

## EQUIPMENT INSTALLATION TERMS AND CONDITIONS

### 1 DEFINITIONS

1.1 In these terms and conditions, the following definitions apply:

- (a) **Business Day** means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- (b) **Charges** means the charges payable by the Customer for the Services, as set out in the Commercial Terms.
- (c) **Commercial Terms** means the cover sheet to these terms and conditions titled 'Equipment Installation' which sets out the commercial terms of the Equipment Installation Agreement.
- (d) **Customer** means the customer named in the Commercial Terms.
- (e) **Equipment** means the equipment listed in the section titled 'Equipment Installation' of the Commercial Terms.
- (f) **Equipment Installation Agreement** means the contract between Mtech and the Customer for the installation of Equipment in accordance with these terms and conditions and the Commercial Terms.
- (g) **Funder** means the person with whom the Customer has entered into a contract to purchase the Equipment from.
- (h) **Installation Period** has the meaning given to it in clause 3.1,
- (i) **Mtech** means Mtech Communications Limited, a company incorporated and registered in England and Wales with company number 11194386 whose registered office is at Hello House, 135 Somerford Road, Christchurch, BH23 3PY.
- (j) **Services** the installation services more particularly described in clause 3.3 below.

### 2 BASIS OF CONTRACT AND DURATION

2.1 The Equipment Installation Agreement takes effect when the Customer signs and returns the Commercial Terms to Mtech.

2.2 The Equipment Installation Agreement continues, unless terminated earlier in accordance with these terms and conditions, until the Services have been accepted or deemed accepted in accordance with clause 3.6.

2.3 These terms and conditions (which incorporate the Commercial Terms) apply to the Equipment Installation Agreement 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. For the avoidance of

doubt, terms referenced on the Customer's purchase orders shall have no legal effect.

### 3 SERVICES

3.1 Subject to the remaining sections of these terms and conditions, and in consideration for the Customer paying the Charges (if any), Mtech will make reasonable endeavours to provide the Services over a mutually convenient period of time (the "**Installation Period**") after the later of:

- (a) the date of the Equipment Installation Agreement;
- (b) if the Customer is taking direct delivery of the Equipment, the date the Customer confirms that the Equipment has been delivered to it; and
- (c) if Mtech is taking direct delivery of the Equipment, the date Mtech takes delivery of the Equipment on the Customer's behalf.

3.2 The parties accept that:

- (a) Mtech will make commercially reasonable endeavours to complete the Services during the Installation Period but if such period is intended as an estimate only and time for performance shall not be of the essence;
- (b) the Services can only be provided once the Equipment has been delivered to the Customer or to Mtech on behalf of the Customer; and
- (c) if applicable, the Services can only be provided once third party providers' services have been connected to the Customer's premises (and the Customer accepts that such matters are outside of Mtech's control).

3.3 The Services comprise the installation of the Equipment at the Customer's premises. In particular:

- (a) the Services shall be provided between the hours of 9am and 5pm on Business Days only unless the parties have agreed otherwise in writing;
- (b) Mtech shall make reasonable endeavours to complete the Services without undue delay during the Installation Period. Installation typically takes 2-3 Business Days but this is not guaranteed;
- (c) Mtech will engage suitably qualified and experienced engineers to ensure that the Services are provided with reasonable care and skill; and
- (d) Mtech shall ensure that its staff and contractors comply with the Customer's reasonable policies regarding security and health and safety whilst on the Customer's premises.

3.4 Mtech may at its absolute discretion agree with the Customer to provide the Services in tranches over

multiple Installation Periods if the supply of part of the Equipment is expected to be delayed.

- 3.5 Mtech will confirm in writing when it has completed the Services and that day shall be the “**Installation Date**”. The Customer has 10 days from the Installation Date (the “**Reporting Period**”) to notify Mtech of any issues with the installation or Equipment. Mtech shall investigate any reported issues promptly in writing and:
- (a) if the reported issue is found by Mtech to have resulted from it not having provided the Services in accordance with these terms and conditions then Mtech shall resolve the issue promptly at no further cost to the Customer;
  - (b) if the reported issue is found by Mtech to be attributable to a fault or defect in the Customer’s pre-existing equipment or wiring then it shall be the Customer’s responsibility to rectify the issue. For certain issues Mtech may, at its discretion, offer to assist with remedying the issue in consideration for the Customer paying an additional charge (which the parties will agree in writing);
  - (c) if the reported issue is found by Mtech to be attributable to a fault or defect with the Equipment itself then:
    - (i) if the Customer has entered into a Maintenance Agreement with Mtech then the issue shall be rectified under the terms of the Maintenance Agreement; or
    - (ii) if the Customer has purchased the affected Equipment directly from Mtech then the issue shall be rectified under Mtech’s Terms and Conditions of Sale; or
    - (iii) in all other cases, the Customer shall be required to contact Mtech who will then make contact with the supplier or manufacturer to resolve the issue and:
      - (1) Mtech shall have no further responsibilities under the Equipment Installation Agreement for that Equipment;
      - (2) the Services shall be deemed to have been performed in full and the Equipment Installation Agreement shall come to an end;
      - (3) Mtech may, at its discretion, offer to assist with remedying the issue in consideration for the Customer paying an additional charge (which the parties will agree in writing); and
      - (4) if additional installation services are requested of Mtech after the Equipment fault or defect is rectified then Mtech reserves the right to charge its then-current charges for carrying out such work (which the parties will agree in writing).
- 3.6 If the Customer confirms within the Reporting Period that it has accepted the installation, or does not report any issues in accordance with clause 3.5

