



## TERMS AND CONDITIONS OF SALE

**1. GOVERNING PROVISION; ACCEPTANCE OF ORDER.** These terms and conditions of sale (these "Terms") govern the sale of products (the "Products") or Services rendered by Markem-Imaje ("Seller") to the person or entity purchasing the Products ("Buyer"). The quotation, order acknowledgment and/or invoice of Seller attached to these Terms, together with these Terms, the Warranty and any specifications for the Products accepted in writing by Seller in writing comprise the entire agreement between the parties with respect to the supply of the Products, and any contract arising therefrom shall be governed solely by the provisions of such documents and these Terms (the "Agreement") and any additional or different terms already or hereafter proposed by Buyer, whether in a purchase order or other communication or otherwise, are hereby rejected and shall not apply unless signed and approved by Seller. Failure of Seller to object to provisions contained in any purchase order or other communication from Buyer shall not be construed as a waiver of these Terms nor an acceptance of any such provisions. Buyer will be deemed to have assented to these Terms by acceptance of any of the products. No order shall be binding on Seller until it is accepted by Seller. Acceptance is, in all cases, conditional upon Buyer's agreement to the terms and conditions set forth in these Terms. After Seller's acceptance, Buyer may not change its order without the written consent of Seller.

**2. CANCELLATION.** No order accepted by Seller may be cancelled or altered by Buyer unless agreed to in writing by Seller. Any reduction in quantities ordered shall constitute a partial cancellation subject to this clause. In the event Seller agrees to cancellation, Seller will stop all work as promptly as reasonably possible, but Buyer will be responsible for costs and expenses assumed by Seller prior to receipt of notice of cancellation which costs and expenses cannot, with reasonable effort, be avoided or mitigated, plus a cancellation fee equal to 10% of the price of the cancelled Products and/or Services. Cancellations as to any completed items shall not be effective and the order will be shipped and billed to Buyer at the order prices.

**3. PAYMENT; SECURITY.** Payment shall be made by Buyer within thirty (30) days of invoice date. If all the Products or Services are not delivered at one time, Buyer shall pay the unit price applicable to the Products or Services delivered. Each shipment shall be considered a separate and independent transaction. All shipments, deliveries and performance of work shall be subject to credit approval by Seller. If Seller is insecure as to the financial condition of Buyer or as to payment for the Products or Services, Seller may require full or partial payment in advance. Any payment not received when due from Buyer will bear interest at the rate of 1.5% per month (18% per year), or if less, the highest lawful interest rate, from the date due. All payments shall be made in the currency of the Seller. For orders shipped outside the country of the Seller, payment may be made by bank draft (from a bank acceptable to Seller) or by confirmed, irrevocable letter of credit (naming Seller as beneficiary) with order or other terms as arranged by Seller. Any charges related to such letter of credit or other payment arrangement shall be paid by Buyer. Payment of the full purchase price for the Products and Services shall not be subject to any set-off, deduction or counterclaim of any kind. Seller may apply any payment against any indebtedness owed by Buyer without prejudice to the remainder of any such indebtedness, regardless of any notation accompanying such payment. Buyer shall pay for all of Seller's costs (including reasonable attorneys' fees) of collection of amounts due for Products and Services, or otherwise, under the Agreement. For the purpose of securing payment of amounts due Seller from Buyer hereunder, Buyer hereby grants to Seller (i) a continuing first security interest in the Products to be shipped hereunder, and all accessions thereto and substitutions therefor, and (ii) a continuing security interest in all of the proceeds from the sale or disposition of the foregoing. If Buyer fails to make payment to Seller of any amounts when due, or if Buyer becomes insolvent or a party to any bankruptcy or receivership proceeding prior to full payment of all amounts payable hereunder, Seller may, notwithstanding any other provisions herein set forth: (a) refuse to make further shipments to Buyer; (b) with or without demand or notice to Buyer, declare the entire amount unpaid immediately due and payable; (c) enter upon the premises where said Products may be found and remove them (Buyer shall make said Products available to Seller at a place reasonably convenient to both parties and shall permit and assist Seller in effecting the retaking and removal of said Products); and (d) sell any or all of said Products as permitted under applicable law, applying the proceeds of the sale to the expenses of retaking, repairing and selling said Products, reasonable attorney's fees and to the satisfaction of all indebtedness then due and unpaid. Any surplus shall be paid to Buyer and any deficiency shall be paid to Seller by Buyer.

