

# Terms and Conditions for the Sale of Goods

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## 1. Definitions

Buyer the person who buys or agrees to buy the goods from the Seller.

Conditions the terms and conditions of sale as set out in this document and any special terms and conditions agreed in writing by the Seller.

Goods the articles which the Buyer agrees to buy from the Seller.

Price the price for the Goods, excluding VAT and any carriage, packaging and insurance costs.

Seller means One2Call Ltd of 51 Clarkegrove Road, Sheffield, South Yorkshire, S10 2NH

## 2. Conditions

**2.1** These Conditions shall form the basis of the contract between the Seller and the Buyer in relation to the sale of Goods, to the exclusion of all other terms and conditions including the Buyer's standard conditions of purchase or any other conditions which the Buyer may purport to apply under any purchase order or confirmation of order or any other document.

**2.2** All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods from the Seller pursuant to these Conditions.

**2.3** Acceptance of delivery of the Goods shall be deemed to be conclusive evidence of the Buyer's acceptance of these Conditions.

**2.4** These Conditions may not be varied except by the written agreement of a Director of the Seller.

**2.5** These Conditions represent the whole of the agreement between the Seller and the Buyer. They supersede any other conditions previously issued.

### 3. Price

The Price shall be the price quoted on the Seller's confirmation of order. The Price is exclusive of VAT which shall be due at the rate in force on the date of the Seller's invoice.

### 4. Payment and Interest

**4.1** Payment of the Price and VAT shall be due within 30 days of the date of the Seller's invoice, unless otherwise stated.

**4.2** Interest on overdue invoices shall accrue from the date when payment becomes due calculated on a daily basis until the date of payment at the rate of 8% per annum above the Bank of England base rate from time to time in force. Such interest shall accrue after as well as before any judgment.

**4.3** The Buyer shall pay all accounts in full and not exercise any rights of set-off or counter-claim against invoices submitted by the Seller.

### 5. Goods

The quantity and description of the Goods shall be as set out in the Seller's confirmation of order.

### 6. Warranties

The Seller warrants that the Goods will at the time of delivery correspond to the description given by the Seller in the confirmation of order. [Except where the Buyer is dealing as a consumer (as defined in section 12 of the Unfair Contract Terms Act 1977), all other warranties, conditions or terms relating to fitness for purpose, quality or condition of the Goods are excluded].

### 7. Delivery of the Goods

**7.1** Delivery of the Goods shall be made to the Buyer's address. The Buyer shall make all arrangements necessary to take delivery of the Goods on the day notified by the Seller for delivery.

**7.2** The Seller undertakes to use its reasonable endeavours to despatch the Goods on an agreed delivery date, but does not guarantee to do so. Time of delivery shall not be of the essence of the contract.

**7.3** The Seller shall not be liable to the Buyer for any loss or damage whether arising directly or indirectly from the late delivery or short delivery of the Goods. If short delivery does take place, the Buyer undertakes not to reject the Goods but to accept the Goods delivered as part performance of the contract.

**7.4** If the Buyer fails to take delivery of the Goods on the agreed delivery date or, if no specific delivery date has been agreed, when the Goods are ready for despatch, the Seller shall be entitled to store and insure the Goods and to charge the Buyer the reasonable costs of so doing.

### 8. Acceptance of the Goods

**8.1** The Buyer shall be deemed to have accepted the Goods 48 hours after delivery to the Buyer.

**8.2** The Buyer shall carry out a thorough inspection of the Goods within 48 hours of delivery and shall give written notification to the Seller within 5 working days of delivery of the Goods of any defects which a reasonable examination would have revealed.

**8.3** Where the Buyer has accepted, or has been deemed to have accepted, the Goods the Buyer shall not be entitled to reject Goods which are not in accordance with the contract.

## 9. Title and risk

**9.1** Risk shall pass on delivery of the Goods to the Buyer's address.

**9.2** Notwithstanding the earlier passing of risk, title in the Goods shall remain with the Seller and shall not pass to the Buyer until the amount due under the invoice for them (including interest and costs) has been paid in full.

**9.3** Until title passes the Buyer shall hold the Goods as bailee for the Seller and shall store or mark them so that they can at all times be identified as the property of the Seller.

