

# STANDARD TERMS AND CONDITIONS OF SALE GOODS AND SERVICES

## 1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions the following words and expressions have the following meanings:

**Business Day** any day which is not a Saturday, a Sunday or a bank or public holiday in England;

**Conditions** these terms and conditions;

**Confidential Information** the provisions of the Contract and all information which is secret or otherwise not publicly available including commercial, financial, marketing or technical information, know-how, trade secrets or business methods, in all cases whether disclosed orally or in writing before or after the date of the Contract;

**Contract** any contract between MDiG and the Customer for the sale of Goods and/or Services, incorporating these Conditions;

**Customer** the person(s), firm or company who purchases the Goods and/or Services/from MDiG;

**Data Protection Legislation** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

**Force Majeure Event** any event outside the reasonable control of MDiG including act of God, fire, flood, lightning, compliance with any law or governmental order, rule, regulation or direction, war, revolution, act of terrorism, riot or civil commotion, strikes, locks outs and industrial action, pandemic, failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services;

**Goods** any goods supplied to the Customer by MDiG (including any part or parts of them);

**Intellectual Property Rights** any patent, copyright, trade mark, service mark or trade name, right in software, right in design, right in databases, image right, moral right, right in an invention, right relating to passing off, domain name, right in confidential information (including trade secrets) or right of privacy, and all similar rights in each case whether registered or not and including all applications for, or renewal or extension of, such rights which exist now or which will exist in the future in the United Kingdom and all other countries in the world;

**Live Dig Radar** means an excavator's digging bucket with ground penetrating radar, supplied by MKL to the Customer.

**MDiG** Marubeni – Komatsu Limited (Registered No: 01040079) trading as ‘**MDiG**’ and includes its successors or assigns. (Registered office is at Padgets Lane, Redditch., Worcs, B98 0RT)

**Order** any order from the Customer to MDiG for the supply of Goods and/ or Services on the MDiG order form or if not on an MDiG order form as confirmed by MDiG’s acknowledgment of order;

**Parts** any spare part supplied by MDiG under the Contract;

**Price** is defined in clause 8.1;

**Services** any Services agreed in the Contract to be provided to the Customer by the Supplier; and

**Specification** the Customer’s specifications for the Goods and/or Services expressly referred to in the Contract.

## 1.2 Drafting Conventions

(a) The headings to the Conditions are inserted for convenience only and shall not affect the interpretation.

(b) Words expressed in the singular shall include the plural and vice versa. References to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity.

(c) The words “other”, “including” and “in particular” shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.

(d) References to any statute or statutory provision shall include any subordinate legislation, any provision which subsequently supersedes it or re-enacts it (whether with or without modification) which are in force prior to the date of the Contract.

## 2 BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services subject to and incorporating these Conditions.

2.2 No Order placed by the Customer shall be deemed to be accepted by MDiG until the Order has been signed by MDiG or (if earlier) MDiG commences manufacture or despatch of the Goods or provision of the Services to the Customer. Any Order shall be accepted entirely at the discretion of MDiG, at which point and on which date the Contract shall come into existence.

2.3 The Contract shall be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document whatsoever and whenever).

2.4 Any quotation or estimate provided by MDiG is subject to and incorporates these Conditions. Without prejudice to MDiG’s right not to accept an Order, quotations will be valid for 14 days from date of issue unless otherwise agreed by MDiG in writing.

### 3 DESCRIPTION OF THE GOODS AND SERVICES

3.1 The description of the Goods and/or Services shall be set out in the Order or, in its absence, MDiG's quotation.

3.2 All drawings, descriptive matter, specifications and advertising issued by MDiG and any descriptions, details or illustrations contained in MDiG's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods or Services described in them and they will not form part of the Contract unless otherwise agreed in writing with MDiG.

3.3 The Customer confirms that it has satisfied itself as to the suitability of the Goods and/or Services for the Customers' requirements and has not relied upon MDiG's skill or knowledge regarding the Goods or Services fitness for any particular purpose or use.

3.4 MDiG reserves the right to amend the Specification of the Goods and/or Services if required by any applicable law.

### 4 DELIVERY AND ACCEPTANCE OF GOODS

4.1 Any times and dates specified by MDiG for delivery of the Goods are intended to be an estimate only and time for delivery shall not be of the essence.

