

**1. Definitions**

- 1.1 “Mobicomm” means Mobicomm Limited, its successors and assigns or any person acting on behalf of and with the authority Mobicomm Limited.
- 1.2 “Customer” means the person/s or any person acting on behalf of and with the authority of the Customer requesting Mobicomm to supply Goods for purchase (and/or hiring Equipment) as specified in any proposal, quotation, order, invoice or other documentation, and:
  - (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
  - (b) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (c) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.3 “Goods” means all Goods or Services supplied by Mobicomm to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Equipment” means all Equipment including any accessories supplied on hire by Mobicomm to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by Mobicomm to the Customer.
- 1.5 “Hire Term” means the Minimum Hire Term as described on the invoices, quotation, authority to hire etc. or any other forms as provided by Mobicomm to the Customer.
- 1.6 “Price” means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) payable for the Goods/Services and/or Fees pertaining to any Hire Term of any Equipment as agreed between Mobicomm and the Customer in accordance with clause 6 below.

**2. Acceptance**

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods/Equipment.
- 2.2 These terms and conditions:
  - (a) sets forth the entire and final understanding of the Customer and Mobicomm pertaining to the subject matter hereof and supersedes all prior arrangement, whether oral or written; and
  - (b) may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or contract between the Customer and Mobicomm.
- 2.3 None of Mobicomm’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of Mobicomm in writing nor is Mobicomm bound by any such unauthorised statements.
- 2.4 The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, Mobicomm reserves the right to substitute comparable Goods (or components of the Goods) and vary the Price as per clause 7.2. In all such cases Mobicomm will notify the Customer in advance of any such substitution, and also reserves the right to place the Customer’s order and/or Services on hold until such time as Mobicomm and the Customer agree to such changes.
- 2.5 Where Mobicomm gives advice or recommendations to the Customer as to a particular course of action or specific products and such advice or recommendations are not acted upon then Mobicomm shall require the Customer or their agent to authorise the Services in writing. Mobicomm shall not be liable in any way whatsoever for any damages or losses that occur as a result of such advice or recommendations not being followed.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.7 In the event that Mobicomm is required to provide the Services urgently, that may require Mobicomm’s staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then Mobicomm reserves the right to charge the Customer a minimum **call out fee** based on Mobicomm’s standard hourly labour rate, plus travel, plus Goods, unless otherwise agreed between Mobicomm and the Customer.

**3. Errors and Omissions**

- 3.1 The Customer acknowledges and accepts that Mobicomm shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
  - (a) resulting from an inadvertent mistake made by Mobicomm in the formation and/or administration of this contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Mobicomm in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Mobicomm; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

**4. Authorised Representative**

- 4.1 The Customer acknowledges that Mobicomm shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to Mobicomm, that person shall have the full authority of the Customer to order any Goods, Services and/or to request any variation thereto on the Customer’s behalf. The Customer accepts that they will be solely liable to Mobicomm for all additional costs incurred by Mobicomm (including Mobicomm’s profit margin) in providing any Goods, Services or variation/s requested thereto by the Customer’s duly authorised representative.

**5. Change in Control**

- 5.1 The Customer shall give Mobicomm not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address, contact phone or fax number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by Mobicomm as a result of the Customer’s failure to comply with this clause.

**6. Quotations**

- 6.1 If Mobicomm has been requested by the Customer to prepare a quotation that involves multiple site visits or third party involvement (for example, radio engineer), then all costs for such visits and third party costs involved will be charged to the Customer irrespective of whether or not the Services go ahead.
- 6.2 Unless otherwise stated, Mobicomm shall prove all heavy equipment and/or scaffolding as may be required for the provision of the Services.
- 6.3 The Price may be based on an hourly rate, after hours and/or travel costs.
- 6.4 For the purpose of calculating increased costs under a non-fixed Price contract, the Price specified in the quote does not include any labour costs. The price shall be adjusted by Mobicomm to reflect all labour costs and any other increased costs.
- 6.5 Labour costs for the purpose of calculating increased costs under the contract will be based on Labour Cost Index (All labour Costs) plus an allowance for holiday pay and insurances.

