



# General Terms and Conditions

- Sale of Products
- Provision of Services



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together  
with

proximus



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## 2 Definitions

“Acceptance”	means acceptance of Products, Services and Deliverables as the case may be.
“Agreement”	means the Proposal and these terms and conditions, together with all exhibits hereto, as may be amended from time to time in accordance with clause 13.6.
“Business Days”	means any day other than Saturday and Sunday and bank and public holidays.
“Deliverable”	means the designs, specifications, software, content, documentation, modifications, and/or other tangible deliverables developed by Telindus in the course of providing Services.
“Client”	means the contracting party who enters into this Agreement with Telindus.
“Charges”	means the amounts that Telindus charges to the Client for the Services and Products with respect to this Agreement.
“Order Confirmation”	means the written confirmation by Telindus to the Client of the Purchase Order following receipt of a Purchase Order.
“Product”	means all hardware, software or other devices purchased by the Client from  Telindus pursuant to this Agreement.
“Proposal”	means a written proposal and/or quotation issued by Telindus for the provision of Products and Services.
“Purchase Order”	means the order sent by the Client in acceptance of the Proposal and terms and conditions for the provision of Products and Services.
“Services”	means all of the consulting and integration Services provided by Telindus under this Agreement including but not limited to consultancy, design, installation and project management.
“Telindus”	means Telindus SA - Luxembourg.
“Party”	means either Telindus or Client or together “the Parties”.

### 3 Applicable Terms

All sales of Products and provision of Services by Telindus shall be governed by these terms and conditions to the exclusion of any other conditions, including any general terms and conditions of the Client. All Proposals of Telindus shall be valid for a maximum period of thirty (30) days. The Client shall accept the Proposal by sending a Purchase Order to Telindus. A Purchase Order shall only be binding: (i) upon issuance by Telindus of an Order Confirmation after receipt of a Purchase Order or (ii) if Telindus starts performing the Services or delivering the Products. If there are conflicts or inconsistencies between the general terms and conditions and the Proposal, the Proposal shall prevail over these general terms and conditions.

## 4 Charges, Invoicing and Payment

### 4.1 Price and Charges

All Charges are exclusive of VAT. The price of a Product is based on the Product cost prevailing at the date of the Proposal. Charges for the delivery of Products to the location requested by the Client are quoted and charged for separately. The Charges for Services will be charged in accordance with the Proposal.

When products are subject to a trade-in programme agreed between the Client and Telindus, the Client shall return the products to the location specified by Telindus, within the agreed time frame. Telindus automatically sends an invoice when the products are not returned within the agreed time frame.

### 4.2 Invoices and Payment

All invoices will be raised in Euro and will be issued immediately following delivery of the Products or in accordance with the Proposal in respect of Services. Invoices are due and payable within thirty (30) days from invoice date. All costs related to the payment of an invoice shall be borne by the Client.

If the Client is resident outside Luxembourg, Telindus may at its sole discretion require that the total price of Products and Services ordered be secured by an irrevocable letter of credit confirmed by a bank satisfactory to Telindus immediately upon receipt of the Purchase Order. Telindus reserves the right to withdraw any period of credit at any time if in its opinion the credit worthiness of the Client shall have in any way deteriorated.

### 4.3 Dispute of Invoice

If an invoice is in any way disputed Client shall notify Telindus in writing within fifteen (15) days of invoice date. In any event the Client shall pay the undisputed amount of any disputed invoice.

### 4.4 Late Payment

In the event of late payment, Telindus shall be entitled to (i) suspend after written notice all further deliveries, warranty or Services and (ii) charge automatically and without notice interest at the rate of 1 % per month (or the maximum as permitted by law) calculated daily from the due date until actual receipt of payment. If the Client shall fail to make payment on due date Telindus shall be entitled to (i) suspend following written notice to the Client of all further deliveries and (ii) charge without notice interest at the rate of 1% per month (or the maximum permitted by law) calculated daily from the due date until actual receipt of payment.

