline to transfer any number until such time that the Customer has complied with all of the obligations within the Agreement.
- 12. Liability**
- 12.1. Nothing in these terms shall restrict or exclude Europacom's liability for personal injury or death as a result of negligence on behalf of Europacom or of its employees in relation to the provision of the Services under this Agreement.
- 12.2. Should a Service(s) provided by Europacom fail to operate and the Customer diverts traffic to an alternative carrier, Europacom will not be held responsible for that carrier's charges.
- 12.3. Neither of the parties shall be liable to the other in contract, tort or otherwise for any loss of contracts, business, anticipated profits or savings or for any other consequential or indirect loss.
- 12.4. Europacom have no liability (whether in negligence or otherwise) for any indirect or consequential loss, nor for any loss of opportunity, goodwill, reputation, business, revenue, profit, or savings the customer expected to make, wasted expenditure or data being lost or corrupted.
- 12.5. Europacom does not have any liability of any sort (including liability for negligence) for the acts or omissions of other providers of telecommunication goods or services or for faults in or failures of their networks and equipment.
- 12.6. Europacom will not be liable to the Customer for breach of the terms and conditions of this Agreement where such breach is by virtue of Force Majeure.
- 13. Force Majeure**
- 13.1. Europacom will not be liable to the Customer or be deemed to be in breach of this Agreement by reason of any delay in performing or failure to perform any of its obligations under this Agreement if such delay or failure was beyond Europacom's reasonable control including, without limitation, fire, flood, strike or other industrial action or any externally introduced computer related viruses or malicious cyber attack of whatever nature. If Europacom is unable to perform its obligations under this Agreement it will promptly notify the Customer of the nature and extent of the circumstances in question.
- 14. Variation**
- 14.1. Europacom may with immediate effect vary any of the terms and conditions of the Agreement as a direct result of Government regulations, new legislation, and statutory instruments. Any variation of the terms of this Agreement shall be by written amendment to this Agreement which shall be notified to the Customer by post or electronic mail and any such amendments shall have immediate effect.
- 15. Severability**
- 15.1. If any provision of this Agreement is found by a court of law to be unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect.
- 16. Assignment**
- 16.1. The Customer may not assign, transfer, charge, make the subject of a trust or deal in any other manner with any of its rights under this Agreement or purport to do any of the same nor sub contract any or all of its obligations under this agreement without the prior written consent of Europacom such consent not to be unreasonably withheld or delayed. Europacom may assign this contract at any time.
- 17. Data Protection**
- 17.1. Europacom shall process any Personal Data in accordance with this Agreement and shall ensure that it has in place the appropriate technical and organisational measures in relation to its obligations under the Data Protection Legislation.
- 17.2. Europacom warrants that it shall comply in all respects with its obligations under the Data Protection Act 1998 and all subordinate legislation as the Customer's data processor in respect of any Personal Data.
- 17.3. Europacom shall ensure that there is no unauthorised or unlawful processing of any of the Personal Data.
- 18. General**
- 18.1. This Agreement contains all of the terms of the agreement between Europacom and the Customer and supersedes all other previous Agreements whether made orally or in writing.
- 18.2. The Customer must notify Europacom providing at least 7 days' written notice of any change of address or payment details.
- 18.3. Any invoice or other documentation given to the Customer by Europacom shall be considered received if delivered to the address provided on this Agreement or any updated address subsequently provided to Europacom in writing.
- 18.4. Failure by either party to exercise or enforce any right conferred by this Agreement shall not be considered a waiver of any such right nor shall it bar the exercise or enforcement thereof or of any other right at any later date.
- 18.5. This Agreement shall be governed, construed and interpreted in accordance with English law and both parties hereby submit to the exclusive jurisdiction of the English courts.
- 18.6. Where the Customer is more than one person, the obligations under this Agreement are joint and several.