**7. Price and Payment**

- 7.1 At Mobicomm's sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by Mobicomm to the Customer; or
  - (b) Mobicomm's quoted price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 7.2 Mobicomm reserves the right to change the Price:
  - (a) if a variation to the Goods/Equipment which are to be supplied is requested; or
  - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, previous work being non-compliant, limitations to site accessibility, safety considerations including the discovery of asbestos,) which are only discovered on commencement of the Services; or
  - (d) in the event of increases to Mobicomm in the cost of labour (overtime or extra shifts) or materials which are beyond Mobicomm's control.
- 7.3 Variations will be charged for on the basis of Mobicomm's quotation, and will be detailed in writing, and shown as variations on Mobicomm's invoice. The Customer shall be required to respond to any variation submitted by Mobicomm within ten (10) working days. Failure to do so will entitle Mobicomm to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 7.4 At Mobicomm's sole discretion a non-refundable deposit may be required.
- 7.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Mobicomm, which may be:
  - (a) on delivery of the Goods/Equipment;
  - (b) by way of instalments/progress payments in accordance with Mobicomm's payment schedule;
  - (c) for certain approved Customers, due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Mobicomm.
- 7.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Customer and Mobicomm.
- 7.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Mobicomm nor to withhold payment of any invoice because part of that invoice is in dispute.
- 7.8 Any payments tendered by the Customer to Mobicomm where the Customer is in default of their obligations of payment shall be applied as follows:
  - (a) firstly, as reimbursement for any collection costs incurred by Mobicomm;
  - (b) secondly, in payment of any interest charges; and
  - (c) thirdly, in satisfaction or part satisfaction of the oldest portion of the Customer's outstanding account.
- 7.9 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Mobicomm an amount equal to any GST Mobicomm must pay for any supply by Mobicomm under this or any other agreement for the sale of the Goods/hire of the Equipment. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

**8. On-Line Ordering**

- 8.1 The Customer acknowledges and agrees that:
  - (a) Mobicomm does not guarantee the website's performance;
  - (b) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by Mobicomm;
  - (c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;
  - (d) there are inherent hazards in electronic distribution, and as such Mobicomm cannot warrant against delays or errors in transmitting data between the Customer and Mobicomm including orders, and you agree that to the maximum extent permitted by law, Mobicomm will not be liable for any losses which the Customer suffers as a result of online-ordering not being available or for delays or errors in transmitting orders;
  - (e) when making a transaction through the website, the Customer's information will pass through a secure server using SSL (secure sockets layer) encryption technology. The encryption process ensures that the Customer's information cannot be read by or altered by outside influences;
  - (f) if the Customer is not the cardholder for any credit card being used to pay for the Goods, Mobicomm shall be entitled to reasonably assume that the Customer has received permission from the cardholder for use of the credit card for the transaction.

8.2 Mobicomm reserves the right to terminate the Customer's order if it learns that you have provided false or misleading information, interfered with other users or the administration of Mobicomm's business, or violated these terms and conditions.

**9. Delivery of Goods/Equipment**

9.1 Delivery ("**Delivery**") of the Goods/Equipment is taken to occur at the time that:

- (a) the Customer or the Customer's nominated carrier takes possession of the Goods/Equipment at Mobicomm's address; or
- (b) Mobicomm (or Mobicomm's nominated carrier) delivers the Goods/Equipment to the Customer's nominated address even if the Customer is not present at the address.

9.2 At Mobicomm's sole discretion the cost of delivery is in addition to the Price.

9.3 The Customer must take delivery by receipt or collection of the Goods/Equipment whenever either is tendered for delivery. In the event that the Customer is unable to take delivery of the Goods/Equipment as arranged then Mobicomm shall be entitled to charge a reasonable fee for redelivery of the Goods/Equipment and/or the storage of the Goods.

9.4 Mobicomm may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in this contract.

9.5 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that:

- (a) such discrepancy in quantity shall not exceed 10%, and
- (b) the Price shall be adjusted pro rata to the discrepancy.

9.6 Any time or date given by Mobicomm to the Customer is an estimate only and Mobicomm will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that Mobicomm is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then Mobicomm shall be entitled to charge a reasonable fee for redelivery and/or storage. Where an agreed commencement date is postponed, unless the Customer provides twenty-four (24) hours' notice is given by the Customer, Mobicomm may charge a cancellation fee.

