

## Purchase of Goods Terms - Business

1	<b>Interpretation</b>	and which shall be accepted by the Customer on first use of OneCloud
	The following definitions and rules of interpretation apply in these Purchase of Goods Terms.	
1.1	<b>Definitions</b>	<b>OneCloud Order</b>
	<b>Acceptable Use Policy</b>	an order that is placed by the Customer via OneCloud
	Onecom's acceptable use policy, a copy of which can be found at <a href="https://www.onecom.co.uk/terms-and-conditions/">https://www.onecom.co.uk/terms-and-conditions/</a>	<b>OneCloud User Terms</b>
	<b>Applicable Law</b>	the OneCloud user terms (as updated from time to time) at <a href="https://www.onecom.co.uk/terms-and-conditions/">https://www.onecom.co.uk/terms-and-conditions/</a> and which shall be accepted by each User on first use of OneCloud
	the laws of England and Wales and any other laws and regulations that apply to providing or receiving the Equipment	<b>Onecom</b>
	<b>Business Day</b>	Onecom Limited (company number 04031272) whose registered office is Onecom House, 4400 Parkway, Whiteley, Fareham, Hampshire PO15 7FJ
	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business	<b>Order</b>
	<b>Charges</b>	an order (in an Order Form, OneCloud Order or as otherwise agreed between the parties) that is placed by the Customer for Equipment and that is accepted by Onecom
	the fees and charges payable to Onecom in relation to the Goods as set out in the Order	<b>Order Form</b>
	<b>Claim</b>	a document headed 'Order Form' which sets out the Equipment that the Customer has requested
	any legal claims, actions or proceedings against a party, whether threatened or actual, whether by a third party or the other party to the Contract	<b>Price Guide</b>
	<b>Contract</b>	the price guide (as amended from time to time) at <a href="https://www.onecom.co.uk/terms-and-conditions/">https://www.onecom.co.uk/terms-and-conditions/</a> (or any other online address that Onecom advises the Customer of);
	shall have the meaning given to it in the Order Form	<b>Privacy Policy</b>
	<b>Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing, and appropriate technical and organisational measures</b>	Onecom's privacy policy (as amended from time to time) at <a href="https://onecom.co.uk/privacy-policy/">https://onecom.co.uk/privacy-policy/</a> (or any other online address that Onecom advises the Customer of)
	shall have the meaning given to it in the Data Protection Legislation	<b>Relevant States</b>
	<b>Customer</b>	the United Kingdom, the European Union, the United States of America and any other countries which are applicable to the Customer
	the party identified as the Customer in the Order Form	<b>Restricted Party List</b>
	<b>Data Protection Legislation</b>	the list of restricted countries published by Relevant States (as updated from time to time)
	all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, as each of the foregoing may be updated, replaced or amended from time to time; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications)	<b>Sanctions</b>
	<b>Effective Date</b>	all economic, trade and financial sanctions, embargoes and other restrictive measures administered in the Relevant States
	the date of an Order	<b>Service(s)</b>
	<b>Equipment</b>	each service(s) provided by Onecom as set out in an Order Form
	the equipment supplied by Onecom as detailed in the Order Form	<b>Shipping Address</b>
	<b>Export Control Laws</b>	in relation to a particular delivery, the shipping address set out in the Order Form relating to such delivery, or such other address agreed between the parties in writing
	all export control laws and regulations administered in the Relevant States	<b>Sub-Processor</b>
	<b>Force Majeure Event</b>	has the meaning given in clause 18.6
	an event or circumstance beyond a party's reasonable control	<b>Third Party Software</b>
	<b>General Terms</b>	third party software supplied by Onecom, which is:
	Onecom's general terms (as amended from time to time) at <a href="https://www.onecom.co.uk/terms-and-conditions/">https://www.onecom.co.uk/terms-and-conditions/</a>	(a) embedded in any Equipment; or
	<b>Goods</b>	(b) downloaded to: (i) any Equipment; or (ii) any other goods situated at a Site and/or used by the Customer, whether or not in conjunction with the Equipment or in connection with a Service
	the Equipment and / or Third Party Software	<b>UK GDPR</b>
	<b>Intellectual Property Rights</b>	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018
	patents, rights to inventions, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world	1.2 a <b>person</b> includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
	<b>Notice</b>	1.3 a reference to a <b>party</b> includes its personal representatives, successors or permitted assigns;
	a notice given by one party to the other under the Contract in accordance with clause 22.5	1.4 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
	<b>OneCloud</b>	1.5 unless stated otherwise, references to clauses in any document forming part of the Contract are to clauses in that document;
	Onecom's online portal	1.6 clause headings shall not affect the interpretation of the Contract;
	<b>OneCloud Customer Agreement</b>	1.7 any phrase introduced by the terms <b>including</b> , <b>include</b> , or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
	the OneCloud customer agreement (as updated from time to time) at <a href="https://www.onecom.co.uk/terms-and-conditions/">https://www.onecom.co.uk/terms-and-conditions/</a>	1.8 a reference to <b>writing</b> or <b>written</b> includes email but not fax; and
		1.9 a <b>party</b> or the <b>parties</b> refer to the parties to the Contract.
		<b>2 Application of these Purchase of Goods Terms</b>
		2.1 These Purchase of Goods Terms shall:
		2.1.1 apply to and be incorporated in the Contract; and

