

THESE ARE THE TERMS AND CONDITIONS ON WHICH MIRACLON WILL SUPPLY THE CUSTOMER WITH SUPPORT SERVICES. THE CUSTOMER AGREES TO BE BOUND BY MIRACLON'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 Service and Maintenance Agreement (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 Support Services provided under 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.

"Certified Maintenance Technician" and **"Certified Operator"** shall mean an individual who is currently certified by Miraclon as having successfully completed all applicable certification training, at Customer's expense.

"Confidential Information" shall mean any information 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 Support Services or the Customer's services, operations, prices, plans or intentions, Support Service information, design rights, trade secrets, market opportunities and business affairs or those of Miraclon 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 that 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.

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

"Equipment" shall mean hardware covered by a Support Plan, as identified in the Agreement.

"Field Replaceable Units or FRU" shall mean components of the Equipment that are replaceable by Miraclon.

"Initial Support Term" shall have the meaning given in condition 10.1 below.

"Interdependent Equipment" means (i) hardware and software within the same workflow configuration with any of the Equipment at a Site; or (ii) software which is resident on hardware provided by Miraclon or (iii) workflow or software associated with hardware, provided by Miraclon.

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

"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 and Parts.

"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.

"Service Fee" shall mean the fee to be paid by Customer periodically to Miraclon for Support Services as specified in the Agreement and in Schedule Support Services.

“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 Equipment, (b) third party software embedded in Miraclon’s software or in Equipment, (c) all software identified in Schedule Support Services, (d) any Software modifications that are provided to Customer by Miraclon, in its sole discretion, and (e) all user materials and other documentation.

“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.

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

“Support Plan” shall mean a service offering that sets out the level of service entitlements purchased by Customer as described in detail in Schedule Support Services.

“Support Services” shall mean Equipment and Software maintenance and support service as further described in Schedule Support Services.

“Support Commencement Date” shall mean the commencement date for the supply of Support Services by Miraclon as set out in the Schedule Support Services.

“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.

“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 Support Services. Subject to the terms of the Agreement Miraclon will provide the Support Services in accordance with the Support Plans and the Software Support License identified in the Schedules to the Agreement on the terms and conditions set out or referred to in the Agreement.

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

2.3 Entire agreement. 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 End user. The Customer represents that it is purchasing the Products as a professional end-user.

3. Additions and Deletions of Products.

3.1 Additions. In the event that Customer has Equipment and Software that is under a Support Plan or Software

Support License and Customer acquires additional equipment and software, for an additional charge such equipment and software shall automatically be placed on that Support Plan or Software Support License at the end of any applicable warranty period for such equipment and software, unless Customer notifies Miraclon otherwise at least 30 days prior to the expiration of the warranty. In such cases, the end of the warranty shall be considered the Support Commencement Date.

3.2 New Support Plan or Software Support License. Subject to condition 5.1, in the event that Customer has equipment and software that is not under a Support Plan or Software Support License and is no longer under warranty or Customer acquires used equipment and software from a third party, and Customer wishes to purchase a Support Plan or Software Support License for such equipment and software, Customer may do so subject to Miraclon's inspection and acceptance. Customer, at its expense, must take any remedial action required by Miraclon, including without limitation in the case of equipment and software acquired from a third party, payment of a remanufacturing, certification and license fee, prior to such equipment and software being placed on a Support Plan or Software Support License.

3.3 Deletions.

3.3.1 Following the Initial Support Term Customer may remove Equipment and Software from a Support Plan or Software Support License by providing Miraclon written notice, in which case the removal shall be effective 90 days following the end of the month of notification and the Service Fee adjusted accordingly. In the event the Software is covered under a Software Support License there will be no refund or credit of pre-paid fees. Notwithstanding the foregoing, should Customer finance a pre-paid Support Plan or Software Support License through a financing company, Customer shall be required to secure approval from the financing company prior to any deletion.

3.3.2 Miraclon may remove Equipment and Software from a Support Plan or terminate a Software Support License by providing Customer written notice, in which case the removal shall be effective 90 days following the end of the month of notification and the Service Fee adjusted accordingly.

3.4 Cancellation. If Customer cancels a Support Plan and then subsequently wishes to re-instate that Support Plan more than 30 days after cancellation, then a full system health check will need to be completed by Miraclon, at Customer's expense. All recommendations made as a result of the health check will need to be implemented by Customer before the Support Plan is re-instated.

4. Customer Responsibilities.

4.1 Maintenance. Customer shall, at its expense, (i) perform all routine maintenance procedures and maintain the Site, each as specified by Miraclon and/or Applicable Law; (ii) promptly install and maintain all Software Updates and procure any additional equipment or software that may be required for, or as a result of, such installation and maintenance; (iii) provide access to the Products during normal business hours; (iv) provide assistance, information, services, Consumables and facilities as may be requested by Miraclon to perform the Support Services; and (v) promptly return to Miraclon, as requested, all replaced Parts.

4.2 Risk. Customer is responsible following Delivery for risk of loss or damage to any Parts shipped to them to enable Miraclon to carry out any Equipment repairs.

