



TERMS & CONDITIONS OF SUPPLY

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THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO CLAUSE 10.9 (CHARGES INCURRED ON CALL-OUT) AND CLAUSE 13 (LIMITATION OF LIABILITY).

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause 1 apply in these Conditions.

Ancillary Goods: those parts or materials which are to be supplied to the Customer or to any person on the Customer's behalf by Mobihose pursuant to the Services.

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 8.00am to 5.00pm on any Business Day.

Call-Out Charge: such amount specified by Mobihose as the call-out charge in the Goods Correspondence and/or Services Correspondence, or such other amount as agreed between Mobihose and the Customer in writing and confirmed by a director of Mobihose in writing, in each case plus Travelling Costs to the extent such Travelling Costs are reasonably incurred in connection with Mobihose's call-out pursuant to a Contract.

Commencement Date: the date upon which the Contract commences, which shall be the earlier of:

- i. the date Mobihose accepts the Customer's order of Goods and/or Services;
- ii. the date the Customer accepts Mobihose's Goods Correspondence and/or Services Correspondence or part of either;
- iii. the date the Customer instructs Mobihose to supply Goods and/or Services following commencement of Mobihose's supply of goods and/or services; and
- iv. the date on which the Customer incurs a Call-Out Charge.

Conditions: these terms and conditions as amended from time to time in accordance with clause 12.4 or clause 17.8.

Contract: the contract between Mobihose and the Customer for Mobihose's supply of goods and/or services to the Customer or to any person on the Customer's behalf.

Controller: as defined in the Data Protection Legislation.

Customer: the person who enters the Contract:

- i. to receive the Goods and/or Services; or
- ii. to have the Goods and/or Services received by another on its/their behalf.

Customer Default: any act or omission of the Customer or any person on the Customer's behalf to perform any obligation in accordance with the Contract.

Customer Equipment: any vehicle, equipment, system, piping, cabling or facility which belongs, or ostensibly belongs, to the Customer or any person on the Customer's behalf and which is involved, directly or indirectly, in connection with the supply of the Goods or Services.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK, including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426).

Deemed Delivery: has the meaning given to it in clause 4.4.1.

Delivery Location: the location set out in the Goods Correspondence or Services Correspondence or such other location as may be agreed between Mobihose and the Customer or any person on the Customer's behalf.

Delivery Notice: the date on which Mobihose sends a communication to the Customer or any person on the Customer's behalf which notifies such person that the Goods are ready for delivery to be taken.

Force Majeure Event: an act, event, circumstance, omission, accident or cause beyond the reasonable control of the party seeking to rely on such act, event, circumstance, omission, accident or cause, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of Mobihose or any other person), failure of a utility, goods or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law, governmental order, rule, regulation or direction, accident, breakdown of vehicles, equipment or machinery, fire, flood, snow, fog, storm or other bad weather conditions, failure of telecommunications lines or systems, shortages of fuel, shortage of necessary Goods, Ancillary Goods, goods in connection with Goods and/or Ancillary Goods, parts or supplies or default of suppliers or subcontractors.

Goods: the goods (or any part of them) to be supplied to the Customer or any person on the Customer's behalf by Mobihose, excluding Ancillary Goods.

Goods Correspondence: any description, specification, proposal or quotation in connection with the Goods, including any relevant plans or drawings, that is provided by or duly on behalf of a director of Mobihose to the Customer or to a person on behalf of the Customer in connection with Mobihose's supply of such Goods.

Hour's Labour: such amount specified by Mobihose as an hour's labour in the Goods Correspondence and/or Services Correspondence, or such other amount as agreed between Mobihose and the Customer in writing and confirmed by a director of Mobihose in writing.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Losses: any and all:

- i. liabilities;
- ii. damage;

- iii. losses (including indirect loss, consequential loss, special loss, loss of profits, loss of anticipated savings, loss of goods, loss of sales or business, loss of reputation, loss of agreements or contracts, loss of use or corruption of software, data or information, loss of opportunity and loss of or damage to goodwill and similar losses);
- iv. fines;
- v. expenses; and
- vi. costs (including all interest, penalties, legal costs and professional costs and expenses).

Mobihose: Mobile Hose and Hydraulics Ltd incorporated and registered in England and Wales with company number 13248851.

Mobihose Materials: materials, equipment, tools, parts, documents, data and other property of Mobihose used in connection with the Goods and/or Services.

Other Products: goods, services, equipment, tools, parts, materials and other property which either:

- i. were not supplied by Mobihose;
- ii. were supplied by Mobihose prior to the date of carrying out the aspect(s) of the Services requiring the use of such goods, services, equipment, tools parts, materials and/or other property; or
- iii. were ordered directly by the Customer from any person other than Mobihose.

Personal Data: as defined in the Data Protection Legislation.

Processor: as defined in the Data Protection Legislation.

Services: the services (or any part of them) to be supplied to the Customer or any person on the Customer's behalf by Mobihose, including the Ancillary Goods.

