



## Protect Plus Terms and Conditions

These Terms and Conditions, including the appendices (“**Terms**”) govern the supply by Midwich Limited, Vincennes Road, Diss Norfolk, IP22 4YT (“**Midwich**” / “**Midwich Group**” / “**Protect Plus**” / “**Protect+**” / “**We**” / “**Us**” / “**Our**”) of Warranty Assurance (the “**Services**”) to purchasers (“**Purchaser**” / “**You**” / “**Your**”). We agree to supply the Services to You if a product (“**Product**”) covered by the Services, fails to operate or operates outside of its specification (as defined by the manufacturer of the Product).

These Terms are not a policy of insurance or a warranty, guarantee or other promise that Your Product will not fail or that it meets any particular quality standard. These Terms do not further extend the rights You obtained in this respect at the time You bought the Product. Under these Terms, We accept no additional liability in respect of defects in the Product beyond a liability to provide the Services as described. These Terms do not affect any existing legal rights You have against the person who supplied Your Product or against Us. Before accepting Our offer to provide the Services, You should read these Terms and Conditions so that You are clear about the Services to be provided, the scope of Our liabilities to You, and Your responsibilities.

### 1. TERRITORY

The Services are only available for Products situated within the United Kingdom, Ireland, France, Germany, Austria, the Netherlands, Belgium, Australia, New Zealand, Singapore, United States and Canada.

We reserve the right to add or remove territories without any notice or liability to You whatsoever, however we will where possible provide thirty (30) days’ notice if we are no longer able to support the Services within a Territory. If You have an active contract in a Territory which we subsequently remove, we will provide a proportionate refund of the remainder of the service contract, pro-rata.

### 2. SERVICES COVERED BY THESE TERMS

Details of the Services offered by Us can be found at **APPENDIX 1: THE SERVICES** which We may vary from time-to-time without any liability to You. If We amend the Services and such amendment results in the removal of one or more elements of the Services, We may continue offering the current Services to You until the expiry date of the Services (refer to Clauses 7 and 8 for details) or provide a proportionate refund of the remainder of the service contract, pro-rata.

### 3. WHAT IS AND ISN'T PROVIDED UNDER THE SERVICES

The current list of inclusions and exclusions provided under the Services can be found at **APPENDIX 2: WHAT IS AND ISN'T COVERED BY THE SERVICES** which We may vary from time-to-time without any liability to You.

### 4. OBLIGATIONS OF THE PARTIES

#### (a) Purchaser Obligations

You shall:

- i. confirm to Us that any Product to be covered under the Services is in good working order prior to the Services becoming active and provide any evidence of such as We may reasonably request;
- ii. provide Us with the serial number of Product to be covered under the Services;
- iii. only use the Product in accordance with the manufacturer’s instructions as to the use and operation as set out in the Product manual;
- iv. pay Us all monies owed in relation to the Services in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law);
- v. contact the PLUS Helpdesk for claims as detailed In **APPENDIX 2**;
- vi. cooperate fully with Us in attempting to resolve any issues;
- vii. not move Product covered under the Services from the agreed address (“**Specified Address**”) to another address unless We agree in writing You may do so;
- viii. inform Us immediately if any Product covered under the Services is beyond economical repair for reasons not covered under the Services and/or due to breach of clause 4(a) iii of these Terms;
- ix. If We are required to attend any Specified Address to provide the Services, ensure that We are provided with all relevant information (including any Health & Safety requirements) to prevent any delays and ensure the safety of Our staff;
- x. ensure faulty Product is returned to Us within thirty (30) days of despatch of the replacement Product;
- xi. pay any agreed costs within agreed timescales;
- xii. pay Us for all losses and expenses We incur as a result of any act or omission caused by You.



(b) Our Obligations

We will:

- provide the Services with reasonable skill and care;
- use reasonable endeavours to resolve a claim;
- conduct ourselves in a courteous and professional manner;
- deal with incidents with empathy and respect.

## 5. TERMS OF PAYMENT

Unless trade credit facilities have been agreed in writing, all orders must be paid for in advance prior to activation of the Services and subject to confirmation of clearance of funds by Your Bank or Card Issuer.

## 6. INSOLVENCY OF THE PURCHASER

This clause applies if:

- (a) You make any voluntary arrangement with Your creditors or become subject to an administration order or (being an individual or firm) become bankrupt or (being a company) go into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- (b) an encumbrancer takes possession, or a receiver is appointed, of any Your property; or
- (c) You cease, or threaten to cease, to carry on business; or
- (d) We reasonably apprehend that any of the events mentioned above are about to occur in relation to You and We notify You accordingly.

