

## **Terms and Conditions of Supply (business resale)**

**The customer's attention is drawn in particular to the provisions of clause 9.**

### **1. Interpretation**

The following definitions and rules of interpretation apply in these terms and conditions of supply ("Terms").

**Commencement Date:** the earlier of the date on which the Customer uses the activation code provided by the Supplier or the date 3 months after the Supplier delivers the relevant equipment to the Customer.

**Contract:** a contract between the Supplier and the Customer for the provision of the Services in accordance with these Terms.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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.

**Location:** the location at which the Supplier's sensors and base station are to be fitted, as set out in the Order.

**Order:** the Customer's order for the Services, as set out in the Customer's purchase order form.

**Price:** the price to be paid in respect of the Subscription Period.

**Services:** the services to be provided by the Supplier under these terms as set out in clause 3.

**Subscription Period:** the period of time for which the Customer has purchased the Services as set out in the Order, such period to start from the Commencement Date.

**Supplier's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Supplier and used directly or indirectly in the supply of the Services including but not limited to the Supplier's sensors and base station to be fitted at the Location.

### **2. Basis of Contract**

2.1 The Order constitutes an offer by the Customer to purchase the Services in accordance with these Terms. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.

2.2 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Price shall become payable. For the avoidance of doubt the Supplier may in its sole discretion and without giving any reason refuse to accept any order placed by the Customer.

2.3 A Contract shall come into force on the Commencement Date and constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in these Terms.

### **3. Services**

3.1 **IMPORTANT:** The Services are a tool intended to assist a structural engineer or other suitably skilled professional and are not an alternative to proper professional advice on

the risks associated with any crack, movement or other feature of a building that the Services are monitoring. The Services provide data only on the monitored features of a building. The responsibility for locating the sensors and analysing the data obtained from these is the Customer's and not the Supplier's.

3.2 The Services consist of the provision of a crack monitoring system to be installed by the Customer at the identified Location and the provision of access to an online data viewer where data collected from the monitoring system can be monitored and downloaded by the Customer, further details can be found on the Specification page on the website <http://www.montecsystems.com/wp-content/uploads/2014/10/Specification.pdf>.

3.3 The Services do not include any analysis of the data collected which shall be the sole responsibility of the Customer.

3.4 Due to the nature of the services with data being transmitted over public mobile telecommunications networks the Supplier cannot and does not give any guarantees that the Services will be continuously available and there may be a delay in the availability of the data.

### **4. Supplier's obligations**

4.1 The Supplier shall use reasonable endeavours to provide the Services to the Customer, but provides no guarantees that the Services will be continuously available or that they will be provided without interruption. The Supplier's Equipment is provided on an "as-is" basis without any warranty as to the accuracy or availability of any data obtained that will be obtained from it.

4.2 The Supplier shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Location and that have been communicated to it, provided that it shall not be liable under these Terms if, as a result of such observation, it is in breach of any of its obligations under these Terms.

### **5. Customer's obligations**

5.1 The Customer shall:

5.1.1 co-operate with the Supplier in all matters relating to the Services;

be responsible for the identification of the Location and the installation of the Supplier's Equipment at the Location in accordance with the Supplier's instructions; and

5.1.2 provide, at the Supplier's reasonable request, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Location.

5.2 If the Supplier's performance of its obligations under these Terms is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.

5.3 The Customer shall indemnify and be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under these Terms, including but not limited to the correct installation of the Supplier's Equipment,

subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

### **6. Charges and payment**

6.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the Price to the Supplier prior to the commencement of the Services.

6.2 All amounts due under these Terms shall be paid in full without any set-off, counterclaim, deduction or withholding.

### **7. Intellectual property rights**

7.1 As between the Customer and the Supplier, all Intellectual Property Rights and all other rights in the Supplier's Equipment, the Supplier's software and any other Intellectual Property Rights of the Supplier used in the performance of the Services shall be owned by the Supplier.

7.2 The Supplier licenses to the Customer on a non-exclusive basis the right to use and access the software made available on the Supplier's website to such extent as is necessary to enable the Customer to make reasonable use of the Services. If the Subscription Period is terminated, this licence will automatically terminate.

7.3 All data obtained from the Supplier's Equipment installed at the Location shall belong exclusively to the Customer provided that the Supplier shall be permitted to use such data for its own analysis of the performance of the Supplier's Equipment and to improve the services offered by the Supplier provided that the name of the Customer and details of the Location shall not be disclosed without the Customer's prior consent. The Customer shall be responsible for downloading and storing data obtained from the Supplier's Equipment.

### **8. Confidentiality and the Supplier's property**

8.1 The Customer undertakes that it shall not at any time during any Subscription Period, and for a period of five years after the expiry or termination of any Subscription Period, disclose to any person technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its employees, agents, consultants or subcontractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain, except as permitted by clause 8.2.

