

1. Definitions and Interpretation

1.1 In these Conditions, the following definitions apply:

Business Day	a day (other than a Saturday, Sunday or public holiday in the UK);
Business Customer	the person or firm who purchases the Goods from MTS;
Conditions	the terms and conditions set out in this document together with any special terms agreed in writing between the Customer (defined below) and MTS;
Confidential Information	information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, clients, customers, products, affairs and finances of MTS for the time being confidential to MTS and trade secrets including, without limitation, technical data and know-how relating to the business of MTS or any of its suppliers, clients, customers, agents, distributors, shareholders or management, whether or not such information (if in anything other than oral form) is marked confidential;
Contract	the contract between MTS and the Customer for the sale and purchase of the Goods through the Site in accordance with these Conditions;
Consumer	the individual who purchases the Goods from MTS wholly or mainly for personal use and not for use in connection with that individual's trade, business, craft or profession;
Cooling -Off Period	has the meaning given to it in clause 11.1;
Customer	the Consumer and/or the Business Customer (as applicable);
Delivery Date	the date for delivery of Goods as specified in an Order Acceptance (defined below);
Delivery Location	has the meaning given to it in clause 4.2;
Force Majeure Event	any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including but not limited to strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, extremes of weather, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious

damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors;

Goods the goods (or any part of them) to be supplied by MTS to Customer as set out in the Order, and as purchased by Customer through the Site;

Insolvency Event where in respect of a party an order is made or a resolution is passed for the winding up of that party (otherwise than for the purpose of solvent amalgamation or reconstruction) or that party becomes subject to an administrative order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of that party's assets or undertaking or that party, being a partnership shall be dissolved or, that party ceases or threatens to cease to carry on its business or be unable to pay its debts or becomes insolvent (within the meaning of Insolvency Act 1986), or makes or proposes to make an arrangement or composition with its creditors or anything which, under the law of any jurisdiction, is analogous to any of the acts or events specified in this definition;

Intellectual Property Rights patents, rights or inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights to get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, 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;

MTS MTS Nationwide Limited, a company registered in England under company number 10241978;

Order the order for the Goods as set out in order form through the Site;

Order Acceptance has the meaning given in clause 2.3; and

Site the MTS website located at store.mtsplant.co.uk through which the Customer places the Order for the Goods.

1.2 Interpretation

1.2.1 In these Conditions, the following rules apply:

- 1.2.1.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.1.2 a reference to a party includes its personal representatives, successors or permitted assigns;
- 1.2.1.3 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted; and
- 1.2.1.4 any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. Basis of Contract and Ordering

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by Customer to purchase the Goods in accordance with these Conditions.
- 2.3 The Order shall only be deemed to be accepted when MTS emails a written acceptance of the Order to Customer through the Site ("**Order Acceptance**"), at which point the Contract shall come into existence.
- 2.4 MTS will inform Customer if MTS are unable to accept the Order, and MTS will not charge Customer for the Goods. This might be because:
 - 2.4.1 the Goods are out of stock;
 - 2.4.2 because of unexpected time limits on MTS' resources which MTS could not reasonably plan;
 - 2.4.3 because MTS has identified an error in the price or description of the Goods;
 - 2.4.4 because MTS has been unable to meet a delivery deadline Customer has specified.
- 2.5 Any samples, descriptive matter, or advertising produced by MTS and any descriptions contained on MTS' Site are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force and this is not sale by sample.
- 2.6 MTS will assign an order number to Customer's Order and notify Customer of this number when MTS accepts Customer Order under clause 2.3.

3. Goods

- 3.1 The description of the Goods will be as set out on the Site and in MTS' brochures and catalogues from time to time.
- 3.2 The images of the Goods on the Site are for illustrative purposes only. MTS cannot guarantee that a device's display of the colours accurately reflects the colour of the Goods, and the Goods supplied to Customer may vary slightly from those images.
- 3.3 The packaging of the Goods may vary from that shown in images on the Site.
- 3.4 MTS reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements, or to implement minor technical adjustments and

improvements. If such amendments will materially change the nature or quality of the Goods, MTS shall notify Customer who may then cancel the Order.

