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TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

- a) In all cases "ICOM" shall mean Icom Holdings Ltd and subsidiary companies of Unit 11, 2M Trade Park, Beddow Way, Aylesford, Kent, ME20 7BT.
- b) "Customer" shall mean the person, firm or company named as such in the Agreement for whom the Goods and or Services are to be carried out and shall include the Customer's legal personal representatives, successors and permitted assigns.
- c) "Agreement" shall mean the contract between ICOM and the Customer for the execution of the Works, including therein all documents to which reference may properly be made in order to ascertain the rights and obligations of the parties.
- d) "Contract Price" shall mean that sum so named in the Agreement together with any additions thereto or deductions therefrom agreed in writing under the Agreement.
- e) "Goods" shall mean the Equipment Hardware, Software, Cabling, Documentation and Services specified in this Agreement to be provided by ICOM to the Customer.
- f) "Premises" shall mean the place or places other than ICOM's premises to which the Goods are to be delivered or Services carried out and where required by the Agreement undertake Installation, Acceptance Tests and Maintenance.
- g) "Software" shall mean all operating Goods, compilers, utilities and other programs and associated documentation provided by ICOM for inclusion in the Goods.
- h) "Documentation" shall mean one copy of all Audit reports, Manufacturers standard User and Operator Handbook(s) together with any documentation specifically denoted in this Agreement.
- i) "Acceptance Tests" shall mean unless otherwise stated in this Agreement a functional demonstration of the Goods to the reasonable satisfaction of the Customer.
- j) "Order Acceptance" shall mean the date of ICOM written acceptance of the Customer's Purchase Order.
- k) "Network Operator" shall mean a public or private telecommunications operator providing a telecommunications network or circuits regulated by statutory licence.
- l) "Sub-Contractor" shall mean any person, firm or company to whom any part of the Agreement has been sub-let in accordance with the Agreement and its legal representatives, successors and permitted assigns.
- m) "Target Dates" shall mean the timing and sequence of events agreed between ICOM and the Customer for the performance of the Agreement..
- n) "Services" shall mean that for turnkey contracts ICOM will provide the Project Management to oversee the contract.

2. CONFIDENTIALITY

- a) The Customer and ICOM shall keep confidential all information of the other party designated as confidential obtained under or in connection with the Contract and shall not divulge the same to any third party without the written consent of the other party.

The provision of this Clause shall not apply to:-

- (i) any information in the public domain otherwise than by Breach of Contract.
- (ii) information obtained from a third party who is free to divulge the same.

- b) The Customer and ICOM shall divulge confidential information only to those employees who are directly involved in the Contract or use of the Goods and Software and shall ensure that such employees are aware of and comply with these obligations to confidentiality.
- c) The Customer and ICOM shall ensure that its Sub-Contractors are bound by the requirements of this Clause.
- d) The provision of this Clause shall continue in perpetuity.

3. EXTENT OF AGREEMENT

- a) This Agreement shall constitute the complete agreement between ICOM and the Customer and shall have no reliance upon any other terms and conditions, performance criteria, guarantees or prior representations whatsoever.
- b) No variations of the conditions in this agreement shall have effect unless expressly accepted in writing by a duly authorised officer of ICOM.
- c) ICOM reserves the right to change the specification and parameters of the Goods to be supplied insofar as such changes do not materially effect the operational performance of the said Goods.

4. ICOM OBLIGATIONS

- a) ICOM shall be responsible for the following:-
 - (i) To obtain, where there is a statutory requirement for ICOM to do so, technical approval from the delegated regulatory authority for the Goods to be supplied and installed in accordance with the terms of this agreement except those items which are specified by the Customer for which ICOM has disclaimed such responsibility in writing.
 - (ii) To supply, install and commission the Goods detailed in this agreement.
 - (iii) To fulfil the warranty obligations defined herein.
 - (iv) To enter into a maintenance agreement with the Customer upon the current terms and conditions for provision of maintenance services and at the rates then prevailing.

