

# Terms & Conditions of Sale

## Section E

### Special meanings

- 1.1 **We, our, us:** M2 Commander Pty Limited ACN 136 950 082 151 Also its agents and workers.
- 1.2 **You, your:** the customer in Item 1 of Section A of this Agreement.
- 1.3 **Item:** reference to an Item and a number means that Item in Section A or Section C-1 of this Agreement.
- 1.4 **The Site:** as in Item 1 of Section A.
- 1.5 **The Equipment:** as in Item 2 of Section C-1.
- 1.6 **This Agreement:** these terms and conditions, the Special Terms and Conditions (if any), the Customer Contract Information at Section A, the System/CustomCare Application at Section C-1 and any schedules or any attachments.

### Sale of the Equipment

- 2.1 We agree to sell the Equipment to you. You agree to buy it. The Equipment will be new unless otherwise stated and agreed with you.
- 2.2 You agree to comply with our toll fraud minimisation information and strategies. A copy of which can be found at [www.commander.com](http://www.commander.com) or by contacting us on 132 777.

### Delivery of the Equipment

- 3.1 We will endeavour to deliver the Equipment to the Site prior to the Proposed Installation Date in Item 6 of Section C-1.

### Installation of the Equipment

- 4.1 This clause 4 only applies if Item 10 says we are to install the Equipment.
- 4.2 When requested we will connect the Equipment to the telephone network at an additional cost fixed by us. We are not responsible for delays in providing network access to your Site.
- 4.3 We will endeavour to install the Equipment at the Site by the Proposed Installation Date in Item 6 of Section C-1.
- 4.4 If you are ready for the Equipment to be installed and we have not installed it by that date, then for the following 14 days only, you can cancel this Agreement by written notice to us. But you cannot cancel after we install the Equipment.
- 4.5 We only have to install the Equipment in our normal working hours (8am-5pm, Mon-Fri). If you want us to install at another time, there will be extra charges.
- 4.6 We are not responsible for any problem during an installation unless we caused the problem or the problem is in the Equipment. If a problem occurs which we did not cause, and we have to fix it, there may be extra charges.
- 4.7 It may be necessary to change the Equipment because of a problem which we did not cause. In that case, the price in Item 2 of Section C-1 may also change. You will be advised when the Equipment is fully installed and functioning correctly. We will provide basic instruction on the features of the Equipment.
- 4.8 We may cancel this Agreement by written notice to you if you have not enabled installation of the Equipment to take place within 60 days of the Proposed Installation Date. In that event you will pay us damages for our storage, handling, re-scheduling and other administration costs as determined by us.

### Preparing the Site for Installation

- 5.1 Before we have to install, you are responsible for preparing the Site for installation of the Equipment. We will tell you what work is needed. If you have not done that work by the time we come to install (on a date that is agreed with you) you will be charged a visit fee and installation will be re-scheduled.
- 5.2 You are responsible for getting any council or other approval needed for that work or our installation work.
- 5.3 You must ensure the working environment is safe for our staff.

### What you must pay

- 6.1 You must pay us the total Equipment price in Item 2 of Section C-1, any installation charges in Item 6 of Section C-1 and any CustomCare charges in Item 5 of Section C-1. However, if these amounts have changed under 4.6, you must pay us the changed amounts.
- 6.2 If any Goods and Services Tax (GST) is or becomes payable by us in respect of any supply made by us to you which is subject to these terms you must, at the time of making payment, reimburse us for any GST paid or payable by us.
- 6.3 We will pay all stamp duty and delivery or storage charges except for any that you have agreed to pay.
- 6.4 You must pay our actual cost to install. This may vary from the quotation price in Item 6 of Section C-1 for installation once we have physically inspected the Site.

- 6.5 If you purchase Equipment to the value of \$50,000 (excluding GST) or greater (not including installation costs or maintenance charges), you must pay us for the Equipment in instalments as follows:
  - (a) 20% of the price of the Equipment will be due within 14 days of entering into this Customer Contract;
  - (b) 40% of the price of the Equipment will be due within 14 days of delivery of the Equipment; and
  - (c) 40% of the price of the Equipment will be due within 14 days of installation of the Equipment.
- 6.6 If you do not pay the first or second instalment of the price in accordance with clauses 6.5(a) or 6.5(b), we may withhold delivery or installation (as applicable) of the Equipment or cancel your Customer Contract and refund to you any amounts paid less reasonable administrative costs incurred by Commander.

