



## TERMS AND CONDITIONS FOR SERVICE AND SUPPORT

<b>1</b>	<b>SCOPE</b> .....	<b>2</b>
1.1	NON-SLA SERVICES .....	2
1.2	SLA SERVICES .....	2
1.2.1	<i>Preventive Maintenance (PM)</i> .....	3
1.2.2	<i>Software Maintenance</i> .....	3
1.2.3	<i>Support Days 'fixed days per year'</i> .....	4
<b>2</b>	<b>GENERAL PROVISIONS</b> .....	<b>4</b>
<b>3</b>	<b>EQUIPMENT; LOCATION; REMOTE ACCESS</b> .....	<b>4</b>
3.1	ADDITIONAL, IN CASE OF A SLA.....	5
<b>4</b>	<b>PAYMENT CONDITIONS</b> .....	<b>5</b>
4.1	PAYMENT TERMS .....	6
<b>5</b>	<b>ACCEPTANCE AND COMPLAINTS</b> .....	<b>6</b>
<b>6</b>	<b>SPARE PARTS AND WARRANTY</b> .....	<b>6</b>
6.1	WARRRANTY .....	7
6.1.1	<i>Limitations</i> .....	7
6.1.2	<i>Scope of warranty</i> .....	7
6.1.3	<i>Warranty period</i> .....	7
6.1.4	<i>Complaints</i> .....	7
6.1.5	<i>Computer programs</i> .....	7
6.1.6	<i>Refurbished, demonstration and second-hand equipment</i> .....	7
6.2	ADDITIONAL, IN CASE OF A SLA.....	7
<b>7</b>	<b>SLA SPECIFIC</b> .....	<b>8</b>
7.1	CAUSES FOR EXCLUSION/SEPARATE CHARGES .....	8
7.2	NOTICES.....	8
7.3	GOVERNING LAW; WAIVER OF JURY TRIAL .....	8
7.4	DAMAGES, COSTS, AND FEES .....	9
7.5	SEVERABILITY; HEADINGS.....	9
7.6	WAIVER .....	9
7.7	CONFIDENTIALITY .....	9
7.8	END OF GUARANTEED SUPPORT ANNOUNCEMENT .....	10
7.9	REMOVAL OF EQUIPMENT FROM COVERAGE.....	10
7.10	NON-ASSIGNMENT.....	10
7.11	REIMBURSEMENT FOR TRAINING COURSES UPON EARLY TERMINATION .....	11
7.12	EXECUTION; COUNTERPARTS .....	11
<b>8</b>	<b>RIGHTS ATTACHED TO COMPUTER PROGRAMS</b> .....	<b>11</b>
<b>9</b>	<b>THIRD PARTY LIABILITY AND COMPENSATION FOR DAMAGE</b> .....	<b>11</b>
9.1	ADDITIONAL, IN CASE OF A SLA.....	12
9.1.1	<i>Additional, in case of Support Days</i> .....	12
<b>10</b>	<b>FORCE MAJEURE</b> .....	<b>12</b>
<b>11</b>	<b>DEFAULT-DISSOLUTION</b> .....	<b>12</b>
<b>12</b>	<b>DISPOSAL OF PROFESSIONAL ELECTRICAL AND ELECTRONIC APPLIANCES</b> .....	<b>13</b>
<b>13</b>	<b>FORUM</b> .....	<b>14</b>

## **1 SCOPE**

These are the terms and conditions for Service and Support of MicroTechniX BV, a company under Belgian law, with its registered office at Anthonis de Jonghestraat 14a, 9100 Nieuwkerken-Waas, entered in the Brussels Register of Legal Persons under number RPR 0502 409 817 (hereafter called MTX).

MTX provides services with or without a service level agreement (SLA or NON-SLA).

For the terms and conditions for the sale of equipment, software, spareparts and accessories, we refer to the document "Terms and condition for equipment, software, spareparts and accessories", which can be found on our website.

### **1.1 NON-SLA services**

The NON-SLA services are 'ad hoc' ordered by the Customer:

Corrective maintenance services on the Equipment

Preventive Maintenance services in order to keep the Equipment operating in accordance with the manufacturers specifications

Support Days 'ad hoc "on call" basis' : these are additional support services provided by MTX on an ad hoc or call basis.

Preventive Maintenance will be carried out according to the manufacturers recommended schedule. Preventive Maintenance generally includes checking mechanical and electrical safety, lubrication, functional testing and adjusting for optimum performance as specified in the detailed Preventive Maintenance work plan. In case of Preventive Maintenance the inspection by MTX is to determine if the Equipment is in good operating condition prior to the commencement of services.