5. CUSTOMERS OBLIGATIONS

ICOM will at all times endeavour to liaise and advise the Customer on all aspects of the installation programme. The Customer, however, is responsible for undertaking and bearing the cost of the following unless otherwise agreed in writing elsewhere in this Agreement:-

- a) The Customer is responsible for supplying ICOM when required with all technical information regarding the location at which the Goods is to be installed and the Customer's operating requirements.
- b) Before delivery is due to take place the Customer must prepare the installation site in accordance with the specification stipulated by ICOM and the Network Operator, and any extra cost incurred as a result of the Customer's failure to do so, including storage costs will be paid to ICOM by the Customer.
- c) The Customer will provided at his own expense, scaffolding, unskilled labour, lifting gear, builder's work, electrical power, heating, lighting and ventilation. Any cutting away and making good of floors, ceilings and walls is the Customer's responsibility.
- d) The Customer shall provide ICOM and ICOM's authorised contractors with access to the installation site at all reasonable times.
- e) The Customer must obtain and pay for all necessary wayleaves and secure the approval of the appropriate planning and other authorities as required.
- f) Although the Manufacturer will be responsible for securing BABT approval of the design of the Goods, the Customer must obtain the Network' Operator's consent for connection of an approved Goods to the relevant network. No liability shall attach to ICOM if the Network Operator denies or withdraws connection facilities to approved Goods.
- g) Any other attachments to the Goods that are made by the Customer shall be at the Customer's wish and the Customer shall be responsible for ensuring that they are suitable for use with the Goods and comply with the Network Operator's regulations.
- h) The Customer is responsible for ensuring that the Goods will only be used in accordance with the terms and conditions of the Branch Goods Licence, as issued (from time to time) by the Secretary of State for Trade and Industry (or any special licence obtained by the Customer) and that only such private circuits are connected to the Goods as are permitted by such licence to be so connected.
- i) The Customer shall enter into a maintenance agreement acceptable to the Network Operator with ICOM at least fourteen (14) days prior to the estimated BIS date.

6. VARIATIONS

Changes to the technical specification and configuration of the Goods requested by the Customer prior to delivery will only be effective if accepted in writing by duly authorised officer of ICOM and their implementation will be subject to full agreement in writing having been reached on any consequential adjustment to the Contract Price and Target Dates.

7. EXTENSIONS OF TIME FOR COMPLETION

If, after the date of the Agreement, ICOM has been delayed or impeded by any acts or omissions of the Customer or any circumstances beyond the reasonable control of ICOM, and providing that ICOM shall without delay have notified the Customer in writing of such delay or impedance of the Customer shall grant ICOM from time to time in writing such extensions of time as may be reasonable and the Target Completion date shall be amended accordingly.

8. CONSEQUENTIAL LOSS

Save as expressly stated elsewhere in the Agreement neither party shall be liable to the other for consequential loss or damage.

9. CONTRACT PRICE

a) The Contract Price unless otherwise specified in this Agreement be inclusive of :-

- (i) Package and delivery of the Goods to the Site.
- (ii) Blockwiring, to the extent specified where this forms part of the contract.
- (iii) Installation where this forms part of the contract.
- (iv) Training, to the extent specified in the contract.
- (v) One set of Documentation.

b) The Contract Price shall, unless otherwise specified in this Agreement, be exclusive of:-

- (i) Value Added Tax.
- (ii) All items denoted as Customer's Obligations in clause 5 of these conditions.
- (iii) Premiums payable in respect of any Bond, Performance Guarantee or Special Insurance incurred solely in conformance with this Agreement.

10. DAY RATE CONTRACTS

a) Fee's are charged for the time spent on the project to the nearest half day. The rates stipulated are based on normal office hours 9am to 5pm Monday to Friday and exclude all statutory bank holidays and weekend work.

b) The rates include travelling time from ICOM's offices to the project, should this exceed 3 hour's in any one day then additional costs will be incurred.

c) The rates include normal secretarial support but exclude any costs associated with travel, hotels, external services and any material necessary for the assignment. These will be charged at cost plus 10%.

d) ICOM will submit invoices at the end of each month and payment shall be made within thirty (30/ days of the date of ICOM's invoice.

