



onecom

# **Equipment and Software Terms**

## 1 General

- 1.1 These Equipment and Software Terms should be read in conjunction with all other terms of the Contract.
- 1.2 These terms apply to the supply of Purchased Equipment, Loan Equipment and Third Party Software. They do not apply to Service Equipment, save for clause 3 (Ordering and delivery), clause 8 (Returns and replacements – Service Equipment) and clause 10 (Risk and retention of title).

## 2 Interpretation

- 2.1 Terms defined elsewhere in the Contract shall have the same meaning in these Equipment and Software Terms. The following definitions shall also apply.

<b>Business Customer</b>	any Customer that is not a Personal Use Customer (including Large Business, Small Business, and Not-for-profit Customers, as defined in the General Terms)
<b>DOA Period</b>	the "Dead on Arrival" period defined by the manufacturer (typically 48 hours to 7 days from delivery)
<b>Manufacturer's Warranty</b>	the standard warranty provided by the original equipment manufacturer, details of which are set out on the relevant manufacturer's website or in the user guide or license relating to the Equipment (including the duration of any warranty period)
<b>Personal Use Customer</b>	an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession
<b>Pre-Order</b>	an Order for Purchased Equipment that has not yet been released for general sale by the manufacturer
<b>Shipping Address</b>	the shipping address specified in the Order, or such other address agreed between the parties in writing

- 2.2 The rules of interpretation set out in the General Terms apply to these Equipment and Software Terms.

## 3 Ordering and delivery

- 3.1 Onecom reserves the right to amend the specification or model of any of the Equipment if required by Applicable Law, if the manufacturer changes such specification or discontinues such model, or if stock of such model becomes otherwise unavailable, between the Effective Date and the time of dispatch. Onecom will endeavour to ensure that any such substituted Equipment will be of equal or better quality.
- 3.2 Onecom reserves the right to cancel an Order at any time prior to dispatch if the Equipment is out of stock or if there was a material error in the price or description on the Order Form (or on the Website or OneCloud).
- 3.3 Onecom shall deliver the Equipment to the Shipping Address.
- 3.4 Any lead times or dates quoted for delivery of Equipment are approximate only, and time of delivery is not of the essence. The Equipment may be delivered by Onecom in advance of any dates quoted for delivery of the Equipment.
- 3.5 Personal Use Customers only: Onecom will deliver the Equipment without undue delay and in any event not later than 30 days after the date the Contract is formed, unless Onecom agrees a different delivery date with the Customer.
- 3.6 Delivery of the Equipment shall be completed on the arrival of the Equipment at the Shipping Address.
- 3.7 The Customer is under a duty to inspect and test the Equipment on delivery. In the event the Equipment is defective on delivery, the Customer must notify Onecom within 48 hours from (and including) the time of delivery.
- 3.8 In the event the Customer does not notify Onecom in accordance with clause 3.7:
  - 3.8.1 the Customer shall be deemed to have fully accepted the Equipment; and

3.8.2 Onecom shall have no liability in respect of such Equipment.

3.9 Delays in the delivery of Equipment shall not entitle the Customer to:

3.9.1 refuse to take delivery of the Equipment; or

3.9.2 claim damages; or

3.9.3 terminate all or part of the Contract.

Personal Use Customers only should also refer to clause 3.5 regarding statutory delivery timeframes.

3.10 If the Customer delays or prevents delivery of the Equipment and/or fails to provide any instructions, documents, licences, consents or authorisations required to enable the Equipment to be delivered, Onecom may:

3.10.1 store the Equipment until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance);

3.10.2 apply reasonable additional charges associated with such delay or prevention of delivery of the Equipment; and

3.10.3 no less than 5 Business Days after first attempting delivery or notifying the Customer that the Equipment is ready for delivery, resell, reallocate or otherwise dispose of part or all of the Equipment.

3.11 The display of Purchased Equipment on the Website is an 'invitation to treat' only. The Customer's Order is an offer to buy. Onecom is not bound to supply the Purchased Equipment until it has sent a written confirmation of acceptance or order completion or dispatched the Purchased Equipment as set out in the General Terms.