4.2 MDiG shall deliver the Goods to the location in the UK as set out in the Order or such other location as MDiG may agree in writing ("**Delivery Location**") at any time after MDiG has notified the Customer that the Goods are ready. Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

4.3 If no estimated delivery date is given MDiG will deliver the Goods within one calendar month of the Goods being made ready for delivery.

4.4 If the Goods are not delivered within three calendar months of the estimated delivery date (if any) the Customer or MDiG may terminate the Contract on written notice to the other. In such circumstances MDiG shall return any deposit paid by the Customer and MDiG's liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the goods.

4.5 Where the Customer collects the Goods from MDiG's premises, the Customer shall provide labour and suitable equipment to load the Goods on to the Customers transport. Delivery will be deemed to have taken place once the loading of the Goods onto the Customer's transport has commenced. Inspection of the Goods must occur before their loading.

4.6 Where the Goods are delivered by MDiG then the Customer should where apparent upon delivery not accept delivery of any Goods which are damaged and any damage incurred during transit must be reported to the carrier and MDiG within 24 hours of delivery. MDiG's liability for damage in transit shall be limited to repair (or at MDiG's discretion replacement) of the Goods.

4.7 MDiG shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the failure of the Customer to provide MDiG with adequate delivery instructions or other instructions relevant to the Goods.

4.8 If for any reason the Customer does not accept delivery of any of the Goods when they are ready for delivery, or MDiG is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations then:

- (a) the Goods will be deemed to have been delivered, risk passing to the Customer (including for loss or damage caused by MDiG's negligence);
- (b) MDiG may store the Goods until actual delivery whereupon the Customer shall be liable for all related costs and expenses (including without limitation storage and insurance); and
- (c) MDiG may, upon giving the Customer 14 days' notice of its intention to do so, elect to treat the Contract as repudiated by the Customer, in which case the Customer:

- (i) forfeits any deposit in respect of the Goods;
- (ii) will pay a cancellation fee equivalent to 10% of the Price; and
- (iii) shall indemnify MDiG in full for any losses, costs, damages, charges and expenses incurred by MDiG as a result of its failure to accept delivery of the Goods (including as a result of having to sell the Goods for a lower value).

4.9 The Customer will be deemed to have accepted the Goods as being in accordance with the Contract unless:

- (a) upon delivery of the Goods, the Customer notifies MDiG in writing of any defect or other failure of the Goods to conform with the Contract (which would be apparent upon reasonable inspection and testing of the Goods); or
- (b) the Customer notifies MDiG in writing of any defect or other failure of the Goods to conform with the Contract within a reasonable time where the defect or failure would not be so apparent upon delivery,

failing which the Customer shall not be entitled to reject the Goods and MDiG shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

4.10 MDiG may at its discretion accept the return of Parts subject to a 15% handling charge. Electrical and perishable Parts are not returnable unless defective in accordance with these Conditions.

## **5 PASSING OF RISK AND LEGAL TITLE**

5.1 The Goods shall be at the risk of the Customer from the time of delivery.

5.2 Full legal, beneficial and equitable title to and property in the Goods shall remain vested in MDiG (even though they have been delivered and risk has passed to the Customer) until:

- (a) payment in full of the Price, in cash or cleared funds, for all the Goods has been received by MDiG; and
- (b) all other money payable by the Customer to MDiG on any other account or under the Contract or any other contract has been received by MDiG.

5.3 Until full legal, beneficial and equitable title to and property in the Goods passes to the Customer:

(a) the Customer shall hold the Goods on a fiduciary basis as MDiG's bailee;

(b) the Customer shall store the Goods at its premises in a proper manner in conditions which adequately protect and preserve the Goods and shall insure them, without any charge to MDiG, and not tamper with any identification upon the Goods or their packaging and shall ensure that they are stored separately from any other goods and are clearly identifiable as belonging to MDiG. MDiG shall be entitled to examine any such Goods in storage at any time during normal business hours upon giving the Customer reasonable notice of its intention to do so;

(c) MDiG may at any time, on demand and without prior notice, require the Customer to deliver the Goods up to MDiG and MDiG may repossess and resell the Goods if any of the events specified in Condition 14 occurs or if any sum due to MDiG from the Customer under the Contract or on any other account or under any other contract is not paid when due;

(d) for the purposes of this Condition 5 the Customer shall ensure MDiG, its employees, agents and sub-contractors shall be entitled to free and unrestricted access to any premises owned, occupied or controlled by the Customer and/or any other location where any of the Goods are situated at any time without prior notice; and

(e) MDiG shall be entitled to maintain an action against the Customer for the price of the Goods notwithstanding that legal, equitable and beneficial title to and property in the Goods has not passed to the Customer,

but the Customer may use (but not sell) the Goods in the ordinary course of its business unless an event set out in Condition 14.1(c) occurs or MDiG terminates the Contract or if any sum owed to MDiG by the Customer is not paid when due.

