

HA HOSTING

tech-star.co.uk

Terms and Conditions of Sale

Effective from: 2025

1. INTERPRETATION

1.1 Definitions

In these Conditions, the following definitions apply:

Affiliate:

In relation to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party at the date of an Order.

Applicable Data Protection Laws:

All applicable data protection and privacy legislation in force from time to time in the UK, including without limitation the UK GDPR; the Data Protection Act 2018 (DPA 2018); the Privacy and Electronic Communications Regulations 2003 as amended; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data.

Business Day:

A day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions:

The terms and conditions set out in this document as amended from time to time in accordance with condition 12.6.

Contract:

The contract between HA Hosting and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer:

The person or firm who purchases the Goods from HA Hosting.

Data:

Any personal, sensitive, confidential or other data stored within any part of the Goods.

Force Majeure Event:

Has the meaning given in condition 11.

Goods:

The goods (or any part of them, save for any Software and/or Data) set out in the Order.

Order:

The Customer's order for the Goods, as set out in the Customer's purchase order form or written enquiry accepted by HA Hosting.

Software:

Any software installed onto the Goods.

HA Hosting:

HA Hosting, a trading name of High Availability Hosting Ltd, registered in England and Wales, whose registered office is at Unit 7 Holbrook Commerce Park, Holbrook Close Sheffield S20 3FJ.

Hardware Sales Website: tech-star.co.uk

UK GDPR:

Has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

1.2 Construction

In these Conditions, the following rules apply:

- a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- b) A reference to a party includes its personal representatives, successors or permitted assigns.
- c) A reference to a statute or statutory provision includes any subordinate legislation made under that statute as amended or re-enacted.
- d) Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- e) A reference to writing or written includes emails.

2. BASIS OF CONTRACT

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 An Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Order shall only be deemed to be accepted when HA Hosting issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.3 It is at HA Hosting's sole discretion whether to accept an Order. HA Hosting may decline an Order for any reason including but not limited to:

- f) the Goods are unavailable;
- g) HA Hosting cannot authorise the Customer's payment;
- h) HA Hosting is not permitted to sell the Goods to the Customer under applicable export controls or sanctions (see condition 2.6);
- i) there has been a pricing or description error; or
- j) the quantity ordered exceeds available stock.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of HA Hosting which is not set out in the Contract. Any samples, drawings, descriptive matter, or advertising issued by HA Hosting and any descriptions or illustrations set out on HA Hosting's website or in any marketing materials are issued for the sole purpose of giving an approximate idea of the Goods described. They shall not form part of the Contract.

2.5 A quotation for Goods given by HA Hosting shall not constitute an offer and shall be subject to any conditions as to availability or otherwise as specified by HA Hosting.

2.6 HA Hosting complies with UK Export Law. Prior to completing a quotation or accepting an Order, HA Hosting will check the buyer's details and the product details against UK export controls and sanctions. Quotations and Goods will only be supplied where HA Hosting is permitted to do so. UK export controls and sanctions may change at any time, which may result in a quotation or Order being cancelled at any stage prior to despatch.

2.7 No Order which has been accepted by HA Hosting may be cancelled by the Customer except with the written agreement of HA Hosting and on terms that the Customer shall indemnify HA Hosting in full against all loss (including loss of profit), costs, charges and other expenses incurred by HA Hosting as a result of the cancellation.

3. DELIVERY

3.1 Delivery of the Goods shall be made to the location set out in the Order or such other location as the parties may agree ('Delivery Location') at any time after HA Hosting notifies the Customer that the Goods are ready.

3.2 Delivery of the Goods may be arranged:

- k) by the Customer arranging collection and transportation using its own courier account or other method; or
- l) by HA Hosting arranging transportation on the Customer's behalf, provided that the Customer shall inform HA Hosting in writing of its preferred delivery arrangements and shall be responsible for obtaining, at its own cost, such import licences and other consents as are required from time to time.

3.3 Any dates quoted for delivery are approximate only. Time of delivery is not of the essence. HA Hosting shall not be liable for any delay caused by a Force Majeure Event or the Customer's failure to provide adequate delivery instructions.

