

Terms & Conditions of Sales & Services Ireland

This document (“**Conditions**”) together with the (1) **Services Descriptions** &/or (2) **Products Descriptions** & (3) **pricing** applicable to the **Products** &/or **Services** that you are buying together form the whole “**Agreement**” between Dell Products (“**Dell**”) and you (“**Customer**”) and prevail in this order in case of conflict.

1. Definitions

CFI: Custom Factory Integration: a Service combining Customer specified software & hardware with Product(s) at the time of manufacture which may include image & applications loading & maintenance, software integration, hardware integration &/or asset management services;

Description: a document forming part of the Agreement which describes a Product or Service;

IM: “Integration Material”: third party product(s) specified or provided by Customer within the scope of CFI;

IPR: “Intellectual Property Rights”: patents, trade marks, registered designs, & applications for same, copyright, design rights, know-how, trade & business names & any other similar protected rights in any country;

Order: request by Customer to purchase Product or Services from Dell;

Order Confirmation: written acceptance by Dell of Customer’s Order;

Price: the charge for Products &/or Services payable by Customer to Dell;

Products: an individual good (including Software) as described in any current document published by Dell physically &/or on its internet site, or in any Order Confirmation & which Customer buys or agrees to buy from Dell but excluding items added to Dell hardware through CFI;

Services: service & support (including CFI) carried out by for or Dell in accordance with the Service Offering;

Service Offering(s): the Service options offered by Dell as described in any current document published by Dell physically &/or on its internet site, or in any Order Confirmation;

Software: computer operating systems, middleware, applications or other software that is manufactured or owned by, or licensed by, Dell;

Third Party Products: products not manufactured, assembled or authorised by Dell that Dell sells (i.e. products that do not carry the ‘Dell’ brand such as sound cards, speakers and certain external devices and accessories).

Third Party Software: computer operating systems, middleware, applications or other software from a third party editor or licensor.

2. Quotations/Orders and Changes

- 2.1 All Orders for Products &/or Services shall be regarded as an offer by Customer to purchase Products &/or Services under the terms of this Agreement and not under any other terms stated on such Orders.
- 2.2 Dell accepts Customer’s offer to purchase under this Agreement & makes a binding Agreement by issuing an Order Confirmation or delivering the relevant Products &/or Services.
- 2.3 Dell reserves the right to make changes to ordered specifications but will identify any such changes in the Order Confirmation. Dell guarantees that any such changed Products or Services will offer at least equivalent functionality & performance.

3. Price and Payment

- 3.1 The Price that Customer has to pay will be shown on Dell’s Order Confirmation and invoices. The cost of freight, insurance, import or export, duties or other associated costs such as delivery, sales, value add, excise taxes shall be added unless already specified as included in the Price.
- 3.2 Dell may adjust prices due to changes to exchange rates, duties, insurance, freight, handling & purchase costs.

4. Delivery of Products

The delivery date specified is an estimate. The place of delivery is as stated in the Order Confirmation.

5. Passing of Ownership & Risk in Products

Ownership of Products passes to Customer on the receipt by Dell of full payment for the Product. Dell may recover any Products supplied at any time prior to ownership passing if Customer is in breach of these Conditions.

Risk passes to Customer on delivery of Products to Customer or to their representative.

6. Acceptance of Products on Delivery

- 6.1 Notwithstanding anything herein to the contrary, Customers may only reject Products for material non-conformity with the Products Description by providing written notice to Dell within 7 days after delivery or otherwise customer shall be deemed to have accepted the Products.
- 6.2 Customer shall notify Dell promptly
 - following delivery of any missing, incorrectly delivered, incorrect specification, or otherwise not as ordered Products or Products which are either in damaged packaging or are visibly damaged; and
 - following discovery of any non-visible damage or defect in Product supplied.
- 6.3 Where Products can be returned to Dell by Customer under the terms of this Agreement, it should either be returned to Dell or be made available for collection at a time which is mutually convenient insofar as possible. Customers should act reasonably in complying with a request by Dell to collect Product at a particular time.

