



MFD COMMUNICATION INFRASTRUCTURE LIMITED

CONDITIONS OF SALE

1 WHOLE AGREEMENT

1.1 These Conditions apply until such time that the relevant Association of Consultancy and Engineering's (ACE) agreement is entered into.

1.2 These Conditions together with any specific conditions which may be set out in the quotation or other contract documents ("Special Conditions") shall comprise the entire agreement between the parties and shall supersede and replace any other contractual terms (including the Buyer's standard terms of purchase) under which MFD Communication Infrastructure Limited ("the Company") offers its services to the Buyer.

1.3 If any conflict arises between these Conditions and any Special Conditions communicated by the Company to the Buyer the Special Conditions shall prevail to the extent that they are inconsistent with these Conditions.

2 QUOTATIONS

2.1 Any quotation is issued by the Company on the basis that the prices or charge rates contained therein shall remain valid for 90 days from the date of such quotation. Unless otherwise agreed in writing between the Company and the Buyer, the quotation is subject to the Company commencing work within three months of both parties signing this Agreement and is subject to clauses 2.2 and 2.3 below without limitation.

2.2 The Company's quotation is made on the assumption that the Company can reasonably carry out the work. If on inspection, the Company discovers this not to be the case, the Company will advise the Buyer as soon as reasonably practicable and then shall be freed from carrying out its obligations under the terms of this Agreement. The Company shall not be liable for any loss incurred by the Buyer as a result of the work not being carried out and the cost of any inspections and all work connected with such inspections shall be borne by the Buyer.

2.3 These Conditions apply to all of the Company's transactions and may only be cancelled or varied with the Company's written consent. This includes the scope or timescale of the work. The Buyer shall not be entitled to the quoted price where the Company agrees to vary the scope of the work or timescales from that originally specified in the quotation.

2.4 Except for agreed subcontract work and subject to the prior written consent of both parties, no work, rights or obligations arising between the parties as a result of this Agreement shall be assigned to any third party.

3 PRICE

3.1 Unless otherwise stated in any Special Conditions prices do not include:-

- 3.1.1 sales taxes or value added tax;
- 3.1.2 any other taxes or levies chargeable in respect of the provision of goods or services.

3.2 The Buyer will pay all such taxes and levies in addition to the agreed price when it is due to pay for the goods or services.

4 PRICE ADJUSTMENTS

4.1 In the event of any suspension or delay in the work caused by reason of any act or omission of the Buyer, or any other party, other than the Company, any prices quoted by the Company may be increased to cover all additional expenses incurred by it on this or any other agreement as a result of such suspension or delay.

5 PAYMENT

5.1 Payment shall be made in pounds sterling or the currency stated in the Special Conditions, within 30 days of the date of the Company's invoice. The Buyer shall make no deduction of any type from such payments unless it has a valid Court Order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

5.2 Time for payment shall be of the essence and failure by the Buyer to pay in accordance with the provisions of these Conditions shall entitle the Company, without prejudice to its rights to damages, to suspend any outstanding deliveries or to cancel the Agreement.

5.3 In addition to the Company's rights under Condition 5.2, the Buyer shall be liable to pay interest compounded monthly on any amount outstanding both before and after judgement at the rate of 3% above the Barclays Bank plc base rate for the time being in force accruing on a daily basis until payment is made.

5.4 All payments payable by the Buyer to the Company under the Agreement shall become due:-

- 5.4.1 when the Company renders an invoice to the Buyer; or
- 5.4.2 if the Agreement is frustrated due to causes outside the control of the Company; or
- 5.4.3 immediately upon termination of the Agreement despite any other provision.

6 ACCESS

6.1 Where the Company is to carry out work or operations at the Buyer's premises or other premises at the direction of the Buyer, the Buyer must ensure that:-

- 6.1.1 such premises and all arrangements affecting the work or operations are ready by the time the Company is scheduled to enter upon such premises to commence such work or operations; and
- 6.1.2 there will be no delay to the works or operations caused directly or indirectly by such premises or such arrangements or the state and condition thereof, for which the Company is not responsible.

7 COMPLETION

7.1 Time shall not be of the essence in relation to completion. All timescales quoted by the Company are its best available estimates based on information available to it at the date of quotation and are subject to revision during the course of the Agreement.

7.2 For the purpose of this Agreement time shall not begin to run until the Company has received all necessary information to enable it to carry out the work or until a written order to proceed on the terms stated in the quotation has been received by the Company, whichever of these events is the later.

8 LIABILITY

8.1 The following provisions set out the entire financial liability of the Company (including any liability for the acts and omissions of its employees, agents and sub-contractors) to the Buyer in respect of any breach of this Agreement and any representation, statement or tortious act or omission, including negligence arising under or in connection with the performance of this Agreement.

8.2 The Company shall be under no liability for any delay or failure to perform in the event that the supply of its services is prevented or delayed by any act or circumstances beyond the Company's reasonable control including but not limited to Act of God, legislation, war, fire, drought, failure of power supply, lock-out, strike or other action taken by employees in contemplation or furtherance of a trade dispute or owing to any inability to procure materials required for its performance of the Agreement.

8.3 The Company shall notify the Buyer of any circumstance arising under Clause 8.2 and if such circumstance prevails for more than 3 months then either party shall have the option by giving notice in writing to the other to bring the Agreement to an end.

8.4 Nothing in this Agreement excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent representation.

THE BUYER'S ATTENTION IS DRAWN IN PARTICULAR TO THE CONTENTS OF CLAUSES 8.5 and 8.6
8.5 The Company's total liability whether in contract or in tort or otherwise shall not exceed the total price paid for the work subject to any liability which may not be so limited by virtue of any applicable law.