Services Correspondence: any description, specification, proposal or quotation in connection with the Services, including any plans or drawings, provided by or duty on behalf of a director of Mobihose to the Customer or to any person on behalf of the Customer in connection with Mobihose's supply of such Services.

Travelling Costs: travelling costs reasonably incurred by Mobihose or on Mobihose's behalf in connection with the Goods or Services, including travelling expenses, hotel costs, congestion charge costs, subsistence and any associated expenses.

UK GDPR: the meaning given in section 3(10), as supplemented by section 205(4), of the Data Protection Act 2018.

VAT: value added tax chargeable from time to time and any similar additional tax.

Warranties: the warranties set out in clause 5.1.

- 12 A reference to a **clause** is a reference to a clause contained in these Conditions, as varied under the Contract.
- 13 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality), including a firm, company, partnership or party.
- 14 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- 15 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.
- 16 A reference to **writing** or **written** excludes fax but not email.
- 17 Unless the context requires otherwise, words in the singular include the plural and in the plural include the singular.

2. BASIS OF CONTRACT

- 2.1 Goods Correspondence and Services Correspondence are given by Mobihose on the basis that no contract for Mobihose's supply of goods and/or services shall form between Mobihose and the Customer except in accordance with clause 2 of these Conditions.
- 2.2 Any Goods Correspondence or Services Correspondence is valid for 30 days from the date Mobihose provides it to the Customer or to any person on behalf of the Customer in connection with Mobihose's supply of such Goods and/or Services referred to in such Goods Correspondence and/or Services Correspondence, provided that Mobihose shall be entitled to withdraw any Goods Correspondence and/or Services Correspondence at any time prior to its acceptance by the Customer without liability, to the fullest extent permitted by law, to Mobihose.
- 2.3 Before instructing Mobihose to supply any Goods or Services, the Customer should read the Contract carefully and, if the Customer does not agree with the Contract, the Customer should please not use the Goods or Services. By proceeding with the Goods or Services, you confirm:
 - 2.3.1 you have had the opportunity to read the Contract carefully and agree to be bound by it; and
 - 2.3.2 you shall ensure that the terms of any Goods Correspondence, if any, and Services Correspondence, if any, are complete and accurate in all respects.
- 2.4 From the Commencement Date, the Contract is formed, together, by:
 - 2.4.1 these Conditions;
 - 2.4.2 the Services Correspondence, if any; and
 - 2.4.3 the Goods Correspondence, if any, and the Contract shall also apply to all of Mobihose's future provision of Goods and/or Services to the Customer or to any person on the Customer's behalf unless agreed otherwise between the parties to the Contract and a director of Mobihose confirms this in writing.
- 2.5 In the event of a conflict between these Conditions and the Services Correspondence, the Services Correspondence prevails. In the event of a conflict between these Conditions and the Goods Correspondence, the Goods Correspondence prevails.
- 2.6 The Contract shall prevail over any of the Customer's terms and conditions, which shall have no force or effect (including contractual effect), even if referenced in pre-contract correspondence and not objected to by Mobihose, unless such terms and conditions specifically state that they amend the Contract and a director of Mobihose confirms this in writing.
- 2.7 Any samples, drawings, descriptive matter, advertising, illustrations or descriptions of the Goods or Services contained in catalogues, brochures or manuals issued by Mobihose are issued or published for the sole purpose of giving an approximate idea of the goods and/or services described in them. They shall not form part of the Contract nor have any contractual force.

3. SUPPLY OF GOODS

- 3.1 The quantity and description of the Goods are described in the applicable Goods Correspondence. The quantity and description of the Ancillary Goods are described in the applicable Services Correspondence.
- 3.2 Mobihose reserves the right to amend the Goods Correspondence and/or the Services Correspondence in connection with the Ancillary Goods if required by any law, rule or regulation and Mobihose shall notify the Customer in such an event.

