

THESE ARE THE TERMS AND CONDITIONS ON WHICH MIRAACLON WILL SUPPLY THE CUSTOMER WITH EQUIPMENT. THE CUSTOMER AGREES TO BE BOUND BY MIRAACLON'S TERMS AND CONDITIONS CONTAINED BELOW.

## **Miraclon's Sales Terms and Conditions**

### **1 Definitions, interpretation and conflicts.**

1.1 Where capitalised terms are used in the Agreement then the following definitions will apply, unless the context otherwise requires.

**"Agreement"** shall mean a Sales Agreement for Products (including all applicable Schedules and these Miraclon T&C's which shall form part of it), signed by authorised representatives of Miraclon and the Customer.

**"Applicable Law"** shall mean all laws of any country or territory as amended from time to time, which apply to the Products included in the Agreement including without limitation the following: constitutional law, civil law, common law, international law, equity, treaties, statutes, decrees, edicts, codes, orders, rules, ordinances and regulations of any local, municipal, territorial, provincial, federal, national or any other duly constituted governmental authority or agency including those relating to health, safety and the environment.

**"Completion of Installation"** shall mean, for Equipment and Software, that the Equipment and/or Software has been Delivered, installed and one test of the Equipment's operation has been successfully completed by Miraclon except for self-installable Equipment and/or Software where it shall mean the date of Delivery by Miraclon.

**"Confidential Information"** shall mean any information of either Party, which is marked as confidential, or is by its nature clearly confidential including, without limitation, drawings, designs or manuals relating to the Products, any information relating to either Miraclon's or the Customer's services, operations, prices, plans or intentions, service information, design rights, trade secrets, market opportunities and business affairs, marketing, suppliers or customers or those of Miraclon's or Customer's customers and which is disclosed (whether in writing, verbally or by any other means including being observed during visits to premises) by the Disclosing Party, whether directly or indirectly, to the Receiving Party.

**"Consumables"** shall mean the media (film, paper, plates, fabrics, plastics, digital media, transfer media, proofing media and other imageable substrates), chemicals, filters and bulbs consumed during normal Equipment use.

**"Customer Replaceable Units or CRU"** shall mean components of the Equipment which are replaceable by Customer, as determined by Miraclon, without the necessary on-site assistance by Miraclon. A list of CRUs is available from Miraclon upon request.

**"Delivery"** shall mean for Equipment and Software FCA (Free Carrier Incoterms® 2010) Port of Departure and for Parts FCA (Free Carrier Incoterms® 2010) Miraclon's European Warehouse.

**"Disclosing Party"** shall mean the Party disclosing Confidential Information.

**"Effective Date"** shall mean the effective date shown in the Agreement or, if no date is inserted, then the last date of signature of the Agreement by both Parties.

**"Equipment"** shall mean the hardware identified in Schedule, Equipment, Software and Professional Services. All Equipment is new unless otherwise indicated in the Agreement. New Equipment may contain parts refurbished as new.

**"Initial Period"** shall mean the initial period shown in the Agreement, or if no initial period is shown then the period of 12 months from the Effective Date.

**"Miraclon T&C's"** shall mean these Sales Terms and Conditions.

**"Non Customer Replaceable Units"** shall mean components which are not replaceable by Customer without the assistance of Miraclon.

**"Parts"** shall mean replacement parts used in the Equipment other than Consumables.

**"Party"** shall mean Miraclon or Customer and **"Parties"** shall mean Miraclon and Customer.

**"Person"** shall mean (a) any corporation, partnership, joint venture, joint stock company, association, trust, business trust, estate, unincorporated organisation, or other business entity, (b) any government or agency, division or sub division thereof, or (c) any individual.

**"Products"** shall mean where the context permits, Equipment, Software, Parts, and Professional Services.

**“Professional Services”** shall mean those services described in Schedule, Equipment, Software and Professional Services, which may include, without limitation: additional training (optional or mandatory) in addition to standard Training as defined in Schedule, Equipment, Software and Professional Services, Equipment modifications, remote online support and other process improvement services.

**“Receiving Party”** shall mean the Party receiving Confidential Information.

**“Schedule”** shall mean a Schedule to the Agreement and shall include any attachments to the Agreement.

**“Site”** shall mean the Customer location where the Equipment and/or Software is installed by Miraclon, or where not installed by Miraclon where the Equipment/ and/or Software is delivered by Miraclon, or where Miraclon did not deliver the Equipment and/or Software where it originally resided.

**“Software”** shall mean (a) software contained in the Equipment, (b) third party software embedded in Miraclon’s software or in the Equipment, (c) all software identified in Schedule, Equipment, Software and Professional Services, (d) any Software modifications which are provided to Customer by Miraclon, in its sole discretion, and (e) all user materials and other documentation.

