

# Terms and Conditions of Sale and Service

These Terms and Conditions of Sale and Service (“Terms”) govern the sale of Products and Support and the license of Software by Markes International Ltd (“Markes”).

## 1. DEFINITIONS

(a) “Delivery” means the date when Markes places the Product(s) at Customer’s or Customer’s representative’s disposal at the location agreed to by Markes and Customer, or at the location specified in the quotation or order acknowledgement.

(b) “Product(s)” means any hardware sold or Software licensed under these Terms. “Custom Products” means Products manufactured or configured to meet Customer requirements.

(c) “Software” means one or more computer programs in object code format, whether stand-alone or bundled with other Products, and related documentation provided to Customer under these Terms.

(d) “Specifications” means specific technical information about Products which is published by Markes in effect on the date Markes ships the Customer’s order.

(e) “Support” means any standard service such as: hardware maintenance and repair; Software updates and maintenance; or training.

“Custom Support” means Support adapted to meet Customer requirements.

(f) “Confidential Information” means any information including information regarding subsidiaries or affiliates disclosed by the one Party (“Disclosing Party”) to the other Party (Receiving Party”) in connection with evaluating the contract and/or order, whether disclosed orally or by way of observation, or in written, graphic, machine readable or any other tangible medium including without limitation, data, designs, memoranda, models, prototype, hardware, tools, or tooling technology and all analysis, compilations, forecasts, data, studies, notes, translations, memoranda or other documents or materials prepared by the Receiving Party containing or based on, or generated or derived from, in whole or in part, any such disclosed information.

## 2. PRICES

(a) Prices are ex-works unless otherwise specified by Markes in the quotation.

(b) Prices are valid for the period indicated on the quotation.

(c) Prices exclude any sales, value added or similar tax which will be payable by Customer in addition to the purchase price if applicable. If exemption from taxes is claimed, Customer must provide a certificate of exemption.

## 3. ORDERS AND RETURNS

(a) All orders are subject to acceptance by way of an Order Acknowledgement from Markes. From this date the contract shall come into existence, referred to as the Commencement Date.

(b) Custom orders cannot be cancelled or have shipment rescheduled without approval of both the regional/global sales manager and the head of finance department. A restocking/process fee will be calculated and invoiced depending on the level of product customisation and when the cancellation occurs with regards to the development and manufacturing of the bespoke, custom product.

(c) *Standard orders (non-bespoke items) can be cancelled before shipment. Markes will charge a cancellation fee of 25% of the order value, at their discretion.*

(d) Product returns will also be subject to Markes' approval and return/refurbishment charges, typically 25% of the order value. This does not affect Customer's statutory rights.

(e) Markes reserves the right to charge for any additional documentation required which is specific to the Customer's order. Such charges may include, but not limited to, notarising fees, certificate of origin fees and certificate of conformity fees.

(f) A minimum order charge of £75 is applied to all orders with a total value below £100. In certain circumstances this minimum order charge may be waived at Markes discretion.

#### **4. SHIPMENT AND RISK OF LOSS**

(a) Markes will make reasonable efforts to meet Customer's Delivery and shipment requirements. If Markes is unable to meet Customer's Delivery and shipment requirements, alternative arrangements may be agreed. In the absence of such agreement, Customer's sole remedy is to cancel the order.

(b) Title to all Products remains with Markes until the Customer has paid the purchase price in full. The Customer may not pawn unpaid goods or transfer title in unpaid goods by way of security. Ownership therefore rests with Markes regardless of delivery until paid, however once taken possession of, the Product remains under the care of the Customer, and as such the customer should make every reasonable effort to ensure the safekeeping and care of said Product until payment.

(c) On request the customer shall make every effort to assist Markes in obtaining any applicable export documentation.

(d) Terms of shipping are either DAP or EXW (Incoterms 2020), Bridgend, UK, unless otherwise agreed.

#### **5. INSTALLATION AND ACCEPTANCE**

(a) For Products with installation included in the purchase price, acceptance by Customer occurs upon completion of installation by Markes. For Products without installation included in the purchase price, acceptance by Customer occurs upon Delivery.

(b) If Customer schedules or delays installation by Markes more than 30 days after Delivery, Customer acceptance of the Product(s) will occur on the 31st day after Delivery.

#### **6. PAYMENT**

(a) Credit payment terms may be offered subject to Markes credit approval. If accepted, payment is due 30 days from Markes' invoice date.

- (b) Markes may change credit or payment terms at any time should Customer's financial condition or previous payment record so warrant. Overdue invoices will incur interest at UK 'statutory interest' rates for late commercial payments.
- (c) Invoices for contractual Support will be issued in advance of the Support period.
- (d) Markes may discontinue support if Customer fails to pay any sum due, or fails to perform under this or any other Markes agreement if, after 10 days' written notice, the failure has not been cured.
- (e) Payment of debt is subject to any local legislation regarding the recoverability of commercial debts, including but not limited to the EU directive 2011/7/EU, Whilst Markes also reserves the right to charge interest where there is delayed payment in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- (f) Where payment terms are agreed as letter of credit, a draft version should be presented to Markes prior to issuance for confirmation and review.