4.3 Parts return. Any Parts due for return will be packaged by Miraclon and Miraclon will arrange collection of these Parts. If Customer does not allow pick up of these Parts within 10 working days, then Miraclon will charge Customer at Miraclon's then current rates.

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

5. Miraclon Support Services Restrictions.

Support Services provided under the Agreement shall be subject to the following restrictions:

5.1 Interdependent Equipment. All Equipment that is Interdependent Equipment must have the same telephone support hours of coverage.

5.2 Customer's employees. Customer shall not permit any of its employees, contractors or other Persons to provide maintenance or support for the Products, unless the individual providing maintenance or support is (i) a Certified Maintenance Technician or Certified Operator, or (ii) instructed by Miraclon. Notwithstanding the foregoing, in no case shall Customer permit any of its employees or contractors or other Persons to provide maintenance or support for, or Miraclon be required to train the Certified Maintenance Technicians or Certified Operators on, the laser components of the Equipment.

5.3 Improper use of the Products; Environmental Conditions. Miraclon shall not be liable for resolving problems relating to (i) improper use of the Products, (ii) the configuration of the Site, including Customer's network, (iii) environmental conditions, or (iv) operation of or use of the Equipment in a manner that has caused premature wear or failure of components that in Miraclon's reasonable judgment is beyond the "normal wear and tear" of the Equipment.

5.4 Consumables use. Miraclon shall not be responsible for resolving any problems caused by operation or use of Equipment with consumables not qualified by Miraclon for use with this Equipment or with consumables for which Equipment is not designed or configured to operate/be used with (e.g. regarding plate type and size).

5.5 Software Updates and Upgrades. Miraclon shall not be responsible for any hardware upgrades to the Products that are necessary with regard to the Software Updates and Software Upgrades.

5.6 Relocation of Equipment. Any Equipment under a Support Plan or Software Support License that is moved to a different location at the Site, or to a different Customer site, shall remain eligible for Support Services under the Support Plan or Software Support License if (i) Customer gives Miraclon reasonable prior written notice of Customer's intent to move such Equipment, and (ii) Miraclon is given the opportunity to supervise and inspect the Equipment during the de-installation, packing, unpacking and reinstallation of the Equipment to ensure that the Equipment is in proper working condition following the relocation. Customer is responsible for all relocation and associated costs.

6. Prices and Payment.

6.1 Service Fee. The Service Fee to be paid by Customer is specified in the Schedules and shall be due and payable in full by the Customer to Miraclon in advance of the period to which the relevant Support Services pertain.

6.2 Pricing changes. Support Services pricing is subject to change, at any time during or following the Initial Support Term, based upon deletions or addition of Equipment and Software as per condition 3. In addition, unless otherwise provided in the Agreement, Miraclon reserves the right to review the Support Fee at any time during the term of the Agreement. If, as a result of this review Customer' price changes, then Miraclon will give Customer written notice of these changes at least 30 days before the change is implemented.

6.3 Additional cost Items. Miraclon reserves the right to charge Customer under a Support Plan or Software Support License for additional cost Items as follows:

(i) *Equipment and Software.* Any costs incurred by Miraclon resulting from Customer (1) changes to the configuration of the Equipment or Software, or (2) postponement of Delivery or installation of the Equipment or Software;

(ii) *Support Services.* Any costs incurred by Miraclon, including without limitation, hourly labour rate, parts, zone surcharges (if applicable), and reasonable expenses (travel, accommodation, food and associated expenses, including telecommunications), in providing Support Services as a result of any of the following:

(a) the Equipment and Software are repaired, modified, have features added to them, or are maintained, or altered, other than by Miraclon, a Certified Maintenance Technician or Certified Operator;

(b) the Equipment is damaged by any negligent or wrongful act or omission by any party other than Miraclon or its agents, or is damaged or lost due to misuse, relocation, transportation, air conditioning, humidity control,

electrostatic discharge, external electrical fields, or external causes, including accident, electrical power failure or surge, disaster, fire, flood, water, wind, and lightning;

(c) Customer operates the Equipment with (i) hardware or software which has not been approved or licensed for use by Miraclon; (ii) a version of Software which is not the latest released Software Upgrade, or which does not contain the latest Software Update; or (iii) consumables not authorised (not qualified) by Miraclon for use with the Equipment;

(d) Support Services are provided outside the hours of coverage specified in the Support Plan or Software Support License;

(e) Emergency weekend on-call Support Services are provided;

(f) Customer has not installed a modem, as requested by Miraclon;

(g) Miraclon installs self-installable Equipment at Customer's request; or

(h) replaced Parts are not returned as directed by Miraclon.

6.4 Payment. Payment will be made in accordance with the applicable payment terms set out in the Schedule Support Services, or if no payment terms are specified within 30 days from the date of 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. Support Services provided on a time and materials basis shall be due and payable 30 days from the invoice date. Miraclon may appropriate any payments received that do not refer to a particular invoice to any outstanding invoice.