If this clause applies then, without prejudice to any other right or remedy available to Us, We shall be entitled to cancel the Services without any liability to You, and if the Services have been delivered but not paid for the price shall become immediately due and payable notwithstanding any other clauses of these Terms or any previous agreement or arrangement to the contrary.

## 7. WARRANTY ACTIVATION AND START OF SERVICES

- (a) **Faulty Products:** We will not provide Services if the Product was faulty or not working at the time of registration. We reserve the right to ask for verification that a Product is in good working order at the time of registration.
- (b) **Serial Number:** We cannot begin the Services without a valid serial number of the Product which is to be covered under the Services.
- (c) **Warranty Activation:** The Services become active from the date of Our invoice to You.
- (d) **Expiry Date:** For the avoidance of doubt, the expiry date of the Services, as set out in the table in clause 8 below, is determined by the Invoice date.
- (e) **Proof of Purchase:** Proof of purchase may be required to issue replacement Product.

## 8. DURATION OF SERVICES

Warranty Period (years)	Duration of Services	Maximum claims per year
1	The 1-year swap out warranty provides support and product warranty repair cover for a period 365 days from the date the Product was purchased new from Midwich.	3
2	The 2-year swap out warranty provides support and product warranty repair cover for a period 730 days from the date the Product was purchased new from Midwich.	3
3	The 3-year swap out warranty provides support and product warranty repair cover for a period 1095 days from the date the Product was purchased new from Midwich.	3
5	The 5-year swap out warranty provides support and product warranty repair cover for a period 1825 days from the date the Product was purchased new from Midwich.	3

## 9. DELIVERIES

The following sets out Our entire liability in regard to delayed or failed deliveries. Under no circumstances shall We be liable to You for any loss, cost, damage or expense caused to You whether arising directly or indirectly by reason of Our failure to comply with any delivery time stated.

(a) Delivery Dates & Times

- i. Any dates and times for delivery given to You by Us or our agents, shall be an estimate only and **are not guaranteed**.
- ii. Delivery shall not be of the essence of the contract, and We shall not be liable for any loss, cost, damage or expense caused to You whether arising directly or indirectly by reason of Our failure to comply with any delivery time stated.



## (b) Unable to Deliver

- i. Where We or Our representatives are delayed or are unable to deliver replacement Product due to inadequate or incorrect delivery instructions, or due to any other act or omission by You, then We may charge You for all costs incurred as a result by Us (including but not limited to storage, re-delivery and Insurance of the Goods).
- ii. Where We or Our representatives are delayed or fail to deliver Product except in the circumstances detailed in 9(b)i and/or under clause 17 (Force Majeure), Our liability shall (at Our option) be limited to:
  - redelivery of the Goods at no additional charge to You; or
  - replacing those Goods not delivered; or
  - issuing a credit note equal to the value (net of VAT) of the price of the Goods not delivered.

## 10. LIMITATIONS OF LIABILITY

Our total aggregate liability to You in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution, by way of indemnity or otherwise, arising in connection with the performance or contemplated performance of the Services shall be limited to a maximum of five-thousand (£5,000) GBP (or the equivalent amount at the prevailing exchange rate if the Services are purchased in another currency e.g. USD) over the Services lifetime, provided that this limit shall not apply to the value of the support and product warranty repair cover provided under clause 8

Under no circumstances shall We be liable to You for: (i) loss of income; (ii) loss of profit; (iii) loss of revenue; (iv) loss of anticipated earnings; (v) loss of anticipated savings; (vi) loss of business; (vii) or loss of goodwill; (viii) loss of bargain; (ix) liability that You have to third parties; or (x) any indirect, consequential or special losses (whether of the type mentioned in clause (i) to (ix) or otherwise).

If You think a failure by Us to provide the Services may cause You losses of the kind mentioned in the preceding paragraph, and it is important to You to protect against them, You should take out appropriate insurance. The terms of the agreement between You and Us are fully set out in this document. There are no other terms, conditions or warranties which apply to these Terms or which are implied into them (except any terms implied by statute which cannot be excluded). The Services to be provided are as described in this document and You should not rely on any representation made to You which suggests otherwise.