4. Delivery

- 4.1 Subject to payment by Customer of the relevant invoice, MTS shall deliver the Goods to the Delivery Location and use reasonable endeavours to deliver on the Delivery Date, but time shall not be of the essence in this respect. The cost of the delivery will be displayed to Customer on the Site.
- 4.2 MTS shall deliver the Goods to the location set out in the Order or such other location as the parties may agree in writing ("**Delivery Location**") at any time after MTS notifies Customer that the Goods are ready. Customer shall prepare Customer's premises for delivery of the Goods.
- 4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location unless the Goods are collected from MTS, in which case delivery of the Goods shall be completed on collection from MTS. Customer will provide, at its expense, at the Delivery Location, adequate and appropriate equipment and manual labour for off-loading the Goods.
- 4.4 If a Customer is a Consumer and Consumer fails to take delivery of the Goods, MTS will leave a notice in writing to Consumer informing Consumer how to rearrange delivery, or provide details of how Consumer can collect the Goods from a local depot.
- 4.5 MTS shall not be liable for any delay in delivery of the Goods or failure to deliver the Goods if such delay is as a result of:
 - 4.5.1 a Force Majeure Event; or
 - 4.5.2 Customer's failure to provide MTS with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If MTS fails to deliver the Goods, its liability shall be limited to the costs incurred by Customer in obtaining replacement goods of the same specification in the cheapest market available, less the price of the Goods. MTS shall have no liability to Customer for direct, indirect or consequential loss howsoever caused (including the negligence) by any delay in delivery except as set out above.
- 4.7 If a Business Customer fails to take delivery of the Goods within 3 (three) Business Days of MTS notifying Business Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or MTS' failure to comply with its obligations under the Contract:
 - 4.7.1 delivery of the Goods shall be deemed to have been completed at 9.00 a.m. on the third Business Day after the day on which MTS notified Business Customer that the Goods were ready; and
 - 4.7.2 MTS shall store the Goods until actual delivery takes place, and charge Business Customer for all related costs and expenses (including insurance and storage costs).
- 4.8 If 10 (ten) Business Days after the day on which MTS notified Business Customer that the Goods were ready for delivery Business Customer has not taken delivery of them, MTS may:
 - 4.8.1 store or arrange for storage of the Goods until actual delivery and charge Business Customer for all related costs and expenses (including without limitation, storage and insurance); and/or
 - 4.8.2 following written notice to Business Customer, resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to Business Customer for any excess over the price of the Goods or charge Business Customer for any shortfall below the price of the Goods.

4.9 MTS may deliver the Goods to the Customer by instalments, which shall be paid for separately in accordance with these Conditions. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle Customer to cancel any other instalment.

5. Warranties

5.1 MTS warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Goods shall:

5.1.1 conform in all material respects with their description (and any relevant specification);

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 MTS.

5.2 Subject to clause 5.1, if:

5.2.1 Customer gives notice to MTS during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1; and

5.2.2 MTS is given a reasonable opportunity of examining such Goods; and

5.2.3 Customer (if asked to do so by MTS) returns such Goods (being all the Goods unless otherwise agreed with MTS) to MTS' place of business at MTS' cost;

MTS shall, at its option, repair or replace the defective Goods, or refund the price of the Defective Goods in full.

5.3 MTS shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

5.3.1 Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;

5.3.2 the defect arises because Customer failed to follow MTS' oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

5.3.3 the defect arises as a result of MTS following any drawing or design supplied by Customer;

5.3.4 Customer alters or repairs such Goods without the written consent of MTS;

5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

5.3.6 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

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

5.5 To the extent that the benefit of any warranties made by the manufacturer or previous seller of the Goods to MTS can be assigned to Customer, MTS shall, if requested by Customer and at the cost of Customer, assign them to Customer.

5.6 Until such assignment, MTS will co-operate with Customer in any reasonable arrangements to provide Customer with the benefit of such warranties or like condition including enforcement at the cost of and for the benefit of the buyer.

5.7 MTS makes no representations and gives no warranties as to the quality, condition, state or description of such Goods, or their fitness or suitability for any purpose. All implied statutory or common law terms, conditions and warranties as to such Goods are excluded to the fullest extent permitted by law.

6. Return of Non-Faulty Goods

6.1 In relation to Goods that do not require installation, at the discretion of MTS, such Goods may be returned within 14 days of delivery at Customer's expense, provided the Goods are complete, undamaged and in their original, undamaged packaging. A handling charge of 20% of the total invoice price will be charged

7. Title and Risk

7.1 Risk in Goods shall pass to Customer on completion of delivery (as described in clause 4.)

8. 7.2 Title to Goods shall pass to Customer, on receipt by MTS of payment for the relevant Goods, in full and cleared funds.**Price and Payment**

8.1 The price of the Goods shall be the price set out in the Order.

8.2 If a Customer is a Business Customer MTS reserve the right to vary the price of the Goods if there are any unforeseen circumstances that would affect the price of the Goods after the Contract is entered into.

8.3 The price of the Goods is exclusive of the costs and charges of transport of the Goods, which shall be paid by the Customer to MTS in addition to the price, as set out in the Order.

8.4 The price of the Goods is exclusive of VAT which shall be payable by Customer to MTS at the rate prescribed by law. If the rate of VAT changes between the Order Acceptance and the Delivery Date, MTS will amend the rate of VAT, unless Customer has already paid for the Goods in full and cleared funds before the rate of VAT takes effect.

8.5 Customer shall pay MTS for the price of the Goods when placing an Order through the Site on or at any time before the Delivery Date.

8.6 Customer shall pay each Order before the Delivery Date. Payment shall be made in full and cleared funds in pounds sterling by credit or debit card. MTS accepts payment with all major credit cards including Visa, Visa Electron, Mastercard, Maestro, JCB, and PayPal Time of payment is of the essence.

8.7 If Customer fails to make any payment due to MTS under the Contract by the due date for Payment, then Customer shall pay interest on the overdue amount at the rate of 4% a year above the base lending rate of HSBC bank from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. Customer shall pay the interest together with the overdue amount.

8.8 Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and Customer shall not be entitled to assert any credit, set-off or counterclaim against MTS in order to justify withholding payment of any such amount in whole or in part.

9. Suspension

9.1 MTS may suspend supply of the Goods to Customer:

- 9.1.1 if Customer fails to pay any undisputed amount due under this Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
 - 9.1.2 to deal with technical problems or make minor technical changes;
 - 9.1.3 to update the Goods to reflect changes in relevant laws and regulatory requirements;
 - 9.1.4 to make changes to the Goods as requested by Customer or notified by MTS to Customer.
- 9.2 MTS will contact Customer in advance to inform Customer that MTS will be suspending supply of the Goods, unless the problem is urgent or an emergency.

10. Termination – MTS

- 10.1 Notwithstanding clause 9, MTS may terminate this Contract if Customer:
- 10.1.1 fails to pay any undisputed amount due under this Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
 - 10.1.2 commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within a period of 10 (ten) Business Days after receipt of notice in writing requiring it to do so;
 - 10.1.3 fails to provide MTS with such information and materials as MTS may reasonably require in order to supply the Goods; or
 - 10.1.4 enters into an Insolvency Event or either party reasonably believes that an Insolvency Event is about to occur in relation to the other party; or
 - 10.1.5 fails to allow MTS to deliver the Goods to Customer, or Customer fails to collect the Goods from MTS.
- 10.2 MTS may terminate this Contract upon giving 1 (one) months' prior written notice to Customer.
- 10.3 On termination of the Contract, Customer shall immediately pay to MTS all of MTS' outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, MTS shall submit an invoice, which shall be payable by Customer immediately on receipt.
- 10.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

11. Termination – Consumer

- 11.1 Consumer may terminate this Contract within 14 days of the Delivery Date ("**Cooling -Off Period**")
- 11.2 The Cooling Off Period does not apply to:
- 11.2.1 sealed audio or sealed video recordings or sealed computer software, once these Goods are unsealed after Consumer has received the Goods; and
 - 11.2.2 any Goods which become mixed inseparably with other items after Delivery.
- 11.3 Consumer may terminate this Contract with immediate effect if:

- 11.3.1 MTS informs Consumer about an upcoming change to the Goods or the Contract which Consumer does not agree to;
- 11.3.2 MTS informs Consumer about an error in the price or description of the Goods Consumer has ordered and Consumer does not wish to proceed;
- 11.3.3 there is a risk that supply of the Goods may be significantly delayed because of a Force Majeure Event;
- 11.3.4 MTS has suspended supply of the Goods for technical reasons;
- 11.3.5 MTS notifies Consumer that MTS are going to suspend supply of the Goods for technical reasons, or
- 11.3.6 Consumer notifies MTS that Consumer has a legal right to end the Contract because of something MTS has done.

12. Return of Goods

- 12.1 If Customer terminates the Contract in accordance with the terms of this Contract after delivery of the Goods, Customer must return the Goods to MTS. Customer must return the Goods by courier to MTS at MTS – Aftermarket - Unit 2, Flanshaw Way, Silkwood Park, Wakefield, West Yorkshire, WF2 9LP, UK.
- 12.2 If the Goods are not suitable for delivery by courier, Customer must allow MTS to collect the Goods from Customer. Customer should call MTS customer services on 0800 156555 or email MTS on store@mtsplant.co.uk a return label or to arrange collection.
- 12.3 If Customer is a Consumer exercising their rights under the Cooling - Off Period, Consumer must return the Goods within 14 days of informing MTS that Consumer wishes to terminate the Contract.
- 12.4 MTS will pay for the costs of return:
 - 12.4.1.1 if the Goods are faulty or misdescribed;
 - 12.4.1.2 if Customer is ending the Contract because MTS has informed Customer about an upcoming change to the Goods or these Conditions;
 - 12.4.1.3 if Customer is ending the Contract because there has been an error in the pricing or description of the Goods;
 - 12.4.1.4 upon the occurrence of a Force Majeure Event;
 - 12.4.1.5 during the Cooling Off period.

In all other circumstances other than those set out in this clause 12.4, Customer must pay for the costs of the return of the Goods.

- 12.5 If Customer is responsible for the costs of return and MTS is collecting the Goods from Customer, MTS will charge Customer the direct cost to MTS of collection. MTS charge for collection of the Goods, from within the UK only. Where Goods are to be collected by MTS from Customer from outside the UK, MTS shall notify Customer the direct cost to MTS of collection in writing.

13. Refunds

- 13.1 If a Customer is entitled to a refund in accordance with the terms of this Contract, MTS will refund Customer the price that Customer paid for the Goods including delivery costs, by the method Customer used for payment.

- 13.2 If a Consumer is exercising their right to return the Goods during the Cooling-Off Period, MTS may reduce Consumers' refund of the price (excluding delivery costs) to reflect any reduction in the value of the Goods, if this has been caused by Consumer handling them in a way which would not be permitted in a shop.
- 13.3 If MTS refunds Consumer the price paid before MTS are able to inspect the Goods and later discovers that Consumer has handled the Goods in an unacceptable way, MTS, in its' discretion may charge Consumer an appropriate amount as way of compensation.
- 13.4 The maximum refund for delivery costs will be the costs of delivery by the least expensive delivery method that MTS' offers. For example, if MTS offer delivery of the Goods within 3-5 days at one cost but Customer chooses to have the Goods delivered within 24 hours at a higher cost, then MTS will only refund what Customer would have paid for the cheaper delivery option.
- 13.5 MTS will make any refunds due to Customer as soon as possible. If Customer is a Consumer during the Cooling – Off Period refunds will be made as follows:
- 13.5.1 if the Consumer is returning the Goods, Consumer refund will be made within 14 days from the day on which MTS receive the Goods back from Consumer or, if earlier, the day on which Consumer provides MTS with evidence that Consumer has sent the Goods back to MTS.
- 13.5.2 in all other cases, the refund will be made to Consumer within 14 days of Consumer advising MTS that Consumer has changed their mind.

14. Limitation of Liability

- 14.1 Nothing in these Conditions shall limit or exclude MTS' liability for:
- 14.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 14.1.2 fraud or fraudulent misrepresentation;
- 14.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1972; or
- 14.1.4 any matter in respect of which it would be unlawful for MTS to exclude or restrict liability.
- 14.2 Subject to clause 14.1:
- 14.2.1 MTS shall under no circumstances whatever be liable to Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss (including at all times, without limitation, economic loss, loss of business, depletion of goodwill or similar) howsoever caused arising under or in connection with the Contract.
- 14.2.2 MTS' total liability to Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed a sum equal to the price paid for the Goods in the Order under which the liability has arisen.
- 14.3 MTS hereby excludes to the fullest extent permitted in law, all conditions and warranties, whether express (other than as set out in these Conditions) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of Customer.
- 14.4 Customer acknowledges that the above provisions of this clause 14 are reasonable and reflected in the price which would be higher without those provisions, and Customer will accept such risk accordingly.

15. Intellectual Property Rights

- 15.1 No right or licence is granted to Customer in respect of the Intellectual Property Rights of MTS, except the right of Business Customer to use the Goods in Business Customer's ordinary course of business.

16. Force Majeure

- 16.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event.

17. Variation and Waiver

- 17.1 Any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by MTS.
- 17.2 No failure to exercise or delay in exercising any right or remedy provided under the Contract or by law constitutes a waiver of such right or remedy, nor shall it prevent or restrict any future exercise or enforcement of such right or remedy.
- 17.3 No single or partial exercise of any right or remedy under the Contract shall prevent or restrict the further exercise of that or any other right or remedy.

18. Notices

- 18.1 Any notice shall only be effective if it is in writing, sent to a party at its registered address (or such other address as that party may notify the other in writing from time to time) and is given in accordance with clause 18.2 below.
- 18.2 Any notice will be deemed to have been duly served if delivered personally, on delivery, if sent by post, on the second Business Day after it was posted or if sent by facsimile process, when correctly despatched provided that, if in any case notice would be deemed to be given outside of 9am to 5.30pm on a Business Day, such notice shall instead be deemed to have been given at the start of the next Business Day.

19. Entire Agreement

- 19.1 The Contract constitutes the whole agreement and understanding of the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of the Contract. Each party acknowledges that it has not relied upon any warranty, representation, statement or understanding other than those expressly set out in these Conditions.

20. Assignment

- 20.1 MTS may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 20.2 Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of MTS.

21. Rights of Third Parties

- 21.1 No term of the Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Contract.

22. Confidentiality

- 22.1 The Customer shall keep confidential any Confidential Information that it may acquire and shall not use the Confidential Information for any purpose other than to perform its

obligations under the Contract and will ensure that its officers and employees comply with the provisions of this clause 22.

23. Severance

- 23.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected and the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

24. Governing Law and Jurisdiction

- 24.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England.