4. DELIVERY OF GOODS

- 4.1 Mobihose shall deliver the Goods to the Delivery Location and the Customer or a person on the Customer's behalf shall take delivery of such Goods within 7 days of the Delivery Notice.
- 4.2 Delivery of the Goods and Ancillary Goods is completed upon the completion of the unloading of such Goods and/or Ancillary Goods at the Delivery Location.
- 4.3 Unless otherwise specifically stated in the Goods Correspondence or Services Correspondence:
- 4.3.1 any dates or times quoted for delivery of the Goods and/or Ancillary Goods are approximate only;
- 4.3.2 the time for delivery of the Goods and/or Ancillary Goods is not of the essence; and
- 4.3.3 the time of delivery shall not be made of the essence by notice, provided that if no date or time is so specified, such delivery shall be made within a reasonable time.
- 4.4 If for any reason the Customer fails to take or accept, or fails to procure the taking or accepting of, delivery of the Goods and/or Ancillary Goods within 10 Business Days of the Delivery Notice or if for any reason Mobihose is unable to deliver the Goods or Ancillary Goods in accordance with the Contract because the Customer has not complied with its obligations under the Contract, including (without limitation) providing appropriate instructions, documents, licences or authorisations, then except where such failure, refusal or delay is caused by a Force Majeure Event or by Mobihose's material failure to comply with its obligations under the Contract in respect of such Goods or Ancillary Goods:
- 4.4.1 delivery of such Goods or Ancillary Goods shall be deemed to have been completed at 9:00am on the third Business Day following the Delivery Notice (**Deemed Delivery**);
- 4.4.2 Mobihose may store such Goods and/or Ancillary Goods until actual delivery takes place, and, to the fullest extent permitted by law, charge the Customer for all related Losses (including storage and insurance costs, liabilities and expenses) directly or indirectly incurred by Mobihose; and
- 4.4.3 risk in such Goods and/or Ancillary Goods shall pass to the Customer, including for loss or damage caused by negligence by or on behalf of Mobihose;
- 4.5 Upon Deemed Delivery, Mobihose may resell or otherwise dispose of part or all of such Goods and/or Ancillary Goods and charge the Customer for any shortfall below the price of such Goods and/or Ancillary Goods.
- 4.6 If Mobihose delivers up to and including 5% more or less than the quantity of Goods and/or Ancillary Goods ordered, the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, Mobihose shall make a pro rata adjustment to the invoice for such Goods.
- 4.7 Unless agreed otherwise in the Goods Correspondence or Services Correspondence:
- 4.7.1 Mobihose may deliver the Goods and/or Ancillary Goods by instalments, which shall be invoiced and paid for separately in accordance with the Contract;
- 4.7.2 each instalment shall constitute a separate contract; and
- 4.7.3 any delay in delivery, defect in instalment or cancellation or termination of any one instalment shall not entitle the Customer to repudiate or cancel any other instalment contract.
- 4.8 At the Delivery Location, the Customer shall, at its own expense, provide adequate and appropriate equipment and manual labour for the loading and/or unloading of the Goods and/or Ancillary Goods.

5. QUALITY OF GOODS

- 5.1 Mobihose warrants that, subject to these Conditions but always to the fullest extent permitted by law, on delivery the Goods and/or Ancillary Goods shall:
- 5.1.1 conform in all material respects with the applicable Goods Correspondence or Services Correspondence;
- 5.1.2 be free from material defects in design, material and workmanship;
- 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- 5.1.4 be fit for any purpose held out by Mobihose in connection with the Goods or Services.
- 5.2 Subject to clause 13.6, if:
- 5.2.1 during the period of 14 days from the date of delivery, the Customer gives written notice to Mobihose within a reasonable time of discovery or, if earlier, when such discovery ought to have occurred that some or all of the Goods or Ancillary Goods do not comply with the applicable Warranties;
- 5.2.2 Mobihose is given a reasonable opportunity of examining such Goods and/or Ancillary Goods; and
- 5.2.3 the Customer, if requested by Mobihose, returns such Goods and/or Ancillary Goods to Mobihose's registered office address as at the date of such request, Mobihose shall, at its option and to the extent that it agrees that such Goods and/or Ancillary Goods do not comply with the Warranties, (i) repair or replace the defective Goods and/or Ancillary Goods or, at Mobihose's option, the defective part(s) of such Goods and/or Ancillary Goods or (ii) refund the price of the defective Goods and/or Ancillary Goods at the pro rata Contract rate.
- 5.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, entirely excluded from the Contract.
- 5.4 These Conditions shall apply mutatis mutandis to any Goods and/or Ancillary Goods repaired or replaced under clause 5.

6. TITLE AND RISK

- 6.1 The risk in the Goods and Ancillary Goods shall pass to the Customer on completion of delivery pursuant to clause 4.2.
- 6.2 Title to the Goods and Ancillary Goods shall not pass to the Customer until:
- 6.2.1 Mobihose receives payment in full (in cash or cleared funds) for:
- 6.2.1.1 the Goods;
- 6.2.1.2 the Ancillary Goods;
- 6.2.1.3 the Services; and
- 6.2.1.4 any other goods and/or services that Mobihose has supplied to the Customer and/or pursuant to a Contract in respect of which payment has become due on any account, in which case title to the Goods and/or Ancillary Goods shall pass at the time of receipt of payment of all such sums.
- 6.3 Until title to the Goods and Ancillary Goods has passed to the Customer, the Customer shall at its sole cost and expense:
- 6.3.1 store the Goods and Ancillary Goods separately from all other goods held by the Customer so that they remain readily identifiable as Mobihose's property;

