



**TELKOM SA LTD ("TELKOM")
CONDITIONS OF SALE FOR A PBX SYSTEM ("System")**

1. DEFINITIONS

"System" means all equipment supplied by TELKOM as stipulated in the Schedule Of Equipment on the order.

2. AGREEMENT

These Conditions of Sale and TELKOM 's quotation constitute the entire agreement between the parties and supersedes any prior written or oral agreement or understanding with respect to the subject matter hereof. No amendment to this Agreement and no waiver of any provision shall be valid unless it is made in writing and signed by a duly authorized representative of the CUSTOMER and TELKOM. Failure by TELKOM to exercise any rights under this Agreement in any one or more instances will not constitute a waiver of such rights in any other instances.

3. ACCEPTANCE

The CUSTOMER shall be responsible for acceptance of the System within 14 (fourteen) days after installation of the System. Any reasons for non-acceptance shall be made by the CUSTOMER in writing to Telkom within fourteen (14) days after installation of the System, failing which the System shall be deemed to be accepted. The acceptance of the system is only related to the System and not to any telecommunication lines associated with the System.

4. PAYMENT

The CUSTOMER shall make payment in full of the System as quoted by TELKOM on or before the due date indicated on the invoice. If payment is to be made in cash, a non-refundable deposit of 30% of the quoted amount is required on date of signature of the quotation by the CUSTOMER and the balance outstanding shall be payable on or before the due date indicated on the invoice. The CUSTOMER shall not be entitled to set off any amount owed in terms of this Agreement against any amounts owed by Telkom to the CUSTOMER. Should the CUSTOMER fail to make payment in full on the due date as indicated on the invoice the CUSTOMER shall be liable to pay interest at 21.5% p.a. thereon calculated from the date that immediately follows the due date of the invoice until the actual date of payment.

5. OWNERSHIP

Notwithstanding delivery, the System sold by TELKOM to the CUSTOMER shall remain the sole property of TELKOM until full payment thereof has been received by TELKOM. However, the risk of loss or damage in and to the System shall pass to the CUSTOMER on the date of delivery of the System to the CUSTOMER's premises.

6. NETWORK CONNECTION

The installation of the System requires a connection to a Public Switched Telecommunications Network. This connection does not form part of this Agreement and the CUSTOMER will have to apply for it separately.

7. DELIVERY

All dates of delivery/installation shall be treated as estimated dates only and the CUSTOMER shall not have any claim of whatsoever nature against TELKOM, arising or flowing from delays in the delivery/installation of the System, howsoever caused. Notwithstanding this, TELKOM shall make reasonable endeavours to meet the deliver/installation date as requested by the CUSTOMER. In the event, however, that the CUSTOMER, for whatever reason, delay the delivery/installation for more than three (3) months, calculated from the date of conclusion of this Agreement, the CUSTOMER shall be liable for payment of

- a. storage cost , if any, and
- b. interest on the purchase price of the equipment calculated at the prime overdraft rate of ABSA Bank Ltd, which interest may be calculated monthly for as long as the CUSTOMER delays the delivery/installation .

8. ACCESS

The CUSTOMER shall prepare and make ready at its own expense, the site for the required installation and shall comply with the installation requirements as set out in Annexure A attached hereto. The CUSTOMER grants TELKOM and/or its authorised representatives and/or sub-contractors access to the CUSTOMER's premises for all purposes under this agreement. Any delays or return calls resulting from the lack of free access or prior authorisation to perform any work under this agreement may, at TELKOM's discretion, be billed at actual cost to the CUSTOMER.

9. FORCE MAJEURE

If either party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement from any cause beyond the reasonable control of that party, the party so affected shall be relieved of its obligations hereunder during the period of such events and its consequences, but only to the extent so prevented.

10. INTELLECTUAL PROPERTY

The CUSTOMER acknowledges that any System and/or software supplied in terms hereof is subject to the proprietary rights of TELKOM and/or its Licensors. TELKOM and/or its Licensors will retain title intellectual property rights associated with the System and software. The CUSTOMER will not copy or duplicate, or permit anyone else to copy or duplicate any part of the software, neither will the CUSTOMER create or attempt to create, or permit anyone else to create or attempt to create, by use of reverse engineering, the source programs or any part thereof from the object programs. The CUSTOMER shall not directly or indirectly sell, transfer, offer, disclose, lease or license any intellectual property in the System and/or the software to any third party.