**“Software Media”** shall mean the disks/media on which the Software is distributed.

**“Software Support License”** shall mean a license to download or have installed a Software Update or Software Upgrade. In addition the Software Support License will set out the entitlements for each specific type of Software Support License.

**“Software Update”** shall mean a release of Software, in object code form, or firmware, which provides minor fixes, improvements and modifications to the Software or Equipment.

**“Software Upgrade”** shall mean a release of Software, in object code form, or firmware, which adds new functionality and feature enhancements to the Software or Equipment.

**“Start-up Assistance”** shall mean operator production support provided by Miraclon during installation as shown in Schedule, Equipment, Software and Professional Services.

**“Training”** shall mean classroom or onsite training provided by Miraclon in the use and operation of the Equipment and/or Software and (unless otherwise stated) the price of Training as described in the Agreement, is included in the price of the Products.

**“VAT”** shall mean value added tax chargeable under any Applicable Law and any other applicable taxes and duties or similar charges which shall be charged in accordance with the relevant Applicable Law in force at the time of making the relevant taxable supply.

1.2 Headings in the Agreement are for convenience only and shall not affect their meaning or interpretation.

1.3 Words (i) having the singular meaning include the plural meaning, (ii) denoting any gender include all genders; and in each case vice versa.

1.4 A reference to writing or written includes facsimile and email.

1.5 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## **2 Agreement.**

2.1 Miraclon agrees to sell and/or license to Customer and Customer agrees to purchase and/or license from Miraclon the Products as identified in the Schedules on the terms and conditions set out or referred to in the Agreement.

2.2 All purchase orders submitted by Customer will be of no effect unless and to the extent that they are accepted by Miraclon in its sole discretion and provided they refer expressly to and are subordinate to the Agreement.

2.3 The terms of the Agreement contain the entire agreement between the Parties and cancel all previous terms of business between Miraclon and Customer in relation to its subject matter. No other terms and conditions (including, without limitation, any terms or conditions which the Customer purports to apply under any purchase order, acknowledgement or any other document issued by the Customer) shall form part of the Agreement.

2.4 The Customer shall ensure that all safety information provided by Miraclon relating to the Equipment is passed on to the Customer’s employees, contractors and representatives or Equipment users. The Customer shall not alter, mask or remove any safety information from the Equipment.

2.5 The Customer represents that it is purchasing the Products as a professional end-user.

### **3 Delivery.**

**3.1. Delivery.** Miraclon will make reasonable efforts to Deliver the Products on the dates set forth in the Agreement or as otherwise communicated by Miraclon. Delivery times are estimates only and Miraclon shall not be liable for failure to Deliver within such time.

**3.2 Force Majeure.** In case of delays caused by Force Majeure as specified in condition 16.2, Miraclon shall have the right either to suspend deliveries without notice, or cancel the order without liability.

**3.3 Instalments.** Miraclon may deliver the Products in instalments. Each instalment will be treated as a separate contract. Each instalment shall be paid on the due date as a condition precedent to further deliveries as per the Agreement. Any defect in any instalment of Products shall not be grounds for cancellation of the remaining instalments.

**3.4 Inspection** Customer shall inspect the Products immediately on Delivery to ensure compliance with the Agreement.

**3.5 Incomplete Deliveries/Product missing from order(s) or visible damage or defects on Products must be reported in writing to Miraclon within 24 hours of Delivery of Products in accordance with conditions 3.5(i) and 3.5(ii):**

- (i) Loose carton Delivery – a consignment note is provided with each Delivery. It is the Customer's or its agent's responsibility to sign and print their name on the consignment note confirming receipt of the order. Any carton shortages or damage must be clearly noted on the consignment note before the Delivery is completed. Claims for carton shortages or damage not marked on the consignment note will not be accepted.
- (ii) Large Delivery (shrink wrapped) – a consignment note is provided with each Delivery. It is the Customer's or its agent's responsibility to sign and print their name on the consignment note confirming receipt of the order. Any pallet shortages or visible damage or defect must be clearly noted on the consignment note before the Delivery is completed. If possible the Customer should count the number of cartons and note any shortages on the consignment note before the Delivery is completed.

### **4 Risk and title.**

**4.1 Risk.** The risk of loss of, or damage to, the Products shall pass from Miraclon to Customer as specified in the applicable Incoterm.

**4.2 Retention of title.** Subject to the provisions of the Software license, title to the Equipment will pass from Miraclon to Customer upon payment in cleared funds of all amounts due to Miraclon, however incurred. Until ownership passes to the Customer, the Customer shall keep the Equipment insured against all risk of loss or damage for Miraclon and shall provide Miraclon with proof of insurance upon request and shall keep Miraclon informed as to where the Equipment is stored at all times. Upon request, the Customer will grant Miraclon reasonable access to the premises where the Equipment is located and will not transfer the Equipment or grant any rights to the Equipment to any third Party until it has obtained full ownership thereof. The Customer will inform its landlord or any other creditor of the retention of title of Miraclon on the Equipment.