### When you must pay

- 7.1 You must pay us at the time of delivery of the Equipment, as set out in any invoice/bill we give you.
- 7.2 We will charge you interest on what is unpaid after that time. The interest rate will be calculated daily at the rate that is 3% per annum above our cost of funding the overdue amount.

### Legal title to the Equipment

- 8.1 We own the Equipment until you have paid us everything you owe us under this Agreement. In the case of software, no title will pass to that software, but we grant you a licence to use that software on the terms set out in the Special Terms and Conditions to this Agreement.
- 8.2 Until that time you hold the Equipment for us.
- 8.3 You cannot sell it or use it as security for a loan or deal with it in any other way (until you own it).

### What if the Equipment is lost or damaged?

- 9.1 The Equipment is at your risk from the time of its delivery to the Site.
- 9.2 We are not responsible for any loss of or damage to any of the Equipment after that time unless we caused it.
- 9.3 If that loss or damage happens and we did not cause it, you still have to pay us the total Equipment price in Item 2 of Section C-1.

### Return of the Equipment

- 10.1 Subject to your legal rights, you cannot return any of the Equipment to us except with our written agreement.

### Changes to the Equipment

- 11.1 We can change the design of the Equipment, or the way it is made, at any time but we can only do this if there is no extra cost to you and the changed Equipment has at least the same functionality.

### Intellectual property rights

- 12.1 Our user manuals are subject to copyright. The Equipment may also be subject to design rights or other rights. Nothing in this Agreement constitutes any transfer of intellectual property rights from us to you.
- 12.2 You must not copy or reproduce any part of our user manuals or any part of the Equipment without our written permission.

### What happens if you cancel?

- 13.1 If you cancel under 4.4, we can take back any of the Equipment at the Site. We will pay you back what you have paid us for the Equipment. You have no other right against us.

### Our warranty

- 14.1 The warranty period for each item of the Equipment and installation workmanship, if installed by Commander, is as detailed in the Sales Schedule attached.
- 14.2 We warrant that, for the warranty period, the Equipment will be free of defects caused by faulty work done or materials used in making it or faulty work done by us in installing it.
- 14.3 But we only have to repair or, at our option, replace the Equipment at no charge to you. In the case of software we will only replace the software (we will do so within a reasonable timeframe after you report the fault to us). You have no other right against us.
- 14.4 This warranty is void if the Equipment, or any warranty sticker on the Equipment, has been tampered with.
- 14.5 This warranty only covers the Equipment and not anything else (such as things attached to it or the wiring already at the Site).
- 14.6 This warranty does not cover defects caused or contributed to by you or others or by abuse or misuse of the Equipment.
- 14.7 Consumable items such as (but without limitation) foam and leather ear cushions, microphone covers, voice tubes, clothing clips and batteries are excluded from warranty.

## Terms & Conditions of Sale

### Section E

#### Limits on our liability

- 15.1 To the full extent permitted by law, any warranty or condition implied (or other liability put on us) under law is excluded from this Agreement. However, if it cannot lawfully be excluded, then if allowed, our liability is limited to repairing or replacing or re-servicing the Equipment or supplying equivalent Equipment or in the case of software we will only replace the software (whichever option we choose) at no charge to you.
- 15.2 We have no liability to you except as written in this Agreement, or except for our deliberate misconduct.
- 15.3 Subject to 15.1, we exclude all liability, in Contract, tort (including negligence) or otherwise for all claims, actions, loss, liability or damage (whether direct, indirect, consequential or incidental loss or damage and whether for loss of profits, costs of delay or data or otherwise) suffered or incurred by you or anybody else because of a failure of the Equipment or any act, omission, delay or non performance by us or any network service provider or any toll fraud suffered by you..

#### When may compliance be excused?

- 16.1 This clause 16 applies if a party cannot fully comply with an obligation under this Agreement due to a cause out of the party's reasonable control.
- 16.2 In that case so far as and for as long as the party cannot comply with the obligation due to that cause, the party is excused from doing so.
- 16.3 However, an obligation to pay money is never excused by this clause.
- 16.4 Industrial disputes, any changes in the law and our failure to obtain materials from our suppliers are, amongst others, to be treated as causes out of our reasonable control.

