



## **Terms and Conditions**

### **1. Definitions**

#### **You the customer**

a person or company buying products or services from Bird Computers

#### **Consumer**

a person buying Products for their own use

#### **Business customer**

a company as defined in English law

#### **Bird Computers (us, our, Bird Computers)**

the Product vendor as identified on your invoice and, where relevant, Service Provider

#### **Integrated Customer Specified Software (ICSS)**

3rd party software or customer downloads installed by Bird Computers

#### **Factory Integrated Components (FIC)**

integrated 3rd party components installed by Bird Computers at time of build

#### **Order confirmation**

acknowledgement of Product ordered by you, sent by Bird Computers. Price stated in Order Confirmation

#### **Product**

as described in Order Confirmation, may include 3rd Party Products and Service Offerings

#### **Service Offering**

as described in an Bird Computers Installation agreement and/or Order Confirmation

#### **Service Provider**

Bird Computers or its authorised service experts

#### **3rd Party Products**

stated in Order Confirmation, not branded or manufactured by Bird Computers

## **Software**

computer operating systems or applications

## 2. Application

This Agreement applies to this sale, service and all statements made by Bird Computers in brochures, price lists, adverts, quotations, on the internet or verbally. Variations to this Agreement must be made by Bird Computers in writing. Any other Terms, Conditions or Purchase Orders are excluded. Placing your order means acceptance of this Agreement. Bird Computers may change this Agreement at its choosing.

## 3. Orders/Contract

Orders are accepted by writing, internet, telephone or fax but are only binding when accepted by Bird Computers. Acceptance is deemed to have taken place when either Bird Computers sends the Order Confirmation in writing or payment has been taken. Please check the Order Confirmation and notify Bird Computers of any mistake in writing immediately, failure to do so will result in the details stated in the Order Confirmation applying to this Agreement.

## 4. Price & Payment Terms:

Quotations are only valid in writing and during the period that they state. If no time is stated the quotation will be valid for a period of 14 days. Bird Computers reserves the right to change Products (incl. 3rd Party Products) at any time but Bird Computers guarantees replacement products at least equivalent functionality and performance. Price excludes tax, shipment, insurance and installation. Exchange rates, duties, insurance, freight and purchase costs (incl. for components and services) may cause Bird Computers to adjust prices. Payment will be made before supply or service or, if agreed, within the agreement terms. Bird Computers may suspend deliveries or service until full payment is received. If payment is late, interest at 2% above the minimum lending rate of Lloyds TSB Bank PLC on the late amount and the costs of recovery shall be payable by the customer. Cheques may only be accepted conditionally.

## 5. Delivery/Title/Risk:

The delivery period in the Order confirmation is approximate. Delivery by instalments may be made. The place of delivery is stated in the Order Confirmation. Title to Product does not pass until full payment in cash or cleared funds have been received for all goods and services delivered to the buyer under this and all other contracts between the seller and the buyer. Until then the customer must insure and store the goods separately and may not modify, pledge or sell them. Bird Computers may enter the storage premises to repossess the goods at any reasonable time specified by Bird Computers until full payment has been received. Should the customer sell them before title passes, they will become Bird Computers agent and the proceeds of the sale shall be held on our behalf, separately from the customer's general funds. Bird Computers may sue for the Price before title passes. If the customer refuses delivery without Bird Computers agreement the customer must pay Bird Computers expenses or losses resulting from that refusal, including storage costs, until the

customer accepts delivery. The promotion of Free delivery on certain items is subject to the promotional item being purchased and delivery being within the UK mainland only. The promotional offer of Free Delivery can be withdrawn without notice.

#### 6. LCD / TFT Display and television Pixel Anomalies:

Due to the manufacturing process employed when producing TFT displays there is a tolerance of pixel anomalies (bright / dark / coloured dots) the limits of which are set by the TFT manufacturer. Bird Computers will only consider a TFT screen to be defective and therefore require replacement in accordance with the warranty when the TFT manufacturer's tolerance limit is exceeded. Please consult the information entitled "LCD Tolerances" supplied with your TFT device for further information.