### **Exclusions of Liability**

Notwithstanding the above, nothing in these Terms shall limit or exclude Our liability for:

- (a) **death or personal injury caused by Our negligence, or the negligence of Our employees, agents or subcontractors (as applicable); and**
- (b) **fraud or fraudulent misrepresentation or wilful default; and**
- (c) **any matter in respect of which it would be unlawful for Us to exclude or restrict liability.**

## 11. CANCELLING OR POSTPONING APPOINTMENTS

- (a) **Minimum Notice Period:** You may cancel or postpone a Services appointment without incurring additional charges provided that You do so at least eight (8) working hours (meaning any hours in the working day as defined above) or more before the appointment. Otherwise, a cancellation fee of fifty-percent (50%) of the Services to be provided at the appointment (calculated at Midwich's standard rates as at the date of cancellation) will be payable before another appointment can be made.
- (b) **Your Liability to Pay Additional Fees:** In addition to the above clause, You will be liable to pay Us any other costs we have incurred, for example, if we have arranged for an Engineer to attend site You will still be liable to us for their costs even if You cancel within the Minimum Notice Period. These costs will be charged at the prevailing rate on the date the Services are cancelled by You.

## 12. CANCELLATION OF SERVICES

- (a) **Your Loss of Cancellation Rights:** Save as otherwise expressly provided in this Agreement, once We start performing the Services You cannot cancel or get a refund for them.
- (b) **Our Right to Cancel:** We may automatically cancel the Services if You submit a claim You know to be false, or which is fraudulent or a misrepresentation. No refund will be given.

## 13. TRANSFERRING THE SERVICES

- (a) **To other equipment:** You cannot transfer the Services to any other equipment except where the unexpired Services term for a Product is transferred under these Terms to a replacement Product provided as part of the Services.
- (b) **To a third party:** You cannot transfer the benefit of the Services to a third party without Our written consent which shall be in our absolute discretion.

## 14. CALL RECORDING

Calls to the PLUS helpdesk may be recorded for training, quality improvement and security purposes to the extent permitted by the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 and other relevant legislation applicable in the relevant Territory.



## 15. ANTI FACILITATION OF TAX EVASION

You shall during the term of this agreement:

- (a) not engage in any activity, practice or conduct which would constitute either:
  - (i) a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or
  - (ii) a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017;
- (b) comply with Our Ethics, Anti-bribery and Anti-corruption Policies ;
- (c) establish, maintain and enforce Your own policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person and to ensure compliance with Clause 15(a); and
- (d) notify Us in writing if You become aware of any breach of Clause 15(a) or have reason to believe that You have received a request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017, in connection with the Services.

## 16. TERMINATION

We reserve the right to terminate the Services immediately by written notice to You if You fail to comply with the provisions set out in the following clause(s): 4(a) (i) to (viii) and/or (x) to (xii)), 5, 6, 7(e), 12(b), 15, 18, and 20.

## 17. FORCE MAJEURE

We shall not be under any liability for any failure to perform any of our obligations under these Terms due to events over which we have no control ("**Force Majeure**") including but not limited to the following non-exhaustive list of events such as: Act of God, explosion, flood, tempest, fire or accident; war or threat of war, terrorist atrocities, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes; difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery; non-performance by suppliers or service providers undergoing an insolvency event; unforeseeable shortages in the availability of personnel caused by epidemic or pandemic; economic recession.

## 18. DATA PROTECTION

Both parties will comply with all applicable requirements of applicable data protection laws. This clause is in addition to, and does not relieve, remove or replace, a party's obligations or rights under applicable data protection legislation.

## 19. VARIATION

Save as otherwise expressly provided in this Agreement, no amendment or variation of these Terms & Conditions shall be effective unless it is in writing and signed by the duly Authorised Representatives of the Parties.

## 20. CONFIDENTIALITY

The Parties acknowledge that the existence of these terms and any oral or written information exchanged between the Parties in connection with the preparation and performance these Terms and the Services are regarded as confidential information. Each Party shall maintain confidentiality of all such confidential information, and without obtaining the written consent of the other Party, it shall not disclose any relevant confidential information to any third parties, except for the information that: (a) is or will be in the public domain (other than through the receiving Party's unauthorized disclosure); (b) is under the obligation to be disclosed pursuant to the applicable laws or regulations, rules of any stock exchange, or orders of the court or other government authorities; or (c) is required to be disclosed by any Party to its shareholders, investors, legal counsels or financial advisors regarding the transaction contemplated hereunder, provided that such shareholders, investors, legal counsels or financial advisors shall be bound by the confidentiality obligations similar to those set forth in this clause. Disclosure of any confidential information by the staff members or agencies hired by any Party shall be deemed disclosure of such confidential information by such Party, which Party shall be held liable for breach of this clause. This clause shall survive the termination of these Terms for any reason.

## 21. GOVERNING LAW

These Terms and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and subject to the exclusive jurisdiction of the English courts.



## APPENDIX 1: THE SERVICES

We currently offer the following Warranty Assurance (the “Services”).

Please refer to **APPENDIX 2: WHAT IS AND ISN'T COVERED BY THE SERVICES** for details of inclusions and exclusions.

