

These conditions of sale apply to those Customers who are purchasing Equipment for use with a product or service being supplied by THUS plc. For those who bought before this time, please see the Terms and Conditions pre 21st of July 2006. Your purchase and right to use the Equipment, as defined below, is subject to the following conditions.

Equipment

Conditions of Sale

1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions, the following words and expressions shall have the following meanings:

"**Accessories**" means the "**Quick Install Guide**" installation instructions, the self-installation CD-ROM containing the Software, an electronic user manual and (if any) other safety/other accessories as supplied by THUS to you;

"**Agreement**" means the agreement between THUS and you for the sale and purchase of the Equipment in accordance with these Conditions;

"**Apparatus**" means any apparatus not supplied to you by THUS and which is used by you, either directly or indirectly, in order to obtain the Service and/or to use the Equipment (but not for the avoidance of doubt, the Equipment);

"**Business Customer**" means you are (i) a person who uses the Equipment in connection with your trade, business or profession; or (ii) a company, partnership or other organisation other than a Consumer;

"**Consumer**" means that your purchase of the Equipment is for non-business use only;

"**Customer**" means the Consumer or Business Customer named as the Customer in the Order Form;

"**Equipment**" means the equipment supplied by THUS to you as detailed in the Order Form and/or the Welcome Letter;

"**Equipment Package**" shall have the meaning given in Condition 2;

"**Equipment Provider**" means anyone who supplies the Equipment to THUS;

"**Notice of Cancellation**" means a notice in writing (or in another durable medium which is available and accessible to THUS), from you to THUS, cancelling your Order;

"**Order**" means the order to purchase the Equipment, submitted by you either by the completion of an Order Form or by telephone;

"**Order Form**" means the form which you fill in and sign and return to THUS, or fill in and submit online;

"**Order Reference Number**" means the reference number generated by THUS which you are made aware of following your submission of an Order;

"**Service**" means any internet access service being provided to you by THUS;

"**Software**" means the software licensed to you by a third party and which comprises part of the Equipment;

"**Support Boundaries**" means the boundaries, describing the level of support and assistance which THUS may at its discretion, provide to you in connection with the Equipment, as set out on the THUS Website or detailed in the Welcome Letter, and which may be varied by THUS from time to time;

"**THUS**" means THUS plc whose registered office is at 1-2 Berkeley Square, 99 Berkeley Street, Glasgow G3 7HR, Scotland;

"**THUS Website**" means the website accessible at: <http://www.demon.net>;

"**Warranty Period**" shall have the meaning given in Condition 5.1;

"**Welcome Letter**" means the letter which is sent by THUS to you and which includes details of the Equipment;

"**Working Day**" means Monday to Friday inclusive from 9.00 am to 5.30 pm excluding UK public bank holidays; and

"**you**" and "**your**" means the Customer (being a Consumer or a Business Customer) who buys or agrees to buy the Equipment from THUS.

1.2 In terms of these Conditions, receipt by THUS of your Order shall be deemed to be an offer by you to purchase the Equipment.

1.3 The Agreement between THUS and you in respect of the Equipment comes into existence at the time of delivery of the Equipment to you in accordance with these Conditions.

2 CANCELLATION

2.1 If you are a Consumer, you shall have the right to cancel your Order for Equipment prior to the expiry of the period of 7 Working Days, beginning the day after the Equipment has been delivered to you in accordance with Condition 5.

2.2 In the event that you exercise this right to cancel you must serve a Notice of Cancellation on THUS, in accordance with Condition 1.3. You should retain possession of the Equipment and all items included in the original sale ("**Equipment Package**"), take reasonable care of the Equipment Package and within 14 Working Days of serving such Notice of Cancellation return the Equipment Package quoting your Order Reference Number. Please contact THUS in accordance with Condition 1.3 for the precise details on how to return your Equipment Package. You will be responsible for all costs incurred in returning the Equipment Package and/or for any costs incurred by THUS in recovering the Equipment Package.

2.3 Any Equipment being returned must be in no worse a condition than it was at the time of delivery to you.

3 PRICE AND PAYMENT

3.1 The price of the Equipment is as set out in the Order Form and/or as detailed on your Welcome Letter and shall include the delivery charge but may be exclusive of the Value Added Tax to be paid.

3.2 Payment will be due on the date specified on the invoice which is issued by THUS. Time for payment shall be of the essence.