### **5 Equipment and Software installation Training and safety information.**

**5.1** Except for self-installable Equipment, Miraclon shall install the Equipment at Customer's Site at a mutually agreeable time. Prior to installation, Customer shall, at its expense, complete all applicable Site preparations as specified by Miraclon and Applicable Law.

**5.2** If Customer fails to have the Site ready for installation, the additional time spent on Customer Site will be charged to Customer at Miraclon's then current rates.

**5.3** Upon Completion of Installation, then unless the Equipment/Software is self installable a Miraclon representative will present the Customer with a report stating that the Equipment and/or Software has been duly installed and Miraclon has achieved Completion of Installation.

**5.4** Miraclon shall provide Training and Start-up Assistance if and as described in Schedule, Equipment, Software and Professional Services. Customer shall be responsible for scheduling all Training prior to installation and has 30 days from Completion of Installation to complete Training from Miraclon. Miraclon has the right to charge Customer for any additional costs if the requested Training is cancelled within 10 days of the scheduled Training date. Failure to schedule or complete Training shall not be cause to delay any payment under the Agreement. Unless otherwise stated in Schedule, Equipment, Software and Professional Services, classroom Training will be conducted at Miraclon's premises and Customer shall be responsible for all travel, living and other costs incurred in connection with the Training.

## **6 Professional Services.**

**6.1** Miraclon will perform Professional Services in accordance with generally accepted industry standards. Customer will perform its responsibilities as and when communicated by Miraclon in a timely and correct manner. Professional Services will be performed within a reasonable time after the Completion of Installation of Equipment and Software. For self-installable Products or self-training Products, Customer must perform such installation or training prior to Miraclon's performance of any associated Professional Services. Miraclon will not be responsible, or otherwise liable, for any delays caused by a failure of the Customer to timely or correctly perform its responsibilities.

**6.2** Miraclon will perform Professional Services in accordance with any statement of work, which shall describe the specific responsibilities of Customer and Miraclon. Miraclon will perform Professional Services in a workmanlike manner and in accordance with industry standards. Customer will perform its responsibilities identified in any applicable statement of work in a timely and correct manner. Professional Services will be performed within a reasonable time after Completion of Installation. For self-installable Products or self-training Products, Customer must perform such installation or training prior to Miraclon's performance of any associated Professional Services. Miraclon will not be responsible, or otherwise liable, for any delays caused by a failure by Customer to timely perform its responsibilities. The Professional Services are a fixed duration service and will be provided in accordance with the days described in Schedule, Equipment, Software and Professional Services and on a 7 hours a day basis. If additional time is needed on-site, it will be provided on a chargeable time and material basis at Miraclon's then current rates and subject to limitations of scheduling and local availability.

## **7 Trade-In.**

If the Agreement includes any trade-in equipment, Customer represents and warrants that (a) the trade-in equipment can be picked up from Customer's Site ground floor loading dock by Miraclon within 10 days following Completion of Installation of the Equipment or as specified in the Schedule, Equipment, Software and Professional Services and (b) is in good working order, condition and repair, subject to normal wear and tear, and (c) Customer has lawful, clear, marketable title to the trade-in equipment free of any third party rights. Customer shall indemnify Miraclon for any costs, claims, damages and liability Miraclon suffers if any of the foregoing representations and warranties are untrue and Miraclon shall have no further obligation to accept the trade-in equipment and Customer shall be immediately liable to Miraclon for an amount equal to the trade in allowance that was applied to reduce the purchase price of the Products. Any trade-in equipment will be identified as such in the Agreement.

## **8 Price and Payment.**

**8.1** Customer will pay the price of the Products as set out in the Schedules.

**8.2.** The prices of the Products do not include and Customer shall pay for: i) costs for additional tools or equipment e.g. crane, forklift and in general costs for transport of the Products from ground floor loading dock to installation area; ii) VAT; iii) export or import duties or other customs charges, when and if applicable and iv) storage and rigging. Further charges as referred to in the Agreement, including conditions 5.2 and 6.2 of these Miraclon T&C's, may also apply.

**8.3** Payment for the Products will be made in accordance with the applicable payment terms set out in the Schedules, or if no payment terms are specified then within 30 days from the date of invoice. All payments for Products are payable in cleared funds to Miraclon as stated on the invoice. Payment may not be made in a currency other than that specified in the invoice. Unless otherwise agreed by Miraclon, payment shall be made by electronic funds transfer.

**8.4** Until a credit account is established, all business with new Customers is on a cash with order basis unless otherwise agreed. Any grant of credit facilities is conditional on Miraclon receiving payment on or before the date set out on Miraclon's invoice and Miraclon may withdraw credit facilities forthwith if payment is not made on or before the due date, in which case payment of all outstanding amounts will immediately become due and payable.

