

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, Inc. ("Markes") to the customer identified on the order acknowledgement ("Customer").

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.

2. PRICES

- (a) Prices are FCA Markes' facility in California or Llantrisant, UK (Incoterms 2010) unless otherwise specified by Markes in the quotation.
- (b) Prices are valid for the period indicated on the quotation.
- (c) Prices exclude any shipping or freight charges, as well as any sales, value added or similar tax, all of which will be payable by Customer in addition to the purchase price, as applicable. If exemption from taxes is claimed, Customer must provide to Markes a certificate of exemption.

3. ORDERS AND RETURNS

- (a) All orders are subject to acceptance by way of an Order Acknowledgement from Markes.
- (b) Customer may cancel orders for Products (except Custom Products) prior to shipment at no charge. Cancellation of orders or rescheduling shipment for Custom Products will be subject to Markes' prior written approval. Product returns (including Custom Products) will also be subject to Markes' approval and return/refurbishment charges, typically 20% of the order value.
- (c) 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 exclusively, notarizing fees, certificate of origin fees and certificate of conformity fees.

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 upon at Customer's expense. 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 pledge unpaid Products or transfer title in unpaid Products by way of security. Ownership therefore rests with Markes regardless of Delivery until paid in full; however, once Delivered to Customer, the Product remains under the care of the Customer, and as such the Customer shall be responsible for all damage to the Product.
- (c) On request the Customer shall make every effort to assist Markes in obtaining any applicable export documentation.
- (d) Terms of shipping are FCA (Incoterms 2010), Markes' facility in California or Llantrisant, 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; provided, however, that Markes may at any time demand a payment bond or irrevocable letter of credit, payable at sight against the relevant documents at the counter of the confirming bank, being a first-class bank in the United States that has adopted the Uniform Customs and Practice for Documentary Credits issued by the

International Chamber of Commerce in favor of Markes on the basis of 100% of the value of the respective order that Customer desires to purchase on credit. A draft letter of credit must be presented to and approved by Markes prior to issuance and acceptance of the order.

- (b) Payment for any order accepted by Markes is due 30 days from Markes' invoice date. Invoices for contractual Support will be issued in advance of the Support period. Markes may change credit or payment terms and may require Customer to have issued to Markes a letter of credit against the entire amount of any future orders, at any time should Markes determine that Customer's financial condition or previous payment record so warrants.
- (c) 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.
- (d) Customer shall pay Markes the full purchase price as set forth in Markes' quote. Unless Markes' quote specifically provides otherwise, freight, storage, insurance and all taxes, levies, duties, tariffs, permits or license fees or other governmental charges relating to the Product or Support or any incremental increases thereto shall be paid by Customer. If Markes is required to pay any such charges, Customer shall immediately reimburse Markes. If Customer claims a tax or other exemption or direct payment permit, it shall provide Markes with a valid exemption certificate or permit and indemnify, defend and hold Markes harmless from any taxes, costs and penalties arising out of same. All payments are due within 30 days after receipt of invoice. Customer shall be charged the lower of 1½% interest per month or the maximum legal rate on all amounts not received by the due date and shall pay all of Markes' reasonable costs (including attorneys' fees) of collecting amounts due but unpaid. All orders are subject to credit approval by Markes.