## 5 Client's Obligations

The Client shall provide all necessary assistance to Telindus to enable the effective provision of Products and Services. Such assistance shall include but not be limited to: (i) obtaining of all licences and consents necessary for the supply of Products or the performance of the Services; (ii) appointing a member of its personnel to act as the single point of contact for all communication with Telindus and to co-ordinate the performance of the Parties obligations under this Agreement; (iii) providing all necessary information relevant for the provision of the Services or delivery of the Products; (iv) providing suitable work space or offices, and access to facilities, equipment and systems; (v) assigning competent and suitably qualified staff to functions that will enable Telindus to provide the Services; (vi) taking timely decisions with respect to the Services; (vii) making available any applicable security procedures or other policies that Telindus is expected to comply with in a timely manner prior to the start of the Services and (viii) preparing the environment for the provision of the Services. Preparation includes but is not limited to the provision of suitable power and environmental conditions.

## 6 Change Control Procedure

Either Party may propose any reasonable change or enhancement to the Services ("Change"). The Party requesting the Change shall notify the other Party in writing (the "Change Order Request") specifying (i) the proposed Change, (ii) the objective or purpose of the Change, (iii) the requirements and specifications and (iv) the requested time schedule for the Change. As soon as practicable Telindus shall notify the Client in writing (i) if the proposed Change is acceptable and (ii) as the case may be, any impact the proposed Change may have on the cost and timing of the Services including a description of changes to Products and required resources ("Change Order Response"). The Parties must provide written approval (a "Change Order") to the Change Order Response to authorize the Change prior to it being put into effect. Change Orders shall thereafter constitute the revised Services.



## 7 Delivery and Acceptance

### 7.1 Products

Telindus shall deliver the Products “Carriage Paid To” the Client’s premises (CPT Incoterms 2000). Delivery dates referred to in Proposals or purchase orders are approximate only. Telindus shall use its reasonable commercial efforts to deliver the Products at the time and place agreed. The Client shall take timely delivery of the Products. Any claim for visible defects or non-conformity in the Products shall be notified to Telindus in writing within three (3) Business Days following delivery. If the Client fails to take delivery of any Product, Telindus shall have the right to immediately invoice (i) the price of the Products and (ii) any other costs incurred by the Client’s failure to take timely delivery.

### 7.2 Services

Telindus will use its reasonable efforts to provide the Services within the agreed timeframes. Acceptance shall occur and all Services are deemed accepted upon completion of the Services unless the Client rejects the Services and/or Deliverables in writing within five (5) Business Days after completion of the Services and/or Deliverables.

## 8 Representations and Warranties

### 8.1 In respect of Services

Telindus shall provide the Client the Services with reasonable skill and care in accordance with generally accepted industry standards and practices.

### 8.2 In respect of Products

Telindus makes no representation or does not give any warranty with respect to the Product other than those stated in the documents accompanying the Product. Telindus assigns and passes on to the Client any warranty of the manufacturer. The Client acknowledges that it shall have recourse only under such warranties and only as against the manufacturer of the Products. If a Product does not contain a warranty statement, Telindus shall give the warranty in relation to the Products as set forth in this clause 8.2. Telindus warrants that hardware will be free from defects in material and workmanship for a period of three (3) months following delivery. In case of a defect, the Client shall contact Telindus and provide the serial number, manufacturer's part and model number and a description of the defect or any other relevant information. All defective Products shall be returned to Telindus premises at the Client's expense. Telindus' sole obligation with respect to warranty, at Telindus' option, for hardware shall be to either replace or repair the defective Product. Telindus may, at its option, use new, reconditioned or re-manufactured parts. If a returned Product is found not to be defective or if the Product had not been used in accordance with the specifications, Telindus shall charge for the time spent in examining the Product and other related costs. Repaired and replacement parts shall be warranted for the remainder of the original warranty period. Telindus warrants that the software will conform in all material respects with the specifications of the software documentation for a period of three (3) months following delivery. Telindus does not warrant that the operation of software will be uninterrupted or error free. Telindus gives no warranty, express or implied with respect to the software, its quality, merchantability or fitness for a particular purpose. Telindus' sole obligation with respect to defects in software shall be limited to, at Telindus' option, replace or rectify the defective software or refund the purchase price in lieu of rectification or replacement.

### 8.3 Notices

Notices for warranty claims must be in writing and sent to Telindus in writing prior to the expiration of the warranty period.

### 8.4 Limitations in respect of warranty obligations

Telindus shall have no liability in respect of: (i) any defect arising from any design or specification supplied by the Client; (ii) any Product repaired or modified by a Party other than by Telindus or a third party not approved in advance by Telindus; (iii) any defect arising from any acts or omissions by the Client or any third party; (iv) any defect arising from abnormal working or physical conditions or electrical stress; (v) any defect due to use not in accordance with the installation, handling or operating instructions of the manufacturer of the Product.

## 9 Termination

Without prejudice to its other rights and remedies, either Party may terminate this Agreement immediately by written notice to the other if the other Party: (i) is in material breach of any of its obligations under this Agreement and if capable of remedy the Party in breach shall have failed to remedy that breach within thirty (30) days after receiving written notice requiring it to remedy that breach; or (ii) is unable to pay its debts or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other Party (otherwise than for the purposes of a solvent amalgamation or reconstruction) (iii) appoints an administrative or other receiver, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of the other Party or the other Party enters into or proposes any composition or arrangement with its creditors generally or anything analogous to the foregoing occurs in any applicable jurisdiction (iv) is materially in breach of its payment obligations.

Termination of this Agreement shall be without prejudice to the rights of the Parties already accrued and existing. In any event, the Client shall pay all (i) the price of the Products ordered by Telindus from its supplier that cannot be cancelled, (ii) the Charges for Services performed, (iii) any other cost of Telindus' personnel assigned to the performance of the Services and (iv) any other expenses incurred by Telindus including accrued interest up to the date of termination.

## 10 Property Rights

### 10.1 Title to Products

The Products shall remain the sole property of Telindus until full payment of the purchase price. Until such time, the Client shall take custody of the Products and hold them as trustee for Telindus. The Client shall store the Products in such a way that they are readily identifiable as the property of Telindus. The Client shall not transfer the Products so long as it has not acquired full title to the Products.

### 10.2 Intellectual Property Rights

Ownership of any intellectual property right (including, but not limited to any copyrights, patents, trademarks and other proprietary rights) of Telindus and/or the manufacturers of the Products (i) existing at the time of execution of this Agreement or (ii) originating in the course of this Agreement, is and shall remain solely and exclusively with Telindus, its licensors or suppliers. All software is provided subject to a license agreement of the licensor or manufacturer of the software. Where applicable if the Client has been supplied with a software license agreement requiring signature the Client shall promptly sign and return the license agreement to the licensor or manufacturer of the software as required in the software license agreement.

Nothing in this Agreement shall be construed as a transfer or assignment of any intellectual property rights from Telindus to the Client. As a consequence, no title or proprietary interest to any Product or related materials (including but not limited to reports, drawings, data sheets, books, machines, models, tools, programming tools, documents or documentation and software) and any modifications or improvements thereof used, developed or made available by Telindus in the course of the provision of the Services is transferred to the Client. Telindus grants to the Client a personal, non-transferable and non-exclusive right to use Telindus' intellectual property rights solely for the specific purposes set forth in this Agreement.

## 11 Confidentiality

### 11.1 Confidential Information

A Party may have access to the confidential information of the other Party. Any Proposal or any information marked as confidential (“Confidential Information”) shall be treated as confidential. Each Party shall take all reasonable measures to keep the Confidential Information and the terms of this Agreement in strict confidence and shall not disclose it to any third party without the prior written consent of the disclosing Party.

### 11.2 Disclosure

Each Party agrees that all Confidential Information received from the other Party will be disclosed by the receiving party only to its employees or subcontractors on a need-to-know basis, and that the receiving Party will inform such persons of its obligations under this Agreement.

### 11.3 Exceptions

Confidential Information shall not include (i) information rightfully in the receiving Party’s possession or known to it prior to receipt of such information from the disclosing Party and which had been received by the receiving Party without a duty of confidence; (ii) information which was rightfully disclosed to the receiving Party by another person; (iii) information which is part of or enters into the public domain without any improper action or inaction by the receiving Party; and (iv) information which is independently developed by the receiving Party.

## 12 Liability

This Agreement sets out Telindus' entire liability to the Client. Except as expressly stated in this Agreement, all liabilities, warranties and conditions, whether express or implied by statute or otherwise, are hereby excluded to the extent permitted by law.

Telindus' entire aggregate liability in respect of any matters arising from any breach of its contractual obligations (express or implied) or any misrepresentation (unless fraudulent), tortuous act or omission including negligence arising under or in connection with this Agreement shall be limited as follows: Telindus' total liability (i) with respect to Products is limited to the price of the Product giving rise to the liability and (ii) with respect to the Services (including any and all breaches, performance, non-performance, acts or omissions) shall in the aggregate not exceed an amount equal to fifty (50) % of the Charges paid to Telindus during the six-month period immediately preceding the most recent event giving rise to liability. Neither Party shall be liable to the other for any special, incidental or consequential or indirect damages (including, without limitation, damages due to business interruption, lost sales or loss of profits, competitive advantage, goodwill, third party claims or loss of data) regardless of the cause of such loss or damage. Any claim by the Client in relation to this Agreement must be notified to Telindus within six (6) months of the damage or claim or loss arising or otherwise no later than six (6) months following termination of this Agreement.

## 13 General Provisions

### 13.1 Governing law and Jurisdiction

This Agreement shall be governed by and construed and interpreted in accordance with Luxembourg law and regulations. Any dispute arising out of or in connection with this Agreement shall be the subject of the exclusive jurisdiction of the Courts in Luxembourg.

### 13.2 No partnership

Nothing in this Agreement shall be construed as creating a joint venture, partnership or other business association outside the terms of this Agreement. Telindus' personnel providing Services to the Client shall not be deemed to be an employee of the Client for any purpose whatsoever. Each Party shall remain an independent contractor. Neither Party shall have authority to contract for or bind the other in any manner whatsoever.

### 13.3 Subcontracting

Telindus may subcontract the whole or a part of the Services to one or more third parties but shall remain solely responsible for its obligations under this Agreement.

### 13.4 Non-Solicitation

During and for a period of six (6) months following termination of this Agreement, the Client shall not directly or indirectly solicit for hire or engage any personnel (whether as employee, consultant or in any other capacity) of Telindus with responsibilities related to this Agreement without Telindus' prior written consent.

### 13.5 Assignment

Neither Party may assign, sub-license or otherwise transfer of any of its rights under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, provided that nothing in this agreement shall prevent or restrict Telindus from assigning, sub-licensing, transferring or otherwise disposing of any of its rights or obligations under this Agreement to its affiliates.

### 13.6 Variation

This Agreement may only be amended if in writing and signed by duly authorised representatives of the Parties.

## 13.7 Entire Agreement; Successors; Paragraph Headings; Severability; Waiver

This Agreement, including any documents incorporated by reference, constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements, whether oral or written, between the parties with respect to such subject matter. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. The paragraph headings of this Agreement are included for convenience of reference and are not to be used in interpreting this Agreement. The provisions of this Agreement are severable and if any one or more such provisions shall be determined to be invalid, illegal or unenforceable, in whole or in part, the validity, legality and enforceability of any of the remaining provisions or portions thereof shall not in any way be affected thereby. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision.

## 13.8 Return of Products

In accordance with the Waste Electrical and Electronic Equipment Directive 2002/96/EC, Telindus shall accept the return of the hardware Products sold by Telindus which the Client wishes to dispose of. The Client is responsible to return the hardware at its cost to Telindus premises or any other location specified by Telindus.

## 13.9 Force Majeure

Neither Party shall be liable for delay or non-performance of its obligations under this Agreement if such delay or default is caused by circumstances beyond its control, including but not limited to fire, flood, accident, storm, acts of God, war, riot, government interference, strikes, and insolvency of the manufacturer and unavailability of the Product. Dates and times by which Telindus is required to perform its obligations under this Agreement shall be postponed automatically to the extent that Telindus is prevented from meeting them by such conditions of force majeure.

## 13.10 Notices

All notices under this Agreement shall be sent in writing by registered mail, courier, fax or email or delivered in person to the General Counsel at the registered address of the Party to whom it is addressed. Notices shall be deemed to be received within three (3) Business days after being dispatched by registered mail or received on the next Business Day if sent by courier with receipt of dispatch, or if sent by fax or email with confirmation of transmission.

## 13.11 Import and Export

The Client acknowledges that the Products may be subject to export and import regulations and shall strictly comply with all such regulations.