**8.5** Unless otherwise specifically stated in the Agreement all prices and charges exclude VAT which will be paid in addition at the rate in force on the date of VAT invoice.

**8.6** Time for payment of amounts due from Customer to Miraclon under the Agreement is of the essence of the contract. Miraclon may appropriate any payments received that do not refer to a particular invoice to any outstanding invoice, including penalties and interest on such invoices.

**8.7** Any rebates allowances or other amounts due to the Customer will be dealt with by credit note or payment.

**8.8** If the Customer fails to pay any amount when due then the Customer will immediately be in default and Miraclon may, without

prejudice to Miraclon's other rights and without further notice, cancel the order for Products, postpone shipments of Products, suspend maintenance services, alter payment terms, repossess the Products, and automatically without the necessity for formal prior notice charge interest on all overdue amounts from the date payment is due until the date actual payment is received at the monthly rate of 1.5 % of the overdue balance. Any other amounts outstanding from the Customer to Miraclon shall also become due and payable immediately.

## **9 Warranty.**

**9.1 Equipment and Parts Warranty.** Unless otherwise stated in the Agreement, Miraclon warrants for the periods set forth below ("**Warranty Period**") as follows: Equipment shall be free from material defects in materials and workmanship, subject to normal use and respect of the recommended service program for the Equipment, for the warranty period set forth in the Schedule Equipment, Software and Professional Services. If no such period is specified, the warranty shall be for a period that is the shorter of (i) 12 months from the date of Completion of Installation of Equipment, and (ii) 14 months from the date of initial Delivery by Miraclon. Parts shall be free from material defects in materials and workmanship for a period of 12 months from Delivery. Miraclon specifically does not warrant that the Equipment or Customer's configuration will operate uninterrupted or error free.

**9.2** During the Warranty Period Miraclon shall provide, at its discretion, (a) remote assistance during Miraclon working hours, Monday to Friday, excluding holidays; (b) on-site assistance during Miraclon working hours, Monday to Friday, excluding holidays, and Parts necessary to repair the Equipment (c) on-line assistance through the e-centre (d) Parts and services as specified in Field Change Orders issued by Miraclon during the Warranty Period.

**9.3** Subject to the provisions of condition 10.1, Customer's sole remedy under the warranty described in this condition shall be, at Miraclon's discretion to repair or replace the defective or non-conforming Part, component of the Equipment or refund of the actual amount paid by Customer for the defective Equipment or Part. The remedies are only available if Miraclon is notified of a warranty claim within the applicable Warranty Period.

**9.4 "Non Customer Replaceable Units" Warranty.** Non Customer Replaceable Units must be installed under the supervision of a Miraclon certified service specialist. Failure to do this will be result in the unit not being covered by any Miraclon warranties.

**9.5 Professional Services Warranty.** Miraclon warrants that it shall perform Professional Services in a professional manner using appropriately skilled personnel in accordance with generally accepted industry standards and Miraclon's then current policies and procedures. Subject to the provisions of condition 10.1 Customer's sole and exclusive remedy under the warranty described in this condition shall be, at Miraclon's option, (1) re-performance of the non-conforming Professional Services, or (2) refund of the amount paid by Customer for the non-conforming Professional Services.

**9.6 Warranties Limitations.** The above warranties only apply if Miraclon is notified of a warranty claim within the applicable Warranty Period and do not apply to claims that arise from (i) accident, neglect, misuse, abuse, improper handling or transportation, or improperly maintained air conditioning, humidity control or electrical power, (ii) caused by any Person other than Miraclon or its authorised agents, (iii) interoperation with other non-Miraclon supplied products, (iv) improper installation, service or modification by Persons other than Miraclon or its authorised agents, (v) use in an environment or a manner or for a purpose for which the Products were not designed or intended, (vi) unusual physical or electrical stress, (vii) any cause other than ordinary use.

**9.7** Subject to the provisions of condition 10.1 any further conditions or warranties (whether express or implied by Applicable Law or arising from conduct or a previous course of dealing or trade custom or usage) as to quality, or fitness for any particular purpose, are expressly excluded to the maximum extent as legally possible.

## **10 Exclusions and Limitation of Liability.**

**10.1** Nothing in the Agreement shall affect any liability which Miraclon may have in respect of the death of, or personal injury to, any person resulting from Miraclon's negligence or operate to limit or exclude any liability for fraud or fraudulent misrepresentation or other liability which cannot be excluded by Applicable Law.

**10.2** Subject to condition 10.1, in no event shall the liability of Miraclon or that of its parent corporation, subsidiaries, affiliates, licensors, manufacturers, subcontractors, and suppliers exceed the actual amount Customer paid for the specific Products that directly gave rise to the damages claimed, regardless of the basis on which the injured Party claims.

