



PRIMARYTECH

TERMS & CONDITIONS

HARDWARE

EFFECTIVE DATE

February 2020

WHEN BUYING FROM PRIMARYTECH, THE CUSTOMER ACKNOWLEDGES AND AGREES THAT IT BUYS GOODS AS A BUSINESS, NOT AS A CONSUMER.

THE WARRANTY PROVISIONS IN CLAUSE 10 BELOW SET OUT PRIMARYTECH'S RESPONSIBILITIES TO THE CUSTOMER IN MORE DETAIL. HOWEVER, AS A BUSINESS, PURCHASES THE CUSTOMER **SUPPLIER**

- (1) **PRIMARY TECHNOLOGIES LIMITED** is incorporated and registered in England and Wales, with company number 04760864. Its registered office is Suite 1204, K2 Tower, 60 Bond Street, HU1 3EN (**Supplier**) (**PrimaryTech**).

AGREED TERMS

1. Interpretation

The definitions and rules of interpretation in this clause apply.

1.1 Definitions:

Agreement: The terms and conditions of the Hardware document.

Check and Send: The supplier provides a service to check the condition of the hardware and returns it to the lease company.

Customer: the customer's principal contact for the quote.

Location: the place or places where the products are to be delivered.

Product: the Products provided by the Supplier specified in the Customer quote.

Service Charge: The Charge for the Services.

Working Day: Monday - Friday, Excluding Bank Holidays, between 9 am to 4 pm.

VAT: value-added tax chargeable under English law for the time being, as well as any similar additional tax.

2. APPLICATION OF CONDITIONS

2.1 These conditions shall:

- (a) Apply to and be incorporated in the terms and conditions.
- (b) Prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, specification, or implied by law, trade custom, practice or course of dealing.
- (c) If you do not wish to be bound by these Conditions, the Customer should not order or accept the delivery of the Products.
- (d) Apply to all Hardware Products.

MAKES FROM PRIMARYTECH WILL NOT BENEFIT FROM THE SAME STATUTORY PROTECTION AVAILABLE TO CONSUMERS UNDER THE SALE OF GOODS ACT 1979 (AS AMENDED), THE CONSUMER CONTRACTS REGULATIONS 2013, OR ANY OTHER CONSUMER PROTECTION LEGISLATION.

- 2.2 No addition to, variation of, exclusion or attempted exclusion of any term of these terms and conditions shall be binding on the Supplier unless in writing and signed by the Supplier's Contact or by a duly authorised representative of the Supplier.

3. EFFECT OF PURCHASE ORDER

- 3.1 The Customer's purchase order or signed order sent to the Supplier constitutes an offer by the Customer to purchase the Supplier's Products. Once the Supplier has accepted an order from the Customer for a Product, the Customer shall not be entitled to cancel that order at any time.

- 3.2 The acknowledgement copy of the purchase order form by the Supplier, or the Supplier's commencement of work in providing Products or execution of work under the purchase order, shall establish a contract for the supply of those Products and, accordingly, the purchase of the same, by the Customer.

- 3.4 The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in their purchase order shall NOT govern the Suppliers.

4. SUPPLIER'S OBLIGATIONS

- 4.1 The Supplier shall use reasonable endeavours to provide the Products specified in the Customer's quote.

- 4.2 The Supplier shall have no obligation to perform any service not expressly agreed upon.

5. PRICE

- 5.1 Unless a written quotation has been given (after which the price quoted will be fixed for thirty (30) days or such other period as is specified therein), the prices for the Products are subject to alteration without notice. The price charged to the Customer will apply when the Supplier accepts the Order. Orders are not binding upon the Suppliers until accepted by the Supplier. All prices exclude value-added tax (and similar tax), packing, carriage, insurance and installation. Where applicable, these will be added as separate items to the Customer's invoice.

