

LAN Control Systems Limited – Standard Terms & Conditions

These Terms and Conditions govern the purchase of LAN Control System Limited (“LCS”) Products and Services as stated on any Offer and sets out the entire agreement between the parties. LCS Offer or acceptance is conditional on the acceptance of these terms. Each offer is valid for a period of 60 days from the date of the offer unless extended, modified or withdrawn in writing by LCS. A purchase made through the Nimbus on-line purchasing system or the return of a purchase order, if any, and/or the completed, executed Offer to LCS will be sufficient to form an Agreement and acceptance of the LCS offer and these Terms and Conditions. All other Terms and Conditions are excluded unless LCS agrees otherwise in writing. For the avoidance of any doubt, any other Terms and Conditions contained in any documentation given to LCS purporting to supersede or replace these Terms and Conditions shall not apply.

1. DEFINITIONS

The following words and phrases have the following meaning in these Terms and Conditions:

“Activation Date” means the date at which the communications services shall commence.

“Agreement” or “Contract” shall mean the acceptance of the LCS Offer together with the Terms and Conditions stated herein and the Purchaser’s purchase order, (excluding any pre-printed terms and conditions on said purchase order and in any attachment or attachments to said purchase order) or other document evidencing acceptance of the LCS Offer for LCS Products and Services.

“Authorised User” means any Purchaser or persons provided authority by the Purchaser to access Nimbus in order to benefit from the Communications Services.

“Communications Services” shall mean the communications, data storage, notifications and Web/Mobile based user interface provided by LCS in accordance with LCS Service Level Agreement as contained herein.

“Data” shall mean any process information, alarms, notifications, reports, and user commands, organized, transmitted and/or generated by the Purchaser’s use of the Communications Services

“Defect” means any defect, failure, imperfection or fault in the Equipment that is attributable (in whole or in part) to defects, failure, imperfections or faults in the materials or workmanship of LCS, and not attributable to any act, omission or default of the Purchaser, whether before or during any relevant Defects Notification Period, and “Defective” shall be construed accordingly.

“Defects Liability Period” means LCS shall be responsible for the period of 12 months from the delivery of the Equipment to which the Defect relates, for the making good by repair, replacement or re-work of any defective Equipment in accordance with LCS RMA procedure which is due to any Defect.

“Defects Notification Period” means the period for notifying Defects in the Equipment during the Defects Liability Period.

“Device or Devices” shall mean the equipment supplied by LCS and used by the Purchaser to send/receive transmissions on or across the Network, including any wireless modem, SIM (Subscriber Identity Module) Card, and any accessories or related equipment.

“Effective Date” shall mean the date LCS unconditionally accept the Purchaser’s purchase order, if any, and/or the completed, executed Offer or purchase made through the Nimbus on-line purchasing system.

“Inherent Defects” means a higher than expected number of Defects notified to and confirmed by LCS during the Defects Notification Period by a Purchaser / Installer.

“Intellectual Property Rights” means patents, trademarks, internet domain names, service marks, registered designs, applications for registration of any of the foregoing, copyright, design rights, trade and business names, trade secrets and knowhow and any other similar protected rights whether registered or unregistered in any country subsisting now or in the future.

“LCS Proposal” (hereinafter the “the Offer”) shall mean the Communications Services and Devices offered to the Purchaser detailing what is to be purchased and the price.

“Offer” shall have the meaning as LCS Proposal or purchase made through the Nimbus on-line purchasing system

“Network” shall mean those integrated mobile switching facilities, data routers, servers, cell sites, internet and any other related facilities or equipment used to provide Communications Services.

“Products or Products” shall have the same meaning as Device as detailed within the Offer.

“Purchaser” shall mean the entity purchasing Communications Services and Devices from LCS.

“Service or Services” shall have the same meaning as Communications Services as detailed in the Offer.

“Service Fees” shall mean the annual fees payable for Communications Services. Service Fees shall be payable in advance of the Service.

“Term” shall mean the duration of Communications Services.

“Device Fees” shall mean the fees payable for the Product as stated in the Offer upon delivery or within and agreed period of time.

“Technical Services” shall mean (i) technical information provided by LCS including data interpretation and reports, (ii) advice and consultation given to Purchaser’s personnel at Purchaser’s facility or at a LCS facility by a LCS engineer or technician or sales person.