3.3 Payment must be made using the method specified by you upon placing your Order.

3.4 In the event of late payment, THUS reserves the right to charge interest on overdue amounts at an interest rate of 4% above the prevailing lending rate of The Royal Bank of Scotland plc, accruing on a daily basis until payment is made, whether before or after any judgement.

3.5 THUS shall be entitled to vary the price for the Equipment on notice to you from time to time. In the event that any proposed increases to the price are not acceptable to you, you will be entitled to terminate the Agreement by serving one month's notice in writing to THUS, as detailed in Condition 12, within thirty (30) days of the date of such notification of a price increase.

4 OWNERSHIP AND USE OF SOFTWARE

4.1 All intellectual property rights in all Software supplied to you as part of the Equipment shall remain the property of THUS or its licensor. You are hereby granted a non-exclusive, non-transferable licence to use the Software solely for the purpose of using the Equipment and for no other purpose, subject to the following conditions:

4.1.1 the Software shall not be reproduced except to the extent strictly necessary for the proper use of the Equipment and for back-up purposes, any such permitted reproduction being solely in object code form;

4.1.2 the Software and any operating manuals or other documentation associated therewith shall be kept in confidence and any disclosure shall be made in confidence and only to the extent strictly necessary for the proper use of the Equipment and you shall be responsible for ensuring that such disclosure does not lead to a breach of this clause;

4.1.3 no modification shall be made to the Software; however, notwithstanding the foregoing, the intellectual property rights, including copyright, in any permitted modifications shall vest in THUS or its licensor; and

4.1.4 you agree to sign any agreement reasonably required by the owner of the intellectual property right(s) in the Software to protect the owner's interest in that Software.

4.2 Subject to condition 4.3, THUS will indemnify you against all claims arising from infringement of any intellectual property rights as a result of your use of the Equipment in the United Kingdom in accordance with condition 4.1, provided that:

4.2.1 you notify THUS promptly in writing of any allegation of infringement;

4.2.2 you make no admission relating to the infringement;

4.2.3 you allow THUS to conduct all negotiations and proceedings and give THUS all reasonable assistance at THUS' cost; and

4.2.4 you allow THUS, at THUS' discretion and expense, to modify or replace the Equipment to avoid the infringement, provided that the Equipment's performance is not affected or its replacement has an equivalent performance, as appropriate.

4.3 The indemnity in Condition 4.2 does not apply to infringements caused by your use of the Equipment in conjunction with other apparatus or software not supplied by THUS; or by your designs or specifications and you shall indemnify THUS against any claims, proceedings and expenses arising from any such infringements.

4.4 You hereby acknowledge that it is your sole responsibility to comply with all terms and conditions of any licence agreement attaching to the Software. You hereby acknowledge that failure to comply with such terms and conditions may result in you being refused a licence for the Software or having the same revoked by the owner of the Software or by THUS. You hereby further agree to indemnify THUS in respect of all costs, charges or expenses incurred by THUS as a result of any breach by you of the terms and conditions contained in any such licence agreement.

5 DELIVERY AND TITLE

5.1 Delivery times quoted by THUS are estimates only and time shall not be the essence of the Agreement.

5.2 THUS shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Equipment and/or the Accessories.

5.3 Delivery shall be deemed to take place when the Equipment arrives at the premises specified by you in the Order Form.

5.4 All risk in the Equipment shall pass to you or your appointed agent at the time of delivery. Ownership of and title to the Equipment (excluding any Software) shall not pass to you until you have paid all sums due to THUS and until the Equipment Provider receives payment in full from THUS. Prior to the title of the Equipment passing to you, you shall hold the Equipment on behalf of THUS and shall keep the Equipment separate from any other goods, properly stored, protected and insured and clearly identified and shall bear the costs thereof.

5.5 THUS shall not be liable for delivery failure in the event that you have provided incorrect or unclear delivery details to THUS. If THUS is unable to deliver the Equipment (for example, without limitation, because no-one is available to accept delivery of the Equipment), you shall pay for any further delivery attempts. However, you will be given a limited period of time in which to collect the Equipment following any failed delivery attempt.

5.6 If THUS is unable to provide you with the Equipment which you have requested in your Order, THUS shall be entitled to supply you with substitute equipment which is substantially similar to, or better than, the Equipment which has been ordered. In such circumstances THUS shall not be in breach of its obligations under this Agreement as a result of doing so and the substitute equipment shall be treated as Equipment for the purposes of these Conditions.