8.6 The Company shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation which arise out of or in connection with this Agreement or of the reliance on the Company's report, advice or information. Furthermore, the Buyer agrees to indemnify and keep indemnified the Company against any claim by any third party as a result of the Buyer's use of the Company's report, advice or information.

8.7 Save in respect of death or personal injury, the Buyer shall look only to the Company (and not to any individual) for redress if the Buyer considers that there has been any breach of this Agreement. The Buyer agrees not to pursue any claim in contract, tort or statute (including negligence) against any individual as a result of carrying out its obligations under or in connection with this Agreement at anytime whether named expressly in this Agreement or not.

8.8 In this Agreement "individual" shall mean any employee or member of the Company. Any such employee or member includes any officer or director of the Company.

9 REPORTS, SPECIFICATIONS, DESIGNS, DRAWINGS, AND ADVICE

9.1 To the best of the Company's knowledge and belief, any results or recommendations given in reports are correct at the time of writing and are written on the basis of the instructions and information provided by the Buyer. The Company will use all reasonable skill and care when giving advice or providing information under this Agreement. The Company gives no warranty or guarantee relating to any report, advice or information provided by it to the Buyer.

10 INTELLECTUAL PROPERTY

10.1 Any rights arising under patent, registered design, copyright, trade mark or otherwise to any inventions, designs, drawings or information produced or acquired in the performance of this Agreement shall vest in and shall remain the property of the Company.

11 CONFIDENTIALITY

11.1 Both parties agree to keep all information relating to this Agreement confidential and neither shall disclose the details of this Agreement to any third party (save that the Company may disclose the mere existence of a business relationship between the parties to whomsoever it chooses). The Buyer shall not gain any right in information either wholly or partly owned by the Company or any third party used in the performance of the Agreement and shall treat all such information as confidential.

11.2 The provisions of this confidentiality clause shall continue indefinitely notwithstanding the termination of the Agreement unless otherwise specified by the Company.

12 TERMINATION AND SUSPENSION

12.1 The Buyer warrants with the Company that there are no circumstances of which the Buyer is or ought to be aware which may involve the Company or any of its officers or employees in giving evidence in any litigation or arbitration proceedings concerning, connected to or arising from this Agreement. In the event that the Company becomes aware of any such circumstances during the term of this Agreement the Company shall be entitled to suspend the work under the Agreement and shall immediately be released from any and all liability to the Buyer without prejudice to any claim that the Company may have against the Buyer. If during the course of the Agreement the Buyer becomes aware of any such circumstances, it shall immediately notify the Company in writing by notice to its registered office.

12.2 The Company may terminate the Agreement without liability to the Buyer at any time if:-
12.2.1 the Buyer makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation; or

12.2.2 the Buyer suspends or threatens to suspend payment of its debts or is deemed to be unable to pay its debts as they fall due or admits inability to pay its debts as they fall due or commences negotiations with all or any class of its creditors with a view to restructuring or rescheduling any of its indebtedness or enters into any assignment, composition or other arrangement for the benefit of its creditors or any class thereof; or

12.2.3 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other process is levied or enforced upon or sued out against the whole or any part of the assets of the Buyer and such attachment or process is not discharged within seven days or a receiver is appointed of any of the property or assets of the Buyer; or

12.2.4 the Buyer ceases or threatens to cease carrying on business; or

12.2.5 a Notice of Intention to Appoint an Administrator is filed at court or any other step (including petition, proposal or convening a meeting) is taken with a view to the rehabilitation, administration, liquidation, winding-up or dissolution of the Buyer company or any other insolvency or moratorium involving the Buyer company; or

12.2.6 the Company anticipates that any of the events mentioned above is about to occur and notifies the Buyer accordingly.

12.3 The Company may without prejudice to any claim or remedy suspend or terminate performance of this Agreement by written notice and shall be entitled to payment at a reasonable rate based on the price of the work already completed.

12.4 The Buyer may terminate the Agreement in the event of a material breach of this Agreement which is not capable of being remedied by the Company or in the event of the insolvency of the Company by two weeks' notice.

13 DISPUTES AND DIFFERENCES

13.1 The parties shall attempt in good faith to settle any dispute by mediation.

13.2 Where this Agreement is a construction contract within the meaning of the Housing Grants, Construction and Regeneration Act 1996 either party may refer any dispute arising under this Agreement to adjudication in accordance with the Construction Industry Council Model Adjudication Procedure.

14 NOTICES

14.1 All notices required to be served by one party upon the other shall be in writing and may be served on the other at its address set out in the Special Conditions.

14.2 All such notices may be served by first class pre-paid letter or facsimile transfer and (in the absence of proof of earlier receipt) shall be deemed to be served:-

14.2.1 in the case of an inland letter 24 hours after proven despatch or posting;

14.2.2 in the case of an airmail letter 72 hours after proven despatch or posting; and

14.2.3 in the case of a facsimile transfer at 9 am on the next following business day of the recipient party.

15 GOVERNING LAW

15.1 This Agreement shall be governed by and construed in accordance with English law and the parties both hereby agree to submit to the exclusive jurisdiction of the English Courts.

16 GENERAL

16.1 No failure or delay by the Company to exercise any of its powers, rights or remedies under this Agreement shall operate as a waiver of them, nor shall any single or partial exercise of any such powers, rights or remedies prevent any further or other exercise of them.

16.2 If at any time one or more of the provisions of this Agreement is or becomes invalid, illegal or unenforceable in any respect under any law the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

16.3 The parties to the Agreement do not intend that any provisions of this Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.