

Packetrade Ltd

General Terms and Conditions

Definitions

“**Agreement**” – means these Terms and Conditions along with the Order Form and associated schedules

“**Customer**”, “**You**” – refers to the company named on the Order Form who is entering into this contract

“**Minimum Period**” – means the minimum period of time the customer has agreed to receive and pay for the Services

“**IX Reach**” – is a trading name of Packetrade Ltd

“**Services**” – means one or more services described by the Agreement

“**Start Date**” – means the target date for the commencement of the Services

“**We**”, “**Us**”, “**Packetrade**” – refers to Packetrade Ltd

1. Commencement and duration

1.1 This Agreement commences on the date the order is accepted by us and will continue for a Minimum Period of 12 months and thereafter until terminated earlier by you or us in accordance with its terms.

1.2 We will use reasonable efforts to begin providing the Services by the Start Date however these are not guaranteed and we will have no liability for any failure to meet the Start Date.

2. Our provision of the Services

2.1 We will provide the Services set out in your Agreement to you with reasonable skill and care and in accordance with the provisions of this Agreement.

2.2 We cannot guarantee that Services will be fault free. However, if a fault occurs, you should report the fault immediately to us and we will endeavour to rectify the fault as soon as reasonably practicable.

2.3 The customer may apply for Service Credits which will be calculated as the proportioned cost of the Services from the time the fault is reported until the time that Packetrade can show that the Services were restored.

2.4 Where we spend time investigating a fault reported by the customer and conclude there was no fault we reserve the right to charge the customer for all reasonable costs and expenses incurred and the customer agrees to pay such charges.

2.5 We may suspend Services where necessary for operational reasons such as repair, maintenance or improvement of the Services or because of an emergency. Except in the event of an emergency, we will try to give you as much notice as possible of any periods of downtime by posting a notice on our web site or sending you an e-mail or by any other reasonable means.

2.6 We may, for any reason, change any codes, login or allocate numbers or resources or the specification of the Services.

2.7 Except as set out in this Agreement the customer is responsible for providing all necessary software, hardware or other facilities required for making use of these Services.

2.8 Any equipment supplied with these Services remains the property of Packetrade.

2.9 Where the customer's equipment is located at a Packetrade site the customer undertakes to maintain:

2.9.1 insurance covering the full replacement value of the equipment against fire, theft, accidental damage

2.9.2 public liability insurance not less than £5,000,000 per annum

2.10 The customer indemnifies Packetrade against any claims, proceedings or threatened proceedings from third parties arising from Packetrade's possession or use of the customer's equipment and for any costs arising in investigating or defending itself in relation to any such claims.

2.11 Packetrade has lien over any customer equipment to secure any fees unpaid under this Agreement. The customer shall not be entitled to remove any equipment until such fees are paid.

2.12 Packetrade may relocate the customer's equipment on giving reasonable notice.

3. Fees

3.1 You agree to pay charges as specified in the charges schedule. Charges are payable from the date that any part of the Services are made available to you.

3.2 Packetrade may change the charges upon giving 30 days notice to you.

3.3 You agree to pay invoices to you within 30 days of the date of invoice.

3.4 Our charges are exclusive of VAT or other applicable taxes. The customer is responsible for ensuring they pay any such tax.

3.5 If you fail to pay within the agreed time period we may:

3.5.1 charge interest on a daily basis at a rate of 4% above base rate until the full amount is received whether before or after any judgment.

3.5.2 immediately suspend or terminate Services

3.6 Where a credit is issued to you Packetrade shall be entitled to deduct that amount from any amounts owing to us by you.

4. Your use of the Services

4.1 You must not use the Services:

4.1.1 in a way that is unlawful or fraudulent;

4.1.2 to deliver, knowingly receive, upload, download, use or re-use any information or material which is abusive, defamatory, obscene or menacing, or in breach of any copyright, privacy or any other rights;

4.1.3 to send or to promote the sending of any unsolicited advertising or promotional material;

4.1.4 in a way which infringes any third party's Intellectual Property Rights;

4.1.5 in a way that does not comply with any written or electronic instructions sent by us to you or posted on our web site by us from time to time.

4.2 You shall be responsible for keeping confidential any authentication information or other similar details that you obtain from us

4.3 You acknowledge that we will not be responsible for any sites, goods or services offered or made available on the Internet provided by third parties.

4.4 You shall be responsible for any losses, expenses or other costs incurred by us that are caused by your breach of Clause 4. We shall notify you of any such claims or proceedings and inform you regularly as to the progress of such claims or proceedings.