2. NETWORK - COMMUNICATIONS SERVICES

Due to the nature of cabled and wireless (cellular) internet communications, transmission and reception of data can never be guaranteed. Data may be delayed, corrupted (i.e., have errors) or be totally lost. Although significant delays or losses of data are rare when wireless devices such as the Nimbus Gateway are used in a normal manner with a well-constructed network, the Nimbus Gateway should not be used in situations where failure to transmit or receive data could result in damage of any kind to the user or any other party, including but not limited to personal injury, death, or loss of property. LAN Control Systems accepts no responsibility for damages of any kind resulting from delays or errors in data transmitted or received using the Nimbus Gateway, or for failure of the Nimbus Gateway to transmit or receive such data.

3. PROVISION OF SERVICES

- 3.1 In consideration of the payment of the Service fees, LCS shall provide the Services to the Purchaser from the Activation Date for the duration of the Term.
- 3.2 LCS reserves the right to alter or modify its Services from time to time provided such alteration or modification does not materially affect the functionality or performance of the Services.
- 3.3 LCS may, during the Term, give the Purchaser on-line access to information which it holds in connection with the Services via an extranet / Internet facility. However, LCS reserves the right to alter the information made available or to suspend or withdraw such access at any time without notice and without any liability on its part. As a condition of receiving such access the Purchaser may be required to agree additional terms of access.
- 3.4 LCS agrees to use reasonable endeavours to provide the Services by the date agreed with the Purchaser. All dates and times are estimates and LCS has no liability for any failure to meet any date or timing.
- 3.5 LCS will provide the Services with the reasonable skill and care of a competent service provider.
- 3.6 The Purchaser acknowledges and agrees it is technically impracticable to provide completely fault free Products and LCS Services and LCS does not undertake to do so.

4. PROVISION OF DEVICES

- 4.1 Upon acceptance of the Offer by the Purchaser and receipt of the Purchaser’s purchase order or placement of on-line purchase order LCS will despatch the Devices within a reasonable period of time unless agreed otherwise in writing. Orders for more than 10 Devices collectively should check availability with LCS to ensure delivery within reasonable period.
- 4.2 Unless agreed to the contrary, delivery of the Devices shall take place to the Purchaser’s nominated delivery address. The Purchaser is responsible for the Devices and for their proper use. If any Device is lost, misused, destroyed or damaged whilst under the control of the Purchaser or an Authorised User, the Purchaser shall pay LCS’s charges for its replacement or repair and reconnection. The Purchaser must not interfere with the Devices nor permit anybody other than LCS or a third party authorised by LCS to do so.
- 4.3 Notification of non-delivery of any Device must be made in writing to LCS in accordance with clause 16.3 within 7 days of the date that LCS advises the Purchaser that the Devices are to be delivered. If the Purchaser fails to notify LCS of non-delivery within this period, the Purchaser shall be deemed to have received all of the Devices.

5. SERVICE AVAILABILITY

- 5.1 During the Term, LCS shall use reasonable endeavours to ensure that:
 - a) the Services in accordance with the Offer are accessible by the Purchaser/Authorised User via the Network on a 24 hour, 7 day a week basis, and
 - b) the Purchaser/Authorised User has access to and use of the Services, subject to routine and emergency maintenance, repairs, configurations or upgrades of the Services.
- 5.2 LCS shall have no liability for errors in the functioning of the LCS Services which are attributable to any of the following: operator error; provision of incorrect information by the Purchaser or its representatives; power failures; malicious interference; any downtime; outages from any subcontractor; the Network or the lack of coverage of the mobile telecommunications network and availability of the Internet.