7. Statutory Rights, Warranties, Repairs, Replacements & Provision of Services

A. Products:

- 7.1 Dell will, within a reasonable time of having been notified of the defect, repair &/or replace materially defective Products containing the Dell brand (at Dell’s option) during the 12 month period post delivery or for such longer period as is detailed in the applicable Service Offering. In respect of any non Dell branded Products sold to Customer by Dell, Dell shall pass on any such third party warranty in as far as is possible. Notebook batteries are delivered with a maximum one-year warranty unless a shorter period is stated in the applicable Service Offering. This warranty is not upgradeable.
- 7.2 These obligations are dependent upon proper use of Products & do not cover any parts of Products which have been modified or repaired without Dell’s prior written consent. Dell may ask third party Software licensors to fulfill Dell’s and/or licensor’s legal obligations relating to the supply of that licensor’s software.
- 7.3 Dell’s obligations do not apply to the consumable components of consumable items (such as toner in printer cartridges) or if a defect is caused by an external cause such as fair wear & tear, software or hardware loaded onto or connected to

- Product by Customer where this software or hardware has not been supplied by Dell, an accident, hazard, humidity control, electrical stress or other environmental conditions not commonly found in a safe home or office environment.
- 7.4 Parts not critical to Product function, including but not limited to hinges, doors, cosmetic features, and frames, are not serviced &/or repaired or replaced.
 - 7.5 If Dell makes repairs to Products under Service Offerings it does so by using components which are new or equivalent to new in accordance with industry standards and practice. Certain repairs or replacements may be carried out by Customer under instruction by Dell. Replaced or repaired parts carry the relevant Service Offering warranty until the end of the original warranty period as described in the Services Offering.
 - 7.6 If Customer does not return removed parts Dell then may charge a fee of which Customer will be informed prior to charge. The fee will reflect the cost incurred by Dell in retrieving the part(s), &/or the cost of procuring another component to recondition &/or arising from failure to comply with environmental obligations as a result of the Customer's failure to return the Product or part.

B. Services:

- 7.7 Dell shall carry out the Services using reasonable skill and care. Dell's obligations under its Service Offerings are further as stated in the Descriptions for those Service Offerings. Dell will use all reasonable endeavours to meet response times estimated in the Service Offerings, but actual timings may vary depending, among other factors, on the remoteness or accessibility of Customer's location, weather conditions & availability of components.
- 7.8 Notwithstanding the above, the following are excluded from Services unless stated otherwise in the Service Offering: local working hours, relocation, removal of non-Dell supplied hardware or software, preventative maintenance, repairs to Products that are functioning within industry standards including without limitation defective pixels on monitors, transfer of data or Software and viruses. Customer is responsible for removal of non-Dell supplied products.
- 7.9 Dell does not provide Dell Service Offerings for Third Party manufactured Software or Products but will pass to Customers, to the extent that it is permitted to do so, the benefit of any warranty or guarantee given by the manufacturer or supplier of Third Party Products.
- 7.10 Service may be provided via telephone (at the normal national rate) or Internet where appropriate. Additional optional value added Services may be offered using Premium Rated Services. Any such Services will be clearly identified & will be provided in compliance with relevant regulations and codes applying to provision and use of Premium Rated Services. Telephone calls may be recorded for training purposes.
- 7.11 Customer must provide Dell with all reasonable courtesy, information & cooperation to enable Dell to deliver the Services & shall be responsible for all telephone & postal charges in contacting Dell.
- 7.12 Dell owns any Product or parts that are removed during repair. Dell may require Customer to return removed parts to Dell for reconditioning, analysis or for environmental reasons.
- 7.13 Products, Software & Services sold will correspond to their Description (except as stated in Term 2.4 above). **Customer must satisfy themselves as to the suitability of the Description for their needs. Dell does not warrant fitness for any particular purpose.**
- 7.14 Customers are not automatically entitled to repair or replacement other than as described in a Service Description or as otherwise agreed by Dell. Dell shall have no liability or obligation for defects in Products or failure to remedy defects except as expressly provided under this Agreement.
- 7.15 Except as expressly provided herein or in any applicable Services Offering, no warranty, express or implied, as to the condition, quality, performance, merchantability, or durability of Products is given or assumed by Dell & all such warranties are hereby excluded to the extent possible under applicable law.

8. Custom Factory Integration (CFI)

CFI may be provided at the discretion of Dell in accordance with Customer's instructions & technical specifications & subject to current Dell requirements. Customer will specify & provide IM or Dell may obtain IM at Customer's instruction. Dell will indicate acceptance &/or validation of IM & then will integrate IM into Product(s), producing a CFI Product. Dell may install CFI Product under Customer's instruction or under Dell technical advice, if agreed in writing. Dell will not carry out CFI work if not technically feasible. Dell shall not warrant the functionality or provide support for IM in any case. Customer hereby indemnifies Dell for any losses howsoever arising to the extent they relate to IM or IPR specified, provided by or owned by Customer and integrated into Products.

9. Force Majeure

- 9.1 Neither party is responsible for non-performance in case of circumstances beyond its reasonable control ("**Force Majeure**") including without limitation, strikes by non Dell employees, terrorist acts, war, exchange fluctuations, governmental or regulatory actions, natural disasters, severe weather, unforeseeable transport or production problems affecting companies that supply Dell.
- 9.2 If the Force Majeure event lasts longer than 60 days then Dell shall have the right to terminate the Agreement by providing notice in writing to Customer & returning all sums paid by Customer under the Agreement. No compensation to Customer will then be due in these circumstances.

10. Liability

- 10.1 Dell accepts its liability for any loss or damage to private property, death or personal injury caused by the Products & Services supplied, the negligence or deliberate misconduct of Dell, or any employees, agents or subcontractors acting on Dell's behalf, provided, however, that in all cases, (except for death or personal injury caused by its negligence or for fraud where there shall be no limit on liability), Dell's liability for losses suffered by Customer will be assessed in accordance with this Clause 10 and be subject to an aggregate maximum equal to 125% of the Price.
- 10.2 Dell's liability shall be limited to reasonably foreseeable losses arising as a direct consequence of breach by Dell of this Agreement. However Dell shall not be liable in certain circumstances for example to the extent the causes or the loss:
 - a) were not reasonably foreseeable by both parties; &/or
 - b) were known by Customer to the exclusion of Dell at the time that the Agreement was entered into; &/or
 - c) arose from the use of the Product &/or Services for purposes other than those contemplated in Clause 7.14.
 - d) were reasonably foreseeable & preventable by Customer such as those arising from, but not limited to:
 - (i) data or information loss caused by failing to keep back up copies of important data on separate media; or
 - (ii) virus damage; or
 - (iii) user inflicted problems such as those caused by failure to read &/or follow user instructions provided in writing or orally by a Dell or third party technician.
- 10.3 In claiming against Dell for any such losses Customer is expected to have acted reasonably, for example, with regard to:

- a) how the losses were accrued – including steps taken to mitigate or to avoid losses occurring; &
 - b) taking reasonable precautions to avoid loss (such as contacting Dell promptly upon becoming aware of an issue).
- 10.4 Dell will not be liable for:

- a) loss resulting from any defect or deficiency in Products or Services which Dell shall have remedied within a reasonable period &/or consistently with the terms of a Service Description;
- b) indirect and consequential losses;
- c) loss of business profits, salary, revenue, loss or corruption of data or anticipated savings.

11. Intellectual Property & Software

- 11.1 Dell indemnifies Customer from all reasonable, direct and demonstrable costs & liabilities arising from any claim that use of Dell branded Products or Dell branded Software infringes any third party IPR. Dell may recall & exchange or modify Product or Software or refund Customer (minus depreciation in this event) or require Customer to install replacement or altered Software from a CD, DVD or an internet download.
- 11.2 Dell retains all Dell-owned IPR in Products. Customer must notify Dell immediately of any infringing or unauthorised use of Products or IPR in it.
- 11.3 Dell does not indemnify Customer for:
- a) Third Party Hardware or Third Party Software;
 - b) unauthorised modification or use of the Products or Software;
 - c) any claim caused by the use of Products or Software in conjunction with anything not supplied by Dell. Customer must comply with the license conditions for any Software supplied.
- 11.4 Customer indemnifies Dell for any claim which arises due to Customer's own actions of which Dell had no knowledge or could not reasonably be expected to have had knowledge, or for any claim related to IM or IPR specified or owned by Customer & integrated into Product.
- 11.5 Dell is allowed to litigate, negotiate & settle claims & Customer must provide reasonable assistance if requested to assist Dell if litigation is directly related to Products supplied to Customer.

12. TUPE

Customer shall keep Dell fully indemnified against any claims, costs, demands, awards, compensation or other liability of any nature arising out of the termination of the employment rights (by way of redundancy or otherwise) or deemed transfer of any employment rights of any of Customer's employees resulting from the entering into or termination of any Order or this Agreement (in whole or in part) for whatsoever reason.

13. Export Control

Customer is advised that Product, which may include technology & software, is subject to EU and US export control laws & laws of the country where it is delivered or used. Under these laws, Product may not be sold, leased or transferred to restricted end-users or countries or for restricted end-uses. Customer agrees to abide by these laws.

14. Data Protection

Personal data obtained by Dell from Customer shall be held & processed in accordance with applicable laws and consistently with Dell's Privacy Policy. Dell may share such personal data with other Dell entities, agents, or subcontractors performing services for Dell. Dell may also transfer personal data to affiliated companies or agents or subcontractors which may be outside the European Economic Area (EEA), in which case Dell will ensure adequate protection to safeguard personal data. For a copy of Dell's Privacy Policy, please visit Dell's website or contact: Dell Data Protection Officer, Dell, P O Box 8288, Dublin 2, Ireland. Customer consents to the processing of Customer's personal data in accordance with the above.

15. Confidentiality

Each party must treat all information received from the other which appears to be confidential as it would treat its own confidential information generally, but at least, with no less than a reasonable degree of care.

16. Termination

- 16.1 Either party may terminate this Agreement or any Order if the other:
- commits a material or persistent breach of these Conditions and fails to remedy such breach within 30 days of written notice being given to it by the other party requiring a remedy;
 - becomes insolvent or bankrupt or is unable to pay debts as they fall due.
- 16.2 Dell may terminate this Agreement or any Order with immediate written notice if Customer fails to pay on time or breaches or Dell reasonably suspects Customer has breached export control laws.
- 16.3 The following clauses of these Conditions shall survive any termination or expiration of these Conditions & shall continue to bind the parties & their permitted successors & assigns: clauses 3, 7-15, 16.3 and 17-19 inclusive.

17. Law & Jurisdiction

This Agreement is governed by Irish Law and the exclusive jurisdiction of the Irish courts.

18. Assignment & Subcontracting

Dell may assign, subcontract or transfer its obligations or rights to a competent third party in whole or in part. Customers may do so only with Dell's written consent.

19. Miscellaneous

If any part of these Conditions are found to be unenforceable by a court, the rest are unaffected.

All notices must be in writing & sent to a legal officer of each party, at the address provided on the invoice.

This Agreement forms the entire agreement of the parties in relation to the relevant Order to the exclusion of all other terms or representations verbal or otherwise and Dell shall have no liability in relation to such terms or representations, unless made fraudulently.

Customer can find all Dell policies, Product and Service Offering details and notices at www.dell.ie