



MOBILEDEMAND CORPORATION
Terms and Conditions of Sale
(U.S. Domestic Sales Only)

If there is a sales/purchase agreement ("Agreement") in effect between you and MobileDemand Corporation ("MobileDemand"), the terms and conditions of that Agreement shall apply to your purchase order, and the following terms and conditions shall not apply to your purchase orders.

In the absence of an Agreement, all orders placed by you (the "Customer") are subject to the following terms and conditions, as well as all additional terms and conditions presented in or accompanying a MobileDemand quotation or order acknowledgement. Conflicting, inconsistent or additional terms and conditions added to or included in Customer's purchase order ("Order") are specifically objected to and are not applicable to the Order.

1. Orders:

All Orders are subject to acceptance by MobileDemand, at its sole discretion, at its offices in Hiawatha, Iowa, U.S.A., even if taken elsewhere by a salesperson, sales agent, or representative. Products may not be returned without prior written authorization from MobileDemand. MobileDemand will consider requests for return of products of current design (for credit against future purchases only), subject to Customer prepaying return freight plus a reasonable handling charge as determined by MobileDemand. MobileDemand retains the right to make sole judgement in the acceptability of all returned items.

- a. Unopened items authorized for return within 30 days from receipt, are subject to a 15% restocking fee.
- b. Unopened items authorized for return 31 to 60 days from receipt are subject to a 20% restocking fee.
- c. No returns will be accepted if items were received more than 60 days from the date of request.

2. Prices:

Prices for products and licensing fees are based on MobileDemand's list prices in effect at time of Order and, exclude: (i) freight and insurance; (ii) all applicable sales, use and excise taxes; and (iii) on-site installation assistance, training, and related services. List prices are subject to change by MobileDemand without notice. All prices are in United States dollars.

Unless otherwise specifically stated therein, all MobileDemand quotations: (i) are based on receiving a single Order; (ii) are effective for that quotation only; (iii) are valid for 30 days; and (iv) exclude on-site installation or installation assistance, training, and services.

3. Terms of payment:

Subject to MobileDemand extending a line of credit, all payments are due no later than 30 days after the date of MobileDemand's invoice. Payments received more than 30 days after the date of invoice are subject to a late charge of 1.5% per month on the unpaid balance. Customer shall be liable for all costs of collection, including attorney fees and court costs, if any. All payments are to be made in United States dollars.

4. Taxes:

Customer is responsible for the payment of all sales, use, excise and other taxes associated with the Order, exclusive of taxes based upon MobileDemand's revenue or net income. If Customer is a tax-exempt entity or pays taxes directly to its state, Customer shall provide MobileDemand with a copy of its tax exemption certificate or direct pay permit with its Order. If applicable, a separate charge for taxes will be shown on MobileDemand's invoice.

5. **Packaging:**

MobileDemand shall pack all shipments in commercially suitable containers that provide reasonable protection against damage during shipment, handling and storage under normal circumstances in reasonably dry, unheated transport and storage quarters. MobileDemand reserves the right to impose additional charges for packaging to comply with Customer's specifications or instructions.

6. **Shipment; Risk of Loss; Insurance:**

Acknowledged shipping dates are good faith estimates only, and MobileDemand is not liable for any loss, damage, cost or expense for any failure to ship within the acknowledged date. Title and risk of loss passes to Customer upon shipment from MobileDemand's facility. MobileDemand has no obligation to provide Customer notice of shipment. Orders may be tendered in partial shipments. All freight and insurance charges shall be paid by Customer. If an Order does not contain shipping instructions, MobileDemand will ship via commercial surface transportation, selecting a carrier based on the shipping rates as negotiated in good faith by MobileDemand.

7. **Testing and Inspection:**

MobileDemand will test and inspect all products prior to shipment in accordance with its normal practices without additional cost to Customer. MobileDemand reserves the right to impose additional charges for Customer requested tests or inspections.

8. **Warranty:**

a. **What is Covered:**

MobileDemand warrants that its products will be free from defects in material and/or workmanship which occur during normal use and perform substantially in accordance with MobileDemand specifications for the specified warranty period. MobileDemand will repair the equipment during the warranty period with new or rebuilt parts, free of charge in the United States. A purchase receipt or other proof of date of original purchase may be required before warranty performance is rendered.

Products and/or Services MobileDemand acquires from or through a manufacturer, distributor or other third-party provider and resells and/or provides to Customer will carry the original manufacturer's pass-through warranty, if any.

b. **How to Obtain Warranty Service:**

Call MobileDemand Service and Support, 319-363-4121, between 8:00 a.m. and 6:00 p.m. Central Standard Time, Monday through Friday for warranty assistance, or email rma@mobiledemand.com. Should equipment require service, MobileDemand will issue a Return Material Authorization (RMA) and shipping instructions.

c. **Service Process:**

All products covered by this warranty will be serviced at MobileDemand's designated Service Center. Unless otherwise instructed by MobileDemand, all products returned under warranty are to be shipped to the following address:

MobileDemand Service Center
1350 Boyson Rd. Bldg B
Hiawatha, IA 52233

The RMA number is to be legibly written on the outside of the shipping container. Product should be re-packaged in its original factory shipping packaging when returned for warranty service. If the original packaging is not available, Customer is to provide packaging of equivalent protection.

d. **Data Storage Media:**

MobileDemand is not responsible for any software programs, data, or other information stored or used on any media or part of any product returned to MobileDemand for warranty service or other repair, including the costs of recovering such programs or data. If, during the warranty service or repair of the product, the contents of the hard disk or any other data storage media are altered, deleted, modified or lost, MobileDemand is not responsible. It is Customer's sole responsibility to back up any software programs, data, or information stored on any storage media or any part of the product returned for warranty service or out-of-warranty repair.

e. **Damage and Other Repairs:**

Product returned for warranty service where the problem cannot be duplicated and no hardware failure is detected is subject to a service charge plus shipping costs. Service performed outside the scope of this warranty will be charged at current time and material rates plus shipping costs.

f. **Exclusions:**

This warranty specifically excludes damage to the product including, but not limited to, the following:

- damage during shipment other than original shipment to Customer;
- damage caused by liquid intrusion into the inside of the product as a result of case fracture or entry through an external port or door;
- damage caused by impact with other objects, or drops and falls, including but not limited to broken display glass, hard drive sector damage or read/write head damage, physical breakaway of internal components;
- damage caused by the use of the product for purposes other than those for which it was designed;
- damage caused by any other abuse, misuse, neglect, accident, negligence, mishandling or misapplication;
- damage caused by products not supplied by MobileDemand or failures which result from alterations, modifications or foreign objects;
- damage from improper maintenance; or
- damage attributable to acts of God.

In no event shall MobileDemand be liable, whether in contract, negligence, tort, or on any other basis, for cover or for incidental, consequential or exemplary damages arising out of or in connection with the sale, services, maintenance, use, performance, failure, or interruption in the operation of the hardware, software or services, even if MobileDemand is advised of the possibility of such damages.

g. **Warranty Disclaimer:**

THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

h. **MobileDemand Limited Warranty:**

MobileDemand's entire liability and Customer's exclusive remedy for any product that fails to comply with this warranty shall be, at MobileDemand's option and expense: (i) to repair the non-conforming product; or (ii) to provide an equivalent replacement. Customer is responsible for returning the non-conforming product, properly packaged, to the MobileDemand Service Center.



The warranty period is not extended as a result of upgrading the product. To receive warranty service Customer must promptly notify MobileDemand of the warranty claim prior to expiration of the applicable warranty period. This warranty is not transferable and applies only to the original end-user and the original product.

9. Software License:

Subject to the terms and conditions of the appropriate license agreement, MobileDemand grants Customer a nonexclusive, nontransferable, perpetual license to use any software provided with or installed on the hardware product. All such software is subject to the applicable license agreement(s) included with the product(s). All Microsoft® operating system software shall be subject to the applicable Microsoft enduser licensing agreement ("EULA"). Your MobileDemand sales representative can furnish you a copy of the applicable EULA if one was not included with your quotation. Customer shall be bound by the above license agreements once the software is opened, the package is opened or its seal is broken. Warranty for any software shall be in accordance with the license agreement.

- a. Such software shall be used only for the processing of Customer's own business information, which may include servicing and maintaining records on behalf of its customers. Customer may not: (i) permit any third party to use the software; or (ii) reverse engineer, disassemble, modify, prepare derivative works of, or otherwise alter the software.
- b. Title to any software provided to Customer under any Order shall remain with the applicable licensor(s). Customer acknowledges that MobileDemand and the third-party licensor(s) own all right, title and interest (including but not limited to all related patent, copyright, and other intellectual property rights) in the software, any related documentation, and any software modifications and enhancements thereof, which shall remain the sole and exclusive property of MobileDemand or the third-party licensor(s).
- c. Hardware product may contain software for internal operation, or as embedded software or firmware that is generally not sold or licensed as a separate software product. Such software is proprietary, copyrighted, and may also contain valuable trade secrets and may be protected by patents. MobileDemand grants Customer a license to use the software code on, or in conjunction with, only the hardware product purchased under Customer's Order.

10. Force Majeure:

MobileDemand shall not be liable for any default or delay attributable to any cause or circumstance beyond its reasonable control, or the reasonable control of its suppliers or sub-contract manufacturers, which prevents or impedes the ability of MobileDemand to deliver product in accordance with an Order. Such causes and circumstances include, but are not limited to: acts of God; governmental acts, decrees or restrictions; accidents; wars, riots, or civil commotion; explosion, fire or flood; boycotts, trade disputes or quarantines; strikes, lockouts, slowdowns or other labor problems; restraints affecting shipment or credit; non-arrival or delay of carriers; inadequate or reduced supply or excessive cost of suitable raw materials, transportation or production facilities; or any other cause or circumstance affecting the ability of MobileDemand, its suppliers, or manufacturers to manufacture and supply product. In the event of such default or delay, the date for shipment shall be extended accordingly. MobileDemand may make delivery on an equitable basis with reference to all its Customers. No Orders may be cancelled due to a force majeure event without MobileDemand's prior written approval.

