

SEARCHWOOD LIMITED T/A COMSCO

Terms and conditions of Sale, Rental and Provision of Searchwood Limited T/A Comsco Radio Paging, Telephone Answering and Associated Services

This Agreement includes the terms and conditions overlaid and the following terms and conditions:

1. DEFINITIONS

In this agreement:
Searchwood Limited T/A Comsco UK Limited means Searchwood Limited T/A Comsco UK Limited, its successors and assigns.
Customer means the customer overlaid.
Equipment means any and all tone, numeric and alpha numeric radio paging equipment or other equipment and accessories purchased or rented by Customer hereunder, as indicated overlaid or as subsequently agreed by the parties in writing.
Network means the radio paging telecommunications system operated by Searchwood Limited T/A Comsco in the United Kingdom.
Services means any and all airtime on the Network or other services provided to Customer hereunder, as indicated overlaid or as subsequently agreed by the parties in writing.

2. EFFECTIVENESS OF AGREEMENT

When signed by Customer and tendered to Searchwood Limited T/A Comsco with the initial payment, this document shall constitute an order for the Equipment and Services. Such order shall be subject to Searchwood Limited T/A Comsco's acceptance and shall not become a binding agreement until signed by Searchwood Limited T/A Comsco. Delivery of Equipment on the Network shall not indicate or imply that Customer's order has been accepted by Searchwood Limited T/A Comsco or become a binding agreement.

3. PURCHASE OR RENTAL OF EQUIPMENT AND SERVICES

On the terms and conditions set forth in this agreement, Searchwood Limited T/A Comsco shall sell and Customer shall purchase the purchased Equipment, Searchwood Limited T/A Comsco shall let to Customer and Customer shall rent from Searchwood Limited T/A Comsco the rented Equipment, and Searchwood Limited T/A Comsco shall provide and Customer shall purchase the Services.

4. PRICE

4.1 Initial Prices. The total purchase price for purchased Equipment and the once only and initial monthly charges for rented Equipment and for Services are as set forth overlaid. All such prices and charges are exclusive of value added tax which shall be payable by Customer at the applicable rate.
4.2 Price Increases. Searchwood Limited T/A Comsco may from time to time, subject to any period during which charges are fixed as indicated overlaid, increase the level of monthly charges for rented Equipment and Services upon notice to Customer not less than 30 days before the new charges are due to take effect. If any such charge is to be increased by more than 15% during any calendar year, then Searchwood Limited T/A Comsco shall give Customer at least 60 days prior notice of such increase, and Customer may terminate this agreement by giving Searchwood Limited T/A Comsco at least 30 days notice prior to the expiry of such 60-day period.

5. PAYMENT

5.1 Initial Payment. The amount indicated overlaid as the 'total payable with order' may be tendered by cheque, cash or credit card. If Searchwood Limited T/A Comsco does not sign this agreement within 30 days of Customer's order, then Searchwood Limited T/A Comsco shall return all cheques or credit card slips held by Searchwood Limited T/A Comsco or otherwise reimburse Customer for the amount paid.
5.2 Future Payments. All future charges shall be due and payable by Customer on receipt of invoices from Searchwood Limited T/A Comsco. Time of payment is of the essence of this agreement. All such charges shall be paid by direct debit or by such other method as Searchwood Limited T/A Comsco may direct. Customer shall sign such authorizations to its bankers as Searchwood Limited T/A Comsco may require from time to time giving effect to this clause.
5.3 Interest. If any charges due from Customer remain unpaid for more than 14 days after the due date, then, without prejudice to its other rights, Searchwood Limited T/A Comsco may charge interest on the past due amount at a rate that is 3 percentage points above the base lending rate of Barclays Bank plc in effect on the due date, calculated from the due date until the date paid.
5.4 Dishonoured Payments. Customer shall pay on demand any costs of re-presenting any dishonoured or countermanded direct debit, standing order, cheque or other method of payment and all costs and expenses incurred in tracing Customer and in taking steps to enforce payment of any sums due.