2.1.2 prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

### 3 OneCloud

3.1 If the Customer has access to OneCloud, the Customer agrees to:

3.1.1 comply with the OneCloud Customer Agreement; and

3.1.2 ensure that each User complies with the OneCloud User Terms.

### 4 Equipment – ordering and delivery

4.1 The Customer is responsible for ensuring that the Equipment is correct and appropriate for the Customer's intended use and requirements.

4.2 Onecom reserves the right to amend the specification or model of any of the Equipment if required by Applicable Law, if the manufacturer changes such specification or discontinues such model, or if stock of such model becomes otherwise unavailable, between the Effective Date and the time of despatch. Onecom will endeavour to ensure that any such substituted Equipment will be of equal or better quality.

4.3 Onecom shall deliver the Equipment to the Shipping Address.

4.4 Any lead times or dates quoted for delivery of the Equipment is approximate only, and time of delivery is not of the essence. The Equipment may be delivered by Onecom in advance of any dates quoted for delivery of the Equipment.

4.5 Delivery of the Equipment shall be completed on the arrival of the Equipment at the Shipping Address.

4.6 The Customer is under a duty to inspect the Equipment on delivery. In the event the Goods are defective on delivery, the Customer must notify Onecom within five Business Days from (and including) the date of delivery.

4.7 In the event the Customer does not notify Onecom in accordance with clause 4.6:

4.7.1 the Customer shall be deemed to have fully accepted the Goods; and

4.7.2 Onecom shall have no liability in respect of such Goods.

4.8 Delays in the delivery of Equipment shall not entitle the Customer to:

4.8.1 refuse to take delivery of the Equipment; or

4.8.2 claim damages; or

4.8.3 terminate all or part of the Contract, subject always to clause 20.2.

4.9 If the Customer delays or prevents delivery of the Equipment and/or fails to provide any instructions, documents, licences, consents or authorisations required to enable the Equipment to be delivered, Onecom may:

4.9.1 store the Equipment until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance);

4.9.2 apply reasonable additional charges associated with such delay or prevention of delivery of the Equipment; and

4.9.3 no less than 5 Business Days after first attempting delivery or notifying the Customer that the Equipment is ready for delivery, resell or otherwise dispose of part or all of the Equipment.

### 5 Equipment – warranties, replacements and returns

5.1 Equipment, where new, are provided with the benefit of, and subject to, the manufacturer's warranty and guarantee (**Manufacturer's Warranty**). Details of the Manufacturer's Warranty are set out on the relevant manufacturer's website or in the user guide or license relating to the Equipment (including the duration of any warranty period).

5.2 Equipment referred to as 'pre-owned' or 'nearly new' have been returned to Onecom by customers (usually during the first 14 days after delivery) with no reported faults. They have been tested to ensure they are fit for such purpose as held out by Onecom and of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended). Pre-owned devices are provided with original accessories and user guides, and in original packaging whenever possible (but the Customer acknowledges that substitute packaging may be used).

5.3 Equipment referred to as 'refurbished' have been through a recycling programme. They have been tested to ensure they are fit for such purpose as held out by Onecom and of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended). Refurbished devices are provided with a data cable and SIM key, but without any other accessories or user guides, and not in original packaging.

5.4 Pre-owned and refurbished Equipment is supplied with the benefit of and subject to the Manufacturer's Warranty save that the warranty period shall be limited to 12 months from delivery.

5.5 Except as provided in this clause 5, Onecom shall have no liability to the Customer in respect of the failure of Equipment to comply with the applicable Manufacturer's Warranty.

5.6 Subject to clause 5.7, Onecom shall not be under any obligation to exchange, repair or replace Equipment or provide any refunds.

