



Terms & Conditions of Sale

THE BOTTOM OF EACH PAGE MUST BE INITIALLED FOR ACCEPTANCE

1. Price

- 1.1. Quoted prices exclude VAT, installation, delivery or handling charges unless otherwise specified in the quote.
- 1.2. 5th Mountain Networks reserves its right to revise its pricing at any time prior to accepting orders.
- 1.3. 5th Mountain Networks reserves its right to increase prices in the event of price increases in the cost components (including foreign exchange rate fluctuations) affecting the cost of supply, production and/or delivery of the Service between the date of the contract and the date of the delivery. Should this eventuality occur the Contracting Party reserves the right to withdraw the order.
- 1.4. The Contracting Party is bound to pay 5th Mountain Networks the quoted price on acceptance of the Contracting Party's order by 5th Mountain Networks. A quotation is not considered a binding contract until an order for said order is placed on and accepted by 5th Mountain Networks.

2. Payment

- 2.1. Payment to 5th Mountain Networks is Cash on Delivery (COD) or via Electronic Funds Transfer (EFT) prior to delivery of the MountainBox appliance.
- 2.2. The Contracting Party cannot withhold payment or make any deductions from any amount owing to 5th Mountain Networks without 5th Mountain Networks' prior consent.
- 2.3. Delivery, for the purposes of this clause, shall be mean the date when Reseller has signed acceptance of the MountainBox appliance.
- 2.4. Specified delivery times are estimates only.



3. Orders

- 3.1. Returned goods will only be credited in full if the Contracting Party has requested a Goods Return Authority within seven (7) working days of despatch and the returned product has not been used or opened or otherwise deemed unsaleable by 5th Mountain Networks. Unless the return is due to 5th Mountain Networks oversight or similar, freight charges will not be credited under any circumstances.
- 3.2. Non-faulty product returned after seven (7) working days will require a Goods Return Authority, must be in a saleable condition, and will be subject to a minimum 10% restocking fee. The Issue of a Goods Return Authority does not guarantee that 5th Mountain Networks will accept the return.
- 3.3. Should the Contracting Party cancel any order after dispatch (regardless of whether the order has been delivered) and the Contracting Party has complied with the previous provisions, 5th Mountain Networks will credit the Contracting Partner the order value (but not the freight charges) on return in a saleable condition of the goods ordered within seven (7) working days of despatch.
- 3.4. Faulty goods will require a Goods Return Authority and will be subject to normal return procedures.
- 3.5. The Contracting Partner is liable for all delivery and insurance charges in respect of returned goods.
- 3.6. The Contracting Partner is responsible for ensuring that all personnel placing orders are authorised to do so and that 5th Mountain Networks is notified should the stipulated authorised personnel change.

4. Risk and Ownership

- 4.1. Risks pertaining to the MountainBox components will pass to the Contracting Partner on signed acceptance of the same.
- 4.2. Ownership of the MountainBox appliance will pass to the Contracting Partner only on receipt of full payment owing to 5th Mountain Networks (whether relating to physical components, the supply of services, or to any other personal property supplied).
- 4.3. While ownership of the goods remain with 5th Mountain Networks the Contracting Partner agrees to act as a fiduciary of 5th Mountain Networks and:



- 4.4. You will not alter, destroy or deface the MountainBox appliance or cover or remove any identity markings.
- 4.5. 5th Mountain Networks reserves the rights to retrieve the MountainBox appliance from the Contracting Partner's premises and resell said appliance in the event of non-payment by the Contracting Partner to 5th Mountain Networks.

5. Repairs, Replacements and Warranties

- 5.1. All Warranties are carried out on a "Return to Base" basis.
- 5.2. 5th Mountain Networks warrants the appliance for a period of twelve (12) months from the date of purchase Notwithstanding the foregoing, 5th Mountain Networks shall be under no liability under this Clause to provide or repair any part of the appliance where:-
 - 5.2.1. In the reasonable opinion of 5th Mountain Networks, a fault in the appliance is caused by accidental or wilful damage suffered after the Delivery Date;
 - 5.2.2. the appliance has been stored or transported in a manner which results in damage to the product;
 - 5.2.3. the MountainBox Price has not been paid in full to 5th Mountain Networks;
 - 5.2.4. any party other than 5th Mountain Networks has tampered with or attempted to repair or alter the workings of the appliance;
 - 5.2.5. the MountainBox appliance has been installed into the End User's network other than in accordance with the conditions of 5th Mountain Networks;
 - 5.2.6. the MountainBox appliance has been damaged due to force majeure
 - 5.2.7. the MountainBox appliance has been damaged due to lightning or over voltage or brown out conditions
 - 5.2.8. the MountainBox appliance has been damaged due to theft.
 - 5.2.9. the MountainBox appliance has been damaged as a result of upstream Service Providers including Carriers networks being out of specification or incorrectly configured;



- 5.3. For the avoidance of doubt, any attempted repair of the MountainBox appliance within the Warranty Period by any party other than 5th Mountain Networks.

6. Default

- 6.1. The Contracting Partner will, on demand, pay to 5th Mountain Networks any amount 5th Mountain Networks incurs (including legal and collection agency costs, court costs and disbursements) in recovering payment of any overdue account.
- 6.2. In an Event of a Default occurring, 5th Mountain Networks reserves the right to suspend or terminate any agreements 5th Mountain Networks has with the Contracting Partner.
- 6.3. If an Event of a Default occurs, all outstanding monies owed by the Contracting Partner to 5th Mountain Networks shall become due and payable notwithstanding that the due date has not been reached.

7. No Liability

- 7.1. 5th Mountain Networks shall not be liable for any delays or failure in complying with any obligation imposed on 5th Mountain Networks under any contract or for any loss or damage (including indirect or consequential loss of damage) if the failure or delay arises from a case unforeseeable or beyond 5th Mountain Networks' control.
- 7.2. 5th Mountain Networks' liability to the Contracting Partner in relation to any MountainBox appliance is limited to the price of these appliances. 5th Mountain Networks will not, in any case, be liable for any consequential or special damages, including loss of business profits.

8. Other Agreements

- 8.1. These terms apply to all transactions where 5th Mountain Networks provide appliances to you.
- 8.2. If there are any inconsistencies between these terms and any order submitted by the Contracting Partner or any other arrangement with 5th Mountain Networks, these terms supersede those unless otherwise agreed in writing.



9. Waiver

- 9.1. If 5th Mountain Networks exercises or fails to exercise any right or remedy available to 5th Mountain Networks, this shall not prejudice 5th Mountain Networks' rights in exercising that or any other right or remedy. Waiver of any term of the contract must be specified in writing by 5th Mountain Networks and signed by an authorised person.

10. Assignment

- 10.1. The Contracting Partner may not transfer or assign all or any of the Contracting Partner's rights or obligations under this contract without 5th Mountain Networks' written consent.

11. Governing Law

- 11.1. This contract and its terms are governed by, and shall be construed in accordance with, the laws of the Republic of South Africa. Both parties submit to the exclusive jurisdiction of the courts.