

MTData Ltd.
Terms & Conditions v3

The Customer's attention is particularly drawn to the provisions of clause 18.

1. Interpretation

1.1 In these terms and conditions:

Business Day means a day that is not a Saturday, Sunday, bank holiday or public holiday in London, United Kingdom.

Business Hours means from 9.00am to 5.00pm on a Business Day.

Contract is defined in clause 3.4.

Critical Fault means a significant error or failure in the Licensed Software which results in a major or total failure of operation of the Licensed Software to perform in substantial conformity with the Documentation, so as to give rise to a major or total interruption to the functioning of the business of the Customer.

Customer means a person who procures (or wishes to procure) any of the Goods.

Documentation means operator and user manuals, training materials, guides, specifications and other materials created or owned by MTData in relation to the use of the Goods.

External Factors is defined in clause 17.2.

Force Majeure Event means an event beyond the reasonable control of MTData including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport 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 subcontractors.

Goods means the hardware, software and/or services offered by MTData to the Customer, as described in a Quotation (and includes any services provided via the Website).

Licensed Software means any software supplied by MTData under this Contract, including any Updates or New Releases to that software provided to the Customer from time to time.

MTData a company incorporate in MTData Ltd [under company number 05582016].

New Release means a new version of Licensed Software which adds new functionality or performance and for which MTData typically charges its customers.

Non-Critical Fault means any error or failure in the operation of the Licensed Software which results in a failure of the Licensed Software to perform in substantial conformity with the Documentation and that is not a Critical Fault.

Non-Excludable Condition is defined in clause 18.1.

Privacy Policy means MTData's privacy policy available on the Website (as may be amended from time to time).

Purchased Goods means the hardware Goods that the Customer purchases from MTData.

Quotation means the written or electronically generated Quotation Terms Sheet provided by MTData to the Customer.

Rented Goods means the hardware Goods that the Customer rents from MTData.

Update means each update of Licensed Software supplied by MTData the purpose of which is to correct an error or defect in the Licensed Software (but excluding New Releases).

Website means MTData's website located at www.mtdata-uk.com.

2. Terms of supply

2.1 The Goods are supplied by MTData on these terms and conditions.

2.2 The Customer agrees to be bound by and abide by these terms and conditions and any other terms, conditions and policies notified by MTData (including the Privacy Policy) in writing in respect of the provision of the Goods.

3. Quotations and orders

3.1 The price specified in a Quotation is only valid for the period stated in the Quotation (or, if no period is stated, for 30 days from the date of the Quotation).

3.2 A Quotation issued by MTData constitutes an invitation to treat and is not an offer.

3.3 By placing an order for Goods on the basis of the pricing and payment terms set out in a valid Quotation, the Customer is making an offer to procure the relevant Goods on those terms and on these terms and conditions.

3.4 A contract in respect of the provision of Goods (**Contract**) is only formed when an order placed by the Customer in accordance with clause 3.3 is received and accepted in writing by MTData (including by the issue of an invoice). The Contract comprises the terms of the Quotation, these terms and conditions, the Privacy Policy, and any other terms notified to the Customer by MTData in writing in accordance with clause 2.2.

4. Prices

4.1 All prices and fees provided by MTData are subject to change without notice and all orders are accepted by MTData on condition that they will be invoiced at the prices set out in the Quotation, provided that MTData reserves the right to correct any typographical and clerical errors in the prices or specifications set out in the Quotation and to amend the prices set out in the Quotation to reflect any variations in the rates or methods of assessment for any freight costs, insurance costs, agency fees, wharfage and storage charges and customs duty in respect of any Goods that occurs after the date of the Quotation. If the Customer places an order for Goods after a Quotation in respect of those Goods has expired, MTData reserves the right to issue a new Quotation in respect of those Goods with updated pricing.

4.2 Unless otherwise stated, the prices specified in a Quotation do not include freight, installation, configuration or commissioning charges or the costs of any special packing and packing materials. The Customer must pay all costs incurred by MTData in freight, installing, commissioning, configuring and/or specially packing the Goods at the request of the Customer.

4.3 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by MTData to the Customer, the Customer shall, on receipt of a valid VAT invoice from MTData, pay to MTData such additional amounts in respect of VAT as are chargeable on the supply of the Goods at the same time as payment is due for the supply of the Goods.

