



## **TERMS AND CONDITIONS OF SALE**

THESE TERMS AND CONDITIONS ("AGREEMENT") APPLY TO YOUR ORDER AND PURCHASE OF HARDWARE, SOFTWARE, THIRD-PARTY BRANDED SERVICES AND SUPPORT, AND ANY OTHER SERVICES (COLLECTIVELY, "PRODUCT") SOLD BY COTELL INTERNATIONAL LIMITED ("COTELL EMEA"). You accept the terms and conditions of this Agreement, unless you have a separate purchase agreement signed by both your company and COTELL EMEA, in which case, that separate agreement will govern. COTELL EMEA may, from time to time and at its sole option, revise this Agreement without notice by posting the revised agreement on its web site ([www.cotell-international.com/terms.pdf](http://www.cotell-international.com/terms.pdf)). The Agreement posted on COTELL EMEA's web site at the time COTELL EMEA accepts your order will govern that purchase.

### **Accuracy of Data/Corrections.**

COTELL EMEA obtains certain data directly from the manufacturer, publisher or supplier of Products and is not responsible for pricing, typographical or other errors in any such data. In addition, availability of third party Product is subject to change without notice. COTELL EMEA reserves the right to cancel orders related to such errors or Product discontinuation or unavailability unless governed by prior agreement between COTELL EMEA and your company, and to amend its sales and marketing materials including price lists at any time

**Order Placement and Order Acceptance.** Your order is deemed placed once payment is made against the relevant pro-forma invoice or a purchase order has been raised and delivered to COTELL EMEA. COTELL EMEA will within forty-eight (48) hours confirm receipt of the order, and shall notify you in writing of either order acceptance or order rejection. COTELL EMEA reserves the right to cancel an order or postpone order acceptance at any time in any of the following

circumstances: a) you have not supplied the relevant configuration or customisation details in the required format or forms; b) the products ordered are no longer available, or the product has ceased to be commercially viable for COTELL EMEA to supply, c) configuration information supplied by you after order placement requires the addition of certain components to the products for which additional charges may be required, d) You fail to make any payment required when due, and such failure continues for a period of five (5) business days after written notice from COTELL EMEA, e) You are deemed unable to pay your debts under relevant insolvency legislation, convene a meeting with creditors generally

with a view to the general readjustment or rescheduling of your company's indebtedness, making a general assignment for the benefit of its creditors, entering into administration,

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receivership or liquidation, taking any action for voluntary winding up, entering into a scheme of arrangement with your creditors, appointing an administrator, receiver, trustee or similar

officer over all or any part of your business, or if a petition is presented for the compulsory winding-up or dissolution of your company, or if a petition or receiving order in bankruptcy is presented in respect of your company; f) you commit a material breach of this Agreement (other than payment terms) and such breach continues for a period of thirty (30) days after written notice from COTELL EMEA.

### **Prices/Payment Terms.**

Prices are subject to change at any time prior to COTELL EMEA's acceptance of your order. Quotations and pro-forma invoices are valid for a period of up to ten (10) days from their date of issue, or for the validity period specified in the quotation or pro-forma invoice. Quoted prices may be subject to change for any reason including but not limited to currency fluctuation, raw materials prices, fuel charges, component prices, and delivery costs. Payment terms are full payment at order placement. Any alternative terms offered are at COTELL EMEA's sole discretion and all orders are subject to COTELL EMEA's credit approval. You must provide appropriate credit references upon request and authorise us to obtain credit history from such references. You agree to pay the total purchase price for the Products, plus all applicable taxes and delivery charges (to the extent delivery charges are not prepaid by you, including delivery charges billed to COTELL EMEA as a result of using your carrier account number or a carrier selected by you). Invoices are due and payable within the time frame and in the currency specified on the invoice, measured from the date of invoice. You agree to pay interest on all past-due amounts at the lower of one and one-half percent (1.5%) per month or the maximum rate allowed by law. You will be responsible for COTELL EMEA's costs of collection for any payment default, including, but not limited to, court costs, filing fees and attorneys' fees. In addition, if payments are not received as described above, COTELL EMEA reserves the right to suspend further deliveries until payment is received. Unless specified, all prices and quotations exclude Import Duties, Insurance, Duty, Handling Charges, Local Tax or any other customs clearance fees. These charges may be levied by your relevant tax jurisdiction, port authority or handling agent whether appointed or not. If you are in any doubt to the extent of fees and charges you may be liable for, please contact COTELL EMEA and consult your local / national tax and import authority .

