

# Service Description – Sale of Equipment



connectivity  voice  mobile  data centre  cloud  connectivity

**m-business**

## 1. INTERPRETATION & ADDITIONAL DEFINITIONS

Unless the context otherwise requires, terms and phrases defined in the General Terms & Conditions, the Services Order Form and any other Services Description attached there to, and the Fees List will have the same meaning when used in this Services Description.

## 2. ADDITIONAL INFORMATION - APPLICATION OF TERMS

2.1 Subject to any variation under Paragraph 2.3, the Equipment shall be provided to the Customer by MT on the terms and conditions provided by the Equipment Order Form (and each document incorporated therein) to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Equipment Order Form simply as a result of such document being referred to or included in Equipment ordering or delivery process.

2.3 The Equipment Order Form apply to all of MT's sales and any variation to these conditions and any representations about the Equipment shall have no effect unless expressly agreed in writing and signed by an authorised signatory of MT. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of MT which is not set out in any Equipment Order Form. Nothing in this condition shall exclude or limit MT's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Equipment by the Customer from MT shall be deemed to be an offer by the Customer to buy Equipment subject to a Equipment Order Form.

2.5 No order placed by the Customer shall be deemed to be accepted by MT until a written acknowledgement of order is issued by MT or (if earlier) MT delivers the Equipment to the Customer.

2.6 The Customer shall ensure that each Equipment Order Form and any applicable specification are complete and accurate.

2.7 Any MT quotation is provided to the Customer on the basis that no binding agreement shall come into existence until both the Customer and MT execute an Equipment Order Form. Any quotation is valid for a period of thirty (30) days only from its date, provided that MT has not previously withdrawn it.

## 3. ADDITIONAL INFORMATION – DESCRIPTION OF EQUIPMENT

3.1 The quantity and description of the Equipment shall be as set out in the Equipment Order Form.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by MT and any descriptions or illustrations contained in MT's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Equipment described in them. They shall not form part of any Equipment Order Form and this is not a sale by sample.

3.3 The Customer acknowledges and accepts that:

- (a) only a duly authorised officer of MT is permitted to make any warranties, statements or promises concerning any Equipment, and then only in writing;
- (b) no other MT employee or other agent or representative has the authority to make such warranties, statements or promises to the Customer;
- (c) 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; and
- (d) MT may make minor alterations to the specification of the Equipment which do not affect the Equipment's performance.

#### 4. **ADDITIONAL INFORMATION – DELIVERY OF EQUIPMENT**

4.1 Unless otherwise agreed in writing by the Parties on the Equipment Order Form, delivery of the Equipment shall take place at MT's place of business (the "Delivery Point").

4.2 The Customer shall take delivery of the Equipment within ten (10) normal working days of MT giving it notice that the Equipment is ready for delivery.

4.3 Any dates specified by MT for delivery of the Equipment are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

4.4 Subject to the other provisions of these conditions MT shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Equipment (even if caused by MT's negligence), nor shall any delay entitle the Customer to terminate or rescind the Equipment Order Form unless such delay exceeds one hundred and eighty (180) days.

4.5 If for any reason the Customer fails to accept delivery of any of the Equipment when they are ready for delivery, or MT is unable to deliver the Equipment on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:

- (a) risk in the Equipment shall pass to the Customer (including for loss or damage caused by MT's negligence);
- (b) the Equipment shall be deemed to have been delivered; and
- (c) MT may store the Equipment until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.6 The Customer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Equipment.

4.7 MT may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the relevant Equipment Order Form.

4.8 Each instalment shall be separate from the others and no cancellation or termination of any one instalment shall entitle the Customer to repudiate or cancel any other instalment.

4.9 If MT posts, or delivers, the Equipment to the Customer for installation by the Customer, then the Customer agrees to notify MT of any damage to the Equipment within forty eight (48) hours from the time that delivery to the Customer occurred, as provided by the Notice provisions of the General Terms & Conditions.

4.10 Unless the Customer notifies MT of any damage to the Equipment that has been delivered to the Customer by post, in accordance with the provisions of Paragraph 4.9, the Equipment shall be deemed to have been provided to the Customer in good working order.