7. WARRANTY

- (a) Markes warrants to Customer that any hardware Products shall conform to the Specifications and shall be free from material defects in material and workmanship. The foregoing warranty shall survive for a period of twelve (12) months from the date of Delivery or the date of installation if installed by Markes or a service technician trained and accredited by Markes, or, if Customer schedules or delays installation by Markes more than 30 days after Delivery or availability of the Product for Delivery, the foregoing 12 month warranty shall commence on the 31st day after Delivery or availability of Delivery. The foregoing warranty shall apply to new hardware Products, including any new hardware Products that contain remanufactured parts.
- (b) Markes warrants that the Support or Custom Support shall be performed in a professional and workmanlike manner. The foregoing warranty shall survive for a period of ninety (90) days from the performance of Support or Custom Support services.
- (c) Markes warrants that any Software (i) will not fail to execute its programming instructions due to material defects in materials and workmanship when properly installed and used on the hardware designated by Markes and (ii) will substantially conform to the Specifications. The foregoing warranty shall survive for a period of thirty (30) days from the date of Delivery or the date of installation if the Software was installed by Markes.
- (d) If Customer gives Markes prompt written notice of breach of any of the foregoing warranties within the applicable warranty period specified above, Markes shall, at its sole option and as Customer's sole and exclusive remedy for such breach of warranty, repair or replace the Product (which can include the repair or replacement of the subject parts), re-perform the Support service or refund the purchase price. Unless otherwise agreed to in writing by Markes, (i) Customer will pay expenses for return of such Product(s), (ii) Customer shall be responsible for any labor required to gain access to the Product so that Markes can assess the available remedies, and (iii) Customer shall be responsible for all costs of installation of repaired or replaced Product. If Markes determines that any claimed breach is not, in fact, covered by this warranty, Customer shall pay Markes its customary charges for any repair or replacement made by Markes. Markes will pay expenses for shipment of repaired or replacement Product(s).
- (e) Markes' warranty is conditioned on (i) Customer's operating and maintaining the Product in accordance with Markes' instructions in the country where such Product has been installed, (ii) any installation, maintenance, calibration, repairs or other alterations or modifications being performed by a service technician that has been trained and accredited by Markes, and (iii) Customer not being in default of any payment obligation to Markes. Markes' warranty does not cover damage caused by maintenance, repair or calibration performed by a person other than a service engineer trained and accredited by Markes; Customer-supplied or third-party-supplied hardware or software, interfacing or supplies; unauthorized modification; improper use or operation outside of the Specifications for the Product; abuse, negligence, accident, loss or damage in transit; or improper site preparation, misuse or improper installation (unless installed by a technician trained and accredited by Markes).
- (f) THE WARRANTIES SET FORTH IN THIS SECTION 7 ARE MARKES' SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITATION OF LIABILITY PROVISION BELOW. MARKES MAKES NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, AT LAW OR COURSE OF CONDUCT, WRITTEN OR ORAL, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR AN INTENDED PURPOSE, LOSS OF DATA, OR NON-INFRINGEMENT, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED. WITHOUT LIMITING THE FOREGOING, MARKES DOES NOT WARRANT THAT THE OPERATION OF PRODUCTS OR SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT IT WILL MEET THE SPECIFICATIONS OF CUSTOMER, OR THAT THE SOFTWARE WILL OPERATE IN HARDWARE AND SOFTWARE COMBINATIONS SELECTED BY CUSTOMER.
- (g) NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE FOREGOING WARRANTIES SHALL NOT APPLY WHEN THE PRODUCT IS PURCHASED AS PART OF A SYSTEM OR AS AN EX-DEMONSTRATION MODEL. IN SUCH AN INSTANCE MARKES WILL COMMUNICATE IN WRITING THE WARRANTY REGARDING SUCH PRODUCT TO CUSTOMER AT THE TIME OF ORDER. IF NO WARRANTY IS COMMUNICATED TO CUSTOMER IN WRITING AT THE TIME OF THE ORDER, THEN NO WARRANTY, WHETHER EXPRESS OR IMPLIED, WILL APPLY WITH RESPECT TO SUCH PRODUCT AND SUCH PRODUCT SHALL BE SOLD "AS-IS, WHERE-IS" WITH ALL FAULTS ACCEPTED BY CUSTOMER.

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 Support contract is cancelled within the first 60 days a refund shall be provided; should any Support 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) All devices, designs (including drawings, plans and specifications), estimates, prices, notes, electronic data, software and other documents or information prepared or disclosed by Markes, and all related intellectual property rights, shall remain Markes' property or the property of Markes' third-party suppliers. Markes grants Customer a limited, non-transferable, worldwide, non-exclusive license to use the Software for internal purposes in accordance with the Specifications and 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) Customer will not disassemble or otherwise modify the Software without written authorization from Markes. Customer may not copy the Software onto any public or distributed network. Customer will not transfer or disclose the Software or the documentation related to the Software to any third party without Markes prior written consent.
- (c) Any breach by Customer of the terms and conditions in this Section 9 shall be deemed a material breach of the Terms and shall not be subject to a cure period. Markes may terminate Customer's license to the Software immediately upon written notice to Customer for breach of the terms in Section 9. Customer must destroy all copies of the Software and related documentation immediately upon notice of termination.