**9.4** The Seller may at any time before title passes and without any liability to the Buyer:

**9.4.1** repossess and dismantle and use or sell all or any of the Goods and by doing so terminate the Buyer's right to use, sell or otherwise deal in them; and

**9.4.2** for that purpose (or determining what if any Goods are held by the Buyer and inspecting them) enter any premises of or occupied by the Buyer.

**9.5** The Seller may maintain an action for the price of any Goods notwithstanding that title in them has not passed to the Buyer.

## 10. Carriage of Goods

Carriage will be chargeable on all sales unless otherwise stated.

# Terms and Conditions for Telephone System (PBX) Maintenance and Support Contracts.

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# GENERAL TERMS AND CONDITIONS

## 1. General

1.1 The terms and conditions in this contract are the sole terms and conditions of the contract between One2call Limited and the Customer. No variation or modification of these terms or conditions and no agreement made, or purported to be made, between One2call Limited and the Customer inconsistent with these terms and conditions shall be valid, or of any effect, unless made in writing and signed by a Director of One2call Limited. No representation regarding the Equipment shall be deemed to be by or on behalf of One2call Limited, nor shall a representation bind One2call Limited unless it is made in writing and signed by a Director of One2call Limited.

1.2 If you give us fourteen days prior notice and we agree, you or your appointed agents may carry out alterations to the Equipment or extension wiring. We reserve the right to inspect such work and, if found by us to be unsatisfactory, we shall require you and you will remedy the defect within ninety days of the inspection.

## 2. Our Duties

2.1 You engage us and we agree to provide and carry out only at the Installation Address during the Term the following Maintenance services subject to the exclusions in clause 5 using reasonable skill and care;

2.1.1 we will maintain or procure the maintenance of the Equipment at the Installation address shown overleaf in efficient working order during the Term;

2.1.2 we will use all reasonable endeavours to arrive within 4 working hours for above 50% failure, or 9 working hours in all other cases (being 9.00am – 5.00pm Monday-Friday excluding public holidays),

2.1.3 we will refund fifty pounds from the next year's maintenance charge, each and every time we fail to arrive within the ISO 9002 guideline of 16 working hours, except when a delay occurs for reasons beyond our control.

2.1.4 We do not maintain any 2 wire devices.

## 3. Your Duties

3.1 You shall at all times;

3.1.1 orally notify us immediately of any fault in the Equipment and/or any repair necessary and then confirm your notification in writing and promptly provide us with any information which reasonably require to enable us to proceed uninterrupted with the performance of this agreement,

3.1.2 afford our staff and our other authorised personnel full and safe access to the Installation Address and the Equipment to enable us to carry out the Maintenance Services;

3.1.3 provide us with, and be responsible for, the safety of such adequate free working space and facilities as may be necessary for the performance of this agreement;

3.1.4 comply with all statutory requirements (including those relating to Health & Safety) which apply to the Maintenance Services and institute safe systems of work at the Installation Address;

3.1.5 promptly inform us about any facts or opinions of which you become aware which are likely to affect our obligations under this agreement;

3.1.6 keep the Equipment at the Installation Address;

3.1.7 except as provided in clause 1.2, not yourself maintain, service, repair, adjust, tamper,

replace, alter or move the Equipment or the extension wiring.

## 4. Payment

4.2 The Maintenance Fee for the first year of the Term shall be due on the Commencement Date, the second and subsequent Maintenance Fees shall be due on the first day of the month in which falls each anniversary of the Commencement Date or annually on a previously agreed payment date.

4.3 Payment on time is an essential condition of the Agreement.

4.4 Payment shall be made by cheque, standing order or by direct debit, the instructions for which shall be signed by you at the same time that this agreement is signed. Direct debits shall not be cancelled without our written consent.

4.5 We may (without prejudice to our other rights and remedies);

4.5.1 suspend performance of any or all of the Maintenance Services by giving written notice to you, if you are in default of your payment obligations under this agreement if so this would not prejudice any other remedies available to One2call Limited; and

4.5.2 charge you interest in respect of the late payment of any sum due under this agreement on a day to day basis (both before and after any judgement) at the rate of 4 per cent per annum above the base rate of National Westminster Bank plc from the due date for payment to the date of actual payment (both dates inclusive). The interest shall be paid by you on demand.

4.6 Theft, loss of or destruction of or damage to the Equipment shall not affect your obligations under this clause.

4.7 After the initial term we may, if our costs increase, increase the annual maintenance charge by a maximum of 10%. Any increase above 10% will require both parties consent.