#### What if you break this agreement?

- 17.1 You must comply with all your obligations in this Agreement fully, correctly and on time, without fail. Your strict compliance is essential.
- 17.2 We may cancel this Agreement by written notice to you if you breach it in any way.
- 17.3 In that case, we can keep what you have paid us for the Equipment.
- 17.4 We may also take back any Equipment and resell it. You must pay all the expenses of this.
- 17.5 You must pay any shortfall in our damages after allowing for anything we get under 17.3 or 17.4.

#### Our right of entry

- 18.1 We can enter the Site to take back any Equipment under 13.1 or 17.4.

#### Our cooling off right

- 19.1 Commander may cancel this Agreement by written notice to you so long as the notice is given within 14 days after this Agreement is made.
- 19.2 In that case, we will pay you back what you have paid us under this Agreement. You have no other right against us.

#### Void or unenforceable terms

- 20.1 Clauses in this Agreement must be read so that they are not illegal, void or unenforceable.
- 20.2 If they cannot, they must be severed (that is, treated as if cut out).
- 20.3 The rest of this Agreement is not affected if any clauses are read down or severed.

#### Signing over rights or obligations

- 21.1 Except with our written consent, you cannot transfer any of your rights or obligations under this Agreement to anybody else.

#### Copies

- 22.1 You agree that an electronic or faxed copy of this Agreement is admissible evidence of this Agreement.

#### Amendment of this Agreement

- 23.1 A certificate given by or on behalf of us regarding any amount owing by you is prima facie evidence of the matters certified.

#### Governing law

- 24.1 This Agreement is governed by the laws of the State of New South Wales and the parties agree to the non-exclusive jurisdiction of its courts.

#### Privacy Act notice and consents

- 25.1 You agree that we may give certain information about you to a credit reporting agency to obtain a credit report about you. (The information which may be given is covered by the s18E(1) of the Privacy Act 1988 (the "Act") and includes identity particulars and the fact that you are entering this Agreement).
- 25.2 You agree that we may seek and obtain information about you from a credit reporting agency or another credit provider and give information about you to another credit provider. (This may include anything about credit worthiness, history, standing or capacity, including information about Commercial credit, which credit providers are permitted by the Act to obtain or receive).
- 25.3 If you are a natural person, we may collect personal information about you including but not limited to your electronic contact details such as email ("your personal information"). If you are a business customer we may collect information about your business including but not limited to your electronic contact details such as email ("your business information"). You acknowledge and agree that we may use your personal information or business information to send commercial electronic messages, as defined under the *Spam Act 2003 (Cth)*. Unless you ask us not to, we will use your personal information or business information to provide information to you about goods or services which we or any of our related bodies corporate or any of our partners, dealers and agents may offer to you; provide information to our related bodies corporate, our partners, our dealers and agents so that they can provide information to you about goods and services they offer; send commercial electronic messages as defined under the *Spam Act 2003 (Cth)* and for billing, administration and customer information purposes. If you do not want us to use your personal information or business information in this way, you may ask us not to by sending a blank email to [unsubscribe@commander.com](mailto:unsubscribe@commander.com) or by contacting our privacy officer on 1800 007 562. Otherwise we will assume that you have consented to the use and disclosure of the information for these purposes.
- 25.4 Information concerning our policies with respect to personal information is contained in our privacy policy as current from time to time which is available on request or on our Website at [www.commander.com](http://www.commander.com).

#### Training Packages

- 26.1 If Item 2 of Section C-1 includes a training package, we will conduct the training at the Site and endeavour to deliver the training at the times agreed with you in advance. We will deliver training of your receptionist and system administrator on a one-to-one basis and user training in groups of no more than 10 users. We will conduct the training during our normal working hours. You will allow us access to the Site and to the Equipment to enable us to conduct the training. You must pay us for extra charges if you want us to conduct the training at other times or for additional travel charges (if any), but only if you agreed to pay beforehand. If you request us to cancel or re-schedule a planned training session less than 3 business days prior to the agreed start date, you will lose the agreed hours for that training session.
- 26.2 Training must be conducted within 12 months from the date of this Agreement. Training sessions must be no less than 1-hour duration. At the end of a training session we will provide you with a voucher for any unused training hours of your package. Vouchers are to be used within the remaining period of 12 months from the date of this Agreement. Vouchers cannot be redeemed for any other Commander offer.

