

## Markem-Imaje Hardware Maintenance and Support Contract

### Terms and Conditions

#### 1: Purpose

The purpose of these Markem-Imaje Hardware Maintenance and Support Contract Terms and Conditions ("Terms") is to define the specific terms and conditions under which Markem-Imaje ("MARKEM-IMAJE") will provide customer ("Customer") with certain hardware maintenance and support services ("Services"), as identified in the Markem-Imaje Service Proposal ("Proposal"). The Proposal and any order acknowledgment and/or invoice of Markem-Imaje, together with these Terms and any specifications for the Services accepted in writing by Markem-Imaje comprise the entire agreement between the parties with respect to the Services, 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 Customer, whether in a purchase order or other communication or otherwise, are hereby rejected and shall not apply unless signed and approved by Markem-Imaje.

#### 2: Effective Date and Duration of the Service Contract Agreement

The term of the Agreement will commence on the Service Start Date and will remain in effect for the term as set forth in the Proposal until terminated in accordance herewith (the "Duration").

#### 3: Prerequisite

Customer may purchase Services only with respect to the instances of the equipment(s) referenced by serial number(s) in the Proposal (the "Equipment"). Software Maintenance and Support is not provided hereunder for any software product or solution, with respect to, but not limited to, any CoLOS® Software product licence and any Packaging Intelligence solution based on projects built with the CoLOS® Software Applications Toolkit (CAT). Customer may purchase separately Software Maintenance and Support Agreements for these products and solutions

#### 4: Scope of the Agreement

During the Duration, MARKEM-IMAJE shall supply the level of Services as set forth in the Proposal in accordance with the then current Markem-Imaje Hardware Maintenance and Support Contract Policy ("Policy") which can be found at <https://www.markem-imaje.com/terms-and-conditions>. The Policy is incorporated into these Terms by reference and are deemed to be a part of the Agreement.

#### 5: Force Majeure

Except for obligations to make payments hereunder, neither party will be liable for any delays or failures caused by circumstances beyond its reasonable control, including without limitation acts of God, wars or other hostilities, terrorist acts, acts of government, governmental restrictions, strikes, fires, floods, earthquakes, work stoppages, embargoes, epidemics, pandemics, power outages, outages or failure of the Internet, failures or delays of web host providers, Internet service providers or Internet facilities or networks, or service attacks or hacking.

#### 6: Customer Obligations

Customer shall be responsible for complying with the obligations as defined in the Policy. Additionally, Customer shall be responsible for keeping a minimum of one person with basic instruction training per shift to troubleshoot and perform minor maintenance operations. Minor maintenance procedures include but are not limited to: correction of dirty print heads, low ink/solvent levels, and head adjustments. Customer shall make every reasonable attempt to solve these minor problems internally. These minor maintenance procedures are mandatory and if not complete, or, if completed improperly may cause undue costs to Customer. It is recommended that the Customer train the necessary personnel at a MARKEM-IMAJE training center or Customer location.

Waiver of Training - If Customer refuses to give basic instruction training to a person for each shift of its operation, MARKEM-IMAJE will not be responsible for failures caused by lack of basic maintenance knowledge. Any such service work performed by MARKEM-IMAJE will be charged at current MARKEM-IMAJE standard rates notwithstanding any other provision of the Agreement.

In addition, Customer agrees:

- ▶ To respect and adhere to the installation specifications of the Equipment as described in the MARKEM-IMAJE user and instruction manuals
- ▶ To respect and adhere to the instructions for the use and routine maintenance as described in the MARKEM-IMAJE user and instruction manuals.
- ▶ To use only consumables, spare parts and accessories specified by MARKEM-IMAJE in the Equipment.