- 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods or Ancillary Goods;
- 6.3.3 maintain the Goods and Ancillary Goods in satisfactory condition and keep them insured against all risks for their full price on Mobihose's behalf from the date of delivery pursuant to clause 4.2;
- 6.3.4 upon request from Mobihose, promptly produce to Mobihose any policies of insurance pursuant to clause 6.3.3;
- 6.3.5 hold the Goods and Ancillary Goods on a fiduciary basis for Mobihose;
- 6.3.6 notify Mobihose in writing immediately if the Customer becomes subject to any of the events listed in clauses 14.2.2 to 14.2.4;
- 6.3.7 grant Mobihose an irrevocable licence at any time to enter the premises where such Goods or Ancillary Goods are or may be stored in order to inspect them or, where the Customer's right to possession has terminated, to recover them; and
- 6.3.8 give Mobihose such information as Mobihose may reasonably require from time to time relating to:
 - 6.3.8.1 the Goods;
 - 6.3.8.2 the Ancillary Goods; and
 - 6.3.8.3 the Customer's ongoing financial position.
- 6.4 The Customer's right to possession of the Goods and Ancillary Goods shall terminate immediately upon the occurrence of any of the events detailed in clauses 14.2.2 to 14.2.4 and Mobihose shall, in such an event, have the right to immediately seize and re-sell any of the Goods or Ancillary Goods from the Customer.
 - 6.5 On termination of the Contract, howsoever caused:
 - 6.5.1 Mobihose's rights contained in clause 6 shall remain in effect; and
 - 6.5.2 the Customer's rights contained in clause 6 shall terminate immediately.

7. SUPPLY OF SERVICES

- 7.1 Mobihose shall supply the Services to the Customer in accordance with the Services Correspondence in all material respects and based on the information given to Mobihose in connection with the Goods Correspondence and/or Services Correspondence, provided that the Customer acknowledges that, due to the nature of Mobihose's Services, the supply of Services may take effect at a place other than that which is described in the Services Correspondence.
- 7.2 Unless otherwise expressly stated in the Services Correspondence, but in every event always subject to clause 7.3, Mobihose shall use reasonable endeavours to meet any performance dates and/or times for the Services specified in the Services Correspondence, but to the fullest extent permitted by law:
 - 7.2.1 any such dates and/or times shall be estimates only; and
 - 7.2.2 time shall not be of the essence for the performance of the Services, provided that if no dates or times for performance of the Services are specified in the Services Correspondence then Mobihose shall still be responsible for delivering the Services within a reasonable time.
- 7.3 Mobihose reserves the right to amend the Services Correspondence:
 - 7.3.1 with the consent of the Customer;
 - 7.3.2 if necessary to comply with any law or regulatory requirement;
 - 7.3.3 if the amendment(s) will not materially affect the nature or quality of the Services; and
 - 7.3.4 in any case where, following the time of Mobihose's communication of the Services Correspondence, Mobihose becomes aware that equipment, parts and/or materials need to be ordered for Mobihose to properly perform the Services, and Mobihose shall notify the Customer in any such event described in clause 7.3.2, clause 7.3.3 or clause 7.3.4.
- 7.4 The Customer acknowledges that information (including, without limitation, prices, dates and/or times) detailed in the Services Correspondence were based on information to Mobihose's knowledge at the time the Services Correspondence was formulated and, therefore, that if the Services Correspondence is amended in accordance with clause 7.3, prices, dates and/or times for the Services are subject to change.
- 7.5 Mobihose warrants to the Customer that the Services will be provided using reasonable care and skill. To the fullest extent permitted by law, except as specified in this clause 7.5 and subject to clause 5.1, all warranties, conditions and other terms implied by statute, common law, course of conduct, trade custom, practice, course of dealing or otherwise are wholly excluded.
- 7.6 Mobihose shall reasonably endeavour to have a reasonable stock of equipment, spare parts and materials, but, to the fullest extent permitted by law, Mobihose does not guarantee that all equipment, parts and/or materials will be available at the time of performance of the Services.
- 7.7 In the event all equipment, parts and materials required for Mobihose to perform the Services are not available for Mobihose to perform the Services, Mobihose may elect to:
 - 7.7.1 instal the parts which are available to Mobihose at the time of such election; or
 - 7.7.2 wait until all such equipment, parts and materials are available before beginning or continuing the provision of any Services, and, in respect of the aspects of the Services affected by such unavailability, Mobihose shall still be responsible for performing such aspects within a reasonable time but at a reasonably later time in light of clause 7.7.
- 7.8 Mobihose shall not at any time be responsible in any circumstances in connection with:
 - 7.8.1 the towing of any Customer Equipment; or
 - 7.8.2 the safety and/or roadworthiness of any Customer Equipment.

