



TEL: +44 (0) 1295 266277
FAX: +44 (0) 1295 268199
sales@msdist.co.uk www.msdist.co.uk

MS Distribution UK Ltd
Unit G171
Cherwell Business Village
Southam Road
BANBURY
OX16 2SP

Sitenett is the Engineering Consultancy and Installation Division of MS (Distribution) UK Ltd

MS (Distribution) UK Ltd, Sitenett Division Standard Terms and Conditions

1. Definitions

- 1.1 "Agreement" means this agreement made between MS (Distribution) UK Ltd and the Customer, including all documents expressly incorporated herein.
- 1.2 "Commissioning Date" means the date on which the System is first brought into use by the customer or, in the event of delays attributable to the customer, the date from which the System can be used by the customer if such delays had not occurred.
- 1.3 "Contract Value" means that sum so named in this agreement together with any additions thereto or deductions there from agreed in writing in accordance with this agreement.
- 1.4 "Customer" means the party with whom MS (Distribution) UK Ltd has contracted to provide the system and services detailed herein and is defined on the front of this agreement.
- 1.5 "Documentation" means one copy of the Manufacturer's Standard User and Operator Handbook(s) together with any other documentation specifically denoted in this agreement.
- 1.6 "Network Operator" means a public or private telecommunications operator providing a telecommunications network or circuit regulated by statutory licence.
- 1.7 "Ready for Service Date" means the date upon which the system has passed MS (Distribution) UK Ltd standard installation tests and MS (Distribution) UK Ltd has informed the Customer that the System is available for Pre-Connection Inspection.
- 1.8 "Site" means the place defined in this agreement to which MS (Distribution) UK Ltd will deliver the System and where required by this agreement will undertake Installation and commissioning of the System.
- 1.9 "Software" means all operation systems and other programs of a machine readable form that are necessary for the System to operate in compliance with the performance parameters defined in this agreement and excluding all source material including but not limited to source code listings, object code listings, flow charts and assembler instructions.
- 1.10 "System" means all System hardware, software, documentation and services specified in this agreement to be provided by MS (Distribution) UK Ltd to the customer.

2. Extent of Agreement

- 2.1 This agreement shall constitute the complete agreement between MS (Distribution) UK Ltd and the customer and any other terms, conditions, performance criteria, guarantees or prior representations whatsoever shall be of no effect unless expressly incorporated herein. No variation of the conditions on this Agreement shall have effect unless expressly accepted in writing by a duly authorised officer of MS (Distribution) UK Ltd.
- 2.2 The customer shall not rely upon any warranty (other than stated under Condition 13 hereof) or technical statements concerning the System which is to be supplied under this Agreement except where such statements have been confirmed in writing and signed by a duly authorised officer of MS (Distribution) UK Ltd and expressly incorporated herein. MS (Distribution) UK Ltd reserves the right to change the specifications and parameters of the System to be supplied insofar as such changes do not materially affect the operational performance of the System.

3. MS (Distribution) UK Ltd's obligations

- 3.1 MS (Distribution) UK Ltd shall be responsible for the following:
- (a) Technical Information, to obtain, where there is a statutory requirement for MS (Distribution) UK Ltd to do so, technical approval from the designated regulatory authority for the System to be supplied and installed in accordance with the terms of this agreement except those items which are specified by the customer for which MS (Distribution) UK Ltd has disclaimed such responsibility in writing.
 - (b) To supply, install and commission the System detailed in this agreement.
 - (c) To fulfill the warranty obligations defined herein.
 - (d) To enter, at MS (Distribution) UK Ltd's discretion, into a maintenance agreement with the customer upon the current MS (Distribution) UK Ltd's terms and conditions for provision of maintenance services and at the rates then prevailing.

