



Markem-Imaje Terms of Service

1: Purpose

The purpose of these Terms of Service ("Terms") is to define the terms and conditions under which Markem-Imaje ("MARKEM-IMAJE") will provide you with limited access to Markem-Imaje's virtual assistant ("Services") outside a Markem-Imaje Hardware Maintenance and Support Contract. If you have an active Markem-Imaje Hardware Maintenance and Support Contract your use of Services is covered by the terms and conditions contained therein.

2: Prerequisite

You may use Services only with respect to the instances of equipment approved by Markem-Imaje.

3: DISCLAIMER OF WARRANTIES

UNLESS OTHERWISE REQUIRED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED "AS-IS" AND MARKEM-IMAJE DISCLAIMS ALL WARRANTIES AND CONDITIONS, EITHER EXPRESSED OR IMPLIED, WITH RESPECT TO THE SERVICES, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

4: 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 you, 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 Terms is confidential, solely for the use of performing 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 these Terms is the Confidential Information of MARKEM-IMAJE. Any confidential information exchanged during the provision of Services must be used by you solely for the purpose of rendering or receiving the Services, and you 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, you 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 you at the time of disclosure; or (c) rightfully obtained by you on a non-confidential basis from a third party. You shall not, nor shall you permit any party to, reverse engineer MARKEM-IMAJE's products and or product components. The obligations under this Article will survive termination or expiration of these Terms for any reason.

5: Proprietary Rights and Notice of Infringement

All intellectual property rights and know-how in, or relating to these Terms and all design, document, software, program, invention, technique, or information made or compiled in connection with these Terms ("Intellectual Property") are owned by or licensed to MARKEM-IMAJE and nothing in these Terms shall have the effect of transferring the ownership of such intellectual property rights to you. In the event of any third party demand, claim or action alleging that the Intellectual Property, properly used by you 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, you 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.

You shall, during the Term:

(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 You become 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 your employees testify when requested and making available for discovery or trial relevant records, papers, information, samples, specimens, and the like.

6: Limitation of Liability

a. Unless prohibited by applicable law, MARKEM-IMAJE shall not be liable to you or to any other person for any of the following types of loss or damage arising under or in relation to the Services (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 exceed \$20.00 or the net amount received by MARKEM-IMAJE for the Services giving rise to such cause of action.

7: Termination

MARKEM-IMAJE shall have the right to suspend or terminate your access to the Services at any time for any reason, with or without cause and with or without notice.

8: Governing Law and Dispute Resolution

These Terms and all claims arising from the relationship between MARKEM-IMAJE and you 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. You agree that all litigation between MARKEM-IMAJE and you which may arise out of or in connection with these Terms or any transaction between them shall be subject to the exclusive jurisdiction of the Courts in the country and State of MARKEM-IMAJE and you hereby consent to the jurisdiction of such courts.

9: Completeness

These Terms constitute the entire agreement between MARKEM-IMAJE and you with respect to its subject matter. These Terms 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 herein 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. MARKEM-IMAJE shall not be responsible for typographical errors.