**10.3** Subject to condition 10.1, in no event shall Miraclon, its parent corporation, subsidiaries, affiliates, licensors, manufacturers

or suppliers or subcontractors be liable for any loss of revenue, profits, business, contracts or cost savings, claims for loss of production or goodwill payments made, anticipated losses resulting from the Agreement, lost data, source material, images or other output, cost of substitute equipment, facilities or services or downtime cost or claims from third parties for any such loss or damage or for any other indirect, special, incidental or consequential loss or damages of any kind even if Miraclon is made aware of the possibility of such losses or damages.

**10.4** Customer is responsible for implementing its own network security including its own anti-virus and back-up data systems including, but not limited to, if any Products are connected to the public internet. Subject to condition 10.1, Miraclon shall not assume or retain any liability or other obligations in connection with any possible Customer data loss or network security and/or virus violation. Customer shall hold harmless and indemnify Miraclon, its parent corporation, its subsidiaries, affiliates, suppliers and licensors, subcontractors and manufacturers against any third party claims and losses relating to breaches of security pertaining to the Internet.

**10.5** Miraclon and its parent corporation, subsidiaries, affiliates, licensors, subcontractors, manufacturers and suppliers may not be held liable for unsatisfactory operation or compatibility of the Products with other manufacturer's hardware, media or software, which have not been qualified by Miraclon.

**10.6** In the case of Products supplied but not manufactured by Miraclon, the liability of Miraclon pertaining to such Products shall be limited to amounts recovered by Miraclon under warranties given by its supplier, if any.

## **11 Software.**

**11.1 License.** It is mandatory that the Customer purchases a Software Support License Plus or Advance for the initial 12 months following Completion of Installation. In the absence of a Software Support License Customer will only have access to download or have installed Software Updates. Miraclon grants to Customer a non-exclusive, non-transferable, non-sub licensable license to use the Software, provided the Software is used only (i) for Customer's internal business purposes, (ii) on the single computer system on which it is installed, and (iii) only in the country of Customer's place of business as stated in the Agreement. Customer shall not pool or share the Software between or among multiple computers, except as authorised by Miraclon. Miraclon may terminate the license without further notice, without prior judicial intervention and without liability, if Customer breaches these provisions or its obligations under the Agreement and fails to cure such breach within 30 days after receipt of Miraclon's written notice of breach. If Customer terminates the Software Support License, they will no longer eligible to receive Software Upgrades. Also see condition 11.5.

**11.2 Ownership.** No title to, or ownership of, the Software is transferred to Customer and any use of the terms "sell", "sale," "purchase" or "acquire" in relation to the Products with respect to the Software shall be deemed to mean "license on the terms contained in the Agreement". Neither Customer nor any of its agents or employees shall (a) copy the Software except for 1 copy for back-up purposes; provided such copy shall contain all proprietary notices and other markings appearing on the Software, (b) assign or otherwise transfer, modify, enhance, supplement, adapt, translate, reverse engineer, reverse assemble, decrypt, decompile, disassemble, create derivative works, or make improvements to the Software, (c) merge Software into any other program, (d) use all or any portion of the Software for the purpose of deriving its source code, or (e) allow third parties to use the Software other than as permitted by this Agreement. Upon termination of the Software license Customer shall cease all use and return or certify destruction of the Software (including copies).

**11.3 Third party rights.** The Software may include programs owned by third parties not affiliated to Miraclon (including Adobe Systems Incorporated). These entities are third party beneficiaries of the Agreement and may enforce the provisions of the Agreement that relate to their rights in the Software. IF THE SOFTWARE IS OR CONTAINS AN EXTENSION FOR QUARKXPRESS® (MACINTOSH®), IT CAN ONLY BE USED WITH A VALID, REGISTERED COPY OF QUARKXPRESS. Miraclon is under no obligation to provide Software Updates for third-party software and assumes no responsibility for and cannot be held liable for such third party software.

**11.4 EULA.** Some of the Software may be subject to the terms of a Kodak End-User License Agreement ("**EULA**"). The EULA is integrated in a digital form in the Software and is readable before installation. The terms of the Agreement and the terms of the EULA shall be applicable with respect to such Software and a copy of the EULA can be obtained from Miraclon upon request. To the extent that the terms of the EULA conflict with the terms of the Agreement, the terms of the EULA shall prevail.

**11.5 Cancellation and reinstatement.** If Customer terminates a Software Support License and subsequently wishes to reinstate it, the Customer will be required to pay an amount equal to the Software Support License (at the then current pricing) for the period that they did not have a Software Support License.