5.4 MDiG's rights and remedies set out in this Condition 5 are in addition to and shall not in any way prejudice, limit or restrict any of MDiG's other rights or remedies under the Contract or in law or equity.

## **6 PROVISION OF SERVICES**

6.1 Where MDiG is to perform the Services at the Customer's premises the Customer shall: procure safe and unhindered access to the premises for MDiG's personnel to carry out the Services at all relevant times; ensure that all consents, permissions, or licences required to allow the Services to be provided are in place; ensure the provision of adequate power, lighting, heating and other such facilities or supplies required for the provision of the Services.

6.2 MDiG shall use all reasonable endeavours to meet any performance dates for the Services specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

6.3 The Services will be deemed to be completed and the relevant element of the Price to be due and payable in accordance with the Contract when MDiG issues a written notice to the Customer: (a) confirming such completion; or (b) confirming that MDiG is available to perform the Services but is prevented from doing so by reason of: (i) the lack of relevant assistance from

the Customer; and/or (ii) the breach of the Contract by the Customer; (iii) the condition of the Customer premises on the site at which the Services are to be provided and/or the facilities at or the services available therein at the time agreed for the provision of the Services.

6.4 Where MDiG is providing data related services or advisory services the Customer shall ensure that all information provided to MDiG is accurate and provided in a timely manner.

## 7 INTELLECTUAL PROPERTY RIGHTS

7.1 As between MDiG and the Customer all Intellectual Property Rights in the Goods and Services and any Intellectual Property Rights created by MDiG in the course of the performance of the Contract or otherwise in the manufacture of the Goods or the provision of the Services belong to MDiG unless otherwise agreed in writing by MDiG.

7.2 Nothing in the Contract shall be deemed to have given the Customer a licence or any other right to use any of the Intellectual Property Rights of MDiG.

## 8 CONTRACT PRICE

8.1 The price for Goods and/or the Services shall be the price set out in MDiG's acknowledgement of the Order or, if no price is quoted, the price set out in the MDiG's price list, published on the date of delivery or deemed date of delivery of the Goods, or completion or deemed completion of the performance of the Services ("**Price**").

8.2 The Goods will be supplied Ex Works (Incoterms 2020) unless otherwise agreed in writing by MDiG.

8.3 Delivery of the Goods shall not be made until the Customer has paid the Price in full and in cleared funds, unless otherwise agreed in writing with MDiG

8.4 The price for the Goods and Services shall be exclusive of any value added tax or other similar taxes or levies and all costs or charges in relation to export or import duties licences, or requirements; packaging; labelling; loading; unloading; carriage; freight and insurance all of which amounts the Customer will pay, where appropriate, in addition when it is due to pay for the Goods and/or Services.

8.5 Where MDiG has agreed to accept equipment from the Customer as a part exchange ("**Part Exchange Machine**") then if in the opinion of MDiG the condition or description of the Part Exchange Machine is different to the condition report provided by the Customer then:

(a) MDiG may at its discretion reject the Part Exchange Machine and the full price of the Goods will be payable by the Customer; and

(b) the Customer shall pay MDiG all costs and loss incurred by MDiG due to the poor condition of the Part Exchange Machine including, without limitation, rectification work.

8.6 MDiG may at any time before delivery increase the Price to reflect any increase in the cost of the Goods and Services that is due to any factor beyond MDiG's control including without limitation: increased prices or costs from the original manufacturer of the Goods, increased costs of distribution or delivery, increases in taxes or duties, currency exchange fluctuations,

increased energy costs, increases in labour or materials, any change to the delivery date or any failure by the Customer to provide all necessary information.

## 9 PAYMENT TERMS

9.1 MDiG shall invoice the Customer prior to delivery for the Goods. In respect of Services, the Supplier shall invoice the Customer on or at any time after the performance of the Services.

9.2

a) Unless otherwise stated in MDiG's Order or order acknowledgment payment shall be made by the Customer prior to delivery in the case of all Goods (other than Parts and Services supplied to Customers who have a trade credit account) and

b) 30 days from the date of invoice, in the case of Parts and Services supplied to customers who have a trade credit account, Time for payment shall be of the essence.