11. Not for Resale:

Customer agrees and represents that it is buying for its own internal use only, and not for resale or distribution to any other third party. MobileDemand authorized resellers are subject to the terms and conditions of the separate reseller agreement executed between MobileDemand and such reseller.

12. Compliance with Laws:

MobileDemand warrants that it is in compliance with all laws, rules, regulations, standards, ordinances, and Executive Orders of the United States, all applicable state and local governments, and all applicable governmental agencies with respect to the manufacture and sale of the Products and in the performance of the services covered by this contract for sale.

Products purchased by Customer shall be subject to export laws and regulations of the United States of America. Customer agrees to comply with all applicable laws and regulations of the various states and of the United States.

13. Intellectual Property:

MobileDemand shall hold Customer harmless from any and all expenses or losses resulting from infringement of United States patent in connection with the purchase, manufacture, or use of MobileDemand designated products, provided MobileDemand is promptly notified in writing of any alleged infringement and given the right, at its option, to either: (i) to modify the products and make them non-infringing; (ii) procure for Customer the right to continue using such products; or (iii) remove such products and refund Customer the purchase price less reasonable and customary depreciation.

14. Limitations on Liability:

DUE TO THE NATURE OF WIRELESS COMMUNICATIONS, MOBILEDEMAND WIRELESS PRODUCTS SHOULD NOT BE USED IN SITUATIONS WHERE LIVES OR PROPERTY WOULD BE ENDANGERED BY AN INABILITY TO FUNCTION OR ESTABLISH COMMUNICATIONS. THEREFORE IN NO EVENT SHALL MOBILEDEMAND BE LIABLE TO CUSTOMER OR ANY THIRD PARTY, WHETHER IN CONTRACT, NEGLIGENCE, TORT, OR ON ANY OTHER BASIS, FOR COVER OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGE FOR ANY BREACH OF THESE TERMS AND CONDITIONS INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF BUSINESS OR GOODWILL, OR LOSS OF USE, EVEN IF MOBILEDEMAND HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE OR ANY CLAIM BY ANY THIRD PARTY. FOR ANY BREACH OF THESE TERMS AND CONDITIONS, MOBILEDEMAND'S SOLE AND EXCLUSIVE MAXIMUM LIABILITY SHALL NOT IN ANY EVENT EXCEED THE TOTAL PRICE OF THE PRODUCTS ORDERED BY CUSTOMER THAT GIVE RISE TO THE CLAIM.

15. Order Cancellation and Rescheduling:

After an Order is accepted, Customer may only cancel the Order by providing MobileDemand written notice at least sixty (60) days prior to the original acknowledged delivery date, subject to reimbursement to MobileDemand for its direct expenses incurred prior to such cancellation.

- a. After an Order is accepted, Customer may only reschedule the Order one (1) time subject to: (i) providing MobileDemand written notice at least sixty (60) days prior to the original acknowledged delivery date; (ii) the requested rescheduled delivery date being no greater than sixty (60) days beyond the original acknowledged delivery date; and (iii) reimbursement to MobileDemand for its direct expenses incurred as a result of such reschedule.
- b. MobileDemand may, upon written notice to Customer, cancel any Order or portion thereof immediately if Customer's financial condition, in MobileDemand's reasonable judgement, indicates that it may not be able to comply with the specified payment terms, unless, upon MobileDemand's request, Customer immediately pays for all products shipped and that portion of the Order that has not yet shipped.

16. Additional Term and Conditions:

a. Assignments:

Customer may not sublease or assign any of its rights or obligations under this contract for sale, including the right to receive payments due or to become due hereunder, without the prior written consent of MobileDemand, and any alleged assignment without such consent shall be void.

b. Contract:

There are no representatives, agreements, warranties, conditions, or obligations, expressed or implied, relating to the sale and purchase of MobileDemand products except as set forth herein. Customer's Order and MobileDemand's acceptance is the sole contract between the parties.

c. Choice of Law:

The construction, validity, and performance of the contract for sale between MobileDemand and Customer shall be governed by the laws of the State of Iowa, United States of America, without reference to its choice of law principles. Customer irrevocably consents to the jurisdiction of the courts of the State of Iowa and the United States District Court, for the trial of any lawsuit arising out of the contract for sale. Any action for the breach of the contract for sale must be commenced within one (1) year after the cause of action has occurred.

d. Attorney Fees:

In the event of litigation to enforce the terms of the contract of sale, the prevailing party shall be entitled to reasonable attorney fees, both at the time of trial and on appeal.

e. Waiver; Enforceability:

Any waiver of the terms and conditions hereof, or any waiver of any breach hereof by Customer, either directly by MobileDemand or by operation of law or in equity, shall not be deemed to be a waiver of any subsequent failure of strict compliance with the performance of each and every item of the contract for sale. If any provision or provisions of the contract for sale are held to be invalid, illegal or unenforceable, such provision shall be enforced to the fullest extent permitted by applicable law, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.