5.7 Where Equipment supplied to the Customer is or becomes faulty during the relevant Manufacturer's Warranty period and for a reason covered by the Manufacturer's Warranty (which excludes the Customer's acts, omissions or misuse):

5.7.1 The Customer should report the fault to Onecom's customer services team on 03300 888 999.

5.7.2 The Customer must re-package the faulty Equipment and ensure that such Equipment and all original accessories are returned to Onecom (to Onecom Limited, Distribution Centre, 4400 Parkway, Whiteley, Fareham, Hampshire, PO15 7FJ (or as otherwise directed by Onecom)) at the Customer's cost and risk by such post or courier service as shall ensure proof of delivery and sufficient insurance to cover the full value of the Equipment.

5.7.3 Onecom shall inspect the returned Equipment and may return it to the manufacturer.

5.7.4 Onecom may, at its sole discretion and subject to inspection of the faulty Equipment, elect to either:

(a) provide replacement Equipment (subject to clause 5.8); or

(b) refund such sum as Onecom reasonably considers to be the current market value of the faulty Equipment.

5.8 The Customer acknowledges that, where it is determined (either by Onecom acting reasonably, or by the manufacturer) that the fault is not covered by the Manufacturer's Warranty, the Customer remains liable for all sums outstanding in respect of such item of Equipment and:

5.8.1 where the faulty Equipment can be repaired:

(a) the Customer shall return to Onecom all replacement Equipment (if any) supplied pursuant to clause 5.7.4(a) (at the Customer's cost and risk) or pay Onecom the full cost of such replacement Equipment; and

(b) at the Customer's option, Onecom shall (i) repair the faulty Equipment and the Customer shall pay the cost of repair, or (ii) return the faulty Equipment to the Customer at the Customer's cost and risk and the Customer shall pay a diagnostic fee as detailed in the Price Guide, or (iii) dispose of faulty Equipment in accordance with the Waste Electric and Electronic Equipment (WEEE) Regulations 2013 and the Customer shall pay a diagnostic fee as detailed in the Price Guide;

5.8.2 where the faulty Equipment cannot be repaired, the Customer shall pay Onecom the full cost of any replacement Equipment supplied pursuant to clause 5.7.4(a).

5.9 The Customer acknowledges and accepts that it is solely responsible for ensuring the backup of any important or confidential data stored on the Equipment prior to its return to Onecom and the Customer agrees that Onecom will not be liable if any such data is lost or corrupted during any process set out in clauses 5.7 and 5.8.

5.10 Notwithstanding the foregoing provisions of this clause 5, no liability will be accepted under any Equipment warranty or guarantee where any Customer invoice is overdue.

### 6 Risk and retention of title

6.1 The risk in the Equipment shall pass to the Customer on completion of delivery.

6.2 Notwithstanding delivery and the passing of risk in the Equipment, or any other provision of the Contract, legal and beneficial title to the Equipment shall not pass to the Customer until Onecom has received payment in full (in cash or cleared funds).

6.3 Until title to the Equipment has passed to the Customer, the Customer shall:

6.3.1 keep accurate records of the location or keeper of the Equipment and store them separately from all other goods held by the Customer so that they remain readily identifiable as Onecom's property;

6.3.2 maintain the Equipment in satisfactory condition and in accordance with the relevant Manufacturer's Warranty and user guide;

6.3.3 keep them insured against all risks for their full replacement value from the date of delivery;

6.3.4 notify Onecom immediately if it becomes subject to any of the events listed in clauses 15.1.3 to 15.1.11; and

6.3.5 give Onecom such information relating to the Equipment as Onecom may require from time to time.

6.4 If, before title to the Equipment passes to the Customer, the Customer becomes subject to any of the events listed in clauses 15.1.3 to 15.1.12, or Onecom reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, without limiting any other right or remedy Onecom may have, Onecom may at any time:

6.4.1 require the Customer at the Customer's own cost and expense to deliver up the Equipment in its possession; or

6.4.2 without further notice enter any premises of the Customer or of any third party where the Equipment may be kept or stored in order to recover them.