- ▶ To use electric current complying with the standards expressed by MARKEM-IMAJE in the instructions of use. If tests reveal that the electric system is irregular, the Customer must employ a protective device (current inverter, system conditioner, etc). If the Customer does not do so, MARKEM-IMAJE has the right to terminate the Agreement.
- ▶ To appoint a representative of the customer during the Markem-Imaje maintenance instruction session.
- ▶ To prohibit work to be done on the Equipment by anyone other than a qualified representative of MARKEM-IMAJE except for the routine maintenance operations defined in the MARKEM-IMAJE user and instruction manuals, the Virtual Assistant, or recommended by MARKEM-IMAJE technical service.
- ▶ To have Equipment in fully operational and functioning condition at the time of MARKEM-IMAJE arrival on site for to perform Preventive and Proactive Maintenance.
- ▶ To put the Equipment and Consumables at the disposal of MARKEM-IMAJE at its arrival on site; to provide MARKEM-IMAJE support personnel with access to and use of Customer's premises, resources, equipment and personnel as reasonably required for MARKEM-IMAJE to perform the Services under the Agreement; to keep an updated register of all maintenance operations carried out by the Customer and by MARKEM-IMAJE and to make it available to MARKEM-IMAJE on the day of the visit; to be available during the intervention; to be prepared to start the Equipment up again at the end of the visit.
- ▶ To inform the MARKEM-IMAJE representative of the rules of access and security applicable on the Customer site prior to its visit.
- ▶ To sign the visit report at the end of each intervention.
- ▶ To make all payments to MARKEM-IMAJE when due.
- ▶ To report immediately to MARKEM-IMAJE any unsatisfactory operation of the Equipment.
- ▶ To inform MARKEM-IMAJE immediately in the case of a disaster rendering the Equipment unusable or in the case of sale of the Equipment to a third party.
- ▶ To respect and adhere to all software licensing terms with respect to all software.
- ▶ To respect and adhere to all installation specifications and instructions with respect to any software upgrades provided in connection with software support.

Any service by MARKEM-IMAJE that results from a lack of compliance by the Customer with its obligations will be invoiced to the Customer at the current prevailing rates in effect.

## **7: Price and Terms of Payment**

Any personal property, sales, use, excise, import, duty, value added, or similar taxes applicable to the goods or services, not measured by the income of MARKEM-IMAJE, shall be paid by Customer. The Services will be provided by MARKEM-IMAJE in consideration of the fees set forth in the Proposal. This fee, plus any applicable taxes, or finance charges shall be payable by Customer as provided in the Proposal. Invoices as per the agreed schedule are payable net and without discount, thirty days following the date of invoice. Overdue amounts shall, without need for notice of default, bear default interest from the due date at the monthly rate of 1.5 % (one point five percent) of the overdue amount. The present provision does not imply any waiver by MARKEM-IMAJE to any other recourse, right or action permitted under applicable law. In particular, MARKEM-IMAJE may withhold the performance of the services or any part thereof. MARKEM-IMAJE

## **8: Confidential Information**

All non-public, confidential or proprietary information of MARKEM-IMAJE, 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 MARKEM-IMAJE (or any of its sub-contractors or sub-suppliers) to Customer, 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 the Agreement is confidential, solely for the use of performing the Agreement and may not be disclosed or copied unless authorized in advance by MARKEM-IMAJE in writing. Without limiting the foregoing, the terms and existence of the Agreement is the Confidential Information of MARKEM-IMAJE. Any confidential information exchanged during the performance of Services must be used by the Customer solely for the purpose of rendering or receiving the Services, and Customer will not disclose, or permit to be disclosed, the same directly or indirectly, to any third party without MARKEM-IMAJE's prior written consent. Upon MARKEM-IMAJE's request, Customer shall promptly return or destroy all documents and other materials received from MARKEM-IMAJE. MARKEM-IMAJE 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 Customer at the time of disclosure; or (c) rightfully obtained by Customer on a non-confidential basis from a third party. Neither Customer itself shall, nor shall Customer permit any party to, reverse engineer MARKEM-IMAJE's products and or product components. The obligations under this Article 9 will survive termination or expiration of the Agreement for any reason.

## 9: Proprietary Rights and Notice of Infringement

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

Customer shall, during the Duration:

(a) take all commercially reasonable measures to safeguard the Intellectual Property (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access.