**11.6 Transfer of License.** Notwithstanding the provisions of conditions 11.1 and 11.2, if Customer sells or transfers the Equipment in which the Software operates, Miraclon shall offer to license the Software, and to provide services, to any bona fide end user (“**Transferee**”) pursuant to Miraclon’s then current standard terms, conditions and fees, provided that the Transferee is not considered, in Miraclon’s discretion, a competitor of Miraclon or its parent, affiliates or subsidiaries and provided that the Transferee, at the sole discretion of Miraclon offers sufficient guarantees for the good faith execution of any of its obligations under the Agreement. To the extent that the Software is licensed to a Transferee in accordance with this condition, Customer’s license to use the Software shall be deemed terminated. Miraclon shall offer to provide de-installation services for the Customer and re-installation and certification for the Equipment and Software and services for the Transferee at Miraclon’s then current applicable fees.

## **12 Agreement Term and Termination.**

**12.1** The Agreement shall be effective from and including the Effective Date and shall continue for the Initial Period continuing thereafter for an indefinite term, unless and until either Party terminates the Agreement by giving 3 months’ written notice to the other expiring at the end of the Initial Period or at any time thereafter.

**12.2** Miraclon may, by written notice to the Customer, terminate the Agreement as of right, without prior notice and without prior judicial intervention or suspend the supply of Products immediately in the event: a) the Customer fails to make any payment due to Miraclon or to a finance company financing the Equipment, and/or Software within 14 days of the due date; b) of any insolvency or bankruptcy proceedings by or against Customer including appointment of a receiver; c) the Customer is in breach of any material provision of the Agreement, which is not rectified within 30 days of written notice requiring rectification and stipulating that failing such rectification the Agreement will be terminated as of right; and/or (d) in the event of the occurrence of anything analogous or having a substantially similar effect to any of these preceding conditions or matters under the Applicable Law of any applicable jurisdiction, and to the procedures, circumstances and events which constitute any of those conditions or matters. Such termination shall be without prejudice to the Parties’ accrued rights, provided that Miraclon may without liability cancel any outstanding orders and provided that, subject to condition 10.1, Miraclon shall not be liable for any termination damages or compensation however arising.

**12.3** If Customer cancels an order for Products for any reason before shipment, Miraclon shall be entitled to retain or invoice the Customer 10% of the value of the relevant cancelled order and any additional costs or compensation for higher damage incurred by Miraclon.

## **13 Confidentiality.**

**13.1** The Receiving Party shall use Confidential Information received solely for the purposes of performing its obligations in accordance with the terms of the Agreement.

**13.2** The Receiving Party will exercise in relation to the Disclosing Party’s Confidential Information no lesser security measures and degree of care than those which the Receiving Party applies to its own confidential information and in any event will exercise a reasonable and appropriate degree of care and protection.

**13.3** The Receiving Party undertakes not to copy or otherwise reproduce any of the Disclosing Party’s Confidential Information or to disclose any of the Disclosing Party’s Confidential Information to any third party except that it may disclose such Confidential Information to its employees, professional advisors, agents or sub contractors but only to the extent necessary for the performance of its obligations under the Agreement. The Receiving Party shall ensure that any third party to whom it discloses the Confidential Information shall be informed of the confidential nature of the information and be bound by obligations of confidentiality on terms no less onerous than those set out in these Miraclon T&C’s.

**13.4** Without prejudice to any other rights or remedies that either Miraclon or the Customer may be entitled to, Miraclon and the Customer acknowledge that damages may not be an adequate remedy for breach of these confidentiality obligations and agree that both Miraclon and the Customer will be entitled to seek the remedies of injunction, specific performance and any other available equitable relief for any threatened or actual breach.

**13.5** The provisions of this condition 13 shall not apply to any Confidential Information:

- 13.5.1 to the extent that it is or comes into the public domain otherwise than as a result of a breach of the Agreement by the Receiving Party;
- 13.5.2 which the Receiving Party can show by its written records was in its possession prior to receiving it from the Disclosing Party and which it had not previously obtained from the Disclosing Party or a third party on its behalf under an obligation of confidence;
- 13.5.3 which the Receiving Party can show by its written records was obtained by the Receiving Party without restriction as to use or disclosure from a third party legitimately in possession of it and legitimately able to disclose it;
- 13.5.4 which has been independently developed by the Receiving Party without access to the Confidential Information;
- or
- 13.5.5 which is required to be disclosed by any Applicable Law.

13.6 The provisions of this condition 13 shall survive the expiry or termination of the Agreement and continue for a period of 3 years following the date of expiry or termination of the Agreement.

#### **14 Intellectual Property.**

14.1 Miraclon trademarks are duly protected by Applicable Law in force and by international conventions. Customer will not use Miraclon trademarks without previous authorisation in writing from Miraclon, it being understood that nothing in the Agreement shall imply such authorisation.

14.2 Intellectual property rights associated with the Products belong to Miraclon (except where owned by a supplier of Miraclon) and are reserved by Miraclon on the sale of Products. The Customer shall not exercise or purport to exercise any rights, powers, privileges and immunities conferred on the proprietor of any intellectual property rights subsisting in or associated with the Products, including the right to sue for damages or other remedies in respect of any infringement.