- 6.5 The Customer shall at all times ensure that any and all parties that seek to assert any right or claim against the Customer are made fully aware that the Equipment is subject to reservation of title by Onecom and that the Equipment is not the property of the Customer.
- 6.6 If, for whatever reason, any party seeks to assert any right or claim against the Customer or the Equipment, the Customer shall at its own cost and expense defend any such right or claim such as to preserve the reservation of title of the Equipment and/or at Onecom's request join any proceedings brought by Onecom in relation to the Equipment.
- 7 Third Party Software**
- 7.1 Third Party Software is licensed under and subject to the terms of the applicable license agreement.
- 7.2 The Customer expressly acknowledges that:
- 7.2.1 its rights to use Third Party Software are limited to the rights provided by the third party licensor;
- 7.2.2 the terms of the applicable license agreement shall comprise the Customer's sole rights and remedies; and
- 7.2.3 all claims that the Customer may have concerning or relating to such Third Party Software regarding the performance or the functionality of such software or any services related thereto shall be brought exclusively against the third party licensor of such software and not against Onecom.
- 7.3 Onecom does not make any warranties concerning the performance or functionality of Third Party Software (including or any services related thereto) distributed by Onecom and hereby disclaims and excludes all such warranties including, without limitation, warranties for merchantability, fitness for any particular purpose, or satisfactory quality whether at common law or in contract or tort or by statute or otherwise.
- 7.4 Onecom shall not be liable to the Customer in respect of any effect on the Services caused or contributed to by Third Party Software (including changes to Third Party Software).
- 7.5 Onecom shall not provide support services in relation to any Third Party Software.
- 8 Charges**
- 8.1 The Customer will pay and is responsible for the Charges.
- 8.2 Onecom may invoice the Customer for any administration charges incurred as a result of the Customer providing a materially inaccurate or incomplete Order.
- 8.3 Onecom reserves the right, by giving written notice to the Customer at any time before delivery of the Equipment, to increase Charges to reflect any increase in the cost to Onecom which is due to any:
- 8.3.1 factor beyond the control of Onecom (including any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture);
- 8.3.2 change in delivery dates, quantities or specifications for the Equipment which are requested by the Customer; or
- 8.3.3 delay caused by any instructions of the Customer or failure of the Customer to give Onecom adequate information or instructions.
- 8.4 Unless otherwise stated in the Order Form, all prices are:
- 8.4.1 inclusive of Onecom's charges for packaging and transport; and
- 8.4.2 exclusive of any applicable value added tax, excise, sales taxes or levies of a similar nature and all other taxes and charges in respect of the Equipment, which shall be payable by the Customer in addition.
- 9 Payment**
- 9.1 Unless stated otherwise in the Order Form, Onecom shall invoice the Customer for the Equipment, on or at any time after an Order or delivery of the Equipment.
- 9.2 Onecom will invoice, and the Customer will pay, in pounds sterling.
- 9.3 If Onecom issues an invoice on OneCloud, it will notify the Customer by email.
- 9.4 The Customer shall pay each invoice submitted by Onecom within the number of days from the date of such invoice as set out in the Order Form (or if no such number is so set out then within 14 days) (**Due Date**), and in full and in cleared funds to a bank account nominated in writing by Onecom.
- 9.5 Payment shall be made on or before the Due Date notwithstanding that delivery or provision of the Equipment may not have taken place and/or that the title to the Equipment has not passed to the Customer.
- 9.6 Onecom may credit assess the Customer from time to time to determine the credit limit on the Customer's account. The Customer will provide Onecom with any information it reasonably requires for this. If Onecom is not satisfied as to the creditworthiness of the Customer, it may
- 9.6.1 notify the Customer that no further credit will be allowed;
- 9.6.2 require all Charges owing by the Customer to Onecom to be paid immediately;
- 9.6.3 require the Customer to pay Charges in advance;
- 9.6.4 require the Customer to provide a guarantee as security for payment of future invoices; and/or
- 9.6.5 require the Customer to pay a deposit.
- 9.7 Without limiting any other right or remedy of Onecom, if the Customer fails to make any payment due to Onecom under the Contract or any other contract between Onecom and the Customer by the Due Date, Onecom shall be entitled to:
- 9.7.1 cancel any Order or suspend any further provision of Equipment to the Customer;
- 9.7.2 deduct monies up to the value of the overdue amount from any sum standing to the credit of the Customer's account with Onecom;
- 9.7.3 charge a late payment charge, as detailed in the Price Guide; and/or
- 9.7.4 charge interest on the overdue amount at the highest rate permitted by Applicable Law from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment.
- 9.8 The Customer will pay all reasonable costs that Onecom incurs when recovering any overdue amount, including debt collection agency and legal costs.
- 9.9 If the Customer disputes the amount of any Onecom invoice in good faith and on bona fide grounds:
- 9.9.1 the Customer shall pay any undisputed portion of the invoice;
- 9.9.2 the Customer shall write to Onecom within 10 Business Days of the date of the invoice providing details of:
- (a) the nature and reason for the dispute;
- (b) the amount in dispute; and
- (c) any evidence to support the disputed amount;
- 9.9.3 if Onecom can demonstrate that the invoice is correct Onecom shall be entitled to charge interest in accordance with clause 9.7.4; and
- 9.9.4 if Onecom determines that the disputed invoice is incorrect Onecom shall issue a corrected invoice and/or apply the relevant credit to the Customer's account.
- 9.10 Any invoice which is not disputed in accordance with clause 9.9 shall be deemed to be fully accepted by the Customer and Onecom shall have no liability in respect of any invoice which is otherwise disputed.
- 9.11 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by Applicable Law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Onecom in order to justify withholding payment in whole or in part. Onecom may, without limiting its other rights and remedies, set-off any amount owing to it by the Customer against any amount payable by Onecom to the Customer.
- 10 Customer's obligations**
- 10.1 The Customer shall:
- 10.1.1 ensure that an Order is complete and accurate;
- 10.1.2 co-operate with Onecom in all matters relating to the Equipment;
- 10.1.3 follow all reasonable instructions from Onecom from time to time in connection with the Equipment, including preparation activities that may be required to enable the Customer to receive the Equipment promptly or otherwise in accordance with the Contract;
- 10.1.4 only use the Equipment in accordance with the Acceptable Use Policy;
- 10.1.5 not resell the Equipment (unless expressly authorised to do so elsewhere in the Contract);
- 10.1.6 comply with, and procure that all Users comply with, Applicable Law and all terms of the Contract;
- 10.1.7 not use the Equipment in a way which is inconsistent with good faith commercial practice to Onecom's detriment;
- 10.1.8 ensure that the Equipment meet its requirements prior to entering into the Contract; and
- 10.1.9 provide Onecom with such information and materials as Onecom may reasonably require to supply the Equipment, and ensure that such information is complete and accurate in all material respects.
- 11 Sanction and export controls**
- 11.1 The Customer and its Users will only use the Equipment in countries in which they have been certified for use in accordance with Applicable Law and not in any countries listed on a Restricted Party List.
- 11.2 The Customer shall comply with all Export Control Laws and Sanctions, in both cases, in the Relevant States.
- 11.3 The Customer shall:

- 11.3.1 not knowingly do anything which may cause Onecom to breach any Export Control Laws or Sanctions;
- 11.3.2 provide such assistance, documentation and information to Onecom as it may reasonably require in order to comply with this clause 11;
- 11.3.3 not carry out activities in any country on a Restricted Party List;
- 11.3.4 not sub-contract or assign the benefit of the Equipment or re-export, re-sell or otherwise transfer any Equipment to any entity based in a country on a Restricted Party List;
- 11.3.5 keep Onecom apprised at all times of the loss, suspension or invalidation of any relevant licence, authorisation, approval or export control privileges including being placed on a Restricted Party List; and
- 11.3.6 keep Onecom apprised at all times (as soon as possible in the circumstances) of any actual or potential breaches of its obligations in relation to Export Control Laws and Sanction or of it becoming aware that any relevant authority has initiated or will initiate any investigation or proceedings against the Customer relating to an actual or potential breach of Export Control Laws or Sanctions.

## 12 Customer Default

- 12.1 If Onecom's performance of any of its obligations in respect of the Equipment is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
  - 12.1.1 Onecom shall without limiting its other rights or remedies have the right to suspend provision of the Equipment pursuant to clause 13, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Onecom's performance of any of its obligations;
  - 12.1.2 Onecom shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Onecom's failure or delay to perform any of its obligations as set out in this clause 11; and
  - 12.1.3 the Customer shall reimburse Onecom on written demand for any costs or losses sustained or incurred by Onecom arising directly or indirectly from the Customer Default.

## 13 Suspension of Equipment

- 13.1 Onecom may restrict or suspend the provision of Equipment:
  - 13.1.1 for any breach of the Customer's obligations under the Contract, including clauses 9 or 10, or any failure to pay Onecom pursuant to the terms of any other contract between the Customer and Onecom; or
  - 13.1.2 if the Customer becomes subject to any of the events listed in clauses 15.1.3 to 15.1.11, or if the Customer fails to pay any amount due under the Contract on the Due Date.
- 13.2 Onecom shall keep all suspensions to a minimum and shall give the Customer prior notice of such suspensions where reasonably practicable.

## 14 Liability

- 14.1 Without prejudice to clause 12.1.3 and subject to clause 14.5:
  - 14.1.1 neither party shall be liable under any circumstances to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
    - (a) any loss of profits, sales, business, or revenue;
    - (b) loss or corruption of data, information or software;
    - (c) loss of business opportunity;
    - (d) loss of anticipated savings;
    - (e) loss of or damage to goodwill; or
    - (f) any indirect or consequential loss; and
  - 14.1.2 a party's total liability to the other arising in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the lower of (i) £100,000.00 and (ii) the Charges in the 12 months prior to the date the loss arose.
- 14.2 The Customer's obligations to make payments to Onecom pursuant to the Contract are in addition to and will not be counted towards the limitations set out in clause 14.1.2.
- 14.3 Any warranties, conditions or other terms implied by common law or statute are, to the fullest extent permitted by law, excluded from the Contract.
- 14.4 Onecom will not be liable if it fails to do something under the Contract (including not carrying out any of its obligations, carrying them out late or not meeting any service levels), whether or not there is a Force Majeure Event (in which case, clause 20.2 applies), to the extent that Onecom's failure is due to:
  - 14.4.1 the Customer's failure to carry out, or delay in carrying out, any of its obligations under the Contract, in which case the Customer will pay Onecom for any costs and losses sustained or incurred as a result of such failure or delay;