5. Intellectual Property, Confidentiality

5.1 All intellectual Property Rights in equipment, hardware software provided or supplied by us in this Agreement will remain with Packetrade or its licensors.

5.2 You warrant that you are entitled to use any trademark or name that you are seeking to use in any Packetrade service.

5.3 You will not disclose to any third party without Packetrade's prior written consent any confidential information, logins, passwords, service specifications, pricing received from us relating to the Services.

5.4 Packetrade reserves the right to reference the customer by name for marketing unless instructed otherwise by the customer in writing.

6. Limitation of liability

6.1 Our liability for death or personal injury arising from our negligence or fraudulent misrepresentation on which the customer has relied is limited to £2,000,000

6.2 Our liability to issue Service Credits will be the maximum extent of our liability for any failure of the Services.

6.3 Our liability to you for any incident or series of incidents shall be limited to 50% of the fees paid or payable under this Agreement for a maximum of 12 months. Credits paid or credited to the customer shall be taken into account.

6.4 Packetrade is not liable for any loss or damage, direct or indirect, caused by it or its employees or agents whether or not in circumstances where such loss or damage is a reasonably foreseeable result of any such breach or any increase in loss or damages results from breach by the party suffering loss of any terms of this Agreement. Further, our liability shall not in any event include losses related to your business such as loss of data, loss of profits or business interruption.

6.5 Each provision of this Agreement operates separately if any provision of this Agreement is deemed to be invalid such part will be deemed not to form part of the Agreement and the remainder of the Agreement shall not be affected.

6.6 Packetrade is not liable in contract or tort for any acts or omissions of the Customer or any third party.

7. Cancellation, Suspension, Termination

7.1 Either party may terminate this Agreement on giving 30 days notice to the other at anytime. You must pay the Fees up to and including the date of termination for all Services you receive from us.

7.2 Where the customer cancels during the Minimum Period the customer will pay any charges that would have been due up until the end of that period, such charges are due immediately upon cancellation.

7.3 If the customer cancels as a result of changes to this Agreement or Services where such changes had an adverse and material effect on the customer's enjoyment of the service then the customer will not be liable for any charges after the date of cancellation.

7.4 The customer's failure to pay charges due or to comply with its obligations are deemed material breaches for the purpose of termination.

7.5 Packetrade may terminate this Agreement immediately, without notice, if the customer commits a material breach of this Agreement and, where such a breach is capable of remedy, fails to remedy the breach within 14 days of a written notice to do so.

7.6 We may at our sole discretion immediately suspend or terminate this Agreement or suspend the provision of the Services in the event that:

7.6.1 we are directed by any competent authority to cease the Services

7.6.2 you fail to pay the Fees where you are required to do so

7.6.3 you use the Services in breach of this Agreement or otherwise fail to meet your obligations under this Agreement

7.6.4 your use of the Services materially disrupts the provision of our services to other customers

7.6.5 we are no longer able to provide the Services

7.6.6 we believe your conduct is likely to result in breach of law or is otherwise prejudicial to Packetrade's interest

8. Force Majeure

8.1 Neither party will be liable to the other for any failure to deliver the Services or for any breach by it of this Agreement, where such failure or breach is due to a reason outside the reasonable control of such party, including, but not limited to, failure of a third party telecommunications provider, breakdown of any equipment not supplied by Packetrade.

9. General Provisions

9.1 We may change the terms of this Agreement (including the Fees or technical specification) at any time by giving 30 days written notice.

9.2 This Agreement supersedes all prior agreements or undertakings between the parties and constitutes the entire agreement.

9.3 In the event of conflict between these Terms and Conditions and the Order form and schedules then the Order form and schedules shall take precedence.

9.4 This Agreement does not create any rights under the Contracts (Rights of Third Parties) Act 1999, which is enforceable by any person who is not a party to it, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

9.5 Either party must act upon a breach of this Agreement within 3 years of the date when that party became aware or ought to have been aware of that breach.

10. Notices

10.1 Notices given under this Agreement must be in writing to the addresses shown in this Agreement and may be delivered by hand, or registered post.

10.2 Notices shall be deemed to have been served on the second day after sending.

11. Assignment

11.1 We may assign, sub-contract or otherwise deal with our rights or obligations under this Agreement at our discretion.

11.2 You may not assign, sub-contract, sell or transfer your rights or obligations under this Agreement without our written consent.

12. Law

12.1 This Agreement is governed by English Law.

12.2 Any action or dispute arising out of or related to this Agreement shall be exclusively dealt with by the English Courts.