4. Customer's obligations

- 4.1 MS (Distribution) UK Ltd will at all times endeavor to liaise with and advise the customer on all aspects of the installation program. The customer however, is responsible for undertaking and bearing the cost of the following unless otherwise agreed in writing by MS (Distribution) UK Ltd:
- (a) Technical information. The customer is responsible for supplying MS (Distribution) UK Ltd when required with all necessary technical information regarding the site at which the System is to be installed and the customers operating requirements.
 - (b) Preparation of the site. Before delivery is due to take place the customer shall prepare the site in accordance with the specifications stipulated by MS (Distribution) UK Ltd and the network operator, and any extra costs incurred as a result of failure to do so, including storage costs, shall be paid to MS (Distribution) UK Ltd by the customer.
 - (c) Provision of facilities. The customer will provide at its own expense scaffolding, unskilled labour,, lifting gear, builder's work, electric power, heating, lighting and ventilation, and where electrical supplies are required they shall be clean and stable and will be provided and maintained by the customer at its own expense. Any cutting away and making good of floors, ceilings, ceiling tiles and panels, trenching, back filling, the supply and erection of poles and the provision of trunking or ducting shall not be supplied by MS (Distribution) UK Ltd unless expressly agreed in writing.
 - (d) Access: The customer shall provide MS (Distribution) UK Ltd authorised contractors with access to the site at all reasonable times.
 - (e) Wayleaves/approvals: The customer shall obtain and pay for all necessary wayleaves and secure the approval of appropriate planning and other authorities as required and provide MS (Distribution) UK Ltd with copies thereof.
 - (f) Connection approval: The customer shall obtain the network operator's consent for connection of an approved System to the relevant networks (if required). It is the customer's responsibility to arrange for such connection to be made together with the provision of any test lines as may be required and to pay any connection and PCI charge, and to comply with any conditions relating to the connection. Installation of the system under this agreement does not include any such connection. No liability shall attach to MS (Distribution) UK Ltd if the network operator denies or withdraws connection facilities to an approved system.
 - (g) Other attachments: Any other attachments to the system that are made by the customer shall be at the customer's risk and the customer shall be responsible for ensuring that they are suitable for use with the system and comply with the network operators regulations. The customer shall not make attachments which diminish performance or the reliability of the system.

5. Variations

Changes to the technical specification and configuration of the system requested by the customer prior to delivery will only be effective if accepted in writing by MS (Distribution) UK Ltd and expressly incorporated into the terms of this agreement and their implementation will be subject to full agreement in writing having been reached on any consequential adjustment to the contract value and target dates.

6. Contract value

6.1 The contract value shall, unless otherwise specified in this agreement, be inclusive of:

- (a) Packaging and delivery of the system to the site.
- (b) Block wiring, to the extent specified in this agreement.
- (c) Installation, where this forms part of this agreement.
- (d) Training, to the extent specified in this agreement.
- (e) One set of documentation.

6.2 The contract value shall, unless otherwise specified in this agreement, be exclusive of:

- (a) Value Added Tax or other government imposts.
- (b) All items denoted as customer's obligations in Condition 4 of these conditions.

7. Payment

7.1. Where MS (Distribution) UK Ltd is installing the system, payment of the contract value shall be due and payable without deduction, as agreed in the contract proposal.

7.2. Where MS (Distribution) UK Ltd is not installing the system, payment of the contract value shall be due and payable without deduction, as agreed in the contract proposal.

7.3. In the event that the customer is unable to take delivery of the system upon the agreed delivery date, MS (Distribution) UK Ltd reserves the right to deliver the system into MS (Distribution) UK Ltd's stores and the customer shall be immediately liable to pay to MS (Distribution) UK Ltd the contract value of the system (or the portion of it so delivered) as though delivery has been made to site.

7.4. MS (Distribution) UK Ltd shall also be entitled to recover any reasonable additional costs incurred as a result of the customer's delay. Payments shall be made within Thirty (30) days of the date of MS (Distribution) UK Ltd's invoice and payment shall not be prevented by minor defects which do not materially affect operational use, but MS (Distribution) UK Ltd shall remedy such minor defects within a reasonable time where it is MS (Distribution) UK Ltd 's responsibility to do so.

