

LIBMTEC LIMITED
TERMS AND CONDITIONS for the Support of Hardware and Software

1. Interpretation

- 1.1. In these terms, the following words and phrases shall have the following meanings:
- 1.1.1. **Contract:** these terms, Client's order and the Supplier's Order Acknowledgement.
 - 1.1.2. **Client:** the person, firm or company to which the Services are supplied.
 - 1.1.3. **Changes:** the installation, re-configuration or modification of Equipment.
 - 1.1.4. **Equipment:** the Hardware and/or the Software.
 - 1.1.5. **Hardware:** the hardware agreed to be supported as listed in the Order Acknowledgement.
 - 1.1.6. **Initial Term:** Unless otherwise stated on the Order Acknowledgement one year from the Start Date.
 - 1.1.7. **Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
 - 1.1.8. **Request:** a request for Services.
 - 1.1.9. **Response Time:** the time between the Request and the first contact from "Company's word"
 - 1.1.10. **Services:** the support services to be supplied by the Supplier listed in the Order Acknowledgement and defined in the Service Level Specification.
 - 1.1.11. **Site:** the location of the Equipment as set out in the Order Acknowledgement
 - 1.1.12. **Software:** any operating system or other software to be supported as listed in the Order Acknowledgement.
 - 1.1.13. **Support Charge:** the charge for the Services as set out in the Order Acknowledgement.
 - 1.1.14. **Support Hours:** the hours during which the Services will be provided as set out in the Order Acknowledgement
 - 1.1.15. **Start Date:** the date for the start of the Services as set out in the Order Acknowledgement.
 - 1.1.16. **The Supplier:** Limbtec Limited.

- 1.2. The headings do not affect the interpretation of the Contract.
1.3. Any reference to a party's employees includes its agents and sub-contractors.

2. Application of terms

- 2.1. These terms and conditions shall:
- 2.1.1. apply to and be incorporated in the Contract;
 - 2.1.2. apply to all dealings relating to support services between the Supplier and the Client; and
 - 2.1.3. prevail over any inconsistent terms or conditions contained in or referred to in the Client's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2. No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.
- 2.3. If the Client wishes to vary any part of the Contract, the request shall be sent in writing to the Supplier. The Supplier shall respond to the Client within 7 days as to whether it is prepared to agree to the change and, if so, details of the cost of the change, any effect on any other part of the Contract including any change in timescales. The Client may accept such proposal within such time as the Supplier may specify or, if none, within 30 days, failing which it shall be deemed rejected. Pending acceptance or rejection the Supplier may continue to perform the Contract without reference to the request.

3. Supply of Services

- 3.1. The Supplier will supply the Services to the Client in accordance with the specifications set out in the Service Level Specification.
- 3.2. Where the Services include a Response Time then:
- 3.2.1. The Supplier will use its reasonable endeavours to respond to a valid Request within the Response Time detailed in the Service Level Specification.
 - 3.2.2. The initial response to the Request will be by an engineer who will investigate the problem by telephone or remotely.
 - 3.2.3. Requests which cannot be resolved by telephone or remote control may require further investigative work. The Request may be escalated and an engineer may visit the relevant Site. Onsite visits will be only be provided within the Support Hours.
 - 3.2.4. The Supplier may repair Equipment away from the Sites when the Supplier considers it necessary to do so.
 - 3.2.5. Client agrees that the Supplier may inspect the Equipment during the Support Hours at the Site. If repair is not included in the Services then any work required to bring any Equipment into acceptable working order will be quoted to the Client. If the Client refuses to have the work carried out the Supplier reserves the right to terminate this Contract or exclude the affected Equipment from the scope of the Services.
- 3.3. Loan equipment may be provided at the Supplier's discretion which remains the Supplier's property. The Client is responsible for the loaned equipment and will pay the Supplier in respect of any loss or damage to the loan equipment while in the possession of the Client.

4. Contractual terms

- 4.1. Any quotation is valid for a period of 30 days only, and the Supplier may withdraw it at any time by notice to the Client.

- 4.2. Each order or acceptance of a quotation for services by the Client shall be deemed to be an offer by the Client subject to these conditions. The Client shall ensure that its order is complete and accurate.
- 4.3. A binding contract shall not come into existence between the Supplier and the Client unless and until the Supplier issues an Order Acknowledgement to the Client, or, if earlier, when the Supplier begins to provide the Services to the Client.
- 4.4. No Contract may be cancelled by the Client, except with the agreement in writing of the Supplier and provided that the Client indemnifies the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of the cancellation.
- 4.5. The Supplier's employees are not authorised to make any contractually binding representations concerning the Services. In entering into the Contract, the Client acknowledges that it does not rely on, and waives any claim for breach of, any such representations which have not been confirmed in writing by an authorised officer of the Supplier.

