Article 7 Limited Warranty

8.1 Mobile Devices warrants (a) that the hardware part of the Products, excluding the Software, sold will be free from defects during the warranty period of twelve (12) months following their date of shipment, and (b) that for a period of ninety (90) days following the shipment of the Products, the Software will substantially conform to the technical specifications Provided that any warranty shall be excluded if the default alleged is the result of a fair wear and tear of the Products, a misuse of the Products, modifications made by Client, a lack of supervision or maintenance and more generally any event out of Mobile Devices’ control. In order to activate the above warranty, Client shall:

- promptly notify Mobile Devices in writing that the Products are defective and shall furnish a detailed explanation of any alleged deficiency;
- return to Mobile Devices the defective Products at its own risks and expenses and in an undamaged state.

If Mobile Devices finds the Products to be defective, Mobile Devices shall at its sole discretion and in a reasonable time, repair or replace the defective Product or credit Client’s account by an amount equal to the price paid for said Products.

8.2 These warranties are exclusive of any other warranty. Mobile Devices will not grant any other express or implied warranty for the Products delivered and in particular, no implied warranty of merchantability or fitness for a particular purpose or any implied warranty of non infringement. Mobile Devices does not warrant that the Products will meet Client’s requirements or that operation of the Software will be uninterrupted or error free.

8.3 Software modifications: Client may request specific software developments or configuration perimeters modifications. In such case, and in no case, issuing the order, Client will provide Mobile Devices with a detailed specification of the modifications. Scope of the modifications, prices and delivery delays of the software modifications will have to be discussed and agreed between Client and Mobile Devices. Client may also modify on his own the software, either internally or through any subcontractor.

In the event of the validation of the changes, and if this is out of the sole responsibility of the Client. After validation of the software by Client, Mobile Devices will either deliver the products with the validated software, deliver of separate standard products, specific software update procedure. In any case the validation of the modified software will be under sole responsibility of the Client.

Article 9 LIMITED LIABILITY AND LIMITATION OF DAMAGES

Neither party’s liability: (a) for death or personal injury caused by the its negligence or the negligence of it employees or agents; (b) for breach of any contract as to title or quiet enjoyment; (c) for fraudulent misrepresentation; (d) as provided in Section 5.1 (ii), (iii) of any action for any duration is not arising from the client or by the use of the Software, either internally or through any subcontractor. (e) Violations of Mobile Devices Intellectual Property Rights in the production to anything which it may have done or not done in connection with this Agreement (and whether the liability arises because of breach of contract, negligence or for any other reason) shall be limited to an amount equal to 100% of the total amount paid or payable by Client under this Agreement.

9.4 Basis of Bargain. The parties expressly acknowledge and agree that Mobile Devices reserves the right to modify its terms and conditions and that Mobile Devices may exclude the liability specified herein, which allocate the risk between Mobile Devices and Client and form a basis of the bargain between the parties.

Article 10 Intellectual Property

Mobile Devices holds and remains the owner of all intellectual property rights related to the Software, including without limitation all patent applications, developments and patterns rights, Products’ trademarks, concepts and know-how elaborated or discovered during the creation of the Products. Upon the sale of the latter, no intellectual property right shall be transferred or assigned to Client. Client commits not to interfere with or prejudice the intellectual property rights of Mobile Devices. Client will indemnify and hold Mobile Devices harmless against all liability, damages, losses and expenses, (including attorneys’ fees and other costs of legal defense), that Mobile Devices, may sustain or incur as a result of a breach by Client of this article. Client shall not reverse assemble, disassemble, or restructure all or part of the Products.

Article 11 Non Disclosure

All information, technical data, specifications,  whatever its nature and support, is confidential and not limited to technical information, not disclosed by Mobile Devices to Client or by Client to Mobile Devices, or that Client may acquire from Mobile Devices or that Mobile Devices may acquire from Client, whose business relationship are confidential and are subject to the strictest confidentiality obligation. Mobile Devices and Client commit not to disclose any confidential information relating to their Products to third parties other than their own employees, agents, subcontractors and partners, persons acting on behalf of their business. Mobile Devices & Client guarantee that their employers shall respect these terms.

Article 12 Force Majeure

In case a Force Majeure event as defined by French law delays the performance of the obligations hereunder, the affected party shall immediately notify the other Party of such an event. 

Article 13 Governing Law

All disputes related to the Products subject to these terms and conditions shall expressly be governed by and construed in accordance with the laws of France. Any dispute arising from the interpretation, the validity or the performance of these terms and of said sales shall first be resolved, by way of direct negotiation, if no such agreement can be reached, shall be submitted to the exclusive jurisdiction of the Commercial Court of Paris. The provisions hereof will not prevent the parties from taking any protective or temporary measures required to preserve their respective interests.