6 QUALITY

6.1 Subject to the other terms and conditions of this Agreement, THUS guarantees the Equipment for twelve (12) months from the date of delivery in accordance with condition 5 (the "Warranty Period").

6.2 If you report a fault with the Equipment during the Warranty Period and the fault is due to faulty design, manufacture, materials or due to the negligence of THUS (or anyone used by THUS to deliver the Equipment), the Equipment will be replaced, or at THUS' option, repaired provided that:

6.2.1 the Equipment has been properly kept and maintained and used in accordance with the manufacturer's instructions, or any instructions that THUS gives to you and has not been modified; and

6.2.2 the fault is not due to damage (other than damage caused by THUS, or anyone used by THUS to deliver the CPE) including lightning and electrical damage; and

6.2.3 the fault is not due to the actions of anyone other than THUS (or anyone used by THUS to deliver the Equipment); and

6.2.4 the fault is not as a result of fair wear and tear; and

6.2.5 the fault is reported in accordance with, and you comply with the procedure outlined in, condition 7.

6.3 Any Equipment repaired or replaced during the Warranty Period will be guaranteed for the unexpired portion of the said period.

6.4 If Software is supplied as part of the Equipment, THUS does not guarantee that it will be error free, however, it will use all reasonable endeavours to correct errors within a reasonable time if they impair the performance of the Equipment.

6.5 Notwithstanding the remaining provisions of this condition 6, THUS shall not be responsible for fixing any faults which affect the Equipment if they arise from or are caused by:

6.5.1 your act or omission, or the act or omission of anyone instructed by you; or

6.5.2 the Apparatus.

7 RETURN OF EQUIPMENT

7.1 You shall inspect the Equipment immediately on delivery to ensure that it is not damaged or faulty.

7.2 If the Equipment arrives damaged or faulty, or if at any time during the Warranty Period the Equipment becomes faulty, you must promptly log a call with THUS on the telephone number which is listed in the Welcome Pack (or on such other number as THUS may advise from time to time) and you must comply with the fault logging and returns process advised by THUS from time to time.

7.3 If THUS confirms that the Equipment is damaged or faulty, then you may have to return the Equipment or the Equipment Package to THUS at the address and in the manner specified from time to time. The Equipment or the Equipment Package must be adequately wrapped in suitable packing to prevent damage during transit.

7.4 THUS shall not accept the return of the Equipment or the Equipment Package unless you have complied with this condition 7.

7.5 THUS does not accept liability for any Equipment or Equipment Package lost or damaged while it is being returned for repair/replacement (including any damage resulting from inadequate packaging) and proof of postage is not proof of delivery. As THUS shall not be liable for any loss or damage caused during transit you are strongly advised to maintain sufficient insurance to cover the value of the Equipment and/or the Equipment Package.

7.6 If THUS has requested the return of the damaged/faulty Equipment, on receipt of the Equipment Package, as specified above, it will be tested against the stated fault (if any). If no fault is located and the Equipment is found to be in full working order, or if THUS is not responsible for fixing the fault under the Agreement, the Equipment will be returned to you at your expense.

8 SUPPORT BOUNDARIES

8.1 THUS may, at its discretion, and without prejudice to the provisions contained in Condition 7 above, provide you with support in accordance with the Support Boundaries. In doing so THUS will use reasonable skill and care. However, THUS offers no guarantee that it will be able to remedy any difficulty that you may be experiencing and will not be liable to you in any way for such failure to remedy the difficulty.

9 SECURITY OBLIGATIONS

9.1 You are solely responsible for your use of the Equipment and in particular you must ensure that when using the Equipment in conjunction with any Service, your use of the Equipment and the Service is secure and does not impact upon the integrity or security of the Service or THUS' network or any network operated by THUS' suppliers. You shall ensure that your use of the Equipment does not enable any third party to gain access to any local area network which you may create and that no third party gains illegal access to THUS' network. In the event that THUS suffers any loss as a result of your breach of this provision, you shall indemnify THUS in full for any loss suffered by THUS as a result of such breach.

10 LIABILITY

10.1 Subject to condition 7, the following provisions set out the entire liability of THUS to you in respect of any breach of these Conditions and any representation, statement to tortious act or omission including negligence arising under or in connection with these Conditions.