6.	PAYMENT	arrangements for the Products. The customer agrees that such an arrangement will be subject to additional terms between the Customer and the finance partner.
6.1	The Supplier may share the customer's credit history information with relevant credit agencies. The Supplier reserves the right to run a credit check with an appropriate credit agency before a Customer credit and to validate any credit card account holder or delivery address details.	6.6
6.2	The Supplier remains the owner of the Products until they have been paid for in full, where applicable.	In addition to condition 6.5, where the Customer has purchased Hardware from the Supplier and paid via a lease at the end of the initial lease term unless agreed by the Supplier, the Customer shall agree to return all Hardware listed on the Supplier's quote to the lease company per their required conditions. The Customer also agrees to pay a Check and Send fee of £750 plus £5 per device plus VAT. To avoid doubt, this service does not include repairing any equipment.
6.3	Unless otherwise notified to the Customer in writing by the Supplier, the Customer shall pay for the Products when placing an Order. Where the Supplier invoices the Customer on the date of delivery for the Products, the Customer shall pay all invoices within fourteen (14) days of the date thereof (time being of the essence). Terms of payment are within the Supplier's sole discretion.	6.7
6.4	<p>Until payment of the Order in full:</p> <ul style="list-style-type: none"> (a) The Supplier shall have absolute authority to retake, sell or otherwise deal with or dispose of any or part of the Products; (b) The products will appear in the Customer's books in the name of the Supplier; (c) In the event of threatened liquidation or threatened seizure of the Products, the Customer will immediately notify the Supplier and the Supplier may take action to repossess the Products. The Customer will also inform interested third parties of the Supplier's ownership of the Products; (d) For the purpose specified in 7.3(c) above, The Supplier or any of its agents or authorised representatives shall, with reasonable cause, be irrevocably entitled, at any time and without notice, to enter upon any premises in which the Hardware or any part thereof is installed, stored or kept, or is reasonably believed so to be; and (e) The Supplier is entitled to seek a Court injunction to prevent the Customer from selling, transferring, or otherwise disposing of the Hardware. 	<p>Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:</p> <ul style="list-style-type: none"> (a) charge interest on such sums due from the due date for payment at the annual rate of 8% above the Bank of England base rate, accruing daily and being compounded quarterly until payment is made, whether before or after any judgment; and (b) suspend all Products until payment has been made in full. (c) Immediately invoice for all services payable to the Supplier under any of the Supplier agreements.
6.5	The Supplier may agree that the Products will be paid for via a leasing arrangement with the Supplier's financing partners. Where applicable, The Supplier will introduce the Customer to a finance partner but will not be a party to any agreement regarding leasing	6.9
		Time for payment by the Customer shall be of the essence.
		6.10
		Where payment for Products is made by a third party, such as a holding company, group company, or procurement framework, the Customer shall remain responsible for the terms relating to payments and charges.
		7.
		SHIPPING AND DELIVERY
		7.1
		The Customer is responsible for all shipping, handling, and delivery costs unless specified otherwise in the agreement.
		7.2
		Estimated delivery times are provided as an indication and are not binding. The Supplier is not responsible for delays caused by shipping carriers or events beyond our control.
		7.3
		All deliveries shall be made during the Working Days. If the Customer requires delivery to be made outside such times, subject to the Supplier's sole discretion, an additional charge

	shall be payable. The Supplier reserves the right to make partial deliveries.		
7.4	If the Customer delays or prevents the delivery, The Supplier may apply reasonable additional charges.	9.3	Returns, unless dead on arrival, will not be accepted in the following circumstances: <ul style="list-style-type: none"> (a) The Products were made to the Customer's specification or configured to order; (b) Product stipulated on the order form or quotation as non-cancellable or non-returnable (c) The Product Manufacturer is Dell or Cisco. (d) The Product type is a server, switch, wireless system, projector, telephone system or audio system.
8.	ORDER AMENDMENTS		
8.1	The Agreement can only be varied with the parties' written agreement, except that the Supplier may make minor changes to the specification of the Products at any time and without notice that do not materially affect their performance.		
8.2	Except for those products listed in condition 8.3, Customers may request an amendment to an Order before the despatch of the Product. Amendments requested by the Customer may incur an additional charge calculated by the Supplier at its sole discretion and may result in delayed delivery of the Product. A Customer may only request an amendment to an Order in writing (including via email). The request must clearly state the customer name, order number, request amendment, and reason for the amendment. Only change to an Order will be effective once the Supplier has confirmed in writing (which for these purposes shall include e-mail) its acceptance of a Customer-requested amendment.	9.4	Cancellation - except for the Products which fall within condition 9.3 above, the Customer may cancel an order after acceptance of the order by the Supplier, but before despatch of the Product, subject to a cancellation fee of up to but not greater than the total order value. Such cancellation fee is to be calculated by the Supplier at its sole discretion and may include: <ul style="list-style-type: none"> (a) Charges for the time cost incurred in order processing and management and/or (b) A restocking fee of the manufacturer and/or (c) The total charges for the Product
8.3	The following Product orders are unable to be amended upon acceptance by the Supplier of the order; <ul style="list-style-type: none"> (a) Servers, Switches, Wireless Systems, Phone Systems, Projectors, Interactive Screens and Audio Equipment. 	9.5	In all events, the Customer will be responsible for the cost of returning the Product to the Supplier or the manufacturer and will be responsible for up to the total value of the Product if it is received damaged, opened or not in a resaleable condition.
9.	CANCELLATION AND RETURNS	9.6	When the Supplier permits the return of Product(s), the Supplier will issue a credit note on the Customer's account so that the invoice for the relevant Product is deemed cancelled.
9.1	The Customer must ensure that all Products are inspected IMMEDIATELY upon delivery. In all cases, the Customer must inform the Supplier of any defects or damages in writing or via telephone within two (2) Working Days of delivery so that the repair or replacement process can begin with the manufacturer.	9.7	Customers must satisfy themselves with the manufacturer's DOA or warranty policies before they purchase the products. Individual manufacturers' DOA policies should be included in the warranty that is delivered with the product. The Supplier's customer service department will not have details of the DOA policies.
9.2	The Supplier will accept responsibility for damages or loss in transit only if: <ul style="list-style-type: none"> (a) The Customer reports the damage or loss as condition 9.1 (b) Such loss or damage is noted on the consignment note or delivery document upon receipt; (c) The added packaging is retained for inspection, and (d) The Products are handled by the Customer per Supplier Handling and Inspection stipulations. 	9.8	If the Customer has inspected the Products by condition 9.1 and finds them to be DOA, the Customer must contact the Supplier within two (2) Working Days to obtain a repair or refund. The Supplier will not accept the return of faulty goods to its premises.
		9.9	The refund or replacement of faulty DOA Products is subject strictly to individual manufacturers' DOA policies.
		9.10	The Customer may be required to contact the manufacturer's technical department to

limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:

- (i) loss of profits;
- (ii) loss of business;
- (iii) depletion of goodwill or similar losses;
- (iv) loss of anticipated savings;
- (v) loss of goods;
- (vi) loss of contract(s);
- (vii) loss of use;
- (viii) loss or corruption of data or information;
- (ix) Service outage;
- (x) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

13. **W**AIVER

- No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

14. RIGHTS AND REMEDIES

- The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

15. SEVERANCE

- 15.1 Suppose any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable. In that case, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. The relevant provision or part-provision shall be deemed deleted if such modification is impossible. 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 this agreement.
- 15.2 Suppose any provision or part-provision of this agreement is invalid, illegal or unenforceable. In that case, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable and, to the greatest extent possible, achieves the

	intended commercial result of the original provision.		No announcement or information concerning this agreement or any ancillary matter shall be made or released or authorised to be made or released by either of the parties without the prior written consent of the other party save as may be required to enable either of the parties to perform its obligations under this agreement or as required by law.
16.	ENTIRE AGREEMENT	21.	NOTICES
16.1	This agreement constitutes the entire agreement between the parties and supersedes it. It extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.	21.1	Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be: <ul style="list-style-type: none"> (a) delivered by hand or by pre-paid first-class post or other next working day delivery service to its registered office; (b) sent by email to an email address to customerservices@primarytech.co.uk
16.2	Each party acknowledges that in entering into this agreement, it does not rely on, and shall have no remedies concerning, any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in this agreement.	21.2	Any notice or communication shall be deemed to have been received: <ul style="list-style-type: none"> (a) If delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; (b) if sent by pre-paid first-class post or other next working day delivery service at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; (c) if sent by email on the next Business Day after transmission, along with a response acknowledging receipt.
16.3	Each party agrees that it shall have no claim for innocent or negligent misrepresentation or misstatement based on any statement in this agreement.	21.3	This clause does not apply to the service of any proceedings or other documents in the course of any legal action or, where applicable, any arbitration or other method of dispute resolution.
17.	ASSIGNMENT	22.	GOVERNING LAW
17.1	Without the Supplier's written agreement, the Customer may not assign, transfer, charge, subcontract, or otherwise deal with all or any of its rights or obligations under the contract.		The agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including, without limitation, non-contractual disputes or claims) are governed by and construed per the law of England and Wales.
17.2	The Supplier may assign, transfer, charge, subcontract, or otherwise deal with all or any of its rights or obligations under the agreement.	23.	JURISDICTION
17.3	This agreement shall bind the Customer and all successors in title. If the Customer organisation is acquired, merged with, or becomes part of another organisation, the terms and conditions of this agreement shall remain in full force and effect, and all obligations under this agreement will be binding upon the successor organisation.		Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).
18.	NO PARTNERSHIP OR AGENCY		
	Nothing in the agreement is intended to or shall operate to create a partnership between the parties or to authorise either party to act as an agent for the other. Neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).		
19.	THIRD-PARTY RIGHTS		
	No one other than a party to this agreement, its successors, and permitted assignees shall have the right to enforce any of its terms.		
20.	PUBLICITY		