7.5. The customer has seven (7) days from date of invoice to raise a query relating to the performance of the system or service supplied. Enquiries must be made in writing and communicated by registered post, fax or email. Queries received outside this period will not be considered valid and payment will be due within the Thirty (30) days specified in 7.4.

7.6. Where payments are not received within Thirty (30) days of the date of MS (Distribution) UK Ltd's invoice MS (Distribution) UK Ltd reserves the right to :

- 7.6.1. Suspend deliveries on this and any other order held with the customer, its parent company, subsidiaries or associates and/or
- 7.6.2. Recover such sums by deduction of monies otherwise due by MS (Distribution) UK Ltd to the customer, its parent company, subsidiaries or associates and/or
- 7.6.3. Charge interest at the statutory interest rate specified in the late payment of commercial debts (interest) Act and amendments thereto per month or part thereof on the unpaid sum for that period the sum remained properly due and/or;
- 7.6.4. Enter onto the customer's premises and recover the system delivered or installed. In such an event MS (Distribution) UK Ltd shall return any sums previously paid less sums reasonably incurred by it in the delivery, installation and recovery of the system, including depreciation in the system's subsequent resale value.

8. System and installation specification

- 8.1. The system and installation specification shall be that which has been agreed upon in writing and expressly incorporated into this agreement and any prior representations be they written or verbal shall be of no effect unless expressly incorporated herein. Where no such specification is detailed in this agreement the system and installation details in MS (Distribution) UK Ltd's quotation shall apply.
- 8.2. The illustrations and engravings in MS (Distribution) UK Ltd's catalogue and data sheets are intended to display the general features of the system and the information contained in such publications shall not form part of this agreement.
- 8.3. All drawings, sketches and information provided by the customer in relation to wiring and installation are contractual documents upon which MS (Distribution) UK Ltd has placed reliance. Any changes, errors or omissions to such drawings, sketches or information shall form a change to this agreement with regards to which MS (Distribution) UK Ltd reserves the right to make additional charges, amend timescales or offer an alternative system, whichever is appropriate and suitable.

9. Risk and title

- 9.1 Risk in the system shall pass from MS (Distribution) UK Ltd to the customer upon delivery to the site (or, in the event of installment delivery to the site, risk shall pass as and when each installment is delivered to the site) and the customer shall indemnify MS (Distribution) UK Ltd against all risks in respect of the same and accept full responsibility to provide insurance cover at full replacement value.
- 9.2 For the purpose of this condition the term system includes any item leased or loaned by MS (Distribution) UK Ltd for demonstration purposes.
- 9.3 Risk in all other equipment, such as tools and plant taken onto the customers site by MS (Distribution) UK Ltd for the purpose of this agreement, shall pass to the customer when brought onto the site by MS (Distribution) UK Ltd (or its agents or sub-contractors) until such equipment is removed from the site except in so far as any damage to such equipment is due to any act of negligence on the part of MS (Distribution) UK Ltd.
- 9.4 Title to system hardware shall pass to the customer only when MS (Distribution) UK Ltd has received full payment for the system hardware. However, title to system software and the media on which it is embodied and copyright and other intellectual and industrial property rights in system software and in all data and information embodied in system hardware shall at all times remain with MS (Distribution) UK Ltd and its licensors.
- 9.5 Hardware to which MS (Distribution) UK Ltd retains title under 9.4 above may be passed by the customer to a third party subject to the customer stating in writing to the third party that title to the hardware is vested in MS (Distribution) UK Ltd and that the third party cannot claim title to the hardware through its possession, or by its conversion, passing on, sale at undervalue or sale at zero value to the third party by the customer.
- 9.6 Software Services supplied by MS (Distribution) UK Ltd to the customer are provided on a Licence-only basis to the Customer alone and may not be supplied to any third party by the customer. Any such onward supply invalidates the Licence Terms of the software supplied and any revenue derived by the Customer or any other third party as a result of such onward supply belongs to MS (Distribution) UK Ltd which retains all rights to recover such revenue, all costs of such action for recovering being the liability of the Customer.

10. Delivery

- 10.1 The contract value includes packaging and delivery to the site nominated by the customer in this agreement by any means at MS (Distribution) UK Ltd's disposal.

11. Matters beyond reasonable control

11.1 Neither the Customer nor MS (Distribution) UK Ltd shall be liable to the other for any loss or damage which may be suffered by the other due to any cause beyond its reasonable control including without limitation any act of God, inclement weather, failure or shortage of power supplies, flood, drought, lightning or fire, strike, lock-out, trade dispute or labour disturbance, any act or omission of Government, highways authorities, other public telecommunications operators or other competent authority, war, act of terrorism, civil disorder or military operations.

12. Disputes

12.1 Any complaint, query or dispute regarding any aspect of the Service provided under these Terms and Conditions, or any Contract to which they apply must be communicated in writing to MS (Distribution) UK Ltd at the address shown on the contract. Any correspondence should include abny customer account number and any applicable contract number(s) relating to the contract.

13. General Conditions

In the following section the term "We" stands for MS (Distribution) UK Ltd and "You" for any Customer entering into any contract with MS (Distribution) UK Ltd.

- 13.1 We may change these terms and conditions at any time for legal, regulatory or commercial reasons and will notify you of all such changes in writing and/or by publishing them on our website located at www.msdist.co.uk and at www.sitenett.co.uk. To the extent that such changes are to your material detriment or relate to an increase in the charges, we will give you at least thirty (30) days' advance notice of such changes in writing and/or publish them on the website www.msdist.co.uk and at www.sitenett.co.uk. If you object to such changes you may be able to terminate this agreement at any time by giving not less than 30 days' notice in writing.
- 13.2 The Contract sets out the whole agreement between you and us for the provision of all Hardware and Services and supersedes all prior arrangements, understandings and agreements between you and us.
- 13.2 If any particular clause of these Conditions shall be or be held to be invalid or shall not apply to your Contract the other clauses hereof shall continue in full force and effect.
- 13.3 Save as otherwise provided in these Conditions, any invoice, notice or other document which may be given by either you or us under these Conditions shall be in writing and shall be deemed to have been given if left at or sent by post to you at the address stated in your application or any other UK address you supply to us for this purpose, or to us at the address given on your last invoice. Such document shall be deemed to have been delivered immediately (if delivered by hand) or 48 hours after posting (if sent by first class post). References in these Conditions to notices given to you by us "in writing" also include by email, which must be sent to your email address stated in your application or any other email address that you supply to us for the purpose. Notices given by us by e-mail shall be deemed to have been delivered the day after the day the notice is sent. For the avoidance of doubt you shall not be entitled to serve any notice on us pursuant to these Conditions by email.
- 13.4 Monitoring or recording of your calls may take place for our business purposes, such as quality control and training, to prevent unauthorized use of our telecommunications systems and to ensure effective systems operation and in order to prevent or detect crime.
- 13.5 We make every effort to ensure the security of your communications. You are however advised that for reasons beyond our control, there is a risk that your communications may be unlawfully intercepted or accessed by those other than the intended recipient. For example, your communications may pass over third party Networks over which we have no control and we shall not be liable to you if this occurs.
- 13.6 All Data relating to this contract or your business relationship with us will be kept safe and not disclosed to any third party unless required by law.
- 13.7 Failure by either you or us to exercise or enforce any right, whether conferred by statute or by your Contract, shall not be deemed as a waiver of any such rights nor prevent the exercise or enforcement of such rights at a later date.
- 13.8 Your Contract and these Conditions shall in all respects be governed by and construed in accordance with the Law of England and Wales and both you and we agree to submit to the non-exclusive jurisdiction of the courts.

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