Corrective and Preventive Maintenance will be carried after inspection prior to the commencement of services. Any inspection as well as any repairs or adjustments deemed necessary by MTX during such inspection shall be made at MTX' per-call rates and terms then in effect and shall include charges for parts, with all such repairs or adjustments to be completed prior to the commencement of service.

The Support Days 'ad hoc "on call" basis' consists in a variety of support services for specific tasks such as support activities for Performance Qualification, training & coaching of users, relocation, retesting and equalification of existing MTX-systems, ...

### **1.2 SLA SERVICES**

The SLA services are part of an agreement during which, for a specified predetermined period of time, i.e. the principal coverage period ("PCP"), the Customer can request one or more services:

Hardware maintenance: Preventive Maintenance services in order to keep the Equipment operating in accordance with the manufacturers specifications

Software maintenance: the maintenance and updates for operating system software



Support Days 'fixed days per year' : these are additional support services provided by MTX on a SLA basis

A SLA shall be in effect during the PCP. The PCP is defined in the Task Order/Statement of Work, excluding the following holidays: New Year's Day, National Holiday, and Christmas Day etc. If one of the foregoing holidays falls on a Saturday, then the holiday will be observed on the previous Friday, and if the holiday falls on a Sunday, the holiday will be observed on the following Monday. Unless an extended hours coverage option has been selected, labor and travel required outside the PCP will be considered as NON-SLA and charged at MTX' per-call rates and terms then in effect.

In case of a SLA, the applicable services and the Equipment to which it applies are determined in the Task Order (TO)/Statement of Work (SoW).

Nothing in the SLA (TO/Sow) shall in any way grant to Customer any right to or license in any diagnostic service software utilized by MTX in servicing the Equipment. Such service software is and remains the property of MTX and is available to Customer pursuant to the terms and conditions of a separate diagnostic materials license agreement, which may require payment of a license fee. This service software shall be disabled by MTX upon cancellation or termination of the SLA (TO/SoW).

#### **1.2.1 Preventive Maintenance (PM)**

Preventive Maintenance will be carried out according to the manufacturers recommended schedule. Preventive Maintenance generally includes checking mechanical and electrical safety, lubrication, functional testing and adjusting for optimum performance as specified in the detailed Preventive Maintenance work plan.

In the event that

- the term of the SLA (TO/SoW) does not include the Equipment warranty period, or
- the term of the SLA (TO/SoW) does not commence immediately upon the expiration of the MTX warranty, or
- the Equipment was serviced prior to commencement of the term by anyone other than MTX or an authorized MTX dealer or service provider, or
- the Equipment was moved from its original location or is not connected to its original power supply (other than portable or mobile Equipment),

then the Equipment is subject to inspection by MTX to determine if it is in good operating condition prior to the commencement of services. Any inspection as well as any repairs or adjustments deemed necessary by MTX during such inspection shall be made at MTX' per-call rates and terms then in effect and shall include charges for parts, with all such repairs or adjustments to be completed prior to the commencement of service under the SLA (TO/SoW).

#### **1.2.2 Software Maintenance**

Whenever the Equipment covered by this SLA (TO/SoW) utilizes MTX' operating system software, Icarus, MTX will provide all maintenance and updates for such operating system software as part of the SLA (TO/SoW). Such updates will solely enhance previously purchased capacities of the Equipment. Operating system software upgrades that provide new features or capabilities or that require hardware changes will be offered to the Customer at purchase prices established by MTX. In addition, some upgrades may require applications training performed by MTX' personnel that will be offered at MTX' rates and terms. MTX retains the sole right to determine whether an upgrade requires such training.



### **1.2.3 Support Days 'fixed days per year'**

The Support Days 'fixed days per year' consists in a variety of specialised support services by having an MTX Engineer/Expert on site during a pre-defined PCP period.

## **2 GENERAL PROVISIONS**

These Terms and Conditions shall govern all legal relationships concerning Service and Support between MTX and the Customer.

Proposals by MTX shall not constitute a commitment. Statements made by representatives and the orders that are placed shall be valid only if accepted and confirmed by MTX in writing.

Changes and/or additions to orders or maintenance contracts shall bind MTX only after and to the extent accepted and confirmed by MTX in writing.

If these Terms and Conditions conflict with those of the Customer, the conditions of MTX shall take precedence.

If any provision of these Terms and Conditions is held to be null and void either in full or in part, this shall not affect the validity of the other provisions of the Terms and Conditions. The provisions contained in the Terms and Conditions shall be interpreted in a way that makes them valid and enforceable under the applicable law.

Derogations from these Terms and Conditions by MTX in favor of the Customer shall never entitle the latter to seek subsequent recourse to such derogations or to invoke their application.