11. PAYMENT

a) Unless otherwise agreed in writing payment of the Contract Price shall be due and payable 30 days after date of invoice.

b) ICOM shall be entitled to recover any reasonable additional costs incurred as a result of the Customer's delay. Payment shall be made within thirty (30) days of the date of ICOM's invoice and payment shall not be prevented by minor defects which do not materially effect operational use, but ICOM shall remedy such minor defects within a reasonable time where it is ICOM'S responsibility to do so.

c) Where payment is not received within thirty days of the date of ICOM's invoice, ICOM reserves the right to:-
(i) Suspend deliveries on this and any other order held with the Customer, its Parent Company, Subsidiaries or Associates.

(ii) Recover such sums by deduction of monies otherwise due by ICOM to the Customer, its Parent Company Subsidiary or Associates.

(iii) Charge interest at five per cent above the Lloyds Bank Plc Base Rate prevailing at that time, per month or part thereof on the unpaid sum for that period.

(iv) Recover the Goods delivered or installed. In such an event ICOM shall return any sums paid less reasonable sums incurred by them in delivery, installation and recovery of the Goods including depreciation in the Goods subsequent resale value.

12. GOODS & INSTALLATION SPECIFICATION

- a) The Goods and Installation Specification shall be that agreed upon and detailed in this agreement and shall have no reliance upon any prior representations be they written or verbal. Where no such specification is detailed in this Agreement the Goods and Installation details indicated in ICOM's quotation shall apply.
- b) The illustrations and engravings catalogues and data sheets are intended to display the general features of the Goods and the information contained in such publication shall not form part of this Agreement.
- c) All drawings, sketches and information provided by the Customer in relation to wiring and installation are contractual documents upon which ICOM have placed reliance. Any changes, errors or omissions to such drawings, sketches or information shall form a change to the Contract for which ICOM reserves the right to make additional charges, amend timescales or offer an alternative Goods, which are appropriate and suitable.

13. RISK AND TITLE

- a) Risk in the Goods shall pass from ICOM to the Customer upon delivery to the installation site and the Customer shall accept full responsibility to provide insurance cover at full replacement value.
- b) Damage to the Goods which is sustained due to ICOM's negligence shall be the liability of ICOM.
- c) For the purpose of this condition the term Goods includes any item leased by ICOM for demonstration purposes.
- d) Risk in all equipment, such as tools and plant taken onto the Customer's site by ICOM for the purpose of this Agreement, shall remain with ICOM insofar as any damage to such equipment is not due to any act of negligence on the part of the Customer.
- e) Title to Goods hardware shall pass to the Customer once ICOM has received full payment for the Goods hardware. However, title to Goods software and the media on which it is embodied and copyright and other intellectual and industrial property rights shall at all times remain with ICOM and its licensors.

14. DELIVERY

- a) The Contract Price includes package and delivery to the site(s) nominated by the Customer in the Contract by any means at ICOM's disposal.
- b) Unless otherwise agreed in writing the Goods Price is based upon the normal delivery timescale for that Goods. When an extended delivery timescale is required by the Customer, ICOM reserve the right to deliver to storage and claim payment accordingly.
- c) Deliveries will be recorded by a ICOM Delivery Note and the Customer or his nominated agent shall acknowledge receipt by countersigning a copy of the Delivery Note.
- d) Where ICOM's site personnel sign to acknowledge receipt of delivery they do so as the Customer's agent unless an agent is notified to ICOM by the Customer in writing prior to delivery. In this instance such personnel as are nominated by the Customer must be available to receive the Goods.
- e) ICOM shall repair or at ICOM's option replace free of charge any part of the Goods which is lost or damaged in transit, provided that ICOM is given notification of such loss or damage within such time as will enable ICOM to comply with the carriers Conditions of Carriage or where delivery is made by ICOM's own transport within 5 working days after the receipt of the advice note.

