



Terms and Conditions of Sale

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Preamble Except in the case of Contracts by tender, the Customer's order shall be subject to written acceptance by MT.

Where MT submits a written tender or quotation for acceptance by the Customer MT's offer shall, unless otherwise specified and unless previously withdrawn, be valid for a period of 2 months and after that period shall be subject to confirmation by MT.

If an order is cancelled by the Customer after acceptance either by tender or otherwise, and after MT has placed an order to a Supplier, the Customer will be subject to a cancellation charge.

1. Definitions

- 1.1 In these Conditions of Contract:
"MT" means Manx Telecom Ltd;
"The Equipment" means the items sold by MT to the Customer under the Contract to which these Conditions apply, and includes any software supplied under this Contract.
- 1.2 Where this Contract does not include installation by MT, paragraphs 4.1, 5.2 and 9.2.1 shall not apply and references to installation shall be ignored and "taking over/taken over by the Customer" shall be read as meaning "delivery/delivered to the Customer".

2. Content of Contract

- 2.1 No variation of these Conditions shall have effect unless agreed in writing by MT and the Customer. These Conditions shall not be replaced by any contract terms proposed by the Customer.

- 2.2 No employee of MT has authority to make any warranty, statement or promise concerning the Equipment except in writing signed by a duly authorised officer.
- 2.3 Except where the Customer relies on MT's written advice, it is the Customer's responsibility to satisfy itself as to the suitability of the Equipment for its needs.
- 2.4 MT may make minor alterations to the specification of the Equipment which do not affect the Equipment's performance.

3. **Connection to Network**

Where the Equipment is to be connected to a telecommunications network or a circuit run by MT or a third party, it is the Customer's responsibility to arrange for such connection to be made, to pay any connection charge and to comply with any conditions relating to connection. Installation of the Equipment under this Contract does not include connection.

4. **Consents: Installing the Equipment: Access**

- 4.1 The Customer shall at its own expense:
- 4.1.1 obtain all necessary consents for the installation and use of the Equipment, including consents for any necessary alterations to buildings;
 - 4.1.2 ensure that any floor loading limits will not be exceeded;
 - 4.1.3 provide suitable accommodation, foundations and environment for the Equipment, including all necessary trunking, conduits and cable trays in accordance with installation standards;
 - 4.1.4 provide electric power needed by MT in installing, testing and maintaining the Equipment;
 - 4.1.5 provide a suitable and safe working environment for MT personnel;
 - 4.1.6 take up or remove in time to allow MT to carry out installation any fitted or fixed floor coverings, ceiling tiles, suspended ceilings and partition covers, and carry out afterwards any making good or decorator's work required. Such preliminaries to be completed in advance of any installation work.
- 4.2 Employees of MT shall observe the Customer's reasonable site regulations previously advised in writing to MT. In the event of any conflict between such site regulations and these Conditions the latter shall prevail.
- 4.3 The Customer shall provide MT at all reasonable times with full and convenient access to the Customer's and other premises for the purpose of carrying out MT's obligations under this Contract. MT will normally carry out work during its usual working hours but may, on reasonable notice, require the Customer to provide access at other times. At the Customer's request MT may agree, exceptionally, to work outside usual working hours; the Customer shall pay MT's reasonable charges for complying with such request.

5. **Taking over**

- 5.1 If the Equipment is to be delivered or ready for service by a date specified by the Customer or by MT, such date is to be treated as an estimate only. MT does not guarantee that the Equipment will be delivered or ready for service by such date, or accept any liability for failure to meet the date.

- 5.2 Upon installation, MT will carry out any tests necessary to ensure that the Equipment is in working order.
- 5.3 The Equipment shall be deemed to be taken over by the Customer at either:
- the date when MT notifies the Customer that the Equipment is in working order; or
- the date when the Customer begins to use the Equipment, whichever is earlier.
- 5.4 Taking over shall not be prevented by minor faults, which do not affect the Equipment's performance, but MT shall remedy such minor faults within a reasonable time.