If MTX derogates from certain clauses or sub-clauses of these Terms and Conditions, the other clauses and sub-clauses shall remain fully in force. The rights of MTX shall not be impaired by any omission on its part to require strict compliance with the Terms and Conditions.

Any waiving of a right or an entitlement under these Terms and Conditions or concerning a failure by the other party may occur only by means of explicit written communication. The waiving of a right or an entitlement shall never be interpretable as the waiving of any other right, even if the two cases exhibit great similarity.

The SLA (TO/SoW), including all exhibits and addenda attached hereto, constitutes the entire agreement between the parties relating to the subject matter hereof, and supersedes all prior and contemporaneous oral or written representations or communications between the parties. The SLA (TO/SoW) may not be modified or amended, except in writing executed by the appropriate designated officers of the parties hereto.

Any variation in the terms and conditions contained in the SLA (TO/SoW) (including, but not limited to, the inclusion of Customer's own terms and conditions in any purchase order or other document issued by Customer in response to and/or referencing MTX' quotation for NON SLA or SLA) shall not be deemed to be a part of the SLA (TO/SoW) and/or shall not be binding upon MTX unless set forth in writing and executed by the appropriate designated officer of MTX. Subject to the limitations expressed herein, the SLA (TO/SoW) will be binding upon and inure to the benefit of the parties hereto, their successors, legal representatives, and permitted assigns.

## **3 EQUIPMENT; LOCATION; REMOTE ACCESS**

MTX service personnel will be given full and free access to the Equipment to perform inspections and service/maintenance/support on the Customer's premises and will make specific appointments for such



maintenance/support. If the Equipment is not made available at the appointed time, waiting time beyond a reasonable allowance will be charged at MTX' per-call rates and terms then in effect.

Customer shall provide MTX with both on-site and remote access to the Equipment. The remote access shall be provided through the Customer network as is reasonably necessary for MTX to provide services. Remote access will be established through a broadband internet-based connection to a Customer owned secure endpoint. The method of connection will be a MTX provided tool with state-of-the-art data communications encryption.

### **3.1 Additional, in case of a SLA**

The Equipment covered under the SLA is limited to the MTX furnished Equipment described in the TO/SoW. The Equipment shall not be moved to another location unless Customer obtains the prior written consent of MTX, subject to the following exceptions:

- I. portable Equipment (e.g. routine microscopes, but not including any equipment that is housed in a mobile vehicle, van or trailer) may be moved to other locations within the same facility, so long as the Customer informs MTX of the location of the Equipment when MTX is scheduled to provide on-site service;
- II. if Equipment is located in a trailer, van or other form of mobile vehicle, the Equipment may be moved from the Equipment Location defined in the SLA (TO/SoW), provided, however, that MTX shall not be required to service such Equipment, and the Response Time and Uptime Performance Guarantees (if any) shall not apply, if either
  - a. the Customer does not notify MTX at least one (1) month in advance of the Equipment's mobile route, or
  - b. the Equipment is moved more than 25 miles from the original Equipment Location;
- III. if fixed Equipment is moved to any other location within the Customer's facility, then either
  - a. the Customer will engage MTX to relocate the Equipment, at MTX' then current rates and charges, or
  - b. if MTX does not perform the services necessary to relocate the Equipment, then MTX may suspend services with respect to such Equipment until MTX performs an inspection of the Equipment, at the Customer's cost, to determine if any repairs are necessitated as a result of any such relocation (in which case the Customer shall be separately charged for such repairs, including parts and labor, at MTX' rates and charges then in effect).

In the event the Customer fails to provide or maintain the remote access connection any Uptime Performance Guarantee shall be void if the remote access connection is not provided and available 24 hours per day, 7 days a week.

## **4 PAYMENT CONDITIONS**

MTX shall send invoices by regular mail, postage prepaid, at the address of the Customer.

Stated prices shall be net prices. All expenses, taxes and costs additional to or resulting from the sale shall be payable entirely by the Customer. Invoices shall be payable on receipt and within NET 45 days of the invoice date by transfer to one of the bank accounts of MTX without any discount, reduction, lien or set-off. Payments shall be deemed to have been made in Belgium.

Any amounts not received by due date shall automatically incur 8% interest without prior reminder. Additionally, the amount owed shall be increased by a fixed penalty equal to 10% of the outstanding amount, subject to a minimum of EUR 40 for administrative and other costs.

Non-payment by due date shall automatically invalidate any permitted payment terms without prior reminder and shall render amounts owed to MTX immediately payable on demand. In such cases MTX may cancel all outstanding orders without prejudice to any of its rights or receivables.