9.3 All payments shall be in Pounds Sterling by electronic transfer to MDiG's bank account as advised to the Customer unless otherwise agreed in writing by MDiG.

9.4 The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, withholding, counterclaim, discount, abatement or otherwise.

9.5 If any sum due from the Customer to MDiG under the Contract or any other contract is not paid on or before the due date for payment then all sums then owing by the Customer to MDiG shall become due and payable immediately and, without prejudice to any other right or remedy available to MDiG, MDiG shall be entitled to:

(a) cancel or suspend the Order and the provision or performance of any Goods or Services; and

(b) charge the Customer interest on the overdue amount from the due date until payment is made in full both before and after any judgment, at four percent (4%) per annum over the Bank of England base lending rate from time to time (accruing on a daily basis and compounded quarterly).

## 10 WARRANTY

10.1 MDiG warrants that:

(a) on delivery and for 12 months thereafter, unless otherwise agreed in writing by MDiG, the Goods (except Parts) shall conform with the Specification;

(b) Parts shall conform with the Specification for 6 months following the date of invoice unless fitted by a MDiG engineer where such Parts shall conform with the Specification for 12 months following the date of invoice.

10.2 If the Customer demonstrates to MDiG's reasonable satisfaction that the Goods do not comply with Condition 10.1 or the Services have not been performed with reasonable care and skill, then MDiG shall at its option and within a reasonable period of time;

(a) repair the Goods or make good the Services free of charge;

(b) replace such Goods with Goods which are in all respects in accordance with the Contract; or re-perform the Services or

(c) issue a credit note to the Customer in respect of such Goods or Services as appropriate having taken back such Goods or materials relating to such Goods or Services, subject, in every case, to the remaining provisions of this Condition 10 provided that the liability of MDiG under this Condition 10 shall in no event exceed the Price of such Goods or Services and performance of any one of the above options shall constitute an entire discharge of MDiG's liability under this warranty.

10.3 Condition 10.2 shall not apply unless the Customer:

(a) notifies MDiG in writing of the alleged defect within seven (7) days of the date of delivery of the Goods or three (3) months of performance of the Services or such other periods as agreed by MDiG in writing; and

(b) affords MDiG a reasonable opportunity to inspect the relevant Goods or the location where the Services were performed.

10.4 If MDiG elects to replace the Goods then the Goods which are being replaced shall (if it has vested in the Customer) revert in MDiG and the Customer shall make any arrangements as may be necessary to deliver up to MDiG the defective Goods which are being replaced.

10.5 MDiG shall be under no liability under the warranty at Condition 10.2:

(a) in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, incorrect storage, failure to follow MDiG's instructions (whether oral or in writing) or follow good industry practice in respect of the Goods, misuse or alteration or repair of the Goods without MDiG's approval;

(b) if the total Price for the Goods and Services has not been paid by the due date for payment;

(c) for any Goods manufactured or appropriated to the Contract in accordance with any design, specification, instruction or recommendation made to MDiG by the Customer or for any Services provided in accordance with specifications or instructions issued by the Customer;

(d) the Goods are different to the Specification due to a change required to comply with applicable law;

(e) in respect of any type of defect, damage or wear specifically excluded by MDiG by notice in writing; or

(f) if the Customer makes any further use of the Goods after giving notice in accordance with Condition 10.3.

10.6 The warranties set out in this document are the only warranties which shall be given by MDiG and all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.



## 11 FORCE MAJEURE

11.1 MDiG shall not be liable to the Customer as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.

11.2 If the Force Majeure Event prevents MDiG from providing the Goods or Services for more than three months, MDiG shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Customer.

## 12 LIABILITY

12.1 Nothing in these Conditions excludes or limits MDiG's liability for:

- (a) death or personal injury caused by MDiG's negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) any liability which cannot be legally excluded or limited.

12.2 Subject to Condition 12.1 MDiG is not liable, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise in connection with the Contract for any:

- (a) loss of profit;
- (b) loss of revenue;
- (c) loss of business; or
- (d) loss of anticipated savings,

in each case whether direct or indirect, or for any indirect, special or consequential loss or damage, howsoever arising.

12.3 Subject to Condition 12.1 MDiG's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise in connection with the Contract shall not exceed 100% of the Price paid to MDiG for the Goods and/ or Services under the Contract.