**Credits.** You must expend or apply any credits issued to you by COTELL EMEA for any reason within two years from the date the credit is issued. If not used within such period, credits will automatically expire.

**Taxes / Duties.** International, national and local sales, use and excise taxes and all similar taxes and duties, (excluding taxes based on COTELL EMEA's income, assets or net worth),

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are solely your responsibility. You may provide COTELL EMEA a tax exemption certificate, which will be subject to review and acceptance by COTELL EMEA.

**Delivery/Title/Risk of Loss.** COTELL EMEA will use commercially reasonable efforts to meet requested delivery times but does not guarantee delivery by a stated time and is not responsible for any damages due to delays or the failure to meet a stated delivery schedule. COTELL EMEA reserves the right to make deliveries in instalments where COTELL EMEA determines it to be commercially reasonable. Delay in delivery will not entitle you to cancel orders for the delayed or other instalments. The cost of Delivery is not included in the quoted product prices and must be quoted separately. COTELL EMEA offers a number of delivery options with different prices, modes of transportation, routes, and delivery destination. It is your responsibility to request pricing for delivery options that are most suitable for your requirements, and prices quoted are subject to COTELL EMEA's standard validity period. Title and risk of loss shall pass to you when Product is delivered to the transportation carrier. COTELL EMEA is not responsible for insuring shipments, nor for any loss or damages to Product during shipment and recommends that you obtain insurance for shipments. COTELL EMEA can supply an insurance quotation upon request where COTELL EMEA has also been asked to provide delivery of the order. Notwithstanding anything in this paragraph, title to software Product remains with the applicable licensor(s), and your rights and obligations related to the software are contained in the license agreement between you and the licensor(s). You grant a security interest in all Products purchased under this Agreement to secure payment in full. UNLESS SPECIFIED, ALL PRICES AND QUOTATIONS EXCLUDE IMPORT DUTIES, INSURANCE, DUTY, HANDLING CHARGES, LOCAL TAX OR ANY OTHER CUSTOMS CLEARANCE FEES. These charges may be levied by your relevant tax jurisdiction, port authority or handling agent whether appointed or not. If you are in any doubt to the extent of fees and charges you may be liable for, please contact COTELL EMEA and your consult your local / national tax and import authority.

**Limited Warranty.** PRODUCTS SUPPLIED BY COTELL EMEA ARE PROVIDED WITH ONLY THOSE WARRANTIES EXPRESSLY SET FORTH IN THE COTELL EMEA WARRANTY SPECIFICATION RELEVANT TO THAT PRODUCT. Your sole remedy and Company's sole obligation for breach of this warranty will be reasonable efforts to correct

any non-conformance or, if this cannot be accomplished, then Company will issue you a credit for, or a refund of, the purchase price and original freight paid for the COTELL EMEA-supplied Product.

**Disclaimer of Warranty.** THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND YOUR SOLE AND EXCLUSIVE REMEDIES. COTELL EMEA DISCLAIMS ALL OTHER WARRANTIES, INCLUDING THE IMPLIED

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**Limitations on Use.** You agree and represent that you are buying Product for your own use or the use of your direct customer. If Product purchased under this Agreement is intended for import or export, it may be subject to import or export regulations. You accept full responsibility for and agree to comply fully with all import or export regulations, including obtaining import or export licenses. The import or export of Products may also alter or void COTELL EMEA's or manufacturer's or publisher's warranty. PRODUCTS OFFERED BY COTELL EMEA ARE NOT DESIGNED FOR USE IN LIFE SUPPORT, LIFE SUSTAINING, NUCLEAR SYSTEMS OR OTHER APPLICATIONS IN WHICH FAILURE OF SUCH PRODUCTS COULD REASONABLY BE EXPECTED TO RESULT IN PERSONAL INJURY, LOSS OF LIFE OR CATASTROPHIC PROPERTY DAMAGE. USE IN ANY SUCH APPLICATIONS IS AT YOUR SOLE RISK.

