

# Terms & Conditions



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DST&Cs(02)03-20

## Customer

Name

Customer Address

Postcode

Customer Company Number (if a Company or LLP)

Quote Reference

**The Customer has read and accepts the Proposal subject to the Terms and Conditions overleaf.**

### Signed by or on behalf of the Customer

Signed

Print name

Position

Date

### Signed by or on behalf of Midland Communications

Signed

Print name

Position

Date

## 1. DEFINITIONS

**Business Hours:** 0900 to 1730 hours Monday to Thursday  
0900 to 1700 hours Friday excluding statutory and bank holidays in the UK (all times being the time in the UK).

**Commencement Date:** The date when the Customer signs the Network Mobile Contract.

**Contract:** the agreement between Midland Communications and the Customer incorporating the Terms and Conditions and the Proposal.

**Customer:** The company/person ordering the Hardware/ services and/or the Mobile Network Services, as detailed at the head of this agreement.

**Hardware:** hardware comprising mobile handsets and similar mobile devices, that Midland Communications supplies to the Customer as set out in the Proposal.

**Midland Communications :** Midlands Communications Distribution Limited (Company Number 03413872) trading as Midland Communications .

**Mobile Network Services:** mobile telephony services provided by the Network Provider;

**Network Provider:** The relevant third-party mobile network service provider who supplies the Customer the mobile telephony services as identified in the Network Mobile Contract.

**Network Mobile Contract:** The network's standard contract and standard terms and conditions applicable to the supply of Mobile Telephony Services in a separate agreement.

**Network Termination Fees:** Charges levied by the Network Provider should the customer wish to terminate their contract earlier than before the contract end date.

**Order:** A document provided by the Customer to Midland Communications detailing their requirements or the purchase order provided by Midland Communications to the Customer (as the case may be).

**Order Incentive:** Incentives offered by Midland Communications in respect of certain Hardware and/ or network services as confirmed in writing from Midland Communications to the Customer.

**Proposal:** the proposal document issued by Midland Communications to the Customer relating to the supply of Mobile Network Services and Hardware, as identified at the head of this agreement.

**Technology Fund:** If applicable, the technology fund made available by Midland Communications (not the Network Provider) to the Customer, as described in the Proposal.

**Terms and Conditions:** Midland Communications' terms and conditions set out in this document;

## 2. BASIS OF AGREEMENT

- 2.1 Midland Communications acts as a partner for the Network Provider. Midland Communications does not provide Mobile Network Services. Midland Communications procures Mobile Network Services on the Customer's behalf by introducing a Network Provider to the Customer and brokering and negotiating commercial terms with the Network Provider on the Customer's behalf.
- 2.2 The commercial terms Midland Communications can broker and negotiate on behalf of the Customer and which are offered by the Network Provider will be referenced in the Proposal and will be incorporated into the Network Mobile Contract.

2.3 The Customer acknowledges that the Network Mobile Contract is not with Midland Communications . This is a separate contract with the Network Provider and the Customer is liable for all payments due under the Network Mobile Contract.

2.4 Midland Communications accepts no liability or responsibility in respect of the Network Mobile Contract or the Mobile Network Services.

2.5 The Order shall only be deemed as accepted when the Customer has signed the Network Mobile Contract and the Contract, which shall take effect from the Commencement Date.

2.6 The Network Provider shall bill the Customer for all monthly airtime.

## 3. PROPOSAL

- 3.1 All Proposals are based solely on the information provided by the Customer to Midland Communications .
- 3.2 All tariff or bundle values on the Proposal are exclusive of VAT.
- 3.3 Midland Communications reserves the right to withdraw or amend the Proposal at any time before it has been accepted by the Customer.

## 4. HARDWARE AVAILABILITY AND DELIVERY

- 4.1 Midland Communications shall deliver the Hardware to the location set out in the Order or such other location as the parties may agree at any time after Midland Communications advises the Customer the Hardware is available for delivery.
- 4.2 Any dates quoted for delivery of Hardware are approximate only, and the time of delivery is not of the essence. Midland Communications shall not be liable for any delay of the delivery of Hardware whether it is caused by a force majeure event or the Customer's failure to provide Midland Communications with adequate delivery instructions or any other instructions that are relevant to the delivery of the Hardware.

## 5. TITLE AND RISK

- 5.1 The risk in the Hardware shall pass to the Customer on completion of the delivery.
- 5.2 Title to the Hardware shall not pass to the Customer until the Network Mobile Contract has been fulfilled in full and all sums due to Midland Communications as per the Terms and Conditions and the Proposal have been paid in full.

## 6. CUSTOMER OBLIGATIONS

### The Customer shall:

- 6.1 Ensure that the Order and all information contained in it is complete and accurate.
- 6.2 Co-operate with Midland Communications in all matters relating to the Network Mobile Contract including (but without limitation) providing Midland Communications with any information requested by Midland Communications .
- 6.3 Only use the Hardware in conjunction with the Network Services and the Mobile Network Contract.
- 6.4 Comply with all requirements of the Mobile Network Contract including (but without limitation) terms of payment.
- 6.5 Where the Customer fails to comply with any of the conditions 6.1 to 6.4 Midland Communications will be under no obligation

to make any payment to the Customer in relation to Order Incentives, Network Termination Fees, the Technology Fund or otherwise under the Contract.

