

Software Maintenance and Support Agreement

1: Purpose of the Agreement

The purpose of this Software Maintenance and Support Agreement (the "Agreement") is to define the terms and conditions under which Markem-Imaje ("MARKEM-IMAJE") will provide customer ("Customer") with certain software maintenance and support services identified in the quote ("Maintenance and Support") for the Software, as defined below.

The Customer is not authorized to transfer or assign its rights and benefits under this Agreement.

This Agreement governs the Maintenance and Support rendered by MARKEM-IMAJE to the Customer purchasing the Maintenance and Support. The quote, order acknowledgement and/or invoice of MARKEM-IMAJE attached to this Agreement comprise the entire agreement between the parties 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 in writing.

2: Effective Date and Duration of the Agreement

The term of this Agreement will commence on the Agreement Start Date and will remain in effect for the term as set forth in the quote until terminated in accordance herewith (the "Initial Term").

Upon expiration of the Initial Term, the term will be renewed and extended for additional one (1) year periods (each a "Renewal Term" and collectively, the "Renewal Terms") unless either party provides written notice of its intent to terminate this Agreement at least ninety (90) days prior to expiration of the Initial Term or the then-current Renewal Term. The Initial Term and any Renewal Term(s) are referred to as the "Term".

3: Prerequisite

Customer may purchase Maintenance and Support only with respect to the instances of software products referenced by serial number in the quotation (the "Software").

4: Scope of the Agreement

During the Term, MARKEM-IMAJE shall supply the level of Maintenance and Support as set forth on the quote in accordance with the then-current Software Maintenance and Support Policy which can be found at: <https://www.markem-imaje.com/terms-and-conditions> (the "Policy").

5: Exclusions

MARKEM-IMAJE shall not be liable under this Agreement for services or repairs when the defect or failure is covered by any of the exclusions defined in the Policy.

6: 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 denial of service attacks.

7: Customer Obligations

Customer shall be responsible for complying with the obligations as defined in the Policy. 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, as mentioned in section 1.4 of the Policy.

8: Price and Terms of Payment

The Maintenance and Support will be provided by MARKEM-IMAJE in consideration of the fees set forth in the quote. This fee, plus any applicable taxes, or finance charges shall be payable in advance. 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 the law of this Agreement. In particular, MARKEM-IMAJE may withhold the provision of the services or any part thereof. MARKEM-IMAJE may change the prices to be paid hereunder by Customer for an annual renewal term and multiple-year agreements. MARKEM-IMAJE shall notify Customer of any such price changes no later than sixty (60) days prior to the renewal date.

9: 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 this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by MARKEM-IMAJE in writing. Without limiting the foregoing: (a) the Software is the Confidential Information of MARKEM-IMAJE; and (b) the terms and existence of this Agreement are the Confidential Information of MARKEM-IMAJE. Any confidential information exchanged during the provision of Maintenance and Support must be used by the Customer solely for the purpose of rendering or receiving the Maintenance and Support, 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 this Agreement for any reason.

10: Customer Cooperation and Notice of Infringement

Customer shall, during the Term:

- (a) take all commercially reasonable measures to safeguard the Software (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 Software;
- (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 Software; or
 - (ii) any claim that the Software, including any production, use, marketing, sale, or other disposition of the Software, 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 Software, including having Customer’s employees testify when requested and making available for discovery or trial relevant records, papers, information, samples, specimens, and the like.

11: Limited Warranty

MARKEM-IMAJE warrants that its 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 Software. 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 upgrades and new releases of software will be provided under any warranty in effect at the time of release and, if none, then on an ‘as-is” basis.

12: Disclaimer of Other Warranties

EXCEPT AS STATED IN THIS AGREEMENT, MARKEM-IMAJE DISCLAIMS ALL WARRANTIES AND CONDITIONS, EITHER EXPRESSED OR IMPLIED, WITH RESPECT TO THE MAINTENANCE AND SUPPORT AND SOFTWARE, 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 THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER ORAL OR WRITTEN, EXPRESSED OR IMPLIED.

13: 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 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.

b. In no event shall MARKEM-IMAJE’s aggregate liability arising out of or related to the (i) Software, (ii) any Maintenance and Support provided by MARKEM-IMAJE, or the (iii) 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 Software, or the Maintenance and Support 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 this Agreement or the Software, or the Maintenance and Support covered hereby shall be brought within one (1) year of the date of invoice for such Software or Maintenance and Support.

14: Termination

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

- (i) In the case the software license 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) 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 this 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 this 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.

15: Intellectual Property

Customer acknowledges and agrees that: (a) the Software are licensed, not sold, to Customer by MARKEM-IMAJE and Customer does not and will not have or acquire under or in connection with this Agreement any ownership interest in the Software or Deliverables, or in any related Intellectual Property Rights; (b) MARKEM-IMAJE will remain the sole and exclusive owner of all right, title, and interest in and to the Software, including all Intellectual Property Rights relating thereto, subject only to the limited license granted to Customer under this Agreement; and (c) Customer hereby unconditionally and irrevocably assigns to MARKEM-IMAJE, its entire right, title, and interest in and to any Intellectual Property Rights that Customer may now or hereafter have in or relating to the Software (including any rights in derivative works or patent improvements relating to either of them), whether held or acquired by operation of law, contract, assignment, or otherwise.

As used herein, "Intellectual Property Rights" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

All Intellectual Property Rights in and to the Software, including without limitation any modifications, enhancements, fixes, patches, updates, and associated documentation provided as part of the Maintenance and Support ("Support Materials") under this Agreement, remain the sole and exclusive property of MARKEM-IMAJE.

Any custom developments, solutions, or other materials provided as part of the Maintenance and Support will remain the sole and exclusive property of MARKEM-IMAJE.

Any data, information, and other content of any type and in any format, medium, or form, whether audio, visual, digital, screen, or other, that is input, uploaded to, placed into, or collected, stored, processed, generated, or output by any device, system, or network by or on behalf of Customer, including any and all works, inventions, data, analyses, and other information and materials resulting from any use of the Software by or on behalf of Customer under this Agreement, except the Software or data, information, or content, including any audio, visual, or digital or other display or output, that is generated automatically upon executing the Software without additional user input, is the sole and exclusive property of MARKEM-IMAJE.

The Customer agrees not to, and will not permit others to, modify, reverse engineer, decompile, disassemble the Software or Support Materials, or otherwise attempt to discover the source code of the Software or Support Materials.

Any feedback, suggestions, or improvements made by the Customer during the provision of the Maintenance and Support are considered non-confidential and non-proprietary. MARKEM-IMAJE will have the unrestricted right to use or incorporate such feedback and suggestions in its products and services, without obligation or compensation to the Customer.

Customer agrees to hold within its organization and shall not, without MARKEM-IMAJE's specific written consent, utilize in any manner or publish, communicate or disclose to third parties any part of the Software or support materials.

Upon termination of this Agreement, Customer must cease using all Support Materials and destroy all copies, except as expressly authorized by MARKEM-IMAJE in writing.

MARKEM-IMAJE reserves the right to audit the use of the Software and Support Materials by the Customer to ensure compliance with the terms of this Agreement.

16: Data Privacy

If in the course of 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>

17: 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 this 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 this 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 this Agreement, and MARKEM-IMAJE 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

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.

18: 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.

19: Language

This 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.

20: Miscellaneous

This 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 this 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.

21: Governing Law and Dispute Resolution

This 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.