**4. PRICE; QUOTATIONS.** Any personal property, sales, use, excise, import, duty, value added, and similar taxes applicable to the goods or services, not measured by the income of Seller, shall be paid by Buyer. Unless otherwise stated herein, prices are determined by Incoterms 2020 and do not include

crating, freight, delivery, insurance, dismantling, loading, or unloading or installation, the charges for which shall be payable by Buyer. Such amounts may be separately shown on invoices. Quoted prices apply for 15 days. Installation service, unless otherwise agreed, is available at standard rates plus transportation and expenses.

**5. DELIVERY; TITLE.** Risk of the Products will be transferred upon delivery to the place indicated by the Seller and title of Products upon full payment. Delivery to a public carrier at the applicable Seller manufacturing facility, consigned as Buyer directs, shall constitute transfer of the shipment's title, ownership, possession, and property to Buyer at point of such delivery. The carrier will thereafter be deemed as acting for Buyer and the shipment will be at Buyer's risk. If no method of shipment is specified by Buyer, Seller will use its discretion in selecting the transportation method.

Any Buyer orders under managed freight will be subject to a surcharge of \$9.00 (or equivalent value in local currency); and in the event of air freight, a surcharge of \$15.00 (or equivalent value in local currency). Estimated shipping schedules are from date of credit approval of order, and receipt of details, information, and samples needed to process and manufacture Buyer's entire order. Shipping or production dates are approximate. Seller may make deliveries in installments.

**6. SAFETY COMPLIANCE.** Buyer shall use, and shall require its employees and agents to use, safety devices, guards, and proper safe operating procedures as set forth in the applicable manuals, instructions, and labels. Buyer shall not remove or modify any safety device, guard, label, or warning. Buyer shall comply with all applicable safety and health laws, standards, regulations, and codes. Buyer acknowledges that certain products may contain or be considered hazardous materials and Buyer shall inform and train its employees accordingly. Seller shall have no liability for, and Buyer shall indemnify and save Seller harmless from, any damages, obligation, loss, and expense related to Buyer's use of the products.

**7. SOFTWARE AND SAAS PRODUCTS.** 7.1. If Seller's Products include any software, Buyer is granted a non-exclusive, non-transferable license to use such software solely to operate the Seller Products on which the software is loaded when such Products are delivered. Buyer shall not copy, modify, display, decompile, disassemble, or otherwise reverse engineer such software, except where local law prohibits Seller from restricting such activities.

7.2. If any additional software or software as service ("SaaS") products (collectively, "Software Solutions") are delivered to Buyer pursuant to a quotation, order acknowledgement, invoice or statement of work, Buyer is hereby granted a non-exclusive, non-transferable, non-sublicensable, limited license to allow Buyer to access and use such Software Solutions in accordance with the Seller's documentation, terms of use, this Agreement, and applicable laws. Buyer acknowledges that Software Solutions may be located on a third-party platform (the "Third-Party Platform") that is provided and hosted by a third party (the "Platform Provider"). Seller is not responsible for the acts or omissions of the Third-Party Platform or the Platform Provider.

7.3. No title to or ownership in any Software Solution is transferred to Buyer. Title to the Software Solutions, and all applicable rights in patents, copyrights, trade secrets and other intellectual property rights in the Software Solutions or related documentation, as well as any copies, modifications or merged portions made of the Software Solutions and/or documentation, are and will at all times remain the sole property of Seller and/or third-party licensors. The Software Solutions are protected by local and international intellectual property laws, by international treaty provisions and by other applicable laws.

7.4. Buyer acknowledges that the Software Solutions are confidential and proprietary to Seller and contains trade secrets. Except as expressly authorized herein, Buyer agrees to hold the Software Solutions within its organization and shall not, without Seller' specific written consent, or as authorized herein, utilize in any manner, or publish, communicate or disclose to third parties any part of the Software Solutions.

**8. RESPONSIBILITIES OF BUYER.** Buyer shall provide Seller with all relevant and accurate information and strictly comply with user guides and instructions provided by Seller. Determination of the suitability of the Products described in any quote or invoice is the sole responsibility of the Buyer and Seller shall have no responsibility in connection therewith. Buyer is responsible for (i) the selection of the Products, their use or results obtained, and (ii) carrying out printing tests in order to check and validate the performances and the quality of the result of marking. Seller shall not be liable (i) in the event the Products are used on supports other than those which were presented to Seller or on supports whose chemical composition and/or the process of implementation may vary, or (ii) in the event insufficiencies of performances and/or of quality of marking can be detected by a suitable control carried out by the Buyer. It is Buyer's sole responsibility to assess the risks in relation to its activity and Buyer is highly advised to take all preventive actions which are deemed necessary to mitigate any damage or loss that could arise from the use of the Products, whether defective or not. Preventive actions include without limitation purchasing back-up equipment's, setting up stocks of Products, performance of testing process



or setting out appropriate actions plan. Products are not designed, manufactured, or tested for use in applications that may involve direct or indirect contact with, or migration to, medical devices, pharmaceuticals, cosmetics, food or substances intended for consumption, and any similar items regulated by the FDA or by laws or requirements of regulatory authorities in other jurisdictions. Buyer is responsible for complying with legal and regulatory requirements and good industry practice related to the proposed use.