5. Client's obligations

- 5.1. The Client will:
- 5.1.1. will provide the Supplier with reasonable direct and remote access to the Equipment, and shall provide such reasonable assistance as the Supplier may request, including, but not limited to, providing sample output and other diagnostic information.
 - 5.1.2. ensure that all data held on their systems is adequately backed up in a manner acceptable to the Supplier and that copies are made available to the Supplier when required.
 - 5.1.3. put in place security measures to protect the Equipment from viruses, harmful code, malicious damage or unauthorised physical access.
 - 5.1.4. ensure that only personnel jointly designated by the Client and the Supplier modify, configure, maintain or repair the Equipment.

6. Exclusions from Services.

- 6.1. The Supplier shall be under no obligation to provide Services in respect of:
- 6.1.1. problems resulting from any modifications or customisation of the Hardware or Software carried out by the Client other than in the normal operation of the same;
 - 6.1.2. any software other than the Software or any hardware other than the Hardware;
 - 6.1.3. incorrect or unauthorised use of the Software or Hardware or operator error where these are defined as use or operation not in accordance with the relevant manufacturers documentation;
 - 6.1.4. the Client's failure to install and use within a reasonable period any new releases or patches advised by the manufacturer of the same or the Supplier;
 - 6.1.5. Equipment which the Supplier reasonably considers to be end of life or beyond reasonable repair or for which spare parts, drivers or updates are not readily available or require essential maintenance not included in the Services;
 - 6.1.6. corrupted data held in data files or databases forming part of any bespoke application software. The Services in this case will be limited to restoring data from a backup held by the Client and taking advice from the software manufacturer; and
 - 6.1.7. consumables such as batteries, toner and ink or any other item classed as a consumable by an Equipment manufacturer.
- 6.2. The Supplier shall upon request by the Client provide the Services notwithstanding that would be excluded by condition 6.1 above and the time spent will be chargeable at the Supplier's then current rates.
- 6.3. The Services do not include:
- 6.3.1. the cost of any third party software upgrades or subscriptions which the Supplier advises are required;
 - 6.3.2. development of bespoke software applications; and
 - 6.3.3. Changes to or the moving of Equipment.
- but the Supplier will upon request by the Client provide such services and this will be chargeable at the Supplier's then current rates.

7. Payment

- 7.1. The Client shall pay the Support Charge periodically (being non-refundable) in advance in the manner as specified in the Order Acknowledgement. All prices are exclusive of VAT. No support shall be provided until payment has been received by the Supplier. The Supplier shall be entitled at any time, and from time to time, to increase the Support Charge to accord with any change in the Supplier's standard scale of charges by giving to the Client not less than 90 days' prior written notice.
- 7.2. If the Supplier either provides any services not included within the Services or provides the Services outside the Support Hours at the request of the Client then the Supplier shall charge for the same at its then current price and the Client shall pay any invoice raised in respect of the same within 30 days.
- 7.3. Time for payment of the Supplier's invoices shall be of the essence of the Contract.
- 7.4. If the Client fails to make payment in full on the due date, the whole of the balance of the Support Charge then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to the Supplier, the Supplier may:
- 7.4.1. appropriate any payment made by the Client to any outstanding sum;
 - 7.4.2. charge interest on the amount outstanding from the due date to the date of receipt by the Supplier (whether or not after judgment), at the annual rate of 5% above the then current base lending rate of Lloyds Bank plc, accruing daily and compounded quarterly; and
 - 7.4.3. suspend all further delivery of equipment, provision of services (in each case whether ordered under these Terms and Conditions or not) or service under warranty until payment has been made in full.

8. Term

- 8.1. The Services shall commence on the Start Date and shall remain in force from year to year thereafter, unless and until terminated by either party giving 1 months notice expiring on any anniversary of this Contract on or after the expiry of the Initial Term or otherwise in accordance with any other clause of this Contract.