- 14.4.2 anyone other than Onecom or Onecom's subcontractors or suppliers doing something, or not doing something, they need to do; or
- 14.4.3 any restriction or prevention by Applicable Law, a court order, an application for interlocutory relief or injunction.
- 14.5 Nothing in the Contract excludes or limits the liability of a party for:
  - 14.5.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - 14.5.2 fraud or fraudulent misrepresentation; or
  - 14.5.3 any other matter for which it would be unenforceable or invalid to seek to limit or exclude liability.
- 14.6 To the extent that any of the Equipment is provided by third parties:
  - 14.6.1 the Customer acknowledges that it must rely entirely on the guarantees and warranties which may have been given by the third party manufacturer to Onecom, which Onecom will endeavour to pass on to the Customer;
  - 14.6.2 Onecom's liability will be limited to such sums as it recovers from the relevant provider.
- 14.7 This clause 14 shall survive termination of the Contract.

## 15 Termination

- 15.1 Without limiting its other rights or remedies, a party may terminate the Contract with immediate effect by giving Notice to the other party if:
  - 15.1.1 the other party fails to pay any amount due under the Contract (and which has not been disputed in accordance with clause 9.9.2) on the Due Date and remains in default no less than 30 days after being notified in writing to make such payment;
  - 15.1.2 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after being notified in writing to do so;
  - 15.1.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
  - 15.1.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - 15.1.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
  - 15.1.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - 15.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
  - 15.1.8 the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - 15.1.9 a floating charge holder over the assets of the other party has become entitled to appoint or has appointed an administrative receiver;
  - 15.1.10 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - 15.1.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 15.1.3 to 15.1.10 (inclusive); or
  - 15.1.12 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business.

## 16 Consequences of termination

- 16.1 On termination of the Contract for any reason:



- 16.1.1 the Customer will immediately pay Onecom any money and interest that is due up to the date of termination;
- 16.1.2 where any Goods are to be returned to Onecom, the Customer shall upon request promptly (and in any case within 14 days of Onecom's written request) pay to Onecom a handling fee in respect of each unit of Goods;
- 16.1.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry;
- 16.1.4 Onecom may charge the Customer the full price for Equipment which were provided at a reduced charge or no charge; and
- 16.1.5 the following clauses shall continue in force: clause 1 (Interpretation), clause 14 (Liability), clause 16 (Consequences of termination), clause 18 (Data protection), clause 19 (Intellectual property), clause 21 (Confidentiality), clause 22 (Entire agreement), clause 22.3 (Waiver) and clause 22.9 (Governing law and jurisdiction).

## 17 Complaints

If the Customer wishes to make a complaint about the Equipment, the Customer must follow the Onecom complaints procedure, located at <https://onecom.co.uk/complaints-procedure-2/> (or any other online address that Onecom advises the Customer of).

## 18 Data protection

- 18.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 18 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 18.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and Onecom is the Processor when providing the Customer with Equipment pursuant to the Contract.
- 18.3 The following table sets out the scope, nature and purpose of processing by Onecom, the types of Personal Data and categories of Data Subject being processed for the purposes of the Contract:

<b>Subject matter</b>	The processing of the Data Subjects' Personal Data in order to provide the Customer with Equipment pursuant to the Contract.
<b>Duration</b>	The duration required for the performance of the Contract.
<b>Categories of data</b>	Any Personal Data transferred by the Customer to Onecom under this Contract, including, but not limited to: <ul style="list-style-type: none"> <li>• title;</li> <li>• full name;</li> <li>• job title; and</li> <li>• telephone numbers and other contact details</li> </ul>
<b>Categories of Data Subjects</b>	Employees and staff of the Customer
<b>Nature of processing</b>	Storing and using the information to fulfil the Contract.
<b>Purposes of processing</b>	To provide the Customer with Equipment pursuant to the Contract.