**9. LIMITED WARRANTY.** 9.1. Seller warrants that the Equipment delivered hereunder will be free from defects in materials and workmanship in accordance with the warranty set forth in the Seller's 'Warranty Policy' (available on request by Buyer) in effect at the time of the shipment (the "Warranty") for the period set forth in such Policy (the "Warranty Period"), unless otherwise agreed by the parties. The Warranty Period starts at the date of shipment to Buyer. Buyer shall promptly inform Seller, provide Seller with all relevant information and reasonable access to its site, and cooperate with Seller in order for Seller to inspect and remedy the defect. Buyer shall not attempt to repair equipment without Seller's prior written consent. During the Warranty Period, Seller will, at its option, repair, replace or refund the purchase price of the equipment which proves to be defective in materials or workmanship. Warranty covers both parts and labor. Travel and expenses shall be charged to Buyer. These remedies are the Buyer's exclusive remedies for breach of warranty. Any warranty services provided by Seller shall not extend the original limited warranty. For Products designated by Seller to be returned for warranty repair or replacement, Buyer shall obtain a return authorization number and shipping instructions from Seller and return the Products shipping charges prepaid. Shipping charges for the return of Products to Buyer shall be paid by Seller within the area specified by Seller; for all other locations, the warranty excludes all costs of shipping, customs clearance and any other related charges. All replaced Products shall become the property of Seller.

9.2. The Warranty shall not apply to defects which result from: (a) non-compliance with Seller's user guides, specifications or instructions, (b) improper installation, use, storage, care or maintenance by Buyer, (c) tear and wear resulting from normal use of parts, (d) modification, alteration or retiming of equipment's, (f) use of Products not supplied by Seller including without limitation interfaces, software, inks, additives, spare parts, accessories, ribbons, labels and consumables, (g) accident, neglect, misuse or abuse, (h) exposure to conditions outside the range of the environmental, power and operating specifications provided by Seller, (i) custom work performed by Buyer, or (j) force majeure events.

9.3. THE WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES, ARISING FROM OPERATION OF LAW, OR ARISING FROM TRADE USAGE OR COURSE OF DEALING, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, REPRESENTATION AS TO PERFORMANCES, NON-INFRINGEMENT OR LACK OF CONFORMITY. THE REMEDIES PROVIDED HEREIN ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES.

**10. PARTS.** Common fasteners are not available from Seller. Parts are generally available from Seller for standard products. Documentation or other support may be provided at Seller's discretion for all products.

**11. LIMITATION OF LIABILITY.** 11.1. Notwithstanding anything to the contrary in the Agreement, Seller shall not be liable to Buyer or to any other person for any of the following types of loss or damage arising under or in relation to the contract (whether arising by tort (including negligence), breach of contract, breach of warranty, product liability or otherwise and whether or not such loss or damage is foreseeable, foreseen or known: (i) any loss of business, profits, goodwill, revenue, contracts, anticipated savings, any wasted expenditure, production downtime, loss or damage of materials or product, third party claim or any loss or corruption of data (regardless of whether any of these types of loss or damage are direct, indirect, or consequential); or (ii), any general, punitive, special, incidental, contributory, indirect or consequential loss or damage of any kind howsoever arising.

11.2. In no event shall Seller's aggregate liability arising out of or related to the Products, any ancillary Services provided by Seller, or the Agreement, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, exceed the net amount received by Seller for the Products or Services giving rise to such cause of action. The parties acknowledge that the charges were determined based upon the foregoing limitation of liability. Any claim by Buyer with reference to this Agreement or the Products and Services covered hereby shall be brought within one (1) year of the date of invoice for such Products and Services.

**12. INDEMNITY.** BUYER SHALL INDEMNIFY AND DEFEND SELLER AND ITS AFFILIATES AGAINST ANY AND ALL LOSSES, DAMAGES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND OTHER COSTS OF DEFENDING ANY ACTION) THAT IT MAY SUSTAIN OR INCUR AS A RESULT OF: (I) THE USE, OPERATION OR POSSESSION OF THE PRODUCTS BY BUYER, (II) THE

ALTERATION OR MODIFICATION OF THE PRODUCTS OR THE USE OR COMBINATION OF THE PRODUCTS WITH OTHER PRODUCTS OR DEVICES BY BUYER, (III) A NEGLIGENT OR WILLFUL ACT OR OMISSION OF BUYER OR (IV) THE BREACH BY BUYER OF THIS AGREEMENT.