8. CUSTOMER'S OBLIGATIONS

- 8.1 The Customer shall:
 - 8.1.1 provide Mobihose with such information and materials as may be reasonably required in order to supply the Goods and Services, and ensure that such information is complete and accurate in all respects;
 - 8.1.2 co-operate with Mobihose in all matters relating to the Goods and Services;
 - 8.1.3 provide Mobihose and its employees, agents, consultants and subcontractors with access to the Customer's premises, office accommodation and other facilities as reasonably required for Mobihose to supply the Goods and Services;
 - 8.1.4 prepare the Customer's premises and Delivery Location for the supply of the Goods and Services;
 - 8.1.5 obtain and at all times maintain all necessary licences, permissions, authorisations and consents that may be required for the supply of the Goods and/or Services before the date on which the Goods and/or Services are to be supplied;
 - 8.1.6 comply with all applicable laws, including health and safety laws, and assist Mobihose in complying with all applicable laws in connection with the Goods and Services;
 - 8.1.7 strictly follow the instructions, recommendations, warnings and advice provided by Mobihose in connection with the Goods and Services, including such instructions, recommendations, warnings and advice detailed in documentation (including, without

- limitation, instruction manuals) supplied with such Goods and/or Services, and the Customer shall advise their employees, officers, directors, subcontractors, agents and representatives of any such instructions, recommendations, warnings and advice;
- 8.18 keep all Mobihose Materials at the Customer's premises in safe custody at the Customer's own risk, maintain the Mobihose Materials in good condition until returned to Mobihose, and not dispose of or use the Mobihose Materials other than in accordance with Mobihose's written instructions or authorisation;
- 8.19 arrange parking for Mobihose within a reasonable distance in connection with the Goods or Services and be responsible at all times for any parking and/or penalty charges incurred by Mobihose in connection with the Goods or Services;
- 8.110 be responsible at all times for the Customer Equipment, including (without limitation) in connection with towing, safety, roadworthiness and the assessment, provision and costs of all health and safety equipment required to use the Customer Equipment;
- 8.111 be responsible at all times for its employees, workers, contractors and subcontractors;
- 8.112 be responsible for clearing all debris, leakages, spillages or other vehicle fluids in connection with the Goods and Services unless the Customer authorises Mobihose to do so at the Customer's sole cost and expense and Mobihose agrees to do so; and
- 8.113 if, in connection with the Goods or Services, the Customer requires any Other Products, then except to the extent damage to such Other Products is directly caused by Mobihose, the Customer shall be responsible for ensuring that such Other Products:
- 8.113.1 conform in all respects with the Customer's applicable agreement(s) with the applicable other goods and services provider(s);
- 8.113.2 are of satisfactory quality (within the meaning of the Sale of Goods Act 1979);
- 8.113.3 are free from material defects in design, material and workmanship;
- 8.113.4 are fit for purpose;
- 8.113.5 are of the standard required by the Customer;
- 8.113.6 are installed correctly in accordance with all applicable laws, including health and safety legislation and good industry practice, by properly qualified engineers; and
- 8.113.7 are installed without damage to such Other Products or other property.
- 8.2 If Mobihose's performance of any of its obligations under the Contract is prevented or delayed by any Customer Default, without limiting or affecting any other right or remedy available to Mobihose and to the extent the Customer Default prevents or delays such performance:
- 8.2.1 Mobihose may suspend the supply of the Goods and Services until the Customer remedies the Customer Default;
- 8.2.2 Mobihose may rely on the Customer Default to relieve it from the performance of any of its obligations under the Contract;
- 8.2.3 to the fullest extent permitted by law, Mobihose shall not be liable for any Losses sustained or incurred by the Customer arising directly or indirectly from any such failure or delay; and
- 8.2.4 upon Mobihose's written demand, the Customer shall, to the fullest extent permitted by law, reimburse Mobihose for any Losses sustained or incurred by Mobihose arising directly or indirectly from the Customer Default.

9. SUPPLY OF GOODS AND/OR SERVICES LIMITATIONS

- 9.1 Mobihose reserves the right to refuse to provide any Goods or Services to the Customer where in Mobihose's reasonable opinion:
- 9.1.1 the Customer Equipment was, immediately before its breakdown or the need for repairs arose, dangerous, unroadworthy or could not otherwise have been lawfully used for its purpose;
- 9.1.2 Mobihose would be required to supply the Goods or Services at a height of over 10 feet, in a tunnel or on a railway line;
- 9.1.3 the Customer is providing non-standard parts or materials for the Services;
- 9.1.4 providing the Services would facilitate or be a breach of law or regulation; or
- 9.1.5 the Customer does not sign, or does not authorise the signing of, authorisation(s) necessary for the supply of the Goods or Services.
- 9.2 Where any refusal is made in accordance with clause 9.1 after Mobihose has, prior to any circumstances in clause 9.1 becoming clear to Mobihose, incurred any expenses or costs in connection with supplying the Goods or Services, Mobihose reserves the right to charge the Customer the Call-Out Charge and a minimum of an Hour's Labour.
- 9.3 Mobihose reserves the right, at its sole discretion, to refuse to provide any goods or services, or any further Goods or Services, to the Customer or any person on the customer's behalf at any time and for any reason. Such refusal may be based on (without limitation) Mobihose's assessment of the Customer's creditworthiness, compliance with the terms of these Conditions or any other reasonable grounds as determined by Mobihose.