6. TITLE TO EQUIPMENT

property in any purchased Equipment shall remain with Searchwood Limited T/A Comsco until the total purchase price, including value added tax, has been received and collected by Searchwood Limited T/A Comsco, and until such time Customer shall hold the Equipment as bailee for Searchwood Limited T/A Comsco. Property in any rented Equipment shall at all times remain with Searchwood Limited T/A Comsco. Customer shall not remove or obscure any Comsco logo, symbol or mark on Equipment.

7. WARRANTIES

7.1 Limited Equipment Warranty. Searchwood Limited T/A Comsco warrants that on delivery all Equipment shall conform to the technical specifications issued at that time by Searchwood Limited T/A Comsco. At Searchwood Limited T/A Comsco's option, The Communication Company shall repair or replace free of charge any Equipment that does not conform to such specifications, provided that such Equipment must be returned to Searchwood Limited T/A Comsco (a) within 90 days from the date of purchase in the case of purchased Equipment or (b) at any time during the rental term in the case of rented Equipment. Repair or replacement under this clause shall be Customer's exclusive remedy and Searchwood Limited T/A Comsco's sole obligation under this warranty. In connection with this warranty, Customer shall pay the cost of returning defective Equipment to Searchwood Limited T/A Comsco and Searchwood Limited T/A Comsco shall pay the cost of returning repaired or replacement Equipment to Customer.
7.2 Limited Services Warranty. Searchwood Limited T/A Comsco warrants that it shall provide the Services using a reasonable level of skill and care. Customer acknowledges that from time to time operation of the airtime Services may be adversely affected by physical limitation of the Network and other causes, including buildings and underpasses, atmospheric conditions and other causes of interference beyond the reasonable control of Searchwood Limited T/A Comsco and Searchwood Limited T/A Comsco does not warrant against and shall not be liable to Customer for any loss or damage suffered for any period of non-operation due to such interference or for any other event of force majeure described in clause 12. Searchwood Limited T/A Comsco may from time to time, without notice or liability to Customer, suspend the airtime Services and, at Searchwood Limited T/A Comsco's discretion, disconnect any Equipment from the Network during any period in which the Network is subject to technical failure, modification or maintenance. Customer shall, except where suspension is for a substantial period, remain liable for the monthly charges during the period of suspension or disconnection.

8. USE AND CARE OF EQUIPMENT

8.1 Risk of Loss of Purchased Equipment. Risk of damage to or theft, loss or destruction of any purchased Equipment shall pass to Customer on delivery.
8.2 Maintenance of Purchased Equipment. If Customer has paid for maintenance coverage for purchased Equipment as indicated overlaid and covered Equipment fails to function as a result of inherent defects or reasonable and normal wear and tear, then Searchwood Limited T/A Comsco shall, at its option, repair or replace such Equipment free of charge provided it is presented to Searchwood Limited T/A Comsco for service during the applicable coverage period. Maintenance coverage shall not apply to cosmetic or other damage or defects to Equipment that do not affect its functioning.
8.3 Risk of Loss of Rented Equipment. Risk of damage to or theft, loss or destruction of any rented Equipment shall pass to Customer on delivery, and such risk shall pass back to Searchwood Limited T/A Comsco when and only when the Equipment is returned to and received by Searchwood Limited T/A Comsco in good working order at the expiry of the rental term. Customer shall not alter, tamper with or attempt to repair any rented Equipment or permit any person other than Searchwood Limited T/A Comsco or its duly authorized agent to do any of the same. Customer shall pay Searchwood Limited T/A Comsco the cost of repair or replacement of any rented Equipment that is damaged, stolen, lost or destroyed, unless such damage, theft, loss or destruction is expressly otherwise covered by warranty or loss waiver coverage.

8.4 Loss Waiver Coverage for Rented Equipment

If Customer has paid for loss waiver coverage for rented Equipment as indicated overlaid and at any time during the applicable coverage period any covered Equipment is damaged, stolen, lost or destroyed while within the United Kingdom, then Searchwood Limited T/A Comsco shall, at its option, repair or replace such Equipment free of charge.