4.4 Unless otherwise stated, and subject to clause 4.3, the prices quoted by MTData are net of all taxes, tariffs, duties and levies imposed by any government or statutory authority. All such taxes, tariffs, duties and levies must be paid by the Customer on demand by MTData.

5. Terms of payment

5.1 Once MTData has received an order for Goods in accordance with clause 3.3, MTData may issue invoices in respect of the Goods on a monthly basis (or such other basis as specified in the relevant Quotation).

5.2 Without limiting clause 5.1:

(a) MTData may issue invoices for equipment progressively as items or instalments of Goods are delivered or are made available for collection;

(b) where the Quotation provides for development of software to meet the requirements of the Customer, MTData may issue invoices progressively as development proceeds; and

(c) where any Quotation provides for installation, configuration and/or commissioning or other services, MTData may issue additional invoices progressively during the course of the provision by MTData of the services.

5.3 The Customer must pay each invoice issued by MTData at the time stated in the Quotation or, in the absence of any time stated, within seven (7) days after the date of the invoice.

6. Delivery

6.1 MTData will not dispatch any Goods to, or make any Goods available for collection by, the Customer until the Customer has paid the deposit, or any other amount that is first due to be paid, under the invoice in respect of the Goods.

6.2 At MTData's election:

(a) MTData shall deliver the Goods to the location set out in the Customer's order or such other location (**Delivery Location**) as the parties may agree at any time after MTData notifies the Customer that the Goods are ready; or

(b) the Customer shall collect the Goods from MTData's premises at [200 Strand Rd, Bootle L20 3HL] or such other location (**Collection Location**) as may be advised by MTData before delivery within [three] Business Days of MTData notifying the Customer that the Goods are ready.

6.3 Any time for processing of an order or delivery of the Goods made known to the Customer is an estimate only and the time of delivery is not of the essence.

6.4 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location or the completion of loading of the Goods by the Customer at the Collection Location (as the case may be).

6.5 If MTData fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. MTData shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide MTData with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

6.6 MTData may, at its option, deliver the Goods to the Customer in any number of instalments, unless otherwise agreed in writing between the parties.

6.7 If MTData delivers any of the Goods by instalments, and any one of those instalments is defective for any reason:

(a) this does not constitute a repudiation of the Contract formed in accordance with these terms and conditions; and

(b) the defective instalment is a severable breach that, subject to clause 18, gives rise only to a claim for replacement or repair of the defective instalment.

6.8 If the Customer fails to accept or take delivery of the Goods within [21] Business Days of MTData notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by MTData's failure to comply with its obligations under the Contract in respect of the Goods:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the [22nd] Business Day following the day on which MTData notified the Customer that the Goods were ready; and

(b) MTData shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

7. Loss or damage in transit

Although MTData appoints contractors who are instructed to use appropriate care when delivering Goods, MTData is not responsible to the Customer or any person claiming through the Customer (including in negligence) for any loss or damage to Goods once those Goods have left the premises of MTData (however caused and whether or not MTData is legally responsible for any person who caused or contributed to that loss or damage), except as required by law (including under any Non-Excludable Condition).

8. Shortage

Except as required by law (including under any Non-Excludable Condition), MTData excludes all liability in relation to any shortage of any Goods delivered if a claim for short delivery has not been lodged with MTData within seven (7) days after the date of receipt of Goods by the Customer.

9. Rights in relation to the Goods

9.1 MTData and the Customer agree that:

(a) the risk in the Purchased Goods shall pass to the Customer on completion of delivery;

(b) title in all Purchased Goods remains with MTData until MTData has been paid in full for those Purchased Goods;

(c) title in all Rented Goods remains with MTData at all times; and

(d) (in the case of Purchased Goods) until title in the Purchased Goods passes to the Customer and (in the case of Rented Goods) at all times, the Customer is the bailee of all Goods and assumes, in favour of MTData, all of the duties and liabilities of a bailee in respect of the Goods.

9.2 In respect of any Goods while they remain the property of MTData, the Customer must:

(a) not dispose of the Goods or create or allow to be created any mortgage, lien, charge, pledge, claim or other encumbrance or third party interest over or in respect of the Goods, or agree to do any of those things;

(b) not (without MTData's prior written consent) supply any of the Goods to any person outside of its ordinary or usual course of business;

(c) insure the Goods for their full insurable or replacement value (whichever is higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Customer carries out business; and

(d) not remove, deface or obliterate any identifying plate, mark or number on any of the Goods.