10.2 Except in respect of death or personal injury caused by THUS' negligence or fraudulent misrepresentation, THUS' liability whether in contract, tort or otherwise in respect of any defect in the Equipment or any breach of these Conditions or any duty owed to you in connection with these Conditions shall be limited to the value of the Equipment.

10.3 Other than as set out in these Conditions, THUS shall not, to the fullest extent permitted by law, be liable to you by reason of any implied or express warranty, condition or other term or duty under statute or at common law.

10.4 THUS shall not be liable, in contract, tort (including without limitation, negligence) pre contract or other representations (other than fraudulent misrepresentations) or otherwise out of or in connection with these Conditions for any economic losses (including without limitation loss of revenues, data, profits, contracts, business or anticipated savings), loss of goodwill or reputation or special, indirect or consequential losses suffered or incurred by you out of or in connection with the provisions under these Conditions.

11 GENERAL

11.1 If any part of these Conditions is found by any court or other competent authority to be wholly or partly invalid, unlawful, void, voidable or unenforceable then such part shall be severed from the remainder of these Conditions and the remainder of the Conditions shall continue to be valid and enforceable to the fullest extent permitted by law.

11.2 Failure or delay by THUS in enforcing or partially enforcing any provision of this Agreement will not be construed as a waiver of any of its rights under these Conditions.

11.3 There is no intention that this Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

11.4 The formation, existence, construction, performance, validity and all aspects of the Agreement shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

11.5 Neither party shall be liable to the other where it is prevented from fulfilling any of its obligations under the Agreement due to circumstances beyond its reasonable control including without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes or delays affecting carriers.

11.6 The Agreement constitutes the entire agreement between the parties concerning purchase of the Equipment. It supersedes all prior and contemporaneous agreements and communications. Where there is a conflict between these Conditions, the Order Form or terms and conditions applicable to any Services these Conditions shall prevail.

11.7 If you ask THUS to make a change to the Agreement, including without limitation a change to the Conditions, THUS may ask you to confirm the request in writing. If THUS agrees to such a change, the Agreement will be amended from the date when THUS confirms the change in writing to you, unless otherwise agreed between the parties in writing.

11.8 THUS may change these Conditions at any time in order:

11.8.1 to comply with any legal, statutory or other regulatory obligation including, without limitation, any requirements from time to time under the Communications Act 2003; or

11.8.2 to make minor changes to the specification of the Equipment; or

11.8.3 to maintain the integrity or security of the Service, THUS' network and/or any network operated by THUS' suppliers; or

11.8.4 to introduce process changes; or

11.8.5 to improve clarity or correct typographical errors; or

11.8.6 to protect the use of the THUS name or its trademarks (or the name or the trademarks of any of its suppliers);

provided that any change introduced for the reasons set out in conditions 11.8.2 to 11.8.6 inclusive shall not materially affect the Equipment or the performance of the Equipment except insofar as it is reasonable to do so.

11.9 Where it is within THUS' control to do so, THUS will give you notice of the changes at least 30 days before the changes are to take effect. Where it is not possible for THUS to give you 30 days prior notice, THUS will give you as much notice as possible in the circumstances.

11.10 You may not assign or sub-contract any of your rights or obligations under these Conditions to any third party unless agreed upon in writing by THUS. THUS reserves the right to transfer, assign, novate or sub-contract the benefit of the whole or part of any of its rights or obligations under these Conditions to any third party.

12 COMPLAINTS

12.1 In the event that you have any complaints in connection with the Equipment please notify THUS of your complaints by writing to the address detailed in Condition 13 or as otherwise notified by THUS.

13 NOTICE

13.1 Any notice required or permitted under these Conditions must be in English and in writing and sent either:

by post to: Customer Services, THUS plc, Gateway House, 322 Regents Park Road, Finchley, London N3 2QQ; or

by email to: customerservice@demon.net

or as otherwise notified by THUS.

13.2 Any notice to be sent to you will be sent to the address which you provide when submitting your Order and as contained on the Welcome Letter or such other address as you shall have given written notice of as the billing address.

13.3 Such notices referred to in Conditions 13.1 and 13.2 shall be deemed to have been received 3 Working Days after mailing if forwarded by mail, and the following Working Day if sent by email or hand-delivered.