- 9. Warranties**
- 9.1. The Supplier warrants to the Client that all services supplied under this Contract will be carried out with reasonable care and skill by personnel whose qualifications and experience will be appropriate for the tasks to which they are allocated.
- 10. Remedies**
- 10.1. If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client (other than by reason of a Force Majeure Event), the Client shall be liable to pay to the Supplier all reasonable costs, charges or direct losses sustained by it as a result, subject to the Supplier notifying the Client in writing of any such claim it might have against the Client in this respect.
- 11. Limitation of liability**
- 11.1. The following provisions set out the entire liability of the Supplier (including any liability for the acts or omissions of its employees) to the Client in respect of any breach of the Contract and any representation, statement or tortious act or omission (including negligence) arising out of or in connection with the Contract.
- 11.2. All warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.
- 11.3. Nothing in these conditions excludes or limits the liability of the Supplier for death or personal injury caused by the Supplier's negligence or fraud or fraudulent misrepresentation.
- 11.4. Subject to condition 11.3:
- 11.4.1. the Supplier shall not be liable for any loss of profits, loss of business, depletion of goodwill or similar losses or for any special, indirect or consequential loss, costs, damages, charges or expenses howsoever arising; and
- 11.4.2. the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to £100,000.
- 12. Intellectual Property Rights**
- 12.1. If the Supplier modifies the Hardware or Software or incorporates data or other information at the request of the Client, the Client shall indemnify and keep indemnified the Supplier against all losses, damages, costs, claims and expenses incurred by the Supplier in connection with any claim for infringement of any third party Intellectual Property Rights which results from that request.
- 12.2. The Supplier hereby grants to the Client an irrevocable, royalty free and assignable licence to use all existing and future Intellectual Property Rights in any software or documentation written specifically for the Client and included in the Services.
- 12.3. The Client's use of the Software shall be subject to the rights and restrictions imposed by the owner of the Intellectual Property Rights in the Software and user manuals and the Client shall comply with all licence agreements, terms of use and registration requirements.
- 13. Confidentiality**
- 13.1. Each party shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed by one party to the other. Each party shall restrict disclosure of such confidential material to such of its employees as need to know the same for the purpose of discharging its obligations under the Contract and shall ensure that such employees are subject to corresponding obligations of confidentiality.
- 13.2. All materials, drawings, specifications and data supplied by the Supplier to the Client shall at all times be and remain the exclusive property of the Supplier, but shall be held by the Client in safe custody at its own risk 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.
- 13.3. This condition 13 shall survive termination of the Contract, however caused.
- 14. Non-Solicitation**
- 14.1. Neither party shall, during the continuance of the Contract, or within 6 months of its termination, whether on behalf of itself or a third party, solicit or seek to entice away any employee of the other. In the event of breach of this clause the party in default shall pay the other a sum equal to six months gross pay of the employee concerned being a pre-estimate of the cost of recruitment and training a replacement.
- 15. Termination for Cause**
- 15.1. Either party may terminate this agreement forthwith on giving notice in writing to the other if one party ceases to carry on business or commits any serious breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed, within 7 days after the receipt of the request in writing from the other to do so, to remedy the breach.
- 15.2. The Supplier may terminate this Contract if the Client fails to pay any sum due under the terms of this Contract and such sum remains unpaid for 14 days after written notice from the Supplier that such sum has not been paid.
- 15.3. Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination.
- 16. Dispute Resolution Procedure**
- 16.1. If any dispute arises in connection with this agreement, directors or other senior representatives of the parties with authority to settle the dispute will, within 7 days of a written request from one party to the other, meet promptly in good faith to resolve the dispute.
- 16.2. If the dispute is not resolved in accordance with condition 16.1, the dispute shall be referred to mediation and the mediator shall be appointed by the President of the Devon & Exeter Law Society.
- 16.3. If no mediation takes place within 28 days of the request under condition 16.1 then the matter shall be referred to an expert, to be appointed, in default of agreement, on the request of either party to the President of the British Computer Society. He or she shall act as an independent expert and not as an arbitrator and his or her decision (including as to costs) shall, except in the case of manifest error, be final and binding upon the Supplier and the Client.
- 17. Data Protection Act**
- 17.1. If any Personal Data (as defined by the Data Protection Act 1998) is passed to the Supplier under this Contract then the parties agree that Client is the Data Controller and that the Supplier is the Data Processor.
- 17.2. The Supplier shall:
- 17.2.1. process the Personal Data only in accordance with instructions from Client;
- 17.2.2. process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
- 17.2.3. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing or loss, destruction, damage, alteration or disclosure;
- 17.2.4. take reasonable steps to ensure the reliability and confidentiality of any of the Supplier's personnel who have access to the Personal Data.
- 18. Force Majeure**
- 18.1. The Supplier shall not be liable to the Client for any breach of its obligations under this Contract if such breach is due to an act, event, omission or accident beyond its reasonable control (Force Majeure Event).
- 18.2. If a Force Majeure Event occurs, the Supplier shall inform the Client as soon as possible and take all reasonable steps to mitigate the effects of the Force Majeure event and resume performance of its obligations as soon as possible.
- 19. Waiver**
- 19.1. A waiver of any right under the Contract is only effective if it is in writing and signed by or on behalf of the waiving party, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 20. Entire Agreement**
- 20.1. This Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 20.2. Each party acknowledges that, in entering into this Contract, it has not relied on, and shall have no right or remedy (other than for breach of contract) in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this agreement.
- 21. Assignment**
- 21.1. The Client shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 21.2. The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 22. Third party rights**
- 22.1. The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.
- 23. Notices**
- 23.1. Any notice required to be given pursuant to this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the address of the party as set out in these conditions, or by email to info@imbtec.com or, in each case, such other address as may be notified by one party to the other.
- 23.2. A notice delivered by hand is deemed to have been received when delivered (or, if delivery is not in business hours, 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. An e-mail shall be deemed to have been delivered within 24 hours from the time of being sent, provided that no "non-deliverable" notice is received by the sender.
- 24. Governing law and jurisdiction**
- 24.1. The Contract and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction.