

## SETEL POWERLINE LIMITED - CONDITIONS OF BUSINESS

### 1 INTERPRETATION

1.1 The definitions and rules of interpretation in this Clause apply in these Conditions:

**“Agreement”** these Conditions and the Purchase Order.

**“Charges”** the charges payable by you to Setel pursuant to Clause 7 as set out in the Purchase Order together with any out of pocket expenses incurred by Setel in relation to the Services.

**“Conditions”** these terms and conditions as amended by Setel from time to time.

**“Confidential Information”** any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of its group, including but not limited to information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers and information.

**“Customer Equipment”** your equipment, network, systems and software which you use in connection with the Hardware and the Services.

**“Hardware”** the equipment as specified in the Purchase Order which Setel will supply to you under the Agreement.

**“Helpdesk”** our first line point of support, details of which are attached to the Purchase Order or are otherwise set out on our Website.

**“Purchase Order”** your order for Hardware and Services which has been accepted and signed by Setel's authorised representative and which sets out the Hardware, Services, Specification and the relevant Charges.

**“Services”** the services to be provided by Setel as detailed in the Purchase Order which may include design services and installation services.

**“Specification”** the requirements for the Hardware and Services as attached to the Purchase Order.

**“Support Hours”** our normal working hours of 9.00am to 5.00pm, Monday to Friday excluding UK public holidays when support for the Hardware will be provided by us unless otherwise agreed in a separate maintenance and support services agreement or as otherwise in writing.

**“Vessel”** the vessel(s) which you own or operate upon which the Hardware will be installed as detailed in the Purchase Order.

**“we”** or **“us”** Setel Powerline Limited of 70, Queen Victoria Street, London or our successors and assigns.

**“Website”** our website at: [www.setel-powerline.com](http://www.setel-powerline.com).

**“you”** the customer specified in the Purchase Order.

### 2 APPLICATION OF TERMS

2.1 These Conditions apply to the Agreement to the exclusion of any other terms that you

may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

- 2.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

### **3 SUPPLY OF HARDWARE**

- 3.1 Setel shall provide and install (either itself or via a third party) the Hardware in accordance with the Purchase Order and Specification.
- 3.2 Setel will require all necessary access and information from you to enable Setel to complete the installation of the Hardware. Setel will coordinate with your authorised agents and/or representative, as communicated by email following the signing of the Agreement, in order to arrange for the installation.
- 3.3 Setel shall not be liable if there is any delay in the installation. Any dates which we give to you are estimates only and time shall not be of the essence with respect to such dates.

### **4 OBLIGATIONS**

- 4.1 In order for us to provide the Hardware and the Services you shall provide us with all necessary co-operation in relation to the Agreement and access to such information as we may require, including but not limited to Customer Equipment, data, security access information, configuration services, and access to the communications necessary for remote support.
- 4.2 Subject to Clause 4.3 you are solely responsible (at your cost), for procuring and maintaining all necessary Customer Equipment, software, network facilities and telecommunications services which are required to access and make use of the Hardware and for Setel PowerLine to provide Services.
- 4.3 You must only use the Hardware in accordance with any instructions advised to you by Setel. Setel shall not be liable for any unauthorised access or reconfiguration of the Hardware by anyone not authorised by Setel.
- 4.4 You shall:
- 4.4.1 ensure that your Customer Equipment: a) meets the minimum technical specifications as notified by us for compatibility with the Hardware; and b) is supplied and maintained in a safe condition, in good working order and that it complies with all applicable legislation or regulations;
  - 4.4.2 comply with all applicable laws and regulations with respect to your activities under the Agreement including without limitation clause 4.6; and
  - 4.4.3 carry out all other responsibilities set out in the Agreement in a timely and efficient manner. In the event of any delays in your provision of such assistance as agreed by the parties, we may adjust any agreed timetable or delivery schedule as reasonably necessary.
- 4.5 We shall not be responsible for any delay or inability to provide the Hardware or Services where this is caused by your breach of any of the obligations in these Conditions.
- 4.6 You shall provide a safe environment for our engineers to perform Services in

accordance with all applicable laws and regulations from time to time, including without limitation, the Health and Safety at Work etc. Act 1974 and the requirements of the Maritime and Coastguard Agency, International Maritime Organisation, Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 and MGN 20 & MGN 492 (M+F) and shall meet the required duty of care. You shall indemnify us in full for any breach of this clause 4.6.

## **5 RISK AND TITLE**

- 5.1 Ownership of the Hardware shall remain with Setel until full payment of the Charges has been received from you in cleared funds.
- 5.2 If the Charges are not paid by the due date, or if you enter into or if in our reasonable opinion you look likely to enter into insolvency, then Setel may take all necessary action under applicable law to recover the Hardware.
- 5.3 Any risk associated with the Hardware shall remain with you following installation.

## **6 SUPPORT AND WARRANTY**

6.1 We warrant that the Hardware and the Services will conform to the Specification. All other conditions, warranties or other terms which might be implied or incorporated into the Agreement, whether by statute, common law or otherwise, are hereby excluded to the fullest extent permitted by law. Setel warrants the Hardware for twelve (12) months from delivery. For those clients enrolled in PowerLine PROTECT Setel provide a life-time warranty on the hardware.

6.2 Notwithstanding Clause 6.1, we:

6.2.1 do not warrant that your use of the Hardware will be uninterrupted or error free and you acknowledge that you are comfortable that the Hardware will meet your business requirements; and

6.2.2 are not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, such as the internet, and you acknowledge that the Hardware and Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

6.3 If you experience any Hardware failure and wish to make a warranty claim, you shall notify us via our Helpdesk during Support Hours with a full description of the Hardware failure. The Hardware shall be returned to the original manufacturer to diagnose and verify the warranty failure. If the warranty claim is valid then Setel shall provide a replacement in full satisfaction of its liability for the failed Hardware. We shall not be liable for any failure or defect in the Hardware caused by the Customer Equipment or any unauthorised personnel.

## **7 CHARGES**

- 7.1 The Charges applicable for the Hardware and Services shall be as set out on the Purchase Order.
- 7.2 Any engineer day charges for Services shall be payable in advance of such engineer day charges being incurred.

- 7.3 If you change or do not meet any of the required detail stated in the Specification including without limitation re-routing or non-arrival of the Vessel then you shall pay all costs and expenses incurred by Setel as a result of the Specification not being met.
- 7.4 All sums payable are exclusive of VAT (and any other applicable sales tax or duty), which shall be added to the Charges at the applicable rate.
- 7.5 You shall pay the Charges in full and without set-off, withholding and/or deduction in accordance with the payment terms set out on the Purchase Order.
- 7.6 If any Charges are overdue and not subject to a bona fide dispute, Setel shall, in addition to its other rights and remedies, be entitled to charge interest on any overdue amounts at the rate set out from time to time in the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.7 You must notify us of any query or dispute in respect of any invoice, or any part of an invoice within fourteen (14) days of the date of the invoice and we shall negotiate in good faith as soon as reasonably practicable to resolve the dispute. If you do fail to notify us of any dispute within the fourteen (14) day period, the full amount of the invoice shall be payable. Payment for all sums not in dispute shall be made on the due date.

## **8 INTELLECTUAL PROPERTY**

- 8.1 You acknowledge and agree that we and/or our suppliers own all intellectual property rights of any nature in the Hardware and Services. Except as expressly stated in this Agreement, you are not granted any rights to, or in, patents, copyrights, database rights, trade secrets, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Hardware or the Services.
- 8.2 You shall not, except as may be permitted by law or otherwise in accordance with this Agreement: (a) copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Hardware in any form or media or by any means; or (b) reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Hardware. You will indemnify us in full for any breach of this clause.

## **9 LIABILITY**

- 9.1 Nothing in this Clause 9 shall limit or exclude our liability to you for death or personal injury, or fraudulent misrepresentation, or breach of any warranty implied by clause 2 of the Supply of Goods and Services Act 1982 or for any other loss or damage which cannot be excluded by law.
- 9.2 Subject to Clause 9.1, we shall have no liability to you for:
- 9.2.1 any loss of profits or anticipated profits; loss of anticipated savings; loss of business opportunity or loss of goodwill or wasted management time which you may suffer, whether they arise directly or indirectly or are immediate or consequential and whether they arise in contract, tort (including negligence) or otherwise; or
- 9.2.2 any indirect or consequential loss or special damage (even though we were aware of the circumstances in which such special damage could arise); or
- 9.2.3 any loss of or damage to your data, howsoever caused.
- 9.3 Subject to Clauses 9.1 and 9.2, our total liability to you, whether in contract, tort

(including negligence) or otherwise in connection with the Agreement, shall not exceed a sum equal to the total value of the Charges.

## **10 TERMINATION**

- 10.1 We may terminate the Agreement immediately on notice to you, and without liability to you:
- 10.1.1 if you fail to pay any amount due on the due date for payment and remain in default more than 21 days after being notified by us in writing to make such payment,
  - 10.1.2 if you breach any of the terms of this Agreement and the breach (where the breach is capable of being remedied) has not been remedied within 30 days of our written request to remedy it;
  - 10.1.3 if you convene a meeting of your creditors or if a proposal is made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) your creditors or if you are unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee receiver, administrative receiver or similar officer is appointed in respect of all or any part of your business or assets or if a petition is presented or a meeting is convened for the purposes of considering a resolution or other steps are taken for your winding up or for making of an administration order;
  - 10.1.4 if such action is required to comply with legislation or a regulatory requirement; or
  - 10.1.5 if you are involved in any fraudulent or unlawful activity.
- 10.2 We may terminate the Agreement without liability if we are prohibited or restricted from providing any part of the Hardware or Services by a third party including without limitation failure of our suppliers.
- 10.3 On termination of the Agreement for any reason:
- 10.3.1 you shall immediately pay to us all of our outstanding unpaid invoices and interest; and
  - 10.3.2 our respective accrued rights and liabilities as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.
  - 10.3.3 Clauses 8, 9, 11 shall survive following termination.

## **11 CONFIDENTIALITY**

- 11.1 Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.
- 11.2 Confidential Information of the disclosing party may be disclosed by the receiving party to its employees, affiliates and professional advisers; provided that the receiving party procures that any such recipient complies with the provisions of this Clause 11.

- 11.3 The obligations set out in this Clause 11 shall not apply to Confidential Information which the receiving party can demonstrate:
- 11.3.1 is or has become publicly known other than through breach of this clause 11;  
or
  - 11.3.2 was in possession of the receiving party prior to disclosure by the other party;  
or
  - 11.3.3 was received by the receiving party from an independent third party who has a full right of disclosure; or
  - 11.3.4 was independently developed by the receiving party; or
  - 11.3.5 is required to be disclosed by a governmental authority, stock exchange or regulatory body, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement to the extent lawfully possible.
- 11.4 If the parties have entered into a confidentiality agreement before the date of the Agreement then notwithstanding Clause 14.4 such confidentiality agreement will remain in place and will take precedence over these Conditions unless the parties agree otherwise.
- 11.5 This Clause 11 shall survive termination or expiry of the Agreement, however arising and shall continue thereafter for a period of 3 years or such other period as may be agreed by the Parties.

## **12 DISPUTES**

If any dispute arises in connection with the Agreement, the directors or other senior representatives of the parties with authority to settle the dispute will, within 30 days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.

## **13 FORCE MAJEURE**

We shall have no liability to you under the Agreement if we are prevented from, or delayed in performing, our obligations under this Agreement or from carrying on our business by acts, events, omissions or accidents beyond our reasonable control including without limitation act of God, inclement weather, failure of a supplier and customs delays

## **14 GENERAL**

- 14.1 We may vary these Conditions from time to time upon notice to you.
- 14.2 A waiver of any right under the Agreement is only effective if it is in writing and shall not be construed as a waiver of any other provision of these Conditions.
- 14.3 If any provision of the Agreement (or part of any provision) is found by the court to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Agreement, and the validity and enforceability of the other provisions of the Agreement shall not be affected.
- 14.4 The Agreement constitutes the whole agreement between us and supersedes all previous agreements (except as set out in Clause 11.4) between us relating to its subject matter. We each acknowledge, in entering into the Agreement, we have not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly provided in this Agreement provided that nothing in this clause

shall limit or exclude any liability for fraud.

- 14.5 You shall not, without our prior written consent, assign, transfer, subcontract or deal in any manner with any of your rights or obligations under the Agreement.
- 14.6 We may at any time subcontract or delegate in any manner any or all of our obligations under the Agreement to any third party or agent.
- 14.7 A person who is not a party to the Agreement shall not have any rights under or in connection with it.
- 14.8 Nothing in this Agreement shall create a relationship of agency, partnership or joint venture between us.
- 14.9 Any notice required to be given under the Agreement shall be in writing and shall be delivered personally, or sent by recorded delivery or by commercial courier to the other party to the address set out in the Order or as otherwise specified by the relevant party by notice in writing to the other party. Any notice shall be deemed to have been duly received if delivered personally, when left at the address set out in the Order or, if sent by recorded delivery, at 9.00 am on the second business day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 14.10 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 in accordance with the law of England and Wales.
- 14.11 Each party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).