11. GUARANTEE

TELKOM guarantees that the System shall be free from defects in material and workmanship under normal use for a period of 1 (one) year from date of delivery with the exception of batteries that are guaranteed for a period of three (3) months.

12. INDEMNITY

Under no circumstances will TELKOM be liable for any consequential, indirect, special, punitive or incidental damages, whether foreseeable or unforeseeable, based on claims of the CUSTOMER, (including, but not limited to, claims for loss of data, goodwill, profits, use of money or use of hardware or software, interruption in use or availability of data or the hardware, software, stoppage of other work or impairment of other assets), arising out of breach or failure of express or complied warranty, breach of contract, misrepresentation, negligence, strict liability in delict or otherwise, whether based on this Agreement, any commitment performed or undertaken under or in connection with this Agreement, or otherwise except only in the case of personal injury where and to the extent that applicable law requires such liability. In no event will the aggregate liability, which TELKOM may incur in any claim by the CUSTOMER, exceed the aggregate of 30 % of the quoted price under this Agreement.

13. CANCELLATION OF ORDERS

13.1 Acceptance by TELKOM of the signed quotation shall give rise to a binding contract. If for whatever reason the CUSTOMER cancels the order prior to installation of the System, the CUSTOMER will be liable for payment of 30 % of the purchase price of the System. If payment was made in cash, the 30 % deposit referred to in condition 4 shall serve as cancellation fee.

13.2 Should the System be an IP PBX that will be connected to the CUSTOMER's local area network (LAN), TELKOM will prior to the installation of the System, conduct a physical and technical inspection of the LAN to determine whether it is compatible with the System and whether it has sufficient capacity available to accommodate the System. In the event that the investigation produces negative results, the CUSTOMER will be responsible to attend to all shortcomings at its own cost and to the satisfaction of TELKOM, failure in which case the CUSTOMER and/or TELKOM may cancel the order by written notice without incurring any liability whatsoever. Notwithstanding the physical or technical inspection of the CUSTOMER's LAN, the CUSTOMER remains responsible for the compatibility of the LAN, the LAN itself and any associated software programs.

14. NOTICES AND DOMICILIUM

The CUSTOMER chooses as its domicilium citandi et executandi the installation address of the System.

15. ASSIGNMENT

The CUSTOMER shall not abandon, transfer, assign or sublet the Agreement or part thereof, or cede any of its rights or delegate any of its obligations in terms of the Agreement, without prior written approval of Telkom, which approval shall not unreasonably be withheld.

16. CONFIDENTIALITY

Either party shall keep confidential the terms and conditions of this Agreement and all the information obtained by it with respect to the other party in connection with this Agreement, except (a) to the extent required by law (b) in connection with any litigation or other legal proceedings where disclosures ordered or required in a court or other governmental body or agency with proper jurisdiction or (c) with the prior written approval of the other party.

17. BREACH

If a party to this Agreement: (1) commits a material breach of any provisions of this Agreement (which includes failure to pay any amount due by it in this Agreement by the due date), and fails to remedy such breach or make payment within 10 (ten) days of written notice to do so; or (2) commits an act which will be an act of insolvency as defined in the Insolvency Act 24 of 1935, becomes insolvent or enters into voluntarily or compulsory liquidation or passes a resolution for liquidation or makes an arrangement or compromise with his creditors, takes steps to de-register itself, or is de-registered, such a party shall be in default. If the CUSTOMER is in default, Telkom shall be entitled, in addition to all other remedies to which it may be entitled to in a law or in terms of this Agreement, to suspend without giving notice, any other telecommunication services rendered in terms of any other agreement between the CUSTOMER and Telkom until the breach is remedied. If any legal proceedings have to be instituted by Telkom to enforce its rights in terms of this Agreement the CUSTOMER will be liable for legal costs on the scale of attorney and own-client cost and any collection commission.