- 18.4 Without prejudice to the generality of clause 18.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer and processing of any Personal Data to and by Onecom for the duration and purposes of the Contract, and will transfer to Onecom only the Personal Data that Onecom requires in order to perform its obligations under the Contract.
- 18.5 Without prejudice to the generality of clause 18.1, Onecom shall, in relation to any Personal Data processed by Onecom as Processor in connection with the Contract:
  - 18.5.1 process the Personal Data only in accordance with the Contract or on the documented instructions of the Customer unless Onecom is required by Applicable Law to otherwise process that Personal Data. Where Onecom is relying on Applicable Law as the basis for processing Personal Data, Onecom shall notify the Customer of this before performing the processing required by the Applicable Law unless that Applicable Law prohibits Onecom from so notifying the Customer. Onecom shall inform the Customer if, in the opinion of Onecom, any of its instructions infringes or may infringe Data Protection Legislation;
  - 18.5.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner

after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- 18.5.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- 18.5.4 assist the Customer, insofar as this is possible (taking into account the nature of processing and the information available to Onecom), at the Customer's cost and written request, in responding to any request from a Data Subject and in ensuring compliance with the Customer's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 18.5.5 notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- 18.5.6 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the Personal Data. For the purposes of this clause 18.5.6, Personal Data shall be considered deleted where it is put beyond further use by Onecom; and
- 18.5.7 maintain records to demonstrate its compliance with this clause 21 and allow for the Customer or the Customer's designated auditors to review, audit and inspect such records for the purposes of verifying such compliance.

18.6 The Customer hereby provides its prior, general authorisation for Onecom to:

- 18.6.1 appoint third-party processors of Personal Data (**Sub-Processors**). Onecom confirms that it has entered or (as the case may be) will enter with each Sub-Processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 18. As between the Customer and Onecom, Onecom shall remain fully liable for all acts or omissions of any Sub-Processor appointed by it pursuant to this clause 18.6; and
- 18.6.2 transfer Personal Data outside of the UK or EEA as required for the purposes as described in clause 18.3, provided that Onecom ensures that all such transfers are effected in accordance with Data Protection Legislation.
- 18.7 Onecom may, at any time on not less than 30 days' notice (pursuant to clause 22.2.2), revise this clause 18 (in whole or in part) or update, amend and/or enhance the data protection provisions of this Contract (in whole or part) to incorporate any applicable controller to processor standard clauses or similar terms in each case adopted under the Data Protection Legislation or forming part of an applicable approved certification scheme under Data Protection Legislation or otherwise to comply with Data Protection Legislation.

## 19 Intellectual property

- 19.1 All Intellectual Property Rights in or arising out of or in connection with the Equipment shall be owned by Onecom or its licensors.
- 19.2 In respect of Software provided by Onecom to facilitate use of the Service (but excluding Third Party Software), Onecom gives the Customer a non-transferable, non-exclusive licence to use the Software only for the purposes and in the manner set out in the Contract, and for the period during which Onecom provides the relevant Service. The Customer will comply with any third party terms that apply to the use of the Software.
- 19.3 If the Customer's use of the Equipment infringes, or allegedly infringes, a third party's Intellectual Property Rights, Onecom will indemnify the Customer for court awarded damages payable to a third party for a proven infringement of that third party's Intellectual Property Rights directly resulting from the use by the Customer of the Equipment provided the Customer:
  - 19.3.1 notifies Onecom promptly about the Claim;
  - 19.3.2 allows Onecom to conduct all negotiations and proceedings and to settle the Claim;
  - 19.3.3 provides Onecom with its reasonable assistance regarding the Claim; and
  - 19.3.4 does not attempt to settle the Claim or make any admission or public statement relating to it, or do anything that may harm Onecom's defence of it.
- 19.4 The indemnity in clause 19.3 will not apply to any part of a Claim that results from or is connected with:
  - 19.4.1 any modification of the Equipment, other than by or on behalf of Onecom;
  - 19.4.2 any content, designs or specifications that have not been supplied by or on behalf of Onecom; or
  - 19.4.3 the Customer using the Equipment in a way not agreed in writing by Onecom.
- 19.5 The Customer will indemnify Onecom for Claims, losses, costs or liabilities brought against Onecom that result from or are connected with:
  - 19.5.1 the Customer's use of the Equipment with equipment, software or another service not supplied by Onecom;
  - 19.5.2 any modification of the Equipment, other than by or on behalf of Onecom;