**13. CHANGES.** Because Seller's policy is one of continuous improvement, Seller reserves the right to change specifications and design at any time.

**14. PROPRIETARY RIGHTS.** All intellectual property rights and know-how in, or relating to, the Products and all design, document, software, program, invention, technique, or information made or compiled in connection with the Products or the Agreement are owned by or licensed to Seller and nothing in the Agreement shall have the effect of transferring the ownership of such intellectual property rights to Buyer. In the event of any third party demand, claim or action alleging that the Products, properly used by Buyer in accordance with any instructions and directions issued with or in relation to such Products by Seller, infringe any patent or other intellectual property right belonging to a third party in the country of delivery by Seller, Buyer shall: (i) promptly notify Seller in writing of such claim; (ii) not make any admission in relation to or attempt to settle or compromise the claim; (iii) give Seller express authority to conduct all negotiations and litigation, and to settle all litigation, arising from such claim; and (iv) provide Seller with all available information, documents and assistance as Seller may reasonably require.

**15. INFRINGEMENT.** Seller shall defend any claim, suit or proceeding brought against Buyer so far as it is based on a claim that any product (including software) supplied hereunder infringes a patent, copyright or trade secret in the United States, and shall pay all damages and costs finally awarded therein against Buyer, provided that Seller is notified promptly in writing of the claim and given full authority, information and assistance for the defense of such claim. If a claim has occurred, or in Seller's opinion is likely to occur, Buyer agrees to permit Seller, at its option and expense, either to procure for Buyer the right to continue using the product (including software) or to replace or modify the same so that it becomes non-infringing, or, if neither of the foregoing alternatives is reasonably available, remove the product (including software) and refund Buyer the price thereof as depreciated or amortized by an equal annual amount over the lifetime of the product as established by Seller. Seller has no liability for any claim based upon the combination, operation or use of any product (including software) supplied hereunder with equipment, devices or software not supplied by Seller. Seller has no liability for any claim based upon alteration or modification of any product (including software) supplied hereunder. Buyer shall defend and hold Seller harmless against any expense, judgment or loss for alleged infringement of any patents, copyrights, trade secrets or trademarks which result from Seller's compliance with Buyer's designs, specifications or instructions. The foregoing states the entire obligation of Seller with respect to infringement or the like.

**16. CONFIDENTIAL INFORMATION.** All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, operating data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller (or any of its sub-contractors or sub-suppliers) to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return or destroy all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party. Neither Buyer itself shall, nor shall Buyer permit any party to, reverse engineer Seller's Products and or Product components.

**17. DATA PRIVACY.** Defined as following information relating to an identified or identifiable natural person, shall be considered Confidential Information and shall be afforded all of the protections set forth in these terms and conditions. In addition, and without limiting the terms generally applicable to Confidential Information, the parties agree that each party will process, apply, view and use the Personal Data only to the extent necessary to comply with this Agreement. Neither party will transfer or otherwise permit the use of the other party's Personal Data unless expressly directed or authorized by the other party. Both parties will comply with applicable laws and best practices relating to privacy and data security.

For further information you can consult the following website: [www.markem-imaje.com/privacy](http://www.markem-imaje.com/privacy) or the e-mail address: [privacy@markem-imaje.com](mailto:privacy@markem-imaje.com)

**18. FORCE MAJEURE.** Either party may suspend performance during the occurrence of an excusable delay. An excusable delay may include any delay not the result of fault or negligence of the party whose performance is prevented



by the delay and which results from the acts of God or public enemy, restrictions, prohibitions, priorities or allocations imposed by governmental authority, embargoes, floods, fires, earthquakes, epidemics, pandemics, unusually severe weather, delays of similar nature or governmental causes, and strikes or labor disputes (of or involving the delayed party's employees only). In the event of such delay or failure, there shall be no cancellation of the Agreement, and the time of delivery or performance shall be extended for a reasonable length of time, but not less than the period of delay.

**19. COMPLIANCE AND EXPORT CONTROL.** 19.1. In performing its obligations and exercising its rights under the Agreement, Buyer shall, at all times, act ethically and in compliance with all applicable (i) legislation, regulations, codes of practice, guidance and other requirements of any relevant government, governmental or regulatory agency or authority, or other relevant body; (ii) common law; and (iii) any binding court order, judgment, or decree (collectively "Laws") of the United States and any jurisdiction in which Seller and Buyer are established or conduct operations relating to the Agreement, including (without limitation) any applicable Laws in force from time to time regarding bribery, fraudulent acts, corrupt practices and/or money laundering (including without limitation, the U.S. Foreign Corrupt Practices Act and the UK Bribery Act of 2010), as may be amended, and any applicable Laws in force from time to time regarding import/export regulations, tax and/or customs and duties (the "Import/Export Legislation").