Prices stated in offers and/or order confirmations shall be valid for 30 days, unless expressly otherwise stated or unless the prices of suppliers of MTX are increased.

If payment is not made in material breach with the agreed payment conditions and if the Customer is bankrupt or insolvent, MTX shall have the right - where applicable and acting fair and reasonably – to repossess the delivered goods or to retain repaired goods until the date of full payment.

#### **4.1 Payment Terms**

Orders for the purchase of services totaling less than EUR 1000 (exclusive of VAT) shall be subject to an administrative and postage charge covering the sending costs and administrative handling.

Unless otherwise specified, for the services to be provided by MTX under the terms of the NON-SLA, all payments shall be made after the performance of the Services.

Unless otherwise specified, for the services to be provided by MTX under the terms of the SLA (TO/SoW), all payments shall be made in advance based on the payment frequency defined in the SLA (TO/SoW).

### **5 ACCEPTANCE AND COMPLAINTS**

All complaints concerning the services shall be made known in writing that accurately describes the complaints and that must be sent within fifteen (15) calendar days after the performed service. The date of posting (postmark) shall be the date of dispatch. After expiry of this term the service shall irrefutably be deemed accepted.

Complaints concerning invoices shall be made known in the same way and within the same period of time, in the absence of which the invoice shall irrefutably be deemed accepted.

### **6 SPARE PARTS AND WARRANTY**

MTX will supply the necessary parts provided that the parts are available from the factory. All replaced parts will be noted on the technicians work order. All Parts will be new, standard parts, or used, reworked or refurbished parts that comply with applicable performance and reliability specifications. Exchange parts removed from the Equipment shall become the property of MTX unless such exchange parts constitute “hazardous wastes”, “hazardous substances”, “special wastes” or other similar materials, as such terms are defined by any federal, state or local laws, rules or regulations, in which case, at the option of MTX, the exchange parts shall remain the property of the Customer and shall be disposed of by the Customer in strict compliance with all applicable laws, rules and regulations.

## **6.1 Warranty**

### **6.1.1 Limitations**

The warranty shall not cover Defects that result from normal wear and tear or from inappropriate use and Defects that occur after the spare parts have been altered or repaired by persons other than engineers and approved agents of MTX. The warranty shall cover only spare parts manufactured by MTX (i.e. MTX-warranty). Other spare parts shall be covered only by the warranties of the manufacturers concerned in accordance with their own provisions (i.e. Third Party-warranty).

### **6.1.2 Scope of warranty**

The spare parts shall be warranted against all defects in material or manufacturing ('Defects') except for consumables. All Defects reported during the warranty period shall be rectified MTX free of charge either by repairing the spare parts or by replacing them by spare parts that are not defective. The MTX-warranty period shall be suspended for the duration of the repair or replacement and shall recommence thereafter.

### **6.1.3 Warranty period**

Unless otherwise specified, the MTX-warranty period for spare parts shall be 6 calendar months. The warranty period shall start on the day of the delivery of the spare parts.

### **6.1.4 Complaints**

The warranty shall be invoked by sending MTX a motivated written protest, possibly even by mail immediately after the defect occurs.

### **6.1.5 Computer programs**

Computer programs shall be warranted against all Defects that not significantly prevent their use. Moreover, computer programs shall be warranted for their compliance with the program descriptions made available to the Customer. However, this shall apply only insofar as they were installed in accordance with the instructions given by MTX. MTX cannot warrant that the computer programs will work in all combinations chosen by the Customer if those combinations are not included in the descriptions. If a Defect comes to light in the computer programs, MTX shall inform the Customer of ways of rectifying the problem or shall carry out a repair or install an equivalent version. MTX shall not accept any kind of liability and shall not provide any kind of warranty for programs, interfaces and similar that originate from other manufacturers. MTX cannot be held responsible for the loss of data due to a repair.

### **6.1.6 Refurbished, demonstration and second-hand equipment**

Unless otherwise agreed in writing, no warranty shall be given on deliveries of refurbished, demonstration or second-hand equipment.

## **6.2 Additional, in case of a SLA**

MTX will supply the necessary parts, except as indicated in SLA (TO/SoW), provided replacement of the parts is required because of normal wear and tear or otherwise deemed necessary by MTX. All replaced parts will be noted on the technicians work order and submitted for approval, a separate invoice for the parts will be presented to the customer.