**Limitation of Liability.** COTELL EMEA WILL NOT BE LIABLE TO YOU FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF INCOME, PROFITS, DATA, OPERATIONAL EFFICIENCY, USE OR INFORMATION, ARISING UNDER THIS AGREEMENT REGARDLESS OF THE FORM OF ACTION OR THEORY OF RELIEF, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Any liability for direct damages arising under this Agreement, regardless of the form of action or theory of relief, is limited to the purchase price of the Product. No action arising out of the transactions under this Agreement may be brought by you more than one (1) year after the damage, loss or expense occurred. COTELL EMEA is not liable for any claim made by a third party or made by you for a third party.

**Termination.** You may cancel any order for Product at no charge up to five (5) business days after order acceptance upon written notice to COTELL EMEA, unless such Product has been modified or otherwise reconfigured in accordance with your order specifications. Cancellation shall not relieve your duty to pay for Products shipped, services performed or expenses incurred by COTELL EMEA prior to such notice. If an order is cancelled, your sole remedy and COTELL EMEA's sole obligation will be a full or partial refund of the purchase price paid for the Product, less any direct unrecoverable costs incurred by COTELL EMEA as a result of fulfilling your order. Cancellation and any refund of orders after five (5) business days from order acceptance are at the sole discretion of COTELL EMEA and must be made in accordance with the policies of the manufacturer, component suppliers, publishers or other suppliers of the Product or its component parts.

**Governing Law and Venue.** This Agreement will be governed by the laws of England and Wales without giving effect to any choice of law rules. You are responsible for compliance with local laws, if and to the extent local laws are applicable. Both parties to this Agreement

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specifically agree to submit to the exclusive jurisdiction of, and venue in, the courts in London, United Kingdom, in any dispute arising out of or relating to this Agreement

**Assignment.** COTELL EMEA may assign or subcontract all or any portion of its rights or obligations with respect to the sale of Products and/or assign the right to receive payments without your consent. You may not assign this Agreement or any of its rights or obligations without the prior written consent of COTELL EMEA. Subject to the restrictions in assignment contained in this provision, this Agreement will be binding on and inure to the benefit of the parties hereto and their successors and assigns.

**Force Majeure.** COTELL EMEA will not be liable for failure to fulfil its obligations under this Agreement or for delays in delivery or performance due to causes beyond its reasonable control. COTELL EMEA's time for performance of any such obligation will be extended for the time period of such delay, or COTELL EMEA may, at its option, cancel any order or remaining part thereof, without liability, upon notice to you.

**Miscellaneous.** No provision of this Agreement may be waived, amended or modified by either party except by a written agreement signed by both you and COTELL EMEA. Any delay or failure by either party to exercise any right or remedy will not constitute a waiver of that party to thereafter enforce such rights. The relationship between COTELL EMEA and you is that of independent contractors and not that of employer/employee, partnership or joint venture. If any part of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable, all other parts will still remain in effect. Notices to be provided under this Agreement must be in writing and will be deemed received upon the earlier of: 1) actual receipt; 2) five (5) days after mailing date, if mailed postage prepaid by regular mail or airmail; or 3) three (3) days after such notice is sent by courier or facsimile transmission.

**Entire Agreement.** This Agreement constitutes the entire agreement between us regarding this purchase of Products from COTELL EMEA and supersedes and replaces any previous communications, representations or agreements. Any additional or different terms or conditions contained in any purchase order or other documents provided by you are considered material alterations to this Agreement, expressly rejected and will not be binding upon COTELL EMEA.

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