6.5 Applicable Taxes and Other Charges. Unless otherwise specifically stated in the Agreement, Customer is responsible for and shall pay or reimburse Miraclon for all (i) VAT; (ii) duties or other customs charges; and (iii) storage and rigging, when and if applicable.

6.6 Time of essence. Time for payment of amounts due from Customer to Miraclon under the Agreement is of the essence of the contract.

6.7 Rebates. Any rebates allowances or other claims due to the Customer will be dealt with by credit note or payment.

6.8 Interest. 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, suspend Support Services, alter payment terms, terminate the Agreement 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.

7. Warranty.

7.1 Miraclon shall perform Services in a workmanlike and professional manner in accordance with generally accepted industry standards and Miraclon's then current policies and procedures. 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 Services, or (2) refund of the amount paid by Customer for the non-conforming Services. Further exclusions contained in condition 6.3 relating to additional charges also apply.

7.2 Subject to the provisions of condition 8.1 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.

8. Limitations of Liability.

8.1 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.

8.2 Subject to condition 8.1, in no event shall the liability of Miraclon or that of its parent corporation, its subsidiaries, affiliates, licensors, manufacturers, subcontractors, and suppliers exceed the total amount of 3 months' Service Fee

regardless of the basis on which the injured Party claims.

8.3 Subject to condition 8.1, in no event shall Miraclon, its parent corporation, subsidiaries, affiliates, licensors, manufacturers or suppliers or subcontractors be liable for any loss of revenue, profits 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.

8.4 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 Support Services are performed using a connection to the public internet. 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 as a consequence of execution of Support Services. 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.

9 Software.

9.1 License. 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 this 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 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. In the absence of a Software Support License a Customer will only have access to download or have installed a Software Update and will no longer be eligible to receive Software Updates. Also see condition 9.5.

9.2 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 this 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, or (d) use all or any portion of the Software for the purpose of deriving its source code. Upon termination of the Software licence, Customer shall cease all use and return or certify destruction of the Software (including copies).

9.3 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 this 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.

9.4 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.

9.5 Software Support License termination. Either Party may terminate the Software Support License following the Initial Support Term by giving 90 days written notice to the other Party expiring no earlier than the end of the Initial Support Term.

If Customer terminates the Software Support License, they will no longer eligible to receive Software Upgrades. 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.

9.6 Transfer of License. Notwithstanding the provisions of condition 9.1, 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. 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.

10. Agreement Term and Termination

10.1 The initial support term for the provision of Support Services (and any Support Plans and/or Software Support Licenses under it) will be for the initial period commencing on the Support Commencement Date set out in Schedule Support Services and will terminate on the End Date set out in Schedule Support Services ("**Initial Support Term**"). If the Auto-renew option in Schedule Support Services has been selected, then following the End Date the Support Services shall automatically renew for successive 12 month periods at the Service Fee indicated in Schedule Support Services subject to price increases (see condition 6.2), unless Customer provides Miraclon with written notice of non-renewal 90 days prior to the end of the Initial Support Term or any 12 month renewal period.

10.2 Miraclon may, by written notice to the Customer, terminate the Agreement or cancel the Support Plan or Software Support License or suspend the supply of Support Services immediately in the event: a) the Customer fails to make any payment due to Miraclon within 14 days of the due date; b) of any insolvency or bankruptcy proceedings by or against Customer including appointment of a receiver; c) Customer fails to operate or use the Products in accordance with Miraclon's specifications, Applicable Law, the use for which it was intended or designed, or for which it has been configured (i.e. plate type and size), or if Customer fails to maintain the Products in an environment which meets the requirements set out in the applicable operating manuals or other Miraclon guidelines; d) 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/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 8.1, Miraclon shall not be liable for any termination damages or compensation however arising. In the event of suspension or termination of Support Services, Miraclon will not be liable to Customer for any damage, loss of profits or prospective profits of any kind or nature arising out of or alleged to have arisen out of such suspension or termination.

11. Confidentiality

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

11.2 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.

11.3 The Receiving Party undertakes not 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.

11.4 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.

11.5 The provisions of this condition 11 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.

11.6 The provisions of this condition 11 shall not apply to any Confidential Information:

11.6.1 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;

11.6.2 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;

11.6.3 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;

11.6.4 which has been independently developed by the Receiving Party without access to the Confidential Information; or

11.6.5 which is required to be disclosed by any Applicable Law.

12 Intellectual Property

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

13 Data protection

In the event that the provision of the Support Services requires Miraclon to process any personal information from Customer, the following terms apply:

13.1 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 Support Services, in accordance with Customer's instructions, or as required or permitted by Applicable Law.

13.2 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.

13.3 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 understand 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.

13.4 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.

13.5 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 Support 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.

13.6 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 Support 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.

14. Miscellaneous

14.1 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 sub contract its obligations or carry out its obligations through its affiliates without restriction.

14.2 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.

14.3 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.

14.4 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.

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

14.6 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.

14.7 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.

14.8 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.

14.9 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.

14.10 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.

14.11 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).

14.12 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.

14.13 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 shall not apply.