3.4 If the Customer fails to take or accept delivery of the Goods within 7 Business Days of HA Hosting notifying the Customer that the Goods are ready, then, except where such failure is caused by a Force Majeure Event or HA Hosting's failure to comply with its obligations:

- m) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which HA Hosting notified the Customer that the Goods were ready; and
- n) HA Hosting shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).

3.5 If 14 Business Days after HA Hosting notified the Customer that the Goods were ready the Customer has not taken or accepted delivery, HA Hosting may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs,

account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

3.6 HA Hosting may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4. QUALITY AND WARRANTY

4.1 Unless otherwise stated in writing by HA Hosting, HA Hosting warrants that on delivery, and for a period of 90 calendar days from the date of invoice ('Warranty Period'), the Goods shall:

- o) subject to condition 4.2, conform in all material respects with HA Hosting's written description of the Goods; and
- p) be functional and operational in all material respects.

4.2 HA Hosting shall use reasonable endeavours to ensure that any Goods which purport to have been made by a particular manufacturer are genuine but shall have no liability to the Customer in the event that any Goods are not the genuine merchandise of the purported manufacturer.

4.3 Subject to condition 4.4, if:

- q) the Customer gives notice in writing to HA Hosting during the Warranty Period that some or all of the Goods do not comply with the warranty in condition 4.1;
- r) HA Hosting is given a reasonable opportunity to examine the Goods; and
- s) the Customer (if asked to do so by HA Hosting) returns such Goods to HA Hosting's place of business at HA Hosting's cost;

then HA Hosting shall, at its option, replace the defective Goods or refund the price of the defective Goods in full. Where HA Hosting elects to replace the Goods, the Customer must return the defective Goods and provide a test report within 7 Business Days of notification. Failure to do so will result in HA Hosting invoicing in full for the replacement Goods.

4.4 HA Hosting shall not be liable for any failure of the Goods to comply with the warranty in condition 4.1 if:

- t) the Customer makes further use of the Goods after giving notice under condition 4.3;
- u) HA Hosting has explicitly stated prior to sale that the Goods are sold as seen, without warranty, or as already defective;
- v) the defect arises because the Customer failed to follow HA Hosting's instructions (oral or written) as to storage, installation, use or maintenance of the Goods;
- w) the Customer alters or repairs the Goods without HA Hosting's written consent; or
- x) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.

4.5 Except as provided in condition 4.3, HA Hosting shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty in condition 4.1.

4.6 Except as set out in these Conditions, HA Hosting gives no warranty in respect of the design, functionality, suitability or condition of any of the Goods. All other warranties,

conditions and terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

4.7 These Conditions shall apply to any replacement Goods supplied by HA Hosting.

4.8 The Customer acknowledges that HA Hosting is a reseller of pre-owned telecommunications and network infrastructure equipment and that no two items are identical. Where defective Goods are replaced under condition 4.3, the replacement items may not be identical to the original Goods. HA Hosting shall use reasonable endeavours to supply materially similar items but shall be under no obligation to do so, in which case a refund will be given.

4.9 No Goods may be returned to HA Hosting without HA Hosting's prior written agreement. All returns must be authorised by HA Hosting before the Customer ships any Goods back.

4.10 All warranty returns are subject to the returned Goods being tested and confirmed as faulty upon receipt by HA Hosting. If the Goods are found to be in working order, HA Hosting will refund any payment received from the Customer less any out-of-pocket expenses incurred, including return carriage charges.

4.11 Returns accepted by HA Hosting outside of the warranty set out in condition 4.1 are made entirely at HA Hosting's discretion and are subject to a restocking fee of 20% of the original invoice price of the Goods.

5. TITLE AND RISK

5.1 Risk of damage to or loss of the Goods shall pass to the Customer:

- y) where delivery is arranged by the Customer under condition 3.2(a), upon collection of the Goods from HA Hosting's premises;
- z) where delivery is arranged by HA Hosting under condition 3.2(b), at the time of arrival at the Delivery Location; or
- aa) if the Customer fails to take delivery, at the date of deemed delivery in accordance with condition 3.4(a).