9.3 If, before title to the Goods passes to the Customer, the Customer becomes subject to an insolvency event, or MTData reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy available to MTData, MTData 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.

10. Installation, configuration and commissioning

10.1 Where the Customer requests that MTData carry out any installation, configuration or commissioning in respect of the Goods, the date of such work will be agreed between the Customer and MTData. However, if for any reason (other than neglect or default of MTData) MTData cannot proceed with the required work on the agreed date, then the Customer must pay on demand by MTData any additional costs incurred by MTData due (directly or indirectly) to the delay.

10.2 The Customer must give MTData all reasonable assistance, including the provision of personnel, facilities, services (including electricity and communication links) and information, and the granting of access to premises and required security clearances during Business Hours, as MTData reasonably requires to ensure satisfactory installation, configuration and/or commissioning of the Goods.

10.3 Unless otherwise specified, prices quoted by MTData for installation, configuration and/or commissioning are quoted on the basis that the work may proceed continuously during Business Hours and that ready access to the installation sites or site is provided by the Customer. MTData may increase the amount charged for installation, configuration and/or commissioning due to any delays caused by the Customer not complying with its obligations under clause 10.2.

11. Licence of Licensed Software

11.1 Where the Quotation provides for the Customer to access MTData's network for use in conjunction with the Goods, subject to payment by the Customer of the applicable fees as set out in the Quotation, MTData grants to the Customer a non-exclusive, non-transferable, non-sub-licensable licence to use the Licensed Software on MTData's network, for the term set out in the Quotation (if any), solely for the purpose of operating Goods purchased or rented by the Customer from MTData.

11.2 Where the Quotation provides for the acquisition by the Customer of a system licence from MTData, subject to payment by the Customer of the applicable fees as set out in the Quotation, MTData grants to the Customer a non-exclusive, non-transferable, non-sub-licensable licence to use the Licensed Software described in the Quotation, for the term set out in the Quotation (if any), solely for the purpose of operating Goods purchased or rented by the Customer from MTData.

11.3 The Customer:

(a) must not use the Licensed Software in conjunction with, or for the purpose of operating, any goods acquired from any third party; and

(b) must only use the Licensed Software with the in-vehicle equipment approved by MTData; and

(c) (where clause 11.2 applies) must only use the Licensed Software at the site approved by MTData.

11.4 The Customer must comply with all reasonable directions issued by MTData regarding use of the Licensed Software, must use the Licensed Software in accordance with the Documentation, and must ensure that all Customer personnel who use, install or support the Licensed Software are properly trained in the operation, installation and support of the Licensed Software.

11.5 The Customer must not use the Licensed Software on equipment other than equipment approved by MTData, except that the Customer may, at its own risk, use it on alternative equipment if the designated equipment is temporarily inoperable due to malfunction, maintenance or change of installation site, or with the consent of MTData.

11.6 The Customer must not copy, alter, modify or reproduce the Licensed Software except to the extent otherwise permitted under this Contract.

11.7 The Customer must use all commercially reasonable efforts to safeguard the Licensed Software from misuse, unauthorised use, loss or damage, and will provide an operating environment for the Licensed Software (including computer hardware and software, appropriate cabling, telephone lines and modem access and communications links, and a suitable temperature controlled, dust and smoke free environment) that complies with all specifications and requirements provided to the Customer by MTData (including stable spike-free electricity supply and a standby generator backed-up UPS (uninterruptible power supply) for all critical computers and associated equipment).

11.8 The Customer must keep accurate records of use, copying, modification and disclosure of the Licensed Software. The Customer must permit MTData to inspect such records at any time during Business Hours and provide a copy of such records to MTData on MTData's request.

11.9 The Customer must keep the Licensed Software and the Documentation confidential, except to the extent that it enters the public domain or the disclosure is required by law, and must take all reasonable steps to ensure that its personnel keep confidential and do not disclose the Licensed Software or Documentation. This clause 11.9 survives the end of the Customer's licence in respect of the Licensed Software.