## **7 SLA SPECIFIC**

### **7.1 Causes for Exclusion/Separate Charges**

The SLA (TO/SoW) specifically excludes labor, parts and expenses necessary to repair Equipment:

- damaged by fire, accident, misuse, abuse, negligence, improper application or alteration or by a force majeure occurrence as described in Section 'FORCE MAJEURE', or by the Customer's failure to operate the Equipment in accordance with the manufacturers instructions or to maintain the recommended operating environment and line conditions;
- defective due to unauthorized attempts to repair, relocate, maintain, service, add to or modify the Equipment by the Customer or any third party or due to the attachment and/or use of non-MTX supplied parts, equipment or software without MTX' prior written approval;
- defective due to any repair or service of the Equipment by the Customer or any third party prior to the commencement of the term of the SLA (TO/SoW);
- which failed due to causes from within non-MTX supplied equipment, parts or software including, but not limited to, problems with the Customer's network;
- which is worn out and cannot be reasonably repaired due to the unavailability of spare parts from the original equipment manufacturer; or
- which is e.g. a hand piece, and which is damaged or defective, or which failed, due to any of the foregoing causes or due to improper cleaning or disinfecting.

If MTX is called upon to service or repair Equipment which falls under this Section, a separate invoice will be issued for labor, parts and expenses at MTX' rates and terms then in effect.

The SLA (TO/SoW) does not entitle the Customer to services related to information technology, imaging workflow design and analysis, or problem diagnosis unless otherwise agreed upon between both parties. MTX' responsibility under the SLA (TO/SoW) does not extend beyond the outbound or inbound sockets of the Equipment. In addition, changes, adjustments, additions or repairs required to or with respect to the Equipment resulting from issues, matters, items or concerns that are the responsibility of the Customer, such as changes related to Customer's network infrastructure, are not covered by the SLA (TO/SoW). This may include, but is not limited to, network IP address changes. Although the Equipment may have limited short term storage capacity, the storage of data, is the responsibility of the Customer.

### **7.2 Notices**

Except for the issuance of invoices as set forth in Section 'PAYMENT CONDITIONS' hereof, all notices required to be provided hereunder shall be in writing and shall be sent by overnight delivery via a nationally recognized delivery service or by certified or registered mail, postage prepaid, to MTX at the address set forth on the first page of the SLA (TO/SoW) and to the Customer at the address stated in the SLA (TO/SoW). Notice given in compliance with this Section shall be sufficient for all purposes under the SLA (TO/SoW), and such notice shall be effective when sent. Either party may change its notice address only if notification is sent in writing pursuant to this Section.

### **7.3 Governing Law; Waiver of Jury Trial**

Any dispute, controversy or claim arising out of or relating to the SLA (TO/SoW), including its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled under the rules/law of Belgium by the commercial state courts of Oost-Vlaanderen, section Dendermonde. The language of the procedure shall be Dutch.





#### **7.4 Damages, Costs, And Fees**

In the event that any dispute or difference is brought arising from or relating to the SLA (TO/SoW) or the breach, termination, or validity thereof, the prevailing party shall not be entitled to recover from the other party punitive damages. The prevailing party shall be entitled to recover from the other party all reasonable attorney's fees and collection agency fees incurred, together with such other expenses, costs and disbursements as may be allowed by law.

#### **7.5 Severability; Headings**

No provision of the SLA (TO/SoW) or hereof which may be deemed invalid, illegal or unenforceable will in any way invalidate any other portion or provision of the SLA (TO/SoW) or hereof. Paragraph headings are for convenience only and will have no substantive effect.

#### **7.6 Waiver**

No failure, and no delay in exercising, on the part of any party, any right under the SLA (TO/SoW) will operate as a waiver thereof, nor will any single or partial exercise of any right preclude the further exercise of any other right.

#### **7.7 Confidentiality**

MTX and the Customer shall maintain the confidentiality of any information provided or disclosed to the other party, its employees or agents (a "receiving party") relating to the business, customers of the disclosing party, including but not limited to know-how, technical data, processes, software, techniques, developments, inventions, research products and plans for future developments, proprietary matters of a business or technical nature, as well as the SLA (TO/SoW) and its terms (including the pricing and other financial terms under which the Customer will be obtaining the services hereunder). Confidential Information shall also include all written materials (including correspondence, memoranda, manuals, training materials, notes and notebooks) and all computer software, models, mechanisms, devices, drawings or plans which may be disclosed or made available embodying Confidential Information. All Confidential Information shall be and remain the sole and exclusive property of the disclosing party. Each party shall use reasonable care to protect the confidentiality of the information disclosed, but no less than the degree of care it would use to protect its own confidential information, and shall only disclose the other party's Confidential Information to its employees and agents having a need to know this information.