9.7 The Customer acknowledges and accepts that:

- (a) should Mobicomm be required to travel between site locations in order to complete the Services, then all travel charges including vehicles, shall be charged as an extra; and
- (b) where Mobicomm is required to collect items for the Services ordered by the Customer from a third party or other location, then all time and costs involved in such collection shall be chargeable to the Customer; and
- (c) Should a related issue arise once Mobicomm has arrived on site that requires rectification in order for Mobicomm to continue with the Services, Mobicomm shall notify the Customer of such issue and where Mobicomm is able to make the rectification with the Customer's permission, Mobicomm shall do so with all additional charges being at the Customer's expense. However, should Mobicomm not be able to perform the rectification work required, and then it shall become the Customer's responsibility to arrange for the work to be performed before Mobicomm can continue with the Services.

**10. Hire Term & Charges**

10.1 The commencement of the Hire Term is either:

- (a) the time the Equipment is collected by the Customer from Mobicomm's premises and will continue until the return of the Equipment to Mobicomm's premises; or
- (b) if Mobicomm agrees with the Customer to deliver and/or collect the Equipment, Hire charges shall commence from the time the Equipment leaves Mobicomm's premises and continue until the Customer notifies Mobicomm that the Equipment is available for collection or until the expiry of the agreed Hire Term, whichever last occurs.

10.2 The Customer is required to pay Hire charges for the on-going use of the Goods.

10.3 At Mobicomm's sole discretion, the Hire charges payable for Equipment hired under this contract will be stipulated on any invoice/quotation etc. supplied by Mobicomm to the Customer and is due and payable in accordance with any agreed payment terms/schedule which may be hourly/daily/weekly/monthly/quarterly/bi-annual/annual. Mobicomm may vary these charges from time to time, as per clause 7.2.

10.4 In the event of a variation, Mobicomm shall give the Customer a written document stating the reason for the variation, a full description of the variation, any effect the variation will have on the agreement, including but not limited to, the Hire charges and any revised Hire Term, and shall require written acceptance by the Customer of the variation prior to execution thereof.

10.5 If the Customer wishes to terminate prior to the expiration of the agreed Hire Term, the Customer must pay to Mobicomm the remaining Hire charges, which would otherwise have been payable to Mobicomm for the agreed term of hire.

10.6 The date upon which the Customer advises of termination shall in all cases be treated as a full day's hire.

10.7 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless Mobicomm confirms special prior arrangements in writing. In the event of Equipment breakdown, provided the Customer notifies Mobicomm immediately, Hire charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Customer.

**11. Title**

11.1 Where this is a hire agreement:

- (a) the Equipment is, and will at all times remain, the absolute property of Mobicomm; however, the Customer accepts full responsibility for:
  - (i) the safekeeping of the Goods and indemnifies Mobicomm for all loss, theft, or damage to the Goods, howsoever caused, and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Customer; and
  - (ii) indemnifying Mobicomm against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Goods during the Hire Term and whether or not arising from any negligence, failure or omission of the Customer or any other persons.

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- (b) if the Customer fails to return the Goods to Mobicomm then Mobicomm, or Mobicomm's agent, may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- (c) the Customer is not authorised to pledge Mobicomm's credit for repairs to the Equipment, or to create a lien over the Goods in respect of any repairs.

### 11.2 Where this an agreement for the purchase of Goods:

- (a) Mobicomm and the Customer agree that ownership of the Goods shall not pass until:
  - (i) the Customer has paid Mobicomm all amounts owing to Mobicomm; and
  - (ii) the Customer has met all of its other obligations to Mobicomm.
- (b) Receipt by Mobicomm of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- (c) It is further agreed that:
  - (i) until ownership of the Goods passes to the Customer in accordance with clause 11.1 that the Customer is only a bailee of the Goods and must return the Goods to Mobicomm on request.
  - (ii) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Mobicomm and must pay to Mobicomm the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (iii) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Mobicomm and must pay or deliver the proceeds to Mobicomm on demand.
  - (iv) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Mobicomm and must sell, dispose of or return the resulting product to Mobicomm as it so directs.
  - (v) the Customer will insure, or self-insure, Mobicomm's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will affect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
  - (vi) the Customer irrevocably authorises Mobicomm to enter any premises where Mobicomm believes the Goods are kept and recover possession of the Goods.
  - (vii) Mobicomm may recover possession of any Goods in transit whether or not delivery has occurred.
  - (viii) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Mobicomm.
  - (ix) Mobicomm may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

