

Standard terms with customers

The Customer wishes to purchase and the Company wishes to sell the Products in accordance with the Order Form and these standard terms.

IT IS AGREED THAT:

1. Definitions and interpretation

In these standard terms, unless the context otherwise requires, the definitions used are as defined in the [IMT Matcher general terms & conditions](#) and these standard terms will be interpreted in accordance with the rules of interpretation in the [IMT Matcher general terms & conditions](#).

2. Supply of Products and Services

- 2.1 The Order constitutes an offer by the Customer to purchase the Products and acceptance of the EULA for the right to use the Equipment and the Software in accordance with the Order Form and these standard terms.
- 2.2 The Order shall only be deemed to be accepted when the Company issues written acceptance of the Order, at which point the Contract shall come into existence.
- 2.3 The Products and the Equipment will conform to the Specification in all material respects.
- 2.4 The Company shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 2.5 The Company shall use its reasonable endeavours to meet any performance dates for the Services specified in the Order Form, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 2.6 The Company warrants to the Customer that the Services will be provided using reasonable care and skill.
- 2.7 The Company will procure that any updates or new releases to the Software are made available to the Customer as such updates or new releases become generally commercially available and the Customer shall install such updates and new releases when they have been provided.
- 2.8 The Company shall provide such training to the Customer as may be specified in the Order.
- 2.9 The Company reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and the Company shall notify the Customer in any such event. The Company shall also be entitled to make changes to the Specification which do not adversely affect the Products and shall give written notice of such changes to the Customer as soon as reasonably practicable.
- 2.10 The risk in the Products and the Equipment shall pass to the Customer on completion of delivery.
- 2.11 Title to the Equipment shall not pass to the Customer at any time.
- 2.12 Title to the Products shall not pass to the Customer until the Company receives payment in full (in cash or cleared funds) for:
 - 2.12.1 the Products; and
 - 2.12.2 any other goods that the Company has supplied to the Customer; in respect of which payment has become due.

3. Customer's obligations

3.1 The Customer shall:

- 3.1.1 ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;

- 3.1.2 co-operate with the Company in all matters relating to the Services;
- 3.1.3 provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Company to provide the Services;
- 3.1.4 provide the Company with such information and materials as the Company may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- 3.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 3.1.6 comply with all applicable laws, including health and safety laws;
- 3.1.7 keep the Company Materials and Equipment at the Customer's premises in safe custody at its own risk, maintain the Company Materials and Equipment in good condition until returned to the Company, and not dispose of or use the Company Materials or the Equipment other than in accordance with the Company's written instructions or authorisation; and
- 3.1.8 comply with any additional obligations as set out in the Specification and/or the Order Form

3.2 If the Company's performance of any of its obligations under the agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

- 3.2.1 without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
- 3.2.2 the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 3.2; and
- 3.2.3 the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

4. Prices and payment

- 4.1 The prices to be paid by the Customer to the Company for the Products, Equipment, Cycles, Licence and the Services are to be the prices as shown in the Order Form, and as amended by the Company from time to time.
- 4.2 The Company shall give the Customer 60 days' notice of any rises in the prices of the Licence, Equipment or Products.
- 4.3 The Customer shall order Cycles from the Company at the prices prevailing from time to time. The Cycles ordered at the Effective Date shall be set out in the Order Form. Upon receipt of any order for Cycles from the Customer, the Company shall provide a corresponding licence file to the Customer, to activate the Use of such Cycles within the Software.
- 4.4 The Company will then invoice the Customer for the amount of Cycles provided at the prevailing price from time to time, with the invoice date being the same as the date the Cycles were provided.
- 4.5 The Customer shall pay to the Company the full amount invoiced to it by the Company within 30 days of the date of invoice.
- 4.6 All amounts due under the Order Form and otherwise pursuant to these standard terms shall be paid by the Customer to the Company in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

5. Intellectual Property Rights

- 5.1 Unless otherwise agreed between the parties, all Intellectual Property Rights in and to the Software and Equipment belong, and shall belong, to the Company and/or its licensors.
- 5.2 The Customer shall, at the expense of the Company and/or its licensors, take all such steps as the Company may reasonably require, to assist the Company and/or its licensors in maintaining the validity and enforceability of the Intellectual Property Rights of the Company and/or its licensors during the Term.
- 5.3 Without prejudice to the right of the Customer or any third party to challenge the validity of any Intellectual Property Rights of the Company, the Customer shall not do or authorise any third party to do any act which would or might invalidate or be inconsistent with any Intellectual Property Rights of the Company or its licensors and shall not omit or authorise any third party to omit to do any act which, by its omission, would have that effect or character.
- 5.4 The Company makes no representation or warranty as to the validity or enforceability of the Intellectual Property Rights in the Products nor as to whether the same infringe on any Intellectual Property Rights of third parties.
- 5.5 The Customer shall not:
 - 5.5.1 copy the Software or Equipment or any part of any of them except to the extent and for the purposes expressly permitted by these standard terms; or
 - 5.5.2 modify, adapt, develop, create any derivative work, reverse engineer, decompile, disassemble or carry out any act otherwise restricted by copyright or other Intellectual Property Rights in the Software or Products.