Confidential Information shall not include any information or data which

- I. is or becomes public knowledge (through no fault of the receiving party or any of its employees or agents),
- II. is made available to the receiving party by an independent third party without any obligation of confidentiality,
- III. is already in the receiving party's possession at the time of receipt from the disclosing party (as such prior possession can be properly demonstrated by it), or
- IV. is required by law to be disclosed, provided that the receiving party gives the disclosing party advance notice of the requirement for disclosure so that the disclosing party can take whatever action it deems necessary to protect the disclosure of its Confidential Information.

In addition, this confidentiality provision shall not apply to any action brought by either party to enforce the terms of the SLA (TO/SoW) against the other party. Any unauthorized use, disclosure or misappropriation of any Confidential Information by the receiving party in violation the foregoing may result in irreparable and continuing damage to the disclosing party; in the event of such breach, the disclosing party shall be entitled to obtain



immediate injunctive relief and any other relief or remedies to which it may be entitled. The receiving party waives any requirement that the disclosing party post a bond or other security in connection with any petition filed by the disclosing party for injunctive relief. In the event that a court of competent jurisdiction determines that the receiving party has breached this provision, then the receiving party shall reimburse the disclosing party for the costs of any court proceedings and all reasonable attorney's fees.

## **7.8 End of Guaranteed Support Announcement**

Notwithstanding anything to the contrary contained herein, in the event that MTX makes a general announcement that it will no longer offer SLA for an item of Equipment or components thereof, or provide a particular SLA option or feature, whether due to the unavailability of spare parts or otherwise (an "EOS Announcement"), then upon no less than twelve (12) months prior written notice to the Customer, MTX may, at its option,

- I. cancel the SLA (TO/SoW) or
- II. remove any affected Equipment, components, options or features from coverage under the SLA (TO/SoW), with, if applicable, a corresponding adjustment of the Annual Agreement Price.

At the end of this twelve (12) month period and at the request of the Customer, MTX will use commercially reasonable efforts to provide service or parts on a time and materials basis only, at MTX' rates and terms then in effect, for any Equipment, components, options or features subject to an EOS Announcement.

## **7.9 Removal of Equipment from Coverage**

The Customer may remove Equipment from coverage under the SLA (TO/SoW) at any time upon no less than thirty (30) days prior written notice to MTX if the use of the Equipment is permanently discontinued and the Equipment is removed from service. There is no fee for this cancellation. If applicable, prorated credit will be issued for any advance payments made by the Customer for the period after the effective date of removal (based on the notice requirement). In addition, if the Customer sells or otherwise transfers any of the Equipment to a third party and the Equipment remains installed and in use at the same location, but such third party does not assume the obligations of the Customer under the SLA (TO/SoW) or enter into a new SLA (TO/SoW) with MTX with a term at least equal to the unexpired term of the SLA (TO/SoW), then the Customer may terminate the SLA (TO/SoW) with respect to such Equipment upon no less than thirty (30) days prior written notice to MTX, in which case the Customer shall pay to MTX

- I. all amounts due under the SLA (TO/SoW) through the effective date of termination (based on the notice requirement) and
- II. as liquidated damages and not as a penalty, an amount equal to 25% of the remaining payments due under the SLA (TO/SoW) for such Equipment from the date of termination through the scheduled expiration of the term of the SLA (TO/SoW).

## **7.10 Non-Assignment**

Customer may not assign the SLA (TO/SoW) unless it obtains the prior written consent of MTX, which consent shall not be unreasonably withheld or delayed. MTX may not assign the SLA (TO/SoW) unless it obtains the prior written consent of the Customer, which consent shall not be unreasonably withheld or delayed, except that MTX may assign without Customer approval to any subsidiary or affiliated company or any of its authorized dealers.



### **7.11 Reimbursement for Training Courses upon Early Termination**

If the SLA (TO/SoW) includes any training courses and the SLA (TO/SoW) is terminated or Equipment is removed from coverage as provided hereof prior to the expiration of the term, then MTX may bill the Customer for any balance due and owing with respect to those training courses that have been completed by the Customer, and Customer agrees to pay the same.

### **7.12 Execution; Counterparts**

If the Customer is a corporation or partnership, the person signing the SLA (TO/SoW) on its behalf certifies that such person is an officer or partner thereof, that his or her action was duly authorized by appropriate corporate or partnership action, that such action does not conflict with the corporate charter or bylaws or the partnership agreement, as the case may be, or any contractual provision binding on such corporation or partnership, and that no consent of any stockholders to his or her action is required.

This SLA (TO/SoW) may be executed in two (2) or more counterparts, each of which shall constitute an original document but all of which together shall constitute one and the same agreement.

## **8 RIGHTS ATTACHED TO COMPUTER PROGRAMS**

MTX shall grant the Customer a non-exclusive right to use the programs, additions to programs and accompanying documentation.

The Customer shall use the programs only for the in the TO/SoW specified equipment.