5.2 Title to the Goods shall not pass to the Customer until HA Hosting has received payment in full (in cash or cleared funds) for the Goods and all outstanding invoices have been settled. For the avoidance of doubt, HA Hosting does not purport to transfer title or any other rights in or to any Software or Data to the Customer.

5.3 Until title to the Goods has passed to the Customer, the Customer shall:

- bb) hold the Goods on a fiduciary basis as HA Hosting's bailee;
- cc) store the Goods separately from all other goods so that they remain readily identifiable as HA Hosting's property;
- dd) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- ee) maintain the Goods in satisfactory condition and keep them insured for their full price from the date of delivery; and
- ff) notify HA Hosting immediately if it becomes subject to any of the events listed in condition 9.2.

5.4 If before title passes the Customer becomes subject to any of the events listed in condition 9.2, or HA Hosting reasonably believes such an event is about to occur, HA Hosting may require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer where the Goods are stored in order to recover them.

6. SOFTWARE AND DATA

6.1 The Customer acknowledges that the Goods are pre-owned and that certain items of Software and/or Data may be embedded within them.

6.2 HA Hosting gives no warranties, licences, consents or other authorisations in relation to any Software. The Customer warrants that it shall independently obtain all necessary licences before using any Software and shall promptly delete any Data which it is not authorised to use or process.

6.3 The Customer shall keep HA Hosting indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties and legal fees awarded against or incurred or paid by HA Hosting as a result of or in connection with:

gg) any claim made against HA Hosting for actual or alleged infringement of a third party's intellectual property rights arising out of any use of the Software following delivery of the Goods; or

hh) any claim made against HA Hosting for actual or alleged breach of the Applicable Data Protection Laws arising from the use, disclosure or processing of any Data following delivery of the Goods.

7. PRICE AND PAYMENT

7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in HA Hosting's published price list in force as at the date of delivery.

7.2 HA Hosting may, by giving notice to the Customer at any time up to 2 Business Days before delivery, increase the price of the Goods to reflect any increase in cost due to:

ii) any factor beyond HA Hosting's control (including foreign exchange fluctuations and increases in taxes, tariffs or duties);

jj) any request by the Customer to change delivery dates, quantities or types of Goods ordered; or

kk) any delay caused by the Customer's instructions or failure to provide adequate information.

7.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport, which shall be paid by the Customer in addition to the price.

7.4 The price of the Goods is exclusive of VAT. The Customer shall, on receipt of a valid VAT invoice from HA Hosting, pay to HA Hosting such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

7.5 HA Hosting may invoice the Customer on or at any time after delivery. Where credit terms have not been agreed, proforma invoices will be raised at the point of order.

7.6 Unless otherwise agreed in writing, the Customer shall pay each invoice in full and in cleared funds within 7 days of receipt. Payment shall be made to the bank account nominated in writing by HA Hosting. Time of payment is of the essence.

7.7 If the Customer fails to pay any amount due under the Contract by the due date, then without limiting HA Hosting's other remedies, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England base rate from time to time (or 4% per annum where the base rate is below 0%). Such interest shall accrue daily from the due date until actual payment, whether before or after judgment. Debt recovery costs may be applied in line with prevailing legislation.

7.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law. The Customer shall not be entitled to assert any credit, set-off or counterclaim against HA Hosting to justify withholding payment. HA Hosting may at any time set off any amount owing to it by the Customer against any amount payable by HA Hosting to the Customer.

8. CUSTOMER'S INSOLVENCY OR INCAPACITY

8.1 If the Customer becomes subject to any of the events listed in condition 8.2, or HA Hosting reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then without limiting any other right or remedy available to HA Hosting, HA Hosting may cancel or suspend all further deliveries under the Contract or any other contract between the Customer and HA Hosting without incurring any liability, and all outstanding sums in respect of Goods delivered shall become immediately due.