## 12. Risk to Goods Supplied

- 12.1 Risk of damage to or loss of the Goods/Equipment passes to the Customer upon Delivery and the Customer must insure the Goods on or before Delivery.
- 12.2 If the Customer requests Mobicomm to leave Goods/Equipment outside Mobicomm's premises for collection or to deliver the Goods/Equipment to an unattended location, then such Goods/Equipment shall be left at the Customer's sole risk.
- 12.3 The Customer warrants that any structures or vehicles to which the Goods are to be affixed/installed are able to withstand the installation of the Goods and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Goods once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring) that Mobicomm, or employees of Mobicomm, reasonably form the opinion that the Customer's premises or vehicles are not safe for the installation of Goods to proceed then Mobicomm shall be entitled to delay installation of the Goods/Equipment until Mobicomm is satisfied that it is safe for the installation to proceed. Where the building structure (as applicable) is not up to appropriate code or standards, Mobicomm shall not be held liable for any rectification work required on the structure. Where the Customer requests Mobicomm to perform any rectification work, then all costs shall be charged to the Customer.
- 12.4 The Customer acknowledges that:
  - (d) in the event **asbestos** or any other toxic substances are discovered at the site that it is their responsibility to ensure the safe removal of the same. The Customer further agrees to indemnify Mobicomm against any costs incurred by Mobicomm as a consequence of such discovery. Under no circumstances will Mobicomm handle removal of asbestos product;
  - (e) where Mobicomm has effected delivery all risk passes to the Customer as per clause **Error! Reference source not found.** and the Customer claims the Goods have been stolen it shall be the Customer's responsibility to notify the police and forward evidence to Mobicomm, however, this shall not excuse the Customer from fulfilling their financial obligations under this contract;
  - (f) that the Goods shall comply with all applicable standards and/or regulations and that it shall be the Customer's responsibility to ensure correct operating procedures are followed so as to not interfere with other communications operators within the transmitting/receiving area;
  - (g) Mobicomm shall not be liable whatsoever for any loss or damage to the Services that is caused by any other party. Where the Customer requests Mobicomm to fix such damage, Mobicomm reserves the right to invoice the Customer all associated costs;
  - (h) Mobicomm is only responsible for parts that are replaced by Mobicomm and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Customer agrees to indemnify Mobicomm against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.

## 13. Customer's Responsibilities When Hiring Equipment

- 13.1 The Customer shall:

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- (a) notify Mobicomm immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Customer is not absolved from the requirements to safeguard the Equipment by giving such notification;
  - (b) satisfy itself at commencement that the Equipment is suitable for its purposes;
  - (c) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by Mobicomm or posted on the Equipment;
  - (d) ensure that all persons operating the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to Mobicomm upon request;
  - (e) upon termination of the hire, present the Equipment on return/collection, complete with all parts and accessories, clean and in good order as delivered; fair wear and tear accepted, to Mobicomm;
  - (f) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over the Equipment;
  - (g) not alter or make any additions to the Equipment including but without limitation defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
  - (h) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
  - (i) not exceed the recommended or legal load and capacity limits of the Equipment;
  - (j) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
  - (k) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
  - (l) indemnify and hold harmless Mobicomm in respect of all claims arising out of the Customer's use of the Equipment.
- 13.2 Immediately on request by Mobicomm the Customer will pay:
- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to Mobicomm;
  - (b) all costs incurred in cleaning the Equipment;
  - (c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;
  - (d) the cost of repairing any damage to the Equipment caused by the negligence of the Customer or the Customer's agent;
  - (e) any lost hire fees Mobicomm would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
  - (f) the cost of repairing any damage to the Equipment caused by vandalism, or (in Mobicomm's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Customer;
  - (g) the cost of fuels and consumables provided by Mobicomm and used by the Customer.
- 14. Product Specifications**
- 14.1 The Customer acknowledges that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in Mobicomm's or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by Mobicomm;
  - (b) while Mobicomm may have provided information or figures to the Customer regarding the performance of the Goods, the Customer acknowledges that Mobicomm has given these in good faith and are estimates based on optimal operating conditions. The coverage range may be less than estimates due to factors out of Mobicomm's control including, but not limited to, atmospheric conditions, the location (geographical or otherwise) of the Goods and the location of surrounding structures and flora; and
  - (c) Mobicomm accepts no liability for testing the Goods, prior to dispatch, unless specifically requested at the time the Customer places order.
- 15. Access**
- 15.1 The Customer shall ensure that Mobicomm has clear and free access to the installation area at all times to enable them to undertake the Services. Mobicomm shall not be liable for any loss or damage to the area (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas or scratches to the vehicle, whichever is applicable) unless due to the negligence of Mobicomm.
- 16. Compliance and Consents**
- 16.1 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with the Australian and New Zealand Wiring standards.
- 16.2 The Customer shall obtain (at the expense of the Customer) all licenses, approvals, applications and permits that may be required for the Services, and that are not included in the project documents provided by Mobicomm unless otherwise specified in Mobicomm's quotation.
- 16.3 The Customer agrees that the work area will comply with any Health and Safety at Work Act 2015 ("HSW") laws and WorkSafe requirements relating to the Services and any other applicable requirements. Furthermore, the parties agree that for the purposes of the HSW Act, Mobicomm shall not be the person who controls the place of work in terms of the HSW Act.
- 17. Personal Property Securities Act 1999 ("PPSA")**
- 17.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Goods/Equipment and/or collateral (account) – being a monetary obligation of the Customer to Mobicomm for Services – that have previously been supplied and that will be supplied in the future by Mobicomm to the Customer.
- 17.2 The Customer undertakes to:

