



Mobile GIS Services Limited

Terms and Conditions

Version 1.0.4

Version History

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1.0	First Release	Michael Darracott	01/04/2020
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1.0.2	Review of terms	Daniel Taylor	11/05/2022
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Terms and Conditions

1. DEFINITIONS

In these conditions:-

“Company” means Mobile GIS Services Limited (t/a MGISS);

“Customer” means the other contracting party;

“Contract” means an Order accepted by the Company (in writing);

“Products” means all the hardware goods supplied by the Company under the Contract;

“Services” means all the services supplied by the Company in relation to the Products;

“Solutions” means any combination of products and services supplied by the Company under the Contract;

“Order” means the order placed by the Customer with the Company for the Products, Services, and/or Solutions;

“Total Contract Price” means the aggregate price of all the Products, Services, and/or Solutions (excluding VAT) supplied by the Company under the Contract;

“Specification” means the Company’s specification for the Products and/or any specification agreed by the Company and the Customer for Services, and/or Solutions;

“Anniversary” means the annual recurrence date of the commencement of the Contract;

“deals as consumer” has the same meaning as in Section 12 of the Unfair Contract Terms Act 1977;

“Group Company” means Mobile GIS Services Limited and any subsidiary thereof.

2. QUOTATION

All quotations shall be subject to these conditions and unless otherwise stated or unless withdrawn by the Company shall be valid for a period of 30 days from the date of the quotation. The quotation is not an offer to proceed, and the Customer is required to place a written Order with the Company using the same reference as on the quotation. The Order shall not be binding on the Company until specifically accepted in writing.

3. PRECEDENCE OF THESE CONDITIONS

The Customer agrees that the Order fully specifies its requirements for Products, Services, and/or Solutions and unless agreed to by the Company in writing shall be deemed to be placed subject to these conditions notwithstanding anything to the contrary contained in or referred to on the Order.

4. PRICES

Unless otherwise stated all prices are strictly net of all taxes, commercial packing and shipping.

5. **PRICE VARIATION**

The Company shall be entitled to increase any subscription or recurring fees for all Products, Services, and/or Solutions at the anniversary, according to the latest rate-card. Any such increases will be limited to the percentage increase in the CPI plus 2% over the preceding 12 months.

6. **PAYMENT**

The Customer shall pay for all Products ordered net cash within 30 days of the date of invoice. However, at the Company's discretion it may choose to extend credit to Customer on such terms and conditions as the Company may specify; provided, however, that the Company may revoke any such credit terms at any time, at the Company's sole discretion. Any sums not paid on the date due shall be subject to an interest charge at the rate of 4% per annum above LIBOR (the London Inter Bank Offered Rate) from time to time compounded monthly on all amounts overdue until payment thereof. The Company reserves the right to stop all shipments during any period when an invoice is past due.

If required by the Company, an Order must be accompanied either by a remittance or advice that an irrevocable Sterling Pounds Letter of Credit has been established with, and confirmed by, a major UK clearing bank in favour of the Company, and/or by the provision of three acceptable supplier references, subject to approval by the Company.

In relation to any Product purchases, this Letter of Credit, where applicable, shall have a validity equal to the full delivery period of the Products, Services and/or Solutions plus one month, and shall provide for part shipment and delivery, and trans-shipment and delivery, with the release of one hundred per cent of the value for each shipment and delivery against presentation of commercial invoices, packing lists and bills of lading or forwarding agent's receipts or airwaybills as evidence of despatch of the Products.

In relation to any Services and/or Solutions, this Letter of Credit, where applicable, shall have a validity equal to the full period of delivery of the Services and/or Solutions plus one month, and shall provide for part delivery split into suitable milestone payments pre-agreed between the Company and the Customer. Payment shall be made immediately once the relevant milestones have been achieved and the Services and/or Solutions delivered in part or in full.

7. **SET-OFF**

In the event that either:-

(a) the Customer has not paid any sum or sums which are due and payable to the Company: or

- (b) the Company has not paid any sum or sums which are due or about to be due and payable to the Customer for any reason;

The Company shall have the right at its sole discretion to reduce the Customer's indebtedness referred to in sub-clause (a) above by setting off against each indebtedness any sums due and payable to the Customer by any Group company or reduce the Company's indebtedness referred to in sub-clause (b) above by setting-off against such indebtedness any sums due and payable by the Customer to any Group company.

8. DELIVERY AND RISK

- (a) Subject to the following sub-clauses all risks shall pass to the Customer upon delivery.
- (b) Unless otherwise specified delivery shall be deemed to take place when the Products have been delivered to the Customer's offices, depots, warehouses, other authorised places of work, and/or approved carriers or FCA U.K. port/airport as defined in Incoterms of the International Chamber of Commerce 2000 Edition if for despatch overseas.
- (c) All dates and times specified to the Customer for delivery are estimates only and the Company shall not have any liability for delay or any damages or losses sustained by the Customer as a result of such dates or times not being met. The Customer shall not be entitled to refuse acceptance of the Products, Services, and/or Solutions as a consequence of such delays.
- (d) If the Customer does not accept delivery of a consignment of Products in accordance with the Contract then:
 - (i) the Products refused shall be in all respects at the Customers risk; and
 - (ii) the cost of storing the Products shall be borne by the Customer; and
 - (iii) if such failure to accept delivery continues for more than ten days the Company shall have the right to terminate the Contract.

9. NOTICES

Any notice required to be given hereunder shall be sufficiently given if properly addressed and sent by registered post to in the case of the Company its registered office and in the case of the Customer its last known address and shall be deemed to have been properly served at the time when in the ordinary course of transmission it would reach its destination.

10. **TITLE**

- (a) The Company shall retain title to the Products, Services, and/or Solutions, as legal and equitable owner until it shall have received all sums due to it from the Customer.
- (b) Until the Customer has paid the Total Contract Price:-
 - (i) the relationship of the Customer to the Company shall be fiduciary in respect of the Products and accordingly the Company shall have the right to trace any proceeds of sale.
 - (ii) the Customer is licensed by the Company to agree to sell the Products for a fee agreeable by the Company, subject to the express condition that the entire proceeds thereof are held in trust for the Company.

11. **SPECIFICATION**

- (a) The Products, Services, and/or Solutions will be supplied generally in accordance with the Specification. The Company's policy is one of continuous development and consequently the Specification may vary from time to time. The Company will not accept liability for the Products in respect of variations from the Specification except where any variation from the Specification is material.
- (b) Descriptions and illustrations in Company catalogues shall not form part of the Contract.
- (c) Alterations to the Specification requested by the Customer will be made by the Company only by agreement and on terms acceptable to the Company. The company makes no guarantees to undertake any alterations to the Specification.

12. **WARRANTY**

THIS WARRANTY DOES NOT AFFECT THE CUSTOMER'S STATUTORY RIGHTS WHERE THE CUSTOMER DEALS AS CONSUMER.

- (a) Any Products which are found to the Company's satisfaction to be defective as a result of faulty design manufacture or workmanship will at the sole discretion of the Company either be replaced free of charge or repaired free of charge provided that:-
 - (i) the Products (or samples thereof showing the alleged defects) are returned properly packed and with carriage paid to the Company's premises in the U.K. at the Customer's risk within 12 months from the date of delivery, and

- (ii) the Products have not been misused, mishandled, overloaded, amended, modified, and/or repaired in any way by the Customer, its servants or agents, or used for any purpose other than that for which they were designed, and
- (iii) if the Products have been manufactured to the Customer's Specification, the defects are not as a result of faulty or inaccurate Specification of the Customer.
- (b) Repaired or replaced Products will be returned free of charge to destinations on the mainland of the U.K. or delivered FCA U.K. for other destinations.
- (c) This warranty is exclusive of all labour costs and, where work is to be carried out in a place other than the Company's premises, travelling costs (including travelling time and all applicable expenses) shall be borne by the Customer.
- (d) In the case of Products not of the Company's manufacture any warranty shall be limited to that given to the Company by the manufacturer thereof. The Company will make the details of such warranties available to the Customer within 10 (ten) business days of any such request.

13. LIABILITY

- (a) The warranty given above is the only warranty given by the Company and otherwise this clause specifies the entire liability of the Company including liability for negligence and in particular but without limitation all statutory other or express implied or collateral terms conditions or warranties are excluded.
- (b) The Company accepts liability except in the case of international supply contract as described in the Unfair Contract Terms Act 1977:
 - (i) for death or personal injury resulting from its negligence, and
 - (ii) arising out of any breach of the obligations as to title implied by statute, and
 - (iii) where the Customer deals as consumer for any breach of any condition or warranty implied by statute as to the correspondence of the Products with description or sample or as to their quality or fitness for purpose or particular purpose, and
 - (iv) up to the amount calculated pursuant to sub-clause (f) below for direct physical damage to or loss of property resulting from the negligence of the Company.
- (c) The Customer is required to notify the Company of any claim under clause 13b above as soon as reasonably possible except that any claim under sub-clause (b) (iv) above shall be notified to the Company within ten days of the Customer suffering any alleged loss or damage.

(d) Except as provided in clauses 13a, 13b, and 13c the Company shall not be under any liability (including liability for negligence) for any loss or damage or injury to the Customer whatsoever no matter when or how arising out of the Products or Services or otherwise whether direct or indirect consequential or contingent and whether foreseeable or not and in particular shall not be liable for financial loss or loss of profits contracts business anticipated savings use or goodwill.

(e) Under no circumstances except as provided in clauses 13b(i), 13b(ii), and 13b(iii) above will the Company's liability whether in contract tort or otherwise exceed:

- (i) where the Total Contract Price is £200,000 or less, the sum of £100,000; or
- (ii) where the Total Contract Price exceeds £200,000, fifty percent of the Total Contract Price.

N.B. THIS CLAUSE DOES NOT AFFECT THE CUSTOMER'S STATUTORY RIGHTS WHERE THE CUSTOMER DEALS AS CONSUMER.

14. PATENT INDEMNITY

If the Customer is threatened with any action by a third party alleging that the Products in the form sold infringe any patent, copyright registered design, or other intellectual property rights then provided that the Customer informs (within 5 business days) and fully co-operates with the Company and in cases where the Company so requests permits the Company to defend any action on the Customer's behalf and have the sole control of any and all negotiations for settlement, then the Company will indemnify the Customer against any award of damages and costs against the Customer arising from such action. Further, if such event occurs the Customer agrees that the Company shall have the option at its discretion and own expense either:

- (a) to modify the Products so that they do not infringe, or
- (b) to replace the Products with non-infringing goods, or
- (c) to procure for the Customer the right for the Customer to continue its use of the Products, or
- (d) to repurchase the Products from the Customer at the price paid by the Customer less depreciation.

The Company shall have no liability in respect of claims for infringement or alleged infringement of third parties patent or other proprietary rights arising from the execution of the Order in accordance with the Customer's Specification, negligence, and/or wilful misconduct and the Customer shall indemnify the Company against all losses, damages, expenses, and costs or other liability arising from such claims.

15. EXCUSABLE EVENTS

The Company shall be under no liability to the Customer for any breach of any provision hereof or failure on its part to perform any obligation as a result of acts of God, war (whether declared or not), sabotage, riot, explosion, Government control, restrictions or prohibitions or any other Government act or omission whether local or national, fire, accident, earthquake, storm, flood, epidemic, pandemic, drought, or other natural catastrophes, inability to obtain equipment, suitable raw materials, components, fuel, power or transportation, disputes with workers, strikes or lockouts, shortage of labour or any other cause beyond the control of the Company and the Company will notify the Customer if affected by any of the causes referred to in this sub-clause. In the event that the Company is unable to perform its obligations under the Contract by reason of any of the causes referred to above for a period of six months or more then either party may at any time after the expiration of such six-month period terminate the Contract by written notice.

16. TERMINATION

Without prejudice to any claim or right it might otherwise make or exercise the Company shall have the right forthwith to determine the Contract by notice and to claim for any losses, costs or expenses thereby incurred if the Customer commits any serious breach of any of the terms of these conditions or if the Customer makes or offers to make any arrangement or composition with creditors or commits any act of bankruptcy, or if any petition or receiving order in bankruptcy is presented or made against the Customer, or if any resolution or petition to wind up the Customer is passed or presented otherwise than for reconstruction or amalgamation or if a receiver of the Customer's undertaking property or assets or any part thereof is appointed or if a third party seizes or threatens to seize the Products before legal ownership has passed to the Customer. If any event occurs which would entitle the Company to terminate any Contract all sums due to the Company shall become immediately payable and the Company by its servants or agents may for the purposes of recovery of all or any of the Products enter upon any premises where they are reasonably thought to be stored and may repossess the same.

