

TERMS AND CONDITIONS FOR THE ORDER OF EQUIPMENT

Definitions 1 and Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in these conditions:
Equipment: the equipment agreed in the Order Form to be rented by You from NIX or a Funder.
Funder: a third party finance provider willing to provide finance for the Equipment and enter into a Rental Agreement with You.
Order Form: the order form overleaf signed by You.
Pre-Installation Services: the assistance to be provided by NIX pursuant to condition 2.3 below together with all other services which NIX deems is required in readiness for installation of the Equipment which shall include without limitation order administration, the booking of engineers and site surveys.
Rental Agreement: means the agreement for the rental of the Equipment in the standard form produced by the Funder or NIX as the case may be.
You or Your: the person, firm or company who signs the Order Form order the Equipment.
- 1.2 Clause and paragraph headings shall not affect the interpretation of these terms and conditions.
- 2 **THE CONDITIONS**
- 2.1 By signing the Order Form You expressly agree to hire the Equipment in accordance with the terms of the Rental Agreement, subject to the Funder and/or NIX (as the case may be) approving Your application for finance.
- 2.2 You will use Your best endeavours to obtain third party finance from a Funder and to enter into a Rental Agreement as soon as possible after the date of this Order Form.
- 2.3 NIX shall use reasonable endeavours to assist You with Your application for third party finance from a Funder but shall have no liability to You if any application You make fails to secure the finance requested.
- 2.4 You will make available to NIX or a Funder all information reasonably requested by either of them in support of Your application for finance for the Equipment.
- 2.5 In the event Your application for third party finance with a Funder is unsuccessful, NIX may, in its sole discretion, provide finance for You and enter into a Rental Agreement with You directly, but shall be under no obligation to do so. If NIX is agreeable to this You agree that you will enter into the Rental Agreement accordingly.
- 2.6 Once You have entered into a Rental Agreement, You will be bound by the provisions of the Rental Agreement and consequently You cannot cancel the rental of the Equipment unless otherwise permitted in accordance with the terms of the Rental Agreement.
- 2.7 In the event Your application for third party finance with a Funder is unsuccessful and NIX is unable or unwilling to enter into a Rental Agreement with You, NIX will notify you accordingly and this order for Equipment will be deemed cancelled without any liability on You or NIX.
- 2.8 By signing the Order Form, you expressly acknowledge and authorise NIX to immediately commence the Pre-Installation Services and to purchase the Equipment and you agree to use all reasonable endeavours to assist NIX to enable the Pre-Installation Services to be carried out (including without limitation providing access to any property reasonably required by NIX) notwithstanding they are carried out prior to the entry into a Rental Agreement. You also expressly acknowledge and agree that you will be liable for payment in respect of such Pre-Installation Services and the Equipment in the event you cancel this order as set out in condition 2.9 below or otherwise fail to enter into a Rental Agreement.
- 2.9 If, after signing the Order Form, and before entry into a Rental Agreement, You wish to cancel the order for the Equipment, then You are permitted to do so by giving NIX 5 business days notice in writing subject to the payment of a cancellation fee equal to:
2.9.1 Costs Incurred: [15%] of the cost incurred by NIX in purchasing the Equipment (it being acknowledged that this represents a genuine pre-estimate of the loss that will be incurred by NIX in not being able to return or otherwise sell that proportion of the Equipment) together with the costs incurred in carrying out the Pre-Installation Services. The costs of the Pre-Installation Services will be calculated by reference to the time incurred by NIX employees or contractors in carrying out the Pre-Installation Services multiplied by NIX standard rates for such services in force at the relevant time. In this respect the current rate for half day surveys is £375 plus VAT and for a full day survey is £550 plus VAT; or in NIX's sole discretion a cancellation fee equal to:
2.9.2 Funder Payment: [15%] of the aggregate fee and commission that would have been received by NIX from a Funder in the event You entered into the Rental Agreement with the Funder, it being acknowledged that such fee and commission represents payment to NIX for introducing You to the Funder and undertaking Pre-Installation Services in relation thereto. NIX agree that notwithstanding the above in no circumstances will You be liable for a cancellation fee which exceeds a sum equal to the aggregate of three (3) quarterly rental payments that would have been charged had You entered into the Rental Agreement.
- 2.10 If, after signing the Order Form you fail for any reason (other than as provided for in condition 2.7) to enter into a Rental Agreement you will be liable to pay a cancellation fee calculated in accordance with condition 2.9.
- 2.11 Any cancellation of this order for Equipment for any reason shall be without prejudice to any other services that You have ordered from NIX which shall remain in full force and effect in accordance with the applicable terms and conditions for that service. For example, if You have also ordered network services, those services will continue notwithstanding termination of this order and nothing in this order will operate to give NIX or You any rights to terminate those services beyond what is contained in the terms and conditions for those services which You have signed up to.
- 2.12 Title to the Equipment shall remain in the ownership of the Funder at all times, unless You have entered into a Rental Agreement with NIX in respect of the Equipment, in which case title to the Equipment shall remain in the ownership of NIX at all times.
- 2.13 By signing the Order Form you warrant and represent that you are a body corporate and not an individual for the purposes of the Consumer Credit Act 1974.
- 2.14 You shall not, without the prior written consent of NIX, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these terms and conditions.
- 2.15 NIX may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these terms.
- 2.16 No one other than the parties to the Order Form or their successors and permitted assignees, shall have any right to enforce any of these terms and conditions.
- 2.17 These terms and conditions and any disputes or claims arising out of or in connection with it or its subject matter or formation are governed by and construed in accordance with the law of England and Wales and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these terms and conditions or its subject matter or formation.
- 3 **DATA PROTECTION**
- 3.1 The following definitions are used in this clause 3:
Applicable Law means (i) any law, statute, regulation, by-law or subordinate legislation in force from time to time to which a party is subject and/or which is applicable in any jurisdiction that the Equipment and/or Pre-Installation Services are provided to or in respect of; (ii) the common law and laws of equity as applicable to the parties (or either of them) from time to time; (iii) any binding court order, judgment or decree as applicable to the parties (or either of them) from time to time; or (iv) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over that party or any of that party's assets, resources or business;
Customer Personal Data means any Personal Data which NIX receives pursuant to the performance of the Pre-Installation Services or supply of the Equipment;
Data Protection Legislation means all applicable data protection legislation including from 25 May 2018 onwards Regulation (EU) 2016/679 (the General Data Protection Regulation or the GDPR) and any national implementing laws, regulations and secondary legislation (or in the event that the UK leaves the European Union, all equivalent legislation enacted in the UK in respect of the protection of Personal Data) (all as amended, updated or re-enacted from time to time); and
Personal Data, Data Subject, Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation.
- 3.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. Subject to clause 3.8, the parties acknowledge that for the purposes of the Data Protection Legislation, You are the Data Controller and NIX is the Data Processor in respect of Customer Personal Data. Clause 3.7 sets out the nature and purpose of processing by NIX, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 3.3 Without prejudice to the generality of clause 3.2, You will ensure that You have all necessary and appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to NIX for the duration and purposes of this contract.
- 3.4 Without prejudice to the generality of clause 3.2, NIX shall, in relation to any Customer Personal Data processed by it in connection with the performance by NIX of its obligations under this contract:
3.4.1 process that Customer Personal Data only on Your written instructions unless NIX is required by Applicable Law to process Customer Personal Data otherwise than in accordance with Your written instructions. Where NIX is relying on Applicable Law as the basis for processing Customer Personal Data, NIX shall promptly notify You of this before performing the processing required by the Applicable Law unless the Applicable Law prohibits NIX from so notifying You;
3.4.2 immediately inform You if NIX becomes aware of a written instruction given by You under clause 3.4.1 that, in NIX's opinion, infringes Data Protection Legislation and NIX shall be entitled to suspend the Pre-Installation Services and supply of Equipment (or at NIX's discretion just the part of the Pre-Installation Services or supply of Equipment which are impacted by the infringement) until such time as the parties have agreed appropriate amended instructions which are not infringing;
3.4.3 ensure that it has in place appropriate technical and organisational measures:
a) to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development