15. ACCEPTANCE TESTS/BIS

- a) Where Installation forms part of the Contract ICOM will carry out tests necessary to ensure the Goods are in working order.
- b) ICOM will assist the Customer in arranging the Network Operator's Pre-Connection Inspection (PCI) and be in attendance during PCI. This does not relieve the Customer from his obligations defined in condition 4.
- c) Following PCI, ICOM will assist the Customer in arranging for the Network Operator to connect the Goods to the network. This does not negate the Customer's obligations under Condition 4.
- d) Following connection to the Network the Acceptance Tests will be considered complete and the Goods brought into service. The Customer shall then sign ICOM's Completion Certificate.
- e) Any defects or shortages will be remedied by ICOM within reasonable time where it is ICOM's responsibility to do so.

16. SOFTWARE

- a) All Software supplied remains the property of ICOM or it's licensor.
- b) ICOM grants the Customer a non-exclusive non-transferrable licence to use the software for the intended purpose of the Goods and for no other purpose the consideration for such licence being included in the Contract Price.
- c) The Customer undertakes to hold the software and any associated manuals and/or documents in strict confidence and not make copies or make available or otherwise disclose to any third party without the prior written consent of ICOM.

17. WARRANTY

- a) ICOM warrants that the Goods will be free from defects in material and workmanship for a period of twelve months after the BIS date, subject to the Goods being properly used for its designed purpose and to proper maintenance, in appropriate environmental conditions.
- b) ICOM will use all reasonable endeavours during the twelve month period to repair (or at its sole option replace) defective items of the Goods hardware and to correct defects in the Goods software, free of charge, where the defects arise as a result of faulty materials or workmanship but ICOM shall have the right to charge for repair, replacement or correction of defects due to any other cause.
- c) ICOM at its sole discretion will either pass on to the Customer any warranty offered to ICOM by a third party manufacturer of equipment which is attached to the Goods, or alternatively ICOM will supply additional equipment at the initial point of sale in lieu of warranty.
- d) Where neither solution practicable ICOM reserves the right to make other arrangements in lieu of warranty.
- e) All other expressed or implied terms, conditions or warranties in respect of quality, fitness, use or condition of the Goods and any liability in short (other than for negligence causing death or personal injury) arising indirectly from the supply of the Goods or its use are excluded.
- f) In no event (whether this agreement continues in force or not) shall ICOM be liable for any loss of contract, profits, business or use of the Goods nor for any other indirect or consequential losses whatsoever attributable to defects in the Goods.

18. LIABILITY FOR DELAY

- a) All times quoted for completion are to date from receipt by ICOM of a written order from the Customer to proceed and all necessary information to enable ICOM to put the work in hand. In respect of the times quoted for completion, time shall not be of the essence.
- b) The completion date will be subject to extension if any incidence of delay is the result of the Customers instructions or lack of instructions, industrial dispute or any other cause beyond ICOM's reasonable control. Insofar as any of the above factors are not a governing cause of any delay and if such delay exceed two complete weeks then where the Customer has suffered loss as a direct result of the delay, ICOM will pay the Customer for each further complete week of delay liquidated damages at the rate of one quarter of one per cent of the value of the delayed Goods to a maximum of five per cent of the price of the delayed Goods. Such damages shall be in total satisfaction of all liability of ICOM to the Customer for all losses of whatsoever kind the Customer may have suffered as a result of ICOM delay.
- c) In no event shall ICOM be liable for any loss of contracts, profits, business or use of the Goods, nor for any other indirect or consequential loss attributable to such delay.