- 6.6** The Customer confirms to Midland Communications that they are acting by way of business and that they are not a consumer.

## **7. ORDER INCENTIVES AND TECHNOLOGY FUND**

- 7.1** Midland Communications offers Order Incentives with selected Hardware and Mobile Network Services. If the Proposal includes Order Incentives, then the following clauses 7.2 and 7.3 apply:

**7.2** Midland Communications shall be under no obligation to pay any Order Incentives to the Customer unless Midland Communications receives a valid hard copy invoice from the Customer

**7.3** Following receipt of an invoice by Midland Communications in accordance with clause 7.2 and subject to clause 7 Midland Communications shall pay the invoice within 90 days of receipt.

**7.4** Midland Communications may offer a Technology Fund to the Customer, as detailed in the Proposal. The Technology Fund may be applied against the cost of Hardware provided by Midland Communications or towards additional equipment (such as signal enhancement equipment) as agreed between Midland Communications and the Customer.

**7.5** If the Customer does not use the Technology Fund, Midland Communications is not obliged to pay the balance of the Technology Fund to the Customer in cash.

## **8. LIMITATION OF LIABILITY**

- 8.1** Midland Communications' liability for loss or damage of any kind whatsoever (however such liability arises and whether in contract, tort, for breach of statutory duty or otherwise) under or in connection with:

(a) the Contract and/or

(b) any matter collateral to this agreement and/or in respect of a representation or misrepresentation (other than fraudulent misrepresentation made by or on behalf of Midland Communications ;

shall in no circumstances exceed the sum paid by the Customer to Midland Communications in respect of the Hardware or services however such liability arises, nothing in this agreement shall limit or exclude Midland Communications' liability in respect of fraud, death or personal injury arising from Midland Communications' negligence.

- 8.2** Subject to clause 8.1, Midland Communications will be under no liability under this agreement for any loss or damage of any kind whatsoever whether consequential or otherwise including but not limited to the loss of profits, pure economic loss, loss of business, loss of opportunity and depletion of goodwill.

## **9. NETWORK TERMINATION FEES**

- 9.1** Midland Communications may offer to buy the Customer out of their current Network Mobile Contract before the end of the minimum period to allow the Customer to enter into a new Network Mobile Contract with a new Network Provider. The Proposal will state if Midland Communications will offer to buyout the Customer.

- 9.2** Midland Communications is under no obligation to perform a buyout even if a buyout is stated on the Customer's Order or the Proposal but if Midland Communications chooses to perform a buyout the provisions of this clause 9 shall apply.

**9.3** On the Proposal it will stipulate the amount Midland Communications will pay to the Customer following a buyout ("Termination Fee") provided that the conditions of clauses 9.4 and 9.5 are complied with.

**9.4** The Termination Fee will be payable to the Customer for the sole purpose of the Customer paying the Termination Fee to the Customer's current Network Provider. Upon receiving the Termination Fee, the Customer will pay the Termination Fee to their current Network Provider. The Customer will be required to terminate their current Network Mobile Contract.

**9.5** Midland Communications shall only be obliged to pay the Customer the Termination Fee and shall not be liable for any shortfall between Termination Fee and the amount the Network Provider requests in settlement of a Network Mobile Contract which is subject to a buyout. For the avoidance of doubt the Customer is liable for any such shortfall and will pay the shortfall to the Network Provider together with the Termination Fee

## **10. TERMINATION**

**10.1** The Customer acknowledges that Midland Communications may receive commissions from the Network Provider in respect of the Network Mobile Contract and Midland Communications may suffer claw back of those commissions in the event of early termination or suspension of the Network Mobile Contract or other fraudulent or unlawful or unauthorised commercial gain activities undertaken by the Customer ("Claw Back Event")

**10.2** The Customer agrees to indemnify Midland Communications for all demands it may suffer or incur as a result of or in connection with a Claw Back Event including paying to Midland Communications a sum equal to any commission Midland Communications is obliged to repay to the Network Provider on the occurrence of such Claw Back Event.

## **11. GENERAL**

**11.1** Assignment and other Dealings

(a) Midland Communications may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under this agreement and may subcontract or delegate in any manner any or all of its obligations under this agreement to any third party, with prior written notice

(b) The Customer shall not, without the prior written consent of Midland Communications , assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under this agreement.

**11.2** Notices

(a) Any notice or other communication given to a party under or in connection with this agreement shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first class post or other next working day delivery service, or by commercial courier or by email.

**(b)** A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 0 a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second business day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, if sent by email, one hour after the email is sent provided that the email is correctly addressed.

**(c)** The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### **11.3 Severance**

If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

### **11.4 Waiver**

A waiver of any right under this agreement or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### **11.5 No Partnership or Agency**

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

### **11.6 Third Parties**

A person who is not a party to this agreement shall not have any rights to enforce its terms.

### **11.7 Governing Law**

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

### **11.8 Jurisdiction**

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