(b) at MARKEM-IMAJE’S expense, take all such steps as MARKEM-IMAJE may reasonably require to assist MARKEM-IMAJE in maintaining the validity, enforceability, and MARKEM-IMAJE’s ownership of the Intellectual Property Rights in the Intellectual Property;

(c) promptly notify MARKEM-IMAJE in writing if Customer becomes aware of:

(i) any actual or suspected infringement, misappropriation, or other violation of MARKEM-IMAJE’S Intellectual Property Rights in or relating to the Intellectual Property; or

(ii) any claim that the Intellectual Property, including any production, use, marketing, sale, or other disposition of the Intellectual Property, in whole or in part, infringes, misappropriates, or otherwise violates the intellectual property rights or other rights of any person; and

(d) fully cooperate with and assist MARKEM-IMAJE in all reasonable ways in the conduct of any claim, suit, action, or proceeding by MARKEM-IMAJE to prevent or abate any actual or threatened infringement, misappropriation, or violation of MARKEM-IMAJE’S rights in, and to attempt to resolve any claims relating to, the Intellectual Property, including having Customer’s employees testify when requested and making available for discovery or trial relevant records, papers, information, samples, specimens, and the like.

## 10: Limited Warranty

MARKEM-IMAJE warrants that the Services will be performed in a workmanlike manner in accordance with reasonable commercial standards prevailing in the industry and in the warranty set forth in MARKEM-IMAJE’s “Warranty Policy” (available on request by Customer). This warranty shall not be construed as a warranty of the performance or operation of any Equipment. This warranty extends only to the Customer. The Customer’s only remedy for a breach of this warranty will be MARKEM-IMAJE’s prompt performance of the services in a manner that complies with this warranty without additional charge to the Customer. Any fixes will be provided on an ‘as-is’ basis. Any firmware upgrades and new releases will be provided under any warranty in effect at the time of release and, if none, then on an ‘as-is’ basis.

## 11: Disclaimer of Other Warranties

**EXCEPT AS STATED IN THE AGREEMENT, MARKEM-IMAJE DISCLAIMS ALL WARRANTIES AND CONDITIONS, EITHER EXPRESSED OR IMPLIED, WITH RESPECT TO THE SERVICES AND EQUIPMENT, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. THE WARRANTIES AND REMEDIES SET FORTH IN THE AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER ORAL OR WRITTEN, EXPRESSED OR IMPLIED.**

## 12: Limitation of Liability

a. Notwithstanding anything to the contrary in the Agreement, MARKEM-IMAJE shall not be liable to Customer or to any other person for any of the following types of loss or damage arising under or in relation to the Agreement (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.

b. In no event shall MARKEM-IMAJE’s aggregate liability arising out of or related to the Services provided by MARKEM-IMAJE, or the Agreement, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, exceed the net amount received by MARKEM-IMAJE for the Services giving rise to such cause of action. The parties acknowledge that the charges were determined based upon the foregoing limitation of liability.

c. Any claim by Customer with reference to the Agreement shall be brought within one (1) year of the date of invoice for such Services.

### 13: Termination

Unless prohibited by local law, the Agreement will be immediately terminated in the following cases:

- (i) In the case the Equipment is sold to a third party by Customer, the Customer must inform MARKEM-IMAJE within five (5) days from the sale including proof of the sale. The termination will be effective at the date of the sale.
- (ii) In the case of irremediable damage to the Equipment. The Customer must inform MARKEM-IMAJE within five (5) days from the damage. The termination will be effective at the date of the damage.
- (iii) Breach of the Agreement by the Customer including, without limitation, the non-payment of fees when due or non-compliance with the use and maintenance instructions recommended by MARKEM- IMAJE. In such case, the Agreement may immediately be terminated by MARKEM- IMAJE without a need for notice to the Customer.

MARKEM-IMAJE shall have the right to terminate the Agreement at any time by giving the Customer a minimum of thirty (30) days written notice.

In all cases cited above, MARKEM-IMAJE will be entitled to payment of all fees specified in the Agreement until the occurrence of the event, on a pro rata temporis basis, and MARKEM-IMAJE will refund to the Customer a pro-rated portion of the fees for the balance of the Term then in effect.