8.5 Limitation on Loss Waiver and Warranties.

Loss waiver coverage shall not excuse or limit Customer's liability to Searchwood Limited T/A Comsco for damage, theft, loss or destruction of rented Equipment due to, and Equipment warranties or maintenance coverage shall not apply to Equipment defects caused by: (a) improper use or neglect by Customer; (b) use of the Equipment with incorrect batteries, accessories or attachments not supplied by Searchwood Limited T/A Comsco; or (c) attempts by Customer or other unauthorized to repair or modify the Equipment. Except to the extent Customer has purchased loss waiver coverage from Searchwood Limited T/A Comsco, Customer shall keep all rented Equipment insured through a reputable insurer against damage, theft, loss or destruction from all usual risks.
8.6 Relief from Obligations. Damage to or theft, loss or destruction of any Equipment arising from any cause, including any insured risk, shall not relieve Customer of any obligation under this agreement.

9. LIABILITY LIMITATIONS

9.1 Consumers. None of the provisions in this agreement shall affect the statutory rights of consumers and Searchwood Limited T/A Comsco does not seek to exclude or restrict its liability to consumers where statute provides that such liability cannot be excluded or restricted.
9.2 Exclusion of Statutory Conditions and Warranties. Searchwood Limited T/A Comsco warrant the Equipment and the Services on the terms of clause 7. Except where Customer deals as a consumer, all conditions and warranties implied by statute, common law or otherwise in relation to the sale or rental of the Equipment or the provision of the Services are hereby excluded.

9.3 Loss or Damage. Searchwood Limited T/A Comsco shall not be liable to Customer for loss or damage arising from its negligence (or the negligence of its employees or agents) or otherwise, however arising, except that Searchwood Limited T/A Comsco does not exclude or restrict its liability for death or personal injury resulting from the negligence of Searchwood Limited T/A Comsco or its employees or agents.

9.4 Consequential Loss or Damage. Searchwood Limited T/A Comsco shall not be liable to Customer under contract, tort or otherwise for any indirect, consequential or special loss or damage, including, without limitation, loss of profits, revenues or other economic loss, whether or not foreseeable arising from the sale and/or rental of the Equipment, the non-delivery of the Equipment or the provision of or failure to provide the Services, or for any claim made against Customer by any other party, whether or not foreseeable.

9.5 Maximum Liability. The aggregate liability of Searchwood Limited T/A Comsco to Customer under contract, tort or otherwise for any loss, damage or expense suffered by Customer as a result of entering into this agreement shall not, under any circumstances, exceed a sum equal to the charges paid by Customer to the date of the loss or damage, except that Searchwood Limited T/A Comsco does not seek to restrict its liability for death or personal injury resulting from the negligence of Searchwood Limited T/A Comsco or its employees.

9.6 Limitation on Actions. No lawsuit, proceeding or other action to enforce a claim by or on behalf of Customer against Searchwood Limited T/A Comsco (except in the case of personal injury or death) arising out of or in connection with this agreement, shall be commenced more than one year after the transaction or occurrence that forms the basis for the claim.

10. INDEMNITY

Customer shall indemnify Searchwood Limited T/A Comsco against all liability incurred or suffered by Searchwood Limited T/A Comsco as a result of third party claims, however arising, and whether made against Customer or Searchwood Limited T/A Comsco from Customer's unauthorized use or any third party's use of the Equipment or the Services or from any breach by Customer of any term or condition of this agreement.

11. USE INSTRUCTIONS

Customer acknowledges that current law restricts and regulates the use of the Services and the Equipment. Customer shall observe all such restrictions and regulations notified by Searchwood Limited T/A Comsco from time to time. Without limiting the generality of the foregoing, Customer shall: (a) not use or allow others to use the Equipment for any improper, immoral or unlawful purpose; (b) comply with any reasonable instructions issued by Searchwood Limited T/A Comsco concerning Customer's use of the Equipment and the Services; (c) provide Searchwood Limited T/A Comsco with all such necessary information that Searchwood Limited T/A Comsco may reasonably require in connection with Customer; and (d) in the case of rented Equipment, not take it outside the United Kingdom without the consent of Searchwood Limited T/A Comsco.