6. **Ownership and risk**

- 6.1 Any part of the Equipment delivered to the Customer's premises (or premises to which the Equipment is delivered at the Customer's request) shall from the time of delivery be at the Customer's risk, whether or not installed, except as regards loss or damage caused by the negligence of MT. Where the Contract does not include delivery and or installation by MT, risk passes when the Customer or his agent takes possession of the Equipment.
- 6.2 If MT is delayed in or prevented from delivering or installing the Equipment by any date specified under paragraph 5.1 due to any delay or default on the part of the Customer, MT may (in addition to any other remedies) on written notice to the Customer, add to the Contract price, a reasonable sum in respect of any additional costs thereby incurred.
- 6.3 MT shall supply the Customer, on written request, with details of any additional sum payable under this paragraph.
- 6.4 Notwithstanding that the Equipment has been taken over and stands at the Customer's risk, ownership of the Equipment shall not pass to the Customer until payment of the Contract price in full and until such time the Equipment shall continue to be the property of MT. At all times before payment in full:
- the Equipment shall stand in the Customer's books in the name of MT;
- the Customer shall take appropriate steps to notify third parties of MT's interest in the Equipment; and in the event of threatened seizure of the Equipment, or of appointment of a receiver or liquidator, or any other event entitling MT to terminate this Contract under paragraph 12 the Customer shall immediately notify MT and MT shall be entitled to enter the Customer's premises and repossess the Equipment.
- 6.5 The Customer agrees that until payment in full of the price of Equipment, such Equipment shall be held by the Customer as bailee for MT and shall store the same safely separately from its own goods. In the event that such Equipment shall be sold by the customer the entire proceeds of sale thereof shall be held in trust for MT and shall not be mingled with any money paid into a bank account and shall at all times be identified as MT's monies.

7. **Guarantee**

- 7.1 If during the period of 12 months (or any other period notified to the Customer by MT) from taking over MT is notified of a fault in the Equipment which is due to faulty design, manufacture or materials, or the negligence of MT, MT will replace or (at its option) repair the faulty part free of charge provided that:
- 7.1.1 the Equipment has been properly kept, used and maintained in strict accordance with the manufacturer's or MT's instructions, if any, and has not been modified except with MT's consent;
- 7.1.2 the fault is not due to accidental or wilful damage (including power interruptions or surges, lightning and electrical damage) or interference with or maintenance of the Equipment by persons other than MT;

- 7.1.3 if the Equipment has been manufactured to the Customer's design, the fault is not due to faulty design by the Customer.
- 7.2 This guarantee does not cover fair wear and tear
- 7.3 In the case of Equipment capable of being installed by the Customer, the Customer will normally be required to return faulty Equipment to MT unless MT agrees otherwise.
- 7.4 As it is not possible for software to be tested in every possible permutation, MT does not warrant that any software supplied under this Contract will be free of all faults or that its use will be uninterrupted but MT shall remedy such defects which significantly impair performance within a reasonable time.
- 7.5 MT may make a reasonable charge in respect of any visit at the Customer's request to repair the Equipment where either no fault is found to exist, or the fault is not covered by this guarantee.

8. **Limitation of Liability**

- 8.1 MT accepts liability for faults in the Equipment and its own negligence to the extent stated in paragraphs 7, 8.3, 8.4 and 8.5, but not otherwise. Except as expressly stated in these Conditions MT has no obligation duty or liability in contract, tort (including negligence or breach of statutory duty) or otherwise.
- 8.2 The implied terms as to title in Section 1 of the Supply of Goods and Services Act 1996 are not excluded.
- 8.3 Where the Customer does not buy the Equipment in the course of a business (or hold itself out as doing so), paragraph 8.1 does not exclude the undertakings implied by Sections 5, 9 and 13 of the Supply of Goods and Services Act 1996, and does not affect the Customer's statutory rights.
- 8.4 MT does not exclude or restrict: - liability for death or personal injury resulting from its own negligence; or liability arising by virtue of Part 1 of the Consumer Protection Act 1991.
- 8.5 In any event subject to clause 8.4 MT's liability in contract, tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with this Contract or howsoever otherwise shall be limited to £1,000,000.
- 8.6 In any event in no circumstances shall MT be liable in contract, tort (including negligence or breach of statutory duty) or otherwise for loss (whether direct or indirect or consequential) of profits, business, or anticipated savings, or for loss of or corruption to data or for any indirect or consequential loss or damage whatever.
- 8.7 Each provision of this paragraph 8 is to be construed as a separate limitation applying and surviving even if for any reason one or other of the said provisions is inapplicable or held unreasonable in any circumstances and shall remain in force notwithstanding termination of this Contract.

9. **Charges and Payment**

- 9.1 Unless MT notifies the Customer otherwise, an invoice will be submitted upon delivery/taking over of the Equipment. Payment is due within 14 days of invoice date. MT may charge daily interest on late payments at an annual rate equal to 4% per annum above the Base Lending Rate of Barclays Bank plc from time to time.
- 9.2 Unless otherwise stated, prices and charges:

- 9.2.1 include delivery to the Customer's premises in the IOM and installation by MT;
- 9.2.2 do not include Value Added Tax which will be added to invoices as appropriate.
- 9.3 Except in written tenders or quotations as specified in the preamble to this Contract, where the Equipment includes items supplied to the Customer at standard MT prices, MT may vary the price payable by the Customer to include any change in those standard prices occurring and notified to the Customer before delivery of the Equipment. In respect of items whose price is increased, the Customer may cancel this Contract at any time before delivery of the Equipment at no cost.
- 9.4 Notwithstanding paragraph 6.4, MT shall be entitled to maintain an action for the price of the Equipment at any time after payment becomes due.