6. SUPPORT AND MAINTENANCE

- 6.1 LCS will supply the Purchaser with a helpdesk in the form of a telephone number and email address which will be manned during LCS's business hours which are Monday to Friday from 08:00 to 17:00. The Purchaser shall direct all Service queries to the Helpdesk.
- 6.2 LCS will promptly acknowledge receipt and respond to any problems with the Services notified to it via the Helpdesk and as soon as reasonably practicable investigate the reported problem and thereafter use its reasonable endeavours, taking into account the severity level of the problem, to promptly correct such problem.
- 6.3 If LCS is of the opinion that it cannot resolve the problem or provide a workaround to the problem, LCS shall notify the Purchaser. If the failure substantially hinders or prevents the Purchaser from using a material part of the functionality of the Services, the Purchaser shall be entitled to terminate this Agreement forthwith by written notice to LCS. LCS will make a pro-rata refund of the Price paid by the Purchaser reflecting the unexpired period covered by such Price.
- 6.4 The problem resolution service in clauses 6.3 and 6.4 shall not include the provision of services for problems attributable to any of the circumstances listed in clause 5.2. Should LCS agree to provide any support that falls within such exclusion, LCS shall be entitled to make an additional charge in accordance with its standard scale of charges from time to time in force.
- 6.5 LCS shall be entitled to suspend access to the Services:
 - a) on reasonable notice to the Purchaser for such period as may be reasonably required for maintenance, repairs or improvements; and
 - b) without prior notice to the Purchaser for exceptional operational reasons;
 - c) if the Service fails or is unavailable for any reason;
 - d) to comply with the requirements of LCS Service Providers or any regulator;
 - e) because of an emergency, for reasons of security, or upon instruction by emergency services, any government or appropriate authority;
 - f) for late payment;

7. USE OF THE SERVICES

- 7.1 The Purchaser shall provide LCS with such information, services, support and other assistance as may be reasonably required by LCS in its provision of the LCS Services.
- 7.2 The Purchaser shall provide LCS with the names of its representatives and operatives requiring access to LCS Services and any other details regarding such Purchasers as LCS may reasonably require from time to time. The Purchaser shall promptly provide LCS with any changes to these details.
- 7.3 The Purchaser shall ensure that each of its representatives or operatives shall:
 - a) generally observe and comply with all the reasonable directions of LCS Services;
 - b) not cause any nuisance, annoyance or inconvenience to any third party by any use or misuse of LCS Services;
 - c) not act in any way whether knowingly or otherwise which will impair the operation of all or part of the LCS Services;
 - d) not be involved in or knowingly, recklessly or negligently permit or negligently allow any other party to be involved in any fraudulent or other unauthorised use or attempted use of the LCS Services by corrupt or dishonest or illegal means at any time and shall notify LCS immediately upon becoming aware of or suspecting such activity.
- 7.4 The Purchaser shall ensure that, prior to receipt of Products and LCS Services, each Purchaser representative or operative has properly completed the required training to operate, install and commission the Products or LCS Services.
- 7.5 The Purchaser shall indemnify LCS and keep LCS indemnified and hold LCS harmless against any and all damages, losses and costs and expenses that may be incurred by LCS in respect of failure by the Purchaser, its representatives or operatives to comply with its obligations as contained herein by reason of negligence or otherwise.

8. DATA PROTECTION

The Purchaser shall obtain and maintain an up to date registration under the Data Protection Act 1998, (as it may be amended extended or re-enacted from time to time, including any statutory provision, regulation, order, instrument or subordinate legislation) ("DPA"), and that it complies with its registration or notification. The Purchaser shall indemnify LCS against all losses, damages, or liabilities of whatever nature (including legal costs on an indemnity basis) which may be suffered or incurred by LCS as a result of or in connection with any prosecution or civil or other action under the DPA relating to any breach of obligations imposed by the DPA or this clause attributable to the Purchaser's act or default.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 The Purchaser acknowledges that the Intellectual Property Rights in the Services, any handbooks or manuals, and any software comprised within the Device(s) are and shall remain the property of LCS and/or its licensors.
- 9.2 Subject to receipt by LCS of all sums due to it under this Agreement as they fall due, LCS grants to the Purchaser a non-exclusive, non-transferable, royalty-free licence to use such Intellectual Property Rights only to the extent necessary for the Purchaser to receive the benefit of the Services.

10. TRAINING

- 10.1 Unless agreed otherwise in writing, LCS will charge the Purchaser for training at its current rates in force from time to time details of which are available on request. LCS may charge the Purchaser for travel and accommodation expenses at cost to LCS.
- 10.2 Should the Purchaser require additional training beyond the training specified in clause 10.1, LCS shall provide such additional training at its standard training fees from time to time in force.