12.4 The Price has been calculated on the basis that MDiG will exclude or limit its liability as set out in these Conditions and the Customer by placing an Order agrees that such exclusions and limitations are reasonable and warrants that the Customer shall insure against or bear itself any loss for which MDiG has excluded or limited its liability in these Conditions and MDiG shall have no further liability to the Customer.

12.5 MDiG does not warrant, represent, undertake or guarantee that use of the Live Dig Radar shall eliminate the risk of utility strikes or utility outages. The Customer acknowledges that it is the Customer's responsibility to ensure that it takes all necessary actions and precautions to ensure that utility strikes or utility outages do not occur. MDiG shall not be responsible for any failure by the Customer to comply with this clause 12.5.

## 13 CANCELLATION

13.1 The Customer can only cancel an Order (or any part of an Order) which MDiG has already accepted, with MDiG's prior agreement in writing and provided that the Customer:

- (a) forfeits any deposit in respect of the Goods; and
- (b) where cancellation is made less than 90 days before delivery pays a cancellation fee equivalent to 10% of the Price.

13.2 MDiG is not bound to agree to any such cancellation and may complete such Order, even if the Customer purports to cancel it.

## 14 TERMINATION

14.1 Save to the extent prohibited by s233B Insolvency Act 1986, MDiG may immediately terminate the Contract by giving notice in writing to the Customer if:

- (a) the Customer fails to pay any sum payable under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payments;
- (b) the Customer commits a material breach of any of its obligations under the Contract which is incapable of remedy or if capable of remedy persists in such breach after 14 days of having been required in writing to remedy or desist;
- (c) the Customer:
  - (i) calls a meeting, gives a notice, passes a resolution or files a petition, or an order is made, in connection with the winding up or dissolution of that party (save for the sole purpose of a solvent voluntary reconstruction or amalgamation);
  - (ii) has an application to appoint an administrator made or a notice of intention to appoint an administrator filed or an administrator is appointed in respect of it or all or any part of its assets;
  - (iii) has a receiver or administrative receiver appointed over all or any part of its assets or a person becomes entitled to appoint a receiver or administrative receiver over such assets;
  - (iv) calls a meeting, gives notice, passes a resolution, makes an application or files documents, or an order is made, or any other steps are taken in respect of obtaining a moratorium or a moratorium is obtained.
  - (v) takes any steps in connection with proposing a reorganisation of the company (whether by way of voluntary arrangement, company voluntary arrangement, scheme of arrangement, compromise or arrangement or otherwise) or any such reorganisation is effected in relation to it, or it commences negotiations with all or any of its creditors with a view to rescheduling any of its debts;
  - (vi) has any steps taken by a secured lender to obtain possession of the property on which it has security or otherwise to enforce its security;

(vii) has any proceeding taken, with respect to it in any jurisdiction to which it is subject, or any event happens in such jurisdiction that has an effect equivalent or similar to any of the events in this Condition 14.1(c); and/or

(d) the Customer ceases, or appears in the reasonable opinion of MDiG likely or is threatening to cease, to carry on all or a substantial part of its business.

## **15 CONSEQUENCES OF TERMINATION**

15.1 The termination of the Contract will be without prejudice to the rights and remedies of either party which may have accrued up to the date of termination.

15.2 On termination of the Contract for any reason whatsoever:

(a) the Customer shall immediately pay to MDiG all of MDiG's outstanding unpaid invoices and interest which shall be payable by the Customer immediately on receipt and in respect of Services supplied but for which no invoice has yet been submitted, MDiG shall submit an invoice which shall be payable by the Customer immediately upon receipt;

(b) the provisions of Conditions 1 (Definitions), 7 (Intellectual Property Rights), 11 (Warranty), 12 (Liability), 15 (Consequences of Termination), 18 (Confidentiality), 19 (General), 20 (Law and Jurisdiction) and any provision which expressly or by implication is intended to come into or remain in force on or after termination will continue in full force and effect;

## **16 RESELLER**

16.1 The Customer agrees that it is purchasing the Goods for its own business use in the United Kingdom, and that the Customer will not (directly or indirectly via the Customer or through a subsidiary or affiliate of the Customer), act as a distributor or reseller of the Goods. For the purposes of this clause "New Goods" is defined as any Goods which have less than 500 hours registered on the service meter of the Goods and that are less than 2 years old.

16.2 The customer agrees that it will not directly or indirectly through a subsidiary or affiliate of the Customer.

(a) market, lease, rent or sell any New Goods outside of the United Kingdom; or

(b) sell any new goods within the United Kingdom

16.3 The Customer will allow MDiG to inspect and audit its sales and internal records relating to the Goods if MDiG requests that the customer provide evidence of compliance with this clause 16.

16.4 If the Customer acts as a distributor or reseller of the Goods or breaches this clause 16, the Customer will be liable for any direct or indirect damage, loss, or harm caused to MDiG (including damage to MDiG's brand or reputation), as well as any reasonable costs incurred by MDiG in seeking to mitigate any such damage, loss, or harm.

## **17 DATA PROTECTION**

17.1 Both parties shall comply with all applicable requirements of the Data Protection

Legislation.

17.2 The Customer consents to MDiG processing Personal Data (as defined in the Data Protection Legislation) in relation to the Contract including by its Komtrax system.

## 18 CONFIDENTIALITY

18.1 The Customer shall keep and procure to be kept secret and confidential all Confidential Information disclosed or obtained as a result of the relationship of the parties under the Contract and shall not use nor disclose the same save for the purposes of the proper performance of the Contract or with the prior written consent of MDiG

18.2 The obligations of confidentiality in this Condition 16 do not extend to any Confidential Information which the Customer can show:

(a) is or becomes generally available to the public other than as a result of a breach of the obligations of confidentiality under the Contract; or

(b) was in its written records prior to entering into the Contract and not subject to any confidentiality obligations; or

(c) was or is disclosed to it by a third party entitled to do so; or

(d) the parties agree in writing is not Confidential Information or may be disclosed; or

(e) is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.

18.3 The Customer shall not make any announcement or otherwise publicise the existence of or disclose to any person the provisions of the Contract without the prior written consent of MDiG.

## 19 GENERAL

19.1 The Customer may not assign, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under the Contract without the prior written consent of MDiG.

19.2 MDiG may assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under the Contract at any time without the prior written consent of the Customer.

19.3 A person who is not a party to the Contract has no rights (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any provision of the Contract.

19.4 The Contract contains the entire agreement between the parties and supersedes any prior arrangement, promises, assurances understandings and agreements (written or oral) between the parties in relation to its subject matter. The Customer acknowledges that in entering into a Contract, it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance, undertaking, guarantee or warranty (whether made innocently or negligently) that is not set out in a Contract.

19.5 The parties acknowledge that the Contract has not been entered into wholly or partly in reliance on, nor has either party been given, any warranty, statement, promise or representation by the other or on its behalf other than as expressly set out in the Contract.

19.6 All warranties and conditions, terms and conditions not set out in the Contract whether implied by statute or otherwise are excluded to the extent permitted by law.

19.7 If at any time any part of the Contract is held to be or becomes void or otherwise unenforceable for any reason under any applicable laws, the same shall be deemed omitted from the Contract and the validity and/or enforceability of the remaining provisions of the Contract shall not in any way be affected or impaired as a result of that omission.

19.8 The rights and remedies of either party in respect of the Contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by that party to the other nor by any failure of, or delay in ascertaining or exercising any such rights or remedies.

19.9 No purported alteration or variation of the Contract shall be effective unless it is in writing, refers specifically to the Contract and is signed by a duly authorised representative of each of the parties to the Contract.

#### 19.10 Notices

(a) Any notices sent under the Contract must be in writing.

(b) Notices may be served in the ways set out in the table below at the relevant party's registered office (if it is a company) or its principal place of business (in any other case) or at such other address as the relevant party may give notice to the other party for the purpose of service of notices under the Contract and, the following table sets out the respective deemed time and proof of service:

<b>Manner of Delivery</b>	<b>Deemed time of delivery</b>	<b>Proof of Service</b>
Personal delivery	On delivery provided delivery is between 9.00am and 5.00pm on a Business Day	Properly addressed and delivered
Prepaid first class domestic postal service	9.00am on the second Business Day after posting	Properly addressed prepaid and posted

## 20 LAW AND JURISDICTION

20.1 The Contract, these Conditions and any issues, disputes or claims arising out of, or in connection with it (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by, and construed in accordance with, the laws of England and Wales.

20.2 All disputes or claims arising out of or relating to the Contract shall be subject to the exclusive jurisdiction of the English and Welsh Courts to which the parties irrevocably submit.