8.2 The relevant events are:

- ll) the Customer suspends or threatens to suspend payment of its debts, is unable to pay its debts as they fall due, or admits inability to pay its debts;
- mm) the Customer commences negotiations with creditors with a view to rescheduling debts or enters into any compromise or arrangement with creditors;
- nn) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- oo) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution or other process is levied against, the whole or any part of its assets;
- pp) (being a company) an administrator is appointed or a notice of intention to appoint an administrator is given;
- qq) a receiver is appointed over the assets of the Customer;
- rr) the Customer suspends, ceases or threatens to cease to carry on all or substantially the whole of its business;
- ss) the financial position of the Customer deteriorates to such an extent that in the opinion of HA Hosting its ability adequately to fulfil its obligations under the Contract has been placed in jeopardy; or
- tt) (being an individual) the Customer dies or, by reason of illness or incapacity, is incapable of managing their own affairs.

9. LIMITATION OF LIABILITY

9.1 Nothing in these Conditions shall limit or exclude HA Hosting's liability for:

- uu) death or personal injury caused by its negligence or the negligence of its employees, agents or subcontractors;
- vv) fraud or fraudulent misrepresentation; or
- ww) any other matter in respect of which it would be unlawful for HA Hosting to exclude or restrict liability.

9.2 Subject to condition 9.1:

- xx) HA Hosting shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or any indirect or consequential loss arising under or in connection with the Contract; and
- yy) HA Hosting's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed 100% of the price of the Goods.

9.3 The Customer acknowledges and agrees that the exclusions and limitations of liability set out in these Conditions are reasonable given that the Goods are used and pre-owned and that this is reflected in the price of the Goods.

9.4 HA Hosting's website lists products manufactured and designed by third parties. The corresponding trademarks, logos and icons remain the property of the relevant third parties. HA Hosting's use of third-party trademarks does not indicate any sponsorship, relationship or endorsement between HA Hosting and those trademark owners, nor does it signify that HA Hosting is authorised by the relevant trademark owner to sell the relevant product.

9.5 HA Hosting gives no warranty and makes no representation that any products displayed on its website have been placed on sale in the UK or any other jurisdiction with the prior consent of the relevant trademark owner.

9.6 Information on HA Hosting's website is provided for general information purposes only and does not constitute technical, financial, legal or other advice. HA Hosting uses reasonable efforts to ensure that website content is accurate but makes no representations or guarantees that content is complete or up to date.

10. FORCE MAJEURE

10.1 For the purpose of these Conditions, 'Force Majeure Event' means any event or circumstance beyond the reasonable control of either party which hinders, prevents or impedes the due performance of that party's obligations and which by the exercise of all reasonable diligence that party is unable to prevent, including strikes, lock-outs or other industrial action, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not), fire, explosion, storm, flood, earthquake, epidemic, pandemic (including Covid-19) or other natural disaster, impossibility of the use of transport networks or telecommunications, or the acts, decrees, legislation, regulations or restrictions of any government.

10.2 If either party is prevented from performing its obligations by a Force Majeure Event, it shall promptly give notice to the other party. The obligations of both parties shall be suspended for so long as the Force Majeure Event continues and neither party shall be

liable for breach or failure to perform its obligations in those circumstances. A party affected by a Force Majeure Event shall use every reasonable effort to minimise its effects and shall resume performance as soon as reasonably possible. If the Force Majeure Event continues for more than 6 months, either party may terminate the Contract on 30 days' written notice.

11. GENERAL

11.1 Assignment. HA Hosting may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of HA Hosting.

11.2 Notices. Any notice given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or principal place of business and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier or email. A notice shall be deemed received: if delivered personally, when left at the relevant address; if sent by pre-paid first-class post, at 9.00 am on the second Business Day after posting; if by courier, on the date the delivery receipt is signed; or if by email, one Business Day after sending.

11.3 Severance. If any provision of the Contract (or part of any provision) is found by any court or competent authority to be invalid, illegal or unenforceable, that provision or part-provision shall be deemed deleted and the validity and enforceability of the other provisions shall not be affected. Where a provision would be valid if some part were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

11.4 Waiver. A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy shall constitute a waiver of that or any other right or remedy.

11.5 Third Party Rights. A person who is not a party to the Contract shall have no rights under or in connection with it.

11.6 Variation. Any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by HA Hosting.

11.7 Governing Law and Jurisdiction. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England and Wales. The parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.