### 5. **ADDITIONAL INFORMATION – NON-DELIVERY OF EQUIPMENT**

5.1 The quantity of any consignment of Equipment as recorded by MT upon despatch from MT's place of business or from a third party supplier shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

5.2 MT shall not be liable for any non-delivery of Equipment (even if caused by MT's negligence) unless the Customer gives written notice to MT of the non-delivery within ten (10) normal working days of the date when the Equipment would in the ordinary course of events have been received.

5.3 Any liability of MT for non-delivery of the Equipment shall be limited to replacing the Equipment within a reasonable time or issuing a credit note at the pro rata Equipment Order Form rate against any invoice raised for such Equipment.

5.4 If MT is delayed in, or prevented from, delivering or installing the Equipment by any date specified in the Equipment Order Form due to any act or omission of the Customer, MT may (in addition to any other remedies) on written notice to the Customer, add to Price, an additional fee in accordance with the Fees List in respect of any additional costs thereby incurred. MT shall supply the Customer, on written request, with details of any additional fees payable under this paragraph.

### 6. ADDITIONAL INFORMATION – PASSING OF RISK/TITLE

6.1 The Equipment is at the risk of the Customer from the time of delivery, whether or not installed. Where the Service does not include delivery and/or installation by MT, risk passes to the Customer when the Customer or his agent takes possession of the Equipment.

6.2 Ownership of the Equipment shall not pass to the Customer until MT has received in full (in cash or cleared funds) all sums due to it in respect of:

- (a) the Equipment; and
- (b) all other sums which are or which become due to MT from the Customer on any account, and until such time the Equipment shall continue to be the property of MT.

6.3 Until ownership of the Equipment has passed to the Customer, the Customer undertakes to:

- (a) hold the Equipment on a fiduciary basis as MT's bailee;
- (b) store the Equipment (at no cost to MT) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as MT's property;
- (c) to record the Equipment in the Customer's books in the name of MT;
- (d) not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment;
- (e) maintain the Equipment in satisfactory condition and keep it insured on MT's behalf for their full price against all risks to the reasonable satisfaction of MT. On request the Customer shall produce the policy of insurance to MT.
- (f) the Customer shall take appropriate steps to notify third parties of MT's interest in the Equipment;
- (g) 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 the Equipment Order Form, the Customer shall immediately notify MT and MT shall be entitled to enter any Customer premises and repossess the Equipment; and
- (h) in the event that the Equipment shall be sold by the Customer contrary to Paragraph 6.4, the entire proceeds of sale thereof shall be held in trust by the Customer 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.

6.4 The Customer may not resell the Equipment before ownership has passed to it.

6.5 The Customer's right to possession of the Equipment shall terminate immediately if:

- (a) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or

administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the UK's Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

- (b) the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between MT and the Customer, or is unable to pay its debts within the meaning of section 123 of the UK's Insolvency Act 1986 or the Customer ceases to trade; or
- (c) the Customer encumbers or in any way charges any of the Equipment.

6.6 MT shall be entitled to recover payment for the Equipment notwithstanding that ownership of any of the Equipment has not passed from MT.

6.7 The Customer grants MT, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

6.8 On termination of the Equipment Order Form, howsoever caused, MT's (but not the Customer's) rights contained in this Clause 6 shall remain in effect.

## 7. ADDITIONAL INFORMATION – EQUIPMENT QUALITY

7.1 MT warrants that (subject to the other provisions of these conditions) upon delivery, and for the duration of the manufacturers warranty, the Equipment shall:

- (a) be of satisfactory quality within the meaning of the Sale of Equipment Act 1983; and
- (b) be reasonably fit for any particular purpose for which the Equipment is being bought if the Customer had made known that purpose to MT in writing and MT has confirmed in writing that it is reasonable for the Customer to rely on the skill and judgement of MT.

7.2 MT shall not be liable for a breach of any of the warranties in Paragraph 7.1 unless:

- (a) the Customer gives written notice of the defect to MT, and, if the defect is as a result of damage in transit to the carrier, within ten (10) normal working days of the time when the Customer discovers or ought to have discovered the defect; and
- (b) MT is given a reasonable opportunity after receiving the notice of examining such Equipment and the Customer (if asked to do so by MT) returns such Equipment to MT's Main Office at MT's cost for the examination to take place there.



7.3 MT shall not be liable for a breach of any of the warranties in Paragraph 7.1 if:

- (a) the Customer makes any further use of such Equipment after giving such notice; or
- (b) the defect arises because the Customer failed to follow MT's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or (if there are none) good industry practice; or
- (c) the Customer alters or repairs such Equipment without the written consent of MT.