#### 7. Acceptance:

When the product is received it must be inspected promptly. Failure to reject within a reasonable period after delivery is deemed to be acceptance of the goods. After this period the goods will have been accepted. If Bird Computers agrees to the return of the Product at its choosing, it must be in its original condition with all packaging and associated items, with an Bird Computers issued returns number and proof of purchase. Bird Computers reserve the right to levy a restocking fee for returned items unless their return is based upon distance selling regulations in force at the time of their return or Bird Computers has determined the item is faulty. Except in the case of faulty items the customer is responsible for the safe and insured return of the item(s) to Bird Computers head office.

#### 8. Distance Selling Regulations:

The Consumer may cancel the contract, by indicating their wish to do so in writing to the Customer Services Department within seven working days, starting the day after product is received, or, if for a service, seven working days starting from the date the Consumer entered into the contract. The Consumer must return the goods to Bird Computers in its original condition with all packaging, associated items and an Bird Computers issued returns number. The cost of the return is to be borne by the consumer. The Regulations do not apply to used goods and unsealed licensed software or items specifically built to order. Bird Computers will refund, less appropriate deductions, to the Consumer within thirty days of the written notice of cancellation, by the original method of payment. Bird Computers will deduct from any refunds the direct charges incurred by Bird Computers of: Transit Delivery Charges £39.95 Inc VAT (maximum three boxes). CONTACT DETAILS Your contract is with: Bird Computers. Vale Park, Bird Computers, Worcs. WR11 1TD Telephone; 01386 769600 Fax; 01386 769795. If you have any questions or complaints regarding the company, these can be addressed to the Customer Care Manager at the above address. This is the registered headquarters of Bird Computers. The company will endeavour to acknowledge written complaints within 5 working days. The time it takes to reach complete resolution of complaints will be governed by the nature and complexity of the issue but we will endeavour to ensure that consumers are informed of the progress of complaints as appropriate. Details of the specification, price and arrangements for payment of the goods purchased by distance selling are available on our web site, in our company publications and will also be provided on invoices despatched with your order. Our sales team are happy to send you a quotation by fax or post detailing specifications or you may want

to print out your web order for your records. Distance Selling regulations allow for a cooling off period of seven days from receipt of goods covered under the legislation. Customers may return specified goods without reason within this period for a refund. This excludes goods made to the consumer's specifications. It does not apply to goods intended for everyday consumption. Video recordings or computer software unsealed by the consumer are also excluded. The cost of returning and appropriately insuring the goods until satisfactory receipt at Bird Computers will be borne by the customer. To cancel the contract Bird Computers Customer Care Manager must be contacted in writing at the above address within 7 working days of receipt of the goods. Delivery is deemed to be completed on the day after receipt of the goods. The customer will be required to return the goods before a refund can be processed. Following receipt of written rejection the customer care department will contact the customer with a RETURN TO MANUFACTURER number within 5 working days. This number must be quoted on all returned goods so that the goods can be properly identified. The company cannot be held responsible for goods returned without proper identification. It is the customer's responsibility to ensure the safe return of the item(s) in the original condition with all associated items and packaging. The item(s) will be deemed as returned upon inspection and confirmation that they are complete and in good order by Bird Computers. A refund will be issued within 30 days of satisfactory receipt of the goods at Bird Computers. Refunds will be by payment to the originating credit card or by cheque. Details relating to the warranty of products purchased from Bird Computers will be included with any PC purchased. Other products are covered under the terms of the Sale of Goods Act 1979 (as amended). Products other than PC's, notebooks, servers or consumables are covered by a 1 year warranty. These details form part but are not the exclusive extent of your contract with Bird Computers which is governed under English law. Your statutory rights as a consumer are unaffected.

#### 9. Warranty:

Bird Computers guarantees to you that Products (excl. 3rd Party Products) will be free from defects for 12 months from delivery and spare parts for 90 days from installation unless stated otherwise. Notebook batteries are deemed consumable items and have a warranty period of 90 days. Should a product be defective within the warranty period Bird Computers will repair or replace the product within a reasonable time. The customer must allow Bird Computers to examine Product at your or Bird Computers premises (at our choosing). Bird Computers owns any replaced Product or parts. All reasonable care and endeavour shall be used to resolve problems within a realistic period in the circumstances. Bird Computers repairs using components on a like for like basis. Where a particular part is not available Bird Computers reserves the rights to substitute the part with one of an equivalent or greater performance. An item will be deemed as faulty only after investigation by Bird Computers. The warranty will only be activated after diagnoses by Bird Computers of a warranty fault. Bird Computers does not give a warranty or guarantee protection for: a) damage caused by incorrect installation, use, modifications or repair by any unauthorised 3rd party or the customer; b) damage caused by any party or other external force; c) fitness for any particular purpose not notified to Bird Computers and agreed in writing at the point of sale or prior to delivery; d) 3rd Party Products, ICSS and FIC specified by the customer. Support for these products will be received directly from their manufacturer or licensor; e) any instruction given by the customer and correctly performed by Bird Computers.