10. LIMITATION OF LIABILITY AND REMEDIES

- (a) NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY, MARKES SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION DOWNTIME COSTS, LOSS OF DATA, RESTORATION COSTS, LOST PROFITS, OR COST OF COVER), AND MARKES' TOTAL LIABILITY ARISING AT ANY TIME FROM THE SALE OR USE OF THE PRODUCTS, SUPPORT OF SOFTWARE, INCLUDING WITHOUT LIMITATION ANY LIABILITY FOR ALL WARRANTY CLAIMS OR FOR ANY BREACH OR FAILURE TO PERFORM ANY OBLIGATION UNDER THE TERMS, SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR THE PRODUCT, SUPPORT OR SOFTWARE THAT IS THE SUBJECT OF THE CLAIM. THESE LIMITATIONS APPLY WHETHER THE LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (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 or Software, technology or technical data purchased or licensed hereunder, assumes responsibility for complying with applicable laws and regulations, and for obtaining required export and import authorizations. Markes may suspend performance if Customer is in violation of applicable laws or regulations. Customer agrees to indemnify, defend and hold Markes harmless from any and all costs, liabilities, penalties, sanctions and fines related to non-compliance with applicable export laws and regulations.
- (d) Markes and Customer shall negotiate in good faith to resolve any dispute relating hereto. If, despite good faith efforts, the parties are unable to resolve a dispute or claim arising out of or relating to these Terms or its breach, termination, enforcement, interpretation or validity, the parties will first seek to agree on a forum for mediation to be held in a mutually agreeable site. If the parties are unable to resolve the dispute through mediation, then any dispute, claim or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Sacramento, California, before three arbitrators who are lawyers experienced in the discipline that is the subject of the dispute and shall be jointly selected by Markes and Customer. The arbitration shall be administered by JAMS

pursuant to its Comprehensive Arbitration Rules and Procedures. The Arbitrators shall issue a reasoned decision of a majority of the arbitrators, which shall be the decision of the panel. Judgment may be entered upon the arbitrators' decision in any court of competent jurisdiction. The substantially prevailing party as determined by the arbitrators shall be reimbursed by the other party for all costs, expenses and charges, including without limitation reasonable attorneys' fees, incurred by the prevailing party in connection with the arbitration. For any order shipped outside of the United States, any dispute shall be referred to and finally determined by the International Center for Dispute Resolution in accordance with the provisions of its International Arbitration Rules, enforceable under the New York Convention (Convention on the Recognition and Enforcement of Foreign Arbitral Awards) and the governing language shall be English.

- (e) These Terms shall be governed by the laws of the State of California without regard to its conflict of laws provisions. Both Markes and Customer reject the applicability of the United Nations Convention on Contracts for the international sales of goods to the relationship between the parties and to all transactions arising from said relationship.
- (f) 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.
- (g) Either party may terminate these Terms for a material breach (including but not limited to, filing of bankruptcy, or failure to fulfill the material obligations of these Terms), upon issuance of a written notice of a material breach and expiration of a thirty (30) day cure period if such breach has not been cured during such 30-day period. If Customer suspends an order without a change order for ninety (90) or more days, Markes may thereafter terminate this Agreement without liability, upon fifteen (15) days' written notice to Customer, and shall be entitled to payment for work performed, whether delivered or undelivered, prior to the date of termination.
- (h) Neither party's failure to exercise any of its rights under these Terms will be deemed a waiver or forfeiture of those rights.
- (i) 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.
- (j) 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 or life-saving medical devices. 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.
- (k) Customer shall use best efforts to provide Markes with the identity of the end user of the Product(s) should Markes be required to provide evidence to government agencies regarding embargoed individuals or organizations on official Sanctions lists.
- (l) Neither party may assign these Terms or an order, in whole or in part, nor any rights or obligations hereunder without the prior written consent of the other party; provided, however, Markes may assign its rights and obligations under these terms to its affiliates or in connection with the sale or transfer of the Markes' business and Markes may grant a security interest in the Agreement and/or assign proceeds of the agreement without Customer's consent.

END OF TERMS AND CONDITIONS OF SALE AND SERVICE