10. **Software and Documents**

- 10.1 Intellectual property rights in all software supplied to the Customer remain the property of MT or its licensor. MT grants the Customer a non-exclusive non-transferable licence to use the software for the purpose of using the Equipment and for no other purpose. The Customer shall not reproduce the software except to the extent strictly necessary for proper use of the Equipment and for back-up purposes; any such permitted reproduction being solely in object code form. The Customer shall keep the software and any operating manuals or other documentation associated therewith in confidence; any disclosure thereof by the Customer shall be made in confidence and only to the extent strictly necessary for the proper use of the Equipment. The Customer shall be responsible for ensuring that such disclosure does not lead to a breach of this paragraph. The Customer shall not make modifications to the software without the prior written consent of MT; the intellectual property rights, including copyright, in any permitted modifications shall vest in MT. This Contract shall not apply to the extent that it is inconsistent with any separate software licence or agreement made between MT and the Customer.
- 10.2 The Customer will on demand sign any agreement reasonably required by the owner of intellectual property rights in all software supplied to the Customer under this Contract for the protection of that software.
- 10.3 The copyright in all documents, drawings and information supplied to the Customer in connection with this Contract shall remain vested in MT. Such documents, drawings and information shall not be copied, disclosed or used (except for the purpose for which they were supplied) without the written consent of MT and shall be returned to MT forthwith of the termination of this Contract.

11. **Infringements**

- 11.1 MT shall indemnify the Customer against all claims and proceedings arising from infringement (or alleged infringement) of any patent, design or copyright enforceable in the Isle of Man, by reason of the Customer's use of possession of the Equipment in accordance with these conditions. As a condition of this indemnity the Customer shall:
 - 11.1.1 notify MT promptly in writing of any allegation of infringement;
 - 11.1.2 make no admission relating to the infringement; and
 - 11.1.3 allow MT to conduct all negotiations and proceedings and give MT all reasonable assistance.
- 11.2 If at any time an allegation of infringement of patent, design, or copyright is made, MT may at its own expense modify the Equipment so as to avoid the infringement or may replace the

Equipment with non-infringing goods provided that any such modification or replacement does not affect the Equipment's performance.

- 11.3 The indemnity in paragraph 11.1 does not apply to infringements occasioned by the Customer's use of the Equipment in conjunction with other apparatus or software not supplied by MT; nor to infringements occasioned by designs or specifications made by the Customer. The Customer shall indemnify MT against claims, proceedings and expenses arising from such infringements.

12. **Termination**

Without prejudice to its other rights, MT shall have the right forthwith to terminate this Contract and to claim for any resulting losses or expenses if:

- 12.1 the Customer commits a breach of this or any other contract with MT and fails to remedy the breach within 30 days of a written notice to do so; or
- 12.2 the Customer commits any act of bankruptcy or is declared bankrupt or compounds with its creditors; or any of its assets is seized or distress is levied against it or a petition for or receiving order in bankruptcy is presented or made against the Customer; or a petition for an administration order is presented in relation to the Customer or a resolution is proposed or petition to wind up the Customer is presented or a receiver or administrative receiver is appointed or anything analogous to any of the foregoing occurs in any jurisdiction in respect of the Customer.

13. **Variation of Terms and Conditions, Entire Agreement**

MT can from time to time change the Terms and Conditions of this Contract other than the charges payable under it by a document referring expressly to this paragraph and signed by a duly authorised employee of MT. MT will publish details of any changes (including the operative date) in its main office as soon as possible and in any event not less than 2 weeks before any change is to take effect, except that if the change is made to a provision of this Contract limiting or excluding MT's liability for breaches of duty to the Customer (in contract or tort) MT will give the Customer not less than 2 weeks notice of the change. Subject thereto this contract, these Terms and Conditions and any document referred to herein constitute the entire agreement between us and shall not be varied save by agreement in writing.

14. **Force Majeure**

MT shall not be liable in respect of any breach of this Contract due to any cause beyond its reasonable control including: Act of God, inclement weather, flood, lightning or fire; industrial action or lockouts; the act or omission of Government, highways authorities, or other competent authority; war, military operations or riot; the act or omission of any party for whom MT is not responsible.

15. **Law**

This contract shall be governed by and construed in accordance with Isle of Man law and the customer hereby irrevocably submits to the jurisdiction of the Isle of Man High Court.