- 5.6 The Customer is granted no rights under the Contract except as expressly stated and the Company expressly reserves all Intellectual Property Rights and its other rights in and to the Products.

6. Confidentiality, data processing and restricted transfers

- 6.1 Each Party agrees that the Contract incorporates and is subject to:
 - 6.1.1 the Confidentiality obligations in the [IMT Matcher general terms & conditions](#); and
 - 6.1.2 the Data Protection and Restricted Transfers provisions in the [IMT Matcher general terms & conditions](#).

7. Warranties

- 7.1 Each Party represents, warrants and undertakes that:
 - 7.1.1 it has full capacity and authority and all necessary consents to enter into and to perform the obligations under the Contract and to grant the rights and licences referred to in these standard terms and that the Order Form is executed by its duly authorised representative and represents a binding commitment on it; and
 - 7.1.2 it shall comply with all applicable Legislation in the performance of its obligations under the Contract.
- 7.2 The Company warrants to the Customer that the Products and Equipment supplied or licensed by it under the Contract will operate substantially in accordance with, and perform, the material functions and features as set out in the applicable part(s) of the Specification.

8. Limitation of liability

- 8.1 The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
 - 8.1.1 any breach of the Contract howsoever arising; and
 - 8.1.2 any representation, misrepresentation (whether innocent or negligent) statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.

8.2 Except as expressly and specifically provided in these standard terms, all warranties, conditions and other terms implied by statute, common law or otherwise are, to the fullest extent permitted by law, excluded from any Contract.

8.3 Nothing in these standard terms or the Contract excludes the liability of the Company:

- 8.3.1 for death or personal injury caused by the Company's negligence; or
- 8.3.2 for fraud or fraudulent misrepresentation.

8.4 Subject to clause 8.3, the Company shall not in any circumstances be liable, whether in tort (including for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:

- 8.4.1 loss of profits; or
- 8.4.2 loss of business; or
- 8.4.3 depletion of goodwill or similar losses; or
- 8.4.4 loss of anticipated savings; or
- 8.4.5 loss of goods; or
- 8.4.6 loss of use; or
- 8.4.7 loss or corruption of data or information; or
- 8.4.8 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

8.5 The Company's total aggregate liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall in all circumstances be limited to the amount actually paid by the Customer to the Company under the Contract in the 12 months preceding the date on which the claim arose.

8.6 The Customer shall fully indemnify the Company for any and all damages, liabilities, costs and expenses (including legal fees) which the Company incurs as a result of any claim based on any breach of any representation or warranty, covenant or agreement committed by the Customer.

8.7 In the event of any breach of the Company's warranty in clause 7.2 (whether by reason of defective materials, production faults or otherwise) the Customer's sole remedy and the Company's only obligation and liability to the Customer shall be for the Company to:

- 8.7.1 replace the Product in question; or
- 8.7.2 at the Company's option, repay any price paid for the Product.

9. Term and termination

9.1 Unless terminated earlier in accordance with clause 9.2 or clause 9.3, these standard terms shall continue for the Term.

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

- 9.2.1 the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or
- 9.2.2 the other party commits a material breach of any term of these standard terms which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so; or
- 9.2.3 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

- 9.2.4 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; or
- 9.2.5 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; or
- 9.2.6 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; or
- 9.2.7 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; or
- 9.2.8 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; or
- 9.2.9 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; or
- 9.2.10 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 9.2.3 to clause 9.2.9 (inclusive); or
- 9.2.11 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

9.3 Without prejudice to any other rights or remedies to which the Company may be entitled, the Company may terminate the agreement without liability to the Company if:

- 9.3.1 the Customer challenges or disputes the validity of any of the Company's Intellectual Property Rights; or
- 9.3.2 the Customer purports to assign any of its rights or obligations under the Contract.

10. Effects of termination

10.1 Upon termination or expiry of the Contract for any reason:

- 10.1.1 the Customer shall (at its sole cost) return (or at the Company's option, destroy):
 - 10.1.1.1 any Equipment which may be in the Customer's possession or under its control;
 - 10.1.1.2 all media on which the Software is held; and
 - 10.1.1.3 all materials, documents or papers whatsoever sent to the Customer and relating to the Company's business (other than correspondence which has passed between the parties) which the Customer may have in its possession or under its control; and
- 10.1.2 the accrued rights of the parties as at termination or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination shall not be affected or prejudiced; and
- 10.1.3 subject to the foregoing provisions of this clause 10.1, all rights and licences of the Customer under the Contract shall terminate.

11. General

11.1 These standard terms incorporate and are subject to the General provisions in the [IMT Matcher general terms & conditions](#).

11.2 The validity, construction and performance of the Contract shall be governed by English law and each Party agrees to submit to the exclusive jurisdiction of the courts of England.