3.12 Pre-Orders:

3.12.1 Estimated release dates: Any release date or 'launch day' provided by Onecom is an estimate based on information from the manufacturer. Onecom is not liable for any delays caused by the manufacturer's failure to release or supply the Purchased Equipment on time.

3.12.2 Contract formation: Notwithstanding payment being taken at checkout, a Contract for a Pre-Order is not formed until Onecom dispatches the Purchased Equipment to the Customer. Onecom reserves the right to cancel a Pre-Order at any time prior to dispatch if manufacturer supply is insufficient to meet demand or if the Purchased Equipment is discontinued.

3.12.3 Price changes: If the manufacturer changes the RRP of the Purchased Equipment prior to the launch date, Onecom may: (a) cancel the Order and provide a full refund; or (b) notify the Customer of the new price and require additional payment before dispatch.

3.12.4 Finance expiry: If the Customer has chosen third-party finance, Onecom is not responsible if the finance provider's credit approval expires due to a delay in the manufacturer's launch date. In such cases, the Customer may be required to submit a new finance application.

## 4 Payment

4.1 Payment shall be made on or before the Due Date notwithstanding that delivery or provision of the Equipment may not have taken place and/or that the title to Purchased Equipment has not passed to the Customer.

## 5 Finance

5.1 Where the Customer chooses to finance the purchase of Purchased Equipment via a third-party finance provider:

5.1.1 the purchase is subject to the Customer entering into a separate finance agreement with that provider;

5.1.2 Onecom's acceptance of the Order is conditional upon the finance provider approving the Customer's application;

5.1.3 Onecom acts as a credit broker, not a lender; and

- 5.1.4 if the finance agreement is terminated, rejected, or cancelled (including where a Personal Use Customer exercises a statutory right to cancel the finance agreement), the Customer must within 7 days:
- (a) pay Onecom the full price of the Purchased Equipment by an alternative payment method; or
  - (b) return the Purchased Equipment to Onecom's nominated address at the Customers own cost and risk. The Purchased Equipment must be returned in its original condition (or, where the Purchased Equipment has been used, in a condition consistent with no more than fair wear and tear) and the Customer must ensure all personal data and accounts have been removed in accordance with clause 9.

If the Customer fails to do either, Onecom may recover the Purchased Equipment in accordance with the General Terms.

- 5.2 Where a finance agreement with a third-party finance provider allows the Customer an option to return the Purchased Equipment to Onecom at the end of the finance term, and the Customer exercises that option:
- 5.2.1 the Customer must return the Purchased Equipment to Onecom's nominated address at the Customer's own cost and risk within 7 days of the end of the finance term;
  - 5.2.2 the Purchased Equipment must be returned in good working order and in a condition consistent with the finance provider's "good condition" guidelines (or, where no such guidelines exist, in a condition that allows for no more than fair wear and tear); and
  - 5.2.3 the Customer must ensure that all personal data and accounts have been removed from the Purchased Equipment in accordance with clause 9.

## 6 Warranties

- 6.1 Equipment, where new, is provided with the benefit of, and subject to, the Manufacturer's Warranty.
- 6.2 Equipment referred to as 'pre-owned', 'nearly new' or 'refurbished' has been returned to Onecom by customers (usually during the first 14 days after delivery) with no reported faults. It has been tested to ensure it is fit for such purpose as held out by Onecom and of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended). These devices are provided with original accessories and user guides, and in original packaging, whenever possible. However, the Customer acknowledges that when this is not possible Onecom will provide a data cable and SIM key (where applicable) and substitute packaging.
- 6.3 Pre-owned, nearly new and refurbished Purchased Equipment is supplied with the benefit of and subject to the Manufacturer's Warranty save that the warranty period shall be limited to 12 months from delivery.
- 6.4 Personal Use Customers only: In addition to the Manufacturer's Warranty, Personal Use Customers have statutory rights that the Purchased Equipment must be of satisfactory quality, fit for purpose, and as described. Within the first 30 days after delivery, if the Purchased Equipment is faulty, the Customer has a right to an immediate refund or a repair/replacement.
- 6.5 Business Customers only: Notwithstanding the foregoing provisions of this clause 6, no liability will be accepted under any warranty or guarantee where any Customer invoice is overdue.
- 6.6 Except as provided in this clause 6, Onecom shall have no liability to the Customer in respect of the failure of Equipment to comply with the applicable Manufacturer's Warranty.