11.10 Except to the extent expressly permitted under Chapter III of the *Copyright, Designs and Patents Act 1988*, the Customer must not modify, alter, adapt, merge, translate, decode, reverse engineer, decompile or disassemble the Licensed Software or merge all or any part of the Licensed Software with any other software without MTData's written permission. The Customer assigns to MTData, including by way of future copyright, all intellectual property rights in any modifications made by the Customer to the Licensed Software. The Customer indemnifies MTData from and against all claims, suits, actions, demands, costs and expenses incurred by MTData arising out of or in connection with any modifications made by the Customer to the Licensed Software, including any claim for infringement of third party intellectual property rights.

12. Use of the Website

12.1 The Customer's use of the Website, including to access any services purchased by the Customer that are provided via the Website, is governed by this Contract.

12.2 The materials displayed on the Website, including without limitation text, photographs, illustrations, artwork, graphical content, names, logos and trade marks are the property of MTData or its licensors. The Customer must not reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or communicate any such materials to any third party without MTData's prior written consent.

12.3 MTData does not represent or warrant that the Website or any linked website (or any content on the Website or any linked website) is free from computer viruses or any other defects or errors which may affect the Customer's software or systems. The Customer is responsible for protecting its own software and systems by installing and implementing appropriate security and system checks.

12.4 The Customer must not use the Website or any of the services provided via the Website:

(a) for any purpose that is unlawful, breaches any applicable code of conduct, infringes a third party's rights or is prohibited by this Contract; or

(b) to breach or circumvent or attempt to breach or circumvent the security of the Website (including 'hacking') or engage in any other malicious, illegal or damaging behaviour in relation to the Website.

12.5 If the Customer purchases any services from MTData that are provided via the Website, the Customer may be issued with a user name and password. The Customer is responsible for maintaining the confidentiality of that user name and password, and is fully responsible for all conduct carried out under the provided user name and account.

12.6 MTData reserves the right to revise and update these terms and conditions and its Privacy Policy, to the extent that they relate to access to and use of the Website, as follows:

(a) if MTData considers that the change is likely to benefit the Customer or have a neutral or minor detrimental impact on the Customer, MTData may make any changes immediately without notifying the Customer except by publishing the amended terms and conditions or Privacy Policy (as applicable) on the Website; and

(b) if MTData considers that the change is likely to have a significant detrimental impact on the Customer, MTData will make the change 7 days after it has notified the Customer of the change (solely by using the email address that the Customer has provided) and MTData will display a notice on the Website describing the change. The Customer may object to the change and terminate the provision of any ongoing services provided by MTData with immediate effect during that 7 day period.

The Customer's continued use of the Website will mean that the Customer accepts those changes.

13. Software support

13.1 MTData will perform the support services that it considers appropriate so that the Licensed Software remains in substantial conformity with the Documentation. This support may, in MTData's sole discretion, take the form of telephone advice, remote error correction by means of modem, on-site attendance followed by such advice, programming or re-configuration as MTData considers necessary, or such other services or methods of provision of services as MTData considers appropriate.

13.2 Non-Critical Faults must be logged by completing a Support Services request form in the form provided to the Customer by MTData from time to time and either faxing it to [0844 800 8772] or emailing it to