The granted rights may not be assigned to third parties without the prior written consent of MTX. Moreover, the Customer shall refrain from copying any part of the programs, additions to programs and accompanying documentation, from making copies of copies and from reproducing them and from allowing their inspection by third parties.

## **9 THIRD PARTY LIABILITY AND COMPENSATION FOR DAMAGE**

Except for the liability provided for under these Terms and Conditions and subject to the application of mandatory or public order laws, the Customer shall not be able to claim any compensation from MTX.

Unless otherwise stipulated in these Terms and Conditions, the liability of MTX shall be limited in all instances to the invoiced amount.

MTX shall not be liable for losses of or changes to data as a result of program errors and shall not be under obligation to restore lost or changed data.

WITHOUT LIMITING THE LIMITATION OF LIABILITY SET FORTH IN THE PRECEDING PARAGRAPH, MTX EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL MTX BE LIABLE FOR ANY LOST PROFITS, LOST SAVINGS, LOST REVENUES, LOSS OF USE OR DOWNTIME (EXCEPT AS OTHERWISE PROVIDED HEREIN), LOST DATA, OR FOR ANY INDIRECT, INCIDENTAL, UNFORESEEN, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER THEORY OR FORM OF ACTION, EVEN IF MTX HAS BEEN ADVISED OF THE POSSIBILITY



THEREOF, ARISING OUT OF OR IN CONNECTION WITH THE SERVICE CONTRACT OR THE USE OR PERFORMANCE OF THE EQUIPMENT.

## **9.1 Additional, in case of a SLA**

MTX' entire liability and Customer's exclusive remedy for any direct damages incurred by the Customer from any cause whatsoever, and regardless of the form of action, whether liability in contract or in tort, arising under the SLA (TO/SoW) or related hereto, shall not exceed an amount equal to the Annual Agreement Price for the specific item of Equipment under the SLA (TO/SoW) that caused the damage or is the subject matter of, or is directly related to, the cause of action. Such maintenance charges will be those in effect for the specific item of Equipment when the cause of action arose. The foregoing limitation of liability shall not apply to claims by Customer or third parties for bodily injury or damage to real property or tangible personal property caused solely and directly by the gross negligence or willful misconduct of MTX. In addition, MTX shall have no liability hereunder to Customer to the extent that Customer's or any third party's acts or omissions contributed in any way to any loss it sustained or to the extent that the loss or damage is due to a force majeure occurrence as described in Section 'FORCE MAJEURE' or any other cause beyond the reasonable control of MTX.

### **9.1.1 Additional, in case of Support Days**

The SLA Support Days offered by MTX is an obligation of means and not an obligation of results. Therefore MTX can never be held responsible for incorrect outcomes, results and diagnosis.

## **10 FORCE MAJEURE**

If it is unable to meet its obligations towards the other party due to force majeure lasting more than 45 calendar days, both parties shall have the right, at its election, to suspend performance of the agreement for not more than six months, or to consider the agreement fully or partly dissolved, without owing the other party any compensation for damage, even if both parties may derive any kind of benefit from the force majeure.

For the present purposes 'force majeure' shall mean any circumstance beyond the control of parties or any unforeseeable circumstance as a result of which the other party cannot reasonably be expected to fulfil the agreement.

MTX will not be liable to Customer for any failure to fulfill its obligations under the Service Agreement due to causes beyond its reasonable control and without its fault or negligence including, but not limited to, governmental laws and regulations, acts of God or the public, war or other violence, civil commotion, blockades, embargoes, calamities, floods, fires, earthquakes, explosions, accidents, storms, strikes, lockouts, work stoppages, labor disputes, or unavailability of labor, raw materials, power or supplies. In addition, in the event of any determination pursuant to the provisions of a collective bargaining agreement between the Customer and any labor union representing any employees of the Customer preventing or hindering the performance of any of the obligations of MTX under the Service Agreement, or determining that the performance of any such obligations violates provisions of that collective bargaining agreement, or in the event a trade union, or unions, representing any of the employees of the Customer otherwise prevents MTX from performing any such obligations, then MTX shall be excused from the performance of such obligations unless the Customer makes all required arrangements with the trade union, or unions, to permit MTX to perform the work. The Customer shall pay any additional costs incurred by MTX that are related to any labor dispute(s) that involve the Customer.