## 7 Returns and replacements – Purchased Equipment

- 7.1 Subject to clause 7.2, Onecom shall not be under any obligation to exchange, repair or replace Purchased Equipment or provide any refunds.
- 7.2 Where Purchased Equipment supplied to the Customer is or becomes faulty during the relevant Manufacturer's Warranty period and for a reason covered by the Manufacturer's Warranty (which excludes the Customer's acts, omissions or misuse) the Customer acknowledges the following process applies, which is subject to the specific terms of the Manufacturer's Warranty, including any DOA Period:
- 7.2.1 The Customer must comply with clause 3.7.

- 7.2.2 Faults reported within the DOA Period may be eligible for replacement, strictly subject to the manufacturer's assessment and policy. Onecom acts according to the manufacturer's determination. Failure to report a fault within the DOA Period typically means it will be handled as a standard warranty repair.
- 7.2.3 The Customer should report the fault to Onecom's customer services team on 03300 888 999 as soon as possible, stating clearly when the fault was first identified.
- 7.2.4 The Customer must re-package the faulty Purchased Equipment and ensure that such Purchased Equipment and all original accessories are returned to Onecom Limited, Distribution Centre, 4400 Parkway, Whiteley, Fareham, Hampshire, PO15 7FJ (or as otherwise directed by Onecom) at the Customer's cost and risk by such post or courier service as shall ensure proof of delivery and sufficient insurance to cover the full value of the Purchased Equipment.
- 7.2.5 Onecom shall inspect the returned Purchased Equipment and, where necessary, liaise with the manufacturer, whose assessment regarding warranty coverage (including DOA eligibility) is final.
- 7.2.6 Subject to the manufacturer's assessment and warranty/DOA policy confirmation, Onecom shall facilitate the remedy determined by the manufacturer, which may be repair, or (at the manufacturer's or Onecom's discretion, particularly if within a confirmed DOA Period) replacement (subject to clause 7.3) or refund (of such sum as Onecom reasonably considers to be the current market value of the faulty Purchased Equipment).
- 7.3 The Customer acknowledges that, where it is determined (either by Onecom or the manufacturer) that a fault in any Purchased Equipment is not covered by the Manufacturer's Warranty (including DOA coverage) (e.g. accidental damage), the Customer remains liable for all sums outstanding in respect of Purchased Equipment and:
  - 7.3.1 where the faulty Purchased Equipment can be repaired:
    - (a) the Customer shall return to Onecom all replacement Purchased Equipment (if any) supplied pursuant to clause 7.2.6 (at the Customer's cost and risk) or pay Onecom the full cost of such replacement Purchased Equipment; and
    - (b) at the Customer's option, Onecom shall (i) repair the faulty Equipment and the Customer shall pay the cost of repair, or (ii) return the faulty Equipment to the Customer at the Customer's cost and risk and the Customer shall pay a diagnostic fee as detailed in the Price Guide, or (iii) dispose of faulty Equipment in accordance with the Waste Electric and Electronic Equipment (WEEE) Regulations 2013 and the Customer shall pay a diagnostic fee as detailed in the Price Guide;
  - 7.3.2 where the faulty Equipment cannot be repaired, the Customer shall pay Onecom the full cost of any replacement Equipment supplied pursuant to clause 7.2.6.
- 7.4 The Customer acknowledges and accepts that it is solely responsible for ensuring the backup of any important or confidential data stored on the Equipment prior to its return to Onecom and the Customer agrees that Onecom will not be liable if any such data is lost or corrupted during any process set out in clauses 7.2 and 7.3.
- 7.5 Business Customers only: Any Purchased Equipment provided as part of a bundle or with associated accessories (including but not limited to cases, screen protectors, chargers or promotional items) must be returned as a complete unit. Onecom reserves the right to refuse a credit, refund or replacement if the Equipment is returned without all bundled items and accessories included in the original Order.
- 7.6 Personal Use Customers only: Returns under the statutory right to change their mind
  - 7.6.1 This clause 7.6 only applies to Personal Use Customers who exercise their right to cancel as set out in the General Terms – Personal Use.
  - 7.6.2 Where the Customer exercises this right, they must return the Purchased Equipment to Onecom in its original, unopened packaging.
  - 7.6.3 Deductions: As set out in the General Terms, Onecom may reduce the refund if the value of Purchased Equipment has been diminished by handling. For electronic items, the Customer acknowledges that the following actions constitute handling beyond what is necessary and will result in a significant deduction from the refund:

- (a) breaking the manufacturer's seal or opening the internal packaging;
- (b) powering on the device or completing the 'set-up' process;
- (c) inserting a SIM card or registering the device with a third-party account (e.g., iCloud or Google); and/or
- (d) any missing accessories, promotional items or bundled items, in which case Onecom shall deduct the full retail price of the missing items from any refund due to the Customer.

7.6.4 Return Costs: The Customer is responsible for the direct cost of returning the Purchased Equipment to Onecom. Onecom strongly recommends using a tracked and insured delivery service, as the Purchased Equipment remains the Customer's responsibility until it is received by Onecom.

## 8 Returns and replacements – Service Equipment

- 8.1 Where the Customer reports a fault with Service Equipment, Onecom shall use reasonable endeavours to ship replacement Service Equipment to the Customer without waiting for a manufacturer's assessment.
- 8.2 The Customer must return the faulty Service Equipment to Onecom within 14 days of receiving the replacement. If the Customer fails to return the faulty unit, Onecom reserves the right to charge the Customer the non-return fee specified in the Price Guide.
- 8.3 If replacement Service Equipment is provided under clause 8.1, but the manufacturer later determines the fault was caused by the Customer's act or omission (e.g., accidental damage or misuse), Onecom shall invoice the Customer for the full cost of the replacement unit and the Customer shall pay such invoice in accordance with the General Terms.

## 9 Customer data

- 9.1 If the Customer returns any Equipment to Onecom (for any reason, including under clauses 7 or 8), it is the Customer's sole responsibility to ensure that all personal data, photos, accounts (e.g. iCloud/Google accounts), passwords and other credentials are removed and the Equipment is factory reset.
- 9.2 Onecom is not responsible for any loss of data or data breach resulting from the Customer's failure to wipe returned Equipment.

## 10 Risk and retention of title

- 10.1 The risk in the Equipment shall pass to the Customer on completion of delivery.
- 10.2 Notwithstanding delivery and the passing of risk, or any other provision of the Contract, legal and beneficial title to Purchased Equipment shall not pass to the Customer until Onecom has received payment in full (in cash or cleared funds).
- 10.3 For the avoidance of doubt, title to Service Equipment, Loan Equipment and Third Party Software shall never pass to the Customer:
  - 10.3.1 Title to Service Equipment shall at all times remain with Onecom and shall never pass to the Customer, regardless of any payments made by the Customer. The provision of Services or the payment of Charges shall not be deemed to constitute payment for, or purchase of, the Service Equipment.
  - 10.3.2 Loan Equipment is provided subject to clause 11 below.
  - 10.3.3 Third Party Software is licensed, not sold, as set out in clause 12 below.
- 10.4 Where Purchased Equipment is financed via a third party, title to Purchased Equipment shall pass to the finance provider and may subsequently pass to the Customer in accordance with the terms of the finance agreement (which typically means title only passes to the Customer when the finance is repaid and any title transfer fee is paid).
- 10.5 Until title to the Purchased Equipment has passed to the Customer, or at all times in respect of Service Equipment, the Customer shall:

- 10.5.1 keep accurate records of the location or keeper of the Equipment and store them separately from all other items held by the Customer so that they remain readily identifiable as Onecom's property;
  - 10.5.2 maintain the Equipment in satisfactory condition and in accordance with the relevant Manufacturer's Warranty and user guide;
  - 10.5.3 keep them insured against all risks for their full replacement value from the date of delivery;
  - 10.5.4 give Onecom such information relating to the Equipment as Onecom may require from time to time; and
  - 10.5.5 Business Customers only: notify Onecom immediately if it becomes subject to any of the insolvency events listed in the Termination clause in the General Terms – Business.
- 10.6 Business Customers only: If the Customer becomes subject to any of the insolvency events listed in the Termination clause in the General Terms – Business, or Onecom reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, without limiting any other right or remedy Onecom may have, Onecom may at any time:
- 10.6.1 require the Customer at the Customer's own cost and expense to deliver up the Equipment in its possession (including both Purchased Equipment not yet paid for and all Service Equipment); or
  - 10.6.2 without further notice enter any premises of the Customer or of any third party where the Equipment may be kept or stored in order to recover them.
- 10.7 The Customer shall at all times ensure that any and all parties that seek to assert any right or claim against the Customer are made fully aware that the Equipment is subject to reservation of title by Onecom and that the Equipment is not the property of the Customer.
- 10.8 If, for whatever reason, any party seeks to assert any right or claim against the Customer or the Equipment, the Customer shall at its own cost and expense defend any such right or claim such as to preserve the reservation of title of the Equipment and/or at Onecom's request join any proceedings brought by Onecom in relation to the Equipment.

## 11 Loan Equipment

- 11.1 Onecom may, at its discretion, provide Loan Equipment to the Customer.
- 11.2 Title to Loan Equipment shall at all times remain with Onecom. The Customer shall not sell, charge, or part with possession of Loan Equipment.
- 11.3 The Customer shall:
  - 11.3.1 keep the Loan Equipment in good working order (fair wear and tear excepted);
  - 11.3.2 use it only in accordance with Onecom's or the manufacturer's instructions; and
  - 11.3.3 notify Onecom immediately of any damage or fault.
- 11.4 The Customer shall return the Loan Equipment to Onecom immediately upon:
  - 11.4.1 the provision of the permanent Purchased Equipment or Service Equipment;
  - 11.4.2 the termination of the relevant Service; or
  - 11.4.3 written request from Onecom.

If the Customer fails to return Loan Equipment within 14 days of such event, Onecom reserves the right to charge the Customer the full replacement cost of the Loan Equipment.

## 12 Third Party Software

- 12.1 Third Party Software is licensed under and subject to the terms of the applicable license agreement.
- 12.2 The Customer expressly acknowledges that:
  - 12.2.1 its rights to use Third Party Software are limited to the rights provided by the third party licensor;

12.2.2 the terms of the applicable license agreement shall comprise the Customer's sole rights and remedies; and

12.2.3 all claims that the Customer may have concerning or relating to such Third Party Software regarding the performance or the functionality of such software or any services related thereto shall be brought exclusively against the third party licensor of such software and not against Onecom.

12.3 Onecom does not make any warranties concerning the performance or functionality of Third Party Software (including or any services related thereto) distributed by Onecom and hereby disclaims and excludes all such warranties including, without limitation, warranties for merchantability, fitness for any particular purpose, or satisfactory quality whether at common law or in contract or tort or by statute or otherwise.

12.4 Onecom shall not be liable to the Customer in respect of any effect on the Services caused or contributed to by Third Party Software (including changes to Third Party Software).

12.5 Onecom shall not provide support services in relation to any Third Party Software.

## **13 Survival**

13.1 The following clauses shall continue in force after the termination or expiry of the Contract or any individual Service: clause 9 (Customer data), clause 10 (Risk and retention of title), clause 11 (Loan Equipment) and clause 12 (Third Party Software).