#### 10. Services:

Services will be provided by Bird Computers or a Service Provider on Bird Computers behalf. Response times are estimates and may vary according to the remoteness or accessibility of Product location. Service may be provided via telephone, internet, e-mail, letter or any other means of communication both written and verbally where appropriate. If agreed, and stated in the Order Confirmation, Service Offering may include advice, asset tagging, installation, integration, disposal, training and /or consultancy. Unless stated in Order Confirmation the following are excluded from Service: items excluded from Warranty, changes to configuration, relocation, preventative maintenance, consumables, diskettes, unnecessary work in Bird Computers assessment, electrical environment, transfer of data or Software, viruses and customer initiated errors either hardware or software. Bird Computers reserve the right to charge for any service carried out that it determines is the result of a customer initiated error, modification or misuse. 3rd Party Products will be repaired according to manufacturer or licensor warranty. Parts not critical to Product function, may not be serviced within Service Offering time period.

#### 11. Integrated Customer Specified Software (ICSS):

The customer will specify and provide ICSS or Bird Computers may obtain ICSS at your instruction. Bird Computers will indicate acceptance and/or validation of ICSS, then will integrate ICSS into Product, producing an ICSS Product. Bird Computers may install ICSS Product under your instruction or under Bird Computers technical advice if agreed. Bird Computers will not carry out ICSS work if it is not technically feasible in our view.

#### 12. Factory Integrated Components (FIC):

The customer will specify and provide FIC or Bird Computers may obtain FIC at your instruction. Bird Computers will indicate acceptance and/or validation of FIC, then will integrate FIC into Product, producing a FIC Product. Bird Computers may install FIC Product under your instruction or under Bird Computers technical advice if agreed. Bird Computers will not carry out FIC work if it is not technically feasible in our view.

#### 13. Liability:

Bird Computers liability in respect of defects in the goods shall be limited to those stated in Clause 9 and subject to Clause 2(1) of the Unfair Contract Terms Act 1977, Bird Computers shall not be liable whether in contract or in tort, including but not limited to negligence, or by reason of breach of statutory duty or otherwise, for any damage or loss whatsoever suffered by the buyer arising out of or attributable to such defects. Neither party shall be liable to the other for any indirect or consequential loss or damage, loss of profit, loss of use or production or of contracts which the other may suffer arising out of any breach by a party of its obligations under the contract and whether the same be due to the negligence of that party or not.

#### 14. Intellectual Property:

The customer indemnifies Bird Computers for any of ICSS or FIC specified or owned by the customer and integrated into Product. Bird Computers is allowed to litigate, negotiate and settle claims and the customer must assist us at our expense (except where ICSS or FIC owned by the customer is allegedly infringing) when litigation is directly related to your Product. Bird Computers retains all

Bird Computers-owned ICSS or FIC in Product. The customer must notify Bird Computers immediately of any infringing or unauthorised use of Product or ICSS or FIC in it.

15. Software:

Software not owned by Bird Computers is supplied subject to the licence and warranty of the Software licensor. Bird Computers encloses the Software licence that the customer requires with the Product where necessary; you must comply with that licence.

16. Export Control:

The customer acknowledge that Product may include technology and Software which is subject to EU and US export control laws and laws of the country where it is delivered or used: the customer must abide by all these laws. Product may not be sold, leased or transferred to restricted end users or countries or for a user involved in weapons of mass destruction or genocide. The customer acknowledges that EU and US restrictions vary regularly and depending on Product, therefore you must refer to the current EU and US regulations.

17. Force Majeure:

Bird Computers is not liable for delays in performance (incl. delivery or service) caused by circumstances beyond its reasonable control and will be entitled to a time extension for performance; examples include strikes, supplier/transport/production problems, exchange fluctuations, governmental or regulatory action and natural disasters. If this lasts more than 2 months, this Agreement may be terminated by either party without compensation.