## Sales Schedule / Special Terms & Conditions of Sale

Section E

### SALES SCHEDULE

#### Our Warranty

##### Commander branded Equipment

- > 12 months for new Equipment and 3 months for refurbished Equipment (parts and labour)
- > The period starts when the Equipment is delivered to the Site or, if we install it, when it is installed at the Site.

##### Headsets, Polycom branded, Video Conference Units – Polycom branded Audio Conference Units and Voice Stations

- > GN Netcom and Jabra branded Headsets – 1 year parts repair or replacement warranty.
- > Plantronics branded Headsets – 1 year parts repair or replacement warranty.
- > Polycom branded Audio Conference Units - 1 year parts repair or replacement warranty
- > Polycom branded Video Conference Units – 12 months parts repair or replacement warranty (except VSX 7000 – 3 years parts repair or replacement)
- > The period starts when the Equipment is delivered to the Site or, if we install it, when it is installed at the Site.
- > We or our agent will resolve the difficulty by providing verbal assistance or you must send us the faulty Equipment at your cost.
- > If when received and tested the Equipment is found to be in working order we will return the Equipment to you at your cost.
- > If when received and tested the Equipment is found to be faulty, we will send you replacement Equipment at our cost.
- > You must pay all labour costs incurred during testing and for the return of Equipment to you.

##### Call Accounting Software - Phoneware Software (including PC Anywhere software and CVT Periscope Express)

- > No warranty provided.
- > Service can be provided by entering a CustomCare Agreement or contacting CustomCare OnLine on 1300 13 88 99 to arrange Fee for Service assistance – Service charged at Fee for Service rates.

##### Voice Mail - Active Voice branded, Call Accounting Software – Periscope branded, Unified Messaging System – CorriDOR branded, Design 2000 and Dallas Delta Announcement Devices and Door Stations, Engenius branded Long Range Cordless Phones, AdvaTel branded IP Console and PhoneEasy software.

- > 12 months parts and labour for new Equipment
- > The period starts when the Equipment is delivered to the Site or, if we install it, when it is installed at the Site.

##### Panasonic Cordless Phones, Telstra Branded Answering Machines, Ericsson GSM Diallers

- > 12 months parts warranty only for new Equipment

#### Commander Installation

- > 1 month for the workmanship and the materials required to complete the installation.
- > The period starts when the installation is completed at the Site.
- > We will resolve the difficulty by:
  - providing verbal assistance, or
  - fixing the fault by remote access, or
  - coming to the Site to rectify the fault.

#### Warranty

- SC1 In addition to clause 15, our warranty does not include any defect or damage caused by unauthorised attempts to repair, by any other cause beyond the range of the intended use of the Equipment, or by accident, fire, lightning, power cuts or outages or other hazards, failure to maintain appropriate environmental conditions.
- SC2 We do not warrant that the Equipment will work in combination with hardware or applications software products provided by third parties, that the operation of any software will be uninterrupted or error free, or that all software defects will be corrected. Where our product documentation or specifications indicate a third party supplied product is compatible, we will make reasonable efforts to provide compatibility except where the non-compatibility is caused by a “bug” or defect in the third party’s product or from use of software not in accordance with our published specifications or user manuals.

#### Software Licence

- SC4 Where software is provided as part of the Equipment, or where the Equipment we are providing are software products only, we grant to you a personal, non-exclusive, non-transferable, licence to use that software only on the Equipment you are purchasing from us and only for your own internal business purposes. You must not use the software for any other purpose. The detailed terms of this licence accompany the Equipment or the software product. By accepting the Equipment or the software product you are deemed to accept the terms of this licence. You acknowledge that at no time do you acquire any right, title or other interest in that software other than this licence.

#### Other Conditions

- SC5 If any equipment is returned to us for repair, we are not responsible for any software, firmware, information or memory data of yours contained in, stored on, or integrated with that equipment.
- SC6 We will not install third party software on the Equipment and it is your responsibility to ensure that any third party software licences are complied with.
- SC7 If you ask us to install software products we are supplying to you on equipment not provided by us, we will only do so on the basis we have no responsibility for any damage or disruption in operation or any other loss resulting out of the use of that equipment or to any other software or data which may reside on that equipment.