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- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Mobicomm may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, Mobicomm for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods/Equipment charged thereby;
  - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Mobicomm; and
  - (d) immediately advise Mobicomm of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 17.3 Mobicomm and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 17.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 17.5 Unless otherwise agreed to in writing by Mobicomm, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 17.6 The Customer shall unconditionally ratify any actions taken by Mobicomm under clauses 17.1 to 17.5.
- 17.7 Only to the extent that the hire of the Equipment exceeds a six (6) month hire period with the right of renewal shall clause 17 apply, and this agreement a security agreement for the purposes of PPSA generally, and in particular Section 36.

**18. Security and Charge**

- 18.1 In consideration of Mobicomm agreeing to supply the Goods/Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under this contract (including, but not limited to, the payment of any money).
- 18.2 The Customer indemnifies Mobicomm from and against all Mobicomm's costs and disbursements including legal costs of a solicitor and own client basis incurred in exercising Mobicomm's rights under this clause.
- 18.3 The Customer irrevocably appoints Mobicomm and each director of Mobicomm as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 18 including, but not limited to, signing any document on the Customer's behalf.

**19. Consumer Guarantees Act 1993**

- 19.1 This agreement is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Hirer is contracting within the terms of a trade/business (which cases are specifically excluded).

**20. Defects and Returns**

- 20.1 The Customer shall inspect the Goods/Equipment on delivery and shall within five (5) days of delivery (time being of the essence) notify Mobicomm of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Mobicomm an opportunity to inspect the Goods/Equipment within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods/Equipment shall be presumed to be free from any defect or damage. For defective Goods/Equipment, which Mobicomm has agreed in writing that the Customer is entitled to reject, Mobicomm's liability is limited to either (at Mobicomm's discretion) replacing the Goods/Equipment or repairing the Goods/Equipment.
- 20.2 Goods will not be accepted for return other than in accordance with 20.1 above, and provided that:
- (a) Mobicomm has agreed in writing to accept the return of the Goods; and
  - (b) the Goods are returned at the Customer's cost within seven (7) days of the delivery date; and
  - (c) Mobicomm will not be liable for Goods that have deteriorated due to exposure to the elements after delivery and/or which have not been stored or used in a proper manner; and
  - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 20.3 Mobicomm may (in its discretion) accept the return of Goods for credit but this may incur a handling fee of twenty percent (20%) of the value of the returned Goods plus any freight.
- 20.4 Subject to clause 20.1, non-stocklist items or Goods made to the Customer's specifications are not acceptable for credit or return.

