



## TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

The customer's attention is drawn in particular to the provisions of clause 10

### 1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

**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 clause 17.9.

**Contract:** the contract between MDC and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

**Customer:** the organisation that purchases the Goods from MDC.

**Force Majeure Event:** has the meaning given in clause 11.

**Goods:** the goods (or any part of them) set out in the Order or a description of Goods provided to MDC by the Customer which has been accepted by MDC.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**MDC:** Mobile Data Collection Limited a private company registered in England and Wales (company number 05040321) whose registered office is situated at Unit A1 Lambs Farm Business Park, Basingstoke Road, Swallowfield, Reading, RG7 1PQ.

**Order:** the Customer's order for the Goods, as set out in the Customer's purchase order form.

**Quotation:** the quotation provided by MDC to the Customer setting out the details of the Goods to be supplied to the Customer by MDC.

**Software:** any operating system installed on the Goods.

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) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and a reference to one gender shall include a reference to the other genders.

- (d) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- (e) A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- (f) Except where otherwise stated, a reference to writing or written includes fax and e-mail.
- (g) References to clauses are to the clauses of this agreement.
- (h) Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **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 The Quotation shall not constitute an offer. A Quotation shall only be valid for a period of 30 days from its date of issue
- 2.3 The Order or any acceptance of a Quotation by the Customer constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer shall ensure that the terms of the Order are complete and accurate.
- 2.4 The Order shall only be deemed to be accepted when MDC issues a written acceptance of the Order or MDC delivers the Goods to the Customer (whichever occurs earlier), at which point the Contract shall come into existence.
- 2.5 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 MDC which is not set out in the Contract. Any samples, drawings, descriptive matter, or advertising issued by MDC and any descriptions or illustrations contained in MDC's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or any other contract between MDC and the Customer for the sale of the Goods.
- 2.6 No order which has been acknowledged by MDC may be cancelled by the Customer, except with the agreement in writing of MDC and provided that the Customer indemnifies MDC in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by MDC as a result of cancellation
- 2.7 The Customer shall provide all assistance and co-operation required by MDC to enable MDC to perform its obligations under this Contract.

## **3. DELIVERY**

- 3.1 MDC shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and MDC reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), the condition of the Goods delivered (whether new, refurbished or second hand), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 3.2 MDC shall deliver the Goods to the location set out in the Quotation or such other location as the parties may agree (**Delivery Location**) at any time after MDC notifies the Customer that the Goods are ready.

- 3.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 3.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. MDC shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure event or the Customer's failure to provide MDC with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.5 If the Customer fails to accept delivery of the Goods within 3 Business Days of MDC notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or MDC's failure to comply with its obligations under the Contract:
- (a) 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 MDC notified the Customer that the Goods were ready for delivery; and
  - (b) MDC shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 3.6 If 5 Business Days after MDC notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, MDC may resell or otherwise dispose of part or all of the Goods.
- 3.7 The Customer shall not be entitled to reject the Goods if MDC delivers up to and including 5% more or less than the quantity of Goods ordered.
- 3.8 MDC 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. QUANTITY AND DESCRIPTION**
- 4.1 The quantity and description of the Goods shall be as set out in MDCs acknowledgement of order or (if there is no acknowledgment of order) Quotation.
- 4.2 All samples, drawings, descriptive matter, specifications and advertising issued by MDC, and any descriptions or illustrations contained in MDCs catalogues or brochures are issued or published for illustrative purposes only and they do not form part of the Contract.
- 4.3 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by MDC shall be subject to correction without any liability on the part of MDC.
- 4.4 MDC reserves the right (but does not assume the obligation) to make any changes in the Specification which are required to conform with any applicable legislation or, where the Goods are to be supplied to the Customer's specification, which do not materially affect their quality or performance. Where MDC is not the manufacturer of the Goods, MDC shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer to MDC.
- 4.5 MDC employees, contractors and agents are not authorised to make any representations or contractually binding statements concerning the Goods.
- 5. QUALITY**
- 5.1 The Customer acknowledges that the only warranties in relation to the Goods, or the supply thereof, are those given to MDC by the manufacturer of the Goods, and that to the extent that any of such warranties are given to MDC, it will, if permitted, pass on the benefit of such warranties to the Customer.