## 7. WARRANTY

- (a) Each Product purchased will include a warranty that is the warranty for the country of purchase. If the Product is moved to another country the warranty may be invalidated. Customers should contact Markes for further information regarding this before moving the product.
- (b) Product warranty information is available with products, on quotations, or upon request. The warranty period begins on Delivery or the date of installation if installed by Markes. If Customer schedules or delays installation by Markes more than 30 days after Delivery, the warranty period begins on the 31st day after Delivery. Customer may receive a different warranty when the Product is purchased as part of a system or as an ex-demonstration model.
- (c) Markes warrants hardware Products against defects in materials and workmanship. Markes further warrants that hardware Products conform to Specifications.
- (d) Markes warrants that Software will not fail to execute its programming instructions due to defects in materials and workmanship when properly installed and used on the hardware designated by Markes. Markes further warrants that Markes-owned standard Software will substantially conform to Specifications. Markes does not warrant that Software will operate in hardware and software combinations selected by Customer, or meet requirements specified by Customer.
- (e) Markes does not warrant that the operation of Products will be uninterrupted or error-free.
- (f) If Markes receives notice of defects or non-conformance as defined in Sections 7(c) and 7(d) during the warranty period, Markes will, at its option, repair or replace the affected Product(s). Customer will pay expenses for return of such Product(s). Markes will pay expenses for shipment of repaired or replacement Product(s).
- (g) Markes warrants that Markes Support will be provided in a professional and workmanlike manner.
- (h) Some newly manufactured Markes Products may contain, and be supported by, remanufactured parts. These parts are equivalent to new in performance and as such are subject to our standard warranties.
- (i) The above warranties do not apply to defects resulting from: improper or inadequate maintenance, repair or calibration by Customer;

Customer-supplied or third-party-supplied hardware or software, interfacing or supplies; unauthorised modification; improper use or operation outside of the Specifications for the Product; abuse, negligence, accident, loss or damage in transit; or improper site preparation.

(j) THE ABOVE WARRANTIES ARE EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. MARKES SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 8. SUPPORT

(a) Customer may order Support from Markes' current Support offering as available. Orders for Support are also subject to the Product specific Support terms and the terms indicated on the quotation.

(b) To be eligible for Support, Products must be at current specified revision levels and, in Markes' reasonable opinion, in good operating and serviceable condition.

(c) Product relocation may result in additional Support charges and modified service response times. Support of Products moved to another location is subject to availability.

(d) Customer is responsible for removing any products not eligible for Support to enable Markes to perform Support services. Additional charges, computed at Markes' standard rates, may be incurred for any extra work caused by such products.

(e) Support does not cover any damage, defects or failures caused by: (i) use of non-Markes media, supplies and other products; (ii) site conditions that do not conform to Markes' site specifications; or (iii) neglect, improper use, fire or water damage, electrical disturbances, transportation, work, or modification by non-Markes employees or subcontractors, or other causes beyond Markes' control.

(f) Customer is responsible for maintaining a procedure external to the Products to reconstruct lost or altered Customer files, data or programs. Customer will have a representative present when Markes provides Support services at Customer's site. Customer will notify Markes if Products are being used in an environment that poses a potential health hazard to Markes employees or subcontractors. Markes may require Customer to maintain such Products under Markes supervision. In addition, if Products are to be returned to Markes for repair or service, Customer must warrant that there are no potential health hazards to Markes employees or subcontractors due to residual sample, calibrant or similar in the Product.

(g) If the contract is cancelled within the first 60 days a refund shall be provided; should any service work be carried out before cancellation then the customer will be billed at the current rate, or such sum shall be retained from the refund of contract payment.

## 9. LICENSES

(a) Markes grants Customer a non-transferable, worldwide, non-exclusive license to use the Software for internal purposes in accordance with the documentation provided with the Software. Such documentation may include license terms provided by Markes' third-party suppliers, which will apply to the use of the Software and take precedence over these license terms. In the absence of documentation specifying the applicable license, Customer is granted the right to use one copy of the Software on one machine or instrument, or as otherwise indicated on the quotation.

(b) The Software is owned and copyrighted by Markes or its third-party suppliers. Markes and its third-party suppliers retain all right, title and interest in the Software. Markes and/or third-party suppliers may protect their rights in the Software in the event of any violation of these license terms.

(c) Customer will not disassemble or otherwise modify the Software without written authorisation from Markes, except as permitted by law.

(d) Customer may not copy the Software onto any public or distributed network.

(e) Markes may terminate Customer's license upon notice for breach of these license terms. Customer must destroy all copies of the Software immediately upon notice of termination.

## **10. LIMITATION OF LIABILITY AND REMEDIES**

(a) In no event will Markes, its subcontractors or suppliers be liable for special, incidental, indirect or consequential damages (including downtime costs, loss of data, restoration costs, lost profits, or cost of cover) regardless of whether such claims are based on contract, tort, warranty or any other legal theory, even if advised of the possibility of such damages. This exclusion is independent of any remedy set forth in these Terms.