and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Customer Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Customer Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
b) in so far as possible and taking into account the nature of the processing, to assist You in the fulfilment of Your obligations to respond to any request from a Data Subject relating to Customer Personal Data;
3.4.4 ensure that all personnel who process Customer Personal Data are obliged to keep the Customer Personal Data confidential except where disclosure is required in accordance with Applicable Law;
3.4.5 assist You, at Your cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities;
3.4.6 at Your written direction, delete or return Customer Personal Data and copies thereof to You on termination or expiry of this contract unless required by Applicable Law to store the Customer Personal Data; and
3.4.7 maintain and on request provide to You information to demonstrate its compliance with this clause 3 and allow for audits by You or Your designated auditor subject to You; giving NIX reasonable prior notice of such information requests or audits; keeping all information obtained or generated thereby strictly confidential (save for disclosure required by Applicable Law); and ensuring that such audit or inspection is undertaken during normal business hours and with minimal disruption to NIX's business.

- 3.5 You consent to NIX appointing the following as third-party processors of Customer Personal Data under this contract:

Name or categories of sub-processor	What sub-processing do they do
Nix Networks Limited	All of Your information required for the provision of Equipment and lease finance where required.
Halo Grenke Macquarie G E Capital BNP Paribas Investec	All of Your information required for the provision of Equipment and lease finance where required.
Sage & Union Street	Secure storage of Your bank details for invoicing and payment.

- 3.6 NIX confirms that it has entered or (as the case may be) will enter into with each third-party processor a written agreement incorporating terms which are substantially similar to those set out in this clause 3. As between You and NIX, NIX shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 3.
- 3.7 This clause sets out the nature and purpose of processing by NIX, the duration of the processing by NIX, the types of Personal Data and the categories of Data Subject:
3.7.1 **Purpose of processing:** For the purpose of the supply by NIX of the Equipment and Pre-Installation Services to You in accordance with this contract.
3.7.2 **Nature of processing:** Use of data in order to contact and liaise with You, in order to supply the Equipment and Pre-Installation Services and in order to carry out credit checks.
3.7.3 **Duration of processing:** The term of this contract.
3.7.4 **Types of Personal Data:** Full name, home address, contact telephone number, email address, emails, bank details, data of birth and proof of identity of You and/or Your employees.
3.7.5 **Categories of Data Subject:** Data in relation to You and/or Your employees.
- 3.8 NIX records and monitors all calls received and made by it and will be the Data Controller in respect of any Personal Data collected as a result. Please see NIX's privacy notice at <https://www.nixcommunications.co.uk/privacy-policy/> for details of how NIX will use Personal Data collected from such calls.