4.8 We reserve the right to review the annual maintenance charge every 12 months, even within contract terms longer than 12 months, and increase the annual maintenance charge if the number of users, licences or software or other elements integral to the reliable operation of the phone system has changed from the originally agreed upon system specification.

## 5. Warranty and Liability

5.1 You acknowledge and agree that;

5.1.1 you are in a better position than we are to foresee and evaluate any potential damage or loss that you may suffer in connection with the Maintenance Services or any other service provided by us under this agreement; and

5.1.2 the Maintenance Fee has been calculated on the basis that we will exclude or limit our liability as set out in clauses 5.2 and 5.4.

5.2 Our total liability to you, whether directly to you or by reason of indemnity or contribution in respect of your liability to any third party, for any negligent acts of omissions of our employees, agents or sub-contractors;

5.2.1 resulting in damage to property shall be limited to £1 million;

5.2.2 in respect of fraud or dishonesty shall be limited to the return to you of up to the Maintenance Fee paid pro-rata to the date of the offence. These limits of liability shall apply separately to each and every claim against us provided that where any one act or omission or series of two or more connected acts or omissions gives rise to more than one claim, the limits shall apply to the aggregate of all of the claims as though they were a single claim.

5.3 We do not limit or exclude our liability for death or personal injury caused by the negligence of our employees, agents or sub-contractors.

5.4 Notwithstanding anything else contained in this agreement, we shall not be liable to you for;

5.4.1 any failure of the Equipment due to:

5.4.1.1 use not in accordance with manufacturer's instruction, unauthorised repair, or use of accessories, not authorised by One2call Limited;

5.4.1.2 foreign bodies, negligent use, wilful abuse or misuse;

5.4.1.3 fire, flood, lightning, theft or act of God;  
5.4.1.4 any delay in the execution of any work of installation, replacement, alteration, removal or otherwise of, or to the Equipment, howsoever caused and any such delay shall not be sufficient cause for cancellation of this contract;  
5.4.1.5 any failure or defective working of the Equipment due to any fault, failure or change in the electricity supply service and/or BT or any other service providers' equipment and/or host PBX systems.  
5.4.1.6 to repair, or to be responsible for, any damage caused by the failure of electrical supply to the Equipment;  
5.4.1.7 in respect of accidental damage to the Equipment or to your property;  
5.4.1.8 economic loss including, but not limited to, loss of profits, revenues or goodwill (including any such loss or damage payable by you to a third party as a result of an action brought by a third party); or  
5.4.1.9 any other indirect or consequential loss (including any such loss or damage payable by you to third party as a result of action brought by a third party) even if the loss in 5.4.8 and/or 5.4.9 was reasonably foreseeable or we had been advised of the possibility of you, incurring it and whether arising from negligence, breach of contract or of statutory duty or otherwise; or  
5.4.2.0 any claims which have not been notified to us within 30 days of the date on which you knew, or should have known, of the claims existence.  
5.5 The express terms of this agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealings or otherwise, all of which are excluded to the fullest extent permitted by law.

## 6. Termination

6.1 This agreement may be terminated;  
6.1.1 by either party giving to the other 42 days written notice prior to the commencement of the second or subsequent terms,  
6.1.2 by us giving you 42 days notice and refunding the balance of any maintenance fee, if already paid.  
6.1.3 immediately by either party on giving notice in writing to the other if the other:  
6.1.3.1 being a company has a receiver or administrative receiver appointed, passes a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, becomes subject to an administration order enters into any voluntary arrangement with your creditors or ceases or threatens to cease to carry on business.  
6.1.3.2 being a partnership (and whether in respect of the partnership or of any one or more of the partners) or an individual (i) is involved in any legal proceedings involving its solvency, (ii) commits an act of bankruptcy or is adjudicated bankrupt or (iii) enters into any composition or other arrangement with its creditors generally (or any class of them) or (iv) has proposals submitted for an individual voluntary arrangement or (v) has a receiver, administrative receiver or other creditors' representative appointed over any of its assets or property or (vi) ceases or threatens to cease to carry on business.  
6.1.3.3 fails to pay on its due date any sum due under this agreement;  
6.1.3.4 commits any material breach of any term of this agreement (other than under clause 6.1.3.3) which, in the case of a breach capable of being remedied, is not remedied within 14 days of a written request to do so.  
6.2 A termination under clause 6.1 shall discharge us from liability for further performance of this agreement and shall entitle us to enter the Installation Address or any of your premises and recover any equipment and materials which are our property (and so that you irrevocably license us, our employees and agents to enter the installation Address or premises for that purpose).  
6.3 Termination of this agreement shall not affect any accrued rights or liabilities of either party or affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after termination.  
6.4 Early termination will leave the maintenance fees due for the remainder of the current term outstanding and payable on demand less 25% early settlement discount. The discount previously

received will become payable in full immediately.