- 5.2 MDC shall not be liable for Goods' failure to comply with any warranties given in respect of the Goods if:
- (a) the defect arises because the Customer failed to follow MDC's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice; or
  - (b) the Customer alters or repairs such Goods without the written consent of MDC; or
  - (c) any loss incurred due to incorrect information provided by the Customer in the Order
  - (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.
- 5.3 The Customer acknowledges and agrees that the Customer's business requirements will be met by the Goods complying with their specification and that the consequences of any failure to do so will be the sole responsibility of the Customer.
- 5.4 Except as provided in this clause 5, MDC shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 5.6 These Conditions shall apply to any repaired or replacement Goods supplied by MDC.

## **6. REMEDIES**

- 6.1 MDC shall not be liable for any non-delivery of Goods (even if caused by MDC's negligence) unless the Customer notifies MDC in writing of the failure to deliver within seven days after the scheduled delivery date.
- 6.2 Any liability of MDC for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Goods.
- 6.3 If MDC's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer (other than by reason of a Force Majeure Event under clause 16), the Customer shall be liable to pay to MDC all reasonable costs, charges or losses sustained by it as a result, subject to MDC notifying the Customer in writing of any such claim it might have against the Customer in this respect.
- 6.4 In the event of any claim by the Customer under the warranty given in condition 5.1, the Customer shall notify MDC in writing of the alleged defect. MDC shall have the option of testing or inspecting the Goods at its current location or moving it to MDC's premises (or those its agent or sub-contractor) at the cost of MDC. If the Customer's claim is subsequently found by MDC to be outside the scope or duration of the warranty in clause 5.1, the costs of transportation of the Goods, investigation and repair shall be borne by the Customer

## **7. TITLE AND RISK**

- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 7.2 Title to the Goods shall not pass to the Customer until MDC has received payment in full (in cash or cleared funds) for the Goods.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods on a fiduciary basis as MDC's bailee;

- (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as MDC's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (e) notify MDC immediately if it becomes subject to any of the events listed in clause 9.2; and
- (f) give MDC such information relating to the Goods as MDC may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

7.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 9.2, or MDC reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy MDC may have, MDC may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **8. PRICE AND PAYMENT**

8.1 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 MDC's published price list in force as at the date of delivery.

8.2 MDC may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond MDC's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials, increase in costs imposed by the manufacturer to MDC, any change in the manufacturer's list price for the Goods, changes in the cost of fuel and any other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give MDC adequate or accurate information or instructions.

8.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods.

8.4 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from MDC, pay to MDC such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

8.5 MDC shall, at its sole discretion, invoice the Customer for the Goods:

- (a) On the date on which MDC issues its acceptance of the Order; or
- (b) on or at any time after the completion of delivery.

8.6 In the event that MDC invoices the Customer in accordance with clause 6.5(a), MDC shall not be obliged to deliver the Goods to the Customer until MDC has received the price of the Goods from the Customer in full in cleared funds.

- 8.7 The Customer shall pay the invoice in full and in cleared funds within 30 days from the date of the invoice. Payment shall be made to the bank account nominated in writing by MDC. Time of payment is of the essence.
- 8.8 If the Customer fails to make any payment due to MDC under the Contract by the due date for payment (**due date**), then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank PLC's base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 8.9 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against MDC in order to justify withholding payment of any such amount in whole or in part. MDC may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by MDC to the Customer.

## **9. CUSTOMER'S INSOLVENCY OR INCAPACITY**

- 9.1 If the Customer becomes subject to any of the events listed in clause 9.2, or MDC 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 MDC, MDC may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and MDC without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 9.2 For the purposes of clause 9.1, the relevant events are:
- (a) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or
  - (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
  - (c) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
  - (d) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer; or
  - (e) (being a company) a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver; or
  - (f) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; or

- (g) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2(a) to clause 9.2(f) (inclusive); or
- (h) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
- (i) the financial position of MDC deteriorates to such an extent that in the opinion of the Customer the capability of the Customer adequately to fulfil its obligations under the Contract has been placed in jeopardy.

**10. LIMITATION OF LIABILITY**

10.1 Nothing in these Conditions shall limit or exclude MDC's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for MDC to exclude or restrict liability.

10.2 Subject to clause 10.1:

- (a) MDC 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 indirect or consequential loss arising under or in connection with the Contract; and
- (b) MDC'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 the price of the Goods.

10.3 MDC shall not be liable for any losses arising from the Customer's subsequent use or misuse of the Goods including (without limitation):

- (a) fair wear and tear;
- (b) wilful damage;
- (c) the Customer's negligence, or that of its agents or employees, or any failure to follow MDC's instructions as to use of the Goods;
- (d) abnormal working conditions beyond those referred to in the Specification; and
- (e) any alteration or repair of the Goods by any manufacturing process or otherwise, save for any latent defect which means that the Goods did not comply with the Specification.

10.4 MDC is not liable for a defect in the Goods unless it is notified to MDC within seven days of the date of delivery or, if the defect would not be apparent on reasonable inspection, within one month of the date of delivery.

10.5 MDC is not liable for:

- (a) non-delivery, unless the Customer notifies MDC of the claim within 5 Business Days of the date of MDC's invoice; or

- (b) shortages in the quantity of Goods delivered in excess of those permitted by clause 3.8, unless the Customer notifies MDC of a claim within 5 Business Days of receipt of the Goods; or
- (c) damage to or loss of all or part of the Goods in transit (where the Goods are carried by MDC's own transport or by a carrier on behalf of MDC), unless the Customer notifies MDC within 5 Business Days of receipt of the Goods or the scheduled date of delivery, whichever is the earlier.

## **11. INTELLECTUAL PROPERTY RIGHTS**

- 11.1 If MDC manufactures the Goods, or applies any process to it, in accordance with a specification submitted or prepared by the Customer or any other information provided by the Customer, the Customer shall indemnify and keep indemnified MDC against all losses, damages, costs, claims, demands, liabilities and expenses (including without limitation consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) awarded against or incurred by MDC in connection with, or paid or agreed to be paid by MDC in settlement of, any claim for infringement of any third party Intellectual Property Rights which results from MDC's use of the Customer's specification or such other information. The indemnity shall apply whether or not the Customer has been negligent or at fault and does not limit any further compensation rights of MDC.
- 11.2 The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Goods are and shall remain the sole property of MDC or (as the case may be) third party rights, owner.
- 11.3 MDC shall retain the property and copyright in all documents supplied to the Customer in connection with the Contract and it shall be a condition of such supply that the contents of such documents shall not be communicated either directly or indirectly to any other person, firm or company without the prior written consent of MDC.
- 11.4 MDC's Intellectual Property Rights in and relating to the Goods shall remain the exclusive property of MDC, and the Customer shall not at any time make any unauthorised use of such Intellectual Property Rights, nor authorise or permit any of its agents or contractors or any other person to do so.
- 11.5 In relation to the Software:
  - (a) the Customer acknowledges that it is buying only the media on which the software is recorded and the accompanying user manuals;
  - (b) nothing contained in these conditions shall be construed as an assignment of any Intellectual Property Rights in the Software or user manuals; and
  - (c) the Customer shall be subject to the rights and restrictions imposed by the owner of the Intellectual Property Rights in the Software and user manuals, and shall comply with all licence agreements, terms of use and registration requirements relating to them.

## **12. CONFIDENTIALITY AND SUPPLIER'S PROPERTY**

- 12.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by MDC or its agents, and any other confidential information concerning MDC's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Customer's obligations to MDC, and shall



ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

- 12.2 All materials, Goods and tools, drawings, specifications and data supplied by MDC to the Customer shall at all times be and remain the exclusive property of MDC, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to MDC, and shall not be disposed of or used other than in accordance with MDC's written instructions or authorisation.
- 12.3 This condition 12 shall survive termination of the Contract, however arising.

### **13. SOFTWARE LICENCE**

- 13.1 If MDC refers to a software licence in the acknowledgment of order, the price of the Goods includes the licence fee for the Customer's right to use the Software.
- 13.2 If the Customer is provided with any operating system software licence in respect of the Software, the Customer shall sign and return it to MDC within seven days of installation of the software, unless the licence has been supplied on a "shrink-wrap" or "click-wrap" basis.
- 13.3 If no software licence has been provided to the Customer, the Customer hereby accepts a non-exclusive, non-transferable licence to use the Software on the following conditions:
- (a) the Customer shall not copy (except to the extent permissible under applicable law or for normal operation of the Goods), reproduce, translate, adapt, vary or modify the software, nor communicate it to any third party, without Supplier's prior written consent;
  - (b) the Customer shall not use the Software on any Goods other than the Goods, and shall not remove, adapt or otherwise tamper with any copyright notice, legend or logo which appears in or on the Software on the medium on which it resides;
  - (c) such licence shall be terminable by either party 28 days' written notice, provided that MDC terminates only if the continued use or possession of the Software by the Customer infringes the developer's or a third party's rights, or MDC is compelled to do so by law, or if the Customer has failed to comply with any term of the Contract; and
  - (d) on or before the expiry of this licence, the Customer shall return to MDC all copies of the Software in its possession.

### **14. IMPORT AND EXPORT**

- 14.1 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 14 shall (subject to any contrary terms agreed in writing between the Customer and MDC) override any other provision of these conditions.
- 14.2 The Customer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Goods as are required from time to time and, if required by MDC, the Customer shall make those licences and consents available to MDC prior to the relevant shipment.
- 14.3 The Customer shall be responsible for complying with any legislation governing:
- (a) the importation of the Goods into the country of destination; and
  - (b) the export and re-export of the Goods,
- and shall be responsible for the payment of any duties on it.

14.4 Unless otherwise agreed in writing between the Customer and MDC, the Goods shall be delivered free on board the air or sea port of shipment and MDC shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

14.5 The Customer shall pay the price for the Goods in pounds sterling

## 15. **DISPUTE RESOLUTION**

15.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then, except as expressly provided in this agreement, the parties shall follow the dispute resolution procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documentation. On service of the Dispute Notice the parties' Representatives shall attempt in good faith to resolve the Dispute;
- (b) if the parties' Representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the managing directors of each of the parties who shall attempt in good faith to resolve it; and
- (c) if the managing directors of the parties are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 10 days after the date of the ADR notice. Unless otherwise agreed by the parties, the place of mediation shall be nominated by the mediator.

15.2 No party may commence any court proceedings in relation to any dispute arising out of this agreement until 30 days after the appointment of a mediator, provided that the right to issue proceedings is not prejudiced by a delay.

## 16. **FORCE MAJEURE**

16.1 MDC reserves the right to defer the date of delivery, or to cancel the Contract or reduce the amount of Goods ordered, if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce MDC or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors (**Force Majeure Event**).

## 17. **GENERAL**

### 17.1 **Waiver of rights based on misrepresentation**

- (a) Each party unconditionally waives any rights it may have to claim damages against the other on the basis of any oral or written statement made by the other or by its legal advisers (whether made carelessly or not) that is not set out or referred to in this agreement (or for breach of any warranty given by the other not so set out or referred to), unless such statement or warranty was made or given fraudulently.

- (b) Each party unconditionally waives any rights it may have to seek to rescind this agreement on the basis of any statement made by the other (whether made carelessly or not), unless such statement was made fraudulently

**17.2 Assignment and subcontracting.**

- (a) MDC 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.
- (b) 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 MDC.
- (c) Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**17.3 Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and in the English language, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier or by fax.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.3(a); if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, writing shall not include e-mail.

**17.4 Severance.**

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

**17.5 Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**17.6 Entire agreement**

- (a) This agreement constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence, negotiations,

arrangements, understandings and agreements between them relating to its subject matter.

- (b) Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this agreement.
  - (c) Each party agrees that its only liability in respect of those representations and warranties that are set out in this agreement (whether made innocently or negligently) shall be for breach of contract.
- 17.7 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.
- 17.8 **Third party rights.** No person other than a party to the Contract shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 17.9 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 17.10 **Governing law and jurisdiction.**
- (a) 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.
  - (b) The parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).
  - (c) Nothing in this clause 17.10 shall limit the right of MDC to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdiction preclude MDC from taking proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.
  - (d) It is the Customer's obligation to acquaint itself and to comply with all applicable requirements and restrictions imposed by law or by governmental and other authorities or corporations relating to the possession, use, import, export, or resale of the Goods. It is the Customer's obligation to ensure that no Goods are exported or imported in violation of the laws of any jurisdiction into or through which the Goods are transported during the course of reaching the Delivery Location. Where necessary, the Customer shall inform MDC at a reasonable time before delivery of any documents which it is necessary for MDC to provide in order to allow export of the Goods in compliance with the laws of any relevant jurisdiction.
  - (e) The Customer irrevocably appoints [NAME] of [ADDRESS], [FAX NUMBER], as its agent to receive on its behalf in England or Wales, service of any proceedings under clause 17.10(b). This service shall be deemed completed on delivery to that agent (whether or not it is forwarded to and received by the Customer) and shall be valid until the Customer has received prior written notice from the Customer that its agent has ceased to act as agent. If, for any reason, its agent ceases to be able to act as agent

or no longer has an address in England or Wales, the Customer shall immediately appoint a substitute acceptable to the Customer and deliver to the Customer the new agent's name, address [and fax number] within England and Wales.

- (f) The rights set out in this clause 17.10 are in addition to any other manner of service permitted by law at the time when service is made.