14.3 Miraclon will defend Customer against any suit based on a claim that the Products infringe any patents in force in the country where the Products are Delivered provided that Miraclon is notified promptly and given information, assistance for and sole control of the defence and/or all decisions to settle or compromise, including all related negotiations. Miraclon shall pay resulting damages and costs awarded in such suit. This provision excludes claims relating to Products not manufactured by or for Miraclon, Products used in combination with equipment or software not manufactured by or for Miraclon, Miraclon Products manufactured specifically to Customer's specifications or designs, Products used in a manner other than as specified by Miraclon or for a purpose for which the Products were not intended, or Products modified after Delivery.

14.4 If any qualifying Products are held to infringe a patent and further use is not permitted by Applicable Law, Miraclon, at its own expense and at its sole option, will either obtain for Customer the right to continue using the Products, or replace infringing Products with non-infringing Products, or modify the Products so that they do not infringe, or remove them and refund the purchase price paid, less a reasonable depreciated value for use. Any other or further liability in this respect is excluded.

#### **15 Data protection.**

15.1 Customer acknowledges that in order for Miraclon to provide the warranty-related services, Training, Start-Up Assistance, and/or Professional Services (the "**Services**") hereunder, Customer may provide Miraclon with personal information. Customer represents and warrants that this personal information has been collected in accordance with Applicable Laws and that it has the authority to provide such data to Miraclon. Miraclon shall process the personal information as needed to provide the Services, in accordance with Customer's instructions, or as required or permitted by Applicable Law.

15.2 Each Party warrants that it shall comply at all times with its obligations under the local data privacy legislation applicable to it in any specific country (the "**Privacy Laws**"), including (without limitation) the EU General Data Protection Regulation. For clarity, Customer (and its affiliates) act as data controllers (as that term may be defined in the Privacy Laws) and Miraclon, its affiliates and subprocessors act as data processors.

15.3 Miraclon shall at all times have implemented reasonable operational, technical and organizational measures to protect the personal information against accidental or unlawful destruction or alteration and unauthorized disclosure or access. Once per year upon request, Miraclon will provide Customer with copies of any applicable Service Organizational Control (SOC) or other internal control reports that it has received. Customer understands that these internal control reports contain Confidential Information of Miraclon. Customer shall not disclose the internal controls reports other than to its auditors and advisors in connection with verifying Miraclon's compliance with this condition.



**15.4** If Miraclon becomes aware of a security breach (as defined in any applicable Privacy Law) that compromises the security, confidentiality or integrity of Customer's personal information (an "**Incident**"), Miraclon will take appropriate actions to contain, investigate and mitigate the Incident. As required by applicable Privacy Laws, Miraclon will notify Customer without undue delay to enable Customer to expeditiously implement its response program.

**15.5** Customer authorizes Miraclon to use its affiliates, suppliers and subcontractors including for data processing, hosting and storage purposes, provided that Miraclon remains responsible for the quality of the Services and the affiliates', suppliers' and subcontractors' compliance with the Privacy Law as applied to data processors. Where required by Privacy Laws, Miraclon has entered into agreements containing standard contractual clauses for the transfer of personal information to processors located in a third country with other Miraclon Affiliates and subprocessors as needed to document their commitment to adequate protection of personal information and authorize the transfer.

**15.6** To the extent required by the Privacy Laws, Miraclon will (at Customer's expense) (i) reasonably assist Customer with fulfilling any obligations to respond to requests for exercising data subject's rights, (ii) delete or return the personal information when no longer needed for the provision of Services, (iii) provide Customer with all information reasonably necessary to demonstrate compliance with the specified obligations, and reasonably allow for and contribute to audits, including inspections. Customer has the right to lodge a complaint with a supervisory authority that is competent for privacy and data protection (for example the Belgian DPA (Data Protection Authority Gegevensbeschermingsautoriteit, Autorité de protection de données), Drukpersstraat 35, 1000 Brussels, Tel. +32 (0)2 274 48 00, Fax +32 (0)2 274 48 35, e-mail: [contact@apd-gba.be](mailto:contact@apd-gba.be)) regarding Miraclon's processing of its personal data.

## **16. Miscellaneous.**

**16.1 Assignment.** Customer shall not assign its obligations under the Agreement, nor delegate or sub contract any performance without Miraclon's prior written consent, which consent shall not be unreasonably withheld. Miraclon may assign all or part its rights and obligations under the Agreement in connection with a sale of the business or assets to which the Agreement relates or relation to the sales/licensing/supply of the Products, or sub contract its obligations or carry out its obligations through its affiliates without restriction.