18. Confidentiality:

Each party must treat all information received from the other marked "confidential" or reasonably obvious to be confidential as it would treat its own confidential information.

19. Termination:

Bird Computers may terminate this Agreement with written notice if the customer: a) fails to pay on time and within 14 days of written notice; b) breaches or Bird Computers suspects the customer has breached export control laws. Either party may terminate if the other; a) commits a material or persistent breach of this Agreement and fails to remedy this within 30 days or written notice from the other; or b) becomes insolvent or is unable to pay debts as they fall due. Bird Computers reserve the right to charge for any components, engineer's time and related costs due to order cancellation.

20. Your obligations as a Customer:

You are responsible for; a) your own choice of Product and its suitability for purpose; b) your telephone & postal charges in contacting Bird Computers, if any; c) any ICSS or FIC specifications & instructions given by the customer; d) all ICSS or FIC, its performance, licences, authorisations and any unused ICSS or FIC. The customer must provide Bird Computers with all reasonable courtesy, information, cooperation, facilities and access to enable Bird Computers to perform duties, failing which Bird Computers shall not be obliged to perform any service or assistance. The customer is

responsible for the removal of non Bird Computers supplied products during service, the back up and confidentiality of all data in Product and all of your legal and regulatory requirements.

#### 21. Data Protection:

Your data will be held and /or transferred in strict accordance with the applicable data protection laws and Bird Computers data protection registration and you consent to this. You may instruct Bird Computers not to use your data for direct marketing purposes.

By submitting information via this site or any related telephone registration process:

- You consent to the processing of data personal to you, such as your name and title, address, telephone number, contact details and other personal details (“Personal Data”), in accordance with the terms notified in the “Personal Data” (or similarly entitled) part of the registration/data input form or telephone registration process for this site.
- You acknowledge that the processing of your Personal Data is necessary and/or desirable for the personalisation of your visit to this site and/or the granting and controlling of access to this site or parts thereof to registered Users or paying subscribers and for fraud prevention purposes you consent to such processing.
- In certain circumstances we may seek additional personal information such as dates of birth, photocopies of identification documents or credit cards for example for identity verification or fraud prevention purposes. Where such additional information is submitted to us, it shall also be regarded as “Personal Data”.

#### 22. Consumer Rights:

Any statutory Consumer rights are unaffected by this Agreement.

#### 23. Jurisdiction:

English law and the exclusive court jurisdiction of the English courts will apply to this Agreement. The Vienna Convention on Contracts for the International Sale of Goods is excluded.

#### 24. Miscellaneous:

If any part of the Agreement is found to be invalid or unenforceable by a court, the rest is unaffected. Bird Computers may subcontract its obligations to a third party. Otherwise, neither party may assign or transfer any obligations or rights. All notices must be in writing (by hand, email, fax or 1st class post deemed delivered 48 hours after posting) and sent to a legal officer of either party. You can find all Bird Computers policies and notices via [www.BirdComputers.com](http://www.BirdComputers.com) and you should refer to this site for any further updates.

Thank you for doing business with Bird Computers

#### **Return to Base Warranty (Parts and Labour)**

1. Cover provided under this Contract:

- a. An unlimited number of requests for hardware service to the base unit and monitor \*\*\*, televisions, GPS, PDA's and set top boxes including but not limited to PVR, DVD player / recorders during normal working hours of 9.00 a.m. to 5.00 p.m., Monday to Friday inclusive, excluding public and bank holidays. Work performed outside normal working hours, software problems, or customer initiated malfunction will be liable to a charge.
- b. The free replacement or repair of any part of the equipment hardware in the equipment schedule\* that has failed during normal use. Parts may be exchanged on a like for like basis.
- c. The Company may inspect, adjust, repair or replace the equipment or any part of it as it considers necessary or advisable.
- d. Unless otherwise agreed specifically in writing by the Company in relation to any particular item, the Company has no responsibility under this Contract in relation of any of the following items, namely:
  - i. Software, storage media, data retrieval
  - ii. Aerials, Building, wiring or telephone instruments where relevant
  - iii. External services outside the control of the Company
  - iv. Consumable items as specified by the equipment manufacturer/distributor
  - v. Repair or alteration of equipment by unauthorised 3rd parties

## 2. Period of Agreement:

Where the customer is in breach of any of its obligations under this or any other agreement between the parties, without prejudice to the Suppliers or their remedies (including the right to terminate this agreement on a continuing or further breach) the Supplier may suspend the provision of its services.