19. LIABILITY FOR ACCIDENTS AND DAMAGE

- a) ICOM shall indemnify the Customer against damage to property (other than the Goods) and death or injury to persons to the extent caused by the negligence of ICOM or its personnel, but not otherwise provided that:-
 - (i) ICOM and its insurers are immediately notified of any claim and have full power to negotiate and settle any claims.
 - (ii) ICOM's total liability for damage to property shall be limited to £2,000,000.
- b) The Customer shall similarly indemnify ICOM and shall maintain or procure appropriate insurance for damage to ICOM property (to the same limits) to the extent caused by the negligence of the Customer or its personnel or contractors.
- c) In no event (whether this Agreement continues in force or not) shall ICOM be liable for any loss of contracts, profits, business or use of the Goods not for any other indirect or consequential losses whatsoever.

20. INDUSTRIAL AND INTELLECTUAL PROPERTY RIGHTS

a) ICOM shall fully indemnify the Customer against all actions, claims, demands, charges and expenses arising from or incurred by reason of any infringement of letters patent, design or copyright by the use of or possession of the Goods and Software supplied under this Agreement subject to the following:-

(i) The Customer shall promptly notify ICOM in writing of any alleged infringement.

(ii) The Customer must make no admission detrimental to ICOM.

(iii) At ICOM's request and expense the Customer will allow ICOM to conduct and/or settle all negotiations and litigation and give ICOM all reasonable assistance. Costs incurred or recovered in such negotiations or litigation shall be for ICOM's account.

(iv) The alleged infringement does not relate to Goods and/or Software designed by or specified by the Customer and which is non-standard to ICOM at the time of this Agreement was concluded.

b) The Customer shall fully indemnify ICOM against all actions, claims, demands, proceedings, damages, charges and expenses arising from or incurred by reason of any infringement of letters patent, leasing or copyright or by the use of or possession of Goods designed by or specified by the Customer which is non-standard to ICOM at the time this Agreement was concluded. In no event shall ICOM be liable for any loss of contracts, profits, business or use of the Goods nor for any other indirect or consequential loss attributable to the infringement described in this condition.

21. TERMINATION OF CONTRACT

a) Without prejudice to other rights ICOM shall have the right forthwith to terminate this Agreement and claim for any resulting losses or expenses if:-

(i) The Customer commits a breach of this or any other Agreement with ICOM and fails to remedy such breach within a reasonable time.

(ii) The Customer commits an act of bankruptcy, or compounds with its creditors, or a petition or receiving order in bankruptcy is presented or made against it, or a resolution or petition to wind up the Customer is passed or presented (otherwise than for reconstruction or amalgamation), or a receiver is appointed.

(iii) The Customer fails to enter into an appropriate Third Party Leasing or Financing Arrangement.

22. CANCELLATION BY THE CUSTOMER

If the Customer wishes to cancel the contract in whole or in part ICOM may, without prejudice to any other rights, agree to accept such cancellation upon the basis that the Customer will promptly reimburse to ICOM all costs and losses incurred to a minimum of ten per cent of the Contract Value.

23. LEASING/FINANCE ARRANGEMENTS

Where the Customer has or will enter into Third Party Leasing or Finance Arrangements this will not affect or invalidate the Terms and Conditions of this contract, save that of passing of Title to the Third Party other than described above the Terms and Conditions of this Agreement have precedence over the Terms and Conditions of any Third Party Leasing or Financing Arrangement entered into by the Customer.

24. ARBITRATION

All differences between ICOM and the Customer arising out of this Agreement and which cannot be mutually resolved shall be referred for an award order and final determination of two persons or their umpire in London in accordance with the provisions of the Arbitration Act 1979 or any statutory modification or re-enactment thereof.

25. FORCE MAJEURE

Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from circumstances beyond the affected party's reasonable control.

26. ASSIGNMENT

a) ICOM may assign or transfer the Contract to any other company directly or indirectly controlling, controlled by or under common control with ICOM.

b) The Customer may only assign or transfer the Contract with ICOM prior to written agreement.

27. LAW

Unless otherwise agreed in writing the contract in all respects be construed and operate as an Englishish Contract and in conformity with English Law. ICOM and the Customer hereby agree to submit to the jurisdiction of the English Courts.