**21. Warranty**

- 21.1 Subject to the conditions of warranty set out in clause 21.2 Mobicomm warrants that if any defect in any workmanship of Mobicomm becomes apparent and is reported to Mobicomm within three (3) months of the date of delivery (time being of the essence) then Mobicomm will either (at Mobicomm's sole discretion) replace or remedy the workmanship.
- 21.2 The conditions applicable to the warranty given by clause 21.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - (i) failure on the part of the Customer to properly maintain any Goods; or
    - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by Mobicomm; or
    - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
    - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - (v) fair wear and tear, any accident or act of God.
  - (b) the warranty shall cease and Mobicomm shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Mobicomm's consent.
  - (c) in respect of all claims Mobicomm shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 21.3 For Goods not manufactured by Mobicomm, the warranty shall be the current warranty provided by the manufacturer of the Goods. Mobicomm shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

**22. Intellectual Property**

- 22.1 Where Mobicomm has designed, drawn or developed Goods/Equipment for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Mobicomm.
- 22.2 The Customer warrants that all designs, specifications or instructions given to Mobicomm will not cause Mobicomm to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Mobicomm against any action taken by a third party against Mobicomm in respect of any such infringement.
- 22.3 The Customer agrees that Mobicomm may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods/Equipment which Mobicomm has created for the Customer.

**23. Default and Consequences of Default**

- 23.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Mobicomm's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 23.2 If the Customer owes Mobicomm any money the Customer shall indemnify Mobicomm from and against all costs and disbursements incurred by Mobicomm in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Mobicomm's collection agency costs, and bank dishonour fees).
- 23.3 Further to any other rights or remedies Mobicomm may have under this contract, if a Customer has made payment to Mobicomm and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Mobicomm under this clause 23, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.
- 23.4 Without prejudice to Mobicomm's other remedies at law Mobicomm shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Mobicomm shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Mobicomm becomes overdue, or in Mobicomm's opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer has exceeded any applicable credit limit provided by Mobicomm;
  - (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

**24. Cancellation**

- 24.1 Without prejudice to any other remedies Mobicomm may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under this contract Mobicomm may suspend or terminate the supply of Goods/Equipment to the Customer. Mobicomm will not be liable to the Customer for any loss or damage the Customer suffers because Mobicomm has exercised its rights under this clause.
- 24.2 Mobicomm may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are delivered by giving written notice to the Customer. On giving such notice Mobicomm shall repay to the Customer any money paid by the Customer for the Goods/Equipment. Mobicomm shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 24.3 In the event that the Customer cancels delivery of Goods/Equipment the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Mobicomm as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 24.4 Cancellation of orders for Goods/Equipment made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

**25. Privacy Act 1993**

- 25.1 The Customer authorises Mobicomm or Mobicomm's agent to:
- (a) access, collect, retain and use any information about the Customer;
    - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Customer.
  - (b) disclose information about the Customer, whether collected by Mobicomm from the Customer directly or obtained by Mobicomm from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 25.2 Where the Customer is an individual the authorities under clause 25.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 25.3 The Customer shall have the right to request Mobicomm for a copy of the information about the Customer retained by Mobicomm and the right to request Mobicomm to correct any incorrect information about the Customer held by Mobicomm.

**26. Service of Notices**

- 26.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this contract;
  - (c) by sending it by registered post to the address of the other party as stated in this contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party's last known email address.
- 26.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

**27. Trusts**

- 27.1 If the Customer at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Mobicomm may have notice of the Trust, the Customer covenants with Mobicomm as follows:
- (a) the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
  - (b) the Customer has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
  - (c) the Customer will not without consent in writing of Mobicomm (Mobicomm will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust property.

**28. Confidentiality**

- 28.1 Each party agrees to treat all information and ideas communicated by the other party confidential and each agrees not to divulge it to any third party, without the other party's written consent.
- 28.2 The quotation and the information contained in the quotation provided by Mobicomm to the Customer is done so on a "commercial in confidence" basis thereby, the Customer agrees not to reproduce or provide said information in any manner to any third party without the prior written approval of Mobicomm.

**29. General**

- 29.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 29.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Hamilton Courts in New Zealand.
- 29.3 Mobicomm shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Mobicomm of these terms and conditions, and:
- (a) the Customer shall not be entitled to claim for liquidated damages, unless the loss or expense suffered by the Customer is due to Mobicomm's negligence; and
  - (b) Mobicomm's liability shall be limited to damages which under no circumstances shall exceed the Price.
- 29.4 Mobicomm may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 29.5 The Customer cannot licence or assign without the written approval of Mobicomm.
- 29.6 Mobicomm may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Mobicomm's sub-contractors without the authority of Mobicomm.
- 29.7 The Customer agrees that Mobicomm may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Mobicomm to provide Goods/Equipment hire to the Customer.
- 29.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 29.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.