## 3. Assignment:

The Company shall be entitled to transfer or assign all or any of its rights in this agreement and to perform any of its obligations through nominated sub-contractors.

## 4. Customer undertakes:

- a. To carry out routine day-to-day preventative maintenance as may be recommended under the Customer operating instructions supplied with this equipment
- b. To permit no alteration to apparatus or wiring except by Agreement with the Company and work to be carried out in accordance with approved procedures
- c. To notify the Company in writing in the event that the Equipment is to be re-located
- d. Responsibility for adequate back-up of its data since its protection or recovery forms no part of the agreement.

- e. Responsibility for costs incurred for the safe and insured return of the equipment to Bird Computers, and subsequent return to the customer. (Collection and return of the equipment can be arranged for a charge by Bird Computers if required)

#### 5. Liabilities:

Bird Computer's liability in respect of defects in the goods shall be limited to those stated in Clause 9 and subject to Clause 2(1) of the Unfair Contract Terms Act 1977, Bird Computers shall not be liable whether in contract or in tort, including but not limited to negligence, or by reason of breach of statutory duty or otherwise, for any damage or loss whatsoever suffered by the buyer arising out of or attributable to such defects. Neither party shall be liable to the other for any indirect or consequential loss or damage, loss of profit, loss of use or production or of contracts which the other may suffer arising out of any breach by a party of its obligations under the contract and whether the same be due to the negligence of that party or not.

#### 6. Virus Infection:

The number of computer viruses in circulation is increasing. A number of these may result in loss of data or damage to the system hardware or software. Issues with systems caused by a virus may result in a chargeable visit by one of our engineers.

#### 7. Force Majeure:

Neither party shall be liable for any failure to perform its obligations hereunder as such failure arises from any Act of God, War, Strike, Lockout or other labour dispute, Riot, Civil Commotion, Fire, Flood, Drought, Legislation or other causes (whether of the foregoing classes or not) beyond the control of the party concerned.

This agreement shall be governed and interpreted according to English Law.

This does not affect your statutory rights.

#### **Return to Base Warranty (Labour Only)**

The terms and conditions for this type of warranty are as per those for "Return to Base Warranty" with the exception of section 1. Cover provided under this contract. This is as follows;

##### 1. Cover provided under this Contract:

- a. An unlimited number of requests for hardware service to the base unit and monitor \*\*\*, televisions, GPS, PDA's and set top boxes including but not limited to PVR, DVD player / recorders during normal working hours of 9.00 a.m. to 5.00 p.m., Monday to Friday inclusive, excluding public and bank holidays. Work performed outside normal working hours, software problems, or customer initiated malfunction will be liable to a charge.
- b. The provision of free labour required to carry out the repair or replacement of any part of the equipment schedule\* that has failed during normal use. The cost of components or replacement parts required to restore the equipment to working order will be recorded and charged to the customer as appropriate. Parts may be exchanged on a like for like basis.

- c. The Company may inspect, adjust, repair or replace the equipment or any part of it as it considers necessary or advisable. Any charges will be agreed with the customer before replacement is made.
- d. Unless otherwise agreed specifically in writing by the Company in relation to any particular item, the Company has no responsibility under this Contract in relation of any of the following items, namely:
  - i. Software, storage media, data retrieval
  - ii. Aerials, Building, wiring or telephone instruments where relevant
  - iii. External services outside the control of the Company
  - iv. Consumable items as specified by the equipment manufacturer/distributor
  - v. Repair or alteration of equipment by unauthorised 3rd parties

\* Equipment Schedule shall be taken to mean any hardware installed within the Bird Computers supplied equipment at the time of purchase. External items are classed as peripherals and therefore have a 12 month return to base or manufacturers warranty. Batteries are subject to charge / discharge limits so are classed as consumable items. The warranty on this item is therefore 90 days.

\*\*\* Monitors are provided with a manufacturer's warranty. This does not provide a specified response time to any warranty issue reported. Suspected problems should first be reported to Bird Computers who, following determination that a hardware fault exists, will put the caller in contact with the manufacturer or their service agents.