<p>19.5.3 any content, designs or specifications that have not been supplied by or on behalf of Onecom; or</p> <p>19.5.4 the Customer using the Equipment in a way not permitted by this Contract.</p> <p>19.6 If using the Equipment leads, or is likely (in Onecom's reasonable opinion) to lead, to a Claim against the Customer as described in clause 19.3, Onecom may (at its own expense):</p> <p>19.6.1 procure the right to continue the Customer's use of the Equipment; or</p> <p>19.6.2 modify or replace the relevant parts of the Equipment so that using the Equipment no longer infringes third party Intellectual Property Rights, provided performance of the relevant parts of the Equipment is not materially affected.</p> <p>19.7 The indemnity in clause 19.3 and the actions in clause 19.6 are the Customer's only remedies for Claims that use of the Equipment infringes a third party's Intellectual Property Rights.</p> <p><b>20 General</b></p> <p><b>20.1 Anti-bribery</b></p> <p>Each party will comply in all respects with the Bribery Act 2010 and other relevant Applicable Law, regulations and sanctions relating to anti-bribery and anti-corruption. Each party will maintain adequate procedures designed to prevent bribery and appropriate anti-bribery and corruption policies and procedures.</p> <p><b>20.2 Anti-slavery and human trafficking</b></p> <p>20.2.1 In performing its obligations under the Contract, each party shall:</p> <p>(a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including the Modern Slavery Act 2015; and</p> <p>(b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct had been carried out in England and Wales.</p> <p>20.2.2 Each party represents and warrants that it has not been convicted of any offence involving slavery and human trafficking or been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.</p> <p><b>20.3 Force majeure</b></p> <p>Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 2 months, the party not affected may terminate the Contract immediately by giving Notice to the affected party.</p> <p><b>20.4 Assignment and other dealings</b></p> <p>20.4.1 Onecom may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.</p> <p>20.4.2 The Customer shall not, without the prior written consent of Onecom (such consent not to be unreasonably withheld or delayed), assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.</p> <p><b>21 Confidentiality</b></p> <p>21.1.1 Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 21.1.2.</p> <p>21.1.2 Each party may disclose the other party's confidential information:</p> <p>(a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 21; and</p> <p>(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.</p> <p><b>22 Entire agreement</b></p> <p>22.1.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.</p> <p>22.1.2 The Customer acknowledges that it has not relied on, and shall have no remedies in respect of, any statement, promise, representation, assurance or warranty made or given (whether innocently or negligently) by or on behalf of Onecom that is not set</p>	<p>out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.</p> <p>22.1.3 Any samples, drawings, descriptive matter or advertising issued by Onecom and any illustrations or descriptions of the Equipment on Onecom's website are issued or published for the sole purpose of giving an approximate idea of the Equipment described in them. They shall not form part of the Contract or have any contractual force.</p> <p>22.1.4 No terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing shall apply to the Contract.</p> <p>22.1.5 Onecom's employees or agents are not authorised to make any representations concerning the Equipment unless confirmed by Onecom in writing. In entering into the Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.</p> <p><b>22.2 Variation</b></p> <p>22.2.1 The provisions in this clause 22.2 are without prejudice to the respective rights of the parties (including Onecom's rights to make changes to Equipment and/or prices) as set out elsewhere in the Contract.</p> <p>22.2.2 Onecom may amend these Purchase of Goods Terms at any time by:</p> <p>(a) publishing the amendment online at <a href="https://onecom.co.uk/terms-and-conditions/">https://onecom.co.uk/terms-and-conditions/</a> (or any other online address that Onecom advises the Customer of); and/or</p> <p>(b) by giving Notice to the Customer.</p> <p>22.2.3 Any typographical, clerical or other accidental errors or omissions in an Order and/or any sales literature, quotation, price list, invoice or other document or information issued by Onecom shall be subject to correction without any liability on the part of Onecom.</p> <p>22.2.4 No other variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).</p> <p><b>22.3 Waiver</b></p> <p>22.3.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:</p> <p>(a) waive that or any other right or remedy; or</p> <p>(b) prevent or restrict the further exercise of that or any other right or remedy.</p> <p><b>22.4 Severance</b></p> <p>If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.</p> <p><b>22.5 Notices</b></p> <p>22.5.1 Save where specified otherwise, any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be:</p> <p>(a) delivered to the other party personally; or</p> <p>(b) sent by prepaid post, recorded delivery or by commercial courier, at its registered office (where sent by the Customer) or the billing address set out in an Order (where sent by Onecom); or</p> <p>(c) sent by email to <a href="mailto:legal@onecom.co.uk">legal@onecom.co.uk</a> (where sent by the Customer) or to the email address set out in the Order Form (where sent by Onecom),</p> <p>or such other address or email address as a party may have specified to the other party in writing in accordance with this clause.</p> <p>22.5.2 Any notice or other communication shall be deemed to have been duly received if delivered personally when left at such address or, if sent by prepaid post or recorded delivery at 9.00 am on the second Business Day after posting or, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed. Notices sent by email will be deemed served one Business Day after transmission.</p> <p>22.5.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.</p> <p><b>22.6 Third party rights</b></p> <p>No one other than a party to the Contract shall have any right to enforce any of its terms.</p>
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**22.7 Counterparts**

22.8 The Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of the Contract but all the counterparts shall together constitute the same agreement.

**22.9 Governing law and jurisdiction**

The Contract, and any dispute or claim 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.