10. CHARGES AND PAYMENT

- 10.1 The price for the Goods and/or Ancillary Goods which the Customer shall pay to Mobihose:
- 10.1.1 is the price set out in the Goods Correspondence and/or Services Correspondence or, if no such price is quoted therein, the price set out in Mobihose's published price list in force at the date of completion of the delivery of the Goods pursuant to clause 4.2 or completion of the Services (as applicable); and
- 10.1.2 excludes the costs of packaging, insurance and transport of the Goods and Ancillary Goods, which shall be incurred at the Customer's expense and invoiced to the Customer.
- 10.2 The charges for the Services which the Customer shall pay to Mobihose shall be calculated on a time and materials basis:
- 10.2.1 the charges shall be calculated in accordance with Mobihose's daily fee rates as set out the Services Correspondence or, if no such rates are quoted therein, then such rates as set out in Mobihose's published rates information in force at the Commencement Date;
- 10.2.2 Mobihose's daily fee rates for each individual person are calculated on an 8am to 5pm basis worked on Business Days;
- 10.2.3 Mobihose shall be entitled to charge the Customer for any costs or expenses reasonably incurred by Mobihose or the persons Mobihose engages or otherwise provides to work in connection with the Services, including (without limitation) Travelling Costs, costs of services provided by third parties which are required by Mobihose for the performance of the Services (including, without limitation, for the cost of any deliveries or materials in connection with such services provided by third parties) and costs incurred, directly or indirectly, by Mobihose in hiring equipment in connection with the Services.

- 10.3 Mobihose reserves the right to:
- 10.3.1 increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Consumer Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Consumer Prices Index;
 - 10.3.2 increase the price of the Goods or Ancillary Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods or Ancillary Goods to Mobihose that is due to:
 - 10.3.2.1 any factor beyond Mobihose's control, including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials or other manufacturing costs;
 - 10.3.2.2 any request by the Customer to change the delivery date(s), time(s), quantities or types of Goods or Ancillary Goods ordered, or the Goods Correspondence or Services Correspondence; or
 - 10.3.2.3 any delay caused by any instructions of the Customer in respect of the Goods or Ancillary Goods or failure of the Customer to give Mobihose adequate or accurate information or instructions in respect of the Goods or Ancillary Goods.
- 10.4 In respect of the Goods, Mobihose shall invoice the Customer on or at any time after completion of delivery pursuant to the Contract. In respect of Services, Mobihose shall invoice the Customer on completion of the Services as reasonably determined by Mobihose.
- 10.5 The Customer shall pay to Mobihose the sums shown in each invoice submitted to the Customer by Mobihose in accordance with the Goods Correspondence and Services Correspondence or, if not dealt with therein:
- 10.5.1 within 30 days of the date of the invoice; and
 - 10.5.2 in full and in cleared funds to a bank account nominated in writing by Mobihose, and time for such payments shall be of the essence of the Contract.
- 10.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of VAT. Where any taxable supply for VAT purposes is made under the Contract, the Customer shall, on receipt of a valid VAT invoice from Mobihose, pay to Mobihose such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of such Goods and/or Services.
- 10.7 If the Customer fails to make a payment due to Mobihose under the Contract by the due date, then, without prejudice to any other right or remedy Mobihose may have, 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 10.7 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%.
- 10.8 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).
- 10.9 Mobihose's labour is generally charged per hour at an hourly rate of an Hour's Labour, subject (without limitation) to clause 10.10. Therefore, a minimum sum of an Hour's Labour is incurred by the Customer on call-out pursuant to a Contract, in addition to the Call-Out Charge which is also incurred by the Customer on call-out pursuant to a Contract, regardless of whether any repair or service can be supplied.
- 10.10 For Services supplied outside of Business Hours, Mobihose's labour is charged per hour at an hourly rate or three times an Hour's Labour.
- 10.11 The Customer is required to reimburse Mobihose for any costs arising from the draining, clean-up or removing of fuel, lubricants or other fluids as required by the Customer or required by Mobihose in the supply of the Goods or Services.
- 10.12 Mobihose shall not be obliged to accept any parts or materials which the Customer seeks to return to Mobihose as surplus, but where it in its sole discretion Mobihose agrees to do so, Mobihose may charge the Customer a handling fee of up to 30% of the invoiced value of such parts or materials.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in the Customer Equipment and any materials otherwise provided by or on behalf of the Customer) shall be owned by Mobihose.
- 11.2 Mobihose grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy and modify the Goods or Ancillary Goods (excluding the Customer Equipment and any materials otherwise provided by or on behalf of the Customer) for the sole purposes of receiving the supply of and using the Goods and Services.
- 11.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 11.2.
- 11.4 The Customer grants Mobihose a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify the Customer Equipment or any materials otherwise provided by or on behalf of the Customer to Mobihose for the term of the Contract for the purpose of supplying the Goods and/or Services.