- [transport.support@mtdata-uk.com]. MTData will acknowledge receipt of any such request within two Business Days of its receipt.
- 13.3 Critical Faults can be logged by calling MTData's support line on [0844 800 8772]. This number operates during business hours.
- 13.4 Support services do not include:
- (a) rectification of defects or errors resulting from any modification of the Licensed Software made by any person other than MTData;
 - (b) rectification of defects or errors resulting from use of the Licensed Software in combination with hardware other than that approved by MTData in writing;
 - (c) rectification of defects or errors caused by the failure of hardware not supplied by MTData;
 - (d) rectification of operating errors;
 - (e) rectification of defects or errors caused by incorrect Customer system configuration changes;
 - (f) rectification of defects or errors caused by third party software or products;
 - (g) rectification of defects or errors that are the subject of a warranty under another agreement with a third party;
 - (h) rectification of defects or errors caused by External Factors;
 - (i) rectification of defects or errors caused by force majeure events (including floods, lightning, fire or any other natural disaster);
 - (j) rectification of defects or errors caused by accidental or deliberate damage;
 - (k) development of new options or features at the Customer's request;
 - (l) investigation of alleged defects or errors where there is insufficient evidence to support the Customer's claim;
 - (m) rectification of defects or errors caused by use of the Licensed Software other than in accordance with any Documentation or the reasonable instructions of MTData;
 - (n) the Customer's failure to install any Update in accordance with clause 13.10; or
 - (o) the provision of New Releases.
- 13.5 Despite any other provision of this Contract, MTData does not guarantee that the provision of support services will be within the times set out in this Contract or otherwise agreed between the parties. To the maximum extent permitted by law, MTData will have no liability whatsoever if provision of the support services is delayed for any reason (including due to circumstances beyond MTData's control).
- 13.6 If MTData provides support services and, in doing so, determines that the alleged defect was not a Critical Fault or Non-Critical Fault in the Licensed Software, or was caused by one or more of the matters referred to in clause 13.4(a) to 13.4(n) (inclusive), MTData may charge the Customer, and the Customer must pay, for the work expended by MTData in providing those services, at MTData's then-current time and materials rates. Any such assistance or support that is provided outside Business Hours will be charged at double MTData's then-current time and materials rates, with a minimum chargeable time of three hours.
- 13.7 The Customer must co-operate fully with MTData's personnel in the diagnosis of any alleged non-conformity of the Licensed Software and must provide all such information that MTData determines necessary for it to perform the support services.
- 13.8 The Customer must:
- (a) at its own cost, provide such telecommunication, hardware, software, information and other facilities as required by MTData to enable it to conduct remote testing and diagnosis of the Licensed Software; and
 - (b) permit MTData to access any hardware on which the Licensed Software is installed to the extent necessary to enable MTData to provide the support services.
- 13.9 MTData may provide Updates or New Releases to the Customer in its sole discretion during the term of the support services. The development, content and delivery schedule of (and, in the case of New Releases, applicable fees for) those Updates and New Releases will be at MTData's sole discretion.
- 13.10 The Customer must install any Update that MTData has released to correct any defects or errors in the Licensed Software as soon as reasonably practicable after the receipt of such Update (at a date and time mutually agreed by the parties, such agreement not to be unreasonably withheld or delayed).
- 13.11 The costs associated with deploying any Update or New Release (including all labour and travel costs) are not covered by this Contract and will be invoiced separately to the Customer.
14. **Documentation**
- 14.1 MTData will provide the Customer with the number of copies of the Documentation specified in the Quotation or as otherwise agreed in writing between the Customer and MTData.
- 14.2 The Customer must not copy or reproduce any Documentation except to the extent otherwise authorised under this Contract.
15. **Term and termination**
- 15.1 MTData will rent the Rented Goods to the Customer, and provide the services included with the Customer's purchase or rental of hardware, commencing on the date on which the Customer's order is accepted by MTData, until this Contract is terminated in accordance with this clause 15.
- 15.2 If the Customer breaches any provision of this Contract (including, without limitation, by failing to pay any amounts owed to MTData by the applicable payment due date), becomes insolvent or ceases to carry on business, MTData may, in its sole discretion, either suspend its obligation to provide services (including suspending the Customer's access to the Licensed Software) until the breach is rectified, or terminate this Contract for cause with immediate effect, by giving notice in writing to the Customer.
- 15.3 The Customer may terminate the provision of ongoing services, the licence of the Licensed Software and/or the ongoing rental of the Rented Goods under this Contract, or this Contract as a whole, for convenience, by giving MTData not less than 60 days written notice of that termination. After the expiry of the minimum term specified in the Quotation (if any), MTData may terminate the provision of ongoing services, the licence of the Licensed Software and/or the ongoing rental of the Rented Goods under this Contract, or this Contract as a whole, for convenience, by giving the Customer not less than 90 days written notice of that termination.