19.2. Buyer shall ensure that the Products, and any other products or technology acquired from Seller under the Agreement, will not be exported, sold, diverted, transferred, or otherwise disposed of in violation of the Import/Export Legislation, either in their original form or after being incorporated into other items.

19.3. Seller expects the Buyer to comply with all relevant Export Control laws and regulations and Seller will not engage, directly or indirectly, in business with restricted parties or in restricted end-uses. Buyer recognizes and accepts that Seller has determined that it will not sell, supply, transfer or export directly or indirectly, or support Products, software or services to or in any country which is the subject of a sanctions program initiated by U.S., E.U. or Switzerland. Additionally, because of the current political and humanitarian situation in as well as the reputational and business risks associated with trade with the non-controlled regions of Ukraine (such as Crimea, Sevastopol, Zaporizhzhia, Luhansk People's Republic-LNR, Kherson, Donetsk People's Republic -DNR), Russia, Belarus, Cuba, Iran, Syria, Sudan, North Korea and Afghanistan, Seller has determined that it will not sell, export or re-export directly or indirectly to or for use in or support (including delivering spare parts and consumables) customers and users located in those countries/regions of any Products supplied under or in connection with this Agreement. As far as Myanmar (Burma) is concerned, sale and support to that country shall first be checked with Seller on a case-by-case basis. The list of countries/regions may vary depending on international events and Seller will update this list accordingly. In addition, Seller may, in its sole discretion, determine not to sell or support Products to entities listed on the restricted parties' lists. Buyer will not be entitled to make any claim against Seller in the event Seller refuses to sell and support customer in any of those countries/regions or to sell to any of those entities. Buyer shall not sell, export or re-export, directly or indirectly, any Products supplied under or in connection with this Agreement to or for use in any of the countries/regions listed above.

19.4. Buyer shall undertake its best efforts to ensure that the purpose of paragraphs 19.1 to 19.3 is respected by any third parties further down the commercial chain, including by possible resellers.

19.5. Buyer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would defeat the purpose of paragraphs 19.1 to 19.3.

19.6. Buyer shall fully comply with the data protection and privacy legislation in all relevant jurisdictions and shall ensure that its employees, agents, and contractors observe the provisions of such legislation.

19.7. Any violation of paragraphs 19.1 to 19.6 shall constitute a material breach of an essential element of this Agreement, and Seller shall be entitled to seek appropriate remedies, including, but not limited to:

- (i) termination of this Agreement; and
- (ii) a penalty equal to the total value of this Agreement and the price of the goods exported

19.8. The Buyer shall immediately inform Seller about any problems in applying paragraphs 19.1 to 19.6 including any relevant activities by third parties that could defeat the purpose of paragraphs 19.1 to 19.3. The Buyer shall make available to the Seller information concerning compliance with the obligations under paragraphs 19.1 to 19.6 within two weeks of the simple request of such information,

**20. ASSIGNMENT.** Buyer may not assign the Agreement without the advance, written approval by an authorized officer of Seller. Such approval may be withheld for any reason.

**21. COMPLETENESS.** The terms and conditions stated herein constitute the entire Agreement between Seller and Buyer with respect to its subject matter.

The terms of the Agreement are independent and severable so that if one provision is not enforceable, that does not affect the remainder of the provisions. No waiver of any term of the Agreement shall be effective unless made in writing and signed by the party against whom the waiver is asserted. No such waiver shall be a continuing waiver or waiver of any other term or breach or default. Seller shall not be responsible for typographical errors.

**22. LANGUAGE** These Terms and Conditions shall be in English and in the local language of the country in which Seller has its registered office, with the local official language taking precedence over English in the event of dispute.

**23. GOVERNING LAW AND DISPUTE RESOLUTION.** This Agreement and all claims arising from the relationship between Seller and Buyer will be interpreted, governed, and enforced by the laws of the country and State of Seller, without regard to any conflict of laws principles and to the exclusion of the United Nations Convention on the International Sale of Goods. The parties agree that all litigation between Seller and Buyer which may arise out of or in connection with the Contract or any transaction between them shall be subject to the exclusive jurisdiction of the Courts in the country and State of Seller and each hereby consents to the jurisdiction of such courts.