7.4 Subject to Paragraphs 7.2 and 7.3, if any of the Equipment does not conform with any of the warranties in Paragraph 7.1, then MT shall at its option repair or replace such Equipment (or the defective part) or refund the price of such Equipment at the pro rata Equipment Order Form rate provided that, if MT so requests, the Customer shall, at MT's expense, return the Equipment or the part of such Equipment which is defective to MT.

7.5 If MT complies with Paragraph 7.4, then it shall have no further liability for a breach of any of the warranties in Paragraph 7.1 in respect of such Equipment.

### 8. **ADDITIONAL INFORMATION – EQUIPMENT GUARANTEE**

8.1 Where MT is not the manufacturer of the Equipment, MT shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to MT.

8.2 If during the period of the manufacturer's warranty, 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 own discretion, repair the faulty part free of charge, provided that:

- (a) the Equipment has been properly kept, used and maintained in strict accordance with the manufacturer's and MT's instructions, if any, and has not been modified except with MT's written consent; and
- (b) 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; and
- (c) if the Equipment has been manufactured to the Customer's design, the fault is not due to faulty design by the Customer.

8.3 This guarantee does not cover fair wear and tear.

8.4 In the case of Equipment that is installed by the Customer, the Customer will be responsible for returning faulty Equipment to MT, unless MT agrees otherwise in writing.

8.5 MT provides no warranties regarding any software that is supplied under this Equipment

Description.

### 9. ADDITIONAL INFORMATION – EQUIPMENT INSTALLATION

9.1 Responsibility for installation of the Equipment will be specified on the relevant Equipment Order Form.

9.2 If the Equipment is to be installed by MT, then, prior to such installation occurring, the Customer must, at its own expense:

- (a) obtain all necessary consents for the installation and use of the Equipment, including consents for necessary alterations to buildings;
- (b) provide all relevant utility services required by MT in relation to the installation, testing, and maintenance of the Equipment;
- (c) ensure that any floor loading limits will not be exceeded;
- (d) provide suitable accommodation, foundations and environment for the Equipment, including all necessary trunking, conduits and cable trays in accordance with installation standards;
- (e) provide a suitable and safe working environment for MT personnel; and
- (f) 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, all of which shall be completed in advance of any installation work.

9.3 Responsibility for maintenance of the Equipment will be specified on the relevant Equipment Order Form.

9.4 If the Equipment is to be maintained by MT, then MT shall provide Equipment Maintenance Services in relation to all Equipment, which shall be considered to be Maintained Equipment for the purposes of the Equipment Maintenance Services.

### 10. ADDITIONAL INFORMATION – EQUIPMENT INSPECTION/TESTING SERVICES

10.1 If the Equipment is to be connected to MT's telecommunication systems or any MT services, then the Customer undertakes to:

- (a) submit such Equipment to MT's Equipment Inspection/Testing Services prior to making such connection; and
- (b) pay any connection charge and to comply with any conditions relating to connection.

### 11. ADDITIONAL INFORMATION – VARIATION OF PRICE



Except in written tenders or quotations, if the Equipment includes items supplied to the Customer at standard MT prices, then MT may vary the price payable by the Customer to include any change in such standard prices occurring and notified to the Customer before delivery of the Equipment. In respect of Equipment for which the Price is increased, the Customer may cancel the relevant Equipment Order Form at any time before delivery of the Equipment at no cost.

### 12. **ADDITIONAL INFORMATION – EQUIPMENT CANCELLATION COSTS**

12.1 If a Customer executes an Equipment Order Form, but then seeks to cancel the order for the Equipment prior to MT delivering the Equipment to the Customer (for any reason other than a MT Event of Default), then the Customer shall be liable to MT for all commercially reasonable costs and expenses that MT may have incurred as a result of the Customer’s cancellation of the Equipment Order Form (the “Equipment Cancellation Costs”).

12.2 MT shall at all times have a duty to mitigate any Equipment Cancellation Costs.

### 13. **ADDITIONAL INFORMATION – MANUFACTURER’S WARRANTY**

The details of any manufacturer’s warranty or guarantee that MT is passing on to the Customer (if any) will be provided in Attachment One hereto.

### **ATTACHMENT ONE – MANUFACTURER’S WARRANTY (IF RELEVANT)**



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