### 14: Data Privacy

If during the business relationship, the parties share personal information the parties will comply with all applicable laws and regulations relating to personal data. For further information you can consult the following website:  
<https://www.markem-imaje.com/privacy>

### 15: Compliance and Export Control

a. In performing its obligations and exercising its rights under the Agreement, Customer 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 MARKEM-IMAJE and Customer 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").

b. Customer shall ensure that the products, and any other products or technology acquired from MARKEM-IMAJE 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.

c. MARKEM-IMAJE expects the Customer to comply with all relevant Export Control laws and regulations and MARKEM-IMAJE will not engage, directly or indirectly, in business with restricted parties or in restricted end-uses. Customer recognizes and accepts that MARKEM-IMAJE 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, Cuba, Iran, Syria, Sudan, North Korea and Afghanistan, MARKEM-IMAJE 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 the Agreement. As far as Myanmar (Burma) is concerned, sale and support to that country shall first be checked with MARKEM-IMAJE on a case-by-case basis. The list of countries/regions may vary depending on international events and MARKEM-IMAJE will update this list accordingly. In addition, MARKEM-IMAJE may, in its sole discretion, determine not to sell or support Products to entities listed on the restricted parties' lists. Customer will not be entitled to make any claim against MARKEM-IMAJE in the event MARKEM-IMAJE refuses to sell and support customer in any of those countries/regions or to sell to any of those entities. Customer shall not sell, export or re-export, directly or indirectly, any Products supplied under or in connection with the Agreement to or for use in any of the countries/regions listed above.

d. Customer shall undertake its best efforts to ensure that the purpose of paragraphs (a) to (c) are not frustrated by any third parties further down the commercial chain, including by possible resellers.

e. Customer 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 frustrate the purpose of paragraphs (a) to (c).

f. Customer 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.

g. Any violation of paragraphs (a) to (f) shall constitute a material breach of an essential element of the Agreement, and MARKEM-IMAJE shall be entitled to seek appropriate remedies, including, but not limited to:

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

h. The Customer shall immediately inform MARKEM-IMAJE about any problems in applying paragraphs (a) to (f) including any relevant activities by third parties that could frustrate the purpose of paragraphs (a) to (c). The Customer shall make available to the MARKEM-IMAJE information concerning compliance with the obligations under paragraphs (a) to (f) within two weeks of the simple request of such information.

i. Notwithstanding the foregoing, any breach of the present Section 15 or in case of failure to comply with any applicable trade regulations, sanctions, or export control laws, Customer shall assume full liability and be responsible for indemnifying and holding MARKEM-IMAJE harmless from and against any and all fines, penalties, damages, attorney fees, legal costs, and any other expenses incurred as a result of Customer's non-compliance.

j. Customer agrees to indemnify, defend, and hold harmless MARKEM-IMAJE, its officers, directors, employees, and agents from any and all claims, liabilities, fines, damages, losses, or expenses (including reasonable attorney fees and court costs) arising out of or relating to Customer's violation of trade compliance, sanctions, or export control law.

#### **16: Assignment**

Customer may not assign the Agreement without the advance, written approval by an authorized officer of MARKEM-IMAJE. Such approval may be withheld for any reason.

#### **17: Language**

The Agreement shall be in English and in the local language of the country in which MARKEM-IMAJE has its registered office, with the local official language taking precedence over English in the event of dispute.

#### **18: Miscellaneous**

The Agreement represents the complete agreement between the parties hereto with respect to the subject matter contained herein and supersedes all prior agreements or understandings, whether written or oral, if any. No attempted modification, amendment or termination of any of the provisions hereof shall be binding unless in writing and signed by both parties.

MARKEM-IMAJE reserves the right to subcontract certain services specified in the Agreement to any firm of its choosing.

Any notice required under these Terms shall be deemed given three days after mailing by certified or registered mail, postage prepaid, or one day after being mailed by internationally recognized overnight courier, in either case, properly addressed to the receiving party.

#### **19: Governing Law and Dispute Resolution**

The Agreement and all claims arising from the relationship between MARKEM-IMAJE and Customer will be interpreted, governed, and enforced by the laws of the country and State of MARKEM-IMAJE, 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 MARKEM-IMAJE and Customer 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 MARKEM-IMAJE and each hereby consents to the jurisdiction of such courts.