8.2 The Customer may disclose the Supplier's confidential information:

to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under these Terms. The Customer shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 8; and as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

8.3 The Customer shall not use the Supplier's confidential information for any purpose other than to obtain the benefit of the Services.

8.4 All materials, equipment (including the Supplier's Equipment) and tools, drawings, specifications and data supplied by the Supplier to the Customer shall, at all times, be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance

with the Supplier's written instructions or authorisation.

8.5 The Supplier's Equipment shall be installed only at the Location, or at such other location as the Supplier may agree in writing, and only in accordance with the written instructions of the Supplier.

## 9. Limitation of liability

9.1 Nothing in these Terms limits or excludes the Supplier's liability for:

9.1.1 death or personal injury caused by its negligence;

9.1.2 fraud or fraudulent misrepresentation; or

9.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

9.2 Subject to clause 9.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

9.2.1 loss of profits;

9.2.2 loss of sales or business;

9.2.3 loss of agreements or contracts;

9.2.4 loss of anticipated savings;

9.2.5 loss of or damage to goodwill;

9.2.6 loss of use or corruption of software, data or information;

9.2.7 damage caused by the underlying crack or other feature being monitored by the Services; or

9.2.8 any indirect or consequential loss.

9.3 To the extent that the Services are unavailable for any part of the Subscription Period for a consecutive period in excess of 24 hours the Subscription Period shall be extended by an equivalent period of time and this shall be the sole remedy in respect of such unavailability of the Services.

9.4 Subject to clauses 9.1, 9.2 and 9.3, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited, in respect of all claims (connected or unconnected) in any consecutive 12 (twelve) month period, to the equivalent of the total charges paid by the Customer in that period.

9.5 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

9.6 The Customer acknowledges and agrees that the limitations and exclusions of liability set out in this Clause 9 are reasonable in all the circumstances taking into account in particular:

9.6.1 the nature of the services as one method of monitoring one identified feature of a building by a skilled professional and is not a substitute for suitable professional advice on the structure of a building or any aspect of it;

9.6.2 that the Supplier does not have insurance for a greater level of liability, and that such insurance is not readily available at all or without a substantial increase in the fees that the Supplier would need to charge for the Services, and the Customer agrees that such insurance is not required.

9.7 The Customer acknowledges that it has had the opportunity to obtain its own legal advice on the effects of the limitations and exclusions in this Clause 9 and confirms that it wishes to proceed on this basis.

## 10. Termination

10.1 The Supplier may terminate the Subscription Period at any time on 3 months'

notice to the Customer provided that the Supplier shall refund to the Customer any unexpired period of the Subscription Period on a pro rata basis to the current Subscription Period.

10.2 Without affecting any other right or remedy available to it, either party may terminate the Subscription Period with immediate effect by giving written notice to the other party if:

10.2.1 the other party fails to pay any amount due under these Terms on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;

10.2.2 the other party commits a material breach of any of these Terms which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified in writing to do so;

10.2.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, within the meaning of section 268 of the Insolvency Act 1986;

10.2.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

10.2.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

10.2.6 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;

10.2.7 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

10.2.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

10.2.9 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

10.2.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.2.3 to clause 10.2.9 (inclusive); or

10.2.11 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

## 11. Consequences of termination

11.1 On termination or expiry of the Subscription Period:

11.1.1 the Customer shall, promptly return all of the Supplier's Equipment. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping and for any and all injury or damage howsoever caused by

the Supplier's Equipment after termination or expiry of the Subscription Period;

11.1.2 the following clauses shall continue in force: clause 7 (Intellectual property rights), clause 8 (Confidentiality and the Supplier's property), clause 9 (Limitation of liability), clause 12.2 (Notices) and clause 12.8 (Governing law and jurisdiction)

11.2 Termination or expiry of any Subscription Period shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of these Terms which existed at or before the date of termination or expiry.

## 12. General

12.1 Assignment and other dealings. The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

12.1 Notices.

12.2.1 Any notice given to a party under or in connection with these Terms shall be in writing and shall be either delivered by hand or 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).

12.2.2 Any notice shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or 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 at the time recorded by the delivery service.

12.2.3 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. For the avoidance of doubt, "writing" shall not include e-mail for the purposes of this clause.

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

12.4 Waiver. No failure or delay by a party to exercise any right or remedy provided under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.5 Rights and remedies. The rights and remedies provided under these Terms are in addition to, and not exclusive of, any rights or remedies provided by law.

12.6 Third party rights. A person who is not a party to the Contract shall not have any rights to enforce its terms.

12.7 Variation. No variation of these Terms shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12.8 Governing law and Jurisdiction. The Contract shall be governed by and construed in accordance with the laws of England, and each party irrevocably submits to the non-exclusive jurisdiction of the courts of England.