17. CONSENTS

Where applicable the Company shall use reasonable endeavours to obtain an export licence and all other necessary consents to enable the Products to be exported from the U.K. In the event that the Company is unable to obtain an export licence, visas, or consents for personnel required to provide Services outside the U.K., the Company shall not be held liable for its failure to perform the Contract. The Customer shall be responsible for obtaining all consents necessary for the import of the Products to the Country of its destination.

18. SOFTWARE

Where software is incorporated in or forms part of or is supplied with the Products the provision of the software is subject to the Company's Software Licence Conditions. In the event of conflict between these conditions and the Software Licence Conditions the latter shall take precedence.

19. INSTALLATION AND COMMISSIONING

If the Services required by the Customer are special services such as installation, commissioning, training, development or management services any additional terms of the Company applicable to such Services will apply except that in the event of any conflict these conditions shall prevail.

20. AMENDMENTS OR CANCELLATION

Once accepted by the Company no Order can be amended or cancelled except with the Company's prior written approval and upon terms, which indemnify the Company against any losses including loss of profit or additional costs resulting therefrom.

21. ENTIRE AGREEMENT

These conditions supersede all previous conditions, understanding, commitments, agreements or representatives whatsoever whether oral or written relating to the subject matter hereof and shall not be varied except with the Company's written consent.

22. TAXES

All prices are exclusive of all taxes, charges, and/or levies of any kind including value added tax whether payable on the supply of the Products and/or services to destinations inside or outside the U.K. or otherwise, and these are payable by the Customer.

23. GOVERNING LAW

These conditions and all Contracts shall be governed construed and shall take effect in accordance with the laws of England, and shall be subject to the jurisdiction of the English Courts.

24. CONSTRUCTION

If any of the words or provisions of these conditions shall be deemed to be invalid for any reason then the conditions shall be read as if the invalid provisions had to that extent been deleted there from and the validity of the remaining provisions of the conditions shall not be affected thereby.

25. GPS (GNSS) LIABILITY (Applicable if any GPS/GNSS content in Contract)

(a) The Purchaser acknowledges that the Global Positioning System ("GPS") and its collective term Global Navigation Satellite Systems "GNSS" are operated as follows; GPS is the Global Navigation Satellite System of the United States Government, GLONASS is the Global Navigation Satellite System of the Russian Federation, GALILEO is the Global Navigation Satellite System of the European Union and BEIDOU is the Global Navigation Satellite System of China, whom are solely responsible for the accuracy and maintenance of their systems. Certain conditions can cause inaccuracies that could require modifications to the receiver. (Examples of such conditions include but are not limited to changes in the GNSS transmission.)

(b) The Customer agrees that neither the Company nor any third party service operator and/or service provider shall be liable to the Customer for, and indemnifies the Company and such third party service operator and service provider, as the case may be, from and against, any loss or damage or other liability suffered or incurred by the Customer arising out of or in connection with the provision of or failure to provide the Company's delivered differential GNSS (GPS) service; or the unavailability, malfunctioning, interruption or other defect in such services, supplies or equipment for which third parties or the Customer are responsible. No such unavailability, malfunctioning, interruption, non-operation or other defect shall relieve the Customer of any of its obligations in the Agreement.

25. Intellectual Property

(a) The Customer acknowledges and agrees that the Company and/or its licensors own all intellectual property rights in the Products, Services, Solutions, and/or the Documentation. Except as expressly stated herein, this Contract does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Products, Services, Solutions, and/or Documentation.

(b) The Customer acknowledges and agrees that the Company and/or its licensors own all intellectual property rights unless otherwise stated with written confirmation, derived or produced through the delivery of any Services, and/or Solutions when working on behalf of the Customer or through the delivery of the Specification.

(c) The Company confirms that it has all the rights in relation to the Products, Services, Solutions, and/or Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Contract.