PROTECTPLUS-1YEAR	1 year swap out hardware warranty and technical support service
PROTECTPLUS-2YEAR	2 year swap out hardware warranty and technical support service
PROTECTPLUS-3YEAR	3 year swap out hardware warranty and technical support service
PROTECTPLUS-5YEAR	5 year swap out hardware warranty and technical support service

## APPENDIX 2: WHAT IS AND ISN'T COVERED BY THE SERVICES

### Requesting the Services

You may request Us to provide Services by contacting Us via the PLUS helpdesk using the following methods:

Telephone	+44 (0) 1344 959444
Email	helpdesk@midwich.com

The Services to be provided will depend upon the Product You have purchased. Once You have contacted us via the PLUS helpdesk, we will advise You which of the following Services is to be provided:

### Working Day

Please note: “Working day” means the normal working hours, excluding any national bank or public holidays in the relevant Territory and any days falling between Christmas and New Year. Next working day applies to dispatch time not arrival time and begins from when a support call and support ticket is received before 12 noon.

### Delivery Times

Any time for delivery given to You by Us or Our agents, shall be an estimate only and **are not guaranteed**. Time shall not be of the essence of the contract, and We shall not be liable for any loss, cost, damage or expense caused to You whether arising directly or indirectly by reason of Our failure to comply with any delivery time stated. We endeavour to resolve any technical support ticket in a timely and reasonable manor.

### Repairs

Repairs will ensure that Your Product or its replacement provides satisfactory performance consistent with its age and usage. Replacement Products may be refurbished units. For some Products it may be more expedient to replace parts of a faulty Product such as power supply or card rather than an entire unit. Our PLUS helpdesk will discuss options based on the specific case ticket raised. The unexpired term of the Services will be transferred to the replacement Product.





## Service Inclusions and Exclusions

Included	Excluded
<p><b><u>Replacement</u></b> If approved, we will arrange for a replacement Product to be dispatched to the address given by You as the location of the Product ("Specified Address") and for the faulty Product to be collected. We will use reasonable endeavours to ensure a replacement product is dispatched next working day, however this is not guaranteed and is subject to local conditions and courier availability. Replacement Products will be equivalent to the Product being replaced and may vary from the specific model and brand covered. Customized Products such as card modular hardware or bespoke hardware configurations are not available next day.</p> <p><b><u>Collect, Repair, Return</u></b> We will arrange to collect the faulty Product from Your Specified Address within seven (7) working days.</p> <p><b><u>On-site</u></b> Onsite engineering services are excluded from Protect+ contracts however we offer a separate service called Onsite+ which can be ordered separately. If You require onsite technical support or assistance, we will arrange, for an additional fee, outside of this agreement, for an engineer to visit Your Specified Address on a time and materials basis. A purchase order for this service must be received and invoiced in advance. Details, availability and pricing are available upon request</p>	<p><b><u>The following are a list of explicitly excluded tasks or scenarios from any Protect+ contract</u></b></p> <ul style="list-style-type: none"> <li>• Routine maintenance and cleaning or parts replacement due to wear and tear;</li> <li>• Replacing of accessories or consumables;</li> <li>• Programming, graphics and commissioning services;</li> <li>• Software licenses required for the hardware to provide certain functionality not available out of the box;</li> <li>• Commissioning of a replacement product;</li> <li>• Setting up the Product on site or Onsite Product support. A separate Onsite+ service is required for access to onsite service levels;</li> <li>• Calibration of other products which may be connected to or used with the Product or with the replacement Product;</li> <li>• Damage or defects caused by use, operation or treatment of the product inconsistent with normal use;</li> <li>• Damage or changes to the Product arising from misuse, including but not limited to physical, cosmetic or surface damage, failure to install or use the Products for its designated purpose or in accordance with the manufacturers / our instructions; failure to maintain the Product properly and in accordance with the manufacturer's instructions; modification to the Product;</li> <li>• The use of options, parts or consumables which are not sourced from Midwich or its subsidiaries;</li> <li>• misuse, including any use outside the Product's specification, excessive or inappropriate use, or use in an adverse or abnormal environment;</li> <li>• Virus infections or use of software/s not provided with the Product or incorrectly installed software/s;</li> <li>• Repair or attempted repair by unauthorized and nonaccredited persons;</li> <li>• Neglect;</li> <li>• Mishap, fire, liquids, chemicals, other substances, flooding, vibrations, excessive heat, improper ventilation, power surges, excess or incorrect supply or input voltage, radiation, electrostatic discharges including lightning, other external forces and impacts.</li> </ul>