

The customer's attention is drawn in particular to *clause 8*.

1. INTERPRETATION

1.1 Definitions:

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business Hours: the period from 9am to 5pm on any Business Day.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 11.4.

Contract: the contract between MULTIPATCHER UK LTD (MPL) and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from MPL.

Delivery Location: has the meaning given in clause 4.2.

Force Majeure Event: an event, circumstance or cause beyond a party's reasonable control.

Goods: the goods (or any part of them) set out in the Order.

Losses: all liabilities, damages, losses (including loss of profits, loss of business, loss of reputation, loss of savings and loss of opportunity), fines, expenses and costs (including all interest, penalties, legal costs (calculated on a full indemnity basis) and reasonable professional costs and expenses).

Order: the Customer's order for the Goods, as set out in the Customer's purchase order form, the Customer's written acceptance of the MPL's quotation, or overleaf, as the case may be.

Specification: any specification for the Goods, including any related plans and drawings, that is agreed by the Customer and MPL.

Warranty Period: has the meaning given in clause 5.1.

1.2 Interpretation

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted and includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** excludes fax and email.

2. BASIS OF CONTRACT

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer must ensure that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when MPL issues a written acceptance of the Order, at which point and on which date the Contract shall come into existence.
- 2.4 The Customer waives any right it might have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by or on behalf of MPL and any descriptions or illustrations contained in MPL's catalogues or brochures (whether digital or otherwise) are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 A quotation for the Goods given by MPL shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

3. GOODS

- 3.1 The Goods are described in the Specification.
- 3.2 The Customer shall indemnify MPL against all Losses incurred by MPL as a result of any claim that the MPL's use of the Specification infringes the intellectual property rights of any third party. This clause 3.2 shall survive termination of the Contract.
- 3.3 MPL reserves the right to amend the Specification if required by any applicable law or regulatory requirement and shall notify the Customer in any such event.

4. DELIVERY

- 4.1 MPL shall ensure that:
 - (a) each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, the relevant Customer and MPL reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

- (b) it states on the delivery note if it requires the Customer to return any packaging materials in which case, Customer shall make any such packaging materials available for collection at such times as MPL shall reasonably request. Returns of packaging materials shall be at MPL's expense.
- 4.2 MPL shall deliver the Goods to the location set out in the Order or such other location as the parties may agree in writing (**Delivery Location**) at any time after MPL notifies the Customer that the Goods are ready.
- 4.3 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. MPL shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide MPL with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If MPL fails to deliver the Goods, its liability shall be limited to the costs paid by the Customer for the Goods. MPL shall not be liable for any failure to deliver the Goods that is caused by a Force Majeure Event or the Customer's failure to provide MPL with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Customer fails to accept delivery of the Goods within five Business Days of MPL notifying the Customer that the Goods are ready for delivery, then, except where such failure is caused by a Force Majeure Event:
 - (a) delivery of the Goods shall be deemed to have been completed at 9:00 am on the second Business Day after the day on which MPL notified the Customer that the Goods were ready; and
 - (b) MPL shall store the Goods until actual delivery takes place, and shall, without limiting its rights, be entitled to charge the Customer for all related costs and expenses (including insurance) at the rate of at least £120 per day.
- 4.7 If 10 Business Days after the date on which MPL notified the Customer that the Goods were ready for delivery, the Customer has not taken actual delivery of them, MPL may resell or otherwise dispose of part or all of the Goods and, without limiting its rights and after deducting reasonable costs and expenses related to storage (including insurance) and selling, charge the Customer for any shortfall below the price of the Goods.
- 4.8 MPL may deliver the Goods by instalments, which it shall invoice and which the Customer shall pay for separately. Each instalment shall constitute a separate contract. Any delay in delivery of or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY

5.1 MPL warrants that on delivery, and for a period of 6 months from the date of delivery (**Warranty Period**), the Goods shall:

- (a) conform in all material respects with the Specification;
- (b) be free from material defects in design, material and workmanship;
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979);
and
- (d) be fit for any purpose held out by MPL.

5.2 Subject to clause 5.3, if:

- (a) during the Warranty Period the Customer gives notice in writing to MPL within 5 days of the date that the Customer ought to have discovered that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) MPL is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by MPL) returns such Goods to MPL place of business at the Customer's cost,

MPL shall, at its option and to the extent that it agrees that such Goods do not comply with the warranty set out in Clause 5.1, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 MPL shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow MPL's oral or written instructions as to the storage, commissioning, installation, use or maintenance of the Goods or good trade practice regarding the same;
- (c) the defect arises as a result of MPL following any drawing, design or specification supplied by or on behalf of the Customer;
- (d) the Customer alters or repairs such Goods;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, MPL shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by MPL.

6. TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer upon acceptance of the Order.

6.2 Title to the Goods shall not pass to the Customer until the earlier of:

- (a) MPL receives payment in full (in cash or cleared funds) for the Goods and any other goods that MPL has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums; and
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in *clause 6.4*.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as MPL's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify MPL immediately if it becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d); and
- (e) give MPL such information as MPL may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) the Customer's ongoing financial position.

6.4 Subject to clause 6.5, the Customer may resell the Goods upon written approval from MPL and may use the Goods in the ordinary course of its business (but not otherwise) before MPL receives payment for the Goods. If the Customer resells the Goods:

- (a) it does so as principal and not as MPL's agent; and
- (b) title to the Goods shall pass from MPL to the Customer immediately before the time at which resale by the Customer occurs.

6.5 At any time before title to the Goods passes to the Customer, MPL may:

- (a) by notice in writing to the Customer, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and

- (b) require the Customer to deliver up all Goods in its possession and control that have not been resold, or irrevocably incorporated into another product, and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored to recover them. The Customer shall procure entry to any such third party's premises if requested to do so by the MPL.

7. PRICE AND PAYMENT

- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in MPL's published price list in force as at the date of delivery.
- 7.2 MPL may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
 - (a) any factor beyond MPL's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - (c) any delay caused by any instructions of the Customer or failure of the Customer to give or delay by the Customer in giving MPL adequate or accurate information or instructions.
- 7.3 The price of the Goods:
 - (a) excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to MPL at the prevailing rate, subject to the receipt of a valid VAT invoice; and
 - (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer
- 7.4 MPL may invoice the Customer for the Goods on or at any time after the completion of delivery pursuant to clause 4.3.
- 7.5 The Customer shall pay each invoice submitted by MPL:
 - (a) within 14 days of the date of the invoice; and
 - (b) in full and in cleared funds to a bank account nominated in writing by MPL, and
 - (c) time for payment shall be of the essence of the Contract.
- 7.6 If the Customer fails to make a payment due to MPL under the Contract by the due date, then without limiting MPL's remedies under clause 9, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.6 will accrue each day at

4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

- 7.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. LIMITATION OF LIABILITY

- 8.1 The limits and exclusions in this clause 8 reflect the insurance cover MPL has been able to arrange. The Customer is responsible for making its own arrangements for the insurance of any excess liability.

- 8.2 References to liability in this clause 8 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence) or otherwise.

- 8.3 Nothing in the Contract limits any liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987;
- (e) any liability that cannot legally be limited; or
- (f) the Customer's payment obligations under the Contract.

- 8.4 Subject to clause 8.3, MPL's total liability to the Customer shall not exceed the price paid by the Customer for the Goods

- 8.5 Subject to clause 8.3, the following types of loss are wholly excluded:

- (a) loss of profits (including loss of anticipated savings);
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of use or corruption of software, data or information;
- (e) loss of or damage to goodwill; and
- (f) indirect or consequential loss.

- 8.6 This clause 8 shall survive termination of the Contract.

9. TERMINATION

- 9.1 Without limiting its other rights or remedies, MPL may terminate the Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer commits a breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 of it being notified in writing to do so;
 - (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
 - (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 9.2 Without limiting its other rights or remedies, MPL may suspend supply of the Goods under the Contract or any other contract between the Customer and MPL if the Customer becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d), or MPL reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.3 Without limiting its other rights or remedies, MPL may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 9.4 On termination of the Contract for any reason the Customer shall immediately pay to MPL all of MPL's unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, MPL shall submit an invoice, which the Customer shall pay immediately on receipt.
- 9.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

10. FORCE MAJEURE

Neither party shall be liable for any delay or failure in the performance of its obligations for so long as and to the extent that such delay or failure results from a Force Majeure Event. If the period of delay or non-performance continues for 3 months, the party not affected may terminate the Contract by giving not less than 30 days' written notice to the affected party.

11. GENERAL

11.1 Assignment and other dealings.

- (a) MPL may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

11.2 Confidentiality.

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of 2 years after termination of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.2; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party may use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

11.3 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees

that it has no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

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

11.5 **Waiver.**

- (a) Except as set out in clause 2.4, a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy does not waive that or any other right or remedy, nor does it prevent or restrict the further exercise of that or any other right or remedy.

11.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part-provision of the Contract is deemed deleted under this clause 11.6, 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.

11.7 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be 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).
- (b) Any notice shall be deemed to have been received
 - (i) if delivered by hand, at the time the notice is left at the proper address; and
 - (ii) if sent by PREPAID, next working day delivery service, at 9:00 am on the two Business Day after posting.
- (c) 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.

11.8 **Third party rights.**

- (a) The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

11.9 **Governing law.** The Contract 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.

- 11.10 **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 Contract or its subject matter or formation.