## 7. Force Majeure

7.1 We shall have no liability to you, or be deemed to be in breach of this agreement, as consequence of any of following events:

7.1.1 flood, storm, severe weather conditions or other natural event;

7.1.2 war, terrorist action, hostilities, resolution, riot or civil disorder;

7.1.3 any destruction, breakdown (permanent or temporary) or malfunction of, or damage to any premises, plant, equipment, or materials (including any computer hardware or software or any records);

7.1.4 the introduction of, any amendment to, a law or regulation, or any change in your interpretation or application by any authority;

7.1.5 any strike, lockout or other industrial action;

7.1.6 any obstruction of any public or private highway or road or any event which prevents or obstructs access to the site;

7.1.7 any breach of contract or default by, or insolvency of, a third party (including an agent or sub-contractor); or

7.1.8 any other event outside our reasonable control, whether similar or not to any of the foregoing.

## 8. Invalidity and severability

8.1 If any provision of this agreement is found by any court of administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability shall not affect the other provisions of this agreement and all provisions not affected by the invalidity or unenforceability shall remain in full force and effect.

## 9. Waiver

9.1 No delay or indulgence by either party in enforcing this agreement shall prejudice or restrict the rights of that party. A waiver of your right shall not operate as a waiver of any subsequent breach. No right, power or remedy conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and the rights, powers and remedies shall be cumulative.

## 10. Warranty

10.1 You warrant to us that you have not been induced to enter into this agreement by any prior representations whether oral or in writing, except as specifically contained in this agreement and you waive any claim for breach of prior representations.

## 11. Assignment

11.1 You shall not transfer this agreement or any of your rights and obligations under it, whether in whole or in part, without first obtaining our prior written consent.

## 12. Notices

12.1 All notices which are required to be given under this agreement shall be in writing and shall be sent to the address of the recipient set out in this agreement or such other address as the recipient may designate by notice given in accordance with the provisions of this clause. Notice may be delivered personally or by first class pre-paid letter or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by facsimile transmission when dispatched.

## 13. Headings

13.1 Headings to clauses are for ease of reference only and shall not affect the interpretation or construction of this agreement.

## 14. Law

14.1 This agreement shall be governed by and construed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts.

# TERMS AND CONDITIONS FOR UKFREE CALL PACKAGES.

## 1. UKFree 123 Package

The UKFree 123 package is available on an initial 12 months term, becoming a rolling monthly contract after the initial term.

All calls terminating to a UK fixed geographic number (01 and 02) or to a number starting 03 from the One2Call SIP trunks purchased on this tariff, will be zero rated and no charge applied in the daily or monthly call data records, subject to the following conditions:

The total number of calls per channel from an endpoint (phone system) shall not exceed 5,000 minutes per month to 01/02/03 terminations. Should the endpoint exceed this amount in any month the customer will be charged £5.00 per 5,000 minutes over the initial limit for the month in which the initial free calls limit is exceeded.

## 2. UKFree Complete Package

The UKFree Complete package is only available if the customer commits to a contract length of 3 years (36 months) or more.

All terminating to a UK fixed geographic number (01 and 02) or to a number starting 03 from the One2Call SIP channels purchased on this tariff will be zero rated and no charge applied in the daily or monthly call data records, subject to the following conditions:

The total number of calls per channel from an endpoint (phone system) shall not exceed 5,000 minutes per month to 01/02/03 terminations or 2,000 minutes to UK mobile destination. Should the endpoint exceed these amounts in any month the customer will be charged £5.00 per 5,000 minutes to 01/02/03 terminations or 2,000 minutes to UK mobile terminations over the initial inclusive minutes limit for the month in which the limit is exceeded.

### **Early Exit Charges**

Customers will be billed their current channel rental charges for each month up to the end of the term if they cease an endpoint within the 3 year term.