during the Reporting Period, then the Services shall be deemed to have been performed in full and the Equipment Installation Agreement shall come to an end.

- 3.7 The Customer agrees to sign a Certificate of Acceptance, in the form provided by Mtech, on the earliest of:
- (a) the Customer accepting the installation or being deemed to have accepted the installation under clause 3.6; and
  - (b) Mtech performing its obligations under clause 3.5 in relation to any reported issues with the Equipment and/or installation (and, acting reasonably, Mtech’s determination on whether such obligations have been discharged shall be final and binding in this regard).
- 3.8 The Customer agrees not to unreasonably withhold or delay or condition its signature of the Certificate of Acceptance under clause 3.7.
- #### 4 CUSTOMER’S OBLIGATIONS
- 4.1 The Customer agrees and undertakes:
- (a) to co-operate with Mtech in all matters relating to the Services and to provide Mtech with such assistance and information as Mtech reasonably requests from time to time; and
  - (b) to prepare and give access to the Customer’s premises according to the reasonable instructions issued by Mtech and to ensure that the premises comprise a safe working environment for Mtech’s staff.
- #### 5 CHARGES AND PAYMENT
- 5.1 The Customer agrees to pay the Charges in accordance with these terms and conditions and the Commercial Terms.
- 5.2 Mtech shall invoice the Customer for the Charges following completion of the Services.
- 5.3 Payment of Mtech’s invoice is due no later than 13 days from the date of the invoice (unless the 13<sup>th</sup> day after the date of invoice is not a Business Day, in which case the latest day for payment shall be the soonest Business Day after the 13<sup>th</sup> day);
- 5.4 All Charges must be paid in full in pounds sterling without deduction, set off or withholding. Payments by BACS must be in cleared funds; and
- 5.5 If the Customer fails to pay any amount due under these terms and conditions then Mtech reserves the right to charge interest at the rate of 4% above the base rate of National Westminster Bank PLC from time to time. Interest is payable when the overdue some becomes payable until it is paid.
- 5.6 Value added tax (VAT) is payable in addition to all charges levied by Mtech unless otherwise specified.

5.7 Mtech will submit all invoices via email to the invoicing email address of the Customer set out in the Commercial Terms. The Customer may amend its invoicing address by giving Mtech 60 days' prior written notice.

5.8 Mtech reserves the right to withhold or withdraw discounts on invoices that are not paid in accordance with this clause 5.

5.9 The Customer agrees that any dispute relating to an invoice (including the calculation of any amounts payable) must be notified to Mtech within six months of the date of the invoice and the Customer shall not be entitled to any credit or refund relating to disputes raised after the expiration of that period.

## 6 LIABILITY

6.1 References to liability in this clause 6 include every kind of liability arising under or in connection with the Equipment Installation Agreement, including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

6.2 Nothing in these terms and conditions limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

6.3 Subject to clause 6.2, the following types of loss are wholly excluded:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill;
- (g) indirect or consequential loss; and
- (h) losses arising from breaches of the Customer's security systems which are not attributable to Mtech's negligence or breach of duty.

6.4 Subject to clauses 6.2 and 6.3, Mtech's total liability to the Customer under the Equipment Installation Agreement shall not exceed £100,000 (one hundred thousand pounds) in aggregate.

6.5 Subject to clauses 6.2, Mtech shall not be liable to the Customer for any breach of or delay in performing Mtech's obligations under the Equipment Installation Agreement which results from the

Customer's breach of its obligations under these terms and conditions.

## 7 FORCE MAJEURE

7.1 Neither party shall be in breach of the Equipment Installation Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances:

- (a) the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed; and
- (b) if the period of delay or non-performance continues for three months, the party not affected may terminate this agreement by giving 28 days' written notice to the affected party.