## **11 DEFAULT-DISSOLUTION**

Customer shall be in default upon:



- I. a failure by Customer to make any payment due MTX within ten (10) days of receipt of notice from MTX that the payment was not made within the applicable payment period;
- II. a failure by Customer to perform any other obligation under the SLA (TO/SoW) within thirty (30) days of receipt of notice from MTX;
- III. a failure to grant MTX access to the Equipment as set forth in Section 'EQUIPMENT; LOCATION; REMOTE ACCESS' hereof;
- IV. a default by Customer or any affiliate of the Customer under any other obligation to or agreement with MTX or any assignee of the foregoing (including but not limited to, a promissory note, lease, rental agreement, license agreement or purchase contract); or
- V. the commencement of any insolvency, bankruptcy or similar proceedings by or against the Customer (including any assignment by Customer for the benefit of creditors).

Upon the occurrence of any event of default hereunder, MTX may, in addition to any and all other remedies available under law, elect to:

- I. immediately cease providing services under the SLA (TO/SoW) and any and all other agreements between the parties, or suspend any training courses, until the default is cured or corrected,
- II. terminate the SLA (TO/SoW), in which case Customer shall pay to MTX
  - a. all amounts due under the SLA (TO/SoW) through the effective date of termination,
  - b. as liquidated damages and not as a penalty, an amount equal to 25% of the remaining payments due under the SLA (TO/SoW) from the date of termination through the scheduled expiration of the term of the SLA (TO/SoW), and
  - c. all costs and expenses of collection, including without limitation reasonable attorneys' fees and court costs incurred by MTX as a result of the Customer's default, and/or
- III. commence collection actions (including court actions) for all sums due under the SLA (TO/SoW) or NON-SLA.

All rights and remedies available to MTX hereunder, by law or equity, shall be cumulative and there shall be no obligation for MTX to exercise a particular remedy.

In the event that Customer cures all defaults hereunder, then prior to resumption of services under the Service Agreement, MTX may inspect the Equipment to determine if it is in good operating condition. Such inspection shall be charged to the Customer at MTX' per-call rates and terms then in effect. Any repairs or adjustments which MTX determines are required due to

- I. the use of any non-MTX parts,
- II. the repair or service of the Equipment by the Customer or any third party during the suspension of services by MTX, or
- III. any of the exclusions from coverage set forth in Section 8 hereof, shall be charges to the Customer at MTX' rates and terms then in effect and shall include charges for parts, with all such repairs or adjustments to be completed prior to the resumption of service under the Service Agreement.

## **12 DISPOSAL OF PROFESSIONAL ELECTRICAL AND ELECTRONIC APPLIANCES**

For the performance of the acceptance obligation for professional electrical and electronic appliances, MTX is a member of RECUPEL and pays an administrative contribution for this.

The customer shall undertake to bear any possible costs for the collection and processing of both the professional electrical and electronic appliances that form the subject of the order when these are discarded and for the discarded electrical and electronic appliances that are thus replaced.



In order to comply with waste products legislation, the customer can call upon an operator with whom RECUPEL has concluded a Charter ([www.recupel.be](http://www.recupel.be)). If desired, MTX can put the customer in contact with an operator for a price quote.

The acceptance obligation only applies to decontaminated appliances for which the customer is solely responsible.

### **13 FORUM**

The commercial state courts of Oost-Vlaanderen (Belgium), section Dendermonde shall hold exclusive jurisdiction to hear any disputes that arise from the contractual relationship with MTX (both sales and after-sales), including disputes regarding application or interpretation of these Terms and Conditions.

Any disputes arising from the contractual relationship with MTX (both sales and after-sales), including disputes regarding application or interpretation of these Terms and Conditions, shall be governed solely by the laws of Belgium.

The language of the procedure shall be Dutch.

Personal data shall be processed in accordance with privacy regulations. The personal data that we obtain about you shall primarily be used for the purposes of the legal relationship that we maintain with you, in particular with regard to the sales or maintenance agreements that you have with MTX.

This information may also be used

- I. to fulfil any service that you require,
- II. to market MTX products and services and associated products and services, among other things through direct marketing notably for personalized marketing purposes, and subsequently
- III. to improve the way that we as a company serve you.

This information shall not be disclosed to third parties outside the MTX, its branches or associated companies, agents, dealers or licensees and other enterprises with each MTX has agreed service provisioning on your behalf and any acquirer, agent or substitute of the parties mentioned above. The information shall originally be processed and managed by MTX BV, Anthonis de Jonghestraat 14a, 9100 Nieuwkerken-Waas, and may be forwarded to other countries, within or outside the European Union, where it may also be processed and stored. Subject to presentation of means of identification, you have the right as an individual to inquire about the information we have stored about you and to require corrections to it if necessary. To do this you must contact MTX BV, Anthonis de Jonghestraat 14a, 9100 Nieuwkerken-Waas. Additionally, you may contact the Privacy Commission, Waterloolaan 115, 1000 Brussels.