11. PRICE AND PAYMENT

- 11.1 The Purchaser shall pay the Device and Services Fees in accordance with the Offer.
Payment terms for Devices are strictly 30 days from date of invoice unless agreed otherwise in writing.
Payment terms for Services are payable in advance.
- 11.2 If LCS does not receive payment in accordance with the provisions of clause 11. or such alternative method as LCS may agree in writing from time to time, LCS may, without prejudice to any other rights and remedies at its option:
 - a) charge the Purchaser interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998; and/or
 - b) suspend provision of the Services.
- 11.3 LCS reserves the right to make annual increases to the Device and Service Fees.

12. CONFIDENTIALITY

Each party shall keep confidential all information, know how or materials relating to the other party's business activities and shall not use the same for purposes other than in relation to the performance of the party's respective obligations contained herein. Neither party shall disclose any such confidential information to any person without prior written consent of the other. These obligations shall survive termination of this Agreement. Nothing in this clause shall apply to any information:

- a) which is (or which becomes) available to the public other than by breach of these Terms and Conditions or of any other duty;
- b) which the party receiving the information already possesses or which it obtains or originates independently in circumstances in which that party is free to disclose it;
- c) which is required to be disclosed by law, by any governmental or other regulatory authority or by court or other authority of competent jurisdiction.

13. WARRANTIES

- 13.1 LCS warrants that upon delivery and for a period of 12 months, the Product will be free from defects in materials and workmanship; it shall use reasonable skill and care in the provision of the LCS Services in accordance with the LCS Service Level Agreement.
- 13.2 LCS shall not be liable for a breach of the warranty in clause 13.1 unless:
 - a) The Purchaser gives written notice of the defect to LCS within 14 days of the time when the Purchaser discovers or ought to have discovered the defect; and
 - b) LCS is given a reasonable opportunity after receiving the notice of examining such Product and the Purchaser or (if asked to do so by LCS) returns such Product to LCS in accordance with the LCS RMA procedure.
- 13.3 If any Product does not comply with the warranty set out in clause 13.1, then, subject to clauses 13.2 and 13.4, LCS shall at its cost, expense and discretion use all reasonable endeavours either repair or replace the Defective Product within 10 working days of receipt of the Defective Product.
- 13.4 LCS shall not be liable for a breach of the warranty in clause 13.1:
 - a) to the extent that it is attributable to further use of such Equipment after giving notice pursuant to clause 13.2; or
 - b) if the defect arises because the Purchaser, its representative or operative failed to follow LCS's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Product;

- c) that is attributable to fair wear and tear, abuse, improper use or use in an environment or for a purpose for which the Product was not designed or intended by LCS; or
 - d) if the Purchaser, its representative or operatives alters, modifies or repairs such Product or any part thereof without the written consent of LCS.
- 13.5 If LCS complies with clause 13.3 it shall have no further liability for a breach of the warranty in clause 13.1 in respect of such Product.
- 13.6 Any repaired or replacement Product will be guaranteed on these terms for the unexpired portion of the warranty period as set out at clause 13.1 above.
- 13.7 If LCS receives written notice from the Purchaser of any breach of the warranties at clause 13.1, then LCS's sole liability shall be, at its sole discretion, to:
- a) remedy the breach within a reasonable time and without charge to the Purchaser ; or
 - b) credit to the Purchaser such proportion of the Product or Subscription Fee as shall correspond to the period during which the specific breach took place as notified by its Purchaser.
- 13.8 No warranty is made regarding the results of usage of the Services or that the Services will meet the Purchaser requirements or that the Services will operate uninterrupted or error free.
- 13.9 LCS warrants for a period of ninety (90) days following delivery of LCS Services that the LCS Services will perform substantially in accordance with the LCS documentation.
- 13.10 The Purchaser must satisfy itself as to the suitability of LCS Services for its needs. LCS does not warrant for fitness for any particular purpose.
- 13.11 No oral or written information or advice given by LCS shall create a warranty, or in any way increase the scope of this warranty and the Purchaser may not rely on any such information or advice.
- 13.12 Except as expressly stated in this document all other warranties, express or implied as to the quality, condition, performance of the Product and Services and any other terms and conditions are excluded to the fullest extent permitted by law.

14. LIMITATION OF LIABILITY

- 14.1 The following provisions set out the entire financial liability of LCS (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Purchaser in respect of:
- a) any breach of this Agreement; and
 - b) any representation, statement or tortious act or omission including negligence arising under or in connection with this Agreement.
- 14.2 Nothing in this Agreement excludes or limits the liability of LCS for death or personal injury caused by LCS's negligence or for fraudulent misrepresentation.
- 14.3 Subject to clause 14.2, LCS shall not be liable to the Purchaser for:
- a) any indirect, consequential, special or punitive loss, damage, costs and expenses;
 - b) loss of profit; loss of revenue; loss of anticipated savings; loss of business; loss of reputation; depletion of goodwill; or
 - c) loss, damage, injury or death resulting from the misuse of the Service.
- 14.4 Subject to clauses 14.2 and 14.3, LCS's total liability to the Purchaser under or connected with this Agreement for:
- a) any loss or damage which arises out of LCS's negligence shall not exceed £1,000,000 for any Claim; and
 - b) any other loss not covered by clause 14.4 (a) shall not exceed the greater of Price payable by the Purchaser for the 12 month period immediately preceding a Claim arising or £10,000.
- 14.5 For the purposes of this clause 14, a "Claim" shall mean any one event giving rise to a claim or, where there is more than one event giving rise to a claim, then a series of connected events.

15. DURATION AND TERMINATION

- 15.1 This Agreement shall commence on the Effective Date and shall (unless terminated in accordance with clause 15.2) remain in full force and effect for the Term and shall continue thereafter unless or until terminated by either party giving to the other not less than 3 months' written notice.

15.2 This Agreement may be terminated forthwith by LCS:

- a) if the Purchaser fails to make any payment on the due date and payment has not been made within 7 days of a written request for the same;
- b) if the Purchaser commits any material breach of any term of this Agreement (other than one falling within clause 15.2 (a)) and which (in the case of a breach capable of being remedied) has not been remedied within 7 days of a written request to remedy the same;
- c) if the Purchaser ceases to trade or if an order is made or a resolution is passed for the winding-up of the Purchaser or an order is made for the appointment of an administrator to manage the affairs, business and property of the Purchaser or such an administrator is appointed, or a receiver and/or manager or administrative receiver is appointed in respect of all or any of the Purchaser's assets or undertaking or the Purchaser takes or suffers any similar or analogous action in consequence of debt in any jurisdiction.

15.3 On termination of this Agreement:

- a) any Price that would have been payable to LCS under this Agreement but for such termination shall immediately become payable together with an administration charge equivalent to one month's Price;
- b) any outstanding Price shall immediately become payable;

15.4 Any termination of this Agreement shall be without prejudice to any other rights or remedies LCS may be entitled to under this Agreement or at law.

16. GENERAL

16.1 These Terms and Conditions and any other documents expressly referred to in the Agreement contain the entire agreement and understanding of the parties with respect to its subject matter / Offer and supersedes all prior agreements written or oral. The Agreement shall override and take the place of any other terms and conditions contained in any document or other communication used by the Purchaser.

16.2 Neither party shall be liable to the other by reason of any delay or failure to perform its obligations (other than a payment obligation) under these conditions or for any resulting loss or damage caused if such delay or failure is due to any circumstances beyond the reasonable control of that party including strike, lockout or other industrial dispute, fire, flood, earthquake or other elements of nature, acts of God, acts of war (whether or not war is declared), riots, civil disturbance, acts of terrorism, regulations, orders or requisitions of any Government.

16.3 Any notice or other written communication given under or in connection with this Agreement shall be in writing addressed to the other party at its registered office or Principal Place of Business.

16.4 If a court decides that any part of the Agreement cannot be enforced, that particular part of the Agreement will not apply, but the rest of the Agreement will.

16.5 A waiver by a party of a breach of any provision shall not be deemed a continuing waiver or a waiver of any subsequent breach of the same or any other provisions. Failure or delay in exercising any right under the Agreement shall not prevent the exercise of that or any other right.

16.6 The Purchaser may not assign or transfer any benefit, interest or obligation under the Agreement.

16.7 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

16.8 This Agreement and all matters (including, without limitation, any contractual or non-contractual obligation) arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.