- 15.4 If the Customer gives a notice of termination for convenience under clause 15.3 before the expiry of a minimum term specified in the Quotation, then the Customer must pay to MTData, within 7 days after giving that notice, in addition to any other amounts that may be owing to MTData under this Contract, an early termination charge equal to 90% of the charges that the Customer would have been required to pay during the remaining period of the minimum services term, licence term and/or rental term (as applicable) had the termination not occurred.
- 15.5 Immediately upon the termination of the rental or this Contract, the Customer must, at its expense, de-install and ship the Rented Goods, in good working order, to the address notified by MTData. This shipment should be insured, as the Customer will bear the risk of loss or damage to the Rented Goods during transit. MTData may invoice the Customer for any Rented Goods that are not returned to MTData in accordance with this clause.
- 15.6 On expiry or termination of this Contract:
- (a) all licence grants to the Customer under this Contract immediately terminate, and the Customer must immediately cease using the Licensed Software;
 - (b) the Customer must immediately return or destroy the Licensed Software (and all portions and copies of it) in its possession or control as directed by MTData and, if requested by MTData, must certify in writing its return or destruction; and
 - (c) the Customer must pay to MTData any fees and charges that are payable and outstanding as at the termination date.
16. **Specifications**
- 16.1 All specifications, drawings and particulars of weights and dimensions provided by MTData to the Customer are approximate only and, except as required by law (including under any Non-Excludable Condition), MTData excludes all liability in relation to any deviation from any of those specifications, drawings, weights or dimensions in the Goods (including the Licensed Software).
- 16.2 The descriptions and illustrations contained in catalogues, price lists, the Website and other advertising matter are provided by MTData for information only and, except as required by law (including under any Non-Excludable Condition), do not form part of this Contract.
- 16.3 All Goods to be supplied by MTData to the Customer are as described on the Quotation. The description of the Goods in the Quotation prevails over all other descriptions of the Goods, including the description in any specification or enquiry of the Customer and in any material provided by MTData.
- 16.4 Where specifications, drawings or other particulars are supplied by the Customer, the price specified in the Quotation is based on MTData's estimates of quantities of Goods required by the Customer. If there are any adjustments in quantities above or below the quantities set out in a Quotation, the price specified in the Quotation will be increased or decreased accordingly on the basis of the unit prices set out in the Quotation.
17. **Performance**
- 17.1 Any information contained in catalogues, price lists, the Website and other advertising matter is supplied without warranty, condition or other terms and any performance figures provided by MTData in relation to the Goods are estimates only. Except as required by law (including under any Non-Excludable Condition), MTData excludes all liability in relation to any failure of the Goods to perform in accordance with any such information or figures except to the extent of any performance guarantee provided by MTData to the Customer in writing. Any such written guarantees are subject to the recognised tolerances applicable to such figures.
- 17.2 The Customer acknowledges that the operation of the Goods (including the Customer's access to the Website and its use of any services provided via the Website) is dependent on and affected by a range of matters outside the control of MTData, including, without limitation, mains power disruptions, the communication and tracking services and coverage provided by third parties, communications infrastructure (such as mobile GSM/GPRS/3G networks, ISP outages, leased line/SDN circuit failure, PMR channel or network failure), weather conditions, magnetic and electronic interference, shielding, terrain, radio emissions, interruptions caused by those matters and other factors as notified from time to time by MTData to Customer including notification via the Website, promotional material, Quotations and specifications (**External Factors**).
- 17.3 To the maximum extent permitted by the law, and subject to clause 18.1, the Customer releases MTData from all claims, suits, actions and demands which may arise, directly or indirectly, out of or in connection with the External Factors and the effect of any of them on the operation of the Goods.
- 17.4 Except as required by law (including under any Non-Excludable Condition), MTData gives no warranty or representation of uninterrupted, continuous or error free operation of, or communication with the Goods or that any outage notifications will be made in a timely manner, or at all.
- 17.5 The Customer indemnifies MTData, and must hold it harmless, from and against all claims, suits, actions, demands, costs and expenses incurred by MTData arising out of or in connection with the External Factors and the effect of any of them on the operation of the Goods.
18. **Limitation of liability**
- 18.1 MTData acknowledges that the Sale of Goods Act 1979 and other statutes, may confer certain rights and remedies on the Customer in relation to the provision by MTData of goods or services under this Contract which cannot be excluded, restricted or modified by agreement. This clause 18 does not exclude, restrict or modify the application of any provision of any statute (including the Sale of Goods Act 1979) where to do so would:
- (a) contravene that statute; or
 - (b) cause any part of this Contract to be void.
- (Non-Excludable Condition).**
- For the avoidance of doubt, nothing in these terms and conditions shall limit or exclude MTData's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - (e) defective products under the Consumer Protection Act 1987.
- 18.2 MTData excludes all implied conditions, warranties and guarantees except any Non-Excludable Condition.
- 18.3 Except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption, if:
- (f) the Customer gives notice in writing during the period ending 12 calendar months after the Goods have been dispatched or made available for collection (whichever is earlier), and within a reasonable time of discovery, that some or all of the Goods do not comply with a Non-Excludable Condition; and
 - (g) MTData is given a reasonable opportunity of examining such Goods,
- MTData's liability (including in negligence) for any breach of any Non-Excludable Condition in relation to any Goods (including in any Licensed Software) is limited to, at MTData's option, repairing the defect or replacing the Goods, so long as:
- (a) the defect has arisen solely from faulty materials or workmanship;
 - (b) the defect has not been caused or contributed to by installation, configuration or commissioning of the Goods by any person other than MTData;
 - (c) the defect has not been caused or contributed to by the Goods having received maltreatment, inattention or interference;
 - (d) the defect has not been caused or contributed to by accessories of any kind being used by the Customer with the Goods that were not manufactured or approved by MTData;
 - (e) the seals of any kind on the Goods remain unbroken; and
 - (f) the defective parts are promptly returned to MTData at the Customer's cost.
- 18.4 Subject to clause 18.1, but despite any other provision of this Contract, MTData is not liable whether in contract, tort (including in negligence), breach of statutory duty, or otherwise, for any cost, loss, liability or expense arising from any loss of profits, loss of revenue, loss of goodwill, loss of customers, loss of or damage to reputation, loss of capital, downtime costs, loss under or in relation to any other contract, loss of data, loss of use of data or any indirect, consequential or special loss or damage incurred by the Customer or any other person arising under or in connection with this Contract or the supply, layout, assembly, installation, provision or operation of the Goods (including the Customer's access to or use of the Website or the provision of any other services by MTData).
- 18.5 Subject to clauses 18.1 and 18.4, but despite any other provision of this Contract, MTData's total aggregate liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including in negligence), breach of statutory duty, or otherwise, for any cost, loss, liability or expense arising, directly or indirectly, under or in connection with this Contract or the supply, layout, assembly, installation, provision or operation of the Goods (including the Customer's access to and use of the Website or the provision of any other services by MTData), is limited to £10,000.
- 18.6 Except as provided in this clause 18, MTData shall have no liability to the Customer in respect of the Goods' failure to comply with a Non-Excludable Condition.
- 18.7 The terms of this clause 18 shall apply to any repaired or replacement Goods supplied by MTData under clause 18.
19. **Customer's property**
- Any property of the Customer under MTData's possession, custody or control is completely at the Customer's risk as regards loss or damage caused to the property or by it.
20. **Returned Goods**
- 20.1 Subject to clause 18, MTData will not accept any Goods returned by the Customer except:
- (a) pursuant to clause 15.5; or
 - (b) on terms agreed in writing with the Customer at MTData's sole discretion.
- 20.2 Any Goods returned by the Customer in accordance with this Contract must be returned at the Customer's expense to the address notified to the Customer by MTData.
21. **Notices**
- 21.1 Any notice required or authorised to be given or served on a party under this Contract must be in writing and delivered personally, by pre-paid registered letter, by facsimile or by electronic mail addressed to the relevant party as set out in the Quotation.
- 21.2 Notice will be deemed given on the date of personal delivery, within the three (3) days of mailing, if by facsimile transmission on receipt by the sender's facsimile machine of notification from the receiver's machine that all pages were successfully transmitted, or if by e-mail upon receipt of a successful delivery notification to the sender's inbox.
22. **Data charges**
- 22.1 If the customer chooses to use MTData's recommended network provider for in-device data dedicated sim cards then:
- (a) The customer must pay for any data usage above the agreed level stated in a contract.
- 22.2 All activated voice sims are to be provided by the customer, prior to stock delivery.
23. **General**
- 23.1 In these terms and conditions:
- (a) the singular includes the plural and vice versa, and a gender includes other genders;
 - (b) another grammatical form of a defined word or expression has a corresponding meaning;
 - (c) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
 - (d) a reference to £ is to British pounds;
 - (e) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
 - (f) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
 - (g) the meaning of general words is not limited by specific examples introduced by **including**, **for example** or similar expressions.
- 23.2 The laws of the England and Wales, govern this Contract, and the Customer and MTData irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of England and Wales.
- 23.3 The Contract constitutes the entire agreement between the parties as to its subject matter, and supersedes all prior or inconsistent statements or representations (including any conditions set out in the Customer's order or request for Goods) as to that subject matter.
- 23.4 This Contract may only be waived in writing signed by MTData.
- 23.5 Except as set out in these terms and conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by MTData.
- 23.6 These terms and 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.
- 23.7 A person who is not a party to the contract between the Customer and MTData shall not have any rights under or in connection with it.