**16.2 Force Majeure.** Neither Party is liable to the other Party for losses, damage, detention, or delays, or will be responsible if its performance becomes commercially impracticable, due to causes beyond the reasonable control of that Party, including strike, lockout, labour disputes or shortages, riot, revolution, mobilisation, war, epidemic, pandemic, transportation difficulties, difficulties in obtaining necessary materials, manufacturing facilities, or transportation, working difficulties, machine breakdowns, accidents, fires, floods or storms, failure of suppliers, acts of God, sabotage, civil unrest, government imposed restrictions or embargoes, acts of civil or military authority, Applicable Law whether valid or invalid, inability to obtain material, hardware or transportation, incorrect, delayed or incomplete specifications, drawings or data supplied by the other Party or third parties (collectively "**Force Majeure**"). In the event of delay in performance due to Force Majeure, any dates set out in the Agreement will be postponed by such period as may be reasonable necessary to compensate for delay.

**16.3 Export Control.** Customer acknowledges that some of the Products may be subject to US export control regulations which Customer shall comply with to the extent that they apply to the Customer.

**16.4 Amendment, Modifications.** Any kind of amendment or modification to the Agreement shall be in writing and signed by authorised representatives of both Parties or shall be of no effect.

**16.5 Waiver.** The failure or delay of Miraclon in exercising a right or remedy does not constitute waiver of them or any right to subsequently enforce them.

**16.6 Severability.** If any part of the Agreement is held unenforceable, the validity of the remaining provisions will not be affected.

**16.7 Representations.** The terms of the Agreement supersede all prior drafts, agreements, arrangements, understandings and discussions between the Parties or their advisors and all statements, representations, terms and conditions, warranties, guarantees, proposals, communications and understandings whenever given and whether orally or in writing. Each Party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of, any such statements, representations, terms and conditions, warranties, guarantees, proposals, communications and understandings that are not set out in the Agreement. Nothing in this condition shall limit or exclude any liability for fraud or fraudulent misrepresentation.

**16.8 Set off.** All amounts due to Miraclon shall be paid in full without any deduction or withholding (other than any deduction or withholding of tax as required by Applicable Law) and the Customer shall not assert any set-off or counterclaim against Miraclon to justify withholding payment in whole or in part. Without waiver or limitation of any of its rights or remedies where Miraclon has incurred any liability to the Customer, whether under the Agreement or otherwise, Miraclon may set off the amount of such liability, including any applicable VAT payable, against any sums owed at any time by Miraclon to the Customer.

**16.9 Enforcement.** Each Party shall be liable for all costs incurred by the other Party (including legal fees and other legal costs) (i) in connection with the collection of any past due amounts and (ii) in any successful action by such other Party to enforce the terms of the Agreement.

**16.10 Major business change.** If, in the reasonable opinion of Miraclon, there is or is likely to be a major change in the business operations of Miraclon that has or could have an adverse impact on the viability of the provision of the Products to be supplied to the Customer (**Major Business Change**), Miraclon may notify the Customer and Miraclon and the Customer must meet and discuss in good faith whether the provisions of the Agreement need to be varied. In the event that the Parties cannot agree in good faith on Agreement variations within a period of 30 days, then either Party has the right to terminate the Agreement. Unless otherwise agreed by Miraclon and the Customer, the rights and obligations of either Party will not be affected until the Agreement is terminated in writing. Neither Party will be entitled to claim or receive compensation from the other Party by reason of the operation of this condition.

**16.11 Communication.** The Customer agrees that Miraclon personnel can communicate electronically with the Customer designated individuals, in relation to marketing, Consumable shipments, payments, Services, scheduling Support Services, and other support items, etc. The Customer is responsible for ensuring that they keep the contacts updated via the Miraclon online support process, or if unavailable, in writing via Customer's designated Miraclon representative.

**16.12 Notices.** All notices to be given under the Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or mailed by first class mail (or air mail if sent internationally) or sent by courier or by fax or email addressed to the Party concerned at the address specified in the heading to the Agreement or to the designated fax number or email address of the recipient's Managing Director or Corporate Secretary or to such other address, email address or fax number as may be notified from time to time by the Party concerned as set out in this condition and shall be deemed to be served when personally delivered, or 2 days after the date it was sent by first class mail (or 3 days after the date it was sent if sent by air mail) or on the date of the fax transmission or email provided that in the absence of acknowledgement of delivery a confirmatory copy is sent by first class post (or air mail if sent internationally).

**16.13 Entry into the Agreement.** The Agreement may be entered into by electronic means. Facsimile signatures are acceptable. It will come into effect only upon signature by the authorised representatives of both Parties.

**16.14 Governing law Jurisdiction.** The Agreement and all matters relating to the Agreement (its coming into existence, its interpretation, its validity, enforceability, termination, etc) shall be governed by and construed in accordance with Belgium law. Each Party hereby submits to the exclusive jurisdiction of the courts of Belgium, provided that either Party shall be entitled to enforce any award made by or any judgement or decision of the courts of Belgium in any other jurisdiction and Seller may commence proceedings in any court with jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods and Book X Code of Economic Law shall not apply.