18. MAINTENANCE

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"Maintenance Services" means such maintenance of the System as is necessary to maintain the System in good order in accordance with the manufacturer's specifications and shall include the necessary adjustment and the replacement of defective parts. TELKOM shall provide Maintenance Services on the system at the installation address during office hours namely 08:00 to 16:30, Monday to Thursday and 08:00 to 16:00 on Friday, all Public Holidays excluded. Recovered or replaced modules, parts and/or units or part thereof shall become the property of TELKOM. Telkom agrees to repair all faults on the System as soon as reasonably possible having received either telephonic or written notices from the CUSTOMER. A chargeable after-hours maintenance/repair service is available on request. TELKOM does not warrant that the operation of the System will be uninterrupted or error free. Should any fault reported by the CUSTOMER prove to be unfounded or due to sources external to the System, TELKOM reserves the right to charge the CUSTOMER TELKOM's ruling abortive maintenance visit charge. The connection of unapproved equipment or cabling or upgrades for use with the System and/or software or in association with or in relation to or inconnection with the System and/or software by the CUSTOMER, may result in the suspension of the maintenance services contemplated and/or the termination of this Agreement. Any additional equipment installed will become part of this maintenance service. Such additional equipment will not extend the duration of the maintenance service. The CUSTOMER shall be responsible for executing those maintenance actions described in the operator and user manual supplied with the System. Any other action shall be considered the responsibility of TELKOM. The CUSTOMER shall not carry out any work on the System or allow any person or company other than TELKOM and its authorized representatives to eliminate faults or to extend the configuration of the System.

18.1 EXCLUSIONS

The Maintenance Services shall not include the following:

- maintenance, repair, adjustments or modifications on the System or any parts thereof not carried out by TELKOM;
- service to any system being connected to or supported by or run with any software and/or system not supplied by TELKOM;
- service to software if the fault is due to the failure of anything not contained in TELKOM's order;
- service iro movement of and/or alterations to the System not authorized by TELKOM;
- making specification changes or performing service iro the relocation of the System or adding or removing accessories, attachments or other devices;
- any changes or modifications requested by the CUSTOMER;
- adjustments, alterations or repairs required to protect the System against interference to the System caused by radio waves, induction or any other source;
- those operator or extension user functions which should be carried out by the CUSTOMER in terms of the operator and user manuals;
- repair and damage or increase in service time resulting from force majeure, fire, water, surges in the main electricity supply, accident, transportation, neglect, misuse or use for purposes other than that for which the System is designed, failure of electrical power, air conditioning or humidity control;
- service as a result of malicious damage;
- service as a result of damage caused by lightning and/or power surges, except if the TELKOM lightning protection unit applicable to the System has been purchased by the CUSTOMER and fitted on the System;
- any cables external to the System that have to be replaced;
- service to underground cables/reticulation where the CUSTOMER does not supply sufficient protection for the cables/reticulation in the form of pipes;
- maintenance of any system located in an unsuitable place as determined by TELKOM;
- the painting or refurbishing of the System or supplying of materials for this purpose;
- the supply and installation of replacement batteries;
- service on any equipment not supplied by TELKOM;

ANNEXURE A

Minimum requirements for the installation of PBX equipment

The customer shall provide the following at his premises:

Minimum liabilities	Requirements for all installations	Depending on customer requirement
1. Accommodation		
Unobstructed working clearance around equipment	X	
Adequate lighting	X	
Sufficient ventilation with protection from elements (e.g. dust, rain, etc.)	X	
Indoor, dry area (typical office environment)	X	
Maintained non-condensing relative humidity between 0% and 80%	X	
Maintained temperature range between 0°C and 40°C	X	
Place to mount control unit and MDF on wall	X	
Space on wall to allow for possible future expansion of system (e.g. additional control unit)		X
2. Power 220V and earth		
Maintained supply voltage of 220V ±10% at 48 to 63 Hz	X	
At least two (2) standard 15A mains power wall sockets for Telkom use only	X	
Mains earth to be properly connected to building earth	X	
No extension cords are allowed	X	
3. Site logistics		
Permission for access to premises during working hours	X	
Adequate safety and environmental conditions in accordance with occupational health and safety laws	X	