12. FORCE MAJEURE

Searchwood Limited T/A Comsco shall not be liable, whether by way of refund of charges or otherwise, to Customer for any breach of this agreement or failure on the part of Searchwood Limited T/A Comsco to perform any obligations as a result of technical problems relating to the network (including the failure by British Telecom or any other public telephone or other Network operator to provide services to the Network), termination of any licence to operate or use the Network, act of God, fire, flood, earthquake, strike, riot, civil disorder, unavoidable casualty, government control, restriction or prohibition or any other governmental or administrative act or omission whether local or national, state or war, accident, the act or default of any supplier, agent or subcontractor, industrial disputes of any kind or any other cause beyond Searchwood Limited T/A Comsco's reasonable control.

13. TERM OF AGREEMENT

13.1 Minimum Term. Rental of Equipment, and the provision of Services by Searchwood Limited T/A Comsco, shall commence on signature of this agreement by both Searchwood Limited T/A Comsco and Customer, and shall, subject to early suspension, disconnection or termination, continue for the remainder of the month including the date of this agreement and thereafter for the minimum term specified overlaid and thereafter unless and until terminated by either party's giving not less than 90 days written notice to the other to expire on or at any time after the expiry of the minimum term. If Customer rents any Equipment and is not a limited liability company, then Customer has the right to terminate this agreement in accordance with the statutory notice below.

13.2 Causes for Early Termination. Searchwood Limited T/A Comsco may, without prejudice to its accrued rights, by 7 days written notice terminate this agreement if: (a) Customer fails to comply with any term of this agreement, including failure to pay any amounts when due and has not remedied that failure within 7 days of receipt of notice from Searchwood Limited T/A Comsco regarding such failure; or (b) Customer makes or offers to make any arrangement or composition with his creditors or commits any act of bankruptcy or of any petition or receiving order in bankruptcy is presented or made against Customer or, Customer being a limited company, any resolution to wind up that company is passed or an administrator, administrative receiver or receiver is appointed over the whole or any part of Customer's assets or Customer becomes insolvent; or (c) any licence to operate or to use the Network, whether under the Wireless Telegraphy Acts 1949 and 1967 or the Telecommunications Act 1984 or any statutory re-enactment or modification thereof or otherwise, is revoked or terminated for any reason; or (d) if for any reason there is a suspension of the whole or any substantial part of Service for a period in excess of 2 months; or (e) if Customer does, or allows to be done, anything which in Searchwood Limited T/A Comsco's opinion may have the effect of jeopardising the operation of the Network or provision of the Services.

13.3 Effect of Early Termination. Upon termination of this agreement for any reason, Searchwood Limited T/A Comsco shall disconnect the Equipment from the Network and Customer shall pay on demand all charges due at the time of termination together with administration charges and any incidental costs arising from termination. On expiration or termination of this agreement pursuant to clause 13.1 or 13.2, Customer shall not as a result be entitled to return any purchased Equipment and Searchwood Limited T/A Comsco shall not as a result be liable to refund the purchase price paid for any purchased Equipment.

13.4 Liquidated Damages. Upon termination by Searchwood Limited T/A Comsco of this agreement during the minimum term pursuant to clause 13.2 (a) or (b) or in the event of a repudiatory or anticipatory breach by Customer during the minimum term (but not when Customer terminates the agreement pursuant to the statutory notice below), Customer shall in addition to the amounts due under clause 13.3 also pay (a) the total charges due for the remainder (if any) of the minimum term (such amount to be discounted to present value using an annual discount rate that is 2 percentage points less than the base lending rate of Barclays Bank plc in effect on the date of the aforesaid termination or breach); less (b) the fair value of any rented Equipment at the date of its return to Searchwood Limited T/A Comsco plus (c) the expected fair value of any rented Equipment at the end of the rental term (such amount to be discounted to present value using the above formula), plus (d) Searchwood Limited T/A Comsco's then-current disconnection fee. Customer recognises and accepts that the foregoing represents a fair pre-estimate of the loss and damages to Searchwood Limited T/A Comsco arising out of unlawful termination or repudiation.

14. MISCELLANEOUS

14.1 Assignment. The benefit and obligations of Customer under this agreement are personal to Customer and may not be assigned to any third party. Searchwood Limited T/A Comsco may at any time pledge or assign the benefit of and its obligations under this agreement. The attempted sale, transfer or loan of the Equipment by Customer, or its loss by or theft from Customer, shall not relieve Customer of any obligations under this agreement, including its obligations to pay all charges specified overlaid.

14.2 Amendments. Searchwood Limited T/A Comsco reserves the right to vary this agreement to comply with requirements imposed upon Searchwood Limited T/A Comsco by new legislation or European Community law, provided that such variation shall be limited to the extent necessary for such purposes. Any such variation shall be effective upon Searchwood Limited T/A Comsco's giving written notice to Customer. No other variation to this agreement shall be effective unless reduced to writing and signed by the authorized signatories of the parties.

14.3 Call Numbers. All telephone and other call numbers for use on the Network or otherwise allocated by Searchwood Limited T/A Comsco to Customer (whether the Equipment using the call number is purchased or rented) shall remain the property of Searchwood Limited T/A Comsco, and Customer shall not be entitled to use such call number in respect of the Equipment or any other equipment after termination of this agreement. Searchwood Limited T/A Comsco reserves the right to reallocate or change any number allocated to Customer from time to time during the term of this agreement and shall have no liability to Customer on account of any such change.

14.4 Entire Agreement. This agreement represents the complete and exclusive statement of the agreement between the parties in relation to the purchase and rental of Equipment and provision of the Services and supersedes all understandings or prior agreements oral or written. All representations or other communications between the parties relating to its subject matter are hereby excluded.

14.5 Waiver. Failure or delay by Searchwood Limited T/A Comsco to exercise on any occasion any of its rights shall not constitute or be deemed a waiver or forfeiture of such rights or any other rights.

14.6 Notices. Any notice, consent or other communication given under this agreement shall be in writing and may be sent by either party to the other at the address appearing overlaid (or such other address, notified in writing): (a) in the case of any notice of termination, by first class recorded delivery post, and (b) in any other case, by prepaid first class post; and shall if so sent be deemed to be duly served 48 hours after so posting.

14.7 Governing Law. This agreement shall be governed by and construed in accordance with English law and the parties agree to submit to the non-exclusive jurisdiction of the English Courts.

IF CUSTOMER IS RENTING EQUIPMENT AND IS NOT A LIMITED COMPANY, THEN THIS AGREEMENT IS REGULATED UNDER THE CONSUMER CREDIT ACT 1974 AND THE FOLLOWING NOTICE APPLIES: IMPORTANT...YOU SHOULD READ THIS CAREFULLY.

THE CONSUMER CREDIT ACT 1974 COVERS THIS AGREEMENT AND LAYS DOWN CERTAIN REQUIREMENTS FOR CUSTOMER'S PROTECTION WHICH MUST BE SATISFIED WHEN THIS AGREEMENT IS MADE. IF THEY ARE NOT, SEARCHWOOD LIMITED T/A COMSCO CANNOT ENFORCE THIS AGREEMENT AGAINST CUSTOMER WITHOUT A COURT ORDER. THE ACT ALSO GIVES CUSTOMER A NUMBER OF RIGHTS. AMONG THESE IS THE RIGHT TO END THE AGREEMENT BY WRITING TO THE PERSON AUTHORISED TO RECEIVE CUSTOMER'S PAYMENTS AND GIVING AT LEAST ONE MONTH'S NOTICE. THE AGREEMENT MUST BE ALLOWED TO RUN FOR AT LEAST 18 MONTHS, THOUGH THIS MAY INCLUDE THE PERIOD OF NOTICE. CUSTOMER WILL HAVE TO MAKE ALL THE PAYMENTS INCLUDING ANY ARREARS UNTIL THE TIME THE AGREEMENT COMES TO AN END. IF CUSTOMER WOULD LIKE TO KNOW MORE ABOUT THE PROTECTION AND REMEDIES PROVIDED UNDER THE ACT, CUSTOMER SHOULD CONTACT EITHER ITS LOCAL TRADING STANDARDS DEPARTMENT OR NEAREST CITIZEN'S ADVICE BUREAU.