12. DATA PROTECTION

- 12.1 Both parties to the Contract will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, any obligations or rights under the Data Protection Legislation.
- 12.2 The parties to the Contract acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and Mobihose is the Processor.
- 12.3 Without prejudice to the generality of clause 12.1, the Customer will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of the Personal Data to Mobihose and/or lawful collection of the Personal Data by Mobihose on behalf of the Customer for the duration and purposes of the Contract.
- 12.4 Mobihose may, at any time on not less than 30 days' notice, revise this clause 12 by replacing it with any applicable controller to processor standard clauses or similar terms adopted under the Data Protection Legislation or forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).
- 12.5 The Customer acknowledges and agrees that details of the Customer's name, address, payment records and details of its employees, drivers, workers, contractors and subcontractors may be submitted to a credit reference agency and personal data will be processed (in accordance with the Data Protection Legislation) by and on behalf of Mobihose in connection with the Contract.
- 12.6 The Customer agrees to inform its employees, drivers, contractors and subcontractors that Mobihose may process or have processed on its behalf (in each case in accordance with the Data Protection Legislation) the details in clause 12.5 in accordance with clause 12.5.

13. LIMITATION OF LIABILITY

- 13.1 References to liability in this clause 13 include every kind of liability arising under or in connection with the Contract to the Customer or any third party including liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise.
- 13.2 Nothing in the Contract limits any liability for:
- 13.2.1 death or personal injury caused by negligence;
 - 13.2.2 damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation; or
 - 13.2.3 any other liability that legally cannot be limited.
- 13.3 Subject to clause 13.2, Mobihose's total liability to the Customer shall not exceed the price paid by the Customer and received by Mobihose for the Goods or Services.
- 13.4 Subject to clause 13.2, the following types of loss are wholly excluded from Mobihose's liability to the Customer:
- 13.4.1 loss of profits;
 - 13.4.2 loss of anticipated savings;
 - 13.4.3 loss of goods;
 - 13.4.4 loss of sales or business;
 - 13.4.5 loss of agreements or contracts;
 - 13.4.6 loss of use or corruption of software, data or information;
 - 13.4.7 loss of or damage to goodwill and similar losses;
 - 13.4.8 special loss; and
 - 13.4.9 indirect or consequential loss.
- 13.5 Mobihose has given commitments as to compliance of the Goods, Ancillary Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 13.6 To the fullest extent permitted by law, Mobihose shall not be liable for any Losses caused by:
- 13.6.1 any person other than Mobihose, after the Customer gives a notice in accordance with clause 5.2, making further use of such Goods or Ancillary Goods which are subject to such notice;
 - 13.6.2 the Customer, any person on the Customer's behalf or any third party failing to follow health and safety procedures, good health and safety practice, proper installation procedures, any instruction manual or the advice or recommendation provided by Mobihose;
 - 13.6.3 the Customer, any person on the Customer's behalf or any third party using the Goods, Ancillary Goods and/or Services for any purpose which differs from Mobihose's or a manufacturer's advice in connection with such Goods, Ancillary Goods or Services at the date of such use;
 - 13.6.4 the Customer, any person on the Customer's behalf or any third party failing to maintain the Goods, Ancillary Goods, parts, materials, safety equipment, Customer Equipment or Mobihose Materials;
 - 13.6.5 reasonable wear and tear;
 - 13.6.6 wilful damage caused by any person other than Mobihose;
 - 13.6.7 unreasonable working conditions;
 - 13.6.8 abnormal storage;
 - 13.6.9 alterations to the Goods, Ancillary Goods or Services by any person other than Mobihose;
 - 13.6.10 Customer Default;
 - 13.6.11 anything the Customer is described as being responsible for by clause 8.1.13;
 - 13.6.12 Mobihose's exercise of its right under clause 9.3; or
 - 13.6.13 the Goods or Services differing from the Goods Correspondence or Services Correspondence as a result of changes to ensure such Goods or Services comply with legal or regulatory requirements.
- 13.7 Mobihose shall not be liable for any delay in the supply of Goods or Services that is caused by a Force Majeure Event or the Customer's failure to provide Mobihose with adequate instructions relevant to the supply of such Goods or Services.
- 13.8 Any liability of Mobihose for failure to deliver Goods or Ancillary Goods in accordance with the Contract shall be limited to the direct costs and expenses incurred by the Customer in replacing such Goods or Ancillary Goods with goods of a similar description and quality in the cheapest market available less the price of the Goods or Ancillary Goods paid to Mobihose within a reasonable time, and no such liability shall arise unless the Customer gives Mobihose written notice of such failure within 14 days of the date when such Goods and Ancillary Goods would have been properly delivered under the Contract.
- 13.9 To the fullest extent permitted by law, Mobihose shall not be liable for any Losses in connection with any changes made to the Services pursuant to clause 7.4.
- 13.10 This clause 13 shall survive termination of the Contract.

14. TERMINATION AND SUSPENSION

- 14.1 Without affecting any other right or remedy available to it, either party to the Contract may terminate the Contract for convenience by giving the other party to the Contract not less than 7 days' written notice.
- 14.2 Without affecting any other right or remedy available to it, either party to the Contract may terminate the Contract with immediate effect by giving written notice to the other party to the Contract if:
- 14.2.1 the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - 14.2.2 the other party takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a receiver appointed to any of its assets or its entering a procedure in any jurisdiction with a similar effect to a procedure listed in this clause 14.2.2;
 - 14.2.3 the other party suspends or ceases, or threatens to suspend or cease carrying on business; or
 - 14.2.4 the other party'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.

- 14.3 Without affecting any other right or remedy available to it, Mobihose may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 14.3.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or
 - 14.3.2 there is a change of control of the Customer within the meaning of "control" given in section 1124 of the Corporation Tax Act 2010.
- 14.4 Without affecting any other right or remedy available to it, Mobihose may suspend the supply of Services and all further deliveries of Goods and Ancillary Goods under the Contract or any other contract between the Customer and Mobihose if:
- 14.4.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or
 - 14.4.2 the Customer becomes subject to any of the events listed in clauses 14.2.2 to 14.2.4; or
 - 14.4.3 Mobihose reasonably believes that the Customer is about to become subject to any of the events listed in clauses 14.2.2 to 14.2.4.

15. CONSEQUENCES OF TERMINATION

- 15.1 On termination or expiry of the Contract for any reason, the Customer shall:
- 15.1.1 immediately pay to Mobihose all sums payable to Mobihose under the Contract, including Mobihose's outstanding unpaid invoices and interest, and, in respect of Goods and Services supplied but for which no invoice has been submitted, Mobihose shall submit an invoice, which shall be payable by the Customer immediately on receipt; and
 - 15.1.2 return all of the Mobihose Materials, Goods and Ancillary Goods which have not been fully paid for and, if the Customer fails to do so, then Mobihose may enter the Customer's premises and take possession of such Mobihose Materials, Goods and Ancillary Goods, provided that until they have been returned, the Customer shall be solely responsible for their safe keeping and shall not use them for any purpose which is not connected with the Contract.
- 15.2 Termination or expiry of the Contract shall not affect the rights and remedies of the parties to the Contract, that have accrued as at termination or expiry, including the rights to claim interest and damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 15.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

16. FORCE MAJEURE

Neither party to the Contract shall be liable under the Contract 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 30 Business Days, the party not affected may terminate the Contract by giving not less than 7 days' written notice to the affected party.

17. GENERAL

17.1 Assignment and other dealings

- 17.1.1 Mobihose 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.
- 17.1.2 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.

17.2 Notices.

- 17.2.1 Any notice given to a party to the Contract under or in connection with the Contract shall be in writing and shall be:
 - 17.2.1.1 delivered by hand at its registered office (if a company) or its principal place of business (in any other case);
 - 17.2.1.2 delivered 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); or
 - 17.2.1.3 as otherwise specified in writing by the receiving party to the notifying party.
- 17.2.2 Any notice shall be deemed to have been received:
 - 17.2.2.1 if delivered by hand, at the time the notice is left at the proper address;
 - 17.2.2.2 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; or
 - 17.2.2.3 if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

- 17.2.3 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.

17.3 Severance.

- 17.3.1 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.
- 17.3.2 If any provision or part provision of the Contract is deemed deleted under clause 17.3.1, the parties to the Contract shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision and, failing such negotiation, such provision or part provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

17.4 Waiver.

- 17.4.1 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.
- 17.4.2 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.

- 17.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture of any kind between the parties to the Contract, nor constitute either party to the Contract the agent of the other for any purpose, nor authorise either party to the Contract to make or enter into any commitments for or on behalf of the other party.

17.6 Entire agreement.

- 17.6.1 The Contract constitutes the entire agreement between the parties to the Contract and supersedes all previous agreements between the parties to the Contract relating to its subject-matter.

- 17.6.2 Each party to the Contract acknowledges that in entering into the Contract it has not and does not rely on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party to the Contract agrees that it has no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 17.7 **Third party rights.**
- 17.7.1 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.
- 17.7.2 The rights of the parties to the Contract to rescind or vary the Contract are not subject to the consent of any other person.
- 17.8 **Variation.**
- 17.8.1 Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties to the Contract (or their authorised representatives).
- 17.8.2 The Customer agrees that only a director of Mobihose has the authority to vary the terms of the Contract on behalf of Mobihose.
- 17.8.3 From time to time and without notice, Mobihose may vary the Contract, including changing any Mobihose Materials, equipment, parts and/or materials supplied as part of the Goods or Services, in order to comply with law, rules or regulations, including health and safety requirements, provided that such changes do not materially affect the nature, scope or price of the Goods or Services.
- 17.9 **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.
- 17.10 **Jurisdiction.** Each party to the Contract 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.