(b) The remedies in these Terms are Customer's sole and exclusive remedies.

## **11. GENERAL**

(a) Markes will not be liable for performance delays or for non-performance, due to causes beyond its reasonable control.

(b) If either party becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned or suffers or commits any similar action, the other party may cancel any unfulfilled obligations.

(c) Customer who exports, re-exports or imports Products, technology or technical data purchased hereunder, assumes responsibility for complying with applicable laws and regulations, and for obtaining required export and import authorisations. Markes may suspend performance if Customer is in violation of applicable laws or regulations.

(d) Disputes arising in connection with these Terms will be governed by the laws of England and Wales and the English Courts will have jurisdiction, except that Markes may, at its own option, bring suit for collection in the country where the Customer is located.

(e) Provisions herein which by their nature extend beyond the termination of any sale or license of Products or Support will remain in effect until fulfilled.

(f) Neither party's failure to exercise any of its rights under these Terms will be deemed a waiver or forfeiture of those rights.

(g) To the extent that any provision of these Terms is determined to be illegal or unenforceable, the remainder of these Terms will remain in full force and effect.

(h) Products are not specifically designed, manufactured or intended for sale as parts, components or assemblies for the planning, construction, maintenance or direct operation of a nuclear facility. Customer is solely liable if Products or Support purchased by Customer are used for these applications. Customer will indemnify and hold Markes harmless from all loss, damage, expense or liability in connection with such use.

(i) On request the Customer must make its best endeavours to support Markes in identifying the end user of the product(s) should Markes be required to provide evidence to government agencies regarding embargoed individuals or organisations on official Sanctions lists.

(j) These Terms constitute the entire agreement between Markes and Customer, and supersede any previous communications, representations or agreements between the parties, whether oral or written, regarding transactions hereunder. Customer's additional or different terms and conditions will not apply. Customer's purchase or license of Products and Support will constitute Customer's acceptance of these Terms, which may not be changed except by an amendment signed by an authorised representative of each party.

(k) Markes reserves the right to amend these Terms without prior notice.

(l) Any public communication relating to the goods and or services provided by Markes must be agreed in writing beforehand and must remain consistent with company branding.

(m) The customer must not use the Markes name or branding in any marketing or promotional material without prior written consent. As mentioned in **11(l)** the communication if agreed, must remain consistent with company branding.

## **12. TERMS APPLICABLE TO WEB SHOP**

(a) All descriptions of the products and services contained on the Markes website or otherwise communicated to any purchaser of such products or services (the "Customer") are approximate only and shall not form any part of the contract between Markes and the Customer.

Markes shall not be liable to the Customer for any errors or omissions on the Markes website, the Markes catalogue or other product advertisement. The advertising of products and services on the Markes website is not an offer capable of acceptance; it merely constitutes an invitation by Markes for the Customer to make an offer to purchase products and services. Markes' acceptance of the Customer's order will take place when Markes confirms pricing and delivery dates to the Customer in writing, at which point a contract will come into existence between Markes and the Customer.

(b) The prices of the products and services are as set out on the Markes website. Markes reserves the right to change prices without prior notice at any time.

(c) All prices exclude VAT, which Markes will add at the rate applicable at the date of order acceptance.

(d) Markes reserves the right to decline to trade with any company or person. Markes may decline to accept any order, whether or not payment has been received, by giving notice of non-acceptance to the Customer by telephone, email or facsimile within a reasonable period of receipt of the order by Markes.

(e) Markes will aim to deliver products in accordance with the times and dates for delivery quoted on the Markes website or by Markes' employees (the 'Quoted Delivery Times'), but Quoted Delivery Times are approximate only and Markes shall not be liable for the consequences of any delay in delivery.

### 13. CONFIDENTIALITY

13.1 Each party undertakes that it shall not at any time during the period from the Customer's order placement, through Delivery, until the end of any and all Support services governed by these Terms ("Contract Period"), and for a period of two years thereafter, disclose to any person any Confidential Information of the other party, and except as permitted by clause 13.2.

13.2 Each party may disclose the other party's Confidential Information:

(a) to its employees, officers, representatives, contractors, subcontractors or professional advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in relation to the particular order placed with Markes (as evidenced by Customer's purchase order). Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or professional advisers to whom it discloses the other party's Confidential Information comply with this clause 12; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3 Neither party shall use the other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the confirmed order or as set out in these Terms.

### 14. FORCE MAJEURE

Neither party shall be liable for any failure or delay in the performance of these obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. These circumstances will also not constitute a breach of contract. In these events the time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 3 months, the party not affected may terminate the Contract by giving 10 Business Days' written notice to the affected party.

### 15. COMPLIANCE

Markes expects all customers to adhere to the relevant and applicable supply chain and import/export legislation and laws of the Country they are operating in.

As a multinational organisation, we are committed to ensuring that our associated businesses are aligned with our stance on ethics and human rights, requiring customers to comply with the necessary ruling regarding modern slavery, anti money laundering and bribery.