## 8 TERMINATION

8.1 Without affecting any other right or remedies available to it, either party may terminate the Equipment Installation Agreement by giving 14 days' written notice if:

- (a) the other party fails to pay any amount due under the Equipment Installation Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of the Equipment Installation Agreement and (if such breach is remediable) fails to remedy that breach within a period of: (in respect of the Customer's breach) 30 days or (in respect of Mtech's breach) 60 days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 ("IA 1986") as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986; or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the IA 1986; or (being a partnership) has any partner to whom any of the foregoing apply;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of

- that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
  - (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - (g) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
  - (h) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
  - (i) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
  - (j) the other party (being an individual) is the subject of a bankruptcy petition, application or order;
  - (k) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
  - (l) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause (c) to clause 8.1(k) (inclusive);
  - (m) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 8.2 Mtech may additionally terminate the Equipment Installation Agreement immediately upon notice if Mtech determines that any information provided by the Customer is false or misleading.
- 8.3 Mtech may additionally terminate any or all of the contracts between it and the Customer upon written notice in the event that the Customer fails to pay any amount due under the Equipment Installation Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.

## 9 INDEMNITY

- 9.1 The Customer shall indemnify Mtech against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Mtech arising out of or in connection with:
- (a) the Customer's breach or negligent performance or non-performance of the Customer's obligations under the Equipment Installation Agreement;
  - (b) the death or injury of any Mtech's staff or contractors caused by the negligence or wilful misconduct of the Customer; or
  - (c) the enforcement of the Equipment Installation Agreement,
- and the Customer shall reimburse Mtech all amounts payable under this clause immediately on demand.

## 10 DATA PROTECTION

- 10.1 Mtech processes personal data in accordance with its Privacy Policy which is accessible from <https://mtechcomms.co.uk/privacy-policy>.

## 11 NOTICES

- 11.1 Any notice given to a party under or in connection with the Equipment Installation Agreement shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (b) sent by email to:
    - (i) Mtech at [info@mtechcomms.co.uk](mailto:info@mtechcomms.co.uk) and
    - (ii) the Customer at the email address specified in the Commercial Terms or, if no such address is specified, the email address specified in the Commercial Terms for receipt of invoices.
- 11.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
  - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
  - (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause "**business hours**" means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 11.3 This clause does not apply to the service of any proceedings or other documents in any legal action

or, where applicable, any arbitration or other method of dispute resolution.

## 12 GENERAL

### 12.1 Interpretation.

- (a) A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time. And a reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- (b) A reference to “**writing**” or “**written**” includes email unless otherwise stated.
- (c) Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- (d) Any words following the terms “**including**”, “**include**”, “**in particular**”, “**for example**” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

12.2 **Complaints.** For information about Mtech’s customer complaints procedure please refer to Mtech’s Customer Complaints Procedure at [www.mtechcomms.co.uk/complaints-procedure](http://www.mtechcomms.co.uk/complaints-procedure)

12.3 **Copies of the contract.** Mtech will only provide copies of the Equipment Installation Agreement to registered directors of the Customer and the Customer’s authorised signatory. Mtech will not share copies with other staff or purported representatives of the Customer.

### 12.4 Assignment.

- (a) Mtech may at any time assign its rights under the Equipment Installation Agreement to any third party.
- (b) The Customer may not transfer or otherwise deal with its rights under the Equipment Installation Agreement without Mtech’s prior written consent. Mtech may, at its absolute discretion, agree to the Equipment Installation Agreement being novated to a third party in place of the Customer subject to such conditions as Mtech sees fit.
- (c) Mtech’s acceptance of payment under the Equipment Installation Agreement from a third party the Customer does not constitute its agreement to a variation or novation of the agreement.

12.5 **Variation.** No variation of the Equipment Installation Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12.6 **Severance.** If any provision or part-provision of these terms and conditions becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these terms and conditions. Additionally,

if any provision or part-provision of these terms and conditions is deemed deleted under this clause, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

12.7 **Waiver.** No failure or delay by Mtech to exercise any right or remedy provided under these terms and conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### 12.8 Entire Agreement.

- (a) These terms and conditions, along with the Commercial Terms, and all documents referred to therein together constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to their subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these terms and conditions, the Commercial Terms or any documents referred to therein. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Equipment Installation Agreement.

12.9 **No partnership or agency.** Nothing in these terms and conditions is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

12.10 **Time for payment.** Time is of the essence for the payment of monies by the Customer.

12.11 **Third party rights.** The Equipment Installation Agreement does not give rise to any rights under the Maintenance Agreements (Rights of Third Parties) Act 1999 to enforce any of its terms.

12.12 **Governing law